



The Public Services Ombudsman Act (Northern Ireland) 2016

Investigation Report

UNDER SECTION 43

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Confidentiality

The Ombudsman is mindful of the requirement of Section 30(5) of the Public Services Ombudsman (Northern Ireland) Act (the 2016 Act) which states that an investigation must be conducted in private. Section 49 of the 2016 Act states that 'information obtained' relating to an investigation shall not be disclosed except in the limited circumstances provided for in the 2016 Act. These provisions in effect constitute a 'statutory bar' which means that, with the exception of the circumstances provided for in Section 49, this office is unable to disclose information obtained relating to a matter investigated even after that investigation has concluded. Section 49 of the 2016 Act is of wide effect and the restrictions in that section apply to all those to whom information is disclosed (in accordance with one of the exceptions in Section 49 of the 2016 Act). Therefore the recipients of the investigation report must adhere to the statutory bar on disclosure and are not permitted to share the contents of the investigation report.

The Role of the Ombudsman

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The 2016 Act provides for the Ombudsman to investigate and report on complaints from a 'person aggrieved'. The Ombudsman may investigate and report 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 in consequence of the exercise of professional judgement, exercisable in connection with the provision of health and social care. In general, the purposes of an investigation are to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the 2016 Act, 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.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgement, she must also consider whether this has resulted in an injustice. Injustice is also not defined in the 2016 Act but can include upset, inconvenience, loss of opportunity or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

Section 30 (6) of the 2016 Act states that 'the procedure for conducting an investigation is to be such as the Ombudsman considers appropriate in the circumstances of the case'. Therefore the Ombudsman has discretion to determine the procedure for investigating a complaint.

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Case Reference 202000385

Listed Authority: Department for the Economy

SUMMARY

I received a complaint about the actions of the Department for the Economy (the DfE). The complaint is about the DfE's management and handling of a business support grant application¹, the complainant submitted on 20 April 2020 to the DfE.

I obtained all relevant information, including DfE records, correspondence and relevant guidelines and policies.

I upheld elements of the complaint. The investigation concluded the DfE appropriately considered all relevant evidence when deciding if the complainant was eligible for a grant. However, I found the DfE did not clearly define their eligibility criteria for assessing the retail element of a business support grant application. I considered this maladministration, causing the complainant to experience uncertainty and frustration regarding his business grant eligibility.

The investigation also found the DfE sufficiently explained its reasons for its decision to reject the complainant's grant application during the application and appeal stages, and in its response to the complainant's MLA's enquiries.

I recommended the DfE apologise to the complainant for the failing identified within one month of the date of the final report. I made further recommendations for the DfE to share the findings of this report with relevant staff for future learning.

¹ Business Support Grant was operated by the Department of Economy to provide support to retail hospitality, tourism and leisure sectors during the Covid 19 pandemic.

THE COMPLAINT

1. I received a complaint about the actions of the Department for the Economy (the DfE). The complaint is about the DfE's management and handling of a grant application that the complainant submitted on 20 April 2020. The complainant applied for a business support grant through the Covid 19 £25,000 Business Support Grant Scheme² (the Grant Scheme).

Background

2. In April 2020 the DfE launched the Grant Scheme to provide support to retail, hospitality, and leisure and tourism businesses experiencing financial hardship due to the Covid 19 pandemic. Applicants could apply for the Grant Scheme between 20 April and 20 May 2020.
3. On 20 April 2020 the complainant applied through the Grant Scheme as he believed his business operated within one of the eligible sectors (retail). On 11 May 2020, the DfE informed the complainant his application was unsuccessful as his business was not eligible. The complainant appealed its decision, which the DfE rejected on 29 June 2020. The complainant and his Member of the Legislative Assembly (MLA) made further representations to the DfE. However, on 11 March 2021 the DfE informed the complainant's MLA that, following a new policy panel review³ of the case, it upheld the original decision and that of the subsequent appeal, not to award the business support grant. A chronology detailing the events leading to the complaint is contained at Appendix four to this report.

Issue of complaint

4. The issue of complaint accepted for investigation was:
Whether the DfE processed the complainant's application and subsequent appeal to the Grant Scheme in accordance with relevant policies and guidance.

