



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against Invest NI

NIPSO Reference: 18195

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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SUMMARY

I received a complaint about the actions of Invest Northern Ireland (Invest NI). The complaint concerned a Letter of Offer (LoO) Invest NI presented to a company in 2015 for a research and development grant (R&D Grant). The LoO was subject to two pre-conditions, which had to be satisfied within six calendar months from the date of issue. The complainant said that he made several requests to Invest NI for an extension to the timeframe detailed in the LoO. However, he believed that these requests were ignored. He complained that Invest NI subsequently withdrew the LoO. He also complained that Invest NI failed to provide adequate guidance and support during the R&D Grant process.

I accepted the following issues of complaint for investigation:

- Issue 1: Did Invest NI follow the appropriate policies and procedures when
 - considering the company's request for extension?
 - determining withdrawal of the company's Letter of Offer?
- Issue 2: Was the communication between Invest NI and the company, from March 2015 to December 2016, appropriate and reasonable?

On investigation of the complaint I did not identify maladministration in relation to Invest NI's decision making when considering the company's request for extension, or when determining withdrawal of the LoO. I also considered Invest NI's communication with the company, between March 2015 and December 2016, to be reasonable. As a result, I did not uphold the complaint.

THE COMPLAINT

1. I received a complaint about the actions of Invest NI in relation a Letter of Offer (Lo) for a Research and Development (R&D) grant it presented to a company in 2015.
2. In October 2012 a US based company in which the complainant is Chief Executive Officer (CEO) met with Invest NI as it was looking for a suitable European location to establish a subsidiary of its operations. Between 2014 and 2015 the complainant explained that he underwent numerous discussions with Invest NI in relation to the potential funding and support his company could receive from Invest NI. A funding option discussed between Invest NI and the complainant was the R&D Grant.
3. The aim of Invest NI's R&D Grant is to support businesses developing new products, processes and services to improve company competitiveness and to benefit the Northern Ireland economy. The R&D Grant is designed to provide support for research and development, and technological innovation relevant to all stages of company development. However, in order to be eligible for the R&D Grant, the company applying has to be an independent company based in Northern Ireland. Therefore, the company was incorporated in Northern Ireland on 26 April 2013. On incorporation, the complainant and a colleague were appointed as the company's directors, and both individuals are listed as having '*significant control*'¹ of the company.
4. The complainant stated that the company subsequently submitted a funding application for the R&D Grant. On 25 March 2015, Invest NI issued the company with a '*Letter of Offer*' (LoO) for the R&D Grant. The LoO was subject to two pre-conditions, which had to be satisfied within six calendar months from the date of issue.
5. From early 2016, the complainant said that he made several requests to Invest NI for an extension to the timeframe detailed in the LoO. He complained that as he received no response from Invest NI, he believed that

¹ These individuals each hold '*more than 25% but not more than 50% ownership*' of the company's shares and voting rights.

the extension had been granted. However, on 8 December 2016, he complained that Invest NI notified him that the R&D Grant had been withdrawn as one of the LoO pre-conditions had not been met, and the project had not been implemented as specified in the company's application. The complainant said that Invest NI failed to communicate appropriately with the company during the R&D Grants process.

Issues of complaint

6. The issues of complaint which I accepted for investigation were:

Issue 1: Did Invest NI follow the appropriate policies and procedures when

- Considering the request for extension
- determining withdrawal of the Letter of Offer?

Issue 2: Was the communication between Invest NI and the company from March 2015 to December 2016, appropriate and reasonable?

7. Given the interrelated nature of the issues of complaint, it was decided to report on both issues of complaint together.

INVESTIGATION METHODOLOGY

8. In order to investigate the complaint, the Investigating Officer obtained from Invest NI all relevant documentation together with Invest NI's comments on the issues raised by the complainant. This documentation included information relating to Invest NI's handling of the complaint.

Relevant Standards

9. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

10. The general standards are the Ombudsman's Principles²:

² These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Principles of Good Administration
- The Principles of Good Complaints Handling
- The Public Services Ombudsmen Principles for Remedy

11. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative and professional judgement functions of those organisations and individuals whose actions are the subject of this complaint.

12. The specific standards relevant to this complaint are:

- the company's LoO, dated 25 March 2015
- the company's Grant for R&D Application Form (Application Form)
- Guidance and Principles of Invest NI Support

13. In investigating a complaint of maladministration, the role of this office is concerned primarily with the examination of administrative actions taken by a body. Section 23 of the Public Services Ombudsman Act (NI) 2016 states *'nothing in this Act authorises the Ombudsman to question the merits of a decision taken without maladministration by a listed authority.'* The focus of this investigation has been on the administrative functions of Invest NI.

14. I have not included all of the information obtained in the course of the investigation in this report. I am satisfied however that everything that I consider to be relevant and important has been taken into account in reaching my findings. As part of the NIPSO process, a draft copy of this report was shared with the complainant and Invest NI for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Issue 1: Did Invest NI follow the appropriate policies and procedures when

- determining withdrawal of the Letter of Offer?
- considering the request for extension?

Detail of Complaint

Withdrawal of the Letter of Offer

15. The complainant said that Invest NI withdrew the company's LoO, as it considered that the company did not meet one of its pre-conditions. He stated that the pre-condition in doubt was pre-condition one of the LoO, which stipulated that the company must provide '*confirmation that it has access to a minimum of £600,000 of funding*', within six calendar months from the date of the LoO.
16. The complainant said the LoO stated that the company must provide evidence of the funding pre-condition '*to the satisfaction of Invest NI*'. However, despite numerous requests by the company for clarification, the complainant believed that Invest NI did not explain what specific evidence was required. Nonetheless, the complainant stated that financial documentations evidencing the company's funding were provided to Invest NI as early as 2014, and continued throughout 2016. He explained that this evidence included bank statements with investors' deposits.
17. During discussions with Invest NI, the complainant said that there were no suggestions that the financial information being provided by the company was insufficient. As a result, he complained that the company continued to provide information to Invest NI and proceed with the project, in the belief that the costs of work been carried out would be funded/ reimbursed by the R&D Grant. He stated that there was numerous communications and events that led the company to believe that the pre-condition had been met.
18. For example, on 9 September 2015, the complainant stated that he had a meeting with Invest NI, at which he believed it had been agreed with the

Invest NI Client Executive that the funding requirement had been met. In addition, he stated that the company submitted its R&D Report 1 to Invest NI on 31 January 2016, which he believed provided evidence that the precondition was met. The complainant stated that the first time Invest NI raised an 'issue' regarding the pre-condition not being met was in an email on 11 February 2016. However, he stated that the subsequent silence from Invest NI was assumed by the company to be acceptance that the pre-conditions had been met. In addition, on 8 November 2016, the complainant stated that the company submitted R&D Report 2, which again detailed how the funding pre-condition was met.

