



Northern Ireland

**Public Services**

Ombudsman

# Investigation Report

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## Investigation of a complaint against the Western Health and Social Care Trust

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**NIPSO Reference: 18741**

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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 the Western Health and Social Care Trust (the Trust). The complaint related to the management of an adoption application by the Trust from the complainants' initial application in April 2012 until they withdrew their application in August 2017.

I accepted the following issue of complaint for investigation:

- Whether the adoption application was managed in line with the relevant legislation, policies, procedures, and guidelines. This was to include:
  - Whether the delays experienced as part of the process, including the delays associated with 'Link Maker'<sup>1</sup>, were reasonable and appropriate;
  - Whether the Trust took appropriate action to address the relationship breakdown between the complainants' and the Social Work team;
  - Whether by accessing a complainant's medical records, the actions of the Trust were reasonable and appropriate.

I found maladministration in relation to the following matters:

- i. The Trust's failure to record and retain notes of a discussion with the complainants' regarding a potential delay to the process caused by the complainant's surgery;
- ii. The Trust's failure to retain documentary evidence that it made efforts to avail of the assistance offered by the HSCB in an attempt to minimise delays in the adoption process;
- iii. The unreasonable delay by the Trust relating to the transfer of the adoption pack to the ADM;
- iv. The unreasonable delay by the Trust in responding to the complainants' request to register with Link Maker;
- v. The Trust's failure to proactively inform the complainants of the likely impact of their limited matching criteria on the process;

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<sup>1</sup> An online platform that aims to help all 'looked after children' (within the UK) to find stable relationships with those who can best meet their individual needs. This is also referred to as Adoption Link.

- vi. The Trust's failure to cancel the panel meeting in June 2017 when it was aware of their intention to raise concerns that were not relevant to the panel; and
- vii. The Trust's failure to obtain explicit consent to obtain a complainant's medical information in December 2016.

I am satisfied that the maladministration I identified caused the complainants to experience the injustice of frustration, uncertainty and distress caused by the Trust's actions resulting in delays to the process. I also considered that they experienced the injustice of frustration and upset by the Trust's failure to delay the couple's attendance at a panel meeting in June 2017. Furthermore, I am satisfied that the Trust's failure to obtain explicit consent to acquire medical information from a complainant's GP caused her to experience the injustice of upset and concern.

I have not found maladministration in relation to the following matters:

- i. The Trust's decision not to allocate a social worker while a complainant was undergoing a surgical procedure;
- ii. The Trust's decision not to allocate an alternative social worker
- iii. The Trust's actions regarding the complainant's request to be matched with a child of the same religious affiliation;
- iv. The Trust's actions to address the breakdown in its relationship with the complainants;
- v. The Trust's decision to share information relating to a potential match with a child from the Welsh register with the complainants; and
- vi. The Trust's actions regarding the transference of the complainants to another Trust area, and its attempts to match them with children from other Trust areas.

## **Recommendations**

The Trust explained that it identified learnings as a result of its investigation into the complaint. These were:

- i. Agree a process for Trust staff to follow when it receives a request to join Link Maker or similar organisations;

- ii. Provide statistical information to prospective adoptive parents at the initial stages of the process; and
- iii. In relation to the provision of explicit consent to obtain medical information, ensure that '*applicants provide consent throughout their adoption journey as required*'.

I welcomed the learning already identified by the Trust following the complaint and commended it for its efforts.

In addition, I recommended within **one** month of the date of this report:

- i. The Trust provides the complainants with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice they experienced as a result of the maladministration identified in this report; and
- ii. The Trust provides the complainants a payment of £250 for the injustice experienced.

The Trust accepted my findings and recommendations.

## THE COMPLAINT

1. The complainants were unhappy about the actions of the Trust regarding its management of their adoption application.
2. They complained that the application process to enable them to become adoptive parents experienced a number of unreasonable delays. They further complained that when they raised their concerns with the Trust, it did not sufficiently address the breakdown of the relationship between them and the Social Work team. The complaint also relates to the Trust's decision to contact one of the patient's GP to access her medical information without her explicit consent.

## INVESTIGATION METHODOLOGY

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

### **Independent Social Work Advice Sought**

4. After further consideration of the issues, I obtained independent social work advice (ISWA) from an advisor with 30 years' experience in social work with children and families. This includes six years as the Independent Chair of two Adoption Panels and over nine years as an Agency Decision Maker for all adoption cases including approval of adopters (ISWA).
5. The information and advice which have informed my findings and conclusions are included within the body of my report. The ISWA provided me with 'advice'; however how I have weighed this advice, within the context of this particular complaint, is a matter for my discretion.

### **Relevant Standards**

6. 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.

The general standards are the Ombudsman's Principles<sup>2</sup>:

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

7. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the Trust staff whose actions are the subject of this complaint.

The specific standards relevant to this complaint are:

- i. The Adoption (Northern Ireland) Order 1987 (the Order);
- ii. The Adoption Agencies Regulations (Northern Ireland) 1989 (the Regulations);
- iii. The Health and Social Care Board's (HSCB) Adoption: Regional Policy and Procedures: Northern Ireland, 2010 (the Policy and Procedures); and
- iv. The Data Protection Act, 1998 (the Act).

8. I have not included all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

9. In accordance with the 2016 Act, a draft of this report was shared with the complainants and with the Trust for comment on factual accuracy and the reasonableness of the findings and recommendations.

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



# THE INVESTIGATION

**Issue 1: Whether the complainants' adoption application was managed in line with the relevant legislation, policies, procedures, and guidelines. This was to include:**

- **Whether the delays experienced as part of the process, including the delays associated with 'Link Maker', were reasonable and appropriate;**
- **Whether the Trust took appropriate action to address the relationship breakdown between the complainants and the Social Work team;**
- **Whether by accessing medical records, the actions of the Trust were reasonable and appropriate.**

**(i) Whether the delays experienced as part of the process, including the delays associated with 'Link Maker', were reasonable and appropriate**

## **Detail of Complaint**

10. The complainants said that they experienced a number of unreasonable delays during their application process to become prospective adoptive parents. In particular, they explained that the delays occurred in the allocation of a social worker and the completion of the home study<sup>3</sup> process. The complainants also said that a further delay was caused because the Trust did not inform them of the low number of children of Protestant affiliation within the Trust area. They explained that this would have affected their chances of being matched with a child of the same religion in accordance with their matching criteria. The complainants also complained regarding the time taken for the Trust to respond to their request to register with Link Maker.

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<sup>3</sup> The applicants undergo a series of interviews conducted by the Social Worker. These interviews relate to a number of areas including the applicants' background, family life, lifestyle and relationships.

## Evidence Considered

### Legislation/Policies/Guidance

11. In relation to the complaint, I considered the Order. I note the following relevant extracts:

*Article 17.— (1) Subject to paragraph (2), where, on the joint application of the parents or guardian of the child and an adoption agency, an authorised court is satisfied in the case of each parent or guardian that he freely, and with full understanding of what is involved, agrees—*

*(a) generally, and*

*(b) either unconditionally or subject only to a condition with respect to the religious persuasion in which the child is to be brought up,*

*to the making of an adoption order, the court shall make an order declaring the child free for adoption.*

12. I also considered the Regulations (1989). I note the following relevant extracts:

*Adoption panel<sup>4</sup> functions*

*10.-(1) Subject to paragraphs (2) and (3), an adoption panel shall consider the case of every child, prospective adopter and proposed placement referred to it by the adoption agency and shall make one or more of the recommendations to the agency, as the case may be, as to—*

*(a) whether adoption is in the best interests of a child and, if the panel recommends that it is, whether an application under Article 17 or 18 (freeing child for adoption with-or without parental agreement) should be made to free the child for adoption;*

*(b) whether a prospective adopter is suitable to be an adoptive parent...*

*Adoption agency decisions and notifications*

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<sup>4</sup> The panel consists of a group of people experienced in adoption. The applicants' assessment is presented to the panel by their social worker and social work manager.

*11.-(1) An adoption agency shall make a decision on a matter referred to in regulation 10(1)(a), (b) or (c) only after taking into account the recommendation of the adoption panel made by virtue of that regulation on such matter.*

*(2) As soon as possible after making such a decision the adoption agency shall, as the case may be, notify in writing...*

*the prospective adopter of its decision as to whether it considers him to be suitable to be an adoptive-parent...*

13. I considered the Policy and Procedures and note the following relevant extracts:

*1.1.7 The Northern Ireland Social Services Inspectorate's Report "Adopting Best Care" launched in May 2002 states:*

*"Adoption is primarily a service for children. All children are entitled to grow up in a loving family that can meet their needs throughout their childhood and beyond. For most children, this will be the family into which they are born. In any year, however, approximately 2,500 children are looked after by Social Services. For a small but significant number of these children, adoption will provide the best opportunity for them to enjoy a family for life"...*

*1.3 Principles...*

*1.3.5 Decision making should be timely, proportionate and in the best interests of the child. This principle should also apply to the process of rehabilitating children with their birth parents in order, if considered appropriate, to pursue the alternative of adoption at the earliest possible date.*

*1.3.6 Delay in the decision making process should be avoided...*

*5.1.3 Wishes of the Birth Parents*

*Birth parents have the legal right to make their agreement to adoption conditional on the child being brought up in the religion of their choice. Their wishes may extend, however, beyond religious upbringing. These will be ascertained, and during the matching, accommodated as far as possible. The paramount consideration will be the best interests of the child...*

### *5.2.9 Religion*

*The Adoption Agency must ascertain from birth parents who agree to place their child for adoption, whether they wish to exercise their right under Article 16 of the Adoption (Northern Ireland) Order 1987 to specify the religious persuasion in which their child is to be brought up. In cases where a Court has given the Adoption Agency parental responsibility under Article 17 or Article 18 of the Adoption (Northern Ireland) Order 1987, the Adoption Agency will give due consideration to the birth parents' religious persuasion when making placement decisions. Prospective adopters will be asked how they will address the religious and spiritual needs of the child to assist the Adoption Agency in its placement deliberations...*

### *5.2.11 Priority for Assessments*

*In addition to the above criteria, priority will be given to applicants who can meet the placement needs of the children currently requiring adoptive placements, including those who have made a child specific application...*

*6.4.1 The Adoption Panel will consider any case referred to it by the Adoption Agency where a significant change in the circumstances of the approved prospective adopters has been identified, normally following a review, and will make a recommendation to the Agency as to whether or not the applicants continue to be suitable as prospective adopters. Where a review report is being presented to the Panel the applicants should be invited to attend...*

### *7.4.5 Home Study Assessment*

*(1) The appropriate manager for adoption should send the applicants written confirmation that their application can proceed. When allocated, it is expected that this stage will be completed within six months of commencement. Applicants should be told what the expected timescale is for the assessment to be completed from the time of application...*

### *7.4.6 Application Considered by Adoption Panel...*

*(7) The Panel will consider the application and make a recommendation to the*

*Agency as to whether the prospective adopters are suitable to be adoptive parents, or may request that further information be obtained.*

*(8) The Chairperson [of the Panel] will advise the applicants of the outcome of the Panel discussion and will remind them of the role of the Agency Decision-Maker<sup>5</sup>.*

*(9) The Chairperson of the Adoption Panel should forward the recommendations of the Panel and the reasons for these, in each case, to the Agency Decision Maker within 10 working days and a copy of the record of the meeting, as soon as possible.*

*(10) The Agency Decision Maker [ADM] should notify the Prospective Adopters of the Agency's decision as to whether or not it considers them suitable adoptive parents, as soon as possible and not later than 28 days following the Panel meeting.*

### **The Trust's records**

14. Records relevant to the process were provided by the Trust and examined.
15. In addition to the records, I also examined a report which details the findings of an investigation into the complaint to the Trust. The report states that the investigation was conducted by the Principal Practitioner for Looked After Service. The report documents that she held investigation meetings with the complainants and also with relevant Trust personnel.
16. In relation to the delay experienced in the allocation of a social worker for the complainants, the report documents that the delay occurred as one of the complainants '*required surgery and there was a duty of care towards her to ensure that she was healthy and fit following her procedure*'. The report stated that this reason was combined with '*competing demands and the need to prioritise cases*' and this '*informed her management decision to place the*

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<sup>5</sup> The panel make a recommendation to the Trust's ADM, who ultimately decides on the outcome of the application.

*commencement of the complainants' home study on hold'.*

17. In relation to the time taken to complete the home study, the report documents that *'this assessment was delayed as [the social worker] was absent from work on unplanned leave due to sickness, which commenced 23 July 2014. [She] was not fit to return to work until the 31 October 2014'.* It further states that the complainants *'were made aware of the complexities around reallocating their case and that they were in agreement, [...] to wait in anticipation that she would be back to work to pick up the assessment. However, [the social worker's] sickness was protracted over a longer period of time than was initially anticipated'.* The report documents that she had an *'unforeseen relapse of her medical condition which necessitated a second episode of sickness...over the period of 7 January 2014 [2015] to 17 February 2015'.*
18. In relation to action taken by the social work manager, the report states that she *'met with the couple on 6 February 2015 to complete the matching process and to support them in the absence of their Social Worker'.* The report further documents that *'both the Panel and the Trust acknowledged the 'waiting' period for the couple and their resilience in respect of same'.*
19. In relation to the complainants' request to register with Link Maker, the report states that *'legal advice should be sought if prospective adopters choose to avail of the services of Adoption Link [Link Maker]'.* The report refers to the delay experienced in the Trust responding to the complainants' request. It documents that *'it is difficult to explain why this issue was not dealt with more decisively and in a timelier manner'.* It further states that *'The complainants' query around registration with Link Maker was a distinct separate request from their non-acceptance of professional guidance and support in respect of their intention to pursue adoption from within the UK and the two issues should have been dealt with separately. There is no doubt that the lack of clarity with regard to the complainants' request to register with Link Maker resulted in confusion and misunderstanding and frustration for them. The complainants did suffer distress and anxiety because it had not been clarified with them in a timelier manner that they could register with Link Maker and for this the Trust sincerely apologises'.*

20. In relation to the complaint that the complainants were not informed of the low number of Protestant children in the Trust area, the report documents that *'statistical information from all Trusts within Northern Ireland...can be accessed on the internet'*. It further documents that *'ARIS<sup>6</sup> [Adoption Regional Information Service] increases the chances of a family achieving an adoption match...'*.
21. The report detailed a number of recommendations identified following the complaint. In relation to the delays experienced, the report recommended that *'the Trust review the process with regard to how staff dealt with the complainants' request to register with Link Maker and the confusion and the delay that arose from this. Following this review the learning will inform intervention and agreed Trust process around a similar request in the future'*. It also recommended that *'the Trust should consider providing statistical information in respect of adoption trends within the Trust area at the initial information and training sessions'*.

### **The Trust's response to investigation enquiries**

22. The Trust was asked to respond to the complaint that it did not progress their application between 2013 and 2014. The Trust explained that *'on successfully completing [Preparing for Permanency] training, their application was accepted to complete their home study.'*
23. In relation to the delay caused by the complainant's surgery, the Trust explained that *'an operation such as the gall bladder is considered significant and therefore time would be allowed for this to occur before allocation...this is a professional judgement on the part of the social work manager and assessing social workers. When SWM [the Social Work Manager] is allocating the assessments they need to consider a number of factors which were considered alongside the pending operation. For example cases that are timetabled in the Court Arena, the outcome of assessments are required for Court cases and*

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<sup>6</sup> A regional database that stores details of children waiting for adoption and approved adopters in Northern Ireland.

*these cases need to be prioritised. This was the initial factor which impacted on [the complainants'] allocation and subsequent to that other case load pressures within the team'.*

24. The Trust were asked if it obtained a medical report to confirm that the complainant was fit to continue the process following her surgery. The Trust explained that *'an initial medical was carried out, no further update medicals were processed during the period the case was unallocated. The Trust acknowledges the deficit in this regard in terms of fully assessing from a medical point of view [the complainant's] readiness to proceed'.*
25. The Trust was also asked if it informed the complainant that her surgery would likely cause a delay to the process. It explained that *'[The] (SWM) recalls discussions with the couple...at the end of Preparing for Permanence Training and [the complainant] advised that she was due to have surgery on 5 June 2013. This was not a formal meeting, it was shared at the end of training. [The SWM] advised [the complainant] that her case would [be] allocated after this date. The Trust has taken cognisance of this given the difficulties the couple have expressed due to this and a formal meeting and record of any discussions will be noted on file and formally agreed between all parties moving forward'.*
26. The Trust explained that *'competing work demands'* caused a further delay to the allocation of a social worker. It explained that it *'was not in a position to allocate a Social Worker over the summer period. This was due to competing demands and Court directed assessments to meet Court timelines, hence the need to prioritise cases. Given this context the commencement of [the complainants] home study was put on hold. [SWM] updated [the complainants] on the 6th August 2013, that she would be unable to allocate the case until mid/late September and asked that [...] would arrange for a review medical...following her surgery. On 9th October 2013, [she] provided further update to [the complainants] on the delay of allocating a Social Worker'.*
27. The Trust explained that *'The complainants were invited and attended an Adoption Regional Information Service (ARIS) Exchange Day on the 28th October 2013. [SWM] corresponded with [the complainants] on 28th November*



*2013 apologising to them for the ongoing delay in allocation and advising that she envisaged that she would not be in a position to allocate a Social Worker until January 2014. She requested that [they] complete some factual details within BAAF<sup>7</sup> [British Association for Adoption and Fostering] forms to help with assessment when allocated to avoid delay. A Social Worker was allocated to complete the home study on the 12th February 2014'.*

28. In relation to the home study element of the process, the Trust were asked if it informed the complainants of the expected date of its completion. It explained that *'during Information Sessions and Preparing for Permanence Training, SWM [Social Work Manager] discusses average time of home study assessments being 6 months. However it is also noted that every assessment is individual to each family's circumstances, availability of applicants, availability of social workers, caseload priorities and social workers leave etc. The Trust therefore does not be [sic] prescriptive as it is not until assessments start that the assessing social worker can get a true sense about how long each assessment can take. This is not formally contracted with applicants at the start of their process'.*
29. The Trust explained that the allocated Social Worker *'undertook an initial introductory home visit to the couple on 14th February 2014 and arrangements were made to commence the home study with them. Unfortunately, this assessment was delayed as [the social worker] was absent from work on unplanned leave due to sickness, which commenced on 23rd July 2014. [The social worker] did not anticipate that she would be absent from work over a number of months and initially thought she would be back to work within a week or two weeks'.*
30. The Trust further explained that *'managing sick leave is complex and very challenging when a Social Worker has engaged in an intense and intimate process of assessment with a couple wishing to adopt a child. Notes during and post each session with the couple can be provided to another Social Worker but the critical part of the assessment is professional analysis. Couples [sic]*

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<sup>7</sup> A membership organisation for professionals, foster carers and adopters.

*engagement with the process, and the journey and openness to learning through the different stages, inform analysis and, as such, a newly appointed Social Worker would need to recommence the assessment from the initial stages. [The complainants] were made aware of the complexities around reallocating their case and they were in agreement, when [the social worker] was off, to wait in anticipation that she would be back to work to pick up the assessment. However, [the social worker's] sickness was protracted over a longer period of time than was initially anticipated and she was not fit to return to work until the 31st October 2014'.*

31. In relation to the complaint that the case was not allocated to another social worker, the Trust explained that *'[The social worker] had completed 11 sessions with the couple and therefore it would be the Trust's view that the assessment was well progressed and at the final stages'.*
32. The Trust explained that *'on the 10th October 2014, [the complainant] communicated to the Social Work Manager that she was not happy that her Social Worker remained off and their assessment would be further delayed. [The complainants] were made aware of the Trust's Complaints procedures and advised that they could make a formal complaint and/or put their views in writing to the Social Work Manager and they would be passed on to Senior Management. The couple declined and the complainant advised that he did not want to do this'.* The Trust further explained that upon the social worker's return to work, she *'prioritised re-commencing work with he complainants] and scheduling a date for a Panel presentation'.* The Trust explained that *'the couple's journey to Panel and delays which featured were addressed by the Social Work Manager in the course of processing the application re: "Second Opinion" visit and recorded in "Home Study" assessment which the couple signed to confirm their agreement and satisfaction with its contents. It should also be noted that the issue of delay was addressed by the Panel Chairperson. The couple did not express dissatisfaction'.*
33. The Trust was referred to the Regulations, which state that the home study process ought to be completed within six months. The Trust explained that it

*'acknowledges this case was not completed within the 6 month guidelines and given the nature of the process the SWM view was that [the social worker] would be best placed to take forward the assessment given how progressed the assessment was. In addition it was anticipated that [the social worker] would return to work before she actually did. The [SWM] made a professional judgement not to reallocate. This is a very unusual situation and Adoption & Permanency team are loathed to reallocate a new SW due to the personal nature of the assessment process, it is about getting to know the couple as well as building a relationship. Allocating a new social worker could have created further delay for the couple as the relationship building and "getting to know" the couple can take time and it is not just about collating the factual information on applicants.*

34. The Trust was questioned regarding the delay experienced between the complainants' case being discussed at panel on 9 April 2015 and the letter confirming the panel's decision, issued on 4 June 2015. The Trust explained that *'the ADM [Agency Decision Maker] received the adoption pack on 27 May 2015...the [ADM] reviewed the adoption papers and agreed the adoption letters on 29 May 2015. The letter to [the complainants] was typed on 4 June 2015. The Panel Chair was unable to process the couple's application to the ADM within the 28 days timescales due to the increasing volume of cases presented to adoption panel and due to the competing demands on the Panel Chair'.*
35. In relation to the complainants' application to join Link Maker, the Trust explained that *'prospective adopters can register directly on line with Link Maker System Ltd which can be accessed through the internet. Link Maker or registering with agencies within the UK are not options the Adoption Team promote with couples as legislation in respect of Adoption in Northern Ireland is different from legislation in other parts of the UK'.*
36. The Trust further explained that *'[The complainants] provided their consent to information being shared by the Western Trust with the Adoption Regional Information Service (ARIS) to support them in finding a suitable match from within all the Trust areas. They were informed on 11th November 2015 that their profile went live on ARIS. Registering Adopters from Northern Ireland with*

*the Adoption Registers in Wales, Scotland and England requires specific criteria to be met and this is set out in an agreed inter-register protocol. The agencies in England were contacted through ARIS in respect of [the complainants] and the Welsh Agency did agree to accept a referral which was made on the 3rd July 2017. It is important to emphasise that, although the Trust is mindful with regard to a couples 'right to family' and a 'duty of care', the paramount principle is to find a placement that meets specific needs identified within a robust and comprehensive assessment and profile of the child'.*

37. *The Trust explained that '[The complainants] were given guidance and support around registering with Link Maker and the need to exercise caution about adoption from within the UK because of the different legislative framework and also that potential links would highly unlikely be within their matching criteria. Support to manage access to Link Maker through a website internet site with regard to children from within the UK is not within the remit of a Trust Adoption Social Worker as the paramount focus is for children within the Western Trust and within the other Trusts in Northern Ireland to be successfully matched with suitable families'.*
38. *In relation to the delay in considering the complainants' application to join Link Maker, the Trust explained that it 'acknowledges the deficits in the process around Link Maker particularly the timescales involved in processing a decision. The exploration of children available on Link Maker reflected children that the Trust would consider difficult to place and therefore outside of the matching of [the complainants]. These dilemmas likely impacted on the process. [The social worker] discussed the couples [sic] request with [...] who acknowledged that she had no experience of the Link Maker process. The social worker had provided [...] with the research that she had gathered. [...] sought further clarification from the Department on 15 June 2016, given that there was no response the Social Work Manager followed up this request on 4 July 2017 in [...] absence'.*
39. *The Trust was asked to explain the reasons for the time taken to consider whether or not the complainants were able to register with Link Maker. The Trust explained that an 'email on 15 July 2016 from [the social worker] to the*

*couple confirms that the Trust can proceed with their request however it was agreed that this was a matter that needed to be brought to the Adoption Panel given the uncommon nature of this request. Panel on 29 September 2016 heard the couple's application however requested advice from the Adoption Panel legal advisor before confirming the Panel recommendation. It was unfortunate that the outcome of the Panel and legal advice was not processed [...] in a timelier manner. Again this delay was compounded by work pressures on Panel chair at that time'.*

40. The Trust was asked to comment on the complaint that it did not consider the option of changing a child's religion to obtain a match for the complainants. The Trust explained that the *'practice primarily focuses on placing children with adoptive parents who practice the same religion as the child's birth parent(s). This is linked to identity and cultural development. Notwithstanding, the Trust has placed child/children with adoptive applicants from a different religious background. This usually relates to a child who is difficult to place and presents with complexities. In such cases, the Social Worker needs to demonstrate to the Panel and the Court that the child's "hierarchy of need" supersedes religious and cultural needs. The complainants were specific about their matching throughout'*.
  
41. In relation to learnings identified by the Trust further to the complaint, the Trust explained that it will *'review the process with regard to how staff dealt with [the complainants'] request to register with Link Maker and the confusion and delay arising from same. Linkage to regional clarity about use of Link Maker. This review is being taken forward by the Head of Service with brief for Adoption. Learning from review to inform future practice and process'*. The Trust further explained that it will provide *'initial information and training sessions to provide statistical information on Trust and regional...adoption trends'* for prospective adoptive parents.

### **Relevant Independent Social Work Advice**

42. In considering the complainants' complaint, I obtained independent social work advice (ISWA) from a registered social worker with relevant experience relating

to adoption in Northern Ireland. The advice was shared with the Trust for comment and where necessary, further advice was sought from the ISWA.

43. I referred to the advice provided by the ISWA. I asked the ISWA to consider the delays experienced in the Trust's allocation of a social worker to the complainants. She advised that at the time of the allocation, the Trust were *'not alone'* in *'experiencing difficulty in relation to their capacity to allocate adoption assessments'*. The ISWA further advised that *'a number of Trusts, later received additional funding from the HSCB [Health and Social Care Board<sup>8</sup>] to assist with reducing the waiting list for Adoption assessments regionally'*.
44. The advice received from the ISWA was shared with the Trust. The Trust was asked if it raised this concern with the HSCB at this time. It explained that *'the Trust was aware that additional monies were available from the HSCB at this point and the precursor for the Trust in accessing these monies was having the relevant social work personnel with knowledge of adoption available and willing to do these assessments outside of their normal working hours. The Trust did not have anyone at this point and time willing to do this'*.
45. The Trust was asked to provide evidence that it sought to access the funding available and that the request was forward to staff. It explained that *'[...] recalls discussing with her manager that additional monies would be available to enable staff to undertake assessments outside of normal working hours. [The] Head of Services, confirmed same [...]. Both [...] were relying on the good will of social staff within the Adoption and Permanency Service and external to the service to undertake additional assessments. There was no formal process around such discussions. Notwithstanding, [...] can stand over the fact that she had discussions with her managers who, in turn, raised with their respective teams. Given the capacity strain within the service area and other service areas, no one came forward'*.
46. Further to the Trust's response, the ISWA was asked to consider if the delay experienced in allocating a social worker was reasonable, appropriate and in

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<sup>8</sup> A statutory organisation that arranges or 'commissions' health and social care services for the population of Northern Ireland

accordance with recognised standards. The ISWA advised that *'the Trust have made it clear that they did not have staff willing to undertake assessments outside their normal working hours, so they clearly attempted to source extra capacity from staff, to try to address the backlog. This further evidences that, they took the necessary steps to try to try to address the issue. Therefore, it remains my view that in the regional context, the time taken to allocate, although outside the expectation laid down in the Regional Adoption Policies and Procedures, was within the recognised operating timescales at that time'*.

47. In relation to the complainant's gallbladder surgery, the ISWA advised that *'it was completely appropriate to await the outcome of surgery, firstly to ascertain if there was any medical outcome or complication that could affect their adoption application and secondly to ensure that the adoption assessment was not commencing at a time when an applicant may be recovering from the impact of surgery however minor'*. She further advised that *'the commencement of this can be a particularly stressful time. Adopters therefore need to be fully fit, focussed and functioning at their best. It would be inappropriate and unprofessional to commence a new Adopters Assessment in these circumstances. The reasons were therefore appropriate, reasonable and in line with recognised standards'*.
48. The ISWA was asked if the Trust ought to have obtained a medical report to confirm that the complainant was medically fit to continue the process. She advised that *'in light of the complainant's previous medical history, it would have been good practice to complete an updated adoption Medical immediately following her surgery, to ensure there were no contra-indications to Adoption following this. This would have allowed the Panel Medical Adviser to comment in relation to the complainant's fitness to proceed with the assessment and any implications for her overall fitness as an Adoptive parent at that time'*.
49. The ISWA further advised, *'I do note that an updated medical was undertaken before they were presented to Panel for Approval in April 2015 and that the Trust viewed, they were fit to proceed with their assessment at the point of allocation in early 2014. Their fitness to engage was assessed by the Social Worker based on information provided by the prospective adopters in*

*conjunction with her own observations, judgements and experience. If the Agency held any concerns or felt there were issues in relation to their medical fitness, they would seek advice or medical opinion from the Medical Advisor to the Adoption Panel. Therefore, in my professional opinion whilst good practice to seek medical opinion it is not strictly necessary and would not have led to a different outcome due to the delays and difficulties in allocation, that were running parallel to this issue’.*

50. The ISWA was asked to consider if the Trust’s communication with the complainants between May 2013 and February 2014 (relating to the delay in the allocation of a social worker) was reasonable and in accordance with recognised standards. The ISWA advised that the Trust *‘provided the minimum level of communication necessary to meet the recognised standards’.*
51. The ISWA was asked to consider the Trust’s reasons for the delay in allocating a social worker to the complainants. In relation to *‘competing work demands’*, the ISWA advised that *‘this was factual and as stated was in line with the position in other Trusts at the time. It was a legitimate and accurate position, in light of the realities at that time’.* The ISWA referred to the Procedures and advised that *‘the focus of adoption is the needs and interests of children...therefore, the fact the Trust was prioritising work was necessary, appropriate, reasonable and in line with recognised standards’.*
52. The ISWA was asked to consider time taken to complete the home study assessment of the complainants. She advised that *‘the time taken to undertake the assessment was out with the timescale that adoption agencies would normally seek to achieve in line with the expectations set out within the Regional Adoption Policies and Procedures and this is acknowledged by the Trust in this case. However, this can unfortunately occur on a fairly regular basis in my experience, during Adopters’ assessments, due to a range of circumstances relating both to the adopters themselves, their family and the circumstances within the agency’.*
53. In relation to the reason for the delay, which was related to the social worker’s sickness absences from work, the ISWA advised that *‘the Trust’s reasons for*



*the delay were appropriate in light of the absence'. She further advised that 'in light of the facts in this case and in particular the social workers [sic] sickness, the time taken, whilst potentially distressing for the adopters, was unavoidable and was reasonable, appropriate and in line with the circumstances'.*

54. In relation to the query as to whether it was appropriate for the Trust to reallocate the complainants' home study to another social worker, the ISWA advised, *'in my professional opinion, the decision taken by the Trust was in line with recognised standards and was appropriate, balanced and reasonable'.* The ISWA was asked if reallocating the home study would have caused a further delay. She advised, *'in the earlier stages it would have led to significant further delay as the Social Worker had completed almost 6 months of work and would have been nearing the end of the assessment. This work would have had to be repeated'.* The ISWA further advised that *'in light of the length of the total time during which the Social Worker was absent and the fact that further sick leave occurred, the delay may have been slightly shorter if everything went well in the new assessment. However, this could not reasonably be predictable on the basis of the evidence at the time and there is evidence the Trust made a balanced judgement and appeared to engage the couple in relation to their thinking'.*
55. The ISWA advised that *'in my professional opinion the judgement made at the time, was made on the basis of all the available information and a clear desire to avoid further delay and additional distress or upset at that point. I note the couple were involved in this decision making. Moreover, as previously stated Adopter Assessments need to [be] robust and detailed as the focus in [sic] to find safe stable and appropriate homes for children who have normally experienced significant harm. Adoption is about finding suitable adoptive families for children in care, it is not about rushing through adoption assessments or in any way compromising assessments to meet potential adopter's timescales or needs'.*
56. The ISWA was asked if the Trust's communication with the complainants during the social worker's absences from work (between July 2014 and March 2015)

was reasonable and in accordance with recognised standards. She advised, '*I understand from the Trust's response that the Social Work Manager wrote to the complainants on the 28th August 2014 and met with the couple at their request on the 10th October 2014. I note that she also supported them [sic] to attend an ARIS Exchange day on the 28th October 2014. I note that the social worker returned to work on the 3rd November 14...I also note the Trust called the couple in December re Christmas Leave and that after the social worker went on a further period of sick leave, the Social Work Manager completed the matching section of the assessment to avoid further delay and to ensure they met the agreed Panel date. Their assessment was completed and presented at Panel on the 9th April as agreed. I would therefore conclude, that the Trust's communication was reasonable in the circumstances and in accordance with the recognised standards when dealing with such a situation*'.

57. The ISWA was asked to consider the delay between the panel meeting (on 9 April 2015), which recommended that the complainants were suitable to be adoptive parents, and the letter communicating the outcome of their application (dated 4 June 2015). She referred to the Procedures and advised, '*the Agency Decision Maker (ADM) should have made their decision within 28 days of the Panel i.e. 7th May 2015. In this case the information to allow the Agency Decision Maker to make his decision was not forwarded until the 27th May, 33 working days after the Panel and well outside the 10 working days recommended by the Policies and Procedures. The decision letter was not signed until the 4th June. The reasons given for this by the Trust are the increasing number of cases presenting to the adoption panel and the competing demands on the Panel Chair. Whilst it is recognised regionally that there can sometimes be delays in the Agency Decision Maker's responses due to delays in the minute taker producing accurate minutes of very complex adoption Panels and the need for the Panel Chair to correct and sign these off, the delay in this case appears significant with no additional evidence presented re the increase in activity or evidence that the recommended timescale is normally met. Therefore, I can only conclude that the time taken was outside the recognised standards and the process of approval should be reviewed by the Trust to ensure better compliance with the prescribed standards*'.

58. The ISWA further advised that *'it should be noted in this case that the paperwork demonstrates that this did not appear to cause a delay that impacted on matching with a child, as the couple were permitted to attend the Regional ARIS Exchange Day on the 28th April 2015 and the Trust were looking internally re suitable matches for the couple. Moreover, they had a follow up visit by their Social Worker on the 8th May 2015 to discuss the children presented on the ARIS day and the next stages of their adoption journey and a further meeting was arranged for the 15th May according to the paperwork. This is extremely pro-active and evidences they were not simply left waiting the Agency Decision Makers approval. Moreover, they went live on ARIS within 6 months of the Panel date, in line with the agreed standard and not from the date of their approval letter so they were not disadvantaged in this regard either. I can therefore only conclude that the clear delay in the ADM approval does not appear to have made any discernible difference to their adoption process'*.
59. In relation to Link Maker, the ISWA explained that *'the previous British Association for Adoption and Fostering (BAAF) an Independent Agency that ran the National Adoption Register via Adoption Registers across England, Scotland, Wales and Northern Ireland, which was known as ARIS in Northern Ireland, went into sudden Administration in August 2015'*. She further explained that *'it was at this time Link Maker, a social enterprise, came on the scene in England but there was no Regional collective knowledge or information known about this organisation...the children that would be listed on Link Maker would be as I understand it be [sic] those, where adopters could not be sourced across those areas. They would therefore be by their very nature children with more complex needs. They would therefore as rightly highlighted by the Trust be outside [the complainants'] matching considerations'*.
60. The ISWA was asked to consider the delay relating to the complainants' request to register on Link Maker. She advised, *'I note that the Trust's own investigation into this issue highlighted a need for the Trust to review how staff dealt with this issue and the confusion and delay that arose. I note that this is*

*the first time such a request had to be dealt with by the Western Trust. Due to this there were no set standards or timescales in which to judge this and this is evidenced by the need to seek advice from the HSCB and the fact that the Department of Health and Social Services viewed it as necessary to provide written guidance to all Trusts...this was a complex issue for [Northern Ireland] due to the very different Adoption context. However, I believe the Trust could have taken additional steps to ensure a timelier, clearer and more robust response’.*

61. In relation to the delays experienced, the ISWA advised that *‘there is evidence of delay in obtaining clarity in relation to Link Maker and the associated issues and potential confusion about the best way to proceed’*. She identified these delays as *‘at their Annual Review in April 2016 the Social Worker had still not clarified whether the couple’s request would need to go to Adoption Panel despite the couple first requesting to Register with Link Maker in February 2016. In light of the couple’s concerns about the delays in the handling of their case, this issue should in my professional opinion have been addressed more proactively. I also note that the Trust did not approach the Regional Commissioners at the HSCB for advice until June 2016 despite the Trust’s continued lack of clarity in relation to the issue. There is also little evidence of correspondence with other Trusts in the Interim to ascertain if they had any experience of Link Maker and any potential issues. The fact that the Chair of the Adoption Panel was also unable to make a decision on the issue at the Panel on the 29th September and that no Legal Adviser was in attendance could also have been addressed more effectively. Finally, the delay in forwarding the information to the Agency Decision Maker, was again out with reasonable timescales’*.
62. In relation to the Trust’s reasons for the delays, the ISWA advised that *‘Trusts in Northern Ireland had little or no knowledge of Link Maker and this is evidenced by the need to consult with the Regional Lead for Adoption and Commissioning at the HSCB, [...], on the 15th June 2016 and the subsequent correspondence the Department felt it necessary to send to all Trusts in [sic].*

*Therefore, the Trusts reasons were appropriate, reasonable and in line with practice knowledge and standards at that time'.*

63. The ISWA was asked to consider the communication the Trust had with the complainants regarding Link Maker and the delays experienced. She advised that *'critically there is evidence of an open discussion with the couple in relation to the very valid reasons for not supporting their request to register in England in June 2016 and I note the couple clearly refused to accept this and insisted that they proceed despite clear information and advice that their limited matching was the issue and that concerns existed about the complexities and potential difficulties of pursuing a match outside of NI [Northern Ireland]. However, I also note that a promised minute of a meeting held with the couple at that time was not typed up and forwarded as agreed'.*
64. The ISWA advised that *'it seems clear that the Trust was struggling to deal with the [sic] [the complainants'] requests during this period and this is understandable not only due to their knowledge...but the challenge the couple were providing to staff as early as February 2016...about not having been matched with a child and the couple's willingness to listen to the pertinent and accurate advice being given by Trust staff'.* The ISWA further advised that *'the Trust's assessment [was] accurate and reflective in light of the communication from [the complainants] at this time. It also reflects that the Trust were attempting to communicate in an open and honest way but that the couple's approach was beginning to understandably raise issues about themselves as adopters at this time'.*
65. The ISWA advised that overall in relation to Link Maker, *'a more timely and professional response in following up the intricacies of Link Maker in the early stages of their enquiries may have assisted the couple is [sic] seeing the Trust as more pro-active in addressing their issues. The delays in producing a clear route for the couple on this issue were not in line with the professional standards that the Trust should be seeking to achieve but there is equally evidence of clear communication about the Trust's views at various points in the process. I am doubtful that any enhanced communication would have resolved the situation but it may have led to the couple feeling less frustrated'.*

66. The ISWA was asked to consider the complaint relating to religious affiliation. The ISWA advised that *'the Adoption Regional Policy and Procedures require each Trust to normally consider applicants who reside within its geographical area. Whilst the Trust clearly do have a lower number of children adopted from a Protestant background historically from the information provided, this would not necessarily have an impact on placement. The Legislation and Policy and Procedure requires the Trust to give due regard to the child's religion'*. She further advised that *'the fact that the family were registered on ARIS is the route to enable a match to best meet the child's identified needs including their religion which is only one, albeit important need in their overall hierarchy of needs'*.
67. The ISWA advised that *'there are no other actions the Trust could or should have taken in respect of the couples concerns with religious affiliation. The couple were appropriately registered on ARIS, were encouraged to attend ARIS Exchange days and although there were delays in approving their desire to look outside Northern Ireland, they were registered with Link Maker and Children Who Wait'*.
68. The ISWA advised that *'a significant issue in my professional opinion was not their religion but their limited matching. From the evidence I have seen, the Trust appeared to engage to move them forward and enhance their chances of a placement in Northern Ireland'*. She further advised that *'it may have assisted this couple's understanding to outline more fully the details of the children waiting or whose cases were proceeding to adoption in the Western Trust at that time but not focussing on religion as this could be misleading, because as demonstrated this is not the sole issue that affects matching. This may have assisted them to understand the likely delay, linked to their more limited matching criteria. However, this would normally have occurred as part of the assessment process and I cannot see any evidence to say this did not occur'*.
69. The advice from the ISWA was shared with the Trust. It was asked if it provided the complainants with details of children waiting or whose cases were proceeding to the Trust at that time. The Trust explained that *'assisting couples*

*with the matching criteria is a complex process. It is the social workers [sic] role to help couples make an informed choice about matching which is quite complex as in many ways as [sic] it is a theoretical exercise. Social workers use anonymised profiles [to] help applicants make as informed [a] decision as possible. It is the Trust view that this exercise may not have assisted the couple in terms of making the link that their specific matching may result in them waiting longer to be matched. The matching process can identify themes in terms of recent matches but it cannot be definitive that a certain matching criteria will equate to longer waiting such is the varied nature of children becoming available for adoption. The couples matching considerations and impact of waiting are integral aspects of the review process post approval’.*

70. Further to the Trust’s response, the ISWA advised that *‘whilst the discussions in relation to matching cannot be definitive and nor can more limited matching criteria necessarily equate to a longer waiting time, in my professional opinion, it is recognised that generally those adopters with more limited matching criteria may take longer to secure a placement’*. She further advised that *‘in the Trust’s own complaint investigation in March 2018...they recommended that; “The Trust should consider providing statistical information in respect of adoption trends within the Trust area at the initial information and training sessions”*. This suggests that this information was not sufficiently explicit as part of the process and as I understand it, was a recommendation to ensure that adopters had a more realistic picture of the children being placed for adoption and the timings involved. This is to ensure adopters are realistic in their expectations...the fact that adopters need to be fully appraised as to the realities of adoption is critical. Therefore, whilst I am not stating that Trusts should be definitive; the need for balanced information, considered and appropriate challenge in relation to matching remains a critical part of the adoption process’.
71. All of the advice received from the ISWA was shared with the Trust. It stated that it had *‘taken cognisance of the key learning from this investigation and will take this learning forward’*.

## Analysis and Findings

72. The complainants said there were delays with their application to become prospective adoptive parents. This included the delays experienced in the allocation of a social worker, the completion of their home study assessment, the consideration of their application to register with Link Maker, and those related to matching a child with the same religious affiliation.
73. I acknowledge that the interests of the child is paramount and therefore the adoption process is robust given that the Trust require a level of reassurance prior to placing a child. However, having reviewed the relevant chronology of events for this complaint, I consider that the process was exceptionally protracted. I note that the complainants raised their initial interest in adopting a child in April 2012. I further note that they completed their Preparing for Permanency training<sup>9</sup> in May 2013. However, it was February 2014 before they were allocated a social worker. It was then a further 14 months before they were approved as prospective adoptive parents at the panel in April 2015. I have considered the Trust's reasons for these significant delays.

### *The delay relating to the complainant's surgery*

74. I note the Trust's comments that the complainant's surgical procedure to remove her gallbladder contributed to the delay in allocating a social worker to the couple. I note that the complainant underwent surgery in early June 2013. I also note the Trust's comments that it delayed the allocation for it to obtain an '*updated medical opinion*' following the complainant's surgery. However, I note that the Trust acknowledged that it did not receive an updated medical prior to allocation. I note the ISWA's advice that obtaining an updated medical opinion following the surgery would have been good practice but not '*strictly necessary*'. However, I consider that as the Trust delayed the allocation of a social worker because of the complainant's surgery, it ought to have obtained reassurance that she was medically fit to continue with the process.

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<sup>9</sup> All persons applying to become adoptive parents are obliged to attend and successfully complete a preparation course before their application is continued.



75. I note the ISWA's advice that it was '*completely appropriate*' for the Trust to await the outcome of the complainant's surgery prior to allocating a social worker. However, given that it was still another eight months after the complainant's surgery before a social worker was allocated to the couple, I do not consider that this heavily contributed to the delay.
76. I note the Trust's comment that it did not record its conversation with The complainants in which it informed the couple of the potential delay due to the surgery. Therefore, there is no evidence to suggest that The complainants were informed of this potential delay. The Third Principle of Good Administration, 'being open and accountable', requires bodies to ensure that '*information, and any advice provided, is clear, accurate and complete*'. It also requires bodies to keep '*proper and appropriate records*'. I consider that the Trust ought to have informed The complainants of the impact the surgery was likely to have on the process. Also that this ought to have been documented and retained. I am satisfied that this constitutes maladministration.

#### *The delay relating to work demands*

77. I note the Trust's comments that '*competing work demands*' further contributed to its delay in the allocation of a social worker to The complainants. I note that there is no targeted timescale stated in the Policy and Procedures regarding the allocation of a social worker. However, I consider that the time taken by the Trust to allocate a social worker to The complainants was well outside expectations.
78. I note the ISWA's advice that at the time of the allocation, there was a difficulty regionally regarding Trusts' '*capacity to allocate adoption assessments*'. This resulted in a number of Trusts receiving additional funding from the HSCB to assist with '*reducing the waiting list for adoption assessments regionally*'. I note the Trust's comments that it was aware that these additional monies were available but that it did not have the relevant social work personnel available to work outside of normal working hours to access the funding. However, the Trust did not provide any documentary evidence of its efforts to avail of this funding or of its requests to personnel to complete the additional work. In the

absence of this documentary evidence, I am unable to conclude whether or not the Trust made efforts to improve its capacity to allocate adoption assessments and minimise the delays experienced. The Third Principle of Good Administration, 'being open and accountable', requires bodies to keep '*proper and appropriate records*'. I consider that the Trust ought to have retained documentary evidence that it made efforts to avail of the additional support offered by the HSCB. I also consider that it ought to have retained evidence of its requests to staff and their responses, especially when it resulted in unacceptable delays such as that experienced by The complainants. I am satisfied that this constitutes maladministration.

*The delay relating to completion of the home study assessment*

79. In relation to the delay experienced in the completion of the home study assessment, I note the Trust's comments that the targeted timeframe for completing a home study assessment is six months (as stated in the Policy and Procedures). I further note that The social worker initiated the home study assessment on 14 February 2014 and the application went to panel on 9 April 2015. I have considered the Trust's reasons for this significant delay.
80. I note that the Trust related the delay to The social worker's absences from work. I further note from the Trust's records and the chronology that The social worker experienced a number of related absences from July 2015 until March 2016. The Trust explained that at the time The social worker's absence commenced, she had already completed a large portion of the assessment. I note the Trust's view that the home study assessment is a complex process and further difficulties may have been experienced if it was allocated to a different social worker.
81. I consider that the delay experienced with the home study assessment was unsatisfactory and well outside the Trust's targeted timescale of six months (as stated in regional guidance). However, I note the ISWA's advice that the delay '*was unavoidable and was reasonable, appropriate and in line with the circumstances*'. I have considered the Trust's reasons for its decision not to reallocate the home study and accept the ISWA's advice that it was '*in line with recognised standards and was appropriate, balanced and reasonable*'. I

consider that allocating an alternative social worker who was not familiar with The complainants' application was likely to have caused a further delay to the process. Therefore, I do not uphold this element of the complaint.

*The delay in approval by the panel*

82. I note that once The complainants' application went to the panel on 9 April 2015, there was a subsequent delay until the adoption pack was passed to the ADM on 27 May 2015. I further note that the reason for this significant delay was '*competing demands on the Panel Chair*'. I accept the ISWA's advice that the time taken to complete this part of the process was '*well outside the 10 working days recommended by the Policies and Procedures*'. I also accept the ISWA's advice that the delay '*appears significant with no additional evidence presented*'. The First Principle of Good Administration, 'getting it right', requires bodies to act '*in accordance with the public body's policy or guidance*'. I consider that on this occasion, the Trust did not meet the timescale set out in its Policies and Procedures. At this stage of the process, The complainants had already experienced significant delays caused by the Trust. I consider that the Trust ought to have considered this and expedited the process rather than causing a further delay. I am satisfied that this constitutes maladministration.
83. In relation to the impact this failing had on The complainants, I note that in the time between the panel meeting and the letter confirming its decision, the Trust continued with the adoption process. I accept the ISWA's advice that the '*clear delay in the ADM approval does not appear to have made any discernible difference to their adoption process*'.

*The delay relating to the request to register with Link Maker*

84. In relation to The complainants' request to join Link Maker, I note that The complainants first discussed their request with The social worker in February 2016. I further note that their request went to panel in September 2016. It was then returned to panel in October 2016 once it obtained legal advice on the issue. I note that a letter confirming the panel's decision was issued to The complainants in December 2016.

85. I have reviewed the relevant chronology regarding this request. I again consider that this process was extremely protracted. I accept the ISWA's advice that the Trust ought to have addressed the couple's request '*more proactively*'. I also accept the ISWA's advice that the panel ought to have addressed the request '*more effectively*', and that the delay in forwarding the information to the ADM was '*again out with reasonable timescales*'.
86. I have considered the Trust's reasons for the delay. I note that as this was the first request of this nature, it was necessary for it to be brought to the panel. I accept the ISWA's advice that the Trust's reason for bringing it to the panel was '*appropriate, reasonable and in line with practice knowledge and standards at that time*'. However, I also accept the ISWA's advice that the delay experienced was '*not in line with the professional standards that the Trust should be seeking to achieve*'. The Second Principle of Good Administration, 'being customer focused', requires bodies to deal '*with people helpfully, promptly and sensitively, bearing in mind their individual circumstances*'. I consider that at this stage of the process, the Trust was fully aware of the delays already experienced by The complainants within the process. I also consider that the Trust did not take this into account when processing The complainants' request, which led to this significant delay. I am satisfied that this constitutes maladministration. I acknowledge that this failing was identified by the Trust in their investigation of The complainants' complaint. I welcome its recommendation to '*inform intervention and agreed Trust process around a similar request in the future*'.

*The delay relating to The complainants' matching criteria*

87. I have considered The complainants' complaint that the delay in the matching process was impacted due to the limited number of children who came from a Protestant background residing in the Trust area. I note that the Order and the Policy and Procedures both state that the birth parents' wishes regarding religious affiliation ought to be considered. I further note that The complainants were registered with ARIS and Link Maker. I accept the ISWA's advice that '*there are no other actions the Trust could or should have taken in respect of the couple's concerns with religious affiliation*'.

88. In relation to the time taken to match The complainants with a child, I considered the Trust's comments and the ISWA's advice regarding the impact their matching criteria had on the process. I accept the ISWA's advice that *'it is recognised that generally those adopters with more limited matching criteria may take longer to secure a placement'*. Furthermore, I note the ISWA's advice that the outcome from the Trust's own investigation into The complainants' complaint suggests that the impact of their limited matching criteria was not made *'sufficiently explicit'* to them.
89. I consider that as a public body, the Trust have an obligation to be open with prospective adopters and to provide them with full information to enable them to make decisions. I consider that the Trust's failure to inform The complainants of the potential delay due to their limited matching criteria is contrary to the Third Principle of Good Administration, 'being open and accountable'. This principle requires bodies to be *'open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete'*. I find that the Trust's failure in this regard constitutes maladministration. I acknowledge that this was identified by the Trust in their investigation of The complainants' complaint. I welcome its recommendation to provide this statistical information to prospective adoptive parents at the initial stages of the process.
90. I recognise that the process to become adoptive parents is often both long and arduous. I consider that the time taken by the Trust to reach the point at which The complainants were approved as prospective adopters was extremely protracted. I recognise that the process experienced delays that were not necessarily within the Trust's control. However, I consider that there were matters that the Trust ought to have managed more expediently, especially given that The complainants had already experienced significant delays.
91. In relation to the impact the failings identified had on The complainants, I am unable to conclude that the Trust's actions affected the couple's chances of being matched with a child. However, I consider that The complainants have experienced injustice as a consequence of the failings I have identified in this

report. I consider that The complainants have experienced the injustice of frustration, uncertainty and distress caused by the actions of the Trust which led to the delays. I note that the Trust identified in its report of its investigation into The complainants' complaint that the couple experienced injustice as a result of the failings it identified. I welcome these findings.

**(ii) Whether the Trust took appropriate action to address the relationship breakdown between The complainants and the Social Work team**

**Detail of Complaint**

92. This element of The complainants' complaint related to the support received and the actions taken by the Trust to address their [The complainants'] concerns with the adoption process. The complainants also complained that the Trust made the decision to inform them about a potential match with a child on the Welsh register following their request to withdraw as prospective adopters. The complainants further complained that when the complainant contacted The social worker on 24 May 2017, her call was answered by a person saying '*Claudy's Café*' on three occasions.

**Evidence Considered**

**Legislation/Policies/Guidance**

93. I considered the Policy and Procedures and note the following relevant extracts:

*1.3 Principles*

*1.3.1 While adoption is essentially a service for children, other key people such as those within the birth families and adoptive families, are included in the overall service, both pre- and post- adoption. The principles which underpin the service whilst accepting that the child's welfare is paramount, recognise the need to give proper consideration to all those involved, in reaching a 'best interests' decision for the child...*

*1.3.7 A "working together" approach should be implemented in the provision of*

*adoption services.*

*1.3.8 Staff and adoption panel members should seek to establish and maintain a relationship of partnership and this should extend, as far as possible, to the children, birth parents, adoptive parents and significant others involved in adoption...*

### **The Trust's records**

94. Records relevant to the process were provided by the Trust and examined. A chronology detailing the full process followed by the Trust regarding The complainants' concerns is contained in appendix four to this report.
95. I also examined the report of the investigation into The complainants' complaint to the Trust. The report documents that *'on 19 February 2016, The social worker reported a difficult and challenging visit with The complainants who were very critical of the process delay and the length of time they had been waiting, making reference to time from initial enquiry as opposed to the commencement of their home study leading to approval in April 2015'*. It further documents that *'it is very evident at this time that The complainants struggled with 'waiting' which is not outside the norm for couples but, notwithstanding this, the difficulty was that The complainants blamed the Adoption Team and ARIS for the delay. They were not open or receptive to support or accepting advice'*.
96. In relation to the potential match with the child from the Welsh register, the report documents *'on 16 August 2017, The social worker received information directly from the Welsh equivalent of ARIS on a link with a 9-month-old child. The social worker was not aware that The complainants had on the same day asked to be removed as prospective adopters from the Western Health and Social Care Trust and requested information to be forwarded on the child. Ms McKevitt stated that she debated the appropriateness of advising the couple of the link but made the decision to share the information'*. It further documents that *'The complainants were asked if they wanted to be provided with more information in relation to the child and they agreed...on 23 August 2017 Mr Burns contacted Ms McKevitt and "advised that they have decided to remain*

*with the Trust and proceed with the link". Ms McKevitt's response to this was that "the decision to stay cannot be about the potential link solely, they must be willing to move forwards from the issues of the past and be able to work with the Trust".*

97. The report documented that *'Ms McKevitt in her response to this complaint has further reflected on her decision-making and has stated with the knowledge of hindsight her decision at the meeting held with The complainants on 21 August 2017 was a misjudgement on her part. She now is of the view that she should have been more decisive at this meeting. When the couple presented with a continued strength of feeling around working with the Trust she should have told The complainants that she was not proceeding with sharing information on the child it was evident that issues remained between The complainants and the Trust which prevented a collaborative working relationship'. It further documents that 'Ms McKevitt and Ms McCallion state that the decision at the meeting on 21 August 2017 to share the detail of the child was not taken with the intention of causing emotional stress or upset to The complainants. They state that, within a difficult meeting, they tried to achieve a balance between The complainants' decision to resign and providing information that potentially could be in their interests and provide a potential match with a child'.*
98. The report documented that *'the decision to inform The complainants about a link can be justified in respect of them having a right to this information but it should have been communicated in a less unambiguous manner and for the purpose of information sharing only...apologies are extended for distress caused, in the process of sharing information in relation to the link to a child following the decision taken by The complainants to resign as prospective adopters'.*
99. The report further documented that *'Ms O'Doherty acknowledges the distress caused by The complainants' experience of elements of the process which give rise to them writing to the Trust. On behalf of the Trust, Ms O'Doherty is sorry that The complainants were unable to resolve their concerns within the Adoption Team and with senior management'.*



100. In relation to phone calls made by the complainant to The social worker's number on 24 May 2017, the report documented that *'The social worker has no explanation for why her extension was answered and the complainant was told she was speaking with Claudy's Café'*. It further documented, *'telephone calls are not recorded, however, The social worker was very clear that she never answered her extension or has any knowledge of anyone else in the team who would answer a phone and pretend the caller was through to the wrong number. There is no evidence in the process of this investigation to suspect that The social worker would have acted in this unprofessional manner with The complainants...it is not possible to explain to The complainants how this occurred'*.
101. In relation to learnings identified following the investigation, the report recommended that *'when relationships become fractured between a prospective Adoptive family and the Trust, priority should be given to resolution of the difficulties. The relationship is critical in any placement of a child and as such the Trust should consider placing on hold the assessment and matching processes until the difficulties are satisfactorily resolved'*.

### **The Trust's response to investigation enquiries**

102. I considered the Trust's response to investigation enquiries relating to this element of The complainants' complaint. The Trust explained that *'the home visit in February 2016 was the juncture that the couple expressed their dissatisfaction at the Trust's previous processes and the fact they had not been matched with a child. It would be the experience of staff within the Adoption and Permanency Team that the "waiting" period can be very difficult. Having reviewed the files and from discussions with staff it would appear that The social worker continued her attempts to support the couple and maintain a positive relationship with the couple. The social worker updated her manager the Social Work Manager who met with the couple on 22 April 2016. In addition Ms McKevitt met with the couple in June 2016 in attempt to continue to work through the issues that the couple had raised'*.

103. The Trust were questioned regarding the steps it took to address its relationship breakdown with The complainants at the time of the panel meeting on 29 September 2016. The Trust explained that *'the Social Work Manager [Social Work Manager] offered to meet with the couple as referenced in email correspondence'*. It further explained that *'Ms McKeivitt offered to meet with the couple and this occurred on 21 December 2016. The couple got the opportunity to further share their frustrations at the Trust processes. During this meeting Ms Burns expressed her view in terms of The social worker and the record of the meeting highlights that Mr Burns did not appear to be of the same view in relation to the working relationship with The social worker. The couple concluded this meeting by advising that they would continue to work with the Trust and the current team involved. Following on from this The social worker and the Social Work Manager took forward the couple's request to be considered for siblings during a review on 02 March 2017. The social worker undertook an updated assessment to evidence their capacity to offer such a placement. The couple were aware that there were a number of siblings needing adoption. This entailed 3 meetings with the couple on 23 March 2017, 12 April 2017 and 24 April 2017 and a second opinion visit by the Social Work Manager 05 April 2017'*.
104. The Trust explained that *'following the presentation at Adoption Panel on 15 June 2017 the relationship between the Trust and the couple further deteriorated. In an attempt to resolve this, the Trust facilitated a meeting between the couple and senior managers in the Trust. The couple met with Ms Clare McCallion, Service Manager and Mr Tom Cassidy -Assistant Director WHSCT on 15 August 2017. During this meeting the couple were offered the opportunity to remain within Western Trust however have their case managed by a new SW and SWM in the Southern Sector of WHSCT. In addition the couple were advised that they could withdraw from Western Trust and register with a Voluntary Adoption Agency such as Family Care Society or Adoption Routes. The couple were advised that transferring their case to another Trust was not something that had occurred before especially given the fact that each Trust is registered with ARIS and this creates matching opportunities across Northern Ireland'*.

105. The Trust further explained that *'Mr Burns expressed uncertainty regarding having an alternative worker to The social worker. The above reflects a timescale of 18 months whereby the relationship between the couple and the Trust could not be resolved despite numerous attempts. The Trust acknowledges the process deficits that compounded the couples experiences however remain of the view that all efforts were made to resolve issues identified'*.
106. The Trust were referred to The complainants' decision to leave the Trust in August 2017. It explained that *'the couple corresponded with the Trust via email on 15 August 2017 to state that they wished to resign from the Trust. Ms McKevitt confirmed receipt of email and advised that she would consult with senior managers and come back to them. It was the Trust intention to bring their information to the Adoption Panel and the Agency Decision Maker who would then confirm with the couple that they had resigned and was no longer on the Trust list of approved adopters'*.
107. The Trust further explained that *'the significant professional and ethical dilemma the Trust found themselves in was that the Trust received information on 16 August 2017 from the Welsh Authorities that The complainants were a potential link for a 9 month old baby. Exploration of the information provided at that time indicated that this could be a potential positive link for the couple. Ms McKevitt discussed this with Mr Armstrong and whilst acknowledging the receipt of the email that the couple should be made aware of this. Given the timing of their email and the information about the link the Trust made the decision to explore this with the couple but were clear with the couple about the dilemmas as recorded in the contact sheets. Unfortunately a resolution could not be reached'*.
108. In relation to this match, the Trust explained that it *'shared with the couple the information from the Welsh Authorities. Whilst Mr Burns advised Ms McKevitt on 23 August 2017 that the couple wished to remain with the Trust there continued to be evident tension and Ms McKevitt expressed her concern regarding this moving forward. Ms McKevitt advised the couple on 24 August*

*2017 that given she was going on annual leave it would give everyone time to reflect and she would make contact with the couple again upon her return. Ms McKevitt met with the couple at their home on 21 September 2017 and unfortunately the outcome of this meeting was that the concerns could not be resolved and she would share their request to resign from the Trust with the Adoption Panel and Agency Decision Maker’.*

109. The Trust was asked to respond to the complainant’s complaint that her call to The social worker’s work number was answered by a person saying ‘Claudy’s Café’ on three occasions on 24 May 2017. The Trust explained that this is a direct line shared by The social worker and one of her colleagues. It further explained that other members of the team can answer this line in their absence. The Trust explained that The social worker was in the office that day and that she did speak with the complainant. However, it explained that ‘*under no circumstances*’ did The social worker ‘*answer the phone and pretend it was Claudy’s Café*’.

#### **Relevant Independent Social Work Advice**

110. The ISWA was asked to consider the Trust’s response to the breakdown of its relationship with The complainants. The ISWA advised that ‘*the Regional Adoption Policy and Procedures...gives no advice in situations where relationships are breaking down. I note that despite emerging concerns about the couple and their clearly increasing difficulties with accepting advice and guidance, the Trust tried to continue to work with the couple...they agreed to work through the issues and in my professional opinion responded well to the request to review their application and approve them for a sibling group. It was important that the Trust tried to work through the issues of difficulty with the couple because of the potential implications the issues were likely to have for their ongoing approval and it would not have been appropriate for the couple to move to another Trust at this stage nor in my professional opinion, would this have been accepted by another Trust*’.
111. In relation to meetings with the Trust regarding the breakdown of their relationship, the ISWA advised ‘*I note that the couple were offered and attended meetings with the Social Work Manager on 22nd April 2016 and the*

*Service Manager in June 2016, in attempts to work through the issues that the couple had raised but that The complainants refused meetings with the Manager in September, October and November 2016. They did agree they would meet again with the Service Manager in December 2016, when it appears the couple were not of a unified view in relation to the working relationship with the Social Worker but that the couple advised they would work with the Trust and the team that was involved...despite a positive assessment that recommended their matching considerations be updated, they unfortunately used the Adoption Panel on the 15th June 2017 as a vehicle to re-air their grievances...the Panel Chair had to rightly put the issue of their approval for a sibling group on hold in light of the need to address the serious issues raised outside of the Panel either through the complaints route or mediation involving senior Trust Management'.*

112. In relation to this panel meeting, the ISWA referred to an email The complainants sent to the Trust on 26 May 2017. The email stated, *'and we are looking forward to getting answers from the panel of the issues that has been raised on the report and also throughout this process as there is many questions to be answered'*. The ISWA advised, *'I believe in light of their email...that their attendance should have been put on hold, as it was never going to be the appropriate vehicle to deal with their now long list of grievances. The fact that this Panel was such a negative experience, albeit mainly due to the couple's inability to move forward and focus on achieving a placement through approval for siblings, only further compounded their negative feelings towards the Trust'*. She further advised, *'I believe the Social worker and her manager should have been clear that the Panel was not the forum to air their concerns'*.

113. The ISWA further advised *'two meetings occurred between the couple, Senior Managers and the Trust Assistant Director on the 26th July 2017 and the 15th August 2017 and were offered a number of options to move the situation forward...it is recorded that Ms McKevitt stated that she had already enquired about the Transfer option at a Regional Inter-Trust Meeting and that this was seen as not having precedent, as ARIS usually met this need to date. It was*

*clearly stated there were no guarantees any Trust would take them on and therefore the clear limitations to this route’.*

114. The ISWA advised that *‘I can only conclude that the Trust took significant steps over a significant period of time, to try to address the issues linked to the breakdown in the relationship with the couple. In my opinion, there is significant evidence that the Trust tried to work to move forward the issues including giving significant and persistent management time to address the issues. They fully involved the couple and sought the couple’s views and were assured by the couple on several occasions that they wished to continue to work with the Trust. In light of this, my professional view is that the actions of the Trust were appropriate, reasonable and in accordance with recognised standards’.*
115. In relation to The complainants’ complaint that the Trust did not transfer them to another Trust to continue the process, the ISWA advised *‘there are no policies, procedures or relevant standards that relate to transferring prospective adopters’.* She further advised that *‘the issues emerging had implications for the Trust’s potential ongoing approval of these prospective adopters and this would have fundamentally made it extremely difficult to pass the case to another Trust. The issues being raised needed to be fully addressed by the Western Trust due to the potential implications for the placement of a child. Moreover, as stated there is no precedent for such a move. I note that there was only one period in my professional opinion, where this could have reasonably been considered and this was in and around the December of 2016. However, their desire to move forward to be assessed for a sibling group in January 2017 would have made this consideration impossible as it would have caused significant delay with this assessment and therefore an enhanced chance of a placement at this point’.*
116. In relation to whether the Trust ought to have matched The complainants to children in other Trust areas, the ISWA advised that *‘the Trust were clearly attempting to make a match with Children in other Trust areas and they facilitated this through the regionally agreed process that exists in Northern Ireland, via registration on ARIS and through attendance of ARIS Exchange days. This is the process whereby children are placed across Northern Ireland*

*and there are no other routes to match the couple with children in other Trust areas apart from ARIS. The couple were appropriately registered on ARIS in exactly the same way as numerous other couples from other Trusts who are seeking a match and where numerous successful matches of children have been made regionally’.*

117. The ISWA was asked to consider the Trust’s actions following The complainants’ decision to resign from the Western Trust in August 2017. The ISWA advised that *‘whilst the couple did express their wish to move from the Western Trust in my professional opinion this was not a simple resignation’.* The ISWA advised that The complainants *‘responded immediately following the meeting with Trust Senior Managers on the 15th August by email stating they wished to move to the Northern Trust... at this stage the issue of the potential link with a child from the Welsh Adoption Register came up and it is clear this complicated an already difficult situation’.* The ISWA further advised that *‘during the meeting to discuss this potential match on the 21st August the couple were of the opinion that it was the Trust’s responsibility to take forward their request to move to another Trust area. The Trust clarified that it was not their role and that there was no precedent or guarantee re the Northern Trust accepting them. The couple were advised to explore this further’.* The ISWA advised that *‘on the 23rd August the couple came back to the Trust and stated that they wished to remain with the Trust and proceed with the link. They were challenged by the Trust whether this was realistic in light of the previous meeting and their clear breakdown in relationship with the Trust’.*

118. The ISWA further advised that *‘during the meeting of the 21st September The complainants stated, “Do you know what [?], we are resigning, we will take this public and legal”.* It was only at this point in my professional opinion that the couple clearly chose to resign as Approved Prospective Adopters, although this would require Adoption Panel approval...in my professional opinion this potentially ruled out a transfer as following the Adoption Panel they were no longer approved’. The ISWA advised that *‘the fact that the Trust had held several meetings with the couple involving Senior Managers and that the Trust had fully involved the couple, I can only conclude that the actions taken by the*

*Trust were appropriate, reasonable and in accordance with recognised standards.'*

119. The ISWA was asked to consider if the Trust's decision to inform The complainants of the possibility of a match with a child from the Welsh register in August 2017 was appropriate, reasonable and in accordance with recognised standards. The ISWA advised *'this was an extremely difficult decision as whilst the Trust clearly held concerns about their relationship and ability to work with the couple, equally they did not want to be seen to prevent their opportunity to achieve a placement...the decision about whether to inform The complainants was very finely balanced. Those involved made a call on the basis they knew they were damned in whatever decision they made; if they didn't tell the couple this would have been a further and even more serious cause for complaint and if they did the road to a placement was going to be at the very least extremely difficult'*.

120. The ISWA further advised *'Ms McKeivitt reflected that with the benefit of hindsight...she should have been more decisive and not shared details about the child, following the couple's strength of feeling around working with the Trust. I would concur with this view but feel that in reality this would have proved impossible, as the couple were aware, that the purpose of the meeting was in respect of a link. I do believe she would have been accused of preventing them from accessing the information promised'*. The ISWA advised that *'professionally the decision to arrange a meeting to potentially tell them about the match was morally a necessary one. However, as stated following the clear evidence that the couple were fixed in their position and could not move forward suggested it would be better not to tell them any further information and confirm that the Trust could not consider a match at this time'*.

### **Analysis and Findings**

121. I note the ISWA's advice that the Policy and Procedures do not provide any guidance on *'situations where relationships are breaking down'*. However, I also note that the Policy and Procedures state that Trusts ought to *'recognise the need to give proper consideration to all those involved, in reaching a 'best interests' decision for the child...'*. Furthermore, the Policy and Procedures



state that *'staff and adoption panel members should seek to establish and maintain a relationship of partnership and this should extend, as far as possible, to the children, birth parents, adoptive parents and significant others involved in adoption...'*. I considered this guidance in my investigation of The complainants' complaint.

122. I note that The complainants first raised their concerns with the Trust in February 2016, which was 10 months following their approval at panel to become prospective adoptive parents. However, I also note that it was almost four years since the couple commenced their application with the Trust (April 2012). I have already identified that by this stage, The complainants had experienced significant delays with the process.
123. I note the Trust's efforts to address the concerns raised by The complainants. This included invitations to meetings with both the Social Work Manager (Social Work Manager) and Ms McKeivitt (Service Manager). I further note that the couple met with Ms McKeivitt in December 2016 and they decided to continue working with the Trust. It was following this meeting that The complainants were considered for a sibling group. I accept the ISWA's advice that the Trust *'agreed to work through the issues and in my professional opinion responded well to the request to review their application and approve them for a sibling group. It was important that the Trust tried to work through the issues of difficulty with the couple because of the potential implications the issues were likely to have for their ongoing approval'*.
124. I note that The complainants stated in an email to the Trust sent on 26 May 2017 that they were *'looking forward to getting answers from the panel of the issues that have been raised on the report and also throughout this process as there are many questions to be answered'*. I further note that the couple raised concerns during the panel meeting that occurred in June 2017. This resulted in the consideration of the request for a sibling group being put on hold to allow mediation between the couple and the Trust. I accept the ISWA's advice that following this email, the Trust ought to have put the couple's attendance at the panel meeting scheduled for June 2017 *'on hold, as it was never going to be*

*the appropriate vehicle to deal with their now long list of grievances’.*

Furthermore, I accept the ISWA’s advice that the events at the panel meeting *‘further compounded their negative feelings towards the Trust. I believe the Social worker and her manager should have been clear that the Panel was not the forum to air their concerns’.*

125. I consider that the Trust’s failure to delay The complainants’ attendance at panel when it was aware of their intentions is contrary to the First Principle of Good Administration. This principle requires bodies to take *‘reasonable decisions, based on all relevant considerations’.* In this situation, the social work team ought to have taken action to reduce the tensions already evident. By failing to take this action, the social work team caused further bad feeling to an already fragile situation. I consider that this constitutes maladministration. I consider that this failing caused The complainants to experience the injustice of frustration and upset.
126. I note that the Trust arranged two further meetings with The complainants and with Mr Tom McCallion, Assistant Director, and Ms McKeivitt, as a means of mediation, which occurred in July and August 2017. I further note that during these meetings, the couple were afforded the opportunity for their case to be transferred to an alternative social worker and social work manager. They were also provided with the option to register with a voluntary agency or to transfer to another Trust area.
127. I have carefully considered the attempts made by the Trust to resolve the breakdown in the relationship between The complainants and the social work team including the options presented to the couple. I accept the ISWA’s advice that *‘the Trust took significant steps over a significant period of time, to try to address the issues linked to the breakdown in the relationship with the couple’.* I further accept the ISWA’s advice that the *‘Trust tried to work to move forward the issues including giving significant and persistent management time to address the issues. They fully involved the couple and sought the couple’s views and were assured by the couple on several occasions that they wished to continue to work with the Trust. In light of this, my professional view is that the*

*actions of the Trust were appropriate, reasonable and in accordance with recognised standards*'. I consider that the Trust took appropriate action to address the breakdown in the relationship between The complainants and the social work team between February 2016 and August 2017. Therefore, I do not uphold this element of the complaint.

128. I note that The complainants advised in email correspondence sent in August 2017 that they wished to transfer to the Northern Health and Social Care Trust (NHSCT) to continue the adoption process. I further note that it was at this time that a potential match with a child from the Welsh register became known to the Trust. I note that the Trust informed the couple of this potential match despite being aware of The complainants' wishes to 'resign' from the Trust. I note the ISWA's advice that *'this was an extremely difficult decision as whilst the Trust clearly held concerns about their relationship and ability to work with the couple, equally they did not want to be seen to prevent their opportunity to achieve a placement'*. I also note the ISWA's advice that *'professionally the decision to arrange a meeting to potentially tell them [The complainants] about the match was morally a necessary one. However...following the clear evidence that the couple were fixed in their position and could not move forward suggested it would be better not to tell them any further information and confirm that the Trust could not consider a match at this time'*.

129. I consider that this was a difficult situation for all parties involved. I note that the meeting with The complainants was arranged by The social worker before she was aware of their decision to withdraw. I further note that the couple were aware that the meeting related to a potential link. I consider it likely that a decision by the Trust not to share the information at that stage would have been viewed negatively by the couple. Therefore, I consider that the Trust's decision to share information relating to the potential match was appropriate and fair to The complainants.

130. The complainants also complained regarding the Trust's failure to transfer them to another Trust area. I note the ISWA's advice that *'there are no policies, procedures or relevant standards that relate to transferring prospective*

*adopters'. I accept the ISWA's advice that 'the issues emerging had implications for the Trust's potential ongoing approval of these prospective adopters and this would have fundamentally made it extremely difficult to pass the case to another Trust'. I also accept the ISWA's advice that following a meeting with Ms McKevitt on 21 September 2017, it was 'at this point in my professional opinion that the couple clearly chose to resign as Approved Prospective Adopters, although this would require Adoption Panel approval...in my professional opinion this potentially ruled out a transfer as following the Adoption Panel they were no longer approved'.*

131. I note that The complainants were registered on ARIS. I accept the ISWA's advice that ARIS *'is the process whereby children are placed across Northern Ireland and there are no other routes to match the couple with children in other Trust areas apart from ARIS'*. I consider that through this process, the Trust made attempts using the options available to it to match the couple with children from other Trust areas within Northern Ireland. I consider that the Trust's actions regarding the transference of The complainants to another Trust area, and its attempts to match them with children from other Trust areas, were reasonable, appropriate and in accordance with relevant standards.

132. In relation to The complainants' complaint that her calls made to The social worker's work number on 24 May 2017 were answered by a person saying *'Claudy's Café'*, I note that the number dialled by her that day is the shared line of The social worker and one of her colleagues. I also note that the office's calls are not recorded. I note that The social worker explained that she was in the office that day. However, she denies that she answered any of her calls in this manner. In the absence of any evidence regarding this matter, I am unable to conclude who answered the calls made by the complainant. I am also unable to conclude whether or not the person answered the calls saying *'Claudy's Café'*.

**(iii) Whether by accessing the complainant' medical records, the actions of the Trust were reasonable and appropriate.**

## **Detail of Complaint**

133. The complainants complained that the Trust contacted the complainant' GP in December 2016 without her consent. the complainant complained that she did not give her '*specific consent*' to the Trust on this occasion.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

134. In relation to this element of The complainants' complaint, I considered the Regulations (1989). I note the following relevant extracts:

#### *Adoption agency's duties in respect of a prospective adopter*

*8.-(1) When an adoption agency is considering whether a person may be suitable to be an adoptive parent...it shall...*

*(c) obtain a written report by a medical practitioner on the prospective adopter's health which shall deal with the matters specified in Part VII of the Schedule, unless such a report has been made within six months before the setting up of the case record under sub-paragraph (a) and is available to the agency...*

135. I also considered the Policy and Procedures. I note the following relevant extracts:

#### *7.4.4 Adoption Application Checks and Assessment*

*(1) Following confirmation from the enquirers that they wish to proceed, the Social Worker should complete the relevant sections of the Information for Preliminary Checks re Adoption Application (Form Adopt 1B). Their signature to the "Consent to Obtain Information" at the end of this form should be countersigned by the Social Worker. The Social Worker should open a file, which should contain all reports, correspondence and recording...*

*(iv) obtain a report of a medical examination by the applicants GP and appropriate checks of health records by requesting medical reports in respect of each applicant, Coram/BAAF Form AH (Adult Health Report). Payment for these and any other medical reports required is the responsibility of the applicants. These forms should be forwarded to the Agency Medical Adviser.*

*(v) obtain the Medical Adviser's opinion of these and obtain any further information thought to be necessary, including a Consultant's Report where the applicant has had or is having specific treatment/investigation.*

*The Medical Adviser should inform the appropriate manager responsible for Adoption Services whether or not there are any health contra-indicators to proceeding with the assessment. If the Medical Adviser recommends that the application should not proceed on medical grounds, he should provide a written summary of the reasons for this recommendation and give it to the Agency. The Agency may in turn refer the matter to the Adoption Panel.*

136. I considered the Data Protection Act (1998), which was in effect at the time the Trust contacted the complainant' GP for her medical information. I note the following relevant extracts:

***Sensitive personal data.***

*In this Act "sensitive personal data" means personal data consisting of information as to—*

*(a)the racial or ethnic origin of the data subject,*

*(b)his political opinions,*

*(c)his religious beliefs or other beliefs of a similar nature,*

*(d)whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),*

*(e)his physical or mental health or condition,*

*(f)his sexual life,*

*(g)the commission or alleged commission by him of any offence, or*

*(h)any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.*

***SCHEDULE 3 – Conditions relevant for purposes of the first principle:***

*processing of sensitive personal data*

*1 The data subject has given his explicit consent to the processing of the personal data.*

*2(1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.*

### **The Trust's records**

137. Records relevant to this element of The complainants' complaint were provided by the Trust and examined. A chronology detailing the full process followed by the Trust regarding The complainants' concerns is contained in appendix four to this report.
138. I examined the medical consent form signed by the complainant as part of her application to adopt (known as the Adult Health form). The signature section of the form states, *'I consent to a medical examination and to any further enquiry deemed necessary and to the provision of this report to the agency. I understand that further enquiries from medical specialists may be needed and that in future I may be asked to give specific consent to obtain further health information'*. The form documents the complainant' signature under this statement.
139. I also examined the report of the investigation into The complainants' complaint to the Trust. In relation to the Trust seeking the complainant' consent to obtain medical information from her GP, the report documents that The social worker *'requested the medical report directly from the GP which is acceptable practice as The complainants had already provided consent for her to obtain medical information. the complainant was annoyed that The social worker did not tell her she was requesting this information and The social worker apologised and shared with the complainant that, on reflection, she understood the complainant' anxiety when contacted by her GP and she should have told the complainant in advance'*.

140. The report documents that in an *'email dated 27 January 2017 [to Dr Kutty, medical advisor to the adoption panel], The social worker stated that the complainant wanted her permission to allow The social worker to follow this up. Dr Kutty responded to The social worker's email on 27 January 2017 with "Any new medical information relating to any person approved or in consideration by the panel is of utmost relevance to us. I believe she has given consent to you regarding obtaining the information from GP at the start of the proceedings'.* The report further documented that *'Dr Kutty queried why the complainant was seeking her approval for this information from the GP when she had already consented to the Social Worker requesting medical information'.*

### **The Trust's response to investigation enquiries**

141. In its response to investigation enquiries, the Trust explained that *'adoptive couples are made aware, within the preliminary enquiries and assessment stages, that the Social Worker will contact health personnel when requested by the Medical Adviser to obtain medical information and are asked to provide their written consent. In some cases the Medical Adviser may write to a treating doctor, for example an Oncologist or a Neurologist, if a GP is unable to provide sufficient information for them to consider'.* It further explained that *'The complainants provided their consent to the Adoption Team to obtain relevant medical information on 26th October 2012. This information is recorded in the Adult Health (AH) form. The Trust has reflected on this part of the process and will revisit the issue of consent at the Annual Medical Review'.*

142. In relation to The social worker's correspondence with the complainant' GP, the Trust explained that *'on 29 September 2016 the Adoption Panel's medical advisor Dr Kutty had requested a follow up on AH2<sup>10</sup> [Adult Health] report dated 15 May 2016. The social worker had contacted the complainant GP in response to that. The social worker and the complainant discussed the matter during a telephone conversation on 01 December 2016'.* It further explained that *'an*

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<sup>10</sup> A report detailing the outcome of the applicant's medical assessment.



*assumption was made by the Trust that the couple's previous consent provided to The social worker remained relevant The decision to contact the GP for clarity was made without any negative intent; The social worker wished to clarify the outcome of an updated urine sample that Ms Burns had completed. This was done so the updated medical could be processed in a timely way'.*

143. The Trust was questioned as to whether the complainant provided her specific consent to obtain her medical information on this occasion. The Trust explained that *'specific consent was not requested and the Trust apologise for this. The social worker apologised in person to the couple during a home visit on 23 January 2017'.* It explained that *'the Trust has considered the above points raised by The complainants and are in the process of ensuring such a situation does not reoccur and that applicants provide consent throughout their adoption journey as required, it is the Trust view this would negate feelings of mistrust that have emerged in this case'.*

#### **Relevant Independent Social Work Advice**

144. In relation to The complainants' complaint that the Trust obtained information from the complainant' GP without gaining adequate consent, the ISWA advised that *'the only legislation, policy or guidelines which specifically relate to medical consent relating to Prospective Adopters is [sic] the Adoption Order 1987 and the Regional Adoption Agency Regulations 1989 stemming from same. The Regional Adoption Policy and Procedures have been updated since the time of the couple's initial medical, so do not totally accurately reflect the exact wording at that time however the process is the same i.e. the Prospective Adopters sign to consent to seek medical information in line with 7.4.4 (i.v and V). This consent allows the Adoption Agency to obtain a report of a medical examination by their GP and appropriate checks of health records as well as "any further information thought to be necessary."*
145. The ISWA further advised that *'it is, in my professional opinion ambiguous in the Policy and Procedures, about whether this allows information to be sought on an ongoing basis without further consent. Dr Kutty clearly believes that the consent given at the start of the process applies on an ongoing basis...however, the consent Form AH signed by the complainant on [29*

October 2012] does state that, “I consent to a medical examination and to any further enquiry deemed necessary and to the provision of this report to the agency. I understand that further enquiries from medical specialists may be needed and that in future I may be asked to give specific consent to obtain further health information.” In my opinion this issue does require clarity regionally’. The ISWA advised that ‘I would suggest that the form AH does not make this clear and for those reasons I would suggest that although the decision to contact the complainant’ GP on this occasion was appropriate and reasonable and in accordance with recognised standards, she should have been informed and asked for her consent’.

### **Analysis and Findings**

146. The complainants complained that The social worker obtained medical information relevant to the complainant without first obtaining her specific consent. I note that on this occasion, the complainant’ GP made her aware that the Trust attempted to obtain her medical information.
147. I note that on 29 October 2012, The complainants signed an adult health (AH) form to provide ‘*consent to a medical examination and to any further enquiry deemed necessary and to the provision of this report to the agency*’. I further note that the form states, ‘*I understand that further enquiries from medical specialists may be needed and that in future I may be asked to give specific consent [my emphasis] to obtain further health information*’.
148. I further note that The social worker made an attempt to obtain the medical information following a request from Dr Kutty in September 2016. This was almost four years after the complainant signed the AH form. I accept the ISWA’s advice that ‘*although the decision to contact the complainant’ GP on this occasion was appropriate and reasonable and in accordance with recognised standards, she should have been informed and asked for her consent*’.

149. I also reviewed the Data Protection Act (1998), which was relevant at the time the medical information was requested. I note that the Act defined physical and/or mental health as '*sensitive personal data*'. The Act also stated that the '*data subject*' was to provide their '*explicit consent*' in order for the data to be processed. I do not consider that the Trust obtained the complainant's '*explicit consent*' to obtain her medical information on this occasion. I consider that the Trust ought to have requested consent from the complainant prior to contacting her GP. I consider that the Trust's failure to obtain the complainant's explicit consent to obtain medical information relevant to her is contrary to the First Principle of Good Administration. This requires bodies to act '*in accordance with the law and with regard for the rights of those concerned*'. I consider that this constitutes maladministration. I consider that this failing and the learning of the request from her GP caused the complainant to experience the injustice of upset and concern.

150. I acknowledge that this failure was identified by the Trust in their investigation of The complainants' complaint. I welcome its recommendation to review the process involved in obtaining explicit consent to obtain medical information. I note that the General Data Protection Regulations (GDPR) have been introduced since The complainants raised their complaint. The Trust ought to consider the GDPR and in particular, the high standard for consent which it sets. The GDPR requires that consent must be unambiguous and granular. The heightened requirements of the GDPR mean that clear records must also be kept to demonstrate consent. I would urge the Trust to take account of these new requirements in its review of its process to obtain medical information from prospective adopters.

## CONCLUSION

151. The complainants submitted a complaint to me about the actions of the Trust and its staff. The complainants' complaint related to the management of their adoption application by the Trust from their initial application in April 2012 until they withdrew as approved adopters in August 2017.

152. I investigated The complainants' complaint and found maladministration in relation to the following matters:

- i. The Trust's failure to record and retain notes of a discussion with The complainants regarding a potential delay to the process caused by the complainant' surgery;
- ii. The Trust's failure to retain documentary evidence that it made efforts to avail of the assistance offered by the HSCB in an attempt to minimise delays in the adoption process;
- iii. The unreasonable delay by the Trust relating to the transfer of the adoption pack to the ADM;
- iv. The unreasonable delay by the Trust in responding to The complainants' request to register with Link Maker;
- v. The Trust's failure to proactively inform The complainants of the likely impact of their limited matching criteria on the process;
- vi. The Trust's failure to cancel the panel meeting in June 2017 when it was aware of their intention to raise concerns that were not relevant to the panel; and
- vii. The Trust's failure to obtain the complainant' explicit consent to obtain her medical information in December 2016.

153. I am satisfied that the maladministration I identified caused The complainants to experience the injustice of frustration, uncertainty and distress caused by the Trust's actions resulting in delays to the process. I also consider that The complainants experienced the injustice of frustration and upset by the Trust's failure to cancel the panel meeting in June 2017. Furthermore, I am satisfied that the Trust's failure to obtain the complainant' explicit consent to acquire medical information from her GP caused her to experience the injustice of upset and concern.

154. I have not found maladministration in relation to the following matters:

- i. The Trust's decision not to allocate a social worker while the complainant' was undergoing a surgical procedure;
- ii. The Trust's decision not to allocate an alternative social worker to The

- complainants when The social worker was absent from work due to illness;
- iii. The Trust's actions regarding The complainants' request to be matched with a child of the same religious affiliation;
  - iv. The Trust's actions to address the breakdown in its relationship with The complainants;
  - v. The Trust's decision to share information relating to a potential match with a child from the Welsh register with The complainants; and
  - vi. The Trust's actions regarding the transference of The complainants to another Trust area, and its attempts to match them with children from other Trust areas.

### **Recommendations**

155. The Trust explained that it identified learnings as a result of its investigation into The complainants' complaint. These were:

- i. Agree a process for Trust staff to follow when it receives a request to join Link Maker or similar organisations;
- ii. Provide statistical information to prospective adoptive parents at the initial stages of the process; and
- iii. In relation to the provision of explicit consent to obtain medical information, ensure that '*applicants provide consent throughout their adoption journey as required*'.

I welcome these learnings already identified by the Trust following The complainants' complaint and commend it for its efforts.

156. I recommend within one month of the date of this report:

- i. The Trust provides The complainants with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice they experienced as a result of the maladministration identified in this report; and
- ii. The Trust provides to The complainants a payment of £250 in solatium for the injustice experienced.

The Trust accepted my findings and recommendations.

A handwritten signature in black ink, appearing to read 'Paul MCFADDEN', written over a horizontal line.

**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.