² The Business Support Grant was a scheme to provide support to businesses that experienced financial hardship as a result of the Covid-19 pandemic. The overarching aim was to help protect jobs, prevent business closures and promote economic recovery.

³ Review of the complainant's application by DfE.

INVESTIGATION METHODOLOGY

5. In order to investigate this complaint, the Investigating Officer obtained from the DfE all relevant documentation together with its comments on the issues of complaint.

Relevant Standards and Guidance

6. I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case.

The general standards are the Ombudsman's Principles⁴:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

7. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- The Department for the Economy's (DfE) £25,000 Business Support Grant Scheme, Guidance and Frequently Asked Questions (FAQs), V 0.3 April 2020 (the Scheme FAQ Guidance);
- The Department for the Economy's (DfE) £25,000 Business Support Grant Scheme, Guidance and Frequently Asked Questions (FAQs), V 1.5 18 May 2020 (the Scheme FAQ Guidance V 1.5);
- The Department for the Economy's (DfE) Staff Instructions Covid 19 - £25,000 Business Support Grant Scheme, 20 April 2020 (Staff Instructions);
- The Department for the Economy (DfE) £25,000 Business Support Grant Scheme For The Retail, Hospitality, Tourism, and Leisure Sectors Application Form (Application Guidance); and
- The Department for the Economy the Grant Scheme's Policy Log 4

⁴ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

May 2020 (Policy Log).

8. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the DfE. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
9. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything that was relevant and important in reaching my findings.
10. A draft copy of this report was shared with the complainant and the DfE for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Detail of Complaint

11. The complainant said the DfE failed to follow its own policy and procedures during the Grant Scheme application process. He disagreed with the DfE's classification of his business as wholesale and said it based its decision only on information from one paragraph on his website. The complainant also said that the eligibility of his business under the Grant Scheme was '*at odds*' with the DfE's own Scheme Staff Instructions. These stated that the DfE would consider '*businesses which were not 100% retail where evidence existed*'.
12. The complainant was concerned the DfE did not contact him '*at any point to seek any evidence*' to substantiate his claim. He also said it did not advise him what evidence he could provide to prove his eligibility. The complainant offered '*to provide whatever they [the DfE] required*'. He believed the DfE did not provide him with reasons why it rejected his initial grant application. He said this meant he could not provide appropriate evidence for the appeal.

Evidence Considered

Policies/Guidance

13. I considered the following policies/guidance:

- The Scheme FAQ Guidance;
- The Scheme FAQ Guidance V 1.5;
- Staff Instructions;
- Application Guidance; and
- Policy Log.

Relevant sections of the guidance considered are enclosed at Appendix three to this report.

DfE's response to investigation enquiries

Eligibility Criteria for the Grant Scheme

14. The DfE explained it rejected the complainant's application '*because the business was deemed to be overwhelmingly wholesale and so did not meet the criteria of the scheme*'. It further explained the validation team (rather than the policy team) produced the Staff Instructions document on 20 April 2020. It said this was '*a mere guide for the validating team to follow*' and neither the appeals panel nor policy panel had access to the document.
15. The DfE explained the validation team '*sought a steer*' from the policy team on how to treat applications from wholesalers. It said a record in the Scheme's policy log, dated 4 May 2020, documents it would consider those wholesalers '*who had a significant retail element*' for the grant. The DfE acknowledged the term '*significant retail element*' could be '*ambiguous*'. Therefore, it referred each individual application from a wholesale business to the Scheme's policy panel to decide if there was '*proof of a significant retail element as part of the business*'.
16. The DfE explained, the '*Scheme policy was to support retailers and not any business with a retail element*'. It further explained that any change in policy referred to the decision to '*not outright reject wholesalers like [the complainant's] business...but to consider the significance of any retail element*

with a view to potentially progressing those applications further'. The DfE said it did not treat any application it received differently.

Reason for Initial Rejection

17. The DfE explained it rejected the complainant's application as his business did not *'operate within any of the eligible sectors'*. It said it offered the complainant the opportunity to appeal the decision on 19 May 2020, requesting a *'clear explanation of the grounds on which the appeal is being made'*. The DfE acknowledged it did not explicitly ask the complainant to provide evidence in support of his appeal. However, it believed there was *'an inference to do so'*. This was because it was unlikely *'the provision of the rationale alone'* would result in a positive outcome for the complainant. The DfE said the complainant did not provide such evidence.
18. The DfE explained that within his appeal, the complainant said his business had two retail warehouses *'which were central to his cash flow and turnover'*. It said the appeal panel did not require further clarification and did not seek further information from the complainant. The DfE referred to the Business Grant appeals procedure and explained *'the onus is on applicants to provide further evidence rather than for the Department to seek evidence that would support an application'*. The DfE also referred to the Staff Instructions, which state *'...a member of the rejected applications team will make contact with the applicant, if required, to ensure that they have all the information they need to make the rejections decision'*. It highlighted the phrase *'if required'* and explained both the appeals panel and the policy panel considered they had *'all the evidence required to make a decision and contact was therefore not made'*.
19. The DfE also referred to an email sent to the complainant on 27 May 2020, which stated *'The Appeals Unit may at some stage contact you to request further information.'* It explained the Appeal Panel did not make this request, as it felt it had sufficient evidence to make a decision. The DfE said it was *'content that this was the correct course of action'*.
20. The DfE referred to evidence the complainant's MLA submitted on 10 September 2020 and explained that the Scheme's independent Policy Panel

found it to *'strengthen the original decision to reject the application'*. The DfE said the complainant *'had ample opportunities to provide irrefutable proof of a significant retail element as part of his business which ultimately [the complainant] has failed to provide'*.

Evidence

21. The DfE explained it did not base its decision on one paragraph of the business website as the complainant alleged. It said it based it on *'multiple pages including catalogues published online for the business'*. The DfE explained that in his further correspondence with the Department, the complainant said *'he sold to hotels and golf clubs'*. It said the complainant's evidence of the *'minority of highlighted transactions on a bank statement'* did not provide *'irrefutable evidence of retail sales'*. It explained this evidence *'further highlighted that the business operated overwhelmingly as a wholesaler.'*

Relevant DfE and Complainant records considered.

22. A summary of the relevant records is attached at Appendix four to this report.

Response to the draft Investigation Report

23. Both the complainant and the DfE were given an opportunity to provide comments on the draft Investigation Report. Where appropriate, comments have been reflected in changes to the report. Other comments are outlined below.

The complainant's response

24. The complainant said the DfE did not advise him it categorised his business as wholesale. The complainant told the DfE throughout the process that his business was retail.
25. The complainant disagreed the DfE gave him ample opportunity to provide his eligibility to the Grant Scheme. The complainant said that without this request for information, he could not provide information to challenge the DfE's decision. The complainant said he did not understand how his bank statements supported the DfE's decision that his business was wholesale.

26. The complainant acknowledged the unprecedented circumstances of the pandemic. However, he believed the DfE's administrative handling of his claim fell below the discretionary allowance. Whilst the pandemic caused the DfE to feel under pressure, he said he had to keep his business afloat, with no staff. The complainant explained he wanted the DfE to clarify what it required to prove his eligibility for the Grant Scheme, and felt the DfE did not provide this clarity.

The DfE's response

27. The DfE said it was content with the accuracy of the evidence and did not provide further comment.

Analysis and Findings

Eligibility Criteria for the Grant Scheme

28. The complainant said he disagreed with the DfE's classification of his business as wholesale. The complainant said it is his position that he sells products at retail prices to the end consumer of the product, and he also sells to the public. The complainant said the DfE failed to follow its own policies and procedures in the '*adjudication of his application*'. Following the receipt of the draft Investigation Report, the complainant said the DfE's lack of clarity on the retail element resulted in the complainant's misunderstanding of the category in which his business belongs to.
29. The Staff Instructions state, '*businesses which are not 100% retail focused but where evidence exists to show they have a retail element will be deemed eligible*'. The Staff Instructions state businesses are eligible for the Grant Scheme if it has a '*retail element*'. Within its internal policy for staff, the DfE amended its eligibility criteria to a '*significant retail element*' on 4 May 2020. On 10 June 2020, the DfE's further amended its internal policy to '*reasonable retail activity*'. The DfE advised the complainant on 4 March 2021 that his appeal was rejected as his business was not '*predominately retail*'.
30. In response to investigation enquiries, the DfE explained it '*disallowed*' the complainant's application because it deemed his business '*overwhelmingly*

wholesale'. Therefore, it *'did not meet the criteria of the scheme'*. The DfE further explained the complainant failed to provide *'irrefutable evidence'* of retail sales. It said the evidence the complainant supplied *'further highlighted that the business operated overwhelmingly as a wholesaler'*.