19. On 8 December 2016, the complainant said that Invest NI withdrew the LoO, almost three years after initial discussions regarding the project had commenced, and significant costs had been incurred by the company. At this time, he complained that Invest NI raised a new issue, expressing that *'the commercial structure of the funding that the Client [the company] has confirmed is not to the satisfaction of Invest NI.'* The complainant said that this issue was raised after the fact, and the company was not given an opportunity to respond.

The company's request for extension

20. The complainant also complained that Invest NI failed to provide the company an extension to the LoO, despite the company's repeated requests. He complained that on a telephone call with the Client Executive, in March 2015, she stated that the LoO *'can be renewed.'*

21. On 24 March 2016, he complained that the company emailed Invest NI seeking the requested extension beyond the end of March 2016. He stated that he received an out of office reply from the Client Executive, and therefore forwarded the email to Invest NI's Technology Executive, and Invest NI's R&D Executive. He complained that he did not receive a response to this email and had concerns that his correspondence was being ignored. As a result, the complainant stated that he instructed his solicitors to write to Invest NI to confirm the position of the requested extension. He explained that a letter was sent on 4 August 2016, however no response was received from Invest NI.

22. The complainant stated that the company continued with the project, as it believed the extension was agreed and the funding was available from Invest NI. He considered that this belief was supported when he received an email from Invest NI on 25 August 2016 notifying him that the company had not submitted a claim and sought details of any claims to be made. On the same day, the complainant stated that he emailed Invest NI seeking confirmation in relation to the request for extension, however he did not receive a response.
23. Therefore, the complainant stated that the company emailed the CEO of Invest NI on 9 September 2016 and referred to the aforementioned correspondence. The complainant said that during the period between the end of September and December 2016, the company continued to correspond with Invest NI, providing additional financial documentation, which took time and money to provide. He complained that these costs were incurred on the belief that the extension request had been agreed and the funding was still available. He stated that the company was relying upon the reimbursement from Invest NI of those expenses to hire personnel in Northern Ireland, but in the absence of such funds was unable to proceed.
24. As detailed above, the company's request for an extension was not approved, and Invest NI withdrew the company's LoO on 8 December 2016.

Communication between March 2015 and December 2016

25. The complainant also said that there was a lack of guidance and support from Invest NI during the R&D Grant process. He complained that Invest NI failed to assist the company make contacts in the industry, and as a result the company had to find, develop and fund the business relationships required to conduct operations on its own.
26. He complained that Invest NI failed to provide feedback following a seminar presentation in November 2015, and the submission of project reports in January and November 2016. In addition, in August and November 2016, the complainant stated that the company requested guidance in hiring manufacturing/ QC personnel, however did not receive a reply. He also

complained that during various meetings in 2014 and 2015, Invest NI promised to assist the company obtaining clarification from Queens University's Centre for Cancer Research & Cell Biology regarding a proposed clinical collaboration, however no follow up was received from Invest NI.

27. The complainant said that during all communications with Invest NI, Invest NI were slow to respond or did not respond at all. In February 2016, he complained that Invest NI ceased all forms of communication with the company. He stated that several attempts were made by the company to reinstate communication, and the company had no alternative but to instruct its solicitors to re-open dialogue. He complained that the stop in communication happened at a critical time in the grants process, when it needed specific guidance as to the nature of acceptable funding.

Evidence Considered

28. As part of investigation enquiries, I considered the LoO, which states:

'4 PRE-CONDITION(S)

As a pre-condition to the Financial Assistance the following condition(s) must be fulfilled and documentary evidence of their fulfillment, to the satisfaction of Invest NI, should be forwarded to [...] Invest NI...

WITHIN 6 CALENDAR MONTHS from the date of issue of this letter. *In the event that such condition(s) are not satisfied by that date, the offer of Financial Assistance may be withdrawn without further notice.*

4.1 *The Company, [...], provides confirmation that it has access to a minimum of £600,000 of funding... The commercial structure of this funding must be to the satisfaction of Invest NI. Supporting documentation must be provided to evidence the legal and financial close of the financing transaction(s)*

4.2 *[The company] should provide finalized contractual documentation detailing the assignment of the intellectual property [...] to the satisfaction of Invest NI.'*

5 GENERAL CONDITIONS

5.1 The Project

The Client shall diligently implement and complete the Project and ensure that the Financial Assistance shall be applied to the Project in accordance with the Application.'

29. I considered the company's Application Form, which states:

'17. Project Overview...

Key Objectives...

2. Set-up the company laboratory in N. Ireland.

- *Sub-let space from [...].*
- *Build-up laboratory, purchase equipment*
- *Hire 1 Senior Scientist and 4 Research Scientists in 2014/15...*

Key Milestones...

4Q 2014

- *Finalize support from Invest NI, US/EU Investors...*
- *Set-up the company laboratories in Antrim, N. Ireland...*

30. I considered the Guidance and Principles of Invest NI Support, which states that:

'Invest NI's Offers Team quality assures and issues the majority of Invest NI's letters of offer. No assistance can be drawn down under an offer until it has been accepted, signed and returned to Invest NI and any pre-conditions satisfied.'

31. I have also considered an email from the Invest NI Client Executive, to the complainant, on 12 February 2015:

'Hi [...],

Thank you for the information below. As previously mentioned any funds relating to [the company] cannot be taken into account for the company as

these are two different companies, unless the funds are to be transferred to the company...

In terms of the peak funding requirements the following sensitivities have been applied

- *20% increase in Project costs results in a peak funding requirement of **£594k***
- *30% increase in Project costs results in a peak funding requirement of **£656k...***

I am happy to argue your case when it goes forward to panel but given the nature of the project I want to be able to give it the best opportunity of passing and that may require the pre-condition of £600k.'

32. In addition, I considered an email from the Client Executive to the complainant on 17 February 2015, in which she stated:

'Hi [...]

As discussed I am pleased to confirm that the R&D project has been approved by the casework panel...

A letter of offer will be issued in due course and two prior-conditions have been identified...

The Company, [...] provides evidence that it has access to a minimum of £600,000 of funding... The commercial structure of this funding must be to the satisfaction of Invest NI. Supporting documentation must be provided to evidence the legal and financial close of the financing transaction(s).

It is likely that Invest NI will require to see £300k of this as share capital (this could be £150k share capital from private investors and a matching £150k from [...]) and readily available to the company. Invest NI will need to know that the company has access to a further £300k when and if it is required.'

