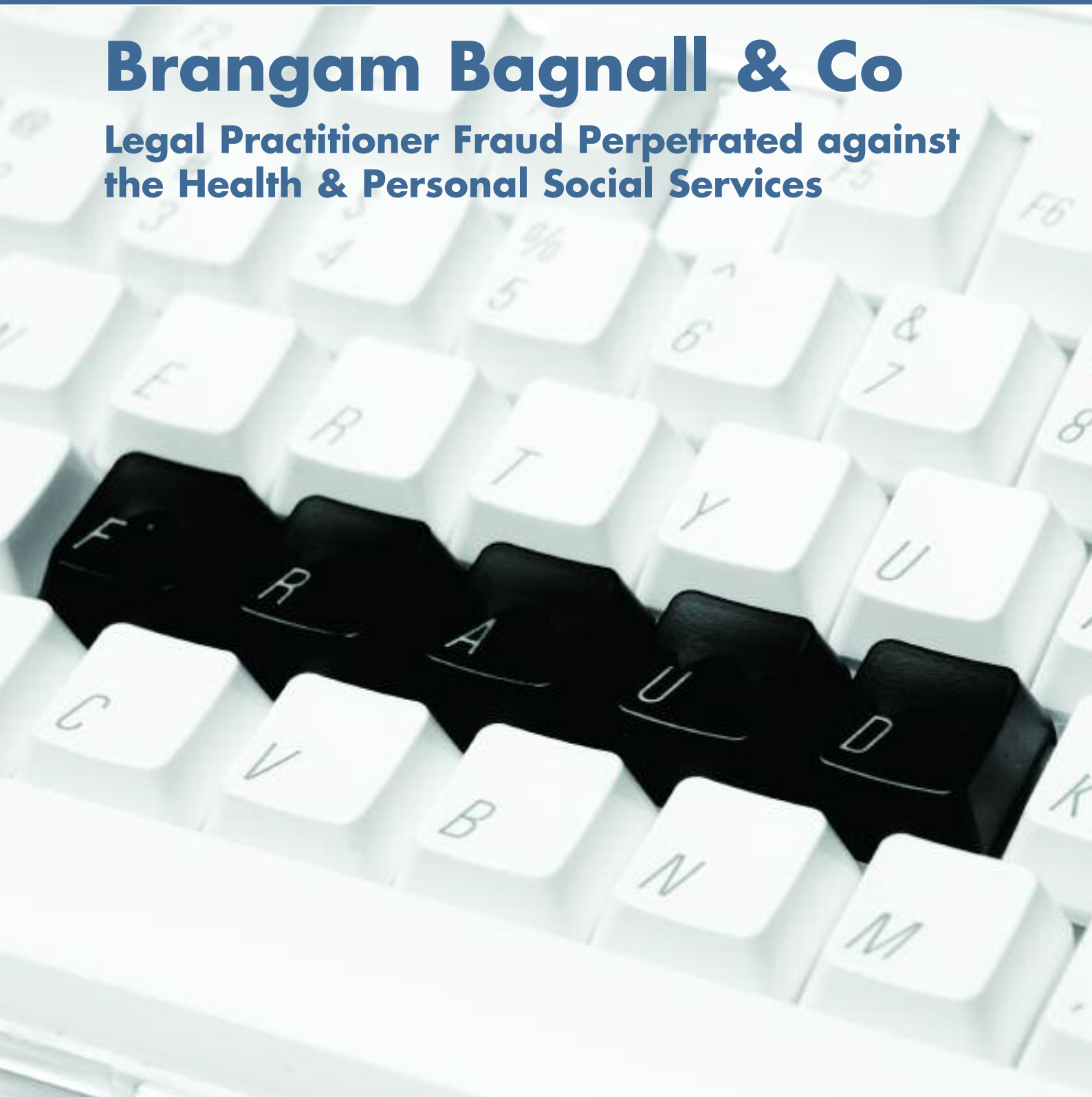




Northern Ireland Audit Office

Brangam Bagnall & Co

**Legal Practitioner Fraud Perpetrated against
the Health & Personal Social Services**



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
NIA 195/07-08 4 July 2008



Northern Ireland Audit Office

Report by the Comptroller and Auditor General for Northern Ireland

Ordered by the Northern Ireland Assembly to be printed and published under the authority of the Assembly, in accordance with its resolution of 27 November 2007

Brangam Bagnall & Co

Legal Practitioner Fraud Perpetrated against
the Health & Personal Social Services

This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 for presentation to the Northern Ireland Assembly in accordance with Article 11 of that Order.

J M Dowdall CB
Comptroller and Auditor General

Northern Ireland Audit Office
4 July 2008

The Comptroller and Auditor General is the head of the Northern Ireland Audit Office employing some 145 staff. He, and the Northern Ireland Audit Office are totally independent of Government. He certifies the accounts of all Government Departments and a wide range of other public sector bodies; and he has statutory authority to report to the Assembly on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

For further information about the Northern Ireland Audit Office please contact:

Northern Ireland Audit Office
106 University Street
BELFAST
BT7 1EU

Tel: 028 9025 1100
email: info@niauditoffice.gov.uk
website: [**www.niauditoffice.gov.uk**](http://www.niauditoffice.gov.uk)

© Northern Ireland Audit Office 2008

Contents

	Page
Section 1: Introduction and Background	2
Introduction	2
Background and overview	2
Section 2: Events leading to the discovery of the fraud	6
Section 3: ASM Horwath findings	10
Value of identified frauds to date	11
Section 4: Types of fraud identified	14
How the fraud was committed	14
- Interim payments	14
- Overstated settlements	15
- False settlements	16
- Double settlements	16
- Social Security Agency Compensation Recovery Unit recovery	17
- Inappropriate outlays	17
- Teeming and lading	18
Section 5: Action taken following discovery of the fraud	20
Law Society of Northern Ireland investigation	20
Department of Health, Social Services & Public Safety	20
Ongoing investigations	23

Section 6:	Conclusions and recommendations	26
	The underlying control weaknesses	27
	Recommendations to the health service and the Department	28
Appendix 1:	Timeline for the Legal Services Fraud	32
Appendix 2:	Details of frauds at health bodies – by identified body	34
Appendix 3:	Details of frauds at health bodies – by nature of extraction	35
Appendix 4:	Extract from Department of Health, Social Services & Public Safety Circular HSS (F) 67/2006	36

Abbreviations

BB & Co	Brangam Bagnall & Company
CRU	Compensation Recovery Unit
CSA	Central Services Agency
DFP	Department of Finance & Personnel
DHSS	Department of Health & Social Services
DHSSPS	Department of Health, Social Services & Public Safety
DLS	Directorate of Legal Services
HPSS	Health & Personal Social Services
HSS	Health & Social Services
NIAO	Northern Ireland Audit Office
PSNI	Police Service of Northern Ireland

Section One:
Introduction and background

...member of
or right grant-
authorization
's goods. ~vb
S & Canad to

ian ...
...
...
...element of

France or

-nisation *n*

fratricide *n* 1 the act
son who kills his or he

Frau (rhymes with h
German form of addre

fraud *n* 1 deliberate d
gain an advantage. 2
formal a person who a

fraudster *n* a person

fraudulent *adj* 1 acti
ceeding from fraud. fr

Section One: Introduction and background

Introduction

- 1.1.1 This report to the Northern Ireland Assembly, serves to record the events surrounding the discovery of fraudulent activity suspected to have been perpetrated on several bodies in the health and social care sector (Health Boards and Trusts) by George Brangam, principal partner in the partnership of solicitors operating under the name of Brangam Bagnall & Company (BB & Co).
- 1.1.2 It is not a complete record at the date of publication. Several legal cases are on-going and an investigation by the Police Service of Northern Ireland (PSNI) has not reached a conclusion. The information set out in the report has been confined to the basic facts about what has actually occurred, together with a record of the actions taken by health bodies to correct those identified control weaknesses which are considered by the Northern Ireland Audit Office (NIAO / the Audit Office) to have facilitated some of the frauds and to have prevented their earlier disclosure.

George Brangam, the then Director of DLS, set up the legal partnership of Brangam Bagnall & Company (BB & Co) with Fiona Bagnall (also a solicitor with DLS).

- 1.2.2 Following a tender exercise led by DHSS, BB & Co were successful in obtaining a place on the Legal Services Framework Contract. Health bodies were advised that if they wished to market test legal services they should be tendered to providers on this Framework Contract. This was not compulsory. Legal services covered by the Framework Contract were wide ranging³, but the majority of work tendered, related to family law and clinical negligence cases. From 1995 until August 2006, BB & Co won, following tender action, contracts to provide legal services at 11 (out of 23) health Boards and Trusts⁴. These services were delivered by way of block contracts, whereby the range of legal services were largely provided within a single contract payment.

- 1.2.3 The Directorate of Legal Services continued to provide a number of services to many of these bodies, particularly in respect of cases still 'live' at the time of a tender, as some did not transfer from DLS to BB & Co.

Background and overview

- 1.2.1 The Directorate of Legal Services (DLS), part of the Northern Ireland Central Services Agency (CSA) was the only provider¹ of legal services to NI health bodies until 1994, when the then Department of Health & Social Services (DHSS)² decided that this provision should be market tested. In January 1995,

- 1.2.4 Until fraudulent activities were uncovered in 2006, BB & Co was a trusted legal service provider, managing hundreds of cases, many with estimated settlement values over £100,000, with a smaller

1 DLS was the only provider, apart from the Departmental Solicitor's Office, which provided land and building conveyance services to health bodies.

2 DHSS became the Department of Health, Social Services and Public Safety (DHSSPS) in 1999.

3 legal services included family law, clinical negligence, employer's liability, public liability and miscellaneous matters.

4 Causeway Health and Social Services (HSS) Trust, Down Lisburn HSS Trust, GreenPark HSS Trust, Homefirst HSS Trust, Mater Infirmorum HSS Trust, Northern HSS Board, North & West Belfast HSS Trust, Royal Group of Hospitals & Dental Hospital HSS Trust, South & East Belfast HSS Trust, Ulster Community Hospitals HSS Trust (formerly Ulster Hospitals HSS Trust and North Down and Ards Community HSS Trust) and United Hospitals HSS Trust.

number exceeding £1 million. George Brangam owned the practice, which had offices in Belfast and Dundonald, and two partners were employed, George Brangam and Fiona Bagnall. Fiona Bagnall left the partnership in July 2003. Gary Daly was employed as a solicitor with BB & Co from July 2003⁵. The partners were assisted by 8 solicitors, 24 para legal and support staff and a bookkeeper.

1.2.5 On 27 July 2006, Causeway HSS Trust informed the Department of Health, Social Services and Public Safety of potential irregularities in respect of particular legal cases handled by BB & Co. On 3 August 2006, the Trust concluded that some of their financial transactions with BB & Co suggested fraud and, after obtaining legal advice, it informed The Law Society⁶. On 4 August 2006, The Law Society commissioned Goldblatt McGuigan to carry out an investigation into financial matters at the Practice. The Practice was closed down by the Society on the 1 September 2006.

1.2.6 The Department appointed ASM Horwath, a firm of accountants, to review payments made by health bodies to BB & Co over the period 1 January 1999 to August 2006. ASM Horwath's findings were derived from case files held by health bodies and by the Practice, from details of payments made by health bodies to BB & Co and BB & Co's returned cheques. In their report⁷ they note that not all files requested at health

bodies and at BB & Co were available, though the Department told us that many of these files may have been disposed of, in line with records management guidance.

1.2.7 There is a possibility that the extent of fraud committed by George Brangam was higher than determined by available evidence. However, the Department told us that the full position may be as stated and that it is not possible to establish categorically the level of fraud because some files, which might have clarified some issues, have been destroyed under routine and legitimate procedures. From the available evidence, ASM Horwath concluded that there were 27 potentially fraudulent payments made by HSS bodies for the period from April 1998 to August 2006, (involving 28 of the 473 cases examined) with a total value of £277,652. The wide variety of methods used by George Brangam to extract monies highlights the systemic nature of the fraud perpetrated.

1.2.8 The legal profession has clear ethical and professional standards, and allegations of financial wrong-doing are relatively rare. It is recognised that there are potential risks arising from the misuse of client funds by members of the profession and The Law Society has strict rules as to how funds that relate to clients are accounted for and banked, in order to reduce the risk of misappropriation of such funds by solicitors or their staff. The management of clients' accounts is governed by the

⁵ Gary Daly told the Audit Office that subsequently, discussions with George Brangam took place over a period of time about becoming a partner, but, although his name appeared on BB & Co headed paper, this was never finalised and a partnership agreement was never executed.

⁶ The Law Society of Northern Ireland is the regulatory body for solicitors in Northern Ireland.

⁷ ASM Horwath, 'Department of Health, Social Services and Public Safety: Re: Brangam Bagnall & Co', 19 April 2007.

Section One: Introduction and background

Solicitors' Accounts Regulations 1998. Inspections of these accounts are carried out by accountants employed by The Law Society⁸.

as the health and social care sector) and by individual health bodies has already identified some significant issues and, in due course, may form the basis of a further Report.

1.2.9 It is our view that opportunities for earlier detection of some of the fraudulent activities of George Brangam were missed, and examples of this are provided in case studies referred to in Sections 2, 4 and 6 of the Report. The fraudulent events involving George Brangam suggest that management in some health bodies with specific responsibilities for such payments, were not sufficiently alert to the risk from fraud. Those with specific responsibilities in health bodies included staff working in claims' management, senior finance staff and, ultimately, chief executives and board members, who had responsibility for ensuring the regularity of such payments. The Department told us that it is highly unlikely that these fraudulent activities would have been discovered given their sophisticated nature and the various means of perpetrating them.

1.2.10 Sections 2 to 5 of this Report note the events leading to the discovery of the fraud, the findings of ASM Horwath, and action taken by The Law Society and the Department. The Report concludes, at Section 6, with a number of best practice recommendations.

1.2.11 A parallel investigation into the initial and subsequent market testing of legal services within the health and personal social services in Northern Ireland (now known

⁸ The function of the Compliance Unit of The Law Society is to review solicitors to ensure that their accounts comply with accounting regulations. The Society requires and receives annual reports provided after an inspection by its own accountants. These reports set out the position on client funds and provide assurance that such funds have been correctly applied. In circumstances where a level of risk has been identified, it would be the practice for the reporting accountants to seek confirmation from clients / third parties that payments had been made to solicitors on foot of properly constituted bills or invoices. The Law Society compliance team do likewise where a level of risk has been identified. In addition to analysis of these annual reports, The Law Society compliance team inspect practices on a regular basis.

Section Two: Events leading to the discovery of the fraud



Section Two:

Events leading to the discovery of the fraud

- 2.1.1 On 10 July 2006, following an unsatisfactory reply to queries raised by employees of the Causeway Trust, the first case where fraud was suspected was brought to the attention of the Trust's Acting Chief Executive. The circumstances of this suspected fraud are noted below.

Case Study 1: On 8 November 2001, George Brangam wrote to the Causeway Trust, advising that Case 1 could be settled for £13,525. The Trust accepted this advice and paid BB & Co the full sum on 27 November. A subsequent review of this case by ASM Horwath showed that £13,273 was transferred from the BB & Co client account into the partnership's office account in two transactions and the balance of £252 was paid to the Courts for another case (an example of teeming and lading⁹). Case 1 was reopened in April 2004 when another member of BB & Co staff wrote to the Trust enclosing a statement from the plaintiff's solicitor that they wanted to proceed with the case. A Trust employee then queried this with BB & Co and was advised that the case was not yet settled. Although further attempts to clarify the position were made in June and August 2004, the matter was not followed up again until 14 June 2006, when DHSSPS raised a query with the Trust asking why this case, recorded as settled, still remained active. On 29 June, another BB & Co staff member provided what, in the Trust employee's view, was an unsatisfactory explanation for the basis of the payment. This case remains active and, at the time of publication of this Report, settlement has not yet been reached.

- 2.1.2 The Trust then requested BB & Co to reimburse the payment of £13,525. Trust staff reviewed their case files to ascertain if there were any further irregularities regarding settlements negotiated by BB & Co. Two more cases were identified where cases had been reactivated after the Trust had made what it believed to be final settlements. These two cases had resulted in double settlements with a value of £17,800 and £8,000 respectively.

- 2.1.3 For all three cases, the Trust wrote to BB & Co asking for full reimbursement of the sums paid by the Trust in 'final settlement' as alleged by BB & Co. The Trust continued to investigate other transactions with BB & Co, and uncovered further cases. Action taken by the Trust is shown in Figure 1.

- 2.1.4 At the 3 August 2006 meeting, it was decided that documentation should be passed to The Law Society of Northern Ireland who agreed that the evidence warranted an investigation which they would conduct.

- 2.1.5 The Law Society told the Audit Office that it took its responsibilities as the regulatory body of the profession extremely onerously. It said that the sequencing of events and the speed at which the Society responded to information passed to the Society represents the standard procedure for the Society and is illustrative of the view taken by the Society where any such queries arise. It is common practice for the Society to instruct independent accountants to consider the issues where such queries do arise or are referred to the Society.

9 "Teeming and lading" – where one account is used to hide an error or disguise a fraud in another account.

Figure 1: Action taken by the Trust

Date	Sequence of events
24 July 2006	Chief Executive and Director of Finance agree to take action in line with the Trust's 'Theft, Fraud and Corruption Response Plan'
27 July 2006	Potential irregularities raised with the Trust's Chief Internal Auditor and the DHSSPS Permanent Secretary
28 July 2006	Following legal advice, the Chief Executive wrote to BB & Co outlining the irregularities and giving two days for a response
31 July 2006	Replies from the Practice raise significant concerns
3 August 2006	Chief Executive and Director of Finance meet with representatives of the Police Service of Northern Ireland, the Legal Branch of the DHSSPS and Departmental officials

- 2.1.6 NIAO note that, but for the action taken by Causeway Trust in July 2006, it is quite possible that the suspect payments it uncovered, as well as those found following later investigation by ASM Horwath, might never have been detected. Although Causeway Trust, like some other health bodies, missed earlier opportunities to uncover the fraudulent activities of George Brangam in relation to its own cases, nonetheless, the Trust is to be commended for uncovering the fraud and taking appropriate and immediate action thereafter.

Section Three: ASM Horwath findings



Section Three:

ASM Horwath findings

3.1.1 In February 2007, ASM Horwath were commissioned by DHSSPS to investigate payments made by health bodies to BB & Co. ASM Horwath selected all BB & Co cases relating to health bodies, to which they provided legal services, and which were above a de minimis level of £750 (known as relevant cases). From these relevant cases 100 per cent (or 219) of clinical negligence cases were tested and 20 per cent (or 202) of other types of litigation (for Causeway Trust this was increased to 95 per cent or 51 cases).

3.1.2 Figure 2 summarises the outcome of ASM Horwath's testing. While it is noted that ASM Horwath considered 79 per cent of cases tested to be reasonable, the uncertainties surrounding the remaining 21 per cent, primarily due to lack of information, are disappointing. Particularly so, because the cases tested were a sample and consequently other frauds may have occurred but not been identified. It should also be noted that, for 29 cases reviewed, there was insufficient

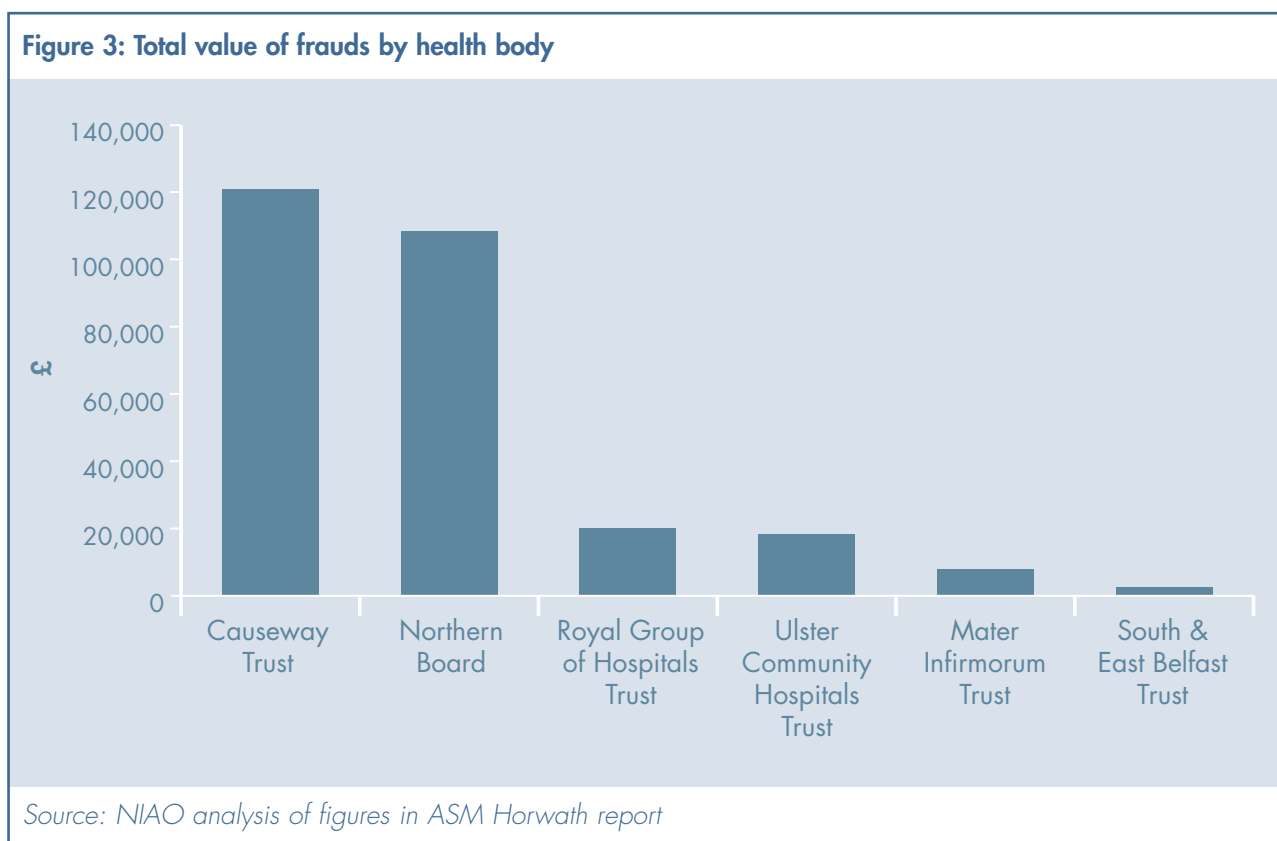
information available to conclude whether fraud had occurred, and in 42 cases, files could not be found at health bodies or at BB & Co and, therefore, no conclusion could be reached. The Department pointed out that, in many cases, files were unavailable due to their destruction in accordance with applicable records management guidance and/or legal advice.

3.1.3 The Department told us that they were unable to provide values for Figure 2, as these cases often involved a number of payments over time from the health service bodies to BB & Co. Although all of the payments particular to relevant cases were tested, they were not individually separated and totalled. This information could be obtained, however it would require all 472 ledger cards being examined and all payments from the health service bodies to BB & Co being separated and totalled. The Department told us that to obtain these values would not be cost effective.

Figure 2: Outcome of sample testing by ASM Horwath

	Number	Percentage (%)
Transactions appear reasonable	373	79
Irregularities appear to have occurred	28	6
Insufficient information available to conclude	29	6
Case files not available from health body and BB & Co, so no conclusion could be reached	42	9
Total cases in sample	472	100

Source: DHSSPS



Value of identified frauds to date

- 3.1.4 Figure 3 summarises the total value of frauds by health body and shows that the two health bodies most affected by such fraud were Causeway HSS Trust (12 cases valued at £120,727) and Northern HSS Board (5 cases valued at £108,296). Full details of the cases for each health body, where fraudulent transactions have been judged to have occurred, can be found at Appendix 2.
- 3.1.5 Of the £277,652 identified fraudulent payments, £268,750 related to clinical negligence cases. CSA manages the Clinical Negligence Central Fund on

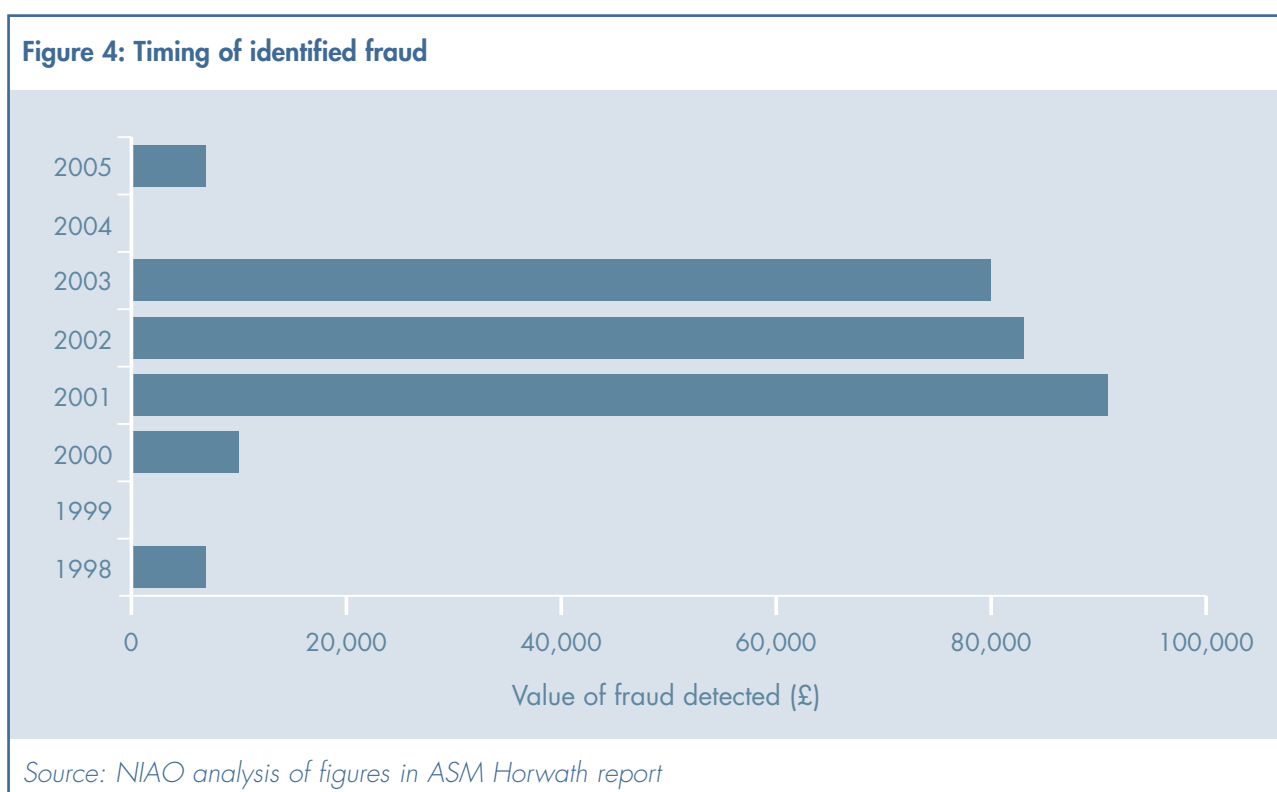
behalf of the health service, and the Fund receives its funding from the Department. Health bodies reclaim clinical negligence payments from this Fund. As a result of these frauds, monies that could have been spent on front-line activity in the health service were initially lost. Subsequently, judgement was obtained ordering full recovery of the amount claimed by the various health bodies in each Writ of Summons, including costs. Judgement for the plaintiffs was entered against George Brangam and judgement was also entered on behalf of Fiona Bagnall against the third party, namely the Estate of George Brangam Deceased¹⁰.

¹⁰ Fiona Bagnall's legal representative told the Audit Office that the professional indemnity insurers for Brangam Bagnall would not have discharged any liability to the Trusts if there was any suggestion, concern or allegation outstanding against Fiona Bagnall in relation to fraudulent activities undertaken against the Trusts.

Section Three:

ASM Horwath findings

- 3.1.6 Figure 4 shows the timing of identified fraudulent activity by George Brangam and shows that the peak period of fraudulent activity was between 2001 and 2003.



Section Four:

Types of fraud identified

or right grant-
authorization
's goods. ~vb
S & Canad to

ian
s-
element of

France or

-nisation *n*

fratricide *n* 1 the act
son who kills his or he

Frau (rhymes with h
German form of addre

fraud *n* 1 deliberate d
gain an advantage. 2

formal a person who a

fraudster *n* a person

fraudulent *adj* 1 acti
ceeding from fraud. fr

Section Four: Types of fraud identified

How the fraud was committed

4.1.1 In NIAO's view, this was a sophisticated fraud. An unusual feature of this was the variety of mechanisms used to extract funds. The Department considered that, in some cases, had existing controls been applied, the fraud may have been prevented or detected at an earlier stage.

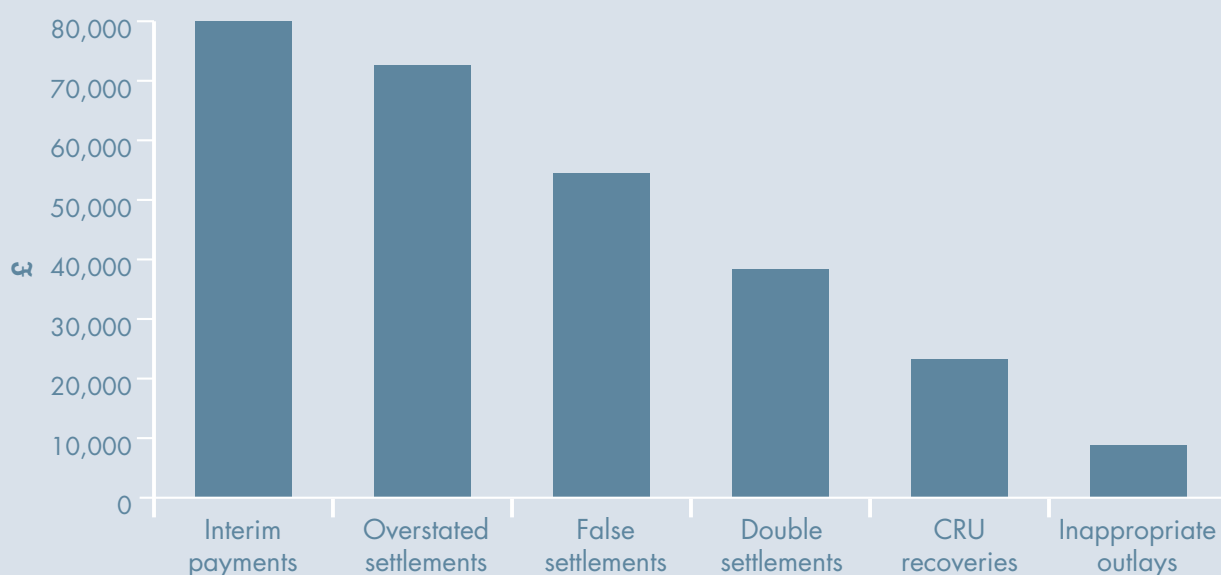
4.1.2 ASM Horwath identified seven types of fraud, six of which are referred to in Figure 5. The seventh, teeming and lading, occurred across a number of the other types of fraud. Full details of cases affected by each method of fraudulent extraction of funds from the health bodies concerned, can be found at Appendix 3.

All but 2 of the 27 payments identified as fraudulent, related to clinical negligence cases, the exceptions relating to an inquest and employer's liability. This section of the report explains each method of extraction, and provides examples in some instances.

Interim payments (2 cases totalling £80,000)

4.1.3 George Brangam wrote to the health body falsely stating that the plaintiff's solicitor had requested an interim payment. It is not unusual for interim payments to be made in cases where the likely settlement value is high, so the interim payment was paid by the health

Figure 5 – Total value of each type of fraud



Source: NIAO analysis of figures in ASM Horwath report

body to BB & Co. When the case was finally settled, Brangam requested and received an inflated amount of settlement from the health body, comprising the sum of the actual settlement and the fraudulently claimed interim payments. Brangam then extracted the overpayment from the client account to the office account through a false invoice for costs.

Case Study 2: In 2003, George Brangam wrote to the Northern HSS Board requesting and then receiving an interim settlement payment of £75,000. Brangam then used £50,000 of this to fund settlement payments for another case for which BB & Co had already been fully reimbursed by the Trust concerned. In February 2004, an internal invoice for the remaining £25,000 was fraudulently raised by George Brangam (for professional services rendered) which transferred this amount from their client account to their office account, despite the fact that these costs were normally met through block contract¹¹ payments. In 2005, the case was actually settled for £1,500,000. The Board were advised by Brangam that it was settled for £1,575,000 and, as the Board assumed a £75,000 interim payment had been paid by BB & Co, they paid £1,500,000 directly to the plaintiff.

What controls did not work?

- Evidence of the actual interim settlement and its value should have been sought.
- Acknowledgement of payments should have been obtained from plaintiffs.

- The Board should have kept a full, independent record of payments, backed up by documentary evidence, and subject to independent review.
- Any independent review of BB & Co accounting transactions which took place did not identify these irregularities.

Overstated settlements (11 cases totalling £72,629)

- 4.1.4 Here, George Brangam claimed that cases had settled at a higher value than they actually had. The plaintiff was then paid the actual settlement amount and Brangam extracted the additional balance paid through a false invoice from the client account to the BB & Co office account.

Case Study 3: Around March 2002, George Brangam wrote to Causeway Trust stating that this case could be settled for £50,000 which was subsequently paid by the Trust to BB & Co. The case was actually settled for £30,000 and an internal invoice for the £20,000 balance was fraudulently raised to transfer this amount, for professional services rendered, from the client account to the office account. It is noted that George Brangam asked the plaintiff's solicitor to remove the settlement value recorded within their bill of costs and the solicitor complied.

¹¹ All health bodies using the services of BB & Co had a block contract in place following a tendering exercise. Under this contract, a fixed fee was paid to BB & Co for the provision of almost all legal services managed on their behalf.

Section Four:

Types of fraud identified

What controls did not work?

- Evidence of the actual settlement value should have been sought.
- Acknowledgement of payments should have been obtained from plaintiffs.
- Any independent review of BB & Co accounting transactions which took place did not identify these irregularities.

False settlements (7 cases totalling £54,525)

- 4.1.5 In these instances monies were obtained for cases where there had been little or no activity since the initial correspondence from the plaintiff's solicitor. In effect the claim had been abandoned by the plaintiff, but until statute barred¹² it remained 'live' within the records kept by the health body. The ASM Horwath review indicates that seven such cases were identified, and letters sent to the respective health bodies stating that BB & Co hoped to settle the cases. George Brangam then requested authority from the health body to settle them for relatively small sums (in terms of clinical negligence). He then wrote to the health body confirming that the case had been settled and requested payment. Money paid into the client account was subsequently transferred to the office account using a false invoice.

What controls did not work?

- Evidence of the actual settlement should have been sought.
- Acknowledgement of payments should have been obtained from plaintiffs.
- Any independent review of BB & Co accounting transactions which took place did not identify these irregularities.
- No control was in place, for example, an annual end-of-year check, whereby the current status of claims being dealt with by CRU was reconciled with the health bodies involved.

Double settlements (3 cases totalling £38,300)

- 4.1.6 This method of extraction was similar to that for false settlements. George Brangam initially informed the Trust that a final settlement had been made and cases could be closed. However, solicitors acting on behalf of the plaintiff subsequently took new action, which then resulted in a need for an actual and agreed settlement. In their report, ASM Horwath note that in all these cases genuine third party evidence was found for the second settlement, but not the first ('final') settlement.

Case Study 4 (see paragraph 6.1.2): In late 2001, George Brangam wrote to Causeway Trust stating that the case

¹² Plaintiffs have six years to submit a claim from the time they have knowledge that they suffered a loss or injury.

could be settled for £17,800, which was subsequently paid by the Trust. In December 2001, around the same amount was transferred, under a false invoice, from the client account to the office account. In July 2003, Brangam wrote to Causeway again and informed them that the case had now settled for £55,000, which was paid by the Trust in September 2003. This July 2003 settlement was genuine, whereas the earlier £17,800 settlement figure claimed was fraudulent.

What controls did not work?

- Evidence of the actual settlement and its value should have been sought.
- The Trust's controls did not ring alarm bells when a 2nd "final settlement" was made on the same case.
- Acknowledgement of payments should have been obtained from plaintiffs.
- Any independent review of BB & Co accounting transactions which took place did not identify these irregularities.

Social Security Agency Compensation Recovery Unit (CRU) recovery (2 cases totalling £23,308)

- 4.1.7 This method of extraction involved George Brangam obtaining a refund from CRU¹³ which was not passed back to the health body.

Case Study 5: This case was settled in November 1999 for £100,000 with an additional amount payable to CRU. In January and March 2001, the Northern HSS Board paid CRU £15,275 and £1,131 respectively. BB & Co successfully appealed these CRU payments and the full amount was refunded in April 2002 and lodged to the BB & Co client account, then transferred to the office account via internal invoice.

What controls did not work?

- No control was in place, for example, an annual end-of-year check, whereby the current status of claims being dealt with by CRU was reconciled with the health bodies involved.

Inappropriate outlays (3 cases totalling £8,890)

- 4.1.8 This method of extraction involved George Brangam seeking and obtaining reimbursement from health bodies for expenses which were either overstated or false. These monies were then transferred from the client account to the office account via a false internal invoice for costs or a false payment.

Case Study 6: In 16 March 1998, George Brangam requested payment of counsel fees of £35,250 from Northern Board. This was paid by the Board on 31 March 1998, but only £29,610 was paid to the counsel, a difference of

¹³ Where a plaintiff receives state benefits as a result of an injury for which a successful claim has been made, all or part of the state benefits received may be repayable to CRU. However, if the plaintiff believes that all or part of the state benefits are not solely attributable to the incident, for example, because of a pre-existing condition, he can appeal CRU's decision. Likewise, if the settlement paid by the health body includes a payment to CRU, the health body's solicitor can appeal this CRU decision and seek to obtain a refund.

Section Four:

Types of fraud identified

£5,640. The BB & Co files include an 'invoice' dated 7 April 1998 which would suggest this had been sent to the Northern HSS Board and shows the lower and correct counsel fees of £29,610. The Northern HSS Board file has been destroyed so it is not possible to confirm whether this invoice was actually sent to them. The Department again pointed out that in many cases, files were unavailable due to their destruction in accordance with applicable records management guidance and/or legal advice.

What controls did not work?

- No verification by health body, of counsel's invoice.

Teeming and lading

- 4.1.9 As noted earlier, this type of fraud involved health bodies being charged for genuine expenses that had been incurred in other cases. Evidence was found to prove that this practice was undertaken on a number of occasions to conceal earlier fraudulent extractions of funds.
-

Section Five:

Action taken following discovery of the fraud



Section Five:

Action taken following discovery of the fraud

- 5.1.1 Section 4 notes the findings of ASM Horwath following their appointment by the Department of Health, Social Services and Public Safety on behalf of the health service. This section of the Report outlines action taken by the Department and The Law Society following the discovery of potential irregularities.

Law Society of Northern Ireland investigation

- 5.2.1 As noted in paragraph 1.2.5, The Law Society undertook a review into financial matters at Brangam Bagnall & Company. This review identified a number of anomalies and shortfalls in the Practice's client account. On 16 August 2006, The Law Society obtained an order from the High Court freezing £500,000 of George Brangam's assets. On 1 September 2006, The Law Society closed BB & Co.
- 5.2.2 The Audit Office has been advised that investigations and actions by The Law Society are now concluded. As to the impact fraudulent activities might have on the legal service itself, all solicitors in private practice contribute to The Law Society's Compensation Fund and carry professional indemnity insurance. In addition to indemnifying against the fraud or default of client monies, professional indemnity insurance also affords a protection to individual partners within a practice where it can be demonstrated that one of the partners has defrauded not only a client but also any other partners

within the practice. In other words, professional indemnity insurance will indemnify an honest partner against the dishonest activities of a partner in so far as the former is liable for client funds. The insurers under The Law Society's master policy have afforded the benefit of such an indemnity to Fiona Bagnall, former partner in the practice, in respect of the matters referred to in this report.

- 5.2.3 Following the completion of any criminal and civil actions relating to George Brangam, we would encourage The Law Society to make available to relevant public bodies, its key reports and findings, to ensure that lessons can be learned, and in particular to raise awareness of the types of fraudulent activities that might be perpetrated in this area. Legal services transactions involving public sector bodies and delivered by solicitors and barristers are significant and it is essential that public money is disbursed, and the reputation of the legal profession protected, through effective controls that help prevent and identify fraud.

Department of Health, Social Services & Public Safety

- 5.3.1 As noted at Section 2 above, the decisive action taken by Causeway Trust which led to the irregularities finally being identified as fraudulent was instigated by a DHSSPS query (see Case Study 1). Since Causeway notified the Department of the suspected frauds, DHSSPS has played a

constructive role in assisting the health service and working closely with the PSNI. The Department pointed out that it retained the services of forensic accountants, ASM Horwath, and a firm of solicitors, in order to determine the nature and extent of fraudulent activity that would be central to legal redress, and to drive forward civil litigation, on behalf of the health service, to recover monies lost. The Department told us it had made strenuous efforts to ensure that civil action was pursued without delay.¹⁴ A high court hearing on 11 September 2007 to initiate the Department's civil action, following the sudden death of George Brangam 2 weeks earlier, was followed by a second review before the Commercial Judge on 13 November 2007 at which the Judge directed that accounting evidence being prepared by BB & Co representatives be furnished by 14 January 2008. A further review took place on 28 January 2008, at which the case was listed for hearing during week commencing 28 April 2008. The Judge also directed that there should be a joint consultation between the relevant parties during the next few weeks. As a result of the discussions, it was possible thereafter to enter into successful negotiations to settle each case for the full amount claimed.

5.3.2 Following preliminary investigations into the alleged fraud, the Department set up a Working Group to review payment processes for litigation and legal services provided to health bodies. Following the Group's report the Department issued

guidance¹⁵ to all health bodies, setting out, in detail, the controls that it considered should be in place (see Appendix 4). Accountable Officers were also required to provide assurance that controls put in place for these services were robust and operating effectively. These assurances were subsequently received from all health bodies by the Department's Counter Fraud Policy Unit.

5.3.3 While it is commendable that this latest guidance was issued promptly, it is important to recognise that adherence to the Department's earlier guidance might have prevented some of these frauds occurring in the first place or led to them being detected at an earlier stage. For example, circular HSS (F) 20/2002¹⁶, clearly sets out corporate responsibility for management of clinical negligence:

- HPSS bodies must ensure that the complete clinical negligence process from incident through to legal settlement is managed professionally;
- HPSS bodies must ensure that full information on each element of the claim is held, in particular making sure that all legal costs associated with the case are separately identified; and
- each year, by 30 June, each Chief Executive must sign and return an annual statement to the Department confirming or otherwise that these obligations are being met and that managerial arrangements are in line with the Department's earlier circular, HSS (F) 20/1998¹⁷.

¹⁴ Causeway HSS Trust took a separate civil action against BB & Co. The same Barrister represented both the Trust and the Department.

¹⁵ DHSSPS Circular HSS (F) 67/2006, 'Payments in respect of Litigation and Legal Services in the HPSS – Implementation of Controls', October 2006

¹⁶ DHSSPS Circular HSS (F) 20/2002, 'Clinical Negligence Cases – Prevention of Claims and Claims Handling', September 2002

¹⁷ DHSSPS Circular HSS (F) 20/1998, 'Clinical Negligence Claims: Claims Handling', May 1998

Section Five:

Action taken following discovery of the fraud

- 5.3.4 NIAO found that, despite the clear requirements of the 2002 Circular, annual statements confirming the above, were not, in many cases, being made. NIAO asked the Department why these missing declarations had not been followed up, particularly given the significant concerns which arose in 2006. The Department told us that, due to the considerable reorganisation of the Health Trusts, post the Review of Public Administration, the Trusts requested additional time to forward annual returns including clinical negligence. It was pursuing outstanding returns from the Belfast Trust and the Eastern and Southern Health Boards. However, it said that, given the sophisticated nature of the fraud perpetrated by George Brangam, it is highly unlikely that such fraudulent activity would have been detected by the Department on receipt of the signed annual declaration from a health body confirming compliance with Departmental guidance.
- 5.3.5 The 1998 Circular advised that all health bodies must have adequate procedures in place to ensure the handling of clinical negligence claims. For example, all claims should be reviewed after closure; boards (or a sub-group) should see regular reports on the number and aggregate value of claims in progress and their eventual outcome; policies and procedures should be subject to regular scrutiny by internal audit; settlements should be approved within delegated limits by the responsible director, claims manager, and a sub group of the board; and records should be held for “a very substantial period” after the claim has been closed. It is clear, from NIAO’s findings, that many of these requirements were not followed by health bodies.
- 5.3.6 Guidance issued by the Department in 1999¹⁸ sets out the procedures for settlements over £250,000. The Department requires a copy of the most recent advice from counsel before considering granting approval in these cases. For cases exceeding the Department’s delegated limit of £1 million, this advice is also required by the Department of Finance & Personnel (DFP). All such claims had to be submitted for approval in advance to the Department, including key documents which should have drawn attention to many of the frauds perpetrated by George Brangam, namely, a copy of the most recent advice from counsel advising the health body of the potential outcome of the case and the estimated settlement, and the final report of the senior counsel. Two cases, totalling £80,000, fell into this category.
- 5.3.7 Following the issue of the Department’s circular in October 2006¹⁹, all health Trusts and Boards asked their internal auditors to review current controls over legal services. At the time of our examination, these reviews had been completed for all health bodies for the 2006-07 financial year, except for that in the Western Board area which was only completed in April 2008. In view of the need to ensure that controls were satisfactory, it is surprising that there had not been an earlier review in the Western Board area to assess that these controls

¹⁸ HSS Executive Circular HSS (F) 28/99, ‘Clinical Negligence Claims: Procedures for Submission of Settlements over £250,000 for approval’, 29 July 1999

¹⁹ DHSSPS Circular HSS (F) 67/2006, ‘Payments in respect of Litigation and Legal Services in the HPSS – Implementation of Controls’, 3 October 2006

were being properly applied, though the Department told us that the Western Board was unaffected by the alleged fraudulent practices. The internal audit reports identified a number of control weaknesses that the bodies affected have agreed to address, where practical. The effect of the controls will be tested by internal audit teams as part of their annual work plans and findings will be reported to their respective Audit Committees.

- 5.3.8 Following the closure of BB & Co, the health service sought advice from the Department regarding the handling of 'live' cases. Many of these cases had reached critical junctures in the legal process and involved family law cases where ongoing court hearings were imminent. Health bodies affected by the closure of BB & Co were concerned that new tenders for the provision of their legal services would delay the orderly and timely transition of cases from BB & Co to a new provider. In the meantime, Gary Daly had set up a new legal practice, MSC Daly Solicitors. Following representations made by this new firm on 4 September 2006, the Permanent Secretary of the Department wrote to all health bodies on 7 September 2006 stating that while the 'Department is not endorsing this firm... there is no impediment in law or procurement practice which would preclude the use of this new firm, should you judge that the use of this firm, to secure continuity of advice, would be in the best interests of your clients'.

- 5.3.9 We asked the Department whether this guidance was based on legal advice and how they weighed the fact that there were continuing investigations into the firm of which Gary Daly had been understood to be the second partner²⁰. The Department told us it received legal advice on the use of MSC Daly which informed the guidance issued to the service. Gary Daly is not, nor has been, under investigation for fraudulent activity. He told us that he was a victim of the fraudulent activities of George Brangam.

Ongoing investigations

- 5.3.10 The Department told us that judgement had been obtained ordering full recovery of the amount claimed in each Writ of Summons, including costs, but that it is unaware of any civil actions being taken against other individuals associated with BB & Co. The PSNI has not concluded its investigations, but The Law Society of Northern Ireland has told us that its investigations into BB & Co and especially the activities of George Brangam are now concluded and files are with the Society's solicitors for further advice on some further particular matters. NIAO will continue to monitor these events and any other matters which may arise in relation to this case.

20 Gary Daly told the Audit Office that he was not a partner in BB & Co (see paragraph 1.2.4 and footnote).

Section Six: Conclusions and recommendations



Section Six:

Conclusions and recommendations

- 6.1.1 In the course of this report we have noted examples of cases where health bodies and the Department could have had opportunities to identify indicators of fraudulent activities on the part of George Brangam. We have also noted that if health bodies had followed guidance issued by the Department, some of these frauds may have been detected long before 2006. Indeed, it is worth emphasizing that it would only have been necessary to identify one of the many areas of suspected fraud, to have triggered an investigation which would have promptly terminated this long-running loss of public funds.
- 6.1.2 In this section of the Report, two of the cases referred to in Section 4 will be further discussed, particularly looking at where the health bodies concerned could have considered the possibility of fraud.

Case Study 4 (see paragraph 4.1.6): It is likely that, if the Causeway Trust had sought proof of settlement, either in December 2001 or July 2003, they would have been alerted to concerns about this potential fraud much earlier. In November 2003, a Trust employee queried these payments with BB & Co but no satisfactory explanation was received. On 15 January 2004, the then Chief Executive of the Trust wrote to George Brangam asking for an explanation. Brangam responded in May 2004 asking for copies of all payments as he was 'having some difficulty in reconciling the payments'. The Trust provided all information requested a few days later

but no reply was received and this was not followed up again until the first fraudulent case was uncovered in July 2006.

Case Study 7: This case study refers to a case where George Brangam used funds fraudulently obtained from Case Study 2 (see paragraph 4.1.3) to fund an actual final settlement for another. Brangam requested payment in full of £292,437 from the Mater Trust and paid the plaintiff £242,437. When the £50,000 difference was queried by the plaintiff's solicitor, part of the proceeds of the fraud perpetrated against the Northern Board (Case Study 2) was used. At an earlier stage in Case Study 7, BB & Co obtained from the Mater, two interim payments for £30,000 and £12,500 in February 2001 and October 2002 respectively. There is no evidence that these two interim payments were ever passed to the plaintiff. In October 2002, Mater staff queried with Brangam why interim payments had not been deducted from the £292,437 final settlement made by the High Court. Subsequently, BB & Co repaid, to the Mater, £37,500 of the fraudulently claimed £42,500 interim payment, but it would appear never to have repaid the £5,000 balance. As this was a case where the settlement exceeded £250,000, it was also scrutinised by the Department. In July 2003, the Department's Finance Policy and Accountability Unit asked the Trust why there was no reference to the £42,500 interim payment in the Court's

judgement. Whilst they can be commended for querying the £42,500 difference, and recouping a substantial part of it, unfortunately the Mater did not obtain a satisfactory explanation from George Brangam on what had occurred, and the Department did not follow up its query. This was a further opportunity to identify the potentially fraudulent claim by George Brangam for this interim payment.

The underlying control weaknesses

6.2.1 Clearly, it is not unreasonable to expect services to be rendered with integrity and honesty by professionals. One of the key lessons of this case is that it is not appropriate /sufficient to rely on this. It is management's responsibility to exercise proper care and attention in the area of legal and litigation services by ensuring adequate controls are in place and that they are complied with. Management, with its knowledge of the cases and its clear responsibilities for ensuring probity and stewardship of public funds, should have carried out the steps noted in the box below:

- complied with guidance and directions issued by the Department;
- been alert to the possibility of fraud, and followed up thoroughly on cases where clear indications of fraud or irregularities were uncovered;

- ensured that their policies and procedures were independently reviewed by internal audit;
- had in place protocols to access records held on their behalf by BB & Co, if required;
- engaged with The Law Society in relation to obtaining their assurances about the professionalism and integrity of solicitors providing services to the health sector;
- obtained third party evidence of interim and final settlements; and
- made settlement payments directly to plaintiffs.

In NIAO's view, these cases may call into question, existing records management practices. In addition to the guidance issued in 2006 (referred to in paragraph 5.3.2 and Appendix 4²¹), the Department pointed, in reply, to guidance issued in 2004 on the maintenance, retention and destruction of those records²².

6.2.2 It is also clear to NIAO that controls in place to protect client funds were not effective. We asked The Law Society if it wished to comment on its assessment of why this was the case. The Law Society considers that it was the complexity of the frauds perpetrated, taken together with the fact that existing controls within the Department and the Trusts not being

21 Circular HSS (F) 67/2006: Payments in Respect of Litigation and Legal Services in the HPSS – Implementation of Controls: DHSSPS, October 2006

22 Good Management, Good Records: DHSSPS, December 2004

Section Six:

Conclusions and recommendations

properly applied, which prevented earlier detection. It also noted the comments made by Goldblatt McGuigan (the firm commissioned by the Society to investigate financial matters at BB & Co (see paragraph 1.2.5): -

“The significance of ...concealment is that not only does it demonstrate the lengths the perpetrator went to conceal his actions but also clearly demonstrates that those tasked with inspecting and reporting on the handling of client funds by Brangam Bagnall & Co (Law Society and reporting accountants) had little chance of identifying these types of anomalies”.

- where there is a suspicion of fraud, procedures set out in current anti-fraud guidance²³ should be followed and, where necessary, suspected fraud should be reported to internal audit, the Department's Counter Fraud Policy Unit, The Law Society of Northern Ireland, the PSNI and the Comptroller and Auditor General; and
- the need to review and report on the effectiveness of procedures and controls in place. (Internal audit teams have been asked to test the effectiveness of controls – see paragraph 5.3.7);

NIAO would also recommend that:

- the Department should review and test the records of current cases held by solicitors on behalf of the health service. As indicated below, this is supported by The Law Society. Health bodies may need to put a protocol in place for their staff, for example in internal audit, to have such access; and
- health bodies should work with The Law Society to develop a governance framework that would provide the health service with transparent assurance regarding the conduct of their legal service providers.

Recommendations for the health service and the Department

6.3.1 Following this review of the fraudulent activities of George Brangam, NIAO notes the recommendations made by the Department in its guidance (HSS (F) 67/2006), issued in October 2006, following the discovery of fraudulent activity. These are shown in Appendix 4. A particularly important control is the need for third party evidence for all settlements, interim and final, before any payments are made. To the Department's recommendations, of which NIAO would particularly highlight:

- the need for health bodies to keep full, independent records of all payments, backed up by primary documentary evidence;

6.3.2 The Law Society's view is that it is not appropriate for health bodies to be provided with details of any concerns which The Law Society might have as to the professional conduct of solicitor firms acting on their behalf. However, the

23 Circular HSS (F) 38/2005: Fraud Reporting Arrangements: DHSSPS, 2005

Society would support the use of the tendering process to introduce a further control. This would entail any firm or individual tendering for a contract to provide professional legal services, being asked to disclose details of any professional conduct findings made against them and whether or not there were any professional conduct investigations ongoing. This would give public bodies the right of contractual redress in the event that material was not disclosed which ought to have been disclosed. The Society also suggests that such contracts provide for the regular review, by client departments, of files held by solicitors in relation to their own legal work and that audits make such cross references accordingly. The Audit Office welcomes this as a useful suggestion for tightening up controls in this area. The Department advised NIAO that, as part of the tender process for legal services in 2005 (which was not concluded) a vendor questionnaire was issued by the Department requiring firms to confirm that they had not been subject to criminal or disciplinary proceedings. However, it is recommended that this requirement is built into future legal contracts and the Department should consider how it can introduce it into existing contracts.

- 6.3.3 DHSSPS should revisit its extensive guidance in respect of legal claims and replace it with a single circular encompassing matters covered in the four existing circulars, including the need for an appropriate period for retention of

legal case files. They should also liaise with the Compensation Recovery Unit to arrange for them to inform health bodies directly of any successful appeals against their recovery orders and also the amount recovered.

- 6.3.4 NIAO would encourage all health bodies to regularly review their controls to ensure that they remain effective. Following the merger of Trusts on 1 April 2007, under the Review of Public Administration, there is a possibility that key staff with knowledge of how the system should work have left or might leave their posts. It will, therefore, be particularly important to ensure a proper awareness of the need to maintain appropriate controls.
- 6.3.5 NIAO is continuing to review other aspects of this case and may report further. Procurement arrangements for legal services, are also being examined and these may be reported on in due course.

Appendices

Appendix One:

Timeline for the Legal Services Fraud

Date	Action
1994	The then DHSS decides that legal service provision to the health service should be market tested.
January 1995	George Brangam and Fiona Bagnall leave DLS and establish their legal practice Brangam, Bagnall & Co (BB & Co).
1995 onwards	BB & Co wins a number of legal service contracts at 11 health service bodies.
April 1998	The first known fraud is perpetrated against the health service.
1998 - 2003	A total of 27 potentially fraudulent transactions occur (involving 28 legal cases). (Details set out in Appendices 2 and 3). The value of these is £277,652.
March 2002	Jennifer Kearney, book-keeper, leaves the Practice.
July 2003	Fiona Bagnall leaves the Practice.
July 2003	Gary Daly commences employment as a solicitor with BB & Co.
14 June 2006	Causeway Trust e-mail BB & Co, requesting explanation of a 'final' settlement payment of £13,525 made in November 2001 for a case which had been reactivated by the plaintiff's solicitor in April 2004.
10 July 2006	Causeway Trust write to BB & Co, asking for reimbursement of £13,525. The Trust investigates irregularities for two other cases.
11 & 19 July 2006	Causeway Trust write to BB & Co, asking for reimbursement of £17,800 and £8,000 respectively for two 'double settlement' cases. The Trust extends its investigation to other transactions.
27 July 2006	Chief Executive and Director of Finance of Causeway Trust meet with the Trust's Chief Internal Auditor who confirms that the matters uncovered appeared to represent irregularities.
27 July 2006	Chief Executive of Causeway Trust telephones and writes to the DHSSPS Permanent Secretary about these potential irregularities.
28 July 2006	Following legal advice, on 28 July 2006, the Chief Executive of Causeway Trust writes to BB & Co outlining the irregularities and giving two days for a response.
31 July 2006	BB & Co replies to the three earlier letters sent by the Trust and these replies raise significant concerns.
3 August 2006	Trust concludes that some of the financial transactions involving it and BB & Co suggest fraud, and inform The Law Society.
4 August 2006	The Law Society holds a special Council meeting and instruct Goldblatt McGuigan to immediately investigate financial matters at the Practice.

Date	Action	
9 August 2006	Goldblatt McGuigan issue a preliminary report to The Law Society identifying a number of anomalies and shortfalls in the client account of the Practice.	
16 August 2006	The Law Society obtain an order from the High Court to freeze £500,000 of George Brangam's assets.	
1 September 2006	The Law Society closes Brangam Bagnall & Company.	
September 2006	Gary Daly sets up MSC Daly Solicitors and some other BB & Co staff join him in this new partnership. The Partnership is passed some 'live' cases that had been handled by BB & Co on behalf of health bodies. It also provides other ongoing legal services for these bodies.	
September 2006	Department sets up a Working Group to review the payment process for litigation and legal services provided to health bodies. The Group promptly reports and Department issues new guidance.	
February 2007	Following a tender process by the Department, ASM Horwath is appointed to investigate the fraudulent activities of George Brangam in respect of the health service.	
March 2007	Department appoints legal representatives.	
19 April 2007	ASM Horwath issues its report into the fraudulent practices of George Brangam: 'Department of Health, Social Services and Public Safety: Re: Brangam Bagnall & Co'.	
June 2007	Writs and Statements of Claims issued.	
August 2007	Following the sudden death of George Brangam, anticipated criminal proceeding against him cannot continue.	
September 2007	Civil Action has first review before Commercial Judge.	Department reviews position with PSNI monthly.
13 November 2007	Civil Action has second review before Commercial Judge.	
28 January 2008	Civil Action has third review before Commercial Judge.	
6 March 2008	Joint Consultation between parties.	
28 April 2008	Judgement in Commercial Court.	

Appendix Two:

Details of frauds at health bodies perpetrated by George Brangam - by identified body

BB & Co Case Reference	Date of Fraud	Value of Fraud (£)
Causeway Trust		
CAU/CN/44	August 2001	7,500
CAU/CN/81	August 2001	11,250
CAU/CN/1	November 2001	13,525
CAU/CN/31	November 2001	7,500
CAU/CN/13	November 2001	17,800
CAU/CN/54	March 2002	20,000
CAU/CN/131	April 2002	7,500
CAU/CN/106	April 2002	8,000
CAU/CN/100	April 2002	12,500
CAU/CN/28	April 2002	3,250
CAU/CN/71	December 2002	5,000
CAU/EL/72	September 2005	6,902
Sub-total		120,727
Northern HSS Board		
NB/CN/11	April 1998	5,640
NB/CN/302	December 1998	1,250
NB/CN/225	December 2000	10,000
NB/CN/335	April 2002	16,406
NB/CN/74	July 2003	75,000
Sub-total		108,296
Royal Group of Hospitals Trust		
RGH/CN/230	July 2001	5,000
RGH/CN/48	December 2001	8,000
RGH/I/49	December 2002	2,000
RGH/CN/106	March 2003	5,000
Sub-total		20,000
Ulster Community Hospitals Trust		
UNDAH/CN/35	October 2001	5,000
UNDAH/CN/27 and UNDAH/CN/31	November 2001	7,250
UNDAH/CN/122	May 2002	5,875
Sub-total		18,125
Mater Infirmorum Trust		
M/CN/4	February 2001	5,000
M/CN/45	May 2001	3,004
Sub-total		8,004
South & East Belfast Trust		
S&E/CN/21	October 2002	2,500
Sub-total		2,500
Total		277,652

Source: NIAO analysis from ASM Horwath report

Appendix Three:

Details of frauds at health bodies perpetrated by George Brangam - by nature of extraction

BB & Co Case Reference	Date of Fraud	Value of Fraud (£)
Interim payments		
M/CN/4	February 2001	5,000
NB/CN/74	July 2003	75,000
Sub-total		80,000
Overstated settlements		
NB/CN/225	December 2000	10,000
M/CN/45	May 2001	3,004
RGN/CN/230	July 2001	5,000
UNDAH/CN/35	October 2001	5,000
RGH/CN/48	December 2001	8,000
CAU/CN/54	March 2002	20,000
CAU/CN/28	April 2002	3,250
UNDAH/CN/122	May 2002	5,875
S&E/CN/21	October 2002	2,500
CAU/CN/71	December 2002	5,000
RGH/CN/106	March 2003	5,000
Sub-total		72,629
False settlement		
CAU/CN/44	Aug 2001	7,500
CAU/CN/81	Aug 2001	11,250
CAU/CN/31	November 2001	7,500
CAU/CN/1	November 2001	13,525
UNDAH/CN/27 and UNDAH/CN/31	November 2001	7,250
CAU/CN/131	April 2002	7,500
Sub-total		54,525
Double settlement		
CAU/CN/13	November 2001	17,800
CAU/CN/106	April 2002	8,000
CAU/CN/100	April 2002	12,500
Sub-total		38,300
CRU recovery		
NB/CN/335	April 2002	16,406
CAU/EL/72	September 2005	6,902
Sub-total		23,308
Inappropriate outlays		
NB/CN/11	April 1998	5,640
NB/CN/302	December 1998	1,250
RGH/I/49	December 2002	2,000
Sub-total		8,890
Total		277,652

Source: NIAO analysis from ASM Horwath report

Appendix Four:

Extract from Department of Health, Social Services and Public Safety Circular HSS (F) 67/2006 dated 3 October 2006

Principal risks identified

1. Settlements have not, in fact, been reached in respect of a "live" case, as notified by defence solicitors.
2. Settlements are reached, but not at quantum notified by defence solicitors.
3. Settlements negotiated by defence solicitors at an unnecessarily high level, due to lack of effective challenge or a rigorous negotiation process.
4. Public monies may be committed by solicitors for case costs, without HPSS prior approval.
5. Third party costs, as notified by defence solicitors, have not actually been incurred.
6. Third party costs, as notified by defence solicitors, have been incurred, but not at quantum notified.
7. Third party costs, as notified by defence solicitors, are excessive and represent poor VFM.
8. Settlements / damages / third party payments that have been routed through defence solicitors are not paid over to duly entitled recipients as intended.
9. Payments are made more than once for the one case/service.

Controls deemed necessary

1. All HPSS bodies should have a written policy in place, duly approved by the board, stipulating the arrangements they should have in place to ensure compliance with extant Departmental guidance as contained in circular HSS (F) 20/2002 and related documents.
2. Legal services should be subject to normal HPSS procurement regulations, with variations to contract, and the provision of additional services not covered by contract, to be agreed in writing.
3. Solicitors' costs charged over and above any block contract arrangements should be backed up with an analysis of time spent and any other chargeable items incurred case per case, as derived from the practices' systems in place to record such items.
4. Written approval from designated senior authorised officer of the HPSS body as to acceptable settlement levels is obtained prior to settlement negotiations by defence solicitors.
5. Written approval from a duly authorised officer of the HPSS body should be obtained prior to defence solicitors engaging counsel/other experts etc.
6. Independent confirmation of settlements actually being reached/ damages awarded and their quantum should be evidenced by way of jointly signed statements or Court papers, prior to payment.

7. Forms of Discharge should be obtained in respect of all cases and used for post payment verification.
 - defence counsel fees and outlays;
 - other defence fees and outlays; and
 - likewise for plaintiffs' costs.
8. Original headed stationery should be received in advance of payment of all Bills of Costs/Fee Notes (showing VAT registration, if applicable).
9. Bills of Costs/Fee Notes in respect of third parties should be checked against professional bodies' approved rates, where possible, prior to payment.
10. All payments to be authorised prior to payment by a designated senior manager.
11. All payment calculations to be checked for accuracy prior to payment.
12. Invoices in respect of all cases/work done should quote unique case reference numbers, which can be matched to HPSS records.
13. All payments to be attributed to specific cases/work done; no payments to be made against generic, unreferenced or unidentified work.
14. Effective budgetary control should be exercised in the monitoring of legal costs, perhaps by the use of "trigger points" set up to alert budget managers when predetermined %'s of spend v budget have been reached.
15. A database/checklist maintained for all payments made per case, analysed into a minimum data set of:
 - settlements/damages;
 - defence solicitors' services and outlays;
16. It is recognised that the resource implications of attributing solicitors' costs that form part of monthly block contracts may be too resource intensive to justify. The decision as to whether such an analysis should be undertaken should be made at HPSS organisations' discretion.
17. Third party payments to be made directly to third parties, where possible.
18. Confirmation that all third party monies have been duly received should be obtained by way of a Form of Receipt signed by the relevant third party.
19. There should be a formal process established within each HPSS body for opening/closing/re-opening case files, requiring designated senior manager approval for such actions.
20. Meetings held between HPSS bodies and solicitors to discuss all aspects of litigation management, should be recorded as minutes or action points, and appropriately agreed.

DHSSPS Recommendations

1. Accountable Officers of all HPSS bodies should review their existing controls in light of the above and satisfy themselves that they have these controls (or equivalent compensating controls) in place and that they are in compliance with extant Departmental guidance. Independent assurance should be obtained periodically as to the effectiveness of

Appendix Four:

the operation of such controls and compliance with Departmental guidance.

2. In respect of solicitors' costs incurred over and above any block contract arrangements, HPSS bodies should reserve the right to randomly check charges claimed "at source" (i.e. – verify the information held in solicitors' systems for recording any such items as are charged for) and reconcile them to invoiced charges.

List of Reports

Title	HC/NIA No.	Date Published
2007		
Internal Fraud in Ordnance Survey of Northern Ireland	HC 187	15 March 2007
The Upgrade of the Belfast to Bangor Railway Line	HC 343	22 March 2007
Absenteeism in Northern Ireland Councils 2005-06	-	30 March 2007
Outpatients: Missed Appointments and Cancelled Clinics	HC 404	19 April 2007
Good Governance – Effective Relationships between Departments and their Arms Length Bodies	HC 469	4 May 2007
Job Evaluation in the Education and Library Boards	NIA 60	29 June 2007
The Exercise by Local Government Auditors of their Functions	-	29 June 2007
Financial Auditing and Reporting - Health Sector: 2003-04 and 2004-05	NIA 66	6 July 2007
Financial Auditing and Reporting: 2005-06	NIA 65	6 July 2007
Northern Ireland's Road Safety Strategy	NIA 1/07-08	4 September 2007
Transfer of Surplus Land in the PFI Education Pathfinder Projects	NIA 21/07-08	11 September 2007
Older People and Domiciliary Care	NIA 45/07-08	31 October 2007
2008		
Social Security Benefit Fraud and Error	NIA 73/07-08	23 January 2008
Absenteeism in Northern Ireland Councils 2006-07	-	30 January 2008
Electronic Service Delivery within NI Government Departments	NIA 97/07-08	5 March 2008
Northern Ireland Tourist Board – Contract to Manage the Trading Activities of Rural Cottage Holidays Limited	NIA 113/07-08	28 March 2008
Hospitality Association of Northern Ireland: A Case Study in Financial Management and the Public Appointment Process	NIA 117/07-08	15 April 2008
Transforming Emergency Care in Northern Ireland	NIA 126/07-08	23 April 2008
Management of Sickness Absence in the Northern Ireland Civil Service	NIA 132/07-08	22 May 2008
The Exercise by Local Government Auditors of their Functions	-	12 June 2008
Transforming Land Registers: The LandWeb Project	NIA 168/07-08	18 June 2008
Warm Homes: Tackling Fuel Poverty	NIA 178/07-08	23 June 2008
Financial Auditing and Reporting: 2006-07	NIA 193/07-08	2 July 2008
General Report by the Comptroller and Auditor General		







information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

E-mail book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries 020 7219 3890

Fax orders 020 7219 3866

Email bookshop@parliament.uk

Internet bookshop.parliament.uk

TSO@Blackwell and other Accredited Agents

ISBN 978-0-337-09030-1



9 780337 090301