31. The DfE stated it assessed the retail element of businesses on a case by case basis. It stated, *'the steer was that there needed to be reasonable element of retail activity'*. It went on to explain there were other words used to describe the term 'reasonable' such as 'significant' and 'predominantly'. I note the DfE used these words within its internal guidance and policy for staff, which were not available to the public. The DfE stated, *'on reflection, we should have ensured that the same terminology was used i.e. 'reasonable' in order to avoid confusion. However, I remain of the view that the same sentiment resides behind the adjective in that there needs to be a reasonable degree of demonstrated retail activity at the business to ensure eligibility'*. The DfE explained the use of these words did not constitute a change to the Scheme's eligibility criteria, and it was therefore not necessary to communicate any change to the public.
32. I accept the DfE's explanation that its eligibility criteria did not change. I recognise the difficulty in obtaining a definition as to what constitutes retail. It is documented within the internal policy log dated 10 June 2020, *'it is not feasible to attempt to place a percentage weighted definition on wholesale/retail split in activity because it would be administratively cumbersome to evidence such a relationship and would be open to widespread challenge'*. This policy log states, *'therefore in such cases where there is evidence provided of reasonable retail activity, in a business that is defined as wholesale [...] it is reasonable to consider the application eligible'*.
33. I note the Scheme financially supported businesses during the Covid 19 pandemic, and it had to be fully operational within a short period of time to deal with challenges the Covid 19 pandemic presented. The DfE informed this Office it received 3,698 applications to the Scheme, and successfully verified 2,996 applications.

34. Although I do not consider the DfE changed its eligibility criteria for the Scheme, I am concerned it did not use the same terminology when assessing such applications. I would have expected the DfE to have clarified the retail element within its FAQ Guidance. This would have been necessary for staff assessing the applications, and for members of the public applying for the Grant Scheme.
35. I consider the changes of wording, and the lack of clarity on the retail element provided to the public and its staff, contrary to the third Principle of Good Administration. This principle requires a public body to be open and clear about its policies and procedures, and to ensure information and advice provided is clear, accurate and complete. Despite the DfE's explanation that the policy did not change, I consider the failure to act in accordance with the Principles of Good Administration maladministration, and uphold elements of the complaint. I consider this change of wording caused the complainant to believe there was a change of policy. In my view good administration requires openness, transparency and clarity. I will consider the injustice to the complainant further in this report.

Reason for initial rejection for the Grant Application

36. The complainant said the DfE failed to provide him a reason for rejecting his initial application. He explained it only did so after it rejected his appeal, and within correspondence with his MLA. The complainant believed that as the DfE did not provide this reason, it did not make him aware of the basis for its refusal, which hindered his opportunity to provide evidence to support his application.
37. The Staff Instructions state, *'once the rejection is made, a member of the 'Rejected Applications' team will ensure the applicant is sent a rejection letter detailing the reason(s) for the rejection'*. The Scheme FAQs state, *'the Department reserve the right to reject applications that do not fully meet the eligibility criteria. In these cases written notification will be sent as soon as the rejection decision is made. These notifications will clearly detail the reason the application was declined'*.

38. The DfE stated, *'at the time his application was initially rejected, the Department informed [the complainant] that he was not eligible as he did not operate within any of the eligible sectors, these being retail'*. The DfE advised this Office *'under the Business Grant right to appeal applicants were able to state their case and provide further evidence'*. The DfE explained it prepared and issued a 'standard response template' for all ineligible applicants. The DfE stated, *'this notification of rejection due to ineligibility was issued to all ineligible applicants, including wholesale businesses'*. The DfE issued this document to the complainant on 11 May 2020.
39. The email issued to the complainant on 11 May 2020 referred him to the guidance notes and the FAQs on the NI Direct Portal for further information. The DfE records document it also issued the complainant an email on 19 May 2020 which advised him, *'you may have been already been notified that your application for the Business Support Grant Scheme cannot be processed further as your business is not in a sector eligible for the grant'*. This email also signposted the complainant to seek further clarification through the guidance notes and the FAQs on the NI Direct Portal. I note this email provided the complainant information on how to appeal this decision.
40. I note the complainant believed the email did not detail the reasons why his business did not meet the eligibility criteria for the Grant Scheme. However, I am satisfied the DfE provided the complainant with a reason for his application's rejection, which was in line with Staff Instructions, and the Scheme FAQs. Although I note the reasoning was brief, I appreciate the number of applications, and the unprecedented circumstances set in context of the pandemic, meant it was not feasible for the DfE to provide detailed reasons to each applicant it rejected.
41. It is clear the DfE directed the complainant to access the Scheme FAQs and guidance notes to seek further information regarding his rejection for the Grant Scheme. I also note the DfE provided the complainant with further information regarding its reason for rejecting his application during the appeals process,

and again in response to his MLA's enquiries. I do not uphold this element of the complaint.

Initial Grant Application

42. The complainant said the DfE based its decision for rejecting his application on a paragraph on his business' website.
43. The DfE said, '*The decision was not based on one paragraph of the business website as indicated, but on multiple pages including catalogues published online for the business*'.
44. The DfE records document the complainant attached an extract from his business website, and a business bank statement for the period 2 March 2020 to 18 March 2020, to his Grant Scheme application submitted on 20 April 2020. The DfE's verification checklist for the complainant's application documents the DfE received a bank statement from the complainant that covered the correct time period to be eligible for the Grant Scheme. The DfE records document the DfE checked the complainant's business on Companies House and on Google to verify his eligibility for the Grant Scheme.
45. After consideration of all the evidence available to me, I am satisfied from the records provided the DfE considered information from Companies House, Google, the complainant's business bank statements and information from his business' website. I do not consider the DfE based its decisions on the complainant's application solely on the information contained within one paragraph from his business' website. For this reason I do not uphold this element of the complaint. I hope the findings in this report go some way to reassure the complainant that the DfE considered a number of pieces of evidence when making the decision on his eligibility for the Grant Scheme.

Appeal Process

46. The complainant said the DfE did not ask him to provide additional evidence in support of his appeal. In his response to the draft Investigation Report, the

complainant said in the absence of this request *'he could not provide robust arguments or evidence'* to support his appeal.

47. The DfE stated, *'Under the Business Grant right to appeal applicants were able to state their case and provide further evidence'*. The DfE further stated, *'further evidence collected/received included review of his business website and offerings from his catalogues which were deemed to be overwhelmingly wholesale'*. The DfE stated the complainant informed the DfE that his business sold to hotels and golf clubs and *'this declaration was used to support the rejection decision.'* The DfE said the complainant supplied it with bank statements that highlighted transactions. The DfE decided however this failed to provide *'irrefutable evidence'* of retail sales and further highlighted that the business operated *'overwhelmingly'* as a wholesaler.
48. The DfE informed the complainant by email on 11 May 2020 that it rejected his application to the Grant Scheme. In a further email on 19 May 2020, the DfE advised the complainant how to appeal this decision. The DfE explained to the complainant he could complete a template table to include a *'clear explanation of the grounds on which the appeal is being made'*. I consider the DfE did not explicitly ask the complainant to supply additional evidence to support his appeal, within this email. However, the DfE advised the complainant he could seek further information regarding his application from the Scheme's FAQ guidance, or by contacting DfE.
49. Following receipt of the draft Investigation Report, the complainant acknowledged the DfE directed him to seek further information in the FAQs and provided contact information. He could not recall if he availed of these options, but felt if he had contacted the DfE, he did not receive the information he required. The DfE did not provide to this Office evidence to confirm the complainant contacted the DfE for clarification.
50. Following receipt of the complainant's appeal, the DfE informed the complainant by email on 27 May 2020 that the Appeals Unit may contact him to request further information. The DfE acknowledged to this Office that whilst it

did not explicitly request evidence, its view was that there was an inference for him to provide it. The DfE explained that the provision of the rationale alone was unlikely to succeed in enabling the complainant to overturn a rejection decision.