33. I considered Invest NI's minutes of meetings held with the company on 9

September and 10 November 2015:

34. I also considered the complainant's minutes of the meeting with Invest NI on 9 September 2015 and an email from the Chief Executive to the complainant on 11 February 2016.

35. I have considered an email from Invest NI to the complainant on 22 March 2016, which states:

'Dear [...]

Further to our conversation earlier today I want to clarify Invest NI's position on the current status of the project...

You have not been able to provide evidence to show £600,000 of funding available to the company. Our pre-condition does not require the funding to be made available by Belfast or NI based investors. Your email suggests that you have the following additional funding available:

US Series A round so-far: \$60k

[...] personal guarantee: £310k

You have stated that you were unable to employ any staff here as the Belfast Investors did not invest on time. Can you advise why you were not able to use the personal guarantee of £310k to start the recruitment? This would have ensured that the project remained as had been submitted in the original form. As previously stated the project completion date is the 30 March 2016 and it is essential that... [the issues] are resolved within the next month so that we can make a decision on how to proceed.'

36. I also considered an email from the complainant to the Client Executive on 24 March 2016 which states:

'During our recent discussions about the company project you stated that the Letter of Offer could be extended... it is prudent for the company to consider an extension beyond March 2016... The extension would grant us some time to be able to collate the information to deal satisfactorily with [the] concerns about the application.'

Is there a template or formal document required for requesting an extension?’

I note that this email was forwarded to others in InvestNI after an out of office reply was received for the Client Executive.

37. In addition, I considered an email from the complainant’s solicitors to the complainant on 27 May 2016, which details the meeting had with Invest NI on 24 May 2016:

‘Hi [...]

The meeting was useful in that it served to explain the reason for the impasse for Invest NI’s perspective...

Source of Funds...

The purpose of the funding is specifically to support the R&D research in Northern Ireland... The award of the grant was made on the basis of [the company’s] application, which we understand indicated that there would be 4 scientists employed in Northern Ireland. We are told that it would be a breach of the terms of the ERD Fund to apply the funding against anything other than the research project...

Financial Condition

*The explained that the £600k financial condition in the letter of offer is the amount determined by Invest NI to be required to adequately fund the project **IN ADDITION** to the Invest NI funding. Although you had presented this funding as being included in your funding mix and it was not challenged by Invest NI until recently, they maintain that this proposal would never have been acceptable to them as satisfying the condition... [Invest NI] indicated that they would be prepared to extend the date for satisfying the condition, if [the company] can demonstrate that the R&D has/ will be undertaken in Northern Ireland in accordance with [its] application.’*

38. I have considered a letter sent by the company’s solicitors to Invest NI on 4 August 2016:

'We act for [the company] and further to the Company's request by email on 24 March 2016... we are now instructed to request on behalf of the Company an extension of 12 months to the 30 September 2016 long stop date for making written claims against the grant.'

39. I also considered an email from Invest NI to the company on 25 August 2016:

'Dear [the company]

To date you have not submitted a claim of the above project...'

40. In addition, I considered an email from the complainant to Invest NI's Chief Executive, Mr Alastair Hamilton, on 9 September 2016:

'Dear Mr Hamilton...

[The Client Executive] had offered an extension of the R&D Grant to give [the company] time to meet the remaining requirements... the company has formally requested such extension in writing on 24 March, on 4 of August and again on 26 of August...

Unfortunately, [the company] has received NO reply from Invest Northern Ireland, not even an acknowledgement for this request of extension.'

41. I considered an email from Mr Hamilton, to the complainant on 14 September 2016

'Dear [...]

With regards to your Grant for R&D project we would like to consider your request for an extension. There are however two major issues that need to be resolved before such a request can be considered. These are:

- *The pre-condition relating to the confirmation that [the company] has secured a minimum of £600,000 funding.*
- *The proposed new staff in the application undertaking the research and development funded by our financial assistance are located in NI.*

These issues have been previously highlighted and it is important that they

are resolved before an extension to the Letter of Offer can be considered.'

Listed Authority's Response

42. As part of the investigation process, Invest NI was provided an opportunity to respond to the complaint.

43. In relation to the R&D Grant, Invest NI stated that it *'is committed to supporting investors through every stage of their investment journey. We offer financial assistance for employment, capital, training and R&D.'* It stated that it *'educates investors on the local market, makes introductions to key contacts and influencers within relevant sectors, and the wider business network.'*

During the investment process, Invest NI stated that *'a dedicated Invest NI advisor will guide investors step by step... which will commence with the submission of a full business plan for the Company's NI operation. The Invest NI advisor will provide guidance on the completion of the business plan and subsequent timeframes throughout the process.'* During the company's investment process, the Client Executive was assigned as its Invest NI advisor.

44. In the company's case, Invest NI approved its project *'on the basis of the application made by the company.'* Therefore, Invest NI stated that the LoO was issued on 25 March 2015, and was accepted by the complainant on the company's behalf through his signing of the Form of Acceptance on 1 April 2015. It stated that *'at this point, the company entered into a contract with Invest NI [and] was legally bound by the conditions of that contract.'*

Determining withdrawal of the Letter of Offer

Issuance of Letter of Offer

45. Invest NI stated that *'the LoO is a legal agreement between Invest NI and the supported company and it contains a number of mechanisms through which Invest NI can withdraw the offer and by which the offer could lapse. These mechanisms include standard conditions, specific pre-conditions and clauses around default.'* Invest NI stated that *'these mechanisms serve to protect public funds and enable individual projects to comply with scheme guidelines*

and wider compliance requirements (e.g. State Aid Rules).'

46. Invest NI explained that *'when supporting any business... there is an element of risk as to whether the project will proceed as planned... The LoO can contain additional clauses, including pre-conditions, which are designed to de-risk certain elements of the project.'* It stated that each LoO *'(and the pre-conditions contained therein) is specific to the company in question and subject to the company's acceptance of the content of those pre-conditions.'*

Letter of Offer's pre-condition

47. In reference to the LoO, Invest NI stated that it *'contains a pre-condition at paragraph 4 relating to the funding of the project.'* It explained that the pre-condition *'required the company to provide confirmation within six calendar months of the date of the letter that it had access to £600k of funding.'* Invest NI stated that the company was required to show supporting documentation *'to evidence the legal and financial close of the financing transaction(s).'*

Communication of pre-conditions prior to issuance of letter of offer

48. Invest NI confirmed that it *'does not provide overarching guidance'* on pre-conditions, *'but works with companies on what [they] mean and how they can be satisfied.'* It stated that the pre-condition was *'communicated to the complainant prior to the issue of the offer'* in an email from the Client Executive on 12 February 2015. Invest NI suggested that *'this can be seen as the start of the process through which Invest NI attempted to help the company to be in a position to meet the pre-condition.'*

49. In addition, Invest NI stated that the Client Executive emailed the complainant on 17 February 2015 to advise him of the pre-conditions that would be included in the LoO. It stated that the Client Executive advised that *'it is likely that Invest NI will require to see £300k of this as share capital (this could be £150k share capital from private investors and a matching £150k from [...]) and readily available to the company. Invest NI will need to know that the company has access to a further £300k when and if it is required.'*

Communication regarding the company's failure to meet pre-condition

50. Between March 2015 and December 2016, Invest NI stated that it entered into dialogue with the complainant highlighting that the pre-condition to the LoO had not been met. Invest NI provided notes of meetings it had with the complainant on 9 September 2015 and 10 November 2015. It stated that the notes *'clearly demonstrate that funding was discussed and the complainant planned to speak to a number of potential investors in relation to funding of the project.'* In addition, Invest NI stated that the complainant had stated that he would provide a personal guarantee of €400k [£310k] to meet the £600k funding pre-condition.

51. Invest NI stated that these meetings *'demonstrate that [the funding projections] was forward looking (the complainant was still in the process of securing funding) and are evidence that Invest NI was actively seeking information on how his pre-condition would be met.'* Invest NI also responded to the complaint that he was advised at the meeting on 9 September 2015 that the pre-condition in relation to funding was met. Invest NI stated that the Client Executive does not recall making this statement, and noted that her minutes of the meeting do not state this.

52. The six month deadline for meeting the LoO's pre-condition was 25 September 2015, and Invest NI stated that it *'continued after this point to work with the complainant and encouraged him to provide the necessary evidence of funding.'* It stated that *'throughout this period of more than 20 months, Invest NI, through the Client Executive and Technology Executive, informed the complainant by email and/ or face to face meetings and/ or telephone calls that he had not met the pre-condition'.*

53. For example, on 8 and 11 March 2016, Invest NI stated that it sent emails seeking clarification on the status of the funding pre-condition and whether the company had employed staff in Northern Ireland. However, it stated that the complainant's response on 15 March 2016, did not provide evidence of the requested information. Subsequently, on 22 March 2016, Invest NI stated that it emailed the complainant again to *'clarify Invest NI's position on the current*

status of the project.'

54. Invest NI explained that in this email, it advised the complainant that *'you have not been able to provide evidence to show £600,000 of funding available to the company.'* It stated that it *'raised [the complainant's] assertion that the company had been unable to recruit in Northern Ireland as 'the Belfast investors did not invest in time'... [and] asked why it was not possible to use his personal funds... to start the recruitment so the project could remain as had been submitted.'* Invest NI stated that *'as far as our records show, the complainant did not respond to this email.'*

55. On 7 April 2016, Invest NI stated that it emailed the complainant in response to his request for an extension to the funding pre-condition timeframe. Invest NI stated that it advised the complainant that *'an extension is only available where there is a clear justification for the delay in the project.'* However, it stated that *'the complainant had advised... in previous correspondence that the project was ahead of schedule.'* In addition, on 18 April 2016, Invest NI stated that the complainant requested additional time to deal with the issues raised [funding and NI based staff], however a subsequent response was not received.

56. Following this, on the complainant's request, Invest NI stated that it met with the company's legal representatives to discuss the project on 24 May 2016. At this meeting, Invest NI stated that *'the same issues, including the meeting of the pre-condition, were raised and Invest NI considered that there was a full understanding of what was required to meet the pre-condition and implement the project as per the original application.'*

Request for extension to letter of offer

57. Invest NI stated that nothing further was heard from the complainant or his legal team until they requested *'to extend the Letter of Offer'* on 4 August 2016. On 14 September 2016, Invest NI stated that its CEO, Mr Alastair Hamilton, replied to the complainant *'reiterating that meeting the pre-condition around funding was one of the two major issues to be resolved before Invest*

NI could consider a request for extension to the Letter of Offer.'

58. The other issue raised by Invest NI to the company in this email was *'that the new staff in the application undertaking the research and development funded by [Invest NI's] financial assistance must be located in NI.'* Therefore, Invest NI stated that the request for extension *'could not be considered as the company could not provide any reasonable assurance that the project had been implemented as outlined in the application (e.g. with four employees based in Northern Ireland and the complainant spending 1/3 of this time in Northern Ireland as an employee of [the company].'* It confirmed that the principles on granting extensions are covered in its Amendments Policy, as *'an extension is a form of amendment to the Letter of offer.'*

Follow up communication regarding failure to meet pre-condition

59. On 22 September 2016, Invest NI stated that it emailed the complainant again, referring to the email on 14 September 2016, and *'to prompt [him] to provide the necessary information to address the issues surrounding the project.'* It stated that the complainant replied on 29 September 2016, *'with a slight variation on the information that he had already supplied but, again, did not provide evidence of the 'legal and financial close of the financing transactions'.* On 5 October 2016, Invest NI sought legal advice as to how it could manage the passing of the funding pre-condition milestone within the LoO.

60. Subsequently, Invest NI explained that it emailed the complainant on 13 October 2016 *'to ask for additional information to determine if any of the project was undertaken by the company in Belfast (other than sub-contracting) and if any of the project had been diligently implemented and completed as per the application form.'* It stated that the complainant replied on 14 October 2016, *'apologising for the lack of communication and promising to provide the information.'* On 10 November 2016, Invest NI stated that it *'sent a reminder... requesting that the information is forwarded.'*

61. On 10 November 2016, Invest NI stated that it received an email from the

complainant *'that demonstrated clearly that the project had not been implemented as per the original application.'* It explained that *'at this point the deadline for meeting the pre-condition had been missed by more than 12 months. The deadline for claiming against the offer (30 September 2016) had passed and the request for extending the offer could not be considered.'*

62. Invest NI stated that the failure of the company to meet the pre-condition in the LoO *'was not a failure of Invest NI's part to communicate to the company about its legal obligations or a failure to guide the company through the process.'* It stated that the LoO was not withdrawn *'until more than 20 months after the letter was issued. The communication in the intervening period demonstrates a willingness on the part of invest NI to be flexible and to assist the customer to be in a position to meet the pre-condition.'*

Withdrawal of letter of offer

63. On 8 December 2016, Invest NI stated that it withdrew its offer, *'more than 20 months after the date of the LoO.'* It stated that *'at no point in this period was the complainant able to provide any supporting documentation to evidence the legal and financial close of a financial transaction to fund his business.'* In addition, Invest NI stated that the company failed *'to implement the project as originally intended... with updates from the company... confirming that the project had been mostly undertaken in the US. Of the costs that had been incurred in Northern Ireland, 100% of these had been on a sub-contract basis and no employees had been hired in Northern Ireland.'* As a result, Invest NI said it had *'no alternative but to withdraw the Letter of Offer in order to protect the public funds for which it is responsible.'*

64. To provide context, Invest NI stated that between 2013 and 2015, it *'issued over 800 Grant for R&D offers.'* During this time, Invest NI stated that *'approximately 200 offers had pre-conditions due to be met, 63 of which related to funding. 58 of these companies met the funding pre-condition with five companies [...] either failing to meet the pre-condition or abandoning the project.'*

65. Invest NI also confirmed that it *'does not have specific guidance on*

determining withdrawal of a letter of offer (LoO).'

Documentation required to evidence satisfaction of pre-condition

66. As part of investigation enquiries, Invest NI was asked to confirm what supporting documentation is required from a company to confirm evidence of funding. Invest NI stated that *'the pre-condition stated that the supporting documentation was required to evidence the legal and financial close of the financing transaction(s). This means that the supporting documentation needs to demonstrate funding into the business. At no point did the complainant provide any evidence of this type.'*

67. As an example, Invest NI stated that *'evidence of the complainant's personal funds does not constitute evidence that funds were available to the company or were being used to fund the project.'* It stated that *'documentation of those funds being introduced to the business as a Director's loan or being used to leverage bank financing would have represented the legal and financial close of a transaction.'*

68. Invest NI explained that the complainant also provided information about funds that he was trying to raise through NI-based investment funds, however *'this funding did not materialise.'* It stated that *'if it had, there would have been formal documentation regarding the funding that could have been used to contribute toward the meeting of the pre-condition.'* In addition, Invest NI stated that the complainant *'provided several 'letters of intent' regarding smaller scale investment into the business, again, this did not represent evidence of the funds being introduced into the business and, as such, falls well short of evidencing the legal and financial close of financing transaction(s).'*

69. Prior to the issuance of the LoO, Invest NI stated that the complainant *'provided a breakdown of the funding to the business.'* It explained that *'it included funds held by a related party.'* Invest NI stated that it explained to the complainant that these *'cannot be taken into account for the company as these are two different companies, unless the funds are transferred to the company.'* It stated that the complainant *'did not provide any evidence to*

show that funds were transferred' to the company.

70. Invest NI also explained that the complainant's evidence of funding *'should [have been] a sufficiently broad mix of debt and equity funding'*, and that this *'was explained to the complainant.'* It stated that *'those plans were not realised, either of securing investment or introducing funds into [the company].'* Invest NI stated that *'as no supporting documentation was provided to evidence these funds being introduced to the business, Invest NI was not in a position to assess whether or not the funding structure was satisfactory.'*
71. As part of investigation enquiries, Invest NI was also asked to provide policies and/ or procedures relating to communication with and/ or providing support to grant applicants. Invest NI stated that it *'provides a range of training, both classroom based and on the job, on communicating and providing support to grant applicants.'* In addition, it stated that *'guidance on the management of projects is also provided, including through documented policies governing individual schemes and Invest NI's intervention policies.'*
72. Invest NI was also asked to provide a response to the complaint that it failed to help the company make contacts in the industry, including clarifying a clinical collaboration with Queen's University. Invest NI stated that the company *'was helped through the process by a client team including the Client Executive, Technology Executive, R&D Manager, Business Appraisal Executive and an independent Technical appraiser.'* Invest NI also provided a number of examples of the engagement between Invest NI and a number of contacts in the industry.
73. Invest NI also stated that *'during the appraisal process of the project [the company] changed the focus of the project to concentrate on late stage development. An element was removed and we understand that the company planned for this activity to be part of a collaboration with QUB at a later stage. This would have formed the basis of a commercial agreement between the*

two parties.’ Invest NI stated that ‘we cannot see from our records that there was any need for Invest NI to intervene between [the company] and QUB. Such intervention would have been limited in any case as Invest NI would not have been party to this agreement.’

Responses to draft report

74. Following issuance of the draft report, the complainant and Invest NI were provided with an opportunity to respond to the findings.

Invest NI

75. In response to communication, Invest NI stated that *‘at the time of the email of [Thursday] 24th March 2016, [the Client Executive] was on an extended period of leave until 27th April 2016 and had no access to email at this time. Her out of office auto response indicated that this was the case.’* It acknowledged that there was *‘a slight delay between the complainant’s email... and the response on [Thursday] 7th April 2016... due to leave over the Easter period.’* However, Invest NI stated that *‘given the complex nature of the communication and the overall timeline of the project... we do not consider this slight delay to be unacceptable or inconsistent with the pattern of the correspondence that had been established with the complainant at that point.’*

76. Invest NI also stated that the complainant’s email on 24 April 2016 followed an email sent on 22 March 2016, which sought clarity on the status of the project. However, Invest NI stated that the complainant failed to respond to this email, and instead opened a new email thread. Invest NI stated that its *‘correspondence prior to the complainant’s email of 24 March and the subsequent responses to that email of 24 March 2016 clearly demonstrate that, as opposed to ignoring [the complainant’s] correspondence, we were proactively engaging with him in order to provide advice and to encourage him to demonstrate that he had met the pre-condition.’* Invest NI also stated that *‘the other correspondence from this period clearly demonstrates that this slight delay was not the reason that the complainant asked his legal*

representatives to intervene on his behalf, namely the email to Invest NI on 18 April 2016.

77. Subsequently, on 4 August 2016, the legal representatives sent Invest NI a letter requesting an extension to the LoO. Invest NI stated that *'the letter did not address any of the outstanding issues raised [...] in the meeting of 24 May 2016.'* Invest NI stated that *'due to the fact that the letter did not address any of the outstanding issues, Invest NI staff recognised the need to discuss the state of play with the project, including deliberating whether or not to seek legal advice, before responding to [the legal representatives] or the complainant.'*

78. Invest NI stated that *'we recognise that it would have been appropriate to acknowledge the correspondence and indicate a timeline for our response, but would also point to the extenuating circumstances caused by the company continuing to request an extension without providing the information that was clearly required.'*

79. In addition, Invest NI also stated that *'we strongly consider that the failure to meet the pre-condition was not due to a lack of clarity about what evidence would have been required but was fundamentally due to the company's failure to introduce funding into the business.'*

Analysis and Findings

80. As part of investigation enquiries, I have examined Invest NI's decision making process when:

- considering whether to offer the company an extension to the pre-condition timeframe contained within the LoO
- determining whether the company's LoO should be withdrawn

Issuance of the LoO

81. I note Invest NI stated that the Client Executive guided and supported the company through the initial investment approval process. On review, I note that there was frequent correspondence between the Client Executive and the

company at this time. I refer to an email sent to the company on 12 February 2015 in which the Client Executive stated, *'I am happy to argue your case when it goes forward to panel.'*

82. Following success at the panel, I note Invest NI subsequently issued the LoO to the company on 25 March 2015. Invest NI confirmed that the LoO was signed by the complainant on 1 April 2015. Upon signing, I note Invest NI stated that the company had entered *'into a contract with Invest NI'*, which was *'legally bound by the conditions of the contract.'*

83. Invest NI advised that the LoO *'is a legal agreement between Invest NI and the supported company'*, which *'contains a number of mechanisms through which Invest NI can withdraw the offer and by which the offer could lapse.'* I note Invest NI explained that these mechanisms include standard conditions, pre-conditions and clauses in relation to default, and they *'are designed to de-risk certain elements of the project.'*

84. On review of the LoO, I note that there are two pre-conditions, the first of which relates to the funding of the company's project. It states that the company must provide *'confirmation that it has access to a minimum of £600,000 of funding... The commercial structure of this funding must be to the satisfaction of Invest NI. Supporting documentation must be provided to evidence the legal and financial close of the financing transaction(s)...*' I note the LoO states that evidence of the fulfillment of this pre-condition must be provided within six calendar months from the date of LoO's issue.

85. In addition, I note that one of the general conditions of the LoO states that the company must *'implement and complete the Project'* as per the application submitted for the R&D Grant. I note that the company's Application Form states that it would hire staff in Northern Ireland, and that the complainant would spend 33% of his time in the country.

86. I note Invest NI stated that it then *'works with companies on... how [the LoO pre-conditions] can be satisfied.'* On review, I note that Invest NI began to advise the company on how to meet the LoO conditions prior to the issuance

of the LoO. On 12 February 2015, I note the Client Executive sent an email to the complainant, which advised, *'I want to be able to give [the company's application] the best opportunity of passing and that may require the pre-condition of £600k'*.

87. In addition, on 17 February 2015, the Client Executive sent a further email to the complainant stating that *'A letter of offer will be issued in due course and two prior-conditions have been identified... [one of which requires that] the company provides evidence that it has access to a minimum of £600,000 of funding... Supporting documentation must be provided to evidence the legal and financial close of the financing transaction(s).'* I note Invest NI stated that *'this can be seen as part of the process through which Invest NI attempted to help [the company] to be in a position to meet the pre-condition.'* I note that the complainant replied to this email, which suggests that he read the email's content.

88. On review, I consider that the conditions, pre-conditions and corresponding deadline were clearly set out in the LoO signed by the complainant. I also consider that the emails sent by the Client Executive prior to the issuance of the LoO, provided the complainant with an advanced knowledge of the pre-conditions that were likely to be included. In addition, I am of the opinion that the email dated 17 February 2015 and the LoO, appropriately state that the evidence of the funding pre-condition had to demonstrate *'the legal and financial close of the financing transaction(s).'*

Communication of failure to meet pre-condition

89. Following the issuance of the LoO, I note Invest NI stated that it was in regular contact with the company, *'by email and/ or face to face meetings and/ or telephone calls'*, to inform the company that the pre-condition had not been met. I note that the six month deadline for meeting the LoO's pre-conditions was 25 September 2015. However, following this deadline, I note Invest NI provided evidence that it continued to work with the complainant and *'encouraged him to provide the necessary evidence of funding.'*

90. I note Invest NI provided evidence of meetings it had with the complainant in

September and November 2015. It stated that these meetings '*evidence that Invest NI was actively seeking information on how [the company's funding] pre-condition would be met.*' I note these minutes record that Invest NI and the company discussed investors and fundraising. However, I note that Invest NI stated that the complainant was detailing the investment he was seeking at these meetings, which evidences that that the funding pre-condition was not met at this point.

91. The company also provided minutes of the meeting on 9 September 2015, which I note also record that the funding pre-condition was discussed. I note the minutes state that the company sought clarification in relation to whether it met the funding pre-condition. I note the complainant stated that he believed that comments made implied that Invest NI's funding pre-condition had been met. In response, I note Invest NI stated that the Client Executive does not recall making this statement, and a review of her minutes of the meeting do not indicate that she said this.

92. I note that there are conflicting opinions and minutes held by Invest NI and the company in relation to whether the funding pre-condition was deemed to be satisfied at this meeting. However, as detailed below, following this meeting there is evidence that Invest NI requested additional financial information from the company to evidence the pre-condition funding was in place. Therefore, regardless of any confusion, I consider that the company were subsequently made aware that the pre-condition had not been met.

93. At the meeting on 10 November 2015, I also note the company stated that it conducted a formal presentation for Invest NI, which it believed addressed the funding pre-condition. However, I note the company stated that Invest NI did not highlight that the pre-condition was not met at this meeting.

94. In January 2016, I note the company stated that it submitted its R&D Report 1, which it also believed provided evidence that the pre-condition was met. Subsequently, on 11 February 2016, I note that the Client Executive sent the complainant an email stating '*we are considering the options for the issue around the pre-condition requiring the need for the £600k fund and I require a*

bit of additional information. I note the Client Executive asked the complainant what the total costs of the project are going to be, and sought clarification as to whether any staff were employed in Northern Ireland.

95. I note the complainant said that this was the first time Invest NI had raised an *'issue'* regarding the pre-condition funding. However, as detailed above, there appears to have been a number of emails sent prior to this evidencing Invest NI seeking clarification in relation to the funding pre-condition. I note Invest NI stated that it sent further emails seeking clarification on the status of the pre-condition on 8 and 11 March 2016.

96. Subsequently, on 22 March 2016, I note that Invest NI sent the complainant an email advising that he has *'not been able to provide evidence to show £600k of funding available to the company.'* The email also questioned why the complainant had not used his personal funds, which he had stated were part of the funding available to the company, *'to start the recruitment [in Northern Ireland] so the project could remain as had been submitted [in the company's application].'* I note the email states that these issues need *'resolved within the next month so that we can make a decision on how to proceed.'*

97. On review of the available evidence, I am of the opinion that Invest NI requested evidence of the company's pre-condition funding at regular intervals following the issuance of the LoO. I note that this is reflective of Invest NI's *'investment journey'*, in which it states that an *'Invest NI advisor will provide guidance on the... timeframes throughout the process.'* I also recognise that Invest NI continued to afford the company additional time to provide evidence following the passing of the pre-condition deadline in March 2015. I am of the opinion that Invest NI evidenced that it attempted to accommodate the company by extending timescales to enable the company to implement the project as intended.

Request for extension to LoO

98. I note Invest NI stated that according to its records the complainant did not respond to its email requesting evidence of the pre-condition funding on 22

March 2016. However, I note that the complainant sent emails to the Client Executive and others on 24 March 2016 requesting an extension to the LoO. He complained that the Client Executive had advised him in March 2015 that the LoO could *'be renewed'*. I note the complainant stated that he received no response to these emails and had concerns that the company's correspondence was being ignored by Invest NI.

99. Subsequently, I note that Invest NI met with the complainant's legal representatives on 24 May 2016 to discuss the project. I note Invest NI stated that at this meeting the pre-conditions were discussed, and *'Invest NI considered that there was a full understanding of what was required to meet the pre-condition and implement the project as per the original application.'*
100. I refer to an email sent by the legal representatives to the complainant, dated 27 May 2016, which details what was discussed at this meeting. I note it states that *'the purpose of the funding is specifically to support the R&D research in Northern Ireland... The award of the grant was made on the basis of [the] application, which we understand indicated that there would be 4 scientists employed in Northern Ireland. We are told that it would be a breach of the terms of the ERD [European Regional Development] Fund to apply the funding against anything other than the research project.'*
101. In addition, the email states that the funding precondition is *'required to adequately fund the project IN ADDITION to the Invest NI funding. Although you had presented this funding as being included in your funding mix and it was not challenged by Invest NI until recently, they maintain that this proposal would never have been acceptable to them as satisfying the condition.'* I note this email stated that Invest NI *'indicated that they would be prepared to extend the date for satisfying the condition, if [the company] can demonstrate that the R&D has/ will be undertake in Northern Ireland in accordance with [the company's] application.'*
102. On 4 August 2016, I note that the legal representatives issued a letter to Invest NI on behalf of the company requesting *'an extension of 12 months to the 30 September 2016 long stop date for making written claims against the*

grant. Following this, I note that there was an email from Invest NI to the company on 25 August 2016, seeking a submission of an expenses claim. However, the extension request was not addressed in this email. I note that the complainant responded to this email on the same date and queried the company's request for extension.

103. As a result of Invest NI's failure to respond, I note the complainant stated that he emailed Invest NI's CEO on 9 September 2016, and referred to the aforementioned correspondence. On 14 September 2016, I note Mr Hamilton replied to the complainant *'re-iterating that meeting the pre-condition around funding was one of the two major issues to be resolved before Invest NI could consider a request for extension to the Letter of Offer.'* As detailed above, I note Invest NI explained that the second issue was that the staff undertaking the work funded by Invest NI's financial assistance had to be located in Northern Ireland.
104. Following this correspondence, I note Invest NI stated that it communicated with the complainant a number of times in September and October 2016 *'prompt[ing him] to provide the necessary information to address the issues.'* On 29 September 2016, I note the complainant sent Invest NI an email providing details of the funding secured to meet the pre-condition. I note Invest NI sought legal advice on 5 October 2016, in relation to the company's failure to address these issues within the timeframe detailed in the LoO.
105. On 14 October 2016, I note Invest NI stated that the complainant sent an email *'apologising for the lack of communication and promising to provide the information.'* I note Invest NI stated that it sent the complainant a reminder on 10 November 2016, to provide the necessary evidence. On this date, I note the company emailed its R&D Report 2 to Invest NI, which it believed provided evidence that the funding pre-condition was met. Similarly, on 12 November 2016 the company sent Invest NI an email with the company's spend profile for the project.
106. In relation to the extension request, I note Invest NI stated that it could not be considered as the company *'could not provide any reasonable assurance that*

the project had been implemented as outlined in the application (e.g. with four employees based in Northern Ireland and the complainant spending 1/3 of his time in Northern Ireland as an employee).’ I refer to Section 5 of the LoO which states that ‘the client shall diligently implement and complete the Project and ensure that the Financial Assistance shall be applied to the Project in accordance with the Application.’

107. At this time, I note Invest NI stated that the company had *‘demonstrated clearly that the project had not been implemented as per the original application.’* I note Invest NI stated that at this time, *‘the deadline for meeting the pre-condition had been missed by more than 12 months. The deadline for claiming against the offer (30 September 2016) had passed and the request for extending the offer could not be considered.’* Invest NI stated that as the company had failed to implement its project based on its application for the R&D Grant, an extension could not be granted.

108. I consider Invest NI’s decision making in this instance to be a discretionary decision. The investigation has not identified maladministration that would lead me to challenge the discretionary decisions taken by Invest NI. In addition I note that Invest NI had already provided an extension following the March 2015 deadline.

Withdrawal of LoO

109. On 8 December 2016, I note Invest NI withdrew its LoO as the complainant did not *‘provide any supporting documentation to evidence the legal and financial close of a financial transaction to fund his business.’* I note Invest NI stated that *‘this means that the supporting documentation needs to demonstrate funding into the business. At no point did the complainant provide any evidence of this.’* In addition I note that Invest NI considered that the company did not implement its project as originally intended, as the company did not have employees in Northern Ireland and the complainant had not spent a third of his time in the country. I refer to the LoO, which states that *‘the Client shall diligently implement and complete the Project and ensure that the Financial Assistance shall be applied to the Project in accordance with the Application.’*

110. As a result, I note Invest NI stated that it had *'no alternative'* to withdraw the LoO *'in order to protect the public funds for which it is responsible.'* I note Invest NI advised that it does not have specific guidance on the withdrawal of LoOs. However, I note that Invest NI explained that between 2013 and 2015, 200 of the R&D Grants it offered had pre-conditions, sixty three of which were related to funding. I note Invest NI stated that *'58 of these companies met the funding pre-condition with five companies (including the company) either failing to meet the pre-condition or abandoning the project.'*
111. Having considered the evidence available I have not identified evidence of maladministration that would lead me to question the discretionary decision taken by Invest NI to withdraw the LoO.

Communication

112. I note the complainant also complained that Invest NI were slow to respond or did not respond at all to communications during the R&D Grant process. Prior to the issuance of the LoO, I am of the opinion that Invest NI maintained good communication with the company and advised the company that conditions would be included within the LoO.
113. On review of the subsequent correspondence, I am of the opinion that Invest NI's communication with the company in relation to satisfying the LoO's pre-conditions was reasonable. As detailed above, I note that there is evidence of Invest NI requesting evidence of the pre-conditions satisfaction on a number of occasions. In addition, as detailed above, I note Invest NI advised the complainant's legal team of the pre-condition requirements, and it subsequently relayed this information to the company. I consider that it is the responsibility of the company to ensure that it provides the evidence which satisfies the structure of the funding. Therefore, I do not uphold this element of the complaint.
114. In addition, although Invest NI considered that the company failed to satisfy the funding pre-condition or employ staff in Northern Ireland, I note that Invest

NI continued to request and accept project information from the company, which may have led the company to consider that the funding information they were providing was adequate, and that the project was still progressing.

Correspondence in March 2016

115. I note the complainant specifically complained that in February 2016, Invest NI ceased all communications with the company, and the company had no alternative but to engage legal representation to re-open dialogue. I note the complainant said that the stop in communication happened at a critical time in the grants process, when the company needed specific guidance as to the nature of acceptable funding. As detailed above, I note the complainant emailed the Client Executive on 24 March 2016 to seek an extension request, and received an out of office reply. As a result, he emailed others in Invest NI on the same day, but received no reply. Therefore, I note the complainant stated that he instructed the company's solicitor to contact Invest NI to open communication.
116. In response, I note Invest NI stated that *'at the time of the email of [Thursday] 24th March 2016, [the Client Executive] was on an extended period of leave until 27th April 2016 and had no access to email at this time. Her out of office auto response indicated that this was the case.'* I note Invest NI acknowledged that there was *'a slight delay between the complainant's email... and the response on [Thursday] 7th April 2016... due to leave over the Easter period.'*³ However, I note Invest NI stated that *'given the complex nature of the communication and the overall timeline of the project... we do not consider this slight delay to be unacceptable or inconsistent with the pattern of the correspondence that had been established with the complainant at that point.'*
117. In addition, as detailed in paragraph 54, I note that the complainant's email follows an email sent on 22 March 2016, which sought clarity on the status of the project. I note that there is no evidence of the complainant responding to

³ Invest NI was closed on 28 and 29 March 2016. There was approximately seven working days between the receipt of the complainant's email and Invest NI's response.

or acknowledging this email. I note Invest NI stated that instead of responding to this email, the complainant opened a new email thread and emailed the Chief Executive on 24 March 2016. I note Invest NI stated that its *'correspondence prior to the complainant's email of 24 March and the subsequent responses to that email of 24 March 2016 clearly demonstrate that, as opposed to ignoring the complainant's correspondence, we were proactively engaging with him in order to provide advice and to encourage him to demonstrate that he had met the pre-condition.'*

118. I also note Invest NI stated that *'the other correspondence from this period clearly demonstrates that this slight delay was not the reason that the complainant asked his legal representatives to intervene on his behalf.'* I refer to the email to Invest NI, dated 18 April 2016, which states *'In light of the various demands on [the complainant's] time at present, he has found it increasingly difficult to manage those discussions at a distance and has therefore asked us to pick the discussions up with you on his behalf.'*

Correspondence in August 2016

119. In addition, I note the complainant said that Invest NI failed to respond to a letter from his legal representation on 4 August 2016. I note that on this date the legal representatives sent Invest NI a letter requesting an extension to the LoO. I note Invest NI stated that *'the letter did not address any of the outstanding issues raised with [...] in the meeting of 24 May 2016.'* I refer to the email to the complainant on 27 May 2016, which details the need to have *'4 scientists employed in Northern Ireland'*, and £600k funding in addition to Invest NI's funding.
120. I note Invest NI stated that *'due to the fact that the letter did not address any of the outstanding issues, Invest NI staff recognised the need to discuss the state of play with the project, including deliberating whether or not to seek legal advice, before responding to [the legal representatives] or the complainant.'* I note Invest NI stated that *'we recognise that it would have been appropriate to acknowledge the correspondence and indicate a timeline*

for our response, but would also point to the extenuating circumstances caused by the company continuing to request an extension without providing the information that was clearly required.'

121. I note the complainant also complained that Invest NI failed to respond to his email on 9 September 2016. I note the complainant emailed Invest NI's Chief Executive, Mr Hamilton, on 9 September 2016, and requested a response by 14 September 2016. I note Mr Hamilton responded within this timeframe, and highlighted the issues that needed to be resolved in order for the complainant's request for extension to be considered. In this email I note Mr Hamilton stated that the complainant should send his response to the Client Executive and/ or the Technology Executive. On review of the available evidence, I have not identified the complainant's subsequent response to this email. I note the Technology Executive subsequently emailed the complainant on 22 September 2016, referring to the email on 14 September 2016, and requesting information in relation to the outstanding issues. As detailed in paragraph 60, the complainant replied on 29 September, however Invest NI considered that he '*did not provide evidence of the 'legal and financial close of the financing transactions'*'.
122. On review of the available evidence, I consider that it is good practice for public bodies to acknowledge correspondence and advise customers of the expected timeframes for a response. I am of the opinion that Invest NI should have considered sending the complainant emails acknowledging receipt of his correspondence on 24 March and 4 August 2016. Going forward, Invest NI should consider introducing this practice. Despite this, I consider that there is evidence of Invest NI attempting to engage with the complainant during this time. Therefore, I consider the communication at this time to be reasonable.
123. In addition, I note the complainant said that Invest NI failed to offer the company assistance to make contacts in the industry, provide feedback following the submission of the R&D Reports and a presentation in November 2015, or obtain clarification from Queens University CCRBC in relation to a clinical collaboration.

124. On review, I note there are emails evidencing Invest NI aiding the company in making contacts within the industry. In addition, I note that there is evidence of correspondence between Invest NI, the complainant and QUB, in which the complainant states, *'We are progressing nicely in our objective of setting-up research collaborations with the Molecular Pathology Laboratory at Queens U'*. I also note that Invest NI stated that the company had made contact with QUB prior to applying for R&D support, and that the company had planned to create a separate *'commercial agreement'* with QUB.
125. In relation to feedback following the company's submission of its R&D reports and presentation in November 2015, I note that during this time Invest NI's communication with the company focused on the requirement to satisfy the pre-conditions contained within the LoO. I note that the complainant stated that he requested feedback from Invest NI, however I have not identified evidence of his requests. Due to the lack of records, I cannot conclude on this issue.

CONCLUSION

126. The complainant submitted a complaint to me about the actions of Invest NI in relation to a Research & Development grant it offered the company.
127. I have investigated the complaint and have not identified maladministration in relation to Invest NI's decision making when considering the company's request for extension, or when determining withdrawal of the company's Letter of Offer. In addition, I consider Invest NI's communication between March 2015 and December 2016 to have been reasonable. Therefore, I do not uphold the complaint.
128. Invest NI accepted my findings.



PAUL MCFADDEN
Acting Ombudsman

March 2020

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.

- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.