



**Northern Ireland
Assembly**

**PUBLIC ACCOUNTS
COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**NIAO Report: 'DETI: The Bioscience
and Technology Institute'**

18 January 2012

NORTHERN IRELAND ASSEMBLY

PUBLIC ACCOUNTS COMMITTEE

NIAO Report: ‘DETI: The Bioscience and Technology Institute’

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Members present for all or part of the proceedings:

Mr Paul Maskey (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Sydney Anderson
Mr Michael Copeland
Mr John Dallat
Mr Alex Easton
Mr Paul Girvan
Ms Jennifer McCann
Mr Mitchel McLaughlin

Witnesses:

Mr Trevor Cooper)	Department of Enterprise, Trade and Investment
Mr David Sterling)	
Mr Mel Chittock)	Invest NI
Mr Alastair Hamilton)	

Also in attendance:

Mr Kieran Donnelly)	Comptroller and Auditor General
Ms Fiona Hamill)	Treasury Officer of Accounts

The Chairperson:

Agenda item 4 is the evidence session on the Audit Office report, ‘DETI: The Bioscience and Technology Institute’. Does any member wish to express an interest in the matter?

I welcome Mr David Sterling, accounting officer for the Department of Enterprise, Trade and Investment (DETI), who is here to respond to the Committee. Members, you will be aware that the Department has provided some more information, which you have in front of you. That is most irregular for the Committee.

Mr Sterling, perhaps you could introduce your colleagues and then explain why we have this additional information.

Mr David Sterling (Department of Enterprise, Trade and Investment):

Thank you, Chair. Joining me today is Mr Alastair Hamilton, chief executive of Invest Northern Ireland; Mr Mel Chittock, executive director of finance and internal operations in Invest NI; and Mr Trevor Cooper, head of finance in DETI.

I regret the way in which the additional information had to be brought to the Committee. It was a document that we and the Audit Office had seen, but I suspect that we had not realised that it might be germane to some of today's discussions. I apologise for the late notification of the information. It only became apparent in the last day or so that it was a matter of interest.

The Chairperson:

OK. I take you to the back page of that information, which relates to informal conversations with the PSNI. However, with regard to the second paragraph, which relates to the finder's fee, are there minutes of the discussions between yourselves, the Department, the PSNI and whoever else was involved?

Mr Sterling:

The significance of the document that we are bringing to your attention is that it indicates that there had been some discussion with the police in 2004 about the double claiming of travel claims. I think that that is correct.

Mr Trevor Cooper (Department of Enterprise, Trade and Investment):

Yes.

Mr Sterling:

Neither ourselves nor the Audit Office had been clear, up to this point, that the issue of the travel claims had been brought to the attention of the PSNI. That is the only reason why we brought the document to the Committee's attention today.

The Chairperson:

The second paragraph of the e-mail that the Committee has just seen relates to the finder's fee. That is why I am saying that it is very irregular for this to happen to the Committee. Even though some reports were done after 2004, I note that the letter was written in 2005. There were reports after that — right up to 2010. Are there minutes of those meetings to say what discussions took place with the PSNI and the results of those discussions?

Mr Sterling:

Yes, there are minutes of the three meetings that took place between the company inspectors, Invest NI and the Department. I think that I am right in saying that minutes of those meetings were produced in DETI or Invest NI. PricewaterhouseCoopers (PwC) said that it has a note of its meeting referred to in the e-mail, and it is prepared to provide us with that if the Committee requests it.

Mr Cooper:

We will ask for that information if the Committee requests it.

The Chairperson:

We are requesting it. I will ask members and, hopefully, we will agree at the end of the meeting to request that information. Is the finder's fee mentioned in the PwC minutes?

Mr Cooper:

PwC has confirmed that that is the case.

The Chairperson:

It has confirmed that with you. We look forward to seeing that report.

Mr Copeland:

My question is related but slightly askance. The responsibility to pursue a prosecution does not

reside with the police. The police's responsibility is to gather the evidence and prepare a file. That file may then be forwarded to the Public Prosecution Service with or without a recommendation. For me to have any confidence in this, I would need to know what the police were told, who was told and the official view that came back. Is what you have just said evidence, or does it indicate that a paper trail exists about what was communicated to the police? What was asked of the police, what was the opinion that they subsequently gave and what was the rank of the person who was spoken to?

Mr Sterling:

We have minutes that indicate the rank of the police officers who were at each of the three meetings, so we know who they were. The notes of those meetings give an overview of the discussions that took place. However, the minutes do not record everything that was said or every document that was discussed. We are working on the basis that, in a matter that could provide evidence of criminal intent, our responsibility is such that the company inspectors would bring that to the attention of the PSNI. The PSNI would then make a judgement on whether there was sufficient evidence for them to make a case to the Public Prosecution Service. In that regard, they are looking to be satisfied that there is something that would be beyond reasonable doubt or, in other words, would provide 99% certainty that a successful case could be mounted.

Mr Copeland:

There are three tests, and one of those is the public interest. We can come back to that later, Chairperson.

The Chairperson:

I appreciate that. You have told us that the finder's fee is mentioned in some of the minutes. You have the minutes to prove that. That is something that we would be looking for. Anything else, we can clarify with you in writing after today's session.

I will start by stating the very obvious. The report on the Bioscience and Technology Institute (BTI) makes for very unhappy reading. We can all agree with that. It catalogues a string of poor judgements, a failure by the funding bodies to apply many of their own guidelines and a disregard for key lessons from previous cases that the old Department had dealt with. What is your view of the way in which this case was handled by your Department and its agencies? Many of us have lobbied different Departments and arm's-length bodies to get investment into our own

communities, areas and constituencies. Sometimes, you can hit your head off a brick wall in trying to get investment in, because there are that many obstacles to climb. In this particular case, having looked through the Audit Office report, it seems to me that a lot of obstacles were there but were broken or put aside and the project was pushed on with. That is not right. Maybe you can give us some explanation of all that.

Mr Sterling:

Thank you, Chair. I welcome the opportunity to answer the Committee's questions on the reasons for the very regrettable failure of this project, which led to the loss of £2.2 million of taxpayers' money. For the record, I am happy to offer an apology on the part of the Department for any failings on its part that gave rise to that. We have already introduced many improvements to our governance arrangements since the event occurred. I am confident that the risk of this happening now is extremely low. I am happy to go through the changes and improvements that have been put in place. I am not sure whether you want to pick up on that now or later, but, certainly, the key point is that lessons have been learnt. We accept all the recommendations that the Comptroller and Auditor General has made, and will take careful account of any further suggestions that the Committee may wish to make.

I will pause there. I am not sure whether you want me to go into some more detail about what we have done since then.

The Chairperson:

I recognise the fact that you and Mr Hamilton are recent appointees to the Department and Invest NI, about which there are obviously serious issues. Government bodies have told us before that they have learnt lessons from the past. You just have to look at the DeLorean case, for example. Lessons were supposed to have been learnt prior to this. Those lessons were not adhered to by the Department.

Mr Sterling:

The material events in this case occurred between 2000 and 2002-03. Since then, we have introduced new appraisal arrangements. New guidance was produced in 2003, and that was updated in 2004 and 2007. Since 2005, we have been doing test drilling of appraisals and post-project evaluations. That test drilling is overseen by our internal audit service. We have new delegations internally within the Department, which came into effect in January 2005. In October

2005, we introduced a new casework process within the Department for projects of more than £0.5 million in value. In July 2010, following the report of the independent review of economic policy (IREP), which was led by Richard Barnett, we introduced a new DETI casework committee. That casework committee was put in place with the agreement of the Department of Finance and Personnel, ourselves and Invest NI. It has provided a more rigorous approach to dealing with projects of this nature. Our monitoring is also much more rigorous. When a project comes along and goes through casework, project-specific monitoring arrangements will be agreed and put in place. However, on a generic basis, our internal audit service will review examples of cases to ensure that those arrangements are being adhered to.

We also brought in new guidance in 2005 to deal with the issue of multiple-funded projects. One of the issues with this project was the fact that there were four public sector funders. We now have clear arrangements in place so that, if multiple funding is an issue, one person or one body is appointed as the lead funder. Memorandums of understanding need to be agreed with all the other funders, and a much more coherent approach is taken to the management of a project that has several funders. Our internal audit service regularly reviews compliance with approval conditions, monitoring arrangements and grant payments.

We have a biannual quarterly assurance process in the Department and all four NDPBs, whereby all business heads are required, twice a year, to provide assurances that governance arrangements are operating correctly and to flag up any governance weaknesses. We have an accountability and casework branch that is, in a sense, the Department's internal policing agent and ensures that all the arrangements are co-ordinated and working well.

Risk management is also much more ingrained in the Department. Operation of our risk management procedures is overseen by our risk management committee and departmental board. We also have a new financial procedures manual that was issued in 2008.

All those things have been put in place since the events of this project, and I am confident that they provide a much sounder form of governance. We have learnt many lessons from this, one of which is that we do not want to strangle ourselves with governance. We need to be clear that, at times, risks still need to be taken. The key thing is that risk needs to be better managed than it was with this project. We now have arrangements in place to allow that to happen.

The Chairperson:

I do not think that the Committee would ever want to pile on more bureaucracy, but you used the word “strangling”. I think that, in this case, the rope was thrown out the window; that is a different matter altogether.

You say that lessons have been learnt between then and now. What lessons were learnt from the DeLorean case? Did the Department take those lessons on board prior to this case?

Mr Sterling:

The DeLorean report came out — I guess — in the early 1980s. I am not sure what —

The Chairperson:

My point is that people were told then that government had learned from that mistake. Government obviously did not learn from that mistake. How can you give assurances that the mistakes that have been made since then will never happen again?

Mr Sterling:

I am not familiar with all that happened before 2005, when a lot of these new arrangements were put in place. However, I am satisfied that the changes that we have introduced since then have created a much stronger framework of governance. Indeed, at the risk of being contradicted, I think that the Comptroller and Auditor General has indicated in the past that the Department has made considerable strides in this area. The Department of Finance and Personnel has also commended us on the strength of our governance on some issues. Lessons may not have been learnt as well as they should have been 10 or 20 years ago, but the lessons that have been learnt in recent years have been ingrained.

The Chairperson:

As I said, you and Mr Hamilton are relatively new appointees. Who were your predecessors in both organisations from 1998?

Mr Sterling:

Are you talking about the permanent secretaries in DETI?

The Chairperson:

And in the Industrial Development Board (IDB) and Invest NI.

Mr Sterling:

Gerry Loughran, who is now Sir Gerry Loughran, was permanent secretary in DETI — or the Department of Economic Development as it was then — from 1994 until November 2000. Bruce Robinson, who is now Sir Bruce Robinson, was permanent secretary from November 2000 until December 2005. Stephen Quinn was permanent secretary from January 2006 until October 2009. I was appointed in October 2009.

The Chairperson:

Mr Hamilton, will you tell us who your predecessors were for the same period?

Mr Alastair Hamilton (Invest NI):

Bruce Robinson, now Sir Bruce Robinson, was the head of IDB up until October 2001. Leslie Ross then became acting chief executive of Invest NI in shadow format until the organisation was fully formed. Leslie Morrison then became permanent chief executive of Invest NI in April 2002, and I replaced him in April 2009.

The Chairperson:

The reason I ask that is to get a list of those names, because a lot of those people were involved in this case. At least, we have the names to attach to some of the questions. Lesson five of the report states:

“it is clear that both the BTI Board and the funding bodies placed a disproportionate amount of trust in Teresa Townsley”.
Why did Invest NI and the Department allow that to happen?

Mr Sterling:

Again, not having been around at the time, I have to make some assumptions here. Teresa Townsley was a chartered accountant, and the report records the various public appointments that she held. She was also a member of the senate and honorary treasurer of Queen’s University, Belfast. Therefore, I assume that a lot of reliance was placed on her because of her standing in the business community and in a number of public bodies.

The Chairperson:

Do you think that it was a cosy relationship that she was on so many bodies?

Mr Sterling:

I do not think I am qualified to comment on that.

The Chairperson:

Do you think that that is good practice?

Mr Sterling:

No. We are all agreed that one of the lessons is that there should be no over-reliance on one person. A corollary of that is that, regardless of whether someone is a director of a public body or private sector body, all best practice corporate governance guidance makes it clear that directors have an individual and collective responsibility for governance within a body. Therefore, I suppose there are two lessons there. On the one hand, if we are providing funds or grants to a body, there is an onus on us to make sure that there are sound governance arrangements in place, but, equally, there is an onus on members of boards to make sure that they discharge their responsibilities as directors in accordance with all relevant guidance.

The Chairperson:

So, are you saying that there are now controls between DETI and Invest NI that would not allow that procedure to happen again?

Mr Sterling:

It certainly should not happen. I will add one slight qualification to that —

The Chairperson:

What controls have you put in place to ensure that it will not happen again?

Mr Sterling:

I will turn to Alastair, given that he has a more direct relationship with the bodies.

Mr A Hamilton:

Once we get into the detail of this case, we will see that conditions were put into the letter of

offer, and those were not met as funding was released. That is the issue. We will answer the questions, and we will try to address the questions that, no doubt, the Committee will have about why those conditions were not met and the controls that were in there around the board and the subcommittees that should have been operational in this matter. Those control measures are in place to ensure that there is a fully functioning and capable board in organisations into which we put funding. However, having said that, we cannot be completely responsible for the activities of private sector organisations. Therefore, we monitor and make sure that the right people are there, but we cannot control or manage boards because then we get into shadow director status, and that brings challenges with it.

I am conscious that the Committee will base its views on the evidence given today and make recommendations going forward. However, while I wholly admit and acknowledge that there was an over-reliance on one individual, which led and contributed significantly to this case, I will put a word of caution out that there are a significant number of small, start-up businesses in Northern Ireland that are functioning well and properly today and are very reliant on one individual, such as an innovator, a designer or someone who has the idea. In the early start-up stages, that individual will take those businesses and drive them forward. Therefore, the challenge is on us not to put a restriction in place that says that you cannot support a body that has only one individual in it but to actually get below the surface of this recommendation and say that we need to be comfortable that that individual is capable of running that organisation in the early stages and, if not, we should make recommendations on things like shadow directors or non-executive directors on to a board to help and assist them.

Mr Copeland:

I just want to check something. During the time frame you are talking about, was there are a board of directors?

Mr A Hamilton:

There was a board of directors for BTI.

Mr Copeland:

And the corporate responsibility, no matter who was doing what, resided with the board of directors?

Mr A Hamilton:

Yes.

Mr McLaughlin:

On a supplementary point, in this particular case, and we should focus on this particular case, we are talking about public money, and the letters of offer very clearly carried conditions that were required to be met before the money could be drawn down. Are we agreed on that?

Mr A Hamilton:

Yes.

The Chairperson:

If you look at paragraphs 6.15 to 6.18, you will see the catalogue of weaknesses in BTI's handling of conflicts of interest. The example in figure 6.2 is of particular concern. MTF Chartered Accountants appears to have had an agreement with IDB whereby a sum of around £70,000 would be paid for getting BTI off the ground. Can you tell us why that was not tendered?

Mr Sterling:

I cannot, Chair. We have had the benefit of seeing the inspectors' report. There is a lack of clarity as to why that was not tendered. What I can say is that such an arrangement would not be put in place now. If there was to be any provision for this type of assistance, it would adhere to public procurement guidance.

The Chairperson:

You cannot tell us why, but can you tell us who within IDB agreed the arrangements with MTF?

Mr Mel Chittock (Invest NI):

Chairman, perhaps I can provide some detail. I did a file review on this particular point for the Audit Office and saw no evidence whatsoever in the IDB files that an arrangement existed. There were minutes —

The Chairperson:

There was no evidence in the files?

Mr Chittock:

There was no evidence that there was a formal arrangement in place for the appointment of MTF by IDB. The appointment was made by the biosciences institute and the contract was between the biosciences institute and MTF.

The Chairperson:

Who paid for it? Who paid the £70,000?

Mr Chittock:

BTI paid the £70,000. IDB did not.

The Chairperson:

At the end of the day, it still was not tendered. This was a project that was going through your organisation. There was a formal agreement with IDB. Is that what you are saying?

Mr Chittock:

No. There was no agreement with IDB on the appointment of MTF.

The Chairperson:

There was nothing whatsoever? There is no correspondence within your files to state that that was a conversation? I take it that that would have been a very important piece of work going through at that stage.

Mr Chittock:

That is correct.

The Chairperson:

But there is still nothing in your files?

Mr Chittock:

There was no evidence that IDB was involved in the appointment process. The appointment was agreed by the BTI board. I have seen BTI board minutes showing that that arrangement was made. The arrangements were made between BTI and MTF.

The Chairperson:

A number of people want in on this particular question. I will take John, Paul and then Mitchel.

Mr Dallat:

I do not want to sound flippant, but given the way things are going today, I wonder whether Mr Sterling or Mr Hamilton are aware that, as far back as the 13th century, King John had a triple lock on his chest of gold. From what I am hearing so far, there was nothing to prevent departmental money going anywhere. Is that what we are being told?

Mr Sterling:

No, I do not think so.

Mr Dallat:

I am sorry, but Mr Chittock has just told us that.

Mr Sterling:

The one point that we would not dispute is that one of the conditions of the funding that went to BTI was that any procurement by BTI should be in accord with public procurement guidance. In this case, it appears that there was no competitive tendering.

Mr Dallat:

That is better.

Mr Girvan:

I appreciate the information that we have heard in relation to the payment. You said that it was not paid by the board, but by BTI. My understanding is that BTI received its funding from a number of public sources as well as one private contributor. On that basis, I take it that all the money, irrespective of who paid the cheque, had some accountability to the public purse and should, therefore, have been dealt with on that basis. I appreciate that there was emphasis on procedure and who paid for it. The fact is that it was still paid for with public money. I just wanted to highlight that.

Mr McLaughlin:

I want to establish the position. From their very inception, BTI, the IDB and, later, Invest had observer status at the board meetings. There have been references to minutes or an examination of files that disclosed information. Does that establish that Invest and, before that, the IDB were exercising their entitlement to be present as observers at the board meetings that discussed those issues?

Mr A Hamilton:

We exercised that right. There were some meetings that the observer did not attend, but it is very clear that that observer status did not give us the information that was required by substitute of monitoring, which we now do separately from that, or that in some cases, when that information was gathered, it was not acted on. The observer status was delivered. The representative from, initially, the IDB and then Invest NI did attend some of the meetings, but either the content of what was discussed at those meetings was not sufficient to give us the information or, if information was gathered, it was not acted on.

Mr McLaughlin:

That is from your own appointed representative?

Mr A Hamilton:

Yes.

Mr McLaughlin:

So when they were talking about board decisions that included, in some circumstances, stepping outside the conditions of the grant support and in other instances, as we have just been discussing, the awarding of contracts without going through the normal procurement processes, your observer did not raise that as a concern?

Mr A Hamilton:

It is very clear from the interviews that took place on all of that that there were a lot of things decided outside of board meetings. The weakness in that observer position, which, for a lot of reasons, we no longer do, including some of the reasons in this case, is that it will not give you access to the information that you need because it is very clear that people were making decisions outside of board meetings.

Mr McLaughlin:

There is a particular reference to Mel's information to this Committee just now. Was an IDB representative present? The timeline would indicate that it would have been an IDB representative at that time. Was the observer there or not?

Mr Chittock:

In relation to the award of a contract to MTF?

Mr McLaughlin:

Yes.

Mr Chittock:

I cannot recall with certainty, but I do not think that the observer was present at that meeting. I would need to confirm that.

Mr McLaughlin:

We might come across that issue as we proceed. Is it possible to produce information for us on the extent of your oversight collectively — that is, the exercise of the observer status? It was established for a purpose. I would be interested to know how regularly you applied that, because that should speak to the attention to detail in managing that process and dealing with any issues of governance or conflicts of interest that may arise. Can that be produced?

Mr A Hamilton:

I would be happy to produce that. I do not have it here at the moment, but I can tell you the observer who attended and the agenda of the meetings that he attended.

The Chairperson:

I cannot understand why you would not have that information with you today if you are going through the case file. I think that that it is very important if the observer was there and that was reported back to the IDB or to DETI. If it was not, there is another failure somewhere along the line. That timeline will prove an awful lot to the Committee.

Mr Copeland:

In my experience of attending directors' meetings, people get a notification of the meeting and an accompanying agenda. The agenda generally follows a set pattern, and the minutes will be in there somewhere. Were there no red flags and lights flashing on your dashboard all over the place suggesting that something was not in accordance with normal business procedures in the way in which this organisation — for want of a better word — was being run? Did you receive a summons to a meeting, or advance notice of a meeting, together with a proposed agenda?

Mr Sterling:

The company inspectors' report and the Audit Office report reflect the fact that that was one of the many weaknesses in the governance of BTI. Minutes were either not kept for a period of time or were poorly prepared. There is also evidence that, at times, misleading information was given to the funders. Those are matters of record in the inspectors' report.

Mr Copeland:

What I am asking you is, if you have the right to be an observer, present at a meeting of the board of directors, and it is being carried on in the way in which you are saying, would it not have been flagged up at an earlier stage that something was wrong, and it needed to be looked at? A period of 21 months without minutes is not an oversight. Anyone with any professional capability at all would be sitting there knowing that he or she had a corporate responsibility, in the sure and certain knowledge that naivety, or a claim of naivety, would not protect him or her from the corporate responsibility of being a member of that board of directors. If I had been one of them, I would have been putting a lot of clear blue water between me and the whole operation at the earliest possible date. In my view, someone within your organisations should have known that something was not right.

Mr Sterling:

We accept that there was a failing there.

The Chairperson:

Do you know who the observer was?

Mr Sterling:

We do.

The Chairperson:

What level was he or she?

Mr Sterling:

At the time, it would have been grade 7.

The Chairperson:

To whom would that person have reported the information after attending the meeting?

Mr Sterling:

He or she would have reported to a grade 5.

The Chairperson:

Were there no notes? Were notes transferred from the grade 7 to the grade 5?

Mr Chittock:

There are documents on file of board minutes and discussions held, but they do not provide an insight into any of the background behind the notes.

The Chairperson:

Was there nothing about the £70,000 in that conversation?

Mr Chittock:

I could see no evidence of that £70,000 having been discussed in the IDB. I did see a record of it being discussed by the BTI board. I can only conclude that there was no arrangement in place. There is no evidence of an arrangement in place whereby the IDB selected or approved the payments.

The Chairperson:

I will move on to Teresa Townsley, who at that time was a member of two departmental boards — the Local Enterprise Development Unit (LEDU) and the Health and Safety Agency. I touched on this earlier. Do you think that that was a blatant example of cronyism?

Mr Sterling:

I do not think so. I do not know, Chair. All I can say is that, nowadays, all public appointments must be done in accordance with the guidance of the Commissioner for Public Appointments. It is clear that we now have in place processes that ensure that everybody who comes forward for public appointment will be questioned on their suitability at interview. They will be tested on any potential real or actual conflicts of interest. On the basis of advice from the appointment panels, which will always include an independent person, Ministers will then decide who is most suitable to be appointed to a public body.

The Chairperson:

I will throw the meeting open to other members who will have their own round of questions.

Mr Copeland:

Thank you, Chair, for your assistance thus far. Mr Sterling, paragraph 2.2 tells us that BTI's business plan fell far short of the standard required under the IDB's own guidelines. Can you give a view as to why it was accepted for appraisal in those circumstances?

Mr Sterling:

Again, I rely on the evidence in the company inspectors' report and the Audit Office report. I cannot entirely explain why a business case that, in a sense, was deficient was accepted. However, we need to recognise that, at the time, the initiative or project was seen as having considerable potential. Despite all the failures and failings that we have seen, we need to cast our minds back to that time. We had an initiative that had the support of two physicians who had worldwide reputations for excellence. Vision 2010 — the economic development strategy that had been published around that time — identified that Northern Ireland could and should exploit the bioscience sector. There was interest from the US and elsewhere in the project, and it had strong political backing. The First Minister, in effect, launched it in DETI in June 2000 or 2001. I am no geneticist, but we had just seen the unlocking of the human genome, and that was heralding the potential for major advances in the treatment of cancer and other genetic diseases and illnesses. It was expected that there was huge potential for commercial spin-outs as a result of all that activity. Aside from the failings at the Ulster Bank, the Almac Trust was prepared to support the venture, albeit by way of a loan. It would be wrong to look at the project without having account of the context in which there was an opportunity that, at the time, people felt that Northern Ireland needed to grasp. That, in a sense, does not excuse any of the failings that

happened thereafter, starting with an inadequate business case.

Mr Copeland:

I understand that to a degree, but what private individuals or banking organisations do with their money is a matter for them. This matter concerned public money.

Mr Sterling:

Indeed. I was not seeking to defend —

Mr Copeland:

I know that you were not. Sometimes, we lose sight of what happens to ordinary people when they find that they have been overpaid £150 of housing benefit or tax credits. They get letters to the point at which their nerves go. Sometimes, we need a dose of reality. The fact is that a plan was accepted. That plan was unclear about the private donor funding. It had no estimate of the fit-out costs. Lease arrangements with Belfast City Hospital had not been agreed, which was fundamental to the success of the initial business plan. There was no solid base for income projections. There was no estimate of the building costs. Two key appointments were not determined: the chief executive and the product manager to oversee the newbuild were not there. There was no marketing plan, and no equipment specification was drawn up. I understand how people may have been caught up in the prospect of peace and things developing, but the bottom line is that a gamble was taken. The gamble proved not to work. If it had worked, that would have been fine. Do you have an opinion as to whether that golden opportunity for Northern Ireland plc to become involved at the very cutting edge of biotechnology was seriously damaged by the failure of the project, not only in relation to the loss of the money but in relation to people from the outside who would be committed to investing here in similar ventures, and that the real loss to Northern Ireland is not solely restricted to the loss of £2.2 million of public money?

Mr Sterling:

I will ask Alastair to pick up on that in a second. A number of targets were associated with the project. Aside from completing the centre, the outputs that were sought were that there would be 10 start-ups within five years, 50 jobs for Northern Ireland graduates would be created within five years, and there would be six new inward investors. Obviously, none of those targets was achieved. Clearly, it had an impact on our ability to capitalise on the opportunities that I identified. However, it was not disastrous in that sense.

Alastair, perhaps you will talk about where we are with the bioscience sector.

Mr A Hamilton:

It is very difficult to say where we could have been today had the project been successful and had the potential that David has just spoken about been realised by way of spin-out companies. There is still an appetite and desire to nurture the ability that resides mainly in our universities, particularly in the whole biosciences area, and draw that out into companies and commercialisation. As painful as the experience has been for all concerned, it will not put us off, corporately as an organisation and government, pursuing those opportunities on behalf of our people.

The bioscience sector is key for us. The persistence of some of the people who are mentioned in the report is testimony to that. Some of the leading scientists with worldwide experience have continued to drive forward their business objectives, albeit in a different environment. Today, the bioscience sector comprises 50 companies in Northern Ireland. Almost 4,500 staff are directly employed. There is a turnover of £500 million across those companies. Uniquely, it is a really good mix of indigenous companies such as Almac, Randox and Norbrook, and foreign-owned companies such as Perfecseal, Warner Chilcott and CaridianBCT. There is a really good balance of inward investors and indigenous companies. There is a Programme for Government target to create high-quality jobs. From a university point of view, the vast majority of those jobs are PhD level; that is the type of talent and capability that we are looking for in those organisations.

I cannot tell you today what has been lost as a result of the project not developing. However, the bioscience sector is critical for us. I would like to try to drive that forward as hard as I possibly can.

Mr Copeland:

I also hope that you will tell me that it will not happen again or, more importantly, that it could not happen again. You have already said that, so I appreciate that.

Mr A Hamilton:

I do not want to get into the debate now, but that is one of the risks. I am conscious that, as painful as this has been, no matter where you look across the world today, incubation, start-ups

and spin-outs out of universities are a critical way to tap into capability in the universities. Although I accept all the report recommendations, which we will discuss as we go through, fear of what might happen should not stop us continuing to try to find those spin-out companies.

Mr Dallat:

Mr Hamilton, do you not agree with us that this is an important subject, not only for the creation of jobs but for the discovery of cures for an illness that, as we speak, people are fighting desperately to survive? However, the report is riddled with fraud from beginning to end. How on earth could you explain that away in the way in which you are doing?

Mr A Hamilton:

Mr Dallat, I am not trying to explain that. I acknowledge all the recommendations of the report, and, as we go through this, I will openly acknowledge the failings in this case. In my comments to Mr Copeland, I am not in any way trying to justify what has happened or to cast any veil over it. I am more than happy to acknowledge, on behalf of my organisation, the failings of the organisation to capitalise on what should or could have been positive and beneficial. That should not take us away from trying to do exactly what you have said, which is to try to create high-quality jobs in the bioscience sector or to find cures for some very deadly diseases.

Mr Dallat:

So do you agree that you can give no justification and no explanation today to begin to explain this?

Mr A Hamilton:

I can give you some explanation of how things happened. I agree that there is no justification for it.

Mr McLaughlin:

I want to pick up on Alastair's point; it is the third time that he has made it in this evidence session. We understand very well the need to take risk and to manage risk, and we understand that, in the private sector, decisions may be taken that do or do not succeed. However, the individual concerned is ultimately responsible and, in a sense, gets the appropriate reward if the business succeeds or fails. We are talking about our reliance on public money that is used to support enterprise being properly monitored and about conditions that are properly laid out to

ensure that the people whom we trust to manage that risk for us will apply those conditions or insist that they are applied before they release public moneys. We are not talking about risk aversion.

The decision on bioscience was absolutely defensible as far as I am concerned; I would take that risk today despite the mistakes. However, let us not confuse ourselves with the risks that people take in developing their businesses and in the oversight role that we properly insist is put in place to protect the public interest. Their money is at risk, and I do not think that any of the questions so far or the others that will follow will be premised on the basis that you took a risk with that venture. As I said before, fair play to you. However, we are entitled to the highest standards of oversight and to straightforward management when client companies fail to meet the conditions to which they signed up. They should not get public money and should not get the balance of grant that remains, and they should certainly be subject to recovery or clawback conditions.

We do not need to be reminded that there are risks involved in trying to bring investment here. You have a very difficult job already, and we would prefer to work in complete support of your efforts to attract that investment. However, when there is failure, we have to examine that, and there was a huge failure in the system in this case. Michael is right to draw attention to that because the fact that it was so hopelessly managed from the start has done more damage to the possibility of investment in that vital and developing area of our economy.

Mr A Hamilton:

I want to be clear: I am not trying to get round that or to change the subject to a different matter. I openly acknowledge to you and Mr Dallat that failings that should not have happened seriously impacted on this project and contributed or led to the loss of public funds. That should not have happened. I have said in this Committee before, our job is about risk management not risk avoidance. A lot of work has been conducted on my watch over the past two years specifically around that. As a matter of fact, the Audit Office has been involved in getting a more acceptable and manageable risk management process into our organisation so that we can manage those risks. On that basis, I am confident that the issues and errors created by this case would not happen today under that risk management process.

Mr Copeland:

Paragraph 2.3 explains that there were some uncertainties, especially on project funding. The advice report recommended that promoters be asked to resubmit their proposals. Why was that advice ignored?

Mr Sterling:

Again, based on the evidence here and in the company inspectors' report, it is clear that there was a strong desire to move quickly with the project, and part of what was driving that was a desire to meet funding deadlines. The need to avoid being driven by such deadlines is another key lesson in the report.

Mr Copeland:

Whose decision was it to go ahead anyway instead of doing what other people have done, such as putting in checks and balances and, perhaps, conditions?

Mr Sterling:

There were four funders. The timeline for the project shows that the four funders gave commitments in principle to the project around late 1999 and early 2000. In 2001, the four funders issued letters of offer at different times. I think that the first letter of offer was issued by DETI in late 1999. I think that the IDB issued its letter of offer in June 2000, which was followed in 2001 by various grants starting to be paid. Again, that is a situation that could not occur today under our guidance. I mentioned to you at the start —

Mr Copeland:

I have a question on the timing and chronology of the funding available from the public sector — in other words, from the Government — which people could have thought was an indication that the project was a sound investment. Did that precede or follow the funding agreements with the private investors?

Mr Sterling:

It preceded it. Indeed, that was one of the factors that was —

Mr Copeland:

So —

Mr Sterling:

If I just might finish, because this is a key point. The various funders, particularly, I think, the Department and the IDB, saw their funding as being a necessary condition to lever money in from the private sector. In other words, rightly or wrongly, it was felt that private sector investors would look more favourably on the project if they saw public money in place. That, in a sense, was one of the other factors that was driving the funders.

Mr Copeland:

Would you also agree that it might be not only because they saw public money in place but because that imbued the project with a degree of “respectability and solidity” that subsequently proved not to be there?

Mr Sterling:

Yes.

Mr Copeland:

Thank you.

I will move on to the next issue. BTI was a flagship project and deserved the highest standards of scrutiny. Paragraph 2.4 states that approval to support the project was sought from the IDB’s resource group rather than from a casework committee. Was that approach not fundamentally at odds with the IDB’s guidelines at that time?

Mr Sterling:

The guidance in place at the time required that a project of this nature be approved at a casework committee.

Mr Copeland:

So someone made a decision to bypass the standard casework committee and progress. Why? Who?

Mr Sterling:

The evidence in the inspectors’ report states some uncertainty around exactly what happened in

that regard. There is no evidence of any approval other than by the resources group. There is some disagreement between those who were interviewed as to whether that was a precursor to it going to the casework committee or not. In the history of the project, that is one of the many uncertainties.

Mr Copeland:

I have to confess that the longer this goes on, the more depressed I find myself. I appreciate that you were not there at the time, but the average person, and anyone involved in business, would shake their head at the entire affair.

I would like to put a question to the Treasury Officer of Accounts. Paragraph 2.5 states that DETI's proposed offer to BTI was approved by the Department of Finance and Personnel (DFP) in December 1999. Given the concerns that were expressed in the advice report and the fact that the offer had an unusually high number of prior conditions, why did the Department of Finance and Personnel fail to spot the warning signs?

Ms Fiona Hamill (Treasury Officer of Accounts):

The DFP approval in 1999 was to make a letter of offer. As members have mentioned in their questioning so far, that letter of offer had significant conditions attached to it. That was the approval of the application of capital funding for the purposes. Beyond that, DFP was not directly engaged in the ongoing supervision and monitoring of the project. Those are matters that fall to Invest NI and to the Department, so DFP would not have had sight of the warning signs. In relation to the subsequent moves and the change of venue for the project, it is our view that the Department should have come back to us because that was a material change. It should have sought reapproval at that stage, but that did not happen.

Mr Copeland:

Who would you have expected to have apportioned the conditions to the report? Where did those conditions come from?

Ms Hamill:

The conditions in any letter of offer are generally those that the related Department sets, and may or may not, subject to DFP approval, include other conditions that DFP has asked for. That is on a case-by-case basis. It is considered by the supply officer.

Mr Copeland:

In this particular case, David, what was the source of the concerns and the conditions that were attached?

Mr Sterling:

It goes back to the original advice report that had been prepared, which identified 13 preconditions and four general conditions. Each of the funding responses —

Mr Copeland:

Were they specific as opposed to being cut-and-paste standards?

Mr Sterling:

The 13 preconditions were specific to the project; the four general conditions were more generic. The four funding bodies applied those to a greater or lesser extent. The IDB, for example, took 11 of the 13 preconditions. Some of the other funders took fewer, reflecting their particular funding body requirements. However, I would not seek to defend such a slightly chaotic approach. Nowadays we have guidance that, as I said earlier, requires the creation of a lead funder who would have an agreed memorandum of understanding with all the other funders and would be clearly responsible and in the lead. The creation of Invest NI has, of course, meant that three of the funders are now within the same body, which has improved things.

Mr Copeland:

Would the chief accounting officer at the time have had a role in establishing whether it was worth pumping public money into something that was red-flagged? I do not know if it is usual or unusual to get conditions, but I understand that there were an unusually high number of prior conditions.

Mr Sterling:

It should have been flagged up within each of the funding bodies —

Mr Copeland:

It was flagged up.

Mr Sterling:

—that it was a high-risk project. It is not clear to me at what level, ultimately —

Mr Copeland:

Who would you expect? I presume that at some stage it would have come to the attention of the chief financial officer, because the chief accounting officer is the person who is responsible for the money. Is that correct?

Mr Sterling:

I am trying to think. From a departmental perspective, the key responsibility would fall to the casework committee. It would be unusual for a project to come to the —

Mr Copeland:

It is not the casework committee; it is the ultimate responsibility.

Mr Sterling:

Sorry. I am quite clear that ultimate responsibility for all that goes on in the Department and, indeed, for the four non-departmental bodies, rests with me.

Mr Copeland:

Or whoever your predecessor was.

Mr Sterling:

At the time.

Mr Copeland:

Yes, I understand that. Who was it at that time?

Mr Sterling:

In 2000?

Mr Copeland:

At the time that this took place.

Mr Sterling:

It would have been Sir Gerry Loughran.

Mr Byrne:

Welcome to the meeting. You are answering on behalf of the Department and the investment bodies. I think it is fair to say that we are very concerned about the tale of woe in the report and the anxiety it creates among the public about how public money is managed and administered. Mr Hamilton, there seems to be a complete absence of records of IDB's consideration and approval of this project. Paragraphs 5.4 and 5.5 and appendix 5 state that the company inspectors were repeatedly unable to access several of the resource group files on the case. Astonishingly, it now appears that one of those files was actually destroyed by Invest Northern Ireland some four months after being requested. How could that happen?

Mr A Hamilton:

Apparently it happened as a result of normal file management processes. I know that a story can be constructed that the file held some information that somebody did not want to see and was therefore secretly destroyed. I can assure you that I do not think that that is the case, because we have monitored and looked at all of the other resource files. I think that the failing here is the lack of information in the resource files rather than whether there was a magical file somewhere that held something important to the case and was destroyed.

Having said that, I openly acknowledge the massive failings in the organisation as regards file retention and file management. Again, I do not want to go down the path of trying to justify things. The report's comments on file management in appendix 5 are accurate, and I acknowledge them. All I can do today, Mr Byrne, is give you the same assurance that I have given the Committee in the past, which is that, over the past four years, an electronic records management system has been implemented in Invest Northern Ireland specifically to overcome this difficulty. The audits of that system have shown that there has been no reoccurrence of what happened — no files have gone missing in the organisation over the past four or five years since the new electronic system was put in place. That is the position as we sit here today. I am not trying to justify it; I accept the report and acknowledge that there were massive failings.

Mr Byrne:

I think that it is fair to say that the NIAO report is an agreed report between the NIAO officials

and the Department, so we are using it to show the factual position of where we are at.

Mr A Hamilton:

Yes.

Mr Byrne:

Paragraph 3 of appendix 5 states that the Invest Northern Ireland file review form that evidenced the decision to destroy the file was itself destroyed. So, it has been accepted that not only was the file destroyed but so, too, was the request form. That conjures up in my mind thoughts of a conspiracy or malpractice. It begs this question: what sort of managerial culture prevailed then and was inherent in the organisation?

Mr A Hamilton:

I have the same evidence in front of me as you have. If you have a view that this was a purposeful destruction of a file that held some information that would have been relevant or may have exposed somebody who was in the middle of this, you can come to the conclusion that there was malpractice. However, there is no evidence in front of me in either this report or the inspectors' report to show that this was a purposeful, wilful destruction of a file that held information. I openly acknowledged to you just now that the record management system was inadequate. You may shake your head and say that that is an understatement, and I would agree; records management within the organisation was not good, and steps have been taken to make sure that the system has been fixed. As for destroying files, one benefit of the electronic management system is that, even if someone deletes a file, we can recover it. We have sufficient capability within to recover all deleted files, so I can give the Committee an assurance today that a reoccurrence of this will not happen.

Mr Byrne:

Bearing in mind that we are talking about 2007 and not 2000 or 2001, paragraph 4 of appendix 5 tells us that the first two searches by the records management team were cursory, because it was unaware that the files were required for a statutory investigation. Why was that not made clear to that team immediately? Whose fault was that?

Mr Chittock:

We do not understand why the searches were treated as cursory. They should not have been

treated in that way; rather, they should have been treated with the utmost importance. One of the difficulties at the time was that, having moved locations from a number of different buildings to a central location, there was a lot of file movement. However, that is not a justification or an excuse for those files not being found. There should have been proper interrogation of our data management system, but there was not. It is a failure that we acknowledge.

Mr Byrne:

I am worried that you are trying to explain things away. You said that the systems that prevailed at the time, either administrative or managerial, were such that this issue can be explained in an innocent way. I ask the questions again. What sort of management culture prevailed then? What culture prevails now? If there was any change in that culture, who brought it about?

Mr Chittock:

I want to add a bit of detail on what we now do with our records management. I cannot comment on what happened at the time, but we now have clear record management policies. We retain all financial records for at least seven years, and we also retain all EU-related project records until at least 2020. There is a 13-year lifespan for EU records management.

Our records management policy has been agreed by the Public Record Office of Northern Ireland (PRONI). As late as January 2011, PRONI put a stop on all records being destroyed across the public sector as part of the review that it was carrying out against legislation. It then asked all non-departmental public bodies (NDPBs) and Departments to resubmit their records management policies in line with the new legislation. We did that in November 2011, and PRONI acknowledged that our records management policy not only meets the acceptable standards but goes some distance beyond that.

I cannot guarantee that a file will not go missing. However, I have put in place assurances that, in any case in which there is an ongoing investigation, all files that relate to that investigation will be retained for at least 10 years from the date on which the investigation is closed. I have done that in the event that any records are required at a later stage. We have attempted to ensure that our records management policy is more than adequate in the retention of information.

Mr Byrne:

My concern is that, when files go missing and there is no paper trail or evidence, malpractice can be fully exploited.

Mr Chittock:

There is now a record of files. Most of our hard-copy files are stored off-site, and our electronic files are tagged so that we can understand their movement. If files are destroyed, there is a requirement for a senior officer in the organisation to sign off on that destruction and for that receipt to be retained as evidence of the basis of the file destruction

Mr Byrne:

Mr Sterling, paragraphs 2.10 and 2.11 —

The Chairperson:

Joe, if you do not mind, there are a couple of supplementary questions. I will bring you back in. The company inspectors asked for information, but that information was destroyed four months later and was not given to the inspectors. Why did it take four months? Why did it take such a long time from when that information was requested?

Mr Chittock:

I do not know the circumstances about the request and how it came to us, and I must simply rely on the information that was provided by the report. That should not have happened. A request should have been made formally to the records management team and it should have been dealt with as an important formal request.

The Chairperson:

I surmise that the information was requested through a letter, an e-mail or a telephone conversation. The report states clearly and your Department agreed that it took four months and the information was destroyed. How long does it normally take you to give someone information when they ask for it.

Mr Chittock:

That is normally done in a short number of days. The information is identified from the records management system, and, if it is in off-site storage, it is recovered from there. We normally

expect files to be recovered in a maximum of two to three days.

The Chairperson:

So, some four months later, the file was destroyed and you still did not provide the information in that time. That is totally unacceptable. What do you think about that?

Mr Sterling:

Clearly, there was a failing. However, we take confidence from the changes to procedures —

The Chairperson:

I have heard about all the changes. You have said all that. The point is that it took four months. That is totally unacceptable. Mr Hamilton made his point, but this looks and smells like a rat. It smells as though something has gone badly wrong. It took four months to look for a piece of information after it was requested. It was never handed over, and then it was destroyed. We do not know what was in the document, but it makes the Department and Invest NI look terribly bad.

Mr Sterling:

I accept that it looks bad.

Mr A Hamilton:

I acknowledge that.

Mr McLaughlin:

For the record, can we find out when the present record management system was introduced?

Mr Chittock:

It was first introduced late in 2004.

The Chairperson:

The information was requested in 2007.

Mr Chittock:

The information dates back to 1999-2000. Therefore, it would have required an awful lot of cataloguing of information held across four separate legacy agencies. So the task was to actually

bring that information together.

Mr A Hamilton:

In case we go off on a tangent, it would be worth bearing in mind that not all the existing paper files have been converted onto that system. Since 2004, all of our new records have been committed onto the electronic record management system, but even in 2007, some three years after the electronic management system was introduced, we were still looking for paper files for this case, which predated the installation of the system. Over a period of time, we will parallel track, the paper files will disappear and, ultimately, when the times that Mr Chittock has gone through have expired, all of our files will then be electronic.

The Chairperson:

So they are not all on yet?

Mr A Hamilton:

No.

The Chairperson:

You have already given us an assurance that it will not happen again, but not all the information is on.

Mr A Hamilton:

With current cases. Sorry, perhaps I should have added that at the end.

Mr Copeland:

What would you expect to have been in such a file, and why do you think that the file was requested in the first place?

Mr A Hamilton:

I think that it was requested in the first place for completeness. Obviously, the inspectors were looking for all of the resource files. We started the line of questioning around the resource group and why a case was approved in the resource group. Obviously, the inspectors then wanted to see, even though that was the wrong forum in which to approve the case, whether it was properly approved. Therefore, they requested absolutely all of the files that related to the resource group,

and this is the one that has gone missing/been destroyed. It is very difficult to judge what was in it.

Mr Copeland:

Would you agree that a set of files that follow a particular path may give you a number of pieces of the jigsaw and that sometimes you can tell, from the bits that you have, the shape of the bit that is missing? Was there any indication as to what fundamental part of the process was in the file that disappeared?

Mr Chittock:

We do not think that there was anything of any substance. Obviously, however, we cannot prove that. There is no suggestion that there was an alternative approval document on the file. The four files that were found contained some references to this project, but they were no more than references; there was no detailed paperwork on that. Therefore, we can only surmise that the missing file did not contain this.

The other point worth making is that the resource group did not have the delegated authority to make that decision, so we do not anticipate that there would be a formal submission. We expected something to have gone through a casework approval committee.

Mr Copeland:

Let me get this right. Did they actually take the decision?

Mr Chittock:

Yes.

Mr Copeland:

In the absence of a delegated authority so to do?

Mr A Hamilton:

Yes.

Mr Copeland:

It is no wonder there is no file.

Mr Dallat:

Chairperson, I am sure that you know, more than anyone here, that we need a report at the end of this that will be positive and will be a contribution for the future. Since we started the meeting at 2.00 pm, I have seen one of the most glaring damage limitation exercises that I have ever witnessed. I say that as the longest-serving member of the Public Accounts Committee.

In the past, there were very good practices in Departments. Therefore, to come here and say that it was all bad practice in the past, it is all hunky-dory now and it has all changed, is absolute rubbish. We are not getting to the truth of who was incompetent or who was responsible for this tsunami of fraud that took place. We need to stop saying that it was bad in the past and that those bad boys have now gone and got their knighthoods: they were not right. That is not the truth. I hope that, from this moment on, we get down to the serious business of establishing what exactly was wrong here and how we put it right.

Mr McLaughlin:

I want to return to this. Strong emphasis has been placed on the modernisation, the reforms and the record management system that we can now depend on. Appendix 5 deals with the destruction of a file and the destruction, at the same time, of a review form that requested or authorised that destruction. I am interested to know about the internal process of file management and approval of destruction because we have arrived at certain date lines. Who signed off on that? With regard to the review form that actioned the destruction of the file, even though that file had been requested four months previously, this was three years after the introduction of your new record system. Therefore, why does your record system, which we can rely on, not tell us who drew up and signed the authorisations to destroy the file? This was not the old file. This was a new document that emerged, I assume, around August 2007, three years after you had introduced the new records management system. So why are we hitting a blank?

Mr Chittock:

The document at the time would have been a paper document attached to the front of a file.

Mr McLaughlin:

There was an extant records management system in place at that time, which should have captured that document in case it was required. Therefore, it was not the old hard copy system; it

was a digital record, which, on the face of it, should have been much more dependable and where you could retrieve all that information. We lost a file that had been requested, and we do not know what was on it. It could have been a completely innocent and meaningless document, but now we will never know. However, as far as I can see, the person who drew up the slip that authorised the destruction of that file is also a mystery, unless you can tell me who it was. I can understand somebody destroying a file and maybe making a mistake in destroying it, but I do not understand why your records management system did not rescue the situation and produce a copy of that document. That is inexplicable to me.

Mr Chittock:

The document was a hard copy piece of paper, which was attached to the front of the file. It should have been scanned and should have been part of our records management system, but, for some reason, it was not. Again, it should not have been destroyed.

Mr McLaughlin:

It is completely coincidental that that should happen and that your records do not reflect that. The paper document that was a fresh document in August 2007 was accidentally destroyed, and an older document that was germane to an ongoing statutory investigation was destroyed because the due date for destruction had arrived, even though there was a stated interest in seeing that document. How do you think that appears?

Mr Easton:

I had the misfortune to work in medical records in the Ulster Hospital for a long time, and we did a lot of filing in those days. What is confusing me about your filing system is that, if we took a chart out of medical records and brought it to wherever, even before our electronic management system was introduced, we always had to put a blue retainer card in its place with the details of where the chart was going in case somebody came along afterwards to look for it. Over that four-month period, somebody went along and looked for that file twice, which is a surprisingly small amount of searching for the file over that time. Surely, even before your electronic system came in, there would have been a card in place stating the whereabouts of that file. Is there a record of where that file was during those two searches?

Mr A Hamilton:

No, there is not.

Mr Easton:

Is that not a bit strange?

Mr A Hamilton:

I am very conscious that I do not want to get into justifications here, but I want to explain. I can understand why the health service would have a personal record files system that would operate in that way. My understanding is that that was not the way in which our system functioned, because those files were not personal files that multiple people would need access to. This is not by way of justification. To answer your direct question, as I understand it, there was no system for marking files that had been removed from the system so that people could then track them.

Mr Easton:

So, basically, a file was taken, there was no record of where it went and it could have been anywhere.

Mr A Hamilton:

Exactly.

Mr Easton:

That is not very good.

Mr A Hamilton:

It is unacceptable.

Mr Byrne:

I want to go back in history to the saga of the decision to grant aid the project on limited written evidence. Paragraphs 2.10 and 2.11 state that, by mid 2001, major difficulties had been encountered with the proposed Belfast City Hospital site. That was three years after the site had been identified and only six months before the DETI funding deadline, yet no site investigation or survey had ever been carried out. Given that government was going to give £2 million in grant aid, why were the funders not keeping a much closer eye on the project? Quite simply, was a blind eye being turned to what was going on, or was a friendly eye being given to the people associated with the project?

Mr Sterling:

I do not know the answer to that. What I can say is that it would not have been in the interest of the funders to allow that delay to occur. The funders had, in a sense, an interest in the project succeeding. The funders had an interest in making sure that funds were paid by the relevant deadline. One of the failings of the project is that BTI, in that period, did not advance the project sufficiently swiftly. It did not deal with the issues in and around the Belfast City Hospital with sufficient speed. Again, there appears to have been a clear lack of energy in taking the project forward at that stage. That was a failing of both BTI and those who were monitoring the project at that time.

Mr Byrne:

I want to go back to the earlier comments about risk management and risk assessment. There is a perception that some projects are more easily and favourably assessed than others, and that those beyond a 25-mile radius of Belfast are much more stringently assessed. There is a clear public perception that there are insiders and there are outsiders. Does that exist?

Mr Sterling:

No.

Mr Byrne:

Paragraph 2.14 states that, at a meeting in May 2001, Teresa Townsley told the funders that it would still be possible to complete construction works before the year end. Given the site difficulties, the absence of planning permission and the construction contract not even having been tendered at that point, how could any credence have been given to the project or to Mrs Townsley's comments?

Mr Sterling:

Credence should not have been given.

Mr Byrne:

So, risk assessment did not really exist?

Mr Sterling:

No. Again, I would not seek to defend that. There should have been —

Mr Byrne:

On the evidence, it looks as though there was no risk assessment.

Mr Sterling:

I agree. On the evidence before us, there was inadequate monitoring of what was really happening with the project. Jumping ahead a bit, that takes us to the point in the project that the report describes as “pivotal”, the failure to progress things on the Belfast City Hospital site and then the move to the Harbourgate site. At that stage, our very clear view, in agreement with the Audit Office report and the company inspectors, is that the project should have been fundamentally reappraised.

Mr Byrne:

I go back to a question that I put earlier. What sort of management culture now prevails? What is the modus operandi? Who is driving what I would call an objective, fair and professional management culture?

Mr Sterling:

The management culture in the Department and its NDPBs flows from myself through the various subaccounting officers, like Alastair, who is in charge of Invest NI. At the start, I described in some detail the governance arrangements that we have in place and which we oversee to make sure that this type of thing does not happen again. As Alastair said, I cannot conceive that something like this could happen again today.

Mr Byrne:

I appreciate that you two were not centrally involved at the time. Mr Hamilton, you were a senior executive with BT and had a distinguished career there. You were plucked by the First Minister to be a special adviser. I have no question about that; you have done good work. I want this question answered: what is the management culture that prevails within the organisation now?

Mr A Hamilton:

I am not trying to divert you. I will answer your question, Mr Byrne, but you would probably be

better asking other people in my organisation what that is. I will tell you what I —

Mr Byrne:

Did you see any reason to fix anything when you took up the job?

Mr A Hamilton:

There were a lot of things that I put into place in the organisation when I joined it. So —

Mr Byrne:

Limited or extensive?

Mr A Hamilton:

Extensive. I have a programme of change within Invest Northern Ireland running today called Transform. There are 18 individual projects running right across the organisation. It was kicked off a year after I took up my post. I waited until the independent review of economic policy was concluded. Of the 53 recommendations in that review, I took those that the Minister agreed to and that were appropriate to Invest Northern Ireland and embedded them, along with the changes that I wanted to see delivered in the organisation, in Transform. That programme is now 70% complete. It covers everything, such as implementing a new performance management system, which relates to some of the points that we have spoken about around this table. It will actually pick up, half-yearly, the performance of the individuals and the organisation — and not just against targets. We now have what we call a values-based performance management system that assesses both what people do and how they do it. They are assessed against both of those steps, and performance management and performance improvement plans are put into place on the back of that. It was quite a painful process to put that into the organisation.

To answer your question, Mr Byrne, I am now starting to see the outworking of that in things like personal accountability, personal improvement and personal performance but also in the managing of underperformance in the organisation. That is just one of those 18 projects.

I have another programme that looks at end-to-end process management. One of the complaints that have been made against Invest NI in the past is that it takes far too long to get approval for a case. We are now tracking that, and I have introduced a complete review of the structure of the organisation, which will become active on 1 April. Specifically, that is to shorten

the lead times from over 40 days to 20 days so that we can get large-scale approvals managed quickly. In connection with that, there is a piece of work on giving increased delegations — we may get to delegations today — to people and to the board, to allow us to progress cases more quickly.

I close my comments at three. I would hope that, if you were to ask people what the management culture is in the organisation, they would say that it has changed over the past three years and that it is a professional, capable, outward-looking one, but one that challenges people and challenges the organisation.

Mr Byrne:

Thank you, I appreciate the answer. I will just make one more comment. You said that you had embedded a culture of professionalism and more objectivity. Are you confident that all of your client executives implement that culture?

Mr A Hamilton:

I would say that we are in a process of driving that cultural change through the organisation.

Mr Byrne:

Thanks.

Mr Copeland:

I want to go back to something that David said, which I think is absolutely correct. The tipping point in the whole sorry affair was when the decision was taken to depart from the Belfast City Hospital site, and that led to finder's fees, buying floors of buildings without the stairs in between them and stuff that you simply could not believe would happen. Do you think, or is there evidence, that there was ever any real intention to go ahead on the Belfast City Hospital site? Seven or eight months before the deadline for the funding to expire, you could not have got planning permission in that time, never mind tender it, nor could you have commenced the construction, never mind finish it. Do you honestly think there was ever any intention to proceed at that site?

Mr Sterling:

I think that there was originally an intention. On the basis of the evidence before us, it seems so

clear that the success of the venture depended on close proximity to the City Hospital and the two universities. I cannot find any explanation why the key individuals involved believed that it would work on another site four miles away.

Mr Copeland:

How much money do you think was gained by some of those who took the decision, because of that decision, from finder's fees —

The Chairperson:

Michael, there is another person who wants to come in with some of those particular questions.

Mr Copeland:

I got carried away, Chair, forgive me.

Mr Easton:

Paragraph 3.5 notes that, with the move to Harbourgate, the estimated project cost was revised to £7.5 million. However, £2.7 million of that had not been secured when the government funders gave the go-ahead. Was that not a recipe for disaster?

Mr Sterling:

At that stage, the funders were being misled about the extent to which there were other sources of private sector funding. I do not blame that entirely on the company. The funders should have done more to satisfy themselves about the other sources of funding that were being reported; apparently, two American institutions were interested. Much more should have been done to establish just how realistic that was. On the basis of the evidence before us, I sense that there was still a blind faith that, if government money were put in, it would somehow or other make the venture, as one of the members said, seem more attractive to the private sector. That was one of the key drivers at that time.

Mr Easton:

You used the word "misled". Who was misled? BTI or you?

Mr Sterling:

BTI misled the funders with the information that it provided. Before the move, the funders were

misled about the extent to which planning approval had been progressed. They were also misled about the extent to which other funding streams were being secured.

Mr Easton:

Who, specifically, was misleading? Who was giving you —

Mr Sterling:

Most of that information would have come from Teresa Townsley.

Mr Easton:

Most?

Mr Sterling:

That was the primary source.

Mr Easton:

BTI's failure to secure adequate funding before the project commenced breached the DETI and IDB letters of offer. Why did your Department ignore its own priorities and conditions?

Mr Sterling:

I repeat the reasons that I gave a second or two ago: there was clearly still a desire to move the project forward. There was a sense that, if, somehow or other, the public sector funding was put in, it would help to secure private sector funding. Indeed, the evidence in the inspectors' report records that people were being motivated by the need to meet funding deadlines.

Mr Easton:

Was this misleading from Teresa Townsley being done by word of mouth, or did she give you documents that indicated that there may be other sources, which led to your going ahead? What type of misleading was it? Was it letters or e-mails?

Mr Sterling:

The evidence on which I base that remark is oral and written.

Mr S Anderson:

David, you say that one of the areas in which Ms Townsley maybe misled was planning. If that were the case, surely the Planning Service would put things in writing. My experience of the Planning Service is that it indicates whether there is a possibility of a project going ahead or failing to go ahead. Are you saying that Ms Townsley said that everything was OK for funding purposes because planning was in place? Mention was made of getting planning, funding and the build in place within a very short timescale. Would planning issues have been just word of mouth from Ms Townsley?

Mr Sterling:

The evidence that we have before us suggests that a rosy picture was being painted of how far the planning process had been advanced.

Mr S Anderson:

Was that done just verbally?

Mr Sterling:

No; it was orally and in writing. Those on the funding side should have tested the validity of that. That would certainly happen nowadays. A number of projects in which I would be involved depend on planning, so we have very close contact with the Planning Service, and we know exactly where things were. That does not appear to have happened in this case.

The Chairperson:

Do you want to come back in, Alex? Two other members want to ask supplementary questions.

Mr Easton:

Could we have sight of the misleading documentation that made you go ahead? If you were given misinformation, was that not fraud, especially if it was documented? If so, that begs the question: why did the police not proceed towards prosecution?

Mr Sterling:

As the company inspectors who were working on our behalf went through it, they identified anything that they believed might signify criminal intent or some form of wrongdoing. I am sure that we will get into that in more detail. The company inspectors made a number of

recommendations. They recommended that certain actions of some of the professionals involved should be referred to their regulatory bodies, specifically the Law Society and the Chartered Accountants Regulatory Board (CARB), and other matters were discussed with the Police Service of Northern Ireland (PSNI).

Mr Easton:

Can we see the documentation that contains the misleading information that made you go ahead?

The Chairperson:

Can we get a copy of it?

Mr Sterling:

Yes.

Mr Easton:

We do not know what it is.

Mr Sterling:

Yes. I will reflect on that.

The Chairperson:

We will also reflect on that request, Alex. You said that the company inspectors were working for you with the information that you gave them. However, you gave them the information that you wanted to give them and discarded other information that you did not want to give them.

Mr Copeland:

I want to firm that up and cut to the chase. In your opinion, is someone who gives you or your Department misleading information that leads to their deriving public money guilty of a criminal offence?

Mr Sterling:

I do not think that I am the right person to make that judgement.

Mr Copeland:

Who is?

Mr Sterling:

We rely on the company inspectors, who worked on our behalf in that regard, and on the PSNI.

Mr Copeland:

What about the ultimate decision? The information that was given to you subsequently proved to be misleading.

Mr Sterling:

Yes.

Mr Copeland:

Was it so well disguised or well dressed up that you did not know that it was misleading? Should you have known?

Mr Sterling:

As I understand it, a key test for the PSNI is whether there is sufficient evidence to prove criminal intent.

Mr Copeland:

I am familiar with the three tests. It is not criminal intent but criminal activity.

Mr Sterling:

Yes, criminal activity. In this case, I have no evidence to suggest that that is the case. However, I am certainly happy to look at that again.

Mr Copeland:

I would appreciate it if you would do that.

Ms Hamill:

I want to clarify the process for fraud allegations and engagement with the PSNI, because we have a clear memorandum of understanding between the Northern Ireland Civil Service (NICS)

and the PSNI. If there is an allegation of fraud, an investigation is undertaken internally, and a pack of evidence is prepared for the PSNI, which then considers the evidence pack and decides whether or not the matter should be referred to the Public Prosecution Service, which will then decide whether or not a prosecution will follow. That is how the process formally works. A decision to prosecute does not come from a Department.

Mr Copeland:

I fully understand that, and the file from the police may have a recommendation of no further police action or a recommendation that a prosecution should take place. Indeed, it is sometimes accompanied by no recommendation. We did other investigations recently, one of which was into criminal legal aid, and, very shortly thereafter, the Committee got a letter from the police asking us to clarify whether we had suspicions of criminal activity or had evidence. With respect, the difference between suspicion and evidence is quite discernible, and, in a number of bodies on which I sit, I am possessed of suspicions but am not qualified to say whether or not those suspicions constitute evidence. I would have thought that, in such cases, £2.2 million is not a lot of money. However, it is a lot when it is public money for minor medical procedures that are carried out in the health service or for filling in potholes. It is an amount for which the small man, in many cases, would be hounded to the point of being driven mad. In this case, however, it seems that there were so many lights flashing on the dashboard that I just cannot comprehend how it was not detected or caught on at an earlier stage. I understand that you are not responsible and that now everything has been attuned to ensure that it will not happen again. However, the fact remains that it did happen.

Perhaps you have seen a certain article in ‘Private Eye’. As a member of Northern Ireland plc and a Member of the Assembly, which has attempted to do its best, I do not think that it holds this place in any degree of credibility. That is why it is so fundamentally important that we are assured that what took place — it is patently obvious that it should not have taken place — will never, ever take place again and that those who were responsible, wherever they are, are held to account.

The Chairperson:

Before I bring Alex back in, I will take a supplementary question from Mitchel.

Mr McLaughlin:

Joe dealt with some aspects of paragraph 2.10, which states:

“The minutes of a BTI Board meeting on 11 April 2001 record that Teresa Townsley provided a detailed site update, highlighting the following problems:

- the main live services (including water mains, steam and power) for the BCH Tower Block ran through the proposed site
- the electricity supply to the site was ‘at breaking point’
- BCH may require a road through the proposed site.”

The reason why I am quoting that paragraph is because, if you go back to the discussion on planning issues, it now, of course, involves a third Department. That is literally months before the decision to move to Harbourgate. I suppose that the Americans had their Watergate; we have to deal with something else. Michael referred to warning lights. The planners had to have been telling those people that they could not develop the site in the manner in which they intended unless they did so at huge and exorbitant cost.

Mr Sterling:

I am sorry to interrupt you. Even more fundamentally, BTI should have commissioned a full site survey. It did not do that.

Mr McLaughlin:

Yes, I know. I want to return to my theme of what we do as a system to protect the public interest. I know what BTI should have done about their management of the proposal. However, we also have to be concerned about our managers. A theme that occurs quite often is the question of whether Departments talk to one another and whether there is joined-up government. It is not such a big place. We are not talking about a continent here. Planners had to be aware that there were already delays in the scheme and a looming deadline for funding. Why people did not recognise that they were dealing with a project that was in deep trouble is yet to be explained.

Mr Sterling:

Indeed, I cannot explain it. All I can say is that, in my experience, in the Department and in Invest NI, things are different now. I have been involved with, for example, the development of the Titanic signature project and the Giant’s Causeway visitors’ centre. In both those projects, there has been close working across government, including with the Planning Service, to ensure that planning issues are dealt with and that we know what planning issues might arise along the way. I am sure that Invest NI can confirm that, in any of its projects in which capital investment is required and planning is an issue, there is good co-operation with the Planning Service.

Mr McLaughlin:

That was in April 2001. We have found that records relating to that issue were being destroyed up until 2007.

Mr Sterling:

There was one file. I am not sure —

Mr McLaughlin:

Yes. We cannot find the rest of the files. The IDB's side in that is absent. I do not know whether Invest NI is in any better a position to pick up the baton. However, I am talking about April 2001. I am sure that somebody would not need to be a technical expert to recognise that there was little likelihood that those problems would be solved within the available time and budget. Of course, BTI decided to move elsewhere. We find that the guardians — the people who ensure that the public interest is protected — are not protecting their own documentation in this matter.

Mr Sterling:

Just to be clear: are you suggesting that other files are missing as well as the one file that Mel described?

Mr McLaughlin:

I am. I am responding to the fact that we cannot piece together the picture of the management of this project from day one up to the present with regard to IDB's oversight and its representative or observer on the board, its minutes and documentation, and its discussions about a business that was grant-aided and did not submit progress reports or minutes of its own discussions. That is what I am talking about.

Mr Sterling:

I entirely agree with you. There is an inadequate audit trail here. That is not the same as saying that files have been lost. I do not think that files were ever properly created in the first place, based on some of the evidence that we have before us.

Mr McLaughlin:

You may have more information than I have, but I have not seen any evidence. We are dealing with a failure to generate minutes, reports and paper trails. I cannot believe that the professionals, and the professional standards that we would expect of our public service, would allow such a situation. I am more inclined to believe that the evidence has been made unavailable.

Mr Sterling:

That may be. I do not have any evidence to suggest that.

Mr McLaughlin:

You do not have any: it is not available.

Mr Sterling:

I agree entirely that there is an absence of clear documentation and a clear audit trail to suggest what happened at the time. My sense is that it may never have existed in the first place, rather than that it was there and that it has been destroyed.

Mr McLaughlin:

OK. People went on paying out the grant, despite the lack of validation, progress reports and the failure to meet the conditions that were attached to the grant being awarded in the first place. Our professionals went along with that.

Mr Sterling:

The report provides evidence of that.

Mr Easton:

Who within the senior management of DETI and the IDB were responsible for giving the go-ahead for Harbourgate?

Mr Sterling:

Departmental records show that approval was given at grade 3 level.

Mr Easton:

Do we have a name?

Mr Sterling:

It would have been the person who was the senior finance director at the time.

The Chairperson:

Perhaps you could get that information for us.

Mr Sterling:

I can share that with you.

Mr Easton:

That was DETI.

Mr Sterling:

That was DETI, yes.

Mr Easton:

What about the IDB? Was anyone there jointly also giving the go-ahead?

Mr Chittock:

At the time, I believe that it was the acting CEO.

Mr Easton:

That would have been based on this misleading information?

Mr Chittock:

This was an amendment to a letter of offer, and the submission that was given to the acting CEO would have detailed that misleading information as part of the justification for change.

Mr Easton:

I will move on to my next question.

The Chairperson:

Perhaps you can confirm that with us as well, because you said that you think that was who it

was. Can you confirm that that was who it was?

Mr Chittock:

Yes, I can do that.

Mr Sterling:

Will the Committee Clerk keep a record of those actions?

The Chairperson:

Yes.

Mr Easton:

The move to Harbourgate represented a fundamental change in the nature of the project, yet paragraph 3.7 points out that the funding bodies failed to reappraise the project. Was that not a serious breach of DETI's and the IDB's guidelines?

Mr Sterling:

Yes; it should have been reappraised.

Mr Easton:

Was it not reappraised because of the misleading information?

Mr Sterling:

I do not think that that was the reason. I cannot give you a single reason. All I can say is that it should have been reappraised. As we discussed earlier, it was a fundamental change. The project's success depended heavily on the building being in close proximity to the City Hospital and the two universities. This was a fundamental change that should have required that the project be re-examined. It was also clear at that stage that the move to Harbourgate would require £2.7 million of additional expenditure, which had not been secured. That is another reason why the project should have been reappraised at that stage.

Mr Easton:

So that was a fundamental flaw.

Mr Sterling:

Two fundamental flaws.

Mr Easton:

Paragraph 2.7 states that the City Hospital site was seen as fundamental to the success of the project. How then, without a reappraisal, could you — not you personally — be sure that the project would be financially viable and that its objectives could be delivered at Harbourgate?

Mr Sterling:

I do not think that we could have been sure without a fundamental reappraisal.

Mr Easton:

Was it the norm that such reappraisals did not occur, or was it just this one incident? Given that there was a change of direction in such a large project, was it normal practice for there to be no reappraisal?

Mr Sterling:

I do not have any evidence to suggest that that was common practice. We recognise that it is important that, if the nature of a project changes, it needs to be reappraised. There is strong guidance from the Department of Finance and Personnel in that regard. I am talking now more about the approval process, but any project that has been approved by DFP and whose costs exceed by 10% or whose project timetable extends more than 24 months has to go back to DFP. Equally, we have issued internal guidance that makes clear the circumstances in which projects should be reappraised. Criteria are set out for the people in charge of projects for guidance.

Mr Easton:

Are the two people who gave the go-ahead for the move to Harbourgate the same two people who made the decision not to have a reappraisal?

Mr Sterling:

It probably would have been the same people who made that decision.

Mr Easton:

Should it have been referred to DFP for a renewal approval?

Mr Sterling:

Yes it should. The DETI element of funding — £1.2 million — should have been referred back to DFP. Again, it is worth reflecting that for a project of this nature today, the full £2.2 million would require DFP approval. So the whole funding package would have to go back to DFP.

Mr Easton:

You have indicated and acknowledged that it was quite strange that the project was not referred back or reappraised and that the go-ahead was given. What excuse did the two individuals have for not doing all that?

Mr Sterling:

I cannot answer that. I am not sure that the inspectors' report records comments from those individuals. Can I check back to see whether there are any?

Mr Easton:

I presume that they would have been asked why they did not do that, because such a lot of money has gone down the tubes.

Mr Sterling:

Chairman, I have read the company inspectors' report, which is 200 pages long and is supported by many, many hours of interviews. I have not seen the transcripts of all those interviews. In total, 42 people were interviewed, and 18 of those were interviewed more than once. Some people were interviewed up to eight times. There is an extensive record of interviews, and I have not seen them all. We can look back to see whether those people were asked about that specific point.

The Chairperson:

Is it possible for us to get a copy of the company inspectors' report?

Mr Sterling:

Can I take advice on that, Chair? The inspectors' report has formed the basis on which the current director disqualification proceedings are being taken forward. It has also provided much of the material that the Chartered Accountants Regulatory Board is using to consider the case that

has been brought to its attention. I would want to test that release would not compromise either of those investigations. It has not been custom and practice for the Department to publish company inspection reports. However, it may be that we are in a position to allow the Audit Office, which has a copy of the report, to release it to the Committee. If you do not mind, I would like to take advice on that.

The Chairperson:

You can take it from this point that we have requested it, so it would be good to get it.

Mr Sterling:

I will test that quickly.

Mr Copeland:

I want to confirm that the directors of BTI at the time are being subject to disqualification procedures.

Mr Sterling:

One director is.

Mr Copeland:

Who?

Mr Sterling:

Teresa Townsley.

Ms J McCann:

Paragraphs 3.21 to 3.34 outline the events surrounding the payment of a £100,000 finder's fee for sourcing Harboursgate. Can you explain why BTI felt the need to pay someone a finder's fee to source a suitable building in Belfast?

Mr Sterling:

It appears from the evidence in the inspectors' report that the project was in something of a crisis, given that the City Hospital site could not be pursued. There was a funding deadline of the end of September, which was extended by a month. The board had decided that it needed to find

another site, and the inspectors' evidence records that four sites were being examined. However, it is not clear from the evidence available to us that all the directors of BTI were made fully aware of the decision to offer a finder's fee to somebody to help to secure a building.

Ms J McCann:

Did you not find it strange that they were actually paying someone to go out to find a property?

Mr Sterling:

I am not expert in those matters, but I am told that that is not unusual in the commercial world. Indeed, BTI's legal advisers, who were asked to offer an opinion on that, indicated that, in their view, payment of the fee was legitimate — sorry, that it had been lawfully approved. However, for an organisation that was being funded primarily by public funds, I would not regard that as an acceptable use of money, albeit that public grant was not used to pay for that.

Ms J McCann:

It is normally the owner or vendor of a property who pays an agent a fee for the purchase of a property. Is that not right? It is not normally the other way about.

Mr Sterling:

As I said, I had never been made aware that fees of that nature were paid before I became familiar with this project, but since then I have been told that that does happen. I do not know how prevalent or widespread it is, but that is what I am told.

Ms J McCann:

Can we have the information on the other three possible sites that were being considered at that time? Do you have that information?

Mr Sterling:

Yes. I cannot remember the other three sites off the top of my head, but we can let you have details of those.

Ms J McCann:

Do we have the information on who owned the Harbourgate building at the time?

Mr Sterling:

We do.

Ms J McCann:

Can you tell us who owned it?

Mr Sterling:

It was an organisation called Royce Developments.

Ms J McCann:

Paragraph 3.8 refers to two independent assessments being carried out in late 2002 to estimate the additional funding that was going to be required at that stage to deliver the project at Harbourgate. Those two independent assessments produced figures of £6.9 million and £10.2 million. Therefore, the BTI's cost estimates were flawed from the very beginning. Why were those flawed estimates not picked up at the IDB appraisal stage?

Mr Sterling:

It was not reappraised, and that was a major failure. Another significant failure was the fact that BTI did not establish the full costs of the move to Harbourgate before it completed the deal. Indeed, it was a consequent failing on the part of the funders not to ensure that such a full appraisal was completed.

Ms J McCann:

With respect, I worked in the community sector long before I came here, and there were checks and balances that you had to put in when you were drawing down funding for much smaller amounts, particularly in capital build projects when you were purchasing buildings. There were very clear deadlines and estimates that you had to put in, so I am quite amazed that that did not happen here.

The business plan for BTI was prepared by MTF Chartered Accountants, which was owned by Teresa and Michael Townsley. Do you consider that Mrs Townsley's position at that time, as the deputy chair of LEDU, had any bearing on the lack of challenge and the lack of detail that was required to be exercised by officials in terms of trying to find out exactly why those estimates were so flawed from the start and why there was no reappraisal?

Mr Sterling:

I think that some of the actions of Mrs Townsley are subject to question. That is why, in part, she has been subject to director disqualification proceedings and why she and her husband have been referred to the Chartered Accountants Regulatory Board.

Ms J McCann:

What I am trying to ask is this: did her position as deputy chair of LEDU actually have any bearing on the lack of challenge being exercised by officials in the Department at that time?

Mr Sterling:

I do not know. Maybe I should turn to my Invest NI colleagues.

Mr A Hamilton:

I cannot judge what was going on with Teresa Townsley at the time and whether she was using her role as deputy chair of LEDU to influence people either directly or indirectly. It is fair to say that people were willing the project on at all levels in the organisations. Going back to the comments that were made at the start, this was an important sectoral initiative. I do not think it was necessarily because of the influence of one individual, but a group of senior management and other people who were involved in the project, as is very clear from this document, were either trying to keep it alive at crisis points, or, at points of progress, like now, to move the project forward to realise the vision that was there. I think that was a significant failing. It was a matter of either chasing money at points or people continuing to progress a project that would not have been approved if it had been reappraised at that point, and we openly acknowledge that. The viability in the funding arrangements that would have been required for this project to proceed at Harbourgate would not have been satisfied. Therefore, the project would have stopped.

Mr Copeland:

Do you have any knowledge, or was any knowledge uncovered, regarding any potential or possible previous relationship between any individual on the board of directors or the management of Royce Developments and the board of directors of BTI? In other words, was the relationship on a purely business level, or was it another example of a cosy arrangement that saw considerable amounts of money — some of it possibly public money — going where it was not supposed to go?

Mr Sterling:

My recollection of the inspectors' report is that there was no evidence that there was such a connection. However, I would like to double-check that.

Mr Copeland:

I would also like you to double-check that, please. Thank you.

Mr Girvan:

I want to come in on the back of the line of questioning that Michael is pursuing about the links, tenuous or otherwise, with the owner of the property. The property was also, ultimately, not suitable for purpose. There was an issue over access —

Mr Copeland:

Stairs were extra.

Mr Girvan:

Yes, access to the building. Therefore, the finders did not do a good job of finding a building that was suitable for the purpose for which it was purchased.

The purchase price was right at the top limit. Was there any indication that negotiations took place on how much was to be paid for the building? The figure that I saw was somewhere in the region of £5 million. It so happens that the amount that was set aside for the project was £5 million, although that may be a coincidence.

This was a good and meaningful project, and a number of those who worked on it did so for the right reasons. However, it looks as though others saw the project as a way of lining their own pockets or those of their friends. Will you expand on some of those points?

Mr Sterling:

You will appreciate that the inspectors' report is very long and I want to check it. I do not want to give a definitive view today, but my recollection is that the inspectors did not uncover any evidence of a connection between any of the directors of BTI and the seller of the property. I think that the evidence suggests that there was no particularly hard negotiation of the price.

However, I will double-check that also.

Mr Girvan:

The report also indicates that the building was not fit for purpose.

Mr Sterling:

It was a shell building that had been designed as a potential call centre. Therefore, it was a long way from being suitable for occupation as an incubator centre. I think that I am right in saying — I will check — that BTI was only interested in buying two floors. The seller's original position was that he was only interested in renting the building, and that, if he had to sell, he would only sell the whole building and not just two floors. However, I will check that in the inspectors' report.

Mr Girvan:

He came out very well.

The Chairperson:

Did the property dealer and the vendor know each other prior to the negotiations on the building?

Mr Sterling:

I do not believe that there is any evidence to suggest that.

The Chairperson:

You don't?

Mr Sterling:

I do not recall whether there was any evidence to suggest whether they knew each other or not.

The Chairperson:

I suggest —

Mr Copeland:

Sorry to interrupt. Just to clarify Chair, did you ask about the property dealer who was the broker?

The Chairperson:

Yes.

Mr Copeland:

I asked about the relationship between the two boards, not the person in the middle.

The Chairperson:

I asked about the property dealer and the vendor.

Mr Sterling:

There was a person who purportedly acted on behalf of BTI in that negotiation. Although there is no record of a contractual relationship being agreed with that person, he or she was doing the deal on behalf of BTI. I am not aware whether, on the basis of the evidence in the report, there was any connection between that third party and the seller of the property.

The Chairperson:

So, you are not aware of that.

Mr Sterling:

I will check that point.

The Chairperson:

Does the Comptroller and Auditor General (C&AG) have any other information on that point?

Mr Kieran Donnelly (Comptroller and Auditor General):

As Mr Sterling said, there is a wealth of underpinning evidence and detailed transcripts. It would be worth going back to those transcripts and checking that.

The Chairperson:

It is important to know that for our report.

Mr Donnelly:

Yes.

The Chairperson:

I take it that you have all of the transcripts?

Mr Sterling:

We do.

The Chairperson:

OK. I look forward to that.

Paragraph 3.4 indicates that BTI's budget was £5 million. Perhaps it is a coincidence that the building was purchased for £5 million, as paragraph 3.1 indicates. Is there any indication as to the level of profit that the vendor made on the sale of the building?

Mr Sterling:

I do not know the answer to that off the top of my head.

The Chairperson:

I ask that because, at that stage, it was probably a buyer's market. We were talking about finder's fees and stuff earlier. The budget was £5 million and the building was purchased for £5 million. Is that just coincidence?

Mr Sterling:

As I said earlier, the evidence suggests that there was not particularly hard negotiation on the sale.

The Chairperson:

I did not think that there was, but maybe you could check the company inspectors' report and report back to us.

Paragraph 6.20 states:

"Two directors have commented that they had been commercially naïve and relied too heavily on those with greater commercial experience in the operation of the company. They referred specifically to the undue influence of Teresa Townsley".

Have any other directors been held to account for the failure of the project? Have those directors gone on to hold other significant posts with commercial or budget responsibility in the Civil Service?

Mr Sterling:

I am not aware of any of the other directors having held any public appointments. Again, I can check that. Are you talking about directors of BTI?

The Chairperson:

I take you to paragraph 6.20.

Mr Sterling:

I will check, but I am not aware of the two directors having held any public appointments.

The Chairperson:

Since?

Mr Sterling:

Their roles in BTI were not public appointments; it was a company limited by guarantee. In a sense, they were, themselves, the founders of it.

The Chairperson:

So, no one else was held accountable whatsoever for all this?

Mr Sterling:

The inspectors' report made a number of recommendations, and we have acted on all of them. For example, they recommended that a number of directors should be referred to the director disqualification unit. Indeed, all the directors were examined in that regard. However, when the public interest test was applied, it was concluded that only one director should be subject to disqualification proceedings. Those were launched on 15 December. The inspectors also recommended that the actions of certain individuals should be reported to their professional organisations.

The Chairperson:

15 December of what year?

Mr Sterling:

2011; it was just last month.

The Audit Office report states that Thomas Armstrong was referred to the Law Society in respect of his role. It also states that a firm of chartered accountants was referred in respect of its role in the preparation of the original business case back in, I think, 1999. As is detailed in the report, the Law Society did not find that Thomas Armstrong had done anything wrong, although it advised him on some matters. Similarly, in relation to the firm of chartered accountants that did the business appraisal, the Chartered Accountants Regulatory Board did not find that any wrongdoing had taken place. That decision was appealed by the Department of Finance and Personnel, but it was not upheld. The Chartered Accountants Regulatory Board is still considering the reference made by DFP in regard to the behaviour of Michael and Teresa Townsley. That is the action that has been taken on the foot of the recommendations in the inspectors' report.

Mr Copeland:

I apologise, but I just do not understand that. The report quite clearly says:

“Two directors have commented that they had been commercially naïve and relied too heavily on those with greater commercial experience ... Another director commented that Board members totally and implicitly trusted Teresa Townsley”. Can you tell us who those directors were? I cannot understand it. Fairly eminent people were involved in this. I can understand, to a degree, commercial naivety. However, if you are involved in something at which minutes are not being recorded at board meetings, in essence, whether naive or not, a lack of knowledge of the law is not a defence. The company's corporate responsibility for this resides with the board of directors. Why, then, does it say, “two directors have commented” and “another director”, but then the directors claiming that they were unaware of the £100,000 finder's fee are actually named. Is there a reason for that?

Mr Sterling:

Can you repeat that last bit?

Mr Copeland:

In the section at the back of the report, it says:

“By contrast, BTI Board members Will McKee (the Chair), Paddy Johnston and Peter Passmore told us that, at the time, they were unaware of the £100,000 finder's fee”.

In other words, they are named and identified as making the statement. Yet, at the start, the report

says:

“Two directors have commented that they had been commercially naïve ... Another director commented that Board members totally and implicitly trusted Teresa Townsley”.

Mr Sterling:

I am not sure why they have not been named in the report.

Mr Copeland:

Can we find out who they are?

Mr Sterling:

It is not for me to say.

Mr Copeland:

Is there a reason why we should not know?

The Chairperson:

It is an agreed report between the Audit Office and yourselves.

Mr Sterling:

Yes.

The Chairperson:

I take it that you asked questions when you were going through the different aspects of the report? You have had to agree this.

Mr Sterling:

Yes.

The Chairperson:

But you are now telling us that you are not sure why some names are in the document and others are not? I can ask the C&AG, but you agreed the report.

Mr Sterling:

I am not sure that that issue was ever brought to my attention.

The Chairperson:

Somebody at the bottom of the table agreed it.

Mr Sterling:

I am not ducking my responsibility. I signed off the report. The fact that names should be included was not something that we requested. I do not know.

Mr Donnelly:

I think that, in that context, we agreed not to name them in the report. In the round, we do name names. We name all the directors elsewhere, but not in that particular context.

Mr Copeland:

Why?

The Committee Clerk:

I think that it was a matter of signing off on the report with all of the third parties.

Mr Donnelly:

Yes. We went through the process with 20 or 30 third parties. It was quite an elaborate process.

Mr Dallat:

Chairperson, nearly two and a half hours into this, I just wonder where we are getting to. I am not sure.

Maybe I will pick up where Michael left off. There must be a lot of people who feel that they have had their fingers badly burned by being involved with the Townsleys — people such as Professor Paddy Johnston, whose brother Jim was an executive member of one of the so-called spin-out companies; Professor Roy Spence; and Dr Passmore. They are all very eminent people. How do they feel about being contaminated by this intrigue of deception, fraud and everything else? I will leave that for a minute.

We do not seem to be able to get away from the Townsleys. They seem to have been centre stage in this whole thing, from beginning to end. Even up to 10 minutes before the meeting, an e-mail centring on the Townsleys was circulating. What about the fictitious letter about the fee for identifying the property? That apparently was not deemed to be a criminal offence, yet, just last week, a celebrity cook was splashed all over the media for stealing a bottle of wine out of Tesco. Here we have £125,000, and nothing is happening. Quite frankly, I regard this e-mail as a decoy, and I do not put any value in it whatsoever. We got the report, and we prepared for this. I do not think that we should have to adjust anything to accommodate this sort of nonsense. We have spent two hours talking about not being able to get documents from files, and, suddenly, they are creeping and crawling out from everywhere.

I really want to ask you about the £125,000 fee for identifying the totally unsuitable piece of property four miles from the City Hospital. Am I right in believing that there was an instruction to pay that money into a foreign bank account?

Mr Sterling:

Part of it —

Mr Dallat:

It does not matter. Even one penny of it is too much.

Mr Sterling:

The BTI paid £100,000 to Thomas Armstrong solicitors. There was a separate payment for the VAT element.

Mr Dallat:

Is that the boy who was found by his own professional body to be totally innocent?

Mr Sterling:

Indeed. Thomas Armstrong solicitors then dispersed the £100,000 three ways. Indeed, the way in which it was dispersed is set out in the report. It is a matter of record that the £25,000 payment to Michael and Teresa Townsley went to a bank account in Spain.

Mr Dallat:

I will tell you why I am interested in this. I belong to a voluntary organisation called the Credit Union. I am treasurer of it, and I am subject to the most stringent money-laundering regulations that you could ask for. If I had authorised something like that, I would, rightly, be in court for it, yet those professional people who, subsequently, have not been found guilty of anything were really money laundering, were they not?

Mr Sterling:

The Townsleys' role in this case is the subject of consideration by the Chartered Accountants Regulatory Board, so I do not want to say anything that might compromise its consideration of that. Indeed, I would say the same about Teresa Townsley's director disqualification proceedings.

Mr Dallat:

OK; let us go back to Thomas Armstrong, their solicitor. He has already been cleared by the Law Society. Did it know about the cheques that were going to foreign bank accounts?

Mr Sterling:

That matter was not referred to the Law Society, as I understand it.

Mr Dallat:

Why not?

Mr Sterling:

The BTI legal advisers adjudged that the payment was legal and had been authorised legally. We referred the issue of the finder's fee to the PSNI, and discussions on that have taken place on several occasions. The PSNI — colleagues can keep me right here — does not believe that there is sufficient evidence of criminal intent, and that matter will not be taken forward.

Mr Dallat:

So, are you saying that, despite the fact that we know that the letter that was written by Michael Townsley was written after the event, is a cover-up and was never received by anybody, the evidence is not sufficient for the PSNI to at least refer this case to the Public Prosecution Service?

Mr Sterling:

On the basis of all the evidence that it has looked at, yes, the PSNI has decided —

Mr Dallat:

And you appealed that no doubt?

Mr Sterling:

I, personally, was not involved in the discussions.

Mr Dallat:

You were lucky; I am glad for you.

Mr Sterling:

A strong case was made by the Insolvency Service and the company inspectors.

Mr Dallat:

A lot of people on the outside will find that absolutely amazing, because people, quite rightly, are penalised for doing things wrong. It is a good job that the Townsleys were not running Barings Bank or they would have made Nick Leeson look saintly. I will move on, Chairperson.

The Chairperson:

John, can Michael come in with a brief supplementary question?

Mr Dallat:

Of course.

Mr Copeland:

I am so staggered by this that I have almost forgotten what I was going to say. John, just you go ahead.

Mr Dallat:

My questions were already covered, but that is not important. It is the fact that they are asked at all. Did you appeal the Law Society's decision in the case of Mr Armstrong?

Mr Sterling:

No, we did not.

Mr Dallat:

Did you not feel that you had justification for doing that?

Mr Sterling:

I was not directly involved in that decision, but my understanding is that the Law Society's view was fairly final. I am not sure whether there is an appeal mechanism. I can check that out.

Mr Dallat:

I referred to those other people who were drawn into that whole web of intrigue. There was a trip to San Diego in California. Mrs Townsley claimed the expenses four times. Was there anything criminal about that?

Mr Sterling:

Again, that matter was referred to the PSNI back in 2004. I think the conclusion at that stage was that there was not sufficient evidence to take any further action.

Mr Dallat:

What really annoys me about this is that part of that money was paid out by the International Fund for Ireland (IFI), a donor fund that was set up to allow different communities to build peace, and here we have these people ripping it off by claiming travel expenses several times over. I think that is important. I just find it amazing. I hope that I never get into trouble, and I try not to, but it seems to me that you need to be guilty of something really terrible before the PSNI shows any interest in exercising the law of the land, if this is true. Am I and others wrong in assuming that there are two levels of accountability? There was the comfortable social circle that existed in Northern Ireland for far too long and included people like the Townsleys and others, who were above the law and were never challenged by the law, or is it just that your Department was so totally incompetent?

Mr Sterling:

No, I do not accept that. I am quite clear that if people have done something wrong, they should be made amenable in whatever way possible. We have been looking at the issue of the travel

claims, etc. Mel, do you want to comment on that?

Mr Chittock:

Clearly there was double claiming of expenditure.

Mr Dallat:

It was not double. The same expenses for travel were claimed four times.

Mr Copeland:

There were twice as many people.

Mr Dallat:

Yes; thanks, Michael. 11 people went on the trip, which, as I understand it, delivered absolutely nothing for Northern Ireland. There were 11 people heading off to the States when this country was struggling to try to pay its bills.

Mr McLaughlin:

There were originally to be five.

Mr Chittock:

The claiming of that expenditure was totally unacceptable. That matter was referred to the police in the early stages of the investigation when it first came to light. The repayments from two companies that were the recipients of that were not pursued at the time because of the wider exercise that was then commissioned to look at the Biosciences and Technology Institute in the round. We have always retained our right to recover that money from the companies involved, and we will do that.

Mr Dallat:

At this stage I have nothing more to ask.

Mr Byrne:

I want to ask about the purchase of Harbourgate. Contrary to agreed funding procedures, DETI released funding to BTI before the outstanding issue from the inspection visit — the use of pro forma invoices and cheques that had not been cleared at the bank — had been resolved. The BTI

cheque of £1,734,500, made out to Thomas Armstrong, the BTI solicitor, for the purchase of Harbourgate, was never presented for payment. In other words, a cheque was made out for ulterior purposes to obtain grant aid. It appears that it was written for the sole purpose of providing false evidence to DETI that payment had been made, therefore allowing the grant. In other words, the grant was triggered on the basis that there was a cheque, but it was never presented to a bank. Is there no position of recovery that can be used at this stage?

Mr Sterling:

We agree with the findings. This was a ruse. It was a ruse to secure funding earlier than it would otherwise have been paid. I suppose the only slight comfort that can be taken is that the money that was released was used for the purchase of the building. In other words, the money was used for the purpose intended, albeit being released earlier than it should have been.

Mr Byrne:

There is evidence in the report that a large sum of money was paid for IT equipment. Does that IT equipment still exist? Are hire charges being paid for storage, and is it possible to recover any money from it?

Mr Sterling:

Yes, £337,000 was used to buy equipment. That equipment was almost entirely never used. It was put into storage and remains there. It will be disposed of when the company is wound up, which will start shortly. However, the reality is that that money has been almost entirely wasted.

Mr Dallat:

God Almighty.

The Chairperson:

Just before I bring Sydney in, two members wish to ask supplementary questions: Mitchel and Michael.

Mr McLaughlin:

I am OK.

Mr Copeland:

My memory has mysteriously returned.

Mr McLaughlin:

Is this your records management system kicking in?

Mr Copeland:

Yes, it is. It was filed somewhere and was found.

With regard to the £100,000 that was dispersed by the solicitor for the so-called finder's fee, you said that three people benefited from those cheques. Were the cheques made payable to individuals or to companies? We have spoken about the community sector and suchlike. Speaking from experience, I run a small community group that recently paid out amounts of £250 to a number of people who participated in an event in July, for which the money has not yet come through. Before payment could be issued, those people had to supply their name, address, national insurance number and what colour of socks they were wearing. If the money was paid on invoice to a company, that is one thing: if it was paid to individuals, was any reference made to Her Majesty's Revenue and Customs?

Mr Sterling:

I am not aware of that. The sequence involved a payment from BTI to Thomas Armstrong, and Thomas Armstrong then dispersed £37,500 to the property dealer and £25,000 to MTF. We know that the £25,000 went to a bank account in Spain. I am not sure what was on the face of the cheque for the payment to the property dealer.

Mr Copeland:

Is it possible to discover that?

Mr Sterling:

I do not know. We could look into that.

Mr Copeland:

Again, Chair — I thank you for your forbearance — you will be aware of a similar instance that involved practically the same people in the House of Commons Public Accounts Committee,

which described it as the biggest impropriety that it had ever seen. Do you think that this is on a par with that? On that occasion, £1.4 was paid for advice. Are you aware of that?

Mr Sterling:

Yes, I am aware of the Emerging Business Trust (EBT) report and its findings. All I can say is —

Mr Copeland:

Do you think that, instead of looking at the little bits of this matter that have led the police to the conclusion that there are insufficient grounds for prosecution, a holistic view of the whole affair might colour their view?

Mr Sterling:

Again, I can double-check that. However, I am pretty sure that the police have been apprised of the entirety of the situation.

Mr Dallat:

Very briefly, Chair, perhaps Mr Sterling could check whether Her Majesty's Revenue and Customs was notified of all those payments, including the £25,000 that went to Spain.

Mr Sterling:

We will check that out.

Mr S Anderson:

Thank you, Chair. How do you follow John Dallat? I refer to part four, which relates to the purchase of the top floor of Harbourgate. Paragraph 4.6 states that a condition of the trust's offer was that Teresa Townsley would stand down from the board before it was prepared to move on it. At the end of the day, they had the greatest sense, and they made that condition for Teresa Townsley to resign. Paragraph 4.6 outlines the arrangements whereby Invest NI was contracted to buy the top floor from BTI at the end of a 90-day period for £1.5 million. Bearing in mind that BTI was technically insolvent and had no source of income to service its liabilities, what justification did Invest NI have for putting a further £1.5 million of taxpayers' money at such high risk? Alastair has already referred to taking risks in the Department for jobs and investment and suchlike, but was this not a case of taking a high risk with a further £1.5 million of taxpayers' money?

Mr A Hamilton:

It should not have happened. I suppose the only mitigation is that it is pretty clear that it was an offer that nobody ever expected would be drawn down, either in terms of BTI or Invest NI. I do not say that by way of a justification because it was a contingent liability, and, if it had been drawn down, the £1.5 million would have had to have been paid. There was a contract around it. It is clear that it was buying time to allow another offer on behalf of the McClay Trust, which acquired the whole building. I am not seeking to justify it at all. There was no business plan for the expenditure, and there are questions around the approval on the proposed expenditure. I suppose the only justification is that it was never drawn down, and there was no loss of public funds on the back of it. However, that is not justification for the error that was concluded.

Mr S Anderson:

Why did Invest NI fail to prepare a formal business case to inform its decision? Was that a deliberate decision to bypass the normal control procedures?

Mr A Hamilton:

In this case, it is very clear that a crisis had been reached. The bank was about to withdraw funding on the basis that a prior deal had not been concluded, and, rightly or wrongly, the decision around that was taken inside 24 hours. If a deal could not be reached that allowed the top floor to be covered for a period of time to allow the McClay Trust to put forward a proposal, the deal would have fallen apart at that stage. I have already commented in Committee that I think that there were people who were genuinely trying to keep the project alive at critical stages. I think that they were a little bit blinded, but they were trying to keep the project alive at critical stages, and that was one of those critical stages. I openly acknowledge that a business plan was not put together. It should have been, but it was not. A decision was taken on a day by authorised people in the organisation to give a guarantee to purchase the top floor. A valuation should have been done of the top floor, which was not concluded, and a business plan should have been put together, which was not done.

Mr S Anderson:

I take your point. There may have been good people there to keep the project alive, but I am sure that you will agree that there were others who had a vested interest in keeping the whole thing alive.

Mr A Hamilton:

I acknowledge that.

Mr S Anderson:

I have listened to what has been discussed today, and perhaps that outweighed the entire project, and it fell down on that side.

Paragraphs 4.10 and 4.11 describe the creation of two documents — a note for the record and a note of intent. Those were attempts by Invest NI to create a record between three and eight months after the event to justify its decision to enter into that 90-day contract. How could that have happened in a professional organisation? Who would have allowed that to happen? How could something such as that be allowed to happen with good leadership?

Mr A Hamilton:

It should not have happened. One thing led to another. The lack of a business plan, the lack of an evaluation and a rushed decision to give approval on one night — albeit on funds that people were very clear would never have been drawn down — were steps that led to that consequence. In my judgement, people decided that, because those funds would never be drawn down, they would not take a record of that meeting. I suppose that the only thing that I would say to you in mitigation, Mr Anderson, is that the interview tapes clearly indicate that there is no doubt that Invest NI's authorised officers at that time did give approval for that transaction to proceed, albeit it was not recorded. There is no doubt that that authority was given. It was not recorded. It should have been. That was an error.

Mr S Anderson:

If I have learned one thing in life, Chair, it is never to make snap decisions. We are talking about millions of pounds. I would not make snap decisions no matter what I wanted to purchase. I have listened to the discussion, and it seems to me that everything was done on a quick timescale. That was a recipe for disaster. When people are pushed into decisions without fully assessing the scenario, it is a recipe for disaster and for something to go horribly wrong.

Paragraph 4.13 states that Invest NI failed to seek approval for the 90-day contract from DFP on the pretext that Harbourgate was a bespoke facility. As such, the £1.5 million cost fell within

the delegated limit. Can you see any justification for regarding Harbourgate as a bespoke facility?

Mr Sterling:

No. Our clear position is that, at that stage, the proposal should have been subject to ministerial and DFP approval.

Mr S Anderson:

That was another big failing.

Mr Sterling:

Indeed; action has been taken in that regard. We may come to that in due course.

Mr S Anderson:

Do you agree that that looks like a deliberate ploy to avoid exposing an improper process to DFP scrutiny?

Mr Sterling:

No; I do not think that that was the case. My presumption is that the motivation was simply to keep the project alive.

Mr S Anderson:

Therefore, they would do anything to keep the project up and running and alive so that it would not tip over.

Mr A Hamilton:

I am firmly of the opinion that that was the motivation for taking the decision to give the guarantee on the top floor. It is very clear from this record that the people who authorised it were assured that funds would not be drawn down. It was sufficient cover to allow additional funding to be sought from the McClay Trust. As we know, in the outworking of that — whether it was fortuitous or that thought had been worked through — £1.5 million was never drawn down from our funding.

Mr S Anderson:

It keeps coming back to the fact that anything would be done to ensure that the project kept moving and did not fail. Obviously, we are where we are today.

Finally, with the commitment being over £1 million, Invest NI should also have obtained ministerial approval. How could such a key control have been so easily ignored?

Mr A Hamilton:

I have already commented that both DFP and ministerial approval should have been sought. You have already asked David about the controls around the bespoke facility. The bespoke facility was a route to try to make a decision quickly because if it had not been a bespoke facility, it would have had to go through approvals, and the project would have failed. Having taken one decision at the very outset, all that we have gone through in your questioning, sir, is all the other steps that flowed from that poor decision at the start to make that stick. It should have had ministerial approval. It did not. I acknowledge that.

Mr S Anderson:

The only thing that I can say about the whole carry-on is that perhaps what we are hearing today is that it will not — or it is unlikely to — happen again if controls and procedures are put in place.

Mr A Hamilton:

On that point, sir, I give you an assurance with regard to materiality, which we have talked about as we have gone along. It touches on the decision to move from the Belfast City Hospital site to Harbourgate and then on the piece that you are examining now. Materiality guidance was reissued on both of those last year through an exercise with the Audit Office. We looked at some cases that changed over the past few years and considered whether they were material. We have reissued that guidance and retrained staff across the organisation to ensure that that does not happen again.

Mr Copeland:

Mr Sterling, I apologise but I will be directing my questions at you again. Paragraph 4.19 of the report outlines how, after purchase, Harbourgate was found to be totally and completely unsuitable for housing a biotechnology facility. Had any due diligence been carried out by DETI and Invest NI before approving the purchase of the building?

Mr Sterling:

In answer to a previous question, I conceded that BTI should have properly surveyed Harbourgate and that the funders should have ensured that such a survey was complete and sufficient to justify the further payment of grant. However, they did not do that.

Mr Copeland:

The January 2003 strategic review, noted at paragraph 4.21 of the report, estimated that BTI required an additional £10.2 million to fulfill its strategy. However, Invest NI decided that it could not afford that. Do you think that it was the right decision to walk away from the project having invested over £2 million in a sector in which substantial growth and employment were forecast?

Mr Sterling:

It was the right decision to cut losses at that stage. Although, having said that, I would argue that losses should have been cut much earlier in the project. Nonetheless, it was the right decision at the time. As Alastair said earlier, although we missed out on the delivery of many important objectives, the bioscience sector in Northern Ireland remains strong and vibrant. We have strong indigenous companies and good foreign-owned companies, and it remains a key cornerstone of the Executive's draft economic strategy.

Mr Copeland:

Did you have any indication that any of the private investors, some of whom were substantial investors, were getting the jitters?

Mr Sterling:

Yes. It was clear from some of the actions that were taken by the private investors at the time that they were concerned. Nonetheless, to go back to an earlier point, the fact that they still had an interest after the move to Harbourgate suggests that others saw some life and potential mileage in the project.

Mr Copeland:

Public money was involved, and the level of oversight and scrutiny that one would normally apportion to public money was in place. Could that have given a false sense of security to some

of those private investors?

Mr Sterling:

It may have done. However, without knowing the minds of the private investors at the time, I could not totally agree with that.

Mr Copeland:

Do you accept that, in many respects, people look after their own money a good deal better than we, on this occasion, looked after the people's money?

Mr Sterling:

Indeed; that is true.

Mr Copeland:

Thank you. Paragraph 4.23 of the report tells us that Harbourgate was bought by an investment company, which has subsequently let the property to DFP's Central Procurement Directorate. Does that mean that the Government are, in effect, paying twice for the same building?

Mr Sterling:

I am not sure that I would agree with that. Mel, will you pick up on some of the work that led to that?

Mr Chittock:

In April 2004, the concept was to try to identify a buyer for the building to recover funds for each of the creditors. At that time, Invest NI was an unsecured creditor. The aim was to work with the bank to try to identify the maximum return possible, so that, if at all possible, public funds could be returned. That was the idea behind the Invest NI team working with the banks to recover funds.

Mr Copeland:

The rent at that stage would have been set by the commercial valuation that was apportioned to it. That would have given an indication of the value of the property.

Mr Chittock:

That is correct.

Mr Copeland:

Did the value of the property that was arrived at by that process reinforce, echo, mirror or differ from what was paid for the property?

Mr Chittock:

From memory, the price for which the building was eventually sold was not too far away from the original purchase price.

Mr Sterling:

It was £4.55 million.

Mr Copeland:

How long after it was purchased was it sold?

Mr Sterling:

That was 2005. There were two payments: there was a payment of around £3.5 million in October 2001 and a further £1.5 million in June 2002.

Mr Copeland:

Do we know the total cost to DFP of the arrangement — I presume that it is the letting arrangement — and the period of the contract that was entered into?

Mr Chittock:

We would not have been party to that information.

Mr Copeland:

We will discover that ourselves.

Paragraph 5.6 states that DETI and the IDB amended their letters of offer on two occasions because of BTI's inability to meet the offer conditions and retrospectively to allow ineligible expenditure that had already been incurred and claimed by BTI. Did that not fundamentally

undermine the very purpose of the conditions of offer, which was to protect public money in the event of BTI's failing to deliver?

Mr Sterling:

I agree with that. Again, it appears that the motivation behind putting public money into the project was to keep it going and make it attractive as an investment for private sector funders.

Mr Copeland:

Would there have been a payback at any stage in the future? The company was going to trade, perform certain functions and have a product. That product would have been on sale. Was there any indication that public money would be repaid with dividends or profit from the business, or was it just simply for start-up?

Mr Sterling:

No. My colleagues can keep me right, but it was grant that was designed to achieve the project objectives that I set out earlier: to provide 10 start-ups within five years, to provide certain incubation facilities, to lead to the creation of 50 jobs for graduates and to provide a location for six inward investors within five years. In a sense, the investment was put forward to deliver those economic and business benefits.

Mr A Hamilton:

It was not an equity investment; it was a grant to deliver purely economic output. It was not for financial return at some future point.

Mr Copeland:

It may have been a grant, but in many respects it looks like a gift.

Paragraph 5.6 explains how DETI, in its first amendment of July 2000, lowered the amount of eligible expenditure and almost doubled the rate of its grant to facilitate earlier payments of funds. Did the Department seek approval from DFP for that amendment?

Mr Sterling:

We did not.

Mr Copeland:

Why not? Was it not a material change to the terms of offer?

Mr Sterling:

It should have been approved by DFP. The only comfort is that it did not breach any of the EU funding rules that governed the project.

Mr Copeland:

So Europe was involved as well?

Mr Sterling:

The £1.2 million that the Department put in was Peace and Reconciliation money.

Mr McLaughlin:

Paragraphs 5.9 and 5.10 deal with project monitoring. We have touched on that issue; it has been a theme of my interventions this afternoon. Essentially, the response has been that it should not have happened, you cannot explain why it happened or that it would not happen any more given the systems that have been introduced. Nevertheless, the shortcomings occurred. Can I take it as common to our positions that you accept that the shortcomings, as detailed in the report, occurred? I will develop my point subsequent to asking Mr Hamilton. It is fairly clear from the report that the IDB's client executive failed to get a proper grip on the situation. I can perfectly understand why there were such high expectations that early entry into that market would be of benefit to the regional economy. However, how do we explain that someone at a more senior level did not pick up on the problems? What were the internal reporting mechanisms? Although issues were exposed as a result of the level of monitoring that was in place at that time, why did that not result in action?

Mr A Hamilton:

If you consider the report in its totality — I have mentioned it, and David has mentioned it several times — it is very clear that, at various levels, including senior levels in the IDB/Invest NI, people were trying to keep the project alive. I am not seeking to justify the lack of monitoring by somebody in a relatively junior position, but it was clear from his interviews that he was gathering information at times and passing it on but that nothing was happening with it. As I said earlier, at other times, because of the way in which the BTI board was operating — or

not, as the case may be — he was able to gather only fairly limited information at those board meetings. All in all, that is not acceptable.

Mr McLaughlin:

Paragraph 5.17 outlines how DETI revised its offer so that equipment that had already been bought by BTI could be included as eligible project costs. The Department was in possession of an internal memo that indicated that such expenditure was outwith the terms of the grant aid. DETI's response was to change the terms of offer and to buy equipment, even though it was aware at the time that BTI did not have premises in which to put it to use. However, it decided to change the terms of offer and, in a sense, post facto regularise the claimed expenditure on equipment. That is not a lack of monitoring. Rather, the guidelines seem to have been thrown out the window and all good judgement set to one side.

Mr Sterling:

Indeed. It is hard not to conclude that that step was taken to make sure that funding deadlines were met. That is our conclusion. In other words, there were clear deadlines by which the £1.2 million of Peace money had to be spent and N+2 targets met, and this was a means of reducing the risk that those targets would not be met. That is a key lesson to emerge from the project and a perfect example of how you need to be extremely careful that funding deadlines do not drive bad spending.

Mr McLaughlin:

We are talking about £357,000 for equipment. Never mind the fact that there were no premises on which to conduct the operation, it did not even have a place to store the equipment.

Mr Cooper:

My understanding is that, at the time, the executives were told by BTI that the equipment was to be used by existing tenants in temporary accommodation.

Mr McLaughlin:

That is helpful; I did not pick that up from the report. Do we have details on what they were told and whether anybody thought it worthwhile to check the veracity of that information?

Mr Cooper:

We can come back to you to confirm that.

Mr McLaughlin:

There is evidence in the report that BTI submitted 11 cheques totalling some £350,000, even though none of those cheques had been processed through a bank. That was a complete breach of the agreed funding procedures. So someone at a fairly senior level who was capable of authorising monitoring officers — those who could raise the cheque to continue to pay the grant — must have said, “We are setting aside those conditions; go ahead and pay that out”, even if the thinking was to try to keep the project alive. They were dealing with cheques that had obviously been part of a fabrication. It was a scam.

Mr Sterling:

As I said earlier, it is hard not to conclude that it was a ruse to release money earlier than would have been justified in line with the conditions in the letter of offer, the only comfort being that the money was used for the purpose for which it was intended, albeit that it should not have been released as early as it was.

Mr McLaughlin:

Paragraph 5.23 — I think someone asked a question about this already —

The Chairperson:

Mitchel, can I just bring Joe in for a supplementary to that last question?

Mr McLaughlin:

Absolutely.

Mr Byrne:

I do not think I have seen any reference to the number of employees who were employed by that organisation. What was the maximum number of paid employees at any time?

Mr Sterling:

I think I am right to say that it never employed anybody.

Mr Byrne:

It never created one job?

Mr Sterling:

Apart from the chief executive.

Mr Copeland:

What sort of salary?

Mr McLaughlin:

There was a bank clerk in Spain who got a bit of work out of it as well.

Mr Sterling:

I think that the chief executive was paid on a per diem rate of £250. I may need to clarify that.

Mr Dallat:

How many times was he paid?

The Chairperson:

Every day?

Mr McLaughlin:

Paragraph 5.23 deals with BTI double claiming some £542,000 from both DETI and IFI. IFI actually discovered that and alerted the Department. The sum involved was, in effect, grant aided to the tune of 92%; 49% by DETI and 43% by IFI. The report demonstrates that, again, DETI and your staff or monitoring people did nothing. You are not going to justify that, because you cannot, but can you tell me how someone with sufficient seniority — it is quite clear to me — was allowing that to happen, or was instructing people at a more junior level, who knew that their jobs and careers would be on the line, to go ahead, and that person would cover their back? Is that not the reality of it? The sums are too big for people at a junior level.

Mr Sterling:

It is an understandable conclusion to reach. The evidence in the company inspectors' report does not point to any person or persons who were doing that, although there is discussion about

pressure to take the project forward, etc. There is no evidence to suggest that undue influence was put on any individual. I should say in that regard that there was double claiming, but at least there was no double payment. Although the grant-aid proportion was 92%, that was still acceptable according to the EU funding guidance at the time.

Mr McLaughlin:

Even though it was not the intention of the Department?

Mr Sterling:

Yes.

Mr McLaughlin:

IFI notified DETI that there was an issue of double claiming. At what level did that communication happen? Does that communication survive? Is it still available?

Mr Sterling:

I am not sure.

Mr Cooper:

A record of that communication survives.

Mr McLaughlin:

So we know who received it?

Mr Cooper:

It would have been received by a middle-ranking official in DETI.

Mr McLaughlin:

Do we know how that official notified that there was a double funding issue emerging? Do we know what action they took, who they reported to and what guidance they received?

Mr Cooper:

I am not sure that we have a clear trail of who they reported to on that matter.

Mr McLaughlin:

If that middle-ranking official had his or her collar felt on the basis of whether they had approved that, would they not tell you fairly quickly that they had passed it on to their line manager or project director? We could find out if we were prepared to ask.

Mr Cooper:

Sorry, I have not picked up your question.

Mr McLaughlin:

It is fairly simple: I am trying to establish where the buck stops in this case. Who decided to proceed in the manner in which they did, subsequent to being notified that there was a double-funding issue?

Mr Cooper:

I think, in the first instance, IFI proceeded to fund the project in the knowledge that DETI had already paid the grant. At that point, it proceeded to make a payment.

Mr McLaughlin:

The report actually indicates that IFI was under a misapprehension that it had accepted funding responsibility for a discrete aspect of the project. Subsequently, it turned out that both IFI and DETI were contributing to the same. It would appear that IFI became aware that there was double funding after the fact. That was the nature of its reference to DETI.

Mr Cooper:

No. My understanding is that IFI was aware that DETI had funded the equipment prior to its making its payment. It became aware when it went to vouch —

Mr McLaughlin:

I know that. It found the invoices stamped with DETI.

Mr Cooper:

It was prior to its payments that it became aware of that.

Mr McLaughlin:

Maybe we are talking at cross purposes. I am pursuing the fact that, first, there does not seem to be any dispute that there was a double-funding element of this —

Mr Cooper:

There were two payments —

Mr McLaughlin:

— whatever the consenting adults decided at the time. I am trying to establish where responsibility rests in the Department with regard to continuing with the project. At different stages, there were very clear indicators that it was dealing with a project that was not being properly managed and did not meet the necessary propriety or standards of administering public money. Perhaps it was the anxiety to see the project succeed despite the odds. However, we are talking about fairly outstanding examples of people deciding to change the terms of offer so that they could pay for equipment that was already paid for, in contravention of the previous guidance, to ensure that the money was released in time for a funding deadline, not to ensure that it was going to do anything productive, because there was nowhere to take it; for example, temporary accommodation, maybe some of the potential clients, blah, blah, blah. But there was not. None of that would stand even cursory examination.

With regard to the disciplinary process that was initiated — we had the inspectors' report and PwC was brought in — do we have a complete audit of all those public servants who were involved in the process and their areas of responsibility, linked by timelines to the development of the project from its inception to its collapse? Can we do that?

Mr Sterling:

We have the company inspectors' report, which is 200 pages long.

Mr McLaughlin:

Are you going to check to see how much of it you can make available?

Mr Sterling:

Yes. It is obviously supported by a vast amount of transcript material, etc. The company inspectors made a specific recommendation with regard to the people working in BTI. I have

described what has been done with regard to references to the director disqualification unit, the Chartered Accountants Regulatory Board and the Law Society. However, the inspectors did not make any recommendations in relation to officials in either the Department or Invest NI. In view of the seriousness of the issues identified in the report, I concluded that we needed to make sure that if any officials had undertaken any actions that were wrong — for want of a better term — they needed to be held accountable. I concluded that there needed to be some element of transparency about it, and we needed to be sure that it was done properly. So, I appointed an independent person to conduct a review of the full inspectors' report. I asked the reviewer to differentiate between actions or inactions that would indicate poor performance and those that would indicate an inappropriate or unacceptable level of performance. I did not ask the reviewer to consider the actions of former NICS or Invest NI employees, as they are effectively beyond the reach of Civil Service disciplinary proceedings or Invest NI disciplinary processes.

The reviewer produced a short report for me, which drew attention to the actions of four individuals: two Invest NI employees and two individuals who are members of the NICS. The Audit Office report acknowledges that disciplinary action was taken against two Invest NI employees. As far as the NICS employees are concerned, on receipt of the report, I took advice in relation to the two cases from my own HR advisors and, where appropriate, DFP and the departmental solicitor. I did that in line with the Civil Service handbook. Following careful consideration and consultation with those various people, it was decided that no action should be taken against either of the two officers.

I am sure that the Committee will want to know more about that, but, on advice, I do not think that it would be fair or appropriate for me to reveal the names of those individuals in an open session or to discuss the many factors that I, with others, had to take account of in reaching those decisions. However, I recognise the genuine concern of the Committee about this case, and I want to strike a proper balance between the need for transparency and accountability and the need to afford an appropriate degree of protection to the people concerned. In that regard, I am happy to offer to write to the Committee a confidential memorandum, which would set out in more detail the considerations that needed to be applied to this case.

Mr McLaughlin:

I appreciate that. That would be helpful. I hope that it is not confined to two individuals, because there was clearly a network, a structure and a line-management system. If necessary, on the same

basis of confidentiality, I would like to fill in the gaps in my understanding of what happened. Who was making the value judgement that certain contraventions of the conditions for grant aid should not result in the whole thing being wound up or remedial action being taken? Perhaps the responsibility lies with the two individuals you have just talked about. We shall see subsequently where they fit in. However, I suspect that the reality is that there was senior involvement. I do not know how senior that involvement was, but there were just too many opportunities for more junior staff to refer for guidance or direction, given the circumstances that they were confronted with in dealing with this project. There are not just too many loose ends here but too many contradictions, conflicts and obvious improprieties for even the most inexperienced junior not to have recognised that they needed some kind of assistance and guidance in handling this.

Mr Sterling:

I am happy to address that point. However, I should say that, for the two officers whose actions were drawn to my attention by the independent reviewer, the issues were largely procedural. Neither the company inspectors nor the independent reviewer have said that this person or that person bears responsibility for the failure of the project. Nonetheless, I am happy to draw out the people who were involved.

Mr McLaughlin:

The value of that information that you describe might simply help us to isolate from that. If we are talking about procedure and about two individuals, I would like to know the terms of reference of that referral to the independent reviewer. The seriousness of the breakdown in governance and management of this matter that we have heard about and read about indicates that we should have the fullest possible picture of everyone in the public service who was involved in managing this matter on our behalf. I think we need that information. However, we can access it under conditions of confidentiality or otherwise.

The Chairperson:

That is why I cannot understand why you will not come forward with names, when other names have been mentioned in the report and here today. How do you justify that?

Mr Sterling:

In respect of the four people who were identified by the independent reviewer, I am acting on guidance that the convention is that we do not refer to those names in an open session like this. I

am acting on advice in that regard.

Ms Hamill:

Just to clarify, when we talk about the guidance, we are talking about the guide to scrutiny of public expenditure, explicitly chapter four, which relates to disciplinary issues. It gives the guidance that disciplinary and employment matters are a matter of confidence and trust, and states:

“In such circumstances, public disclosure may damage an individual’s reputation without that individual having the same ‘natural justice’ right of response which is recognised by other forms of tribunal or inquiry. Any public information should therefore be cast as far as possible in ways which do not reveal individual or identifiable details.”

That goes on to suggest that the Committee would take that information to be able to pursue its inquiry under confidence. That is really where we are, because, as the accounting officer says, these are still internal disciplinary matters.

Mr McLaughlin:

The facts of the disciplinary process and the outcome were that nobody was effectively disciplined.

Mr Sterling:

Two people were disciplined in Invest NI. That is acknowledged in the Audit Office report.

Mr McLaughlin:

OK. The broader point, and I do not want to be diverted, because I am not arguing that we deal with this in open business as a disciplinary matter, but the outcomes are of much more significance. What is legitimate and in the public interest is that we know who managed this from the top down to those who were hands-on and engaged with the project. Subject to guidance, I would like to pursue that information after this evidence session.

The Committee Clerk:

On the guidance, I can clarify for the Committee that there is precedence to this discussion. The Osmotherly Rules, which the Treasury Officer of Accounts has referred to, are a little bit dated, and they were prepared for Select Committees in Whitehall. They are used as guidance in the Assembly, and the Committee has referred to them before. The excerpt that Fiona read from further states:

“Where Committees need such details to discharge their responsibilities, they should be offered in closed session and on

an understanding of confidentiality.”

That is guidance for the Government, obviously.

“Evidence in such matters should normally be given on the basis that it will not be given until disciplinary hearings are completed. When hearings are completed, the Department will inform the Committee of the outcome in a form which protects the identity of the individual or individuals concerned, except in so far as this is public knowledge already and where more detail is needed to enable the Committee to discharge its responsibilities, that detail will be given. The Committee will thereafter be given an account of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in the Departmental arrangements.”

That is what Fiona was referring to, and that has to be seen in the more updated context where the presumption in the Assembly context is for transparency between the Government and from government towards the Assembly as scrutiny body.

The Committee also has data protection responsibilities. In making a decision on this and on whether it wants to receive that information confidentially, the Committee will want to consider that recent freedom of information case law referred to the fact that:

“where data subjects carry out public functions, hold elective office or spend public funds, they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives”.

Recent case law also states:

“The existence of the FOIA in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where that information relates to the performance of public duties or expenditure of public money.”

The Information Commissioner advises that:

“the public authority consider the seniority of the role, whether the role is public facing and whether the position involves responsibility for making decisions on how public money is spent”.

That is the direction of travel in which the Committee will want to consider that decision. The Committee may want to consider whether to ask for the information again in public session or to follow it up in writing.

Mr McLaughlin:

That clarifies it for me. As it is such a sensitive issue, my own sense of it — it is up to the Committee — is that it would be better pursued subsequent to whatever we get in the report. We should then consider what to do, although that may be to write for further information.

Mr Dallat:

I have no real knowledge of what the Committee Clerk read out. However, I am slightly concerned that we may be getting ourselves into a gagging situation, in which we are not allowed

to have disclosures.

As I see it, there are two levels that are important to the Committee. First, there are those individuals who perhaps failed to carry out their duties. I understand what David said about that, and I can relate to it. Secondly, and much more importantly, there are those who are in leadership roles, and there is no need for any gagging in relation to them. We need to know who the leaders were, where the buck stopped and who failed fundamentally. I am not interested in pursuing a witch-hunt against an individual who perhaps did not tick some form. However, it is time that public money is accounted for in the same way as the private sector wants to account for its money.

I am sure that other members understand what I am trying to say. In this report, I want to see the leaders, who are paid leaders' salaries of, perhaps, six figures, clearly identified, and I want to see where they failed. I do not think that that we should be restricted in doing so in any way.

The Chairperson:

OK. Can we agree what we will receive the information in confidentiality? Is that what we are saying?

Mr Dallat:

Chairperson, I do not have a problem with an individual who has been identified as not having carried out some duty. However, I do not want this report, as regards the failure of leadership at the top level and among those who were paid what the outside world would consider to be astronomical salaries, to be gagged in any way. They failed in a fundamental project that should have delivered solutions to health problems and created jobs. Instead of that, they cost the public purse over £2 million. There was also a whole pile of deception and fraud. I do not think that that needs to be concealed.

Mr McLaughlin:

As we process the information and the evidence that we heard today, we should ask for the additional information that we need. We will then deal with the response. In that response, people might argue confidentiality, or they might respond in line with existing guidance and as they do with other correspondence. Let us not get too far ahead of ourselves. We will ask the questions and the answers will come back in some form. If people believe that they have to resort

to confidentiality, the Committee has to be prepared to hear those arguments.

The Chairperson:

OK. Are members content with that approach?

Members indicated assent.

The Chairperson:

OK, Mitchel?

Mr McLaughlin:

Yes. I am exhausted.

Mr Easton:

Paragraphs 6.24 and 6.27 of the report outline the Department's consideration of fraud. As regards concerns about the grant claims, paragraph 6.26 notes PSNI comments that DETI, by its own actions, effectively undermined its own case against BTI. Do you want to comment on that?

Mr Sterling:

Yes. The PSNI was simply reflecting on the fact that the way in which certain things had been done by the funders did influence them. However, the key point is that the PSNI also acknowledged that the way in which the funders had engaged with BTI in that context did not lead to any loss to the public purse or any gain to the funders. That is the key point that needs to be recognised.

Mr Easton:

Are you satisfied that there is sufficient training in fraud awareness in your Department?

Mr Sterling:

Yes, I think that there is. A high importance is placed on fraud awareness and on responding to the risk of fraud. Trevor will say something about the procedures that we have in place.

Mr Cooper:

Fraud awareness is provided centrally by the Centre of Applied Learning. Civil Service standards

would be applied and would be available. We emphasise to all staff the importance of attending that training. We have a fraud response plan, and we are currently reviewing our fraud policy. We have fairly robust and complete fraud procedures.

Mr Sterling:

Our audit and risk management committee takes a keen interest in it.

Mr Easton:

Paragraph 6.27 of the report says that you did not consult the police on the concerns about tenants and overseas travel. Does the email that we received cover that?

Mr Donnelly:

It does not cover all aspects. The evidence, for example, is a separate issue.

Mr Easton:

OK. Do you want comment on the issue of the tenants?

Mr Cooper:

The inspectors — they would advise the police regularly on those sorts of matters — believed that there would not have been a sufficient level of evidence to prove criminal intent. They believed that that issue would be best dealt with under the director disqualification process. My understanding is that that is being taken forward through that process.

Mr Easton:

Do you take that issue seriously?

Mr Cooper:

Absolutely. The inspectors' recommendation in that regard has been taken forward.

Mr Easton:

Paragraph 1.4 refers to possible disqualification proceedings being taken against BTI directors. What decisions have you finally come to?

Mr Sterling:

As I mentioned earlier, disqualification proceedings are being taken against one person, Teresa Townsley. Those proceedings were launched on 15 December 2011.

Mr Easton:

Why has it taken so long to reach this point, given that the company inspectors were appointed in 2005?

Mr Sterling:

Consideration cannot be given to that matter until a company inspection report is concluded. The report was produced in November 2009, and there was a two-year deadline by which decisions had to be taken. We fell within that deadline.

Mr Easton:

In retrospect, do you consider that the process could have been done more quickly?

Mr Sterling:

When I look back on this process, I wish that it had been possible to conclude it more quickly. However, predicting the length of time that a company inspection report will take and how much it will cost is very difficult. As I said, 42 people needed to be interviewed, some as many as eight times. A draft report was produced in autumn 2008. It then took a year to clear the report with all the individuals who were named in it and to ensure that it was not likely to be legally challenged when it was completed. So, such a process takes a long time. It is significant, mind you, that there has been a change in legislation. Since 1 October 2009, company inspections have been conducted under the Companies Act 2006 by the companies investigation branch (CIB) in Whitehall. We no longer do them. If a company comes to our attention, we have to draw it to the attention of the CIB in London. It would decide whether to take it forward, and it would also fund the cost if it decided to proceed.

Mr Easton:

What is the expected timetable for disqualification proceedings to be concluded?

Mr Sterling:

Again, that is difficult to predict. I am sure that it will take a year or more.

Mr Easton:

Mitchel has already asked most of my next question, so you will have to forgive me. Paragraph —

The Chairperson:

Sorry, Alex; I am going to bring in Michael for a quick supplementary question.

Mr Copeland:

Thank you, Chair. I will be brief. My question goes back to something that Alex said a few moments ago about the decision to take action against one director and not the rest. I was wondering how that decision was arrived at. The primary defence appears to be a misplaced trust or a commercial naivety. Was any work done around whether those defences or excuses stood the test of examination? For example, were they directors of other companies? Did they handle large budgets? What was done was done, but it could not have been done without some degree of suspicion, knowledge or intuition that something fundamental was wrong.

Mr Sterling:

Those considerations are taken in the first instance by our insolvency service. The key test in legislation is whether it is expedient and in the public interest for a disqualification to be made. One of the key factors that needs to be taken into account is the likelihood of success. There are a range of other factors that —

Mr Copeland:

Is that the same as or similar to the three tests that the police apply for a successful prosecution?

Mr Sterling:

No; I think that it is slightly different. Lest it prejudice the proceedings that have been launched, I do not want to be drawn any further on why it was deemed to be in the public interest for one person and not another to be taken forward for disqualification proceedings.

Mr Copeland:

You will understand the question, given the corporate responsibility of a board of directors.

Mr Sterling:

I do.

Mr Easton:

Mitchel has gone into a lot of what I was going to ask, but we will go through a few of the issues. Paragraph 1.4 refers to the independent review of the conduct of officials who were involved in the case. Who carried out that review, and on what basis were they appointed?

Mr Sterling:

The review was conducted by Paul Leighton, who is a former deputy chief constable of the PSNI. I selected him on the basis that, in his former career, he had extensive experience of HR and discipline issues and was not directly associated with the Northern Ireland Civil Service or Invest NI.

Mr Easton:

You spoke about how any officials were covered in the review, so we have dealt with that issue. You also said that the DETI staff who were involved were reviewed.

Mr Sterling:

Yes. I will address those issues in the confidential memorandum that I will provide to the Committee.

Mr Easton:

You indicated some of the grades that were involved, so that is fine. What was the conduct of the IDB and Invest NI chief executives? Were they involved in the review of the case?

Mr Sterling:

Sorry, which?

Mr Easton:

Was the conduct of the IDB and Invest NI chief executives involved in the case review?

Mr Sterling:

When I mentioned this earlier, I said that the scope of the independent reviewer's work was

confined to people who were still in the Civil Service or Invest NI. Our disciplinary procedures do not extend to people who are no longer with us.

Mr Easton:

Thank you.

The Chairperson:

When was that review carried out?

Mr Sterling:

It was carried out in September 2010.

The Chairperson:

Was the conduct of the head of DETI during that time reviewed?

Mr Sterling:

Sorry, I did not follow that.

The Chairperson:

Alex just asked whether the review took in the chief executives of the IDB and Invest NI. I take it that you are saying that Alastair was put in place after the individuals Alex was talking about were there. Were any other senior staff in DETI handling the issue? If so, have they left the Civil Service as well?

Mr Sterling:

I handled this issue myself. The confidential memorandum that I will produce will set all this out in detail.

The Chairperson:

OK.

Mr Girvan:

It has been a long session. Mr Sterling, cases 1 to 5 of appendix 7 illustrate how BTI was beset by a variety of unresolved conflicts of interest. How could that situation have been allowed to

develop? What was the Department doing to ensure that those checks were done? Case 3 of appendix 7 sets out an appalling sequence of events involving Fusion Antibodies, a company in which some of the BTI directors and their close relatives had a 75% shareholding and gained financial benefit at the expense of BTI. I will use one case as an example: £100,000 was used to purchase a DNA sequencer that BTI bought, grant-aided by DETI. I will come back to the point that, I think, Trevor made. Fusion Antibodies used that machine for 18 months free of charge and later bought it for £15,000. Why did the Department, as a grant funder, not prevent that type of abuse? There is a conflict of interest with some people sitting on boards or being part-owners or shareholders of other firms that would be competitors of the company that was being set up. There is also the issue of those people having some involvement in some of the boards that were making decisions about that company. I appreciate that there was some indication from Mrs Townsley that she had, at one stage, been a LEDU board member. How close was that connection?

Mr Sterling:

I will ask Mel to comment on some of the detail, but the general point is that there was a comprehensive failure of corporate governance in the BTI board. The failure to have a process and a set of arrangements for managing conflicts of interest was one of the most notable governance failures. So, I do not for a second seek to defend any of this at all. Mel will deal with the specifics.

Mr Chittock:

The appendices show that there were clearly a number of related-party transactions. Those related-party transactions should have been declared at the various boards. In fact, at one of the BTI board's very first meetings, it recognised the need for a governance process that allowed for those conflicts to be declared and managed accordingly. Unfortunately, it never actually followed through with action; it never produced a code of conduct for board members. As a general rule, we require that all conflicts of interest be declared. LEDU actually knew about the relationship between Fusion Antibodies and Genomic Mining Limited. However, no follow-up action was taken to ensure that arm's-length relationships existed between the various bodies. Again, we insist that contracts are put in place that define those relationships. Clearly, in some of those transactions, transfers took place between companies that we are not sure were at arm's length. We referred those matters to the PSNI, and it is unfortunate that no further action was taken.

Mr Girvan:

That brings me back to case 2, which is on GCE. That details a range of shares that were held by BTI directors and close relatives even though the company was not supposed to have personal shareholdings. Despite that, the Industrial Research and Technology Unit (IRTU) offered GCE assistance of £1.2 million. Did IRTU deliberately turn a blind eye to the personal shareholdings, or was it just incompetent?

Mr Chittock:

GCE never operated as a company. Although, as I acknowledged, the IRTU offered GCE assistance, GCE was never up and running as a trading company. Therefore, no assistance was ever paid. The foundation documents for GCE were clearly at odds with the Bioscience and Technology Institute, which was established as a not-for-profit organisation. So, I think that there is a conflict between GCE and BTI.

I want to add a little bit of background. I first became involved in these companies in around 2002. When I provided advice as part of my role in corporate finance, those relationships were the trigger for this investigation's being undertaken. Therefore, as soon as we became involved in that, we realised that there were connections between various companies. That led to the subsequent company inspection process, and it has taken us all the way through to where we are today.

The Chairperson:

Paul, before you move on, I want to bring John in for a quick supplementary question.

Mr Dallat:

My question was really to round that up. It is OK; I will let it go.

The Chairperson:

If your question is to round it up, I will bring you in after Paul finishes his question.

Mr Girvan:

Case 5 in appendix 7 examines the actions of FPM Chartered Accountants in the award of the contract for the economic appraisal. I recognise that that case did not involve a lot of money.

Nevertheless, with the support of Mrs Townsley, FPM knowingly obtained a clear and improper advantage over another consultancy in the tendering process. FPM is also featured in appendix 6 with regard to claims for overseas travel, which we mentioned already, on two separate occasions. It failed to discharge its responsibilities as the independent auditor. Apart from an unsuccessful referral to the Chartered Accountants Regulatory Board (CARB), has any other action been taken against FPM? One thing that I want to check and make clear is whether DETI or Invest NI still use FPM Chartered Accountants.

Mr Chittock:

The action was to refer FPM to CARB about its conduct. CARB's conclusion was mentioned earlier. As regards whether FPM is used today, I would need to check any arrangements that we have with the firm.

Mr Girvan:

Do you think that it is acceptable for cases such as this to be allowed to pass without any effective form of censure on the basis of what has transpired? That firm has been party to everything that went on.

Mr Chittock:

That was part of the company inspectors' analysis of the various roles of individual bodies. They drew conclusions on that, hence the reference to CARB in their activities.

Mr Girvan:

Do you have any detail of their outcomes? I know that you talked about that earlier, but when are they expected to report back on this issue?

Mr Chittock:

I do not know whether my colleagues have a date from CARB.

Mr Cooper:

CARB has decided that there is no action to take on the director of FPM on the issue of the economic appraisal. The referral on Michael and Teresa Townsley is ongoing. We do not have an indication of when an outcome is expected on that. A lot of information has been provided to CARB, and I think that it has to go through a form of clearance process in the same way that the

inspectors went through a clearance process for their review. So, that is ongoing.

Mr McLaughlin:

When we find these comprehensive failures of governance, which is a very good way of describing it, I will be interested to know whether the response is simply limited to referring to the professional bodies. Has the Department taken any action? Is there a consequence for the Department, given the experience and the failures?

Mr Sterling:

We have acted on all the recommendations that the company inspectors' report made on referrals to professional bodies and the director disqualification unit. I have explained the process that I put in place to determine whether any serving official should be subject to discipline, and we have also discussed the various references that we and company inspectors made to the PSNI. I believe that we have done all that we can to make people culpable for the things that have gone wrong in this project.

Mr McLaughlin:

I am not complaining about what you did; I am wondering whether it was sufficient or as much as you could have done. In circumstances in which you referred someone to a professional body, are there any instances whereby, if it decides that no action is necessary, it will protect the Department or any other Department from that individual?

Mr Sterling:

That is a good question.

Mr McLaughlin:

Yes; I know it is a good question.

Mr Sterling:

We have seen references to professional bodies before. I think that I will withhold; I will keep —

Mr McLaughlin:

I am not going to tempt you into being indiscreet. There is a genuine issue here as to whether you should do what the guidance would indicate that you should, and I think that, properly, you

should do that. However, that does not provide a guarantee that we are going to get the necessary protection.

Mr Sterling:

No; that is true. Professional bodies self-regulate, by and large, so if somebody does something wrong in a professional capacity and it falls short of the 99% test that is necessary for criminal action, as well as of the other two tests, and if, on the other hand, the regulatory bodies determine that no action can be taken, there is really nowhere else to go apart from director disqualification.

Ms Hamill:

There is no discretionary action that we can take. We must stay within the legal process, which is to refer such people to their professional bodies. That is why DFP insisted that we appeal the decision of CARB, because both we and the Department —

Mr McLaughlin:

Is there a difference between referring to a professional body and making a formal complaint?

Ms Hamill:

They were formally referred under the by-laws of those bodies.

Mr McLaughlin:

Yes, but I am asking quite a precise question. Is there a difference between referring and making a formal complaint? Would it be dealt with differently?

Mr Cooper:

They were effectively formal complaints about their actions, as outlined in the inspection report. CARB has been provided with all the extracts of the inspection report that deal with the actions that are relevant to the professional body in question. It has also been provided with transcripts. We have provided CARB with as much as we possibly can to give it full sight of all the actions that we were aware of in this case.

Mr McLaughlin:

I referred to the fact that there is some information that we need, and, subject to any justifiable limitations on what we can do publicly, I think that we should still seek that information. I am

interested in the brief that was given to Paul Leighton for his review. I would also like to see as much detail as possible about the referrals to professional bodies, which, in two of the examples that we heard about, came back with the view that no action was necessary. I would like to see the detail of what was submitted to them that allowed them to come to that conclusion.

The Chairperson:

Are Committee members happy enough to seek that clarification?

Members indicated assent.

Mr Copeland:

I support what Mitchel said about those two aspects of the case. I would very much like to know the nature of what went on with the police. In other words, were the police asked whether a number of random items were offences and they responded by saying that they were not, or did they get a holistic view of all the available evidence at one time? If so, what rank of police officer was involved in taking the decision. You can look at bits of this and say that they are fair enough and may have been because of X, Y or Z, but if you look at the overall scenario, I am sure that, as someone who is responsible for public money, it makes your blood run cold to think that this could have happened and that it could have happened accidentally. I do not think that it could. As has been said, it does not seem that there is any likelihood that anyone will be found culpable or that a message will be sent out to people who indulge in this sort of activity that they will be subject to some recourse by those who are commanded with charge of the public purse.

So, I would like to know the nature of the exchanges with the police, the evidence that was presented to them, the way in which it was presented, if it was presented as a holistic view and whether a person at an appropriate level in the police took the judgement on the seriousness of the disappearance of £2.2 million.

Mr Dallat:

I know that we are winding up. The term “risk aversion” is increasingly creeping into the political vocabulary. I thank the panel for coming here for four hours of very tough questioning. Will the witnesses put on record whether they agree that, if the correct risk management is followed, there is no need in the wide world for any risk aversion?

Mr A Hamilton:

Absolutely.

Mr Dallat:

You are not saying that very loudly.

Mr A Hamilton:

I agree absolutely. If risk management is done properly, risk aversion should not be in your vocabulary.

Mr Dallat:

That is very useful, honest and frank. It is useful, because sometimes you and the Audit Office come in for a lot of flak for engaging in these exercises. I think that that is an honest answer.

Mr McLaughlin:

I associate myself with that, because it is also exactly my view of the situation. The risk assessment should be done, and the matter should then be managed in the appropriate way.

The Chairperson:

It is not the first time that we have said that in this Committee over the years. Departments need to take that on board.

Mr A Hamilton:

Chairman, I know that you have not asked me a question, but I want to make a comment. I do not say that flippantly; I said it because I absolutely believe it. On the back of my previous appearance in front of this Committee, all our casework proposals are up front on the document and have all the risks outlined alongside mitigation for those risks. So, I assure you that the assurance that I gave this Committee for proper risk management the previous time is now in place in our casework-handling processes.

The Chairperson:

I appreciate that. To sum up, almost £2.5 million has been lost —

Mr McLaughlin:

Sorry for interrupting you, but can I make a quick point? This went completely out of my head at the time. If we look at the chronology of the process, we can see that it actually almost coincided with the birth of the Assembly. Everybody will remember the hiatus and the suspensions that occurred. Quite a lot of this story involves the establishment of the Assembly, its collapse in 2002 and the very extended period when it was in suspension. Did that have anything at all to do with what happened here?

Mr Dallat:

Of course it had.

Mr Sterling:

There is no evidence in the inspectors' report — *[Laughter.]*

Mr McLaughlin:

Well done, David. I will let you off with that. Brilliant. You should have been a politician.

Mr Dallat:

No, you would not wish that on anybody.

The Chairperson:

On that note, a lot of money has been lost. Some very senior people who maybe ended up going on to become head of the Civil Service were all there or thereabouts, even —

Mr Dallat:

There were knighthoods and everything.

The Chairperson:

A lot of mistakes were made, and I hope that the Department and Invest NI take a lot of this on board. We have not sought the information lightly; we sought it so that we can complete our report in the best possible manner. I listened to what you said, Alastair, about some lessons having been learned, and you have now started to implement some of the issues from the previous hearing. I appreciate that, and let us hope that we can move on in that manner from now on. However, this has been very poor, and it has not been good for any of us to sit and listen to. It is

probably one of the longest reports that we have had to sit through in one session, but, there you go — it had to be done. Thank you for your attendance.