51. The DfE's records document that following the correspondence in May, the complainant contacted the DfE in June 2020 stating he did not have an opportunity to provide evidence to support his appeal. The DfE rejected the complainant's appeal on 29 June 2020. The appeal document states the complainant *'has provided no additional evidence to support his claim that would allow the panel [to] make a determination on the two retail warehouses he mentions'*.
52. In an email dated 9 July 2020 the DfE wrote to the complainant, *'all available evidence to the panel overwhelmingly supported that you are a wholesaler, if they required further evidence it would have been requested, but with the examples you have given so far it would still support the original decision'*.
53. I accept that initially the DfE did not sufficiently clarify to the complainant what additional information he could submit. However, I consider the DfE later provided appropriate information to the complainant regarding how to obtain further information regarding his application. This would have allowed the complainant to decide what information he wanted to submit in support of his appeal.
54. I note the complainant's MLA sent a letter to the DfE on 10 September 2020 in support of the complainant's appeal for a reconsideration of his application for the Grant Scheme. The MLA attached the complainant's business bank account statements to this letter. The complainant highlighted retail transactions on the statements for the benefit of the DfE. I note from the DfE's records, this evidence only reinforced the DfE's position that the complainant was not eligible for the Grant Scheme. I consider that by accepting this evidence from the complainant's MLA, the DfE afforded the complainant the

opportunity to submit additional evidence to support his application for the Grant Scheme. For this reason I do not uphold this element of the complaint.

Injustice

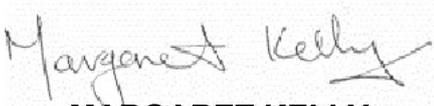
55. I identified that the Department failed to provide the complainant sufficient clarity regarding its definition of the retail element within its eligibility criteria. Whilst I have identified maladministration in relation to this aspect, I have not identified any grounds on which I could question the merits of the DfE's discretionary decision to reject the complainant's application for the Grant Scheme. I am satisfied that the DfE's decision to reject the application would have been no different had the terminology been clearer. Nevertheless, I consider the complainant sustained an injustice as a result of the DfE's failing. This injustice is not as a result of the decision to reject his application to the Grant Scheme, but because of the doubt it created about the process. His uncertainty and frustration with the DfE, in relation to his application for the Grant Scheme, represents an injustice that should receive remedy.

CONCLUSION

56. I received a complaint about the actions of the Department for the Economy (the DfE). The complaint related to the DfE's management and handling of a grant application the complainant submitted on 20 April 2020.
57. I investigated the complaint and found maladministration in relation to the following:
- i. The DfE failed to provide sufficient clarity within its guidance for the public and its staff.
58. The investigation established that the DfE appropriately assessed a range of evidence when it considered the complainant's application for the Grant Scheme. DfE also afforded the complainant the opportunity to submit evidence to support his application during the appeals process, and again in response to his MLA's enquiries.

Recommendations

59. I recommend that the DfE provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration/failures identified (within **one month** of the date of this report).
60. I recommend that the DfE share the findings of this report with relevant staff to prevent future recurrence.
61. I recommend that the DfE should provide me with an update within **three** months of the date of my final report.



MARGARET KELLY
Ombudsman

2022

Appendix 1

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.

Appendix 2

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

2. Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.

- Publishing service standards for handling complaints.
- Providing honest evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.

Appendix 3

Relevant extracts of policies and guidance

- I considered the Scheme Guidance and FAQs and identified the following relevant extracts:

...(3) Eligibility criteria for the grant

Eligible businesses/ properties

Businesses must operate in a premises in the retail, hospitality, tourism or leisure sectors, in one of the following:

<i>Amusements</i>	<i>Garden Centre</i>	<i>Race Track</i>
<i>Arts Galley</i>	<i>Golf Driving Range</i>	<i>Restaurant</i>
<i>Action Mart</i>	<i>Harbour</i>	<i>Retail Warehouse</i>
<i>Bakery</i>	<i>Ice Rink</i>	<i>Riding School</i>
<i>Bingo Hall</i>	<i>Laundry</i>	<i>Shooting Range</i>
<i>Bowling Alley</i>	<i>Leisure/Gym/Fitness Centre</i>	<i>Shop</i>
<i>Café</i>	<i>Market</i>	<i>Showroom</i>
<i>Camping Site</i>	<i>Museum</i>	<i>Sports Club</i>
<i>Car Wash</i>	<i>Office (in eligible sector)</i>	<i>Taxi Depot</i>
<i>Caravan Site</i>	<i>Outdoor Centre</i>	<i>Theatre</i>
<i>Cinema</i>	<i>Petrol Filling station</i>	<i>Tourism Accommodation</i>
<i>Entertainment Centre</i>	<i>Play Centre</i>	<i>Visitor Centre</i>
<i>Exhibition Venue</i>	<i>Post Office</i>	
<i>Funeral Parlour</i>	<i>Public House</i>	

Businesses/ properties excluded from this grant:

- Vacant properties;*
- Public bodies;*
- Premises used for manufacturing purposes;*
- Properties with a Total Net Annual Value of under £15,001 or over £51,000;*

- *Businesses which, as of the 15 March, were dissolved or about to be dissolved, are not eligible;*
- *Businesses which, as of the 15 March 2020, were insolvent or for whom insolvency action had been instigated, are not eligible;*
- *Businesses that were dormant as of the 15th March 2020, i.e. not trading but not insolvent;*
- *Businesses that are being used for the provision of the following services to visiting members of the public:*
 - o *Financial services (e.g. banks, building societies, cash points, bureaux de change, short-term loan providers)*
 - o *Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)*
 - o *Professional services (e.g. estate agents, solicitors, accountants, insurance agents/ financial advisers and quantity surveyors)*
- *Providers of childcare*
- *Construction service....*

...(8) Appeals procedure ...

...All applications are assessed fairly and consistently. The Department reserve the right to reject applications that do not fully meet the eligibility criteria. In these cases written notification will be sent as soon as the rejection decision was made. These notifications will clearly detailed the reason the application was declined.

The Department will give you every reasonable means of providing the information needed to validate eligibility. However, if, when requested, you have been unable to provide sufficient information, then your application may be rejected. Should there be any dispute with the decision made, the applicant will have the right to ask for an independent review to be conducted. Further details on how to submit an appeal will be included in the rejection notice. The request should be lodged within two weeks of the date of the rejection notice. Please note that this appeals procedure only applies where an application has been submitted, processed and rejected.'

- I considered the Scheme Staff Instructions and identified the following relevant extracts:

...2. DfE Internal Verification Process

...Verification of Applications

...Process for Verifiers to determine if business operates in an eligible sector (Retail, hospitality, tourism or leisure).

Verifiers have a number of internal and external resources to use for eligibility verification including:

- *Master List – Eligibility Filter (EC1/20/0171646);*
- *File to cross check for extra information to help with eligibility decision (EC1/20/0162711);*
- *SIC Master list (EC1/20/0162517);*
- *referrals to the appropriate local council (EC1/20/0165264 using EC1/20/0151076);*
- *Companies House beta website (<https://beta.companieshouse.gov.uk/>);*
- *Internet searches.*

Businesses which are not 100% retail focused but where evidence exists to show they have a retail element will be deemed eligible...

The Verifier should only progress the application to the next stage once they are content they have sufficient information to determine if the businesses eligible or ineligible...

... Verification Assistance

A number of staff are designated as 'Verification Assistants'. Each team has a Verification Assistant assigned...All requests for assistance and responses should be done by email using the heading ' - Assistance required', ensuring either Tracker 1 or 2 is copied into the email as appropriate. Verification Assistants can use the internet and web pages as an additional verification tool – as well as ringing or emailing the applicant directly. The Verifier should save

this response into their supporting evidence file. The Verification Assistants will also save their investigations into the relevant supporting evidence file...'

...Rejected Applications

If an application is to be rejected it should be passed to the 'Rejected Applications' team. A member of the 'Rejected Applications' team will make contact with the applicant, if required, to ensure they have all the information they need to make the rejection decision.

Once the rejection decision is made, a member of the 'Rejected Applications' team will ensure the applicant is sent a rejection letter detailing the reason(s) for the rejection...'

- I considered the Scheme's Policy Log and identified the following relevant extracts:

'However there have been instances where businesses are involved in activity that spans both categories. In such cases, assuming all other criteria is satisfied, eligibility decisions will rest on the evidence provided either in the application, in verification searches, companies house, or on additional evidence provided on review.

Wholesalers are outside of the remit of this scheme. However wholesalers whose businesses also involve a significant retail element should be investigated further with a view to assessing eligibility under the retail sector. Further information may be required from the applicant. Each application will have to be assessed on its own merit.

If the business is purely a wholesale business they are not eligible but if it can be confirmed that a core part of the business is within the retail sector then the business should be considered eligible for this grant scheme'.

'I can confirm we discussed the eligibility of businesses under the £25k scheme that demonstrated a retail element and we further discussed the difficulty of in trying to apportion percentages between retail and wholesale. Retail is the sector that is covered in the eligibility criteria agreed by the Executive and the administration of the scheme was based on this determination. However, this is an area where the guidance can only be guidance and in many cases some further investigation will be required. Simply put Wholesale sells to other

businesses and retail sell to the public and the activities that underpin this are defined within the sic codes. However there have been instances where businesses are involved in activity that spans both categories. In such cases, assuming all other criteria is satisfied, eligibility decisions will rest on the evidence provided either in the application, in verification searches, companies house , or on additional evidence provided on review. It is not feasible to attempt to place a percentage weighted definition on wholesale/retail split in activity because it would be administratively cumbersome to evidence such a relationship and would be open to widespread challenge. Businesses do not typically stand still. In many cases their business model is constantly evolving to take advantage of opportunity or react to external pressures. Therefore in such cases where there is evidence provided of reasonable retail activity, in a business that is defined as wholesale (sic code or companies house) it is reasonable to consider the application eligible.'

Appendix 4

Relevant chronology of events

20 April 2020	Application submitted by complainant to the Grant Scheme.
4 May 2020	Scheme policy log updated to regarding wholesalers.
5 May 2020	Verification checklist signed off for application.
11 May 2020	DfE email to complainant - advising application cannot be processed as not in eligible sector.
19 May 2020	DfE email to complainant - advising can appeal decision not to process application further. Template for completion included.
20 May 2020	Completed appeals template returned to DfE by complainant.
27 May 2020	DfE email to complainant - Acknowledgment of receipt of appeal.
29 June 2020	Appeal templates completed by DfE. DfE email to complainant – Appeal rejected.
30 June 2020	Complainant email x2 to DfE – advising business was retail, had offered to supply further evidence and making FoI request. Letter from MLA to DfE on behalf of complainant – what further evidence would be considered acceptable and any further appeals available?

OFFICIAL - PERSONAL

7 July 2020 DfE email to complainant – Advising decision of appeal panel final and lack of retail evidence.

8 July 2020 Complainant email to DfE – re provision of evidence and definition of wholesaler.

9 July 2020 DfE email to complainant – advising on definition of wholesaler, correspondence also being sent to MLA.

10 July 2020 Complainant email to DfE – querying DfE definition of wholesale.

16 July 2020 DfE letter of response to MLA – complainant’s primary purpose business determined as wholesale. No further appeal process.

10 September 2020 Letter from MLA to DfE on behalf of complainant – banks statements provided as evidence for sales transactions to members of public.

30 September 2020 Email from MLA to DfE on behalf of complainant – requesting acknowledgment of letter sent on 10 September 2020.
DfE email to MLA – letter being considered.

2 October 2020 Email from MLA to DfE – Further questions raised following receipt of staff instructions for grant.

14 October 2020 DfE letter of response to MLA – response to 10 September letter – position upheld.
Email from MLA to DfE – requesting if email of 2 October has been taken into consideration.

OFFICIAL - PERSONAL

4 November 2020	DfE email to MLA – email being considered.
23 November 2020	Email from MLA to DfE – still awaiting response to 2 October queries.
22 December 2020	Letter from MLA to DfE – still awaiting response.
11 and 19 February 2021	Emails from MLA to DfE – requesting confirmation of receipt of email and update on case respectively.
4 March 2021	Review of complainant’s application by new policy panel.
11 March 2021	DfE letter of response to MLA – Original decision upheld.