



Northern Ireland  
Assembly

Public Accounts Committee

# OFFICIAL REPORT (Hansard)

NIAO Report: 'Department for Regional  
Development: Review of an Investigation of a  
Whistleblower Complaint'

16 October 2013

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr Ross Hussey  
Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Sean Rogers

**Witnesses:**

Ms Deborah McNeilly	Department for Regional Development
Dr Andrew Murray	Department for Regional Development
Mr Richard Pengelly	Department for Regional Development
Mr Geoff Allister	
Dr Malcolm McKibbin	
Mr Paul Priestly	

**In attendance:**

Mr Mike Brennan	Acting Treasury Officer of Accounts
Mr Kieran Donnelly	Comptroller and Auditor General

**The Chairperson:** I welcome Kieran Donnelly, who is here with his Audit Office team. I remind members that Mr Mike Brennan is here on behalf of Ms Fiona Hamill.

I welcome the witnesses to the meeting. Richard, without further ado, would you like to introduce your team?

**Mr Richard Pengelly (Department for Regional Development):** Certainly. Thank you very much, Chair. On my far left is Paul Priestly, who was the accounting officer in the Department between 2007 and 2010; Deborah McNeilly is my deputy secretary for finance and resources; Andrew Murray on my right is the chief executive of Transport NI, which encompasses Roads Service; and Malcolm McKibbin and Geoff Allister are former chief executives of Roads Service.

**The Chairperson:** You are all very welcome. I remind members to stick to their line of questioning. Some members will be sweeping, and I will allow you time for that. If members wish to ask supplementary questions, they should indicate that either to the Committee Clerk or to me.

Richard, as I said, you and your team are very welcome. I know that, for various reasons, it has been a big ask to get all the witnesses here today. Among those is the time that has passed since this all began and why it has taken so long for the issue to be investigated and reach the Committee. Do you think that this has been an acceptable time for a whistle-blower to wait to have his genuine concerns examined?

**Mr Pengelly:** Thanks, Chair. Before I get into the substance of your question, I wish, if I may, to make a few brief points to clarify matters to avoid the repetition of points as we go through.

The additional witnesses who have come along today have done so at short notice, and we are grateful for the Committee's tolerance in giving us an extra week to prepare. The fact that the issues go back more than 10 years and the fairly limited preparation time raise the possibility that some issues may be raised today that our memory and collective preparation do not allow us to answer immediately. Therefore, more than would normally be the case, we may need to come back to you in writing on some points. We will try to avoid that if at all possible, but it is just to make the Committee aware of that and to ask you for your forbearance.

I want to make two other points for the purposes of clarification. The Committee and the witnesses always take a great deal of comfort from the fact that we work off an agreed report; it makes the evidence sessions much easier. Given the roles of Paul, Geoff and Malcolm at the time that the report was being cleared, they did not have the opportunity to comment; therefore I want you to appreciate that some of their comments will be made in that context. Secondly, Chair, your helpful letter to us on 4 October clarified that, although the focus of today's session will be on the report, Committee members may want to explore issues that preceded the report and the investigation. There is no agreed evidence base, and that is not satisfactory in facilitating an evidence session. We are happy to work round that, but I point it out for the sake of clarity. It is not an ideal situation for us, but we are happy to work with the Committee and to try to work round that.

**The Chairperson:** Absolutely. I concur with some of the sentiment. I assure you that if, during a line of questioning, a witness cannot recollect or bring information to the fore, we will allow you the opportunity to put it in writing. At times, the Committee has called witnesses again. We will allow for that today, and we understand that that is the case because of the length of time that has passed.

Returning to my question, what would you say to the whistle-blower about how the Department has dealt with this case?

**Mr Pengelly:** Thanks, Chair. The Audit Office report highlighted that its investigation took four and a half years, which I think we all accept is not ideal. However, I think that there are a couple of contextual points that we need to recognise.

The first is that this investigation did not start with a complete set of allegations or a complete evidence base. It started at the tail end of 2005, further allegations and evidence came forward in 2006 and 2007, and it was the early part of 2009 before Mr Connolly confirmed that he had submitted all his evidence and had nothing more to add. There was confirmation in the early part of 2009, a draft report was issued in mid-2009, a final report was issued towards the tail end of 2009 and everything was finalised in 2010. It was a substantial investigation, as there was a great deal of material to get through. The best indicator of that that I can offer the Committee is that, although it took us four and a half years, as the Audit Office report draws out, it did not reperform any of our work or take additional evidence; it simply reviewed the material that we had collated. That work by the Audit Office took two and half years, which underscores the complexity of the task and the amount of evidence and level of detail that had to be gone into. Conceptually, I accept that we want to get through these things as quickly as possible. However, it is fundamental that we do not rush things or miss things and that we go through it objectively and analytically. We did that in this case.

**The Chairperson:** Thank you, Mr Pengelly. As I said, time has passed, and the witnesses may have difficulty in recollecting precisely. It was useful to have the sequence of events aired so clearly and precisely.

Hansard is experiencing interference with mobile phones. If anybody's mobile phone is on — mine is switched off — please turn it off, as it can be difficult for Hansard to pick up the recording of the session.

We move on to the circumstances that gave rise to the suspected fraud investigation.

**Mr Girvan:** Richard, I appreciate that we are going back quite some time. I want some clarification. I understand that Andrew Murray is "Official A" in the report and that Geoff Allister is "Official B". Is that correct?

**Mr Geoff Allister:** Yes.

**Mr Girvan:** Going back quite some time, who was running the procurement competitions for road signs that ended up awarding the whistle-blower's business to another company in 2000?

**Mr Pengelly:** My memory has failed us already. "Official D" in the report is Dr Murray.

**Mr Girvan:** Official D?

**Mr Pengelly:** Yes. "Official B" is Mr Allister.

**Mr McKay:** There is a list, Paul.

**Mr Girvan:** Who was running the procurement in 2000?

**Mr Pengelly:** The named individual? Organisationally —

**Mr Girvan:** In the organisation.

**Mr Pengelly:** What is now the Central Procurement Directorate (CPD) was then the Government Purchasing Agency (GPA). It would have had the procurement experts that Roads Service worked with; it would have owned and managed the procurement competition for us.

**Mr Girvan:** Can you not put a name to it? Would one person have headed it up?

**Mr Pengelly:** Are you talking specifically about signs and equipment?

**Mr Girvan:** Yes.

**Mr Pengelly:** I do not know who that —

**Mr Girvan:** In relation to the signage.

**Mr Pengelly:** In 2000?

**Mr Girvan:** Yes.

**Mr Pengelly:** I do not know.

**Mr Girvan:** The other thing that I want to find out — maybe Mr Allister will tell us — is how one contractor's business repeatedly ended up being given to another. Exactly what happened during that process? That is signage again.

**Mr G Allister:** I am having some difficulty hearing. Could you repeat the question?

**Mr Girvan:** How did one contractor's business, which it had won, end up being repeatedly given to another contractor during that period?

**Mr G Allister:** Is that during the 1999-2000 contract?

**Mr Girvan:** It is between 2000 and 2002.

**Mr G Allister:** The results of the investigation at that time found that some of the signs that were under the contract for Traffic Signs and Equipment went to an alternative supplier. Yes?

**Mr Girvan:** Yes.

**Mr G Allister:** I think that an internal audit report at the time into the investigation stated that "rash expediency" was given to another supplier.

**Mr Girvan:** What exactly is meant by "rash expediency"?

**Dr Malcolm McKibbin:** Maybe I can help. There was a previous complaint about orders not being given to Traffic Signs and Equipment in 1999. A complaint was made to Mr Victor Crawford and was investigated by Dessie Moore, who was the Roads Service Direct (RSD) operations manager. None of the allegations was substantiated. In 2001, a complaint was made to the Minister for Regional Development Peter Robinson via John McDowell, who worked for Traffic Signs and Equipment at that time.

He made three allegations about the work of Roads Service and PWS. The first related to competitor firms being advised of Traffic Signs and Equipment prices. That allegation was withdrawn by Traffic Signs and Equipment. The second allegation related to Traffic Signs and Equipment not being included in a restricted list. Again, that issue was resolved. The third allegation involved signs being misordered; orders that should have gone to Traffic Signs and Equipment were given to PWS. The investigation by internal audit and Roads Service found that, at three sites, orders to the value of just under £7,000 plus VAT should have gone to Traffic Signs and Equipment. The investigation found that there was no evidence of fraud and that it was likely that the southern division of RSD gave the orders to PWS because of its concerns about the poorer delivery performance of Traffic Signs and Equipment. To give you a feel for the performance statistics of the signage firms, my figures show that Traffic Signs and Equipment delivered about 75% of its orders late and PWS delivered about 30% of its orders late. There was clearly a delivery problem, but that did not excuse the signage being given to the wrong contractor. The investigation found that, on three sites, there was signage to the value of £7,000, with an additional cost to the public purse of £1,000, and some loss of profit to Traffic Signs and Equipment. There was a profit margin of £7,000 for the sites that were identified to us.

The following year, Traffic Signs and Equipment made another complaint to Mr Allister. That complaint was more about quotations not being sought from firms for signs that were off contract. It was not about misplaced signs; it was for signs that were off-contract. Again, an investigation by internal audit found that there was no fraud at that time. Those are the only instances that I was made aware of when I was chief executive. We are talking about half a dozen orders. I asked Roads Service roughly how many signage orders there were per year and was advised that there are over 4,000.

One of the reasons why you, Chair, asked me to attend was to give you some context. I am trying to give you a feel for this.

**Mr Girvan:** I want to go back to the original tender. If somebody tenders to make signs for the Department, they would be expected to get the orders for those signs. In doing so, expertise would be required to help during the procurement. Was CPD ever consulted by the Department about the procurement exercise to be carried out for that tender?

**Mr G Allister:** CPD was in the lead because it was the centre of procurement expertise (COPE). It had the professional advisers to the Department for the purchase of signage contracts.

**Mr Girvan:** I was interested to hear Dr McKibbin's comment about signs being delivered late or not being available at the time. It is something that members might cover later. To find that signs were made two years before they were required is another interesting point, but other members might cover that.

During the proceedings of the tender, the weighting varied between 100% and 20%, although it eventually ended up at 20%. The reference was changed, whether it was the quality, the standard or whatever. I know that minimum standards are required, which would probably be covered under

documentation to ensure that anyone who tendered would meet those standards. Why was there a manipulation of the tender process that was seen to facilitate a desired contractor?

**Mr G Allister:** I have not seen any evidence of the manipulation of a tender process. There is —

**Mr Girvan:** Am I right that the tender process was changed by the weighting of costs being brought down from 100% to 20%? However, that did not happen. That had to be negotiated at different stages during the process because somebody was maybe not winning the contract and so desired to change it in another way. We want to get to the truth; that is why we are here.

**Mr G Allister:** I will take you through the process. There was a range of quality/price splits or, in other words, the percentage split between quality and price through the complete range of contracts, from 1999 to 2001, in 2002 and onwards. It might be useful to outline the context and explain that, in the late 1990s, enormous changes were taking place in procurement policies and strategies across the United Kingdom. One in particular, Rethinking Construction, which was led by Sir John Egan in 1998, was adopted in Northern Ireland and became part of the Achieving Excellence initiative here.

He moved procurement along a number of important themes, one of which was the quality-driven agenda. There was a recognition at that stage that a great deal of procurement up until that date had been done on price only, and it was found that that was not resulting in value for money. There were adversarial issues around the management of contracts and, indeed, it was driving the wrong behaviours. Therefore in the late 1990s there was a move towards procurement on the basis of quality and price; that came into Northern Ireland and was adopted as procurement policy here by the procurement board and the Executive in, I think, 2002. However, in the run-up to that, on the advice of the GPA — the Central Procurement Directorate as it is now — there was a move amongst all government clients in Northern Ireland, under the auspices of the Construction Clients' Group, to move towards quality and price. I am setting the context for you, because that is what I have been asked to try to do.

I will explain the process for each contract; indeed, this is generic for all contracts. An evaluation team is put in place at the start of each contract, and its role on behalf of the purchasing client — those who want to use the product, — is to sit down at the start of each contract and, for that specific contract at that moment, decide on what the quality/price split should be if that is how it will be procured. It works in the background. In the early 2000s, there was a move towards most economically advantageous tender (MEAT), and that was defined as getting quality and price. The evaluation team's role is to set the quality and price, and that is done specifically for each contract. Once that has been set, which is done in advance for each contract, that is the mechanism by which the tenders are selected.

**Mr Clarke:** I want to pull you back to two points because, to a degree, I got the impression that Malcolm helped you to answer that question. In your first explanation, you talked about expediency, which suggested that there was some sort of impropriety in how the contract was managed. Do you accept that?

**Mr G Allister:** That is in the Audit Office report into —

**Mr Clarke:** No, it is your word; you used the word "expediency".

**Mr G Allister:** That view was formed in the Department on, I think, the basis of the Audit Office report, which said that there had been honest mistakes. I think that that was the terminology, although I cannot remember the exact terminology that was used at the time.

**Mr Clarke:** You mention honest mistakes, but what is your view of the court ruling in 2001, I think, when the contractor took a case against the Department?

**Dr McKibbin:** It was 2010.

**Mr Clarke:** When the contracts were awarded, a contractor took a case against the Department. It goes back to my colleague's point about toning down the price in the matrix from an 80:20 split to a 60:40 split.

**Mr G Allister:** The changes in the split were the view of the evaluation team when it set the criteria against which the most economically advantageous tender was going to be judged on each competition.

**Mr Clarke:** Are you suggesting that changing the matrix in how it will be scored and the award of a tender after a process has started is normal practice?

**Mr G Allister:** No. Sorry, maybe I have not made myself clear.

**Mr Clarke:** You have not.

**Mr G Allister:** I am sorry, then, if I have not. The evaluation team sits down at the start of the process even before adverts go out. These are European Union competitions; so, even before the adverts go out, the procurement evaluation team sits down and decides at that stage, before they have advertised, the criteria by which they will judge the successful tenderers in the competition. That is done for each competition.

In each competition, they will take into account a range of factors, advice from professionals such as CPD and look at lessons learned from previous contracts. They will form a view for that specific contract on what they think is an appropriate split between quality and price.

**Mr Clarke:** Do you have a copy of the report to hand?

**Mr G Allister:** The Audit Office report?

**Mr Clarke:** Yes.

**Mr G Allister:** I have.

**Mr Clarke:** In the last paragraph of section 72 on page 33, entitled "In favour of the Whistleblower", which is an extract of the court judgement, the judge states:

*"I am satisfied that the Defendants are in breach of the duty owed under the regulations [Public Contract Regulations 2006] to the extent that they have not complied with the legal obligations of objectivity and transparency in measuring quality at 40 per cent in the assessment of the tenders. Further I am satisfied that, in consequence of that breach, the Plaintiff [Whistleblower] has suffered or risks suffering loss or damage in respect of the three contracts that the Plaintiff would otherwise have won, had the price quality split been 80/20 rather than 60/40 [the issue of price/quality split above resonates with Allegation 1]."*

Surely that does not tie in with what you just said, Mr Allister.

**Mr G Allister:** The comment under "In favour of the Whistleblower" is:

*"complied with the legal obligations of objectivity and transparency"*

What the judge said in the ruling was that he was not convinced of the transparency in how the 40% was arrived at. He could not see how the 40% was arrived at.

**Mr Clarke:** Yes, that is the judge —

**Mr G Allister:** Yes, but at no stage —

**Mr Clarke:** — who said he was:

*"satisfied that the Defendants are in breach of the duty owed under the regulations [Public Contract Regulations 2006]".*

Will you accept the judge's ruling in that case or not?

**Mr G Allister:** I am accepting that what he says is that —

**Mr Clarke:** So, you are accepting that in the case of the contractor who took the case against the Department, it was unjust how the Department arranged to change the split.

**Mr G Allister:** No, he did not say that.

**Mr Pengelly:** I am sorry, Mr Clarke, but I think this post-dates Mr Allister's time in the organisation.

One of the grounds for complaint was that the quality/price split was manifestly wrong. The judge ruled that it was not manifestly wrong. The error that the Department made was that we did not fully document and articulate the rationale for a 40% figure. I think the complainant argued that the qualitative factor should have been in the region of 10% to 20%. We used 40%, so the judge in his ruling said that clearly between the two sides the precise point was somewhere between 20% and 40% but in the absence of a clear articulation of our reason. He was not saying that it was wrong. He said that we had not properly documented it.

**Mr Clarke:** That is not how a reading of the judgement comes across.

**Dr McKibbin:** I may be able to help. At the time, the DRD got further legal advice from Nigel Giffin QC, on the outcome of the court case.

**Mr Clarke:** Did you appeal it?

**Dr McKibbin:** Pardon?

**Mr Clarke:** Did you appeal the decision?

**Dr McKibbin:** No.

**Mr Clarke:** So, no. I am just trying to establish the relevance of further advice after you took a case and the judge found in favour of the contractor in this case in terms of that paragraph.

**Dr McKibbin:** I am happy to —

**Mr Clarke:** What I want to do before you expose anything else about this, Malcolm, is to establish whether, after that advice, you decided to appeal the decision or otherwise. If you did not appeal it, then it is not relevant.

**Dr McKibbin:** I disagree with the point regarding relevance because it obviously informed —

**Mr Clarke:** It is relevant where you use public money to take legal advice and if you do not pursue it, whether that advice was in favour of the original judgement or otherwise.

**Dr McKibbin:** First, I was not in DRD at the time, but I want to go back to the allegation that you were saying that this was a bias-related or favouritism-orientated exercise —

**Mr Clarke:** I did not use those words.

**Dr McKibbin:** I thought that you were talking about the manipulation of —

**Mr Clarke:** I did not use that word either.

**Mr Girvan:** I did.

**Dr McKibbin:** I beg your pardon.

An accusation was made that the criteria were manipulated. When the case was looked at, the reasons for the alleged bias were said to include a history of dispute, which we have talked about, with the principle individual behind the company, which included allegations that procurement evaluation criteria had previously been shifted deliberately more in the direction of quality as opposed to price for



the specific purpose of advantaging the rival operation and disadvantaging Traffic Signs and Equipment Ltd (TSEL) or a predecessor company.

The judge, Weatherup J, rejected all of those bias-related allegations as well as other allegations of manifest error; so the judge rejected allegations, in the 2010 competition, of any interference with figures that will have been carried out to advantage one contractor over another. That is a result of a High Court case where the judge heard witnesses give evidence under oath for 16 days.

**Mr Clarke:** I am not disputing that, but I am talking about the section where he came to the convincing conclusion that this contractor was disadvantaged. Let us not talk about all the other aspects of this particular case; on that one aspect, the judge found in favour of the person who brought the case against the Department. He found against the Department in that aspect of the case. Is that fair to say, Malcolm?

**Dr McKibbin:** I will pass over to Andy who is the accounting officer.

**Dr Andrew Murray (Department for Regional Development):** The plaintiff considered that the 2009-2010 competition was unfair and stated a number of grounds on which he thought it was unfair. The issue of transparency was not one of the grounds that was taken to the court, but when the court and Weatherup J examined the whole issue, he found what I would regard as a very technical point on which we had not complied with the regulations. I must say that this did —

**Mr Clarke:** Technical or otherwise, do you accept that the court's judgement on that?

**Dr Murray:** Yes, we did accept that. We did not appeal it, as you have said; but it did send quite a shockwave through the industry, because nobody was doing that before. The need for transparency was identified in this court case for the first time. Now, that is not to be confused with the transparency of making sure that all contractors are aware of the quality/price mix at the start of a competition; this is a completely different point.

**Mr Pengelly:** The judge said specifically that 40% might turn out to be a justified measure of quality and that the decision to use 40% was not to disadvantage or advantage any particular tenderer; so, the problem was the failure to document the rationale for using the figure of 40% as opposed to the 40% being wrong.

**Mr Clarke:** He said he was satisfied that the plaintiff had suffered loss as a consequence of that breach. In Mr Allister's opening remarks, Richard, he mentioned contract "expediency". I think that his choice of words caused doubt in some of our minds, considering what the judge found, if you then take the advice that Malcolm got from the QC whereby the Department did not take a decision to appeal some of the judge's findings.

I am happy to lead back to my colleague.

**Mr G Allister:** If I can just clarify a point, Chair. The comment on "rash expediency" was one that, as I recall, was made by the then chief executive of Roads Service about the purchasing of tender from another supplier rather than those that got the contract.

**Mr Girvan:** I want to go back to a point that was made earlier. I had asked a question about one contractor's business repeatedly ending up being given to another, and the explanation given to him was that it was as a result of orders being delivered late. Do you have any documented evidence of contacting the contractor who had won the contract and explaining to him why he was not getting it; or were orders given to him in a timely fashion to allow him to do it? I know that some people have unrealistic expectations of giving you an order on a Friday afternoon at 4.00 pm and saying that they will pick it up on a Monday morning at 9.15 am; but some boy might have a wee bit of slack in his process and might be able to do it. Was there any indication that the orders were given in a timely fashion and that there was an understanding of a time for the orders to be delivered?

**Mr G Allister:** There was a very clear understanding, under the terms of the contract, of the timescale in which the order should be delivered. In a review of the papers in preparation for today, I went back over papers for many years and, at that time, I saw papers reflecting that the signs and equipment firm had been written to on 37 occasions with regard to the late delivery of signs. I recall the note which said that there had been no formal response.

**Mr Girvan:** Thank you. I turn to Mr McKibbin. What was the first time that irregularities in relation to the contracts associated with the signage was brought to your attention?

**Dr McKibbin:** I was made aware of it when I took over as chief executive.

**Mr Girvan:** That was in —

**Dr McKibbin:** I was chief executive designate from January to March 2002 and acting chief executive from March 2002 onwards. I saw the results of the 2001 investigation.

**Mr Girvan:** Were measures already in place, or did you put additional measures in place to ensure that this type of occurrence could not happen again?

**Dr McKibbin:** A whole series of measures were put in place to try to ensure that the misordering did not occur again.

Each order was followed up with the heads of business units. A whole series of meetings took place with senior management to make sure that they were aware of the problems encountered. Over 300 staff were sent on training courses to try to ensure that, throughout the next few years, they got better at contract management.

At the meetings of the heads of business units, we frequently discussed controls assurance and contract compliance. A series of performance-related meetings took place with the relevant suppliers. We introduced a new contract monitoring system, centralised the ordering of signs and client-checking of order receipts. We provided greater clarity on the timeliness targets, and we reiterated and repeated the procedures that had to be adhered to by our staff.

We amended schedules to stop the confusion of ordering between schedules. For instance, if you have one schedule for triangular signs and one for warning signs, where do you order a triangular warning sign from? There was some basic stuff that we had to try to improve. We continued to improve and gave added weight to the quality side of the quality/price criteria, because that was the aspect of the contract with which we were most concerned.

We now have mandatory requirements for contractors to be accredited to sector schemes that provide third-party assurance over the quality of their materials. We have introduced director of engineering memorandums to try to ensure better procedures and e-procurement in the ordering, accepting and receipt of signs. I can go on if you wish.

**Mr Girvan:** No. I appreciate that you are going through a comprehensive list of measures that were put in place to try to ensure that this would not happen again. We might get back to that list later.

In conjunction with the 2001 report, you obviously identified shortfalls in the organisation and the individuals who had probably failed. Was any action, or disciplinary action, taken against members of staff at that stage?

**Dr McKibbin:** With respect to disciplinary action, the 1999 investigation made no findings against Roads Service. Obviously, disciplinary action was not appropriate.

**Mr Girvan:** Was there an obvious improvement required within your own organisation that you could identify?

**Dr McKibbin:** Not in 1999. That investigation preceded my tenure. In any event, in 2001, the complaint investigation found that some Roads Service staff had placed orders incorrectly. The chief executive at the time wrote out, saying that he regarded it as a serious offence, but noted that there was no evidence of fraudulent activity and that the problem — and this is where the term that Geoff used came from — had arisen as a result of rash expediency by the officers concerned, based on their concerns about the performance of Traffic Signs and Equipment delivery.

The permanent secretary at the time was Nigel Hamilton. He wrote to the Minister and concluded, on the basis of whether disciplinary action was required, that actions were misguided rather than malicious in intent and that, as such, the guidance at the time would not support formal disciplinary

action by the Department. Therefore, disciplinary action was considered at the time but was not thought to be appropriate.

The November 2002 investigation, during which time I was chief executive, found that, apart from the known problems with the previous contract, a new problem was arising, which was that some suppliers were not being given the opportunity to tender or quote for off-contract signs. Internal audit investigated it. It was normal practice for internal audit to identify whether it believed there was a need to consider disciplinary action, but the conclusion reached was that there was a failure of performance rather than one of conduct. Paragraph 1061 of the staff handbook that existed in 2002 states that:

*"Where the behaviour complained of concerns an apparent failure of performance rather than conduct, different procedures may be appropriate."*

That is, different procedures from disciplinary action. At that time, in discussions with Mr Allister, we came to the conclusion —

**Mr Girvan:** After that, training would have come in.

**Dr McKibbin:** A whole lot of training came in at that point. The list of things that I was telling you about had already come in post-2002. We were saying that we had a problem; we believed that it was more to do with performance than anything else; and there had been no finding of any investigation or court case that suggested bias, favouritism, collusion or fraud. That is why we believed that it was a question of performance and should best be dealt with by line management through the performance management procedures in place at the time. On the basis of the code that existed at the time, that was a reasonable conclusion.

**The Chairperson:** Mr McKibbin, back in 2002, you used very strong words in a letter that you wrote to Roads Service senior officials directing them that this should never happen again. Can I quote an extract from what you wrote?

**Dr McKibbin:** That is not my letter. That was the previous chief executive, Colin James. I was not chief executive of Roads Service at that time.

**The Chairperson:** To further that, I will read an extract from the letter that he wrote:

*"a civil servant who knows that an applicant has a legal entitlement and uses grounds that he knows to be improper for denying it to him is in effect cheating him out of it. This is no less wrong when it is done in the name of a Government Department than when it is done by a private citizen."*

Obviously, that was not your letter, but in 2006, there was legislation that described fraud as making a dishonest representation, perhaps for gain, or perhaps to cause loss to another or to expose another to the risk of loss. Are you satisfied with the findings that there was non-compliance with proper controls but no evidence of fraudulent activities at that time?

**Dr McKibbin:** I did not carry out the investigation. I looked at the results of the investigation that had been concluded by people who were specialised in investigating such issues. If you are asking me —

**The Chairperson:** On looking at the results, did you believe that there was no fraudulent activity at that time and that there was no evidence of it?

**Dr McKibbin:** On the basis of the evidence that I saw, I did not believe that there was any intent of fraud or malicious intent. You have to be careful of having the benefit of 20/20 hindsight. You are quoting a 2006 interpretation of fraud against the time in 2002 when the decisions were being made. I am not sure of the relevance of that comment.

However, was it wrong that Signs and Equipment's Mr Connolly did not get the orders? Yes, it was. He should have got the orders, and the business should have been able to make a profit on those orders. I do not know why Signs and Equipment or Mr Connolly never used the contractual claim mechanism that exists in contracts and which would have allowed him to claim that he had been incorrectly treated, suffered a loss and, therefore, could make a claim against the contract. Even if that had been turned down — and I think that it would have been difficult to do so when there is evidence to suggest that the orders were incorrectly placed — he could have gone to arbitration using

clause 39 of the 2002 and 2005 contracts. A financial redress mechanism was in place; I just wanted to point that out. I am sure that it will become relevant as we progress through the afternoon.

**The Chairperson:** Mr Copeland wants to ask a supplementary question. Are you happy to let him come in?

**Mr Girvan:** Yes.

**Mr Copeland:** Thank you. I am just trying to get my mind around there being no evidence of fraudulent activities. Was there evidence of breach of contract?

**Dr McKibbin:** Yes.

**Mr Girvan:** I want to return to an earlier point. I appreciate that any contractor who wishes to tender for public sector work knows that going down the route of becoming a whistle-blower could damage his or her opportunities in the future. Many contractors have perhaps encountered issues and have just sucked it up, let it run and hoped that they would get the contract next time. I believe that that goes on. I have been involved in the private sector and know exactly what you come up against sometimes. You have to deal with a very bureaucratic system, and you take the stance that you have lost out this time but that you will go again. Is there any indication that that has happened on other occasions such as this?

**Mr G Allister:** My experience in the construction industry, which I have to say is very widespread, would not tend to support that. I have worked with lots of contractors who, on many occasions, have taken claims for all sorts of thing that they regarded as breaches of contract. Those were put through the process that Dr McKibbin referred to. That process was available at the time. The other point to make is that past performance —

**Mr Girvan:** I agree with you in relation to very large contractors. They sometimes feel that they are indispensable. The wee man does not always feel that way. That means that others can take over.

**Mr G Allister:** I am sorry. My experience goes right across the field from multimillion pound contracts right down to small contracts. I have known small contractors who have taken cases.

There is an important point to make. Under procurement regulations, past performance is not taken into account in the awarding of contracts. Contractors are aware of that, so should not be fearful in any way of exercising their rights under a contract.

**Mr Clarke:** Mr Allister, you were at pains to stress your vast experience twice. Your pen profile does not suggest that. Perhaps you did not really sell yourself. We have a two-liner, which states that you:

*"worked for 37 years in a variety of posts in DRD Roads Service, and was Chief Executive from June 2008 until...retirement in...2012."*

That does not highlight the vast experience that you are reading into the record today. Would you like to tell us a bit about your background?

**Mr G Allister:** I joined Roads Service in 1975. I have probably worked in almost all areas of Roads Service — across traffic management, roads maintenance and new road construction. I became director of engineering on the board of Roads Service in late 2000. My main role as director of engineering was to deliver a range of value-for-money services to the public. More specifically, it was to provide strategic leadership and management to two internal provider organisations: the direct labour workforce, which was about 900-strong in those days and carried out winter maintenance, grass-cutting, fixing potholes etc; and the engineering consultancy branch, in which my role was to design and supervise a range of works across the networks such as road improvement schemes and road resurfacing schemes.

I also had responsibility for developing engineering policies, looked after the transportation unit and was the head of profession for engineering staff. I was also a member of Roads Service board and took forward a whole range of initiatives to try to improve its contract management and procurement expertise across the piece. The evidence of that came in 2002, when Roads Service was awarded

COPE status for works contracts; it was not for goods and services. Indeed, I think that it gained COPE exemplar status in 2008. Does that answer your question?

In 2007 —

**Mr Clarke:** That is probably ample to enlighten me to the fact that you have definitely had a varied career. However, you have been steeped in the public sector and have very little experience in the private sector. I think that that was the point that my colleague was making when he spoke of some of the opinions of private sector contractors. Your answer also tells me that you have held some very serious and high-profile jobs in high positions in Roads Service. However, I do not know whether many of those would give you much experience of the procurement end of things and how people have suffered. Thank you for that very glowing CV.

**Mr McKay:** I want to return to the context in which the phrase "rash expediency" was mentioned. Will you clarify that?

**Mr G Allister:** That was as a result of the 2001 internal audit report.

**Mr McKay:** What did it mean?

**Mr Allister:** As I understand it, it was the expression used to describe the actions of those who had purchased signs from one contractor when they should have been purchased from another.

**Mr McKay:** Was it used in an internal audit report?

**Mr G Allister:** Yes.

**Dr McKibbin:** I asked the same question. If it helps, the example quoted to me was of someone ordering 12 signs, with 11 signs being on one schedule to one contractor and one on another schedule to another contractor. In that case, 12 would have been ordered from the contractor who had the contract for 11, so to speak. Clearly, they should not have done that. They should have ordered 11 from one contractor and one from the other. That was what I understood the term "rash expediency" to be. I was told that on a third-party basis, but I am trying to share it with you in case it sheds some light on the term.

**Mr McKay:** Could we get a copy of that report for information?

**Dr McKibbin:** I am sure that the DRD could get that to you.

**Mr Copeland:** I have a fair bit, Mr Allister. Thank you for attending.

Will you talk me through the procurement process, step by step, for road signs as it was in 2001. For clarity, was it primarily based on cost rather than quality?

**Mr G Allister:** Do you mean for the contract that was awarded in 2002?

**Mr Copeland:** I presume so.

**Mr G Allister:** The first thing to say is that I did not have a role in establishing the contract team or initiating the contract in 2001. I suppose that the process would have started off —

**Mr Copeland:** Who did?

**Mr G Allister:** It would have been the business unit. It would have decided that it required some signs or required a new contract for signs. As I said earlier, that business unit would have established what is called an evaluation panel, which would have had members from Roads Service and CPD, which was managing the project from the point of view of it being the centre of procurement expertise.

The panel would have advertised for expressions of interest, and a number of those would have been received in 2001. The next step would have been to draw up a shortlist; the panel had advertised that it was going to do that. Once the panel had drawn up the shortlist, it would have issued the tenders.

Prior to issuing tenders and getting into the process, the panel would have decided the contract split and the tender evaluation criteria. The panel would then have received the tenders back, evaluated and analysed the tenders, and brought a recommendation to Roads Service as the procuring authority or contracting authority to award the contract.

**Mr Copeland:** To the best of your recollection, was the contract let primarily on the basis of cost?

**Mr G Allister:** As I understand it, it was 60% cost and 40% quality.

**Mr Copeland:** The CPD interests me. The Committee recently heard about a fairly large amount of public money that went somewhere that it should not have as a result of the CPD not attending a meeting when a contract was awarded. Rather uncharacteristically, the contract was valued in London and the representative from the CPD was on holiday and could not go.

Would records for the number of meetings for the process you have talked about involving the CPD and the business unit still exist? Would there also be details of how the decision was arrived at and what criteria were used? You cannot get a bunch of people in a room and let them come up with an idea of their own. It must have been referenced against some previous or new directives.

**Mr G Allister:** I cannot answer about the specifics because I was not involved in the specific procurement. I can perhaps give you some indication from a generic point of view. If the procuring authority — let us say that it is a business unit in Roads Service — decides that it needs signs for a two-year period, its responsibility will be to draw up the specification and outline its requirements, such as the types of signs, the delivery requirements, and so on.

**Mr Copeland:** In other words, what you want, when you want it and what you hope it is made of.

**Mr G Allister:** That is right. There will then be a meeting of the evaluation panel, which will come together and take advice from the procurement experts, which in this case was Central Procurement Directorate. It will then decide on the most important things about the contract. At that stage, delivery was an issue, as we heard earlier. Therefore, delivery was an important point, as was the process behind it.

**Mr Copeland:** With road signs, you tend to know that you will need them before you need them. It strikes me that delivery and the change in the balance of cost and quality was occasioned because of the delivery argument.

**Mr G Allister:** The process is not just about procuring the road signs. You have to look at the outcome. Why do we need the road signs? Roads Service needs road signs because it is carrying out roadworks on the network. There are big safety issues involved, and Roads Service needs to be able to advise motorists of that. Another reason that signs are needed in a timely fashion is, for example, because we need to publicise that we will be doing some work digging up the A1 that will disrupt traffic in four weeks' time. If we do not have the signs to put up to sign that work in four weeks' time, we will deal with a lot of complaints. Therefore, it is important that we get those signs correctly manufactured, delivered and erected. It is not just a question of getting the sign for the sake of it but of getting it up to warn motorists and, most importantly, to make the road improvements after that. That is the importance of delivery, because if that does not occur or your erection process goes wrong, your end product fails as well.

**Mr Copeland:** Was there evidence of companies not matching the required delivery times?

**Mr G Allister:** There was evidence of poor delivery from the companies that were contracted to provide signs for Roads Service at that time. That is the background to the procurement exercise. As I said, I was not involved in the procurement exercise, but I have no doubt that the people who did it were the people who know when they need signs and know the background. They would have said, "Delivery is pretty important to us, but it has not been good to date. Let us put quality up front and give the tenderers a fair chance to price. Let us say to all of them that quality will be very important in this contract, and we will measure it against your processes for managing invoices and orders and your delivery timescales." That is the call of the evaluation panel. Once the evaluation panel has decided that, it is sealed and set in stone. That continues right the way through the procurement process and is how the tenders are evaluated at the end of the process.

**Mr Copeland:** Were the companies that responded to the tender documents advised that, in future, being cheapest would not necessarily result in them getting the work and that there had to be more emphasis on quality? If they were advised, were they all advised and were they advised at the same time and in the same manner? Many of the companies would have been producing and supplying road signs for quite some time, I assume. I will not say the goalposts had moved, because I understand exactly what the evaluation panel was trying to achieve, but were the companies advised that the parameters under which tenders would be examined would be materially different from the way in which they had been examined in the past?

**Mr G Allister:** I will perhaps ask Andrew Murray to come in on this, but my understanding is that the notice that goes into the Official Journal of the European Union (OJEU) defines that. The panel applies to get the documents to apply, and those documents — I think that they are called "instructions for tendering" — will state, "We are procuring on quality: price." I think that it goes as far as defining the elements of quality. It did at that time.

**Mr Copeland:** In your opinion, were the companies that had previously tendered for work and won under the old arrangements, which were more based on price, disadvantaged by the shift in criteria, in that they had a history of delivering late, whereas other companies may not have had such a history?

**Mr G Allister:** No, