National Audit Office

Report

by the Comptroller
and Auditor General

Department for Education

Investigation into oversight of the Student Loans Company's governance, and management of its former chief executive

HC 948 SESSION 2017–2019 11 MAY 2018

Our vision is to help the nation spend wisely.

Our public audit perspective helps Parliament hold government to account and improve public services.

The National Audit Office scrutinises public spending for Parliament and is independent of government. The Comptroller and Auditor General (C&AG), Sir Amyas Morse KCB, is an Officer of the House of Commons and leads the NAO. The C&AG certifies the accounts of all government departments and many other public sector bodies. He has statutory authority to examine and report to Parliament on whether departments and the bodies they fund, nationally and locally, have used their resources efficiently, effectively, and with economy. The C&AG does this through a range of outputs including value-for-money reports on matters of public interest; investigations to establish the underlying facts in circumstances where concerns have been raised by others or observed through our wider work; landscape reviews to aid transparency; and good-practice guides. Our work ensures that those responsible for the use of public money are held to account and helps government to improve public services, leading to audited savings of £734 million in 2016.

National Audit Office

Department for Education

Investigation into oversight of the Student Loans Company's governance, and management of its former chief executive

Report by the Comptroller and Auditor General

Ordered by the House of Commons
to be printed on 9 May 2018

This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

8 May 2018

HC 948 | £10.00

Our investigation focuses on the Department for Education's oversight of the Student Loans Company in the period leading up to the dismissal of its chief executive officer in November 2017. It sets out: how the chief executive officer was appointed, managed and dismissed; the Department for Education's oversight of the Student Loans Company during his tenure; and actions planned by the Department to improve its oversight.

Investigations

We conduct investigations to establish the underlying facts in circumstances where concerns have been raised with us, or in response to intelligence that we have gathered through our wider work.

005688 05/18 NAO

Contents

The National Audit Office study team consisted of:
Mark Parrett and Sarah Perryman, with the assistance of Penny Hawkins, Natasha Pein, Matthew Turner and Hector Whitrow, under the direction of Simon Helps.

This report can be found on the National Audit Office website at www.nao.org.uk

For further information about the National Audit Office please contact:

National Audit Office
Press Office
157–197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7400

Enquiries: www.nao.org.uk/contact-us

Website: www.nao.org.uk

Twitter: @NAOorguk

What this investigation is about

1 The Student Loans Company (the Company) administers loans and grants to students at universities and colleges across the UK. It processes around 1.8 million applications a year, and has more than 8 million customers repaying or due to repay loans totalling over £100 billion.

2 The Company is funded primarily by grant-in-aid. The Company is a non-departmental public body, which until June 2016 was sponsored by the Department for Business, Innovation & Skills. From July 2016 the Company has been sponsored by the Department for Education (the Department). The Company is also registered with Companies House and is owned by four shareholders, with the Department owning 85% and the devolved administrations of Wales, Scotland and Northern Ireland each owning 5%.

3 The Student Loans Company appointed Mr Steve Lamey as its chief executive officer on 1 June 2016. Two members of Company staff made formal allegations about Mr Lamey to the Department and Company in May and July 2017. The Company suspended Mr Lamey in July 2017. The Department and Company commissioned two independent investigations into the allegations. These were conducted by the Government Internal Audit Agency and Sir Paul Jenkins KCB QC (Hon). A timeline of events is at **Figure 1** on pages 6 and 7.

4 Following internal processes, including a hearing panel and an appeal, the Company dismissed Mr Lamey, without compensation, on 7 November 2017 for gross misconduct in public office, including breach of four of the seven Nolan principles and failure to adhere to HM Treasury’s *Managing Public Money* guidance. Mr Lamey does not agree with the findings of either of the investigations, or with the disciplinary and appeal panels.

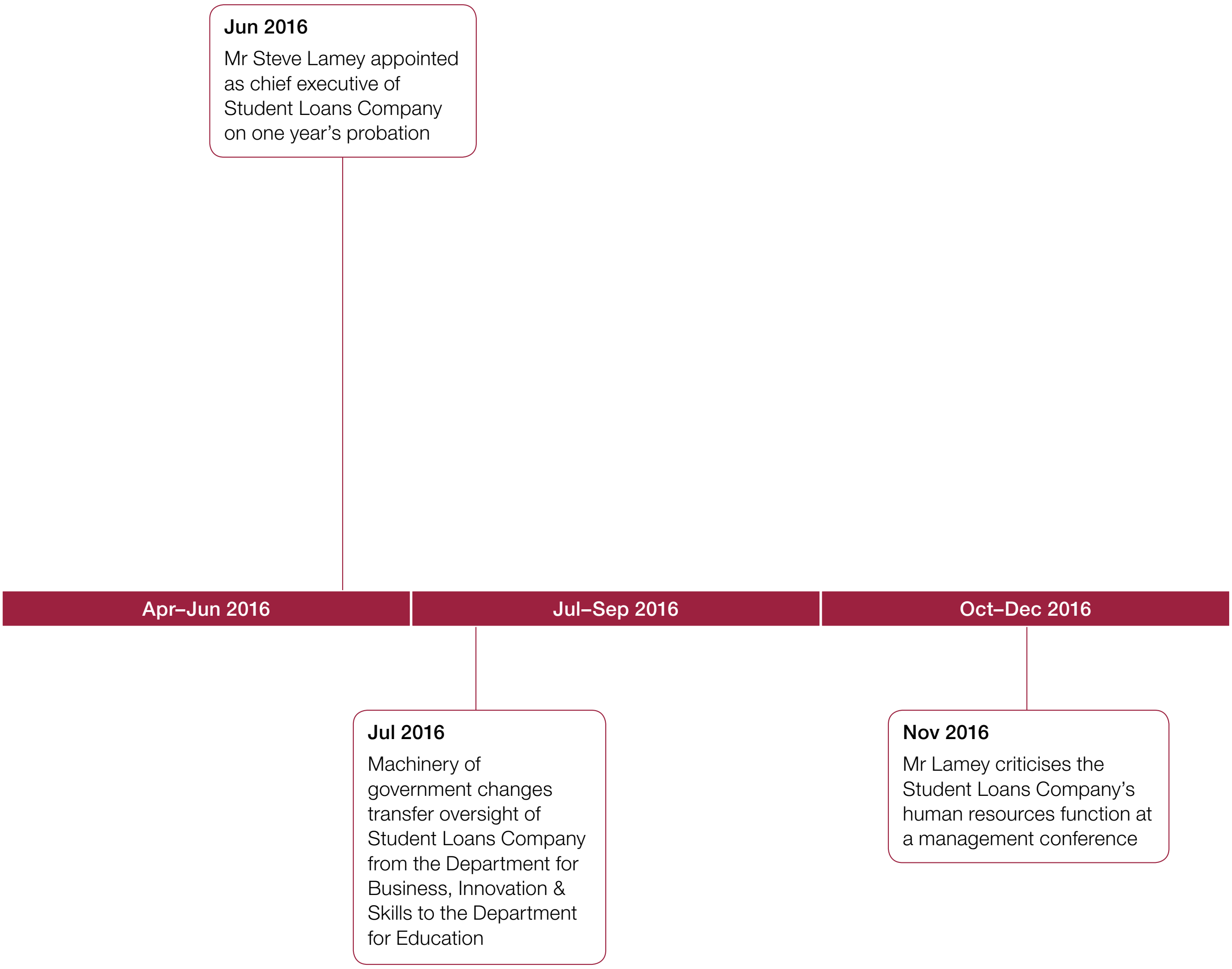
5 From summer 2017, the Department told us about the allegations made by whistleblowers and the actions being taken by both the Department and the Company. In the light of the two investigations, the conclusions of the Company’s disciplinary process, and the related parliamentary interest, we judged that there was sufficient concern that we needed to examine the Department’s oversight of the Company, and that it would be in the public interest to do so. This investigation describes the events surrounding Mr Lamey’s appointment and dismissal. It sets outs the Department’s role in oversight of the Company and how it responded to the concerns raised by the two Company staff. We have not re-investigated the allegations made by those staff. We have also not evaluated the original decision to dismiss Mr Lamey or the findings of the subsequent appeal.

6 We take the protection of whistleblowers seriously. We have therefore not included details that could identify them. In preparing our report we consulted the whistleblowers on the content and presentation of their involvement in advance of publication. We also agreed with the potential whistleblower the presentation and content of their account.

7 This report describes:

- the appointment, performance management and dismissal of Mr Lamey (Part One);
- the Department's oversight arrangements (Part Two); and
- the Department's plans to improve its oversight of the Company (Part Three).

Figure 1
Timeline of events in the Department for Education's oversight of the Student Loans Company



Source: National Audit Office analysis of the investigation reports of the Government Internal Audit Agency and Sir Paul Jenkins, and Department for Education and Student Loans Company documents

Jan–Mar 2017

Jan 2017
Appraisal meeting held. Mr Lamey's behaviour in the meeting is later found to amount to bullying

10 Feb 2017
Student Loans Company makes executive redundant without approvals

Mar 2017
Mr Lamey criticises Student Loans Company in front of key stakeholders at a conference

Apr–Jun 2017

Apr 2017
Mr Lamey restructures the executive leadership team leaving no qualified member responsible for finance

8 Apr 2017
Student Loans Company occupies a new building without a Cabinet Office approved lease

May 2017
Whistleblower 1 makes formal allegations to Department for Education

26 May 2017
Government Internal Audit Agency asked to investigate whistleblower 1's allegations by Student Loans Company and Department for Education

31 May 2017
End of Mr Lamey's probationary period

Jul–Sep 2017

Jul 2017
Whistleblower 2 makes formal allegations to the Student Loans Company's chair

11 Jul 2017
Mr Lamey suspended as chief executive and accounting officer

12 Jul 2017
Student Loans Company and the Department for Education engage Sir Paul Jenkins to investigate whistleblower 2's allegations

20 Sep 2017
Government Internal Audit Agency report completed

28 Sep 2017
Sir Paul Jenkins' report completed

Oct–Dec 2017

7 Nov 2017
Mr Lamey dismissed for gross misconduct following a disciplinary hearing and an appeal

Summary

Key findings

The appointment, performance management and dismissal of the chief executive officer

1 **The Department for Business, Innovation & Skills (BIS) had concerns about appointing Mr Lamey, which led to the Student Loans Company (the Company) appointing him with an extended probationary period.** The appointment panel identified only one appointable candidate, Mr Lamey. BIS had concerns about the absence of other suitable candidates to act as benchmarks. Having obtained and considered references from Mr Lamey's employment at HM Revenue & Customs, which he left in 2012, BIS officials initially recommended to ministers that the recruitment process should be re-run, a recommendation which the Cabinet Office supported. Following advice from the special adviser for appointments, and a meeting between Mr Lamey and the minister, BIS subsequently revised its advice to include an alternative option of appointing Mr Lamey with an extended probationary period, to partially mitigate the concerns it had identified. Ministers agreed that the Company could appoint Mr Lamey, subject to an extended probationary period of one year. The Company's board agreed Mr Lamey's appointment (paragraphs 1.2 to 1.8).

2 **Neither BIS nor the Department for Education (the Department) believed that the probationary arrangements would be an effective test of Mr Lamey's performance, and did not fully implement all recommended measures to support and oversee Mr Lamey.** The Company's chair agreed with BIS that he would assess Mr Lamey's performance monthly during the one-year probationary period. However:

- the chair informed BIS at the time that he had "significant reservations around the probation clause". In his view an extended probation clause did not set "the right context for the start of a relationship of trust between a chair and a chief executive officer";
- although the board was aware of the probationary period, the only person at the Company aware of BIS's concerns, and that the probationary period was extended as a result, was the chair. Mr Lamey had argued successfully that his extended probationary period should not be disclosed to anyone else at the Company;

- the chair told us he sought feedback informally from executives but they were not clear on the purpose of the feedback they were being asked to provide. Neither the chair nor the Department believed that this process would be effective in identifying concerns; and
- we found evidence that the Department was aware of three monthly monitoring meetings between the chair and Mr Lamey during the year. The chair told us that he had further monthly monitoring meetings with Mr Lamey, but could not provide written minutes, which were required by Mr Lamey's contract. The Department has not provided evidence that it was aware of further meetings taking place.

BIS suggested additional measures to ministers, such as identifying a non-executive director of the Company to work with the chair to oversee Mr Lamey's performance. BIS made the Company chair aware of these suggestions, but the Company did not implement all of them and the Department did not review the arrangements (paragraphs 1.10 to 1.14).

3 **Two Company employees formally made allegations about Mr Lamey in May and July 2017; and each reported being well supported by the Department, with each set of allegations resulting in a separate independent investigation.** The allegations included concerns about Mr Lamey's management and leadership style. The Department and Company chair undertook to treat both individuals as whistleblowers. The individuals told us that, once they had made the allegations formally, the Department contacted them within hours, and provided good support. The Department and Company jointly commissioned two separate investigations into the allegations. The Government Internal Audit Agency investigated the allegations made by the first whistleblower and Sir Paul Jenkins KCB QC (Hon) investigated the allegations made by the second (paragraphs 1.17 to 1.18).

4 **The Company dismissed Mr Lamey on 7 November 2017 for gross misconduct in public office.** In March 2017 the chair was positive about Mr Lamey's performance in his annual appraisal, concluding that he had "an excellent first 10 months". In October 2017 a disciplinary hearing found that Mr Lamey had breached: the Nolan principles of public life; *Managing Public Money* guidance; the Company's code of conduct and values; and provisions in the framework document setting out the terms of the relationship between the Department and the Company. The specific findings of the hearing included that Mr Lamey had failed to protect a potential whistleblower and had a management and leadership style which amounted to a failure in leadership. Mr Lamey appealed against the decision. The appeal upheld the initial decision to dismiss. The Company dismissed Mr Lamey on 7 November 2017, and the Department simultaneously removed his status as accounting officer (paragraphs 1.15 and 1.17 to 1.41).

On the Department's oversight

5 **There were many changes in the Company during 2016, but the Department did not consider whether its oversight arrangements were sufficient.** During 2016 oversight of the Company transferred from BIS, the Company appointed a new chief executive officer and replaced most of its non-executive directors. Mr Lamey, with the board's approval, also restructured the executive leadership team, reducing the executive leaders' attendance at board meetings and therefore their interaction with the Department's assessors. He stopped providing the board with a separate report from the executive director responsible for finance. The Department did not reassess the appropriateness or effectiveness of its oversight arrangements in response to these changes (paragraphs 2.14 to 2.15).

6 **Accountabilities, roles and responsibilities for the Department's oversight of the Company are not up to date and lack clarity.** No sponsoring department has updated the framework document, which sets out the terms of the relationship between them and the Company, since 2009. Officials from the Company and Department also told us they are not clear about the role of representatives from the Department on the board and other committees or the extent to which they should be observing, advising or intervening in the Company's business. We identified similar concerns in our overall review of government departments' oversight of arm's-length bodies in June 2016 (paragraphs 2.8 to 2.12).

On lessons learned

7 **The Department is reviewing the governance and structure of the Company, with the first phase to be completed by June 2018.** In phase one, the Department is working with UK Government Investments to examine how the current governance arrangements are operating, whether they work well, and whether they could be improved in the short to medium term. The Department has not yet set out the detailed scope of phase two, during which it intends to examine the Company's longer-term operating model. The Department is also reviewing its relationships with all of its arm's-length bodies, which it aims to complete by January 2019 (paragraphs 3.1 to 3.4).

Part One

The appointment and tenure of the chief executive officer

The appointment of Mr Lamey as chief executive officer

1.1 The Student Loans Company (the Company) chief executive officer is appointed by the Company's board with the agreement of the Secretary of State.

1.2 In 2015 the Company employed a firm of head-hunters to recruit a new chief executive officer. In March 2016, following interviews, an appointment panel, including the Company chair and representatives from the Department for Business, Innovation & Skills (BIS), identified Mr Lamey as the only appointable candidate.

1.3 The head-hunters obtained references from three individuals who worked with Mr Lamey while he was at HM Revenue & Customs (HMRC), where he worked until 2012. Mr Lamey's most recent employer declined to provide references. Mr Lamey was a self-employed consultant from May 2013. The head-hunters did not seek references from his clients.

1.4 In March 2016, BIS officials advised ministers that the references from HMRC raised questions about Mr Lamey's ability to build the right relationships, trust and rapport, particularly given the complex stakeholder relationships he would need to manage – one element of the person specification for the role. BIS advised ministers that, in the absence of a strong field of candidates against which to benchmark his performance, it would be too risky to appoint Mr Lamey. Officials recommended re-running the recruitment process.

1.5 In April 2016, the special adviser in BIS responsible for advising the Secretary of State on appointments questioned the fairness and accuracy of the HMRC references received as they were anonymised and, in her view, did not support the conclusion that Mr Lamey should not be appointed. She also raised concerns about the cost of re-running the recruitment process.

1.6 The special adviser showed BIS a copy of Mr Lamey's 2011-12 performance appraisal from HMRC, which stated that his achievements put him "in top performer territory". In relation to Mr Lamey's ability to build the right relationships, his HMRC appraisal gave examples of strong joint working with another department and commented positively on his leadership approach. BIS officials told ministers that the appraisal was "generally very strong", but quoted one significant negative comment from the appraisal regarding collaborative behaviours. The appraisal had additionally explained that this was in an internal setting and largely reflected Mr Lamey's frustration.

1.7 On 14 April 2016, Mr Lamey met the minister to discuss the role. Subsequently, BIS provided revised advice to ministers that either the Company could be asked to re-run the recruitment process, or it could appoint Mr Lamey permanently if he passed an extended period of probation. BIS also recommended additional safeguards (paragraph 1.10). The minister confirmed that he would like Mr Lamey to be appointed to the role if appropriate measures to handle the concerns identified were in place.

1.8 The Company board approved Mr Lamey's appointment on 27 April 2016. On 3 May 2016, the then Prime Minister approved Mr Lamey's appointment subject to satisfactory completion of an extended one-year probationary period. On 1 June 2016 the principal accounting officer at BIS wrote to Mr Lamey to confirm his appointment as accounting officer at the Company.

1.9 Mr Lamey's employment by the Company began on 1 June 2016. His objectives reflected the need to lead the Company through significant change. The job specification noted that the Company was midway through a programme of transformation to increase resilience, flexibility and efficiency. Also, that the Company had a very significant change portfolio to deliver, including reforms of the higher education student finance system and the sale of the student loan book.

Performance management arrangements

1.10 In their advice to ministers on 20 April 2016, officials from BIS advised that a one-year probationary period would partially mitigate their concerns about the appointment. They suggested four additional measures: an early meeting with ministers to discuss priorities; identifying a non-executive director of the Company to work with the chair to oversee Mr Lamey's performance; asking the chief executive officer of another BIS body to mentor Mr Lamey; and setting clear objectives for Mr Lamey that put equal weight on delivery and relationship-building. BIS shared these suggestions with the Company chair.

1.11 BIS and the Company implemented two of the four additional safeguards BIS suggested:

- Mr Lamey met with ministers shortly after his appointment to discuss priorities.
- Neither BIS nor the Company identified a non-executive director to support the Company's chair. The chair told us that the non-executive directors in post at the time were new to the Company and, in most cases, to the public sector and had insufficient experience of managing chief executive officers.
- The Department told us that a mentor for Mr Lamey was not identified because of the transfer of oversight of the Company from BIS.
- Mr Lamey's objectives did include measures to: build and improve the Company's health by providing strong leadership and continuing to enhance the cohesiveness of the executive leadership team; and build, maintain and enhance strong relationships with key stakeholders.

1.12 The Company chair accepted the recommendation for a one-year probationary period, and the Company included it, supported by monthly performance monitoring meetings, in Mr Lamey's contract. However, the chair told us that Mr Lamey had argued that the extension of his probationary period should not be disclosed to anyone else at the Company. When the board approved Mr Lamey's appointment it was aware of the one-year probationary period, but the Company chair was the only member who was aware of the concerns raised in his recruitment which led to this. The chair informed BIS in May 2016 that he had "significant reservations around the probation clause". Also, in his view, that an extended probation clause did not set "the right context for the start of a relationship of trust between a chair and a chief executive officer". The chair and Department also told us that they believe upwards feedback arrangements, in this case with staff providing feedback to the chair on the chief executive officer's performance, are ineffective.

1.13 BIS, and then the Department, therefore relied on the chair's monthly performance review meeting as the principal way of assessing Mr Lamey's performance. The chair told us that he held monthly meetings with Mr Lamey, apart from in February 2017 as he was ill. The meeting in November 2016 was cancelled. Mr Lamey's contract required these meetings to be minuted, however the Company and Department only have a written record of three monitoring meetings, held in July and October 2016 and January 2017. The chair could not provide written minutes of the other meetings. The Department has only provided evidence that it was aware of the three minuted meetings taking place. The meeting for March was superseded by the annual appraisal process.

1.14 The minutes of the three meetings record largely positive feedback about Mr Lamey's progress. Mr Lamey's contract said that the meetings were to assess: his performance against business indicators; his attendance; and compliance with the Company's code of conduct. The chair told us that he had consulted internal and external stakeholders informally as part of his reviews. He talked to members of the Company's executive team about Mr Lamey's performance, but they were not always aware that they were being asked for formal feedback and did not raise concerns, although many have since told us that they had them.

1.15 At the end of March 2017, Mr Lamey received a positive annual appraisal from the chair. The chair concluded that Mr Lamey had "an excellent first 10 months".

1.16 The Company neither extended nor confirmed conclusion of Mr Lamey's probationary period. In April 2017, the remuneration committee agreed that it was appropriate for Mr Lamey's probationary period to end at the due date of 31 May 2017. The chair therefore told the board in May 2017 that he would confirm Mr Lamey's permanent employment at the end of the probationary period. The first allegations about Mr Lamey, including concerns about his management and leadership style, were made to the Department formally in mid-May 2017 and notified to the chair on 24 May 2017, just after the May board meeting. The chair told us that he then advised Mr Lamey that, as a result of the allegations, he was not in a position to confirm that the probationary period had been concluded satisfactorily. The chair confirmed this to Mr Lamey by email on 23 June 2017.

How concerns were raised

1.17 In mid-May 2017 the Department's officials heard concerns about Mr Lamey and other members of the executive team from a member of the Company's staff. On 24 May 2017 an official from the Department told the Company chair about the staff member's concerns. The Department, with the Company, commissioned an investigation from the Government Internal Audit Agency (GIAA). In late May and early June GIAA interviewed the member of staff, provided the Department with details of the allegations and agreed terms of reference. The investigation then began on 15 June 2017. The GIAA investigated 12 allegations from the first whistleblower.

1.18 In early July 2017 the chair told the Department that further allegations about Mr Lamey had been made by a second whistleblower. The Department and the Company commissioned a second investigation, by Sir Paul Jenkins KCB QC (Hon), into these allegations. His investigation began on 20 July 2017. Sir Paul Jenkins investigated 57 allegations and points given in evidence, each made by one or more witnesses including the second whistleblower. Both investigations reported in September 2017. During July and August 2017, the Department's principal accounting officer made his own inquiries into Mr Lamey's behaviour. The Department and Company chair undertook to treat both individuals as whistleblowers. The individuals told us that, once they had made the allegations, the Department contacted them within hours, and provided good support.

Disciplinary action leading to Mr Lamey's dismissal

1.19 On 4 October 2017 the chair informed Mr Lamey of the grounds for the Company taking disciplinary action, in writing, and provided Mr Lamey with copies of the GIAA and Jenkins reports. In line with the Company's disciplinary procedure, a disciplinary hearing took place on 16 October 2017. The hearing was chaired by a member of the Company's board. The disciplinary panel considered five areas of concern from the GIAA report, and six areas of concern from Sir Paul Jenkins' report. The number of areas of concern does not directly relate to the number of allegations made, because the investigation reports and the disciplinary panel grouped a number of allegations together in reaching their conclusions and the investigations did not uphold all of the allegations. The note of the disciplinary hearing states that the chair of the panel could "…come to no other conclusion than to recommend to the [Company] that [Mr Lamey] should be dismissed as CEO of the [Company] for gross misconduct in public office".

1.20 Mr Lamey appealed against the decision. His appeal was heard by a different board member on 1 November 2017, supported by a director from HMRC's human resources function. The appeal panel agreed with the conclusions of the disciplinary hearing. The Company dismissed Mr Lamey from the chief executive officer position on 7 November 2017. On the same day, the Department's principal accounting officer wrote to Mr Lamey to remove his accounting officer status, stating that he would have probably done so even if Mr Lamey had not been dismissed. Mr Lamey does not agree with the findings of either of the investigations or with the disciplinary and appeal panels.

Findings of the investigations, the disciplinary proceedings and the appeal

1.21 The disciplinary panel found that Mr Lamey had breached: four of the seven Nolan principles of public life (integrity, objectivity, accountability and leadership); failed to carry out his role as the Company's accounting officer; and did not adhere to HM Treasury's *Managing Public Money* guidance, the Company's code of conduct, its values or its framework document. The appeal panel considered and reported on the areas of concern in upholding the disciplinary panel's decision, which were Mr Lamey's:

- failure to protect a potential whistleblower;
- approach to decision-making and procurement;
- leadership and management;
- language and tone in an appraisal meeting;
- criticism of the Company and colleagues; and
- failure to have a finance director on the executive leadership team.

Further, the appeal panel concluded that "with so many cases now evident, it appears as though a management catastrophe… was inevitable".

Failure to protect a potential whistleblower

1.22 We take the protection of potential whistleblowers seriously. We have therefore not included details that could identify them. In preparing our report we agreed with the potential whistleblower the presentation and content of their account.

1.23 There were concerns about the way in which Mr Lamey treated a potential whistleblower. The GIAA investigation found that, on the balance of probabilities, actions were taken to prevent them from raising their concerns. The GIAA reported that both Mr Lamey and another senior member of staff were warned that the individual may raise concerns, and that those concerns would be taken seriously and investigated. The GIAA investigation found that Mr Lamey and the senior member of staff also knew from advice that they received that the actions were not appropriate.

1.24 The disciplinary panel, based on the GIAA report, upheld concerns about how the potential whistleblower was treated. The appeal panel concluded that the actions taken were an extraordinary act, that Mr Lamey was aware of the individual's concerns and that he should have exercised greater care to protect a potential whistleblower.

Approach to decision-making and procurement

Lease on the Europa building

1.25 Concerns were raised about how the decision to lease a new building, the Europa building in Glasgow, was taken and whether the decision had been appropriately approved. GIAA concluded on the balance of probabilities that Mr Lamey provided an unrealistic timeframe for the acquisition of a new lease on the Europa building and that, as a result, procurement processes were not followed at an early stage. In addition, detailed financial comparisons were not undertaken and the finance team was not actively involved in the process to a level that would have been expected. Sir Paul Jenkins heard evidence from Mr Lamey that, up against a deadline and with serious risks from delay, he "went ahead without final completion of what he called the Government Property Unit 'paperwork'". Sir Paul Jenkins' report found nothing in the allegation that Mr Lamey pressed ahead with the acquisition of the Europa building without either proper needs and cost analysis or approvals. The GIAA report accepted that, overall, the building lease is good value for money.

1.26 The disciplinary panel concluded, based on the GIAA report, that Mr Lamey failed to obtain the required Cabinet Office approval for the lease.

Redundancy payment to an individual

1.27 Concerns were raised that Mr Lamey had made a member of the executive leadership team redundant without obtaining the necessary approvals from the Cabinet Office. The GIAA investigation found that, on the balance of probabilities, Mr Lamey failed to ensure that the correct financial processes were followed in making redundancies within the Company. The report stated that a settlement and confidentiality agreement was also signed, contrary to Cabinet Office requirements. The report stated that the chair of the remuneration committee confirmed that, contrary to Company policy, the redundancy had not been agreed through the remuneration committee and the appropriate approvals had not been requested. GIAA also found that the Department was not consulted about this redundancy, and necessary approvals from the Department and Cabinet Office were not sought or obtained.

1.28 Sir Paul Jenkins reported that nobody could tell him categorically that approval from the board or remuneration committee was needed for the specific package that was the subject of the allegation. He reported that there was insufficient evidence for him to conclude that this was a breach of the relevant standards.

1.29 While noting Sir Paul Jenkins' findings the disciplinary panel concluded, based on the GIAA findings, that required approvals for redundancy payments and settlement agreements were not obtained.

Procurement

1.30 Concerns were raised that the Company had let contracts without the required approvals. The GIAA concluded that as accounting officer, Mr Lamey was aware that the Company took shortcuts in some procurement exercises. It found that senior managers exerted pressure to deliver procurement quicker than was necessary to allow correct processes to be followed. The GIAA investigation found no evidence that procurement was influenced by personal relationships or for the personal gain of any Company employees.

1.31 The disciplinary panel concluded, based on the GIAA investigation, that procurement processes were circumvented, and that there were occasions when a "strong direction towards appointments of suppliers without appropriate competition has occurred".

Failure to meet chief executive officer accountability requirements

1.32 There were concerns about the way in which Mr Lamey discharged his chief executive officer accountability requirements. The disciplinary hearing concluded that, overall, Mr Lamey appeared to have adopted a 'risk-based' approach rather than a compliance-based approach necessary to his role as chief executive officer of this particular organisation. The report stated that he may have found the latter frustrating and a hindrance in his desire to force necessary change throughout the Company, but that failing to comply with guidance was not an option open to him or one he should have adopted.

1.33 The appeal panel found that:

- in the situations regarding redundancy and the building lease, Mr Lamey chose to take an autocratic approach that, in the event of any controversy, obstacle, or difficulty, would have left him, the Company and the relevant executive leadership team members unnecessarily exposed;
- there were several opportunities for Mr Lamey to mitigate risks simply by obtaining approval from a higher authority, such as the Department, not only protecting himself and the Company, but also, most importantly, the subordinates on whose advice he was too reliant;
- with respect to redundancy, Mr Lamey's evidence that "this was the first time the Company had done this" should have provoked and heightened the requirement for him to seek and obtain approval, and exercise compliance and diligence;
- while Mr Lamey asserted that being an arm's-length body meant that he had a level of independence from the Department, this does not excuse his actions. The panel concluded that referring to arm's-length body status as a defence is disingenuous as the Company is very clearly a publicly owned organisation;
- the Company therefore has to operate with the very highest levels of integrity. In two significant cases – one relating to a severance payment and one relating to a building lease – that integrity was compromised, for which the chief executive officer must take full responsibility; and
- Mr Lamey's approach was risk-based as opposed to compliance-based.

Leadership and management

1.34 Concerns were raised about Mr Lamey's leadership, his behaviour and the behaviour of some senior members of staff. The GIAA investigation found some unacceptable management practices, which it considered, on the balance of probabilities, supported some of the allegations of bullying, harassment and poor management behaviours. The GIAA reported that there was evidence of cultural issues within the Company at a senior management level. For example, that testimony alluded to individuals being fearful or penalised for challenging the decisions of senior executives. The GIAA considered that this was further demonstrated by the noticeable reluctance of a number of witnesses to provide detailed information and by two witnesses asking if they could talk to GIAA 'off the record'. Sir Paul Jenkins concluded that Mr Lamey's failure to control bad behaviours among the executive leadership team and some aspects of his treatment of executive leadership team members, which made them wary of speaking up or challenging him, showed poor leadership and was a breach of Nolan principle 7 (leadership).

1.35 The disciplinary panel used the evidence from the GIAA and Sir Paul Jenkins' reports of inappropriate behaviour in recommending Mr Lamey's dismissal.

Language and tone in an appraisal meeting

1.36 Concerns were raised about Mr Lamey's language and tone in an appraisal meeting. Sir Paul Jenkins concluded that Mr Lamey's behaviour during an appraisal meeting with a senior member of staff in January 2017 amounted to bullying. The individual reported the incident to the Company's human resources department at the time, but did not want to take their complaint further. To respect the individual's wishes, the relevant human resources official did not tell others in the Company or the Department about the incident. It came to the Department's attention through the investigations.

1.37 The disciplinary panel concluded, based on Sir Paul Jenkins' report, that Mr Lamey's language and tone not only breached the Company's code of conduct, but also Mr Lamey's legal obligation to treat staff in a manner consistent with his duty of trust and confidence. The appeal panel reported that, with respect to this incident, it does not doubt the findings of the investigations, however, given the strength of Mr Lamey's denial, it relied less on this incident in reaching its conclusions.

Criticism of the Company and colleagues

1.38 Concerns were raised that Mr Lamey knowingly made inaccurate and exaggerated criticisms of the Company and colleagues. Sir Paul Jenkins found that:

- Mr Lamey criticised the Company, including exaggerating how often customer calls were mishandled, in front of key stakeholders at a conference on 21 March 2017;
- Mr Lamey's criticism of human resources staff at a conference in November 2016 was demoralising to staff; and
- Mr Lamey repeatedly used various inaccurate and exaggerated narratives.

Sir Paul Jenkins found these criticisms amounted to a breach of Nolan principle 7 (leadership) and were unfair to many of the staff and so also constituted a breach of Nolan principle 3 (fairness).

1.39 The disciplinary panel concluded, based on Sir Paul Jenkins' findings, that Mr Lamey's criticisms of the Company and colleagues were unfair and amounted to a failure of leadership.

Absence of a finance director on the executive leadership team

1.40 Concerns were raised as to whether the member of the executive leadership team responsible for finance was suitably qualified for that role. Sir Paul Jenkins' report cited *Managing Public Money*, which states that the finance director of a public sector organisation should: have board status equivalent to other board members; report directly to the permanent head of the organisation; and be a member of the senior leadership team, the management board and the executive committee (and/or equivalent bodies). Mr Lamey's restructuring of the company's executive leadership team resulted, from April 2017, in no qualified executive director responsible for finance at executive leadership team level or reporting to the accounting officer.

1.41 The disciplinary panel concluded, based on Sir Paul Jenkins' report, that this was a breach by Mr Lamey of the framework agreement and of his accounting officer responsibilities.

Part Two

The Department for Education's oversight

2.1 In this part we look at:

- the main features of the system of oversight;
- formal governance documents;
- the Department for Education's (the Department's) assessment of risks to oversight; and
- the Department's awareness of decisions.

The Department's system of oversight

2.2 Officials represent the Department at the Student Loans Company (the Company) board and other meetings (**Figure 2**).

The Company's main governance arrangements

2.3 The Company's board is responsible for ensuring that there are effective corporate governance arrangements that set out how the Company is directed and controlled and which provide assurance on risk management and internal control. It is also responsible for ensuring that the Company complies with any statutory or administrative requirements for the use of public funds. The board is supported by two sub-committees:

- The **audit and risk committee,** chaired by a non-executive director, supports the board on matters relating to internal control and governance and associated assurance matters. The audit and risk committee's terms of reference are set out in the 2009 framework agreement. The committee is supported by an in-house internal audit service. The external audit is provided by KPMG.
- The **remuneration and nominations committee** (referred to as the remuneration committee) supports the board on all matters related to the appointment and the remuneration of executive directors, including the chief executive officer.

Figure 2
Student Loans Company forums from 2016 to 2017

Oversight forums

Whitehall Group
(until January 2017)

Membership: Company chair and chief executive, representatives from the Department for Education, devolved administrations and other government departments.

Role: reports to the Department for Education's executive board and shareholders group any risks or issues it has been unable to resolve that will have a significant impact on the Department.

Quarterly shareholders meeting
(from May 2017)

Membership: Company chair and an executive, representatives from the Department for Education, devolved administrations and other government departments as needed.

Role: reports to ministers on the Company's progress towards delivering on ministerial strategy and objectives.

Delivery Quad[1]

Membership: Company executive chair, the Company's policy and planning team, the Department for Education, representatives from the devolved administrations.

Role: reports to the Company's executive on the Company's capacity and ability to deliver its commission.

Student Loans Company (the Company)

Board

Membership: Non-executive directors and the chief executive. Department for Education representatives attend as assessors but are not board members.

Role: Overall responsibility for the strategy and operations of the Company. Appoints and manages the chief executive officer.

Remuneration and nominations committee[2]

Membership: Non-executive directors. Department for Education representatives attend as assessors but are not members.

Role: supports the board on the appointment and remuneration of members of the executive leadership team, including the chief executive officer.

Audit and risk committee

Membership: Non-executive directors. Department for Education representatives attend as assessors but are not members.

Role: supports the board on matters relating to internal control and governance and associated assurance matters.

Executive leadership team

Membership: executive directors from the Company.

Role: controlling and monitoring the Company's operational and financial management.

-- Reporting

Notes

1 Chaired by the Department for Education until February 2017. Since chaired by the Student Loans Company.

2 From early 2018 called the remuneration, people and organisational design committee.

Source: National Audit Office analysis of Department for Education and Student Loans Company documents

2.4 Five out of eight of the Company's non-executive directors joined the board in March 2016, just before Mr Lamey joined. Two more left in June 2016. The non-executive directors have a range of experience in business, but limited exposure to running public sector organisations. Board members and the Department agree that the balance of skills and public sector experience needs to be improved. Non-executive and executive directors told us that initially they had not understood public-sector governance methods and how these differ from the private sector.

The Department's links with the Company

2.5 There are several ways in which the Company maintains a relationship with the Department through formal attendance at meetings of various forums (Figure 2). The Department contributes to governance of the Company through assessors, who attend main board meetings on behalf of the government shareholders. The assessors may also attend meetings of sub-committees of the board.

2.6 The Department has a team that sponsors the Company on its behalf; the two senior members of the team are the Department's assessors of the Company. The assessors' role includes providing assurance on the effectiveness of corporate governance and whether there is any need to intervene. They also assist the board in understanding the minister's aims and objectives, advise on whether the minister needs to be consulted, and assure the minister and principal accounting officer about the operation of the services, performance and value for money. They advise on appointment of the chair, chief executive officer and non-executive directors, and assess the performance of the chair for the purpose of reappointment.

2.7 When the Company transferred from the Department for Business, Innovation & Skills (BIS) to the Department, the sponsor team transferred too, maintaining continuity. Two of the three senior individuals have since moved on. In interviews with us, Company executives were critical of the amount of contact that they had with the Department immediately after its transfer from BIS. The sponsor team now has monthly meetings with the Company chair, fortnightly meetings with the Company chief finance officer, and weekly discussions with the interim chief executive officer. The relationship now is described by both sides as good and improving. Company executives acknowledge that the sponsor team works hard to help them respond to constant and significant policy developments. Some Company executives found the Department slow to respond to queries and told us that the Department has not dedicated sufficient resources to the sponsorship role.

2.8 To support the assessors, the Department's finance, digital and human resources teams liaise with their counterparts in the Company. They offer support and technical advice. The finance team approves and monitors the Company's budgets. The digital team approves business cases for technological changes and helps to develop strategy. The human resources team supports the Company with its pay arrangements and attends the remuneration committee. Officials from the Company told us that they are not always clear about the role of representatives from the Department, for example, whether they are there to observe, advise or take decisions. The officials from the Department who normally act as assessors told us that they are clear about their role. One other Departmental director told us that they were not clear about their role and another, that although they were clear what they could do based on limited time available, their role was not necessarily understood by the Company.

Formal governance documents

2.9 In our review of government departments' oversight of arm's-length bodies in June 2016 we concluded that accountabilities, roles and responsibilities for arm's-length bodies are not always clear, risking confusion and tensions.[1] Given the varying degrees of independence that different arm's-length bodies have, it is essential that both departments and arm's-length bodies are clear about who is responsible for what. Framework documents between departments and arm's-length bodies should clearly set out the terms of the relationship and be updated regularly.

2.10 The Company, BIS and the Department have reviewed the framework agreement, which sets out the broad framework in which the Company should operate, but have not updated the document with the changes they identified are needed. The current agreement was drawn up in 2009 by the Department for Innovation, Universities & Skills. The Cabinet Office code of practice on governance says that framework agreements should be updated every three to five years, or when there is a change in senior leadership.[2]

2.11 Every year, the Department writes an annual performance and resource agreement letter to the Company. This confirms the priorities for the coming financial year and sets out the annual budget and performance measures and levels expected. The agreement for 2016-17 was not issued until 6 October 2016. The agreement for 2017-18 was not issued until December 2017. As an interim measure, the Department wrote to the Company at the start of each year to confirm the Company's budget for its core activities and board-approved change projects, but did not set out its priorities or performance measures. The view of the chair and a number of the Company directors is that the lack of an agreement was an unsatisfactory position for the governance of the Company.

1 Comptroller and Auditor General, *Departments' oversight of arm's-length bodies: a comparative study*, Session 2016-17, HC 507, National Audit Office, July 2016.

2 HM Treasury and Cabinet Office, *Corporate governance in central government departments: code of good practice*, April 2017.

2.12 When the Company appoints a new chief executive officer, the Department should write to them as accounting officer to formally delegate authority for expenditure and payments that contribute to the Department’s objectives. BIS wrote to the Company’s previous chief executive officer setting out these delegated tasks. It stated that all income and expenditure should be managed according to the guidance set out in *Managing Public Money*. It also stated that any breach of the conditions could result in disciplinary action. BIS did not send either the interim chief executive officer or Mr Lamey a delegation letter. The Department told us that the letter issued to the previous chief executive officer was “evergreen”, so there was no need to issue a similar letter to Mr Lamey, as the rules continued to apply. However, the letter to the previous chief executive officer stated that the delegation would “remain in force until further notice or such time as you personally cease to be the post holder”.

2.13 BIS sent Mr Lamey a letter on his appointment as accounting officer. It drew Mr Lamey’s attention to *Managing Public Money* (which refers to the Nolan principles of public life) and other guidance that describes the conduct required of senior civil servants and accounting officers.[3] The Department also provided training on the responsibilities of an accounting officer to Mr Lamey. Mr Lamey’s contract also stated that the Company’s code of conduct formed part of his terms and conditions of employment and reflected the Nolan principles of public life.

The Department’s management of risk

2.14 A number of changes to the Company occurred in 2016. The Department took on responsibility for the Company from BIS in July 2016. This occurred soon after the Company had appointed five new non-executive directors in March 2016 and Mr Lamey in June 2016. BIS had a large number of arm’s-length bodies, and a structure and governance to oversee them, which the Department did not have. The Department relied on the transfer of staff from the BIS sponsor team for expertise. The Department told us that it adopted a lighter-touch approach to overseeing the Company than BIS to reduce unnecessary bureaucracy. The Department did not review the risks arising from these changes, and did not consider whether its oversight arrangements were appropriate and sufficient.

3 HM Treasury, *Managing Public Money*, July 2013

2.15 The Department did not assess the impact on oversight of changes that Mr Lamey made to the Company's governance. During his tenure, Mr Lamey decided that having four to six executive team members in attendance at board meetings was unnecessary. From September 2016, with the board's approval, Mr Lamey reduced attendance of executives at the board to himself and the deputy chief executive officer, and other members of the executive by invitation only. In reporting to the board Mr Lamey also combined the finance report from the responsible executive director into his own chief executive officer's report. These measures reduced the amount of contact between executives and board members. The Department discussed the need to have a qualified person responsible for finance on the Company's executive leadership team with the Company. An assessor told Mr lamey on 11 May 2017 that the Company had not been in breach of the HM Treasury's *Managing Public Money* guidance to date and that, in order to maintain good practice during his redesign of the Company's executive team, Mr Lamey should engage the Department's chief finance officer to reassure him that the Company has the financial leadership needed for an organisation of its size and complexity.

Department's awareness of Mr Lamey's actions

2.16 The Department was aware of Mr Lamey's plans to make redundancies as part of his reorganisation. In September 2016 the Department and the Company revised the expenditure control framework, and what approvals the Company needed, including for redundancies, payment in lieu of notice and confidentiality clauses. Mr Lamey contributed to this review. At least one assessor has attended every board meeting following Mr Lamey's appointment. There was also an assessor at every audit and risk committee and remuneration committee meeting. Consequently, the Department was aware of Mr Lamey's plans to restructure the executive leadership team as early as September 2016, and was present for the discussion of the likely redundancies in January 2017. At its January meeting, the remuneration committee, with representatives from the Department present, agreed "subject to the necessary board approvals" the redundancy of up to three existing executives as part of Mr Lamey's redesign of the executive leadership team. The Department told us that it discussed severance options with Mr Lamey but did not check that the correct procedures had been followed.

2.17 The Department was also aware in January 2017 of Mr Lamey's plans to lease a new building. The Company anticipated the need for a new building and identified this in its risk report. In February 2017 Mr Lamey asked his team to find new premises ready to occupy by 1 May 2017. Mr Lamey informed the February 2017 board meeting, with the Department's assessors present, that the Company was working with the Government Property Unit to obtain additional accommodation. Later, the Company's head of estates told Mr Lamey that he needed Cabinet Office approval. Mr Lamey told him to press ahead. The Department did not check that the correct procedures had been followed.

2.18 Departmental officials were at the November 2016 conference when Mr Lamey was openly critical of the Company and repeatedly used various inaccurate and exaggerated narratives, including about specific individuals in the Company.

2.19 The Department attended the Company's audit and risk committee so the Department was aware of assurances provided by internal auditors and reports of matters arising from the work of the Company's external auditors. Neither auditor identified or raised concerns until after the whistleblowers had come forward. In March 2018, the Company's external auditors, KPMG, gave a qualified regularity opinion in the Company's accounts for 2016-17 where the Company had failed to obtain required approvals in two areas. In the first area, the Company did not obtain approvals for confidentiality clauses that deviated from the standard wording provided by the Cabinet Office, and for making a payment in lieu of notice within one settlement agreement. In the second area, the Company let two call-off contracts, which included digital and technology expenditure, for which it did not obtain the required approvals from the Cabinet Office or the Department. For other expenditure procured through the G-Cloud framework, KPMG could not obtain sufficient, appropriate audit evidence to demonstrate the regularity of the expenditure.

Part Three

Lessons learned

The executive

3.1 The Department for Education (the Department) is supporting the Student Loans Company (the Company) in making senior appointments to strengthen its executive leadership team. As well as identifying an interim chief finance officer, the Department identified an experienced interim chief executive officer, who took up post in November 2017, and an interim chief information officer. The Company has appointed a new chief finance officer and has started the process to recruit a permanent chief executive officer.

3.2 The acting and interim chief executive officers in place since Mr Lamey left told us that they have changed the way the executive team reports to the board, for example to improve finance and procurement procedures. Executives will attend board meetings more frequently. The chief finance officer's report to the board has been reinstated and will be separate from the chief executive officer's report.

Governance reviews

3.3 The Department is working with UK Government Investments to review its oversight and governance of the Company. In phase one the Department is considering how the current governance arrangements are operating, whether they work well, and whether they could be improved in the short to medium term. The Department is discussing the results of the review, and its recommendations, with the Company and devolved administrations, including plans to revise the framework document. Phase one should be completed by June 2018. The Department has not yet set terms of reference or a timescale for phase two, which is likely to examine the Company's operating model for the longer term.

3.4 The Department is also looking at how it works with its arm's-length bodies and aims to have clear lines of accountability between it and them. It told us that, for each body it sponsors, it is reviewing arrangements and aims to have a proportionate approach to assurance, based on each body's purpose and a mutual understanding of risk. The Department plans to complete this work by January 2019.

Updating policies

3.5 The Company is reviewing its policies and structures and is making changes to improve its governance and oversight. The chair of the remuneration committee told us that the committee's terms of reference were not robust enough to prevent individuals from avoiding seeking proper approvals, for example for agreements on termination of employment. The Company agreed new terms of reference for the remuneration committee in February 2018. They now explicitly state that, in future, the committee will approve the detailed terms of every executive's termination agreement before they are discussed or agreed with the executive concerned. The remuneration committee also plans to review the Company's human resources policies, including its policy for whistleblowing.

Appendix One

Our investigative approach

Scope

1 Our investigation focuses on the Department for Education's (the Department's) oversight of the Student Loans Company (the Company). It does not reinvestigate the allegations of the two whistleblowers. It sets out the facts about the Department's response to the allegations by the whistleblowers. It does not conclude on the correctness of the Government Internal Audit Agency's or Sir Paul Jenkins' investigations, nor the correctness of the decisions of the disciplinary and appeals panels. Our investigation begins with the recruitment of Mr Lamey in 2016, and finishes in mid-April 2018.

Methods

2 In examining these issues, we drew on a variety of evidence sources.

3 We conducted semi-structured interviews with staff and non-executive directors from the Company and with staff from the Department and reviewed internal documents to establish the systems of oversight and governance in place, what happened following the whistleblowers' allegations, and the action taken by the Department once the allegations had been made.

4 We conducted semi-structured interviews with both whistleblowers and the former chief executive officer.

5 We conducted semi-structured interviews with Sir Paul Jenkins and with staff from the Government Internal Audit Agency concerning the conduct of a findings from their investigations.

6 We reviewed government documents of current practice in oversight of arm's-length bodies. We also reviewed a number of documents from the Department and the Company including:

- internal management documents, briefings and meeting minutes concerning the oversight and governance of the Student Loans Company;
- internal documents including briefings, objectives, appraisals and records of meetings concerning the appointment and performance of Mr Lamey;
- internal documents setting out the changes to the governance of the Student Loans Company and the reviews being undertaken by the Department;
- the two investigation reports, including appendices containing the underlying evidence, commissioned by the Company and the Department;
- the papers setting out the findings of the disciplinary and appeal panels, and available transcripts;
- board papers and minutes;
- minutes and papers from the Company's remuneration committee and audit and risk committee;
- whistleblowing and disciplinary policies;
- correspondence between the whistleblowers, the Company, the Department and others; and
- the Department and the Company's annual report and accounts.

This report has been printed on Evolution Digital Satin and contains material sourced from responsibly managed and sustainable forests certified in accordance with the FSC (Forest Stewardship Council).

The wood pulp is totally recyclable and acid-free. Our printers also have full ISO 14001 environmental accreditation, which ensures that they have effective procedures in place to manage waste and practices that may affect the environment.

National Audit Office

Design and Production by NAO External Relations
DP Ref: 005688-001

£10.00

ISBN 978-1-78604-189-0

9 781786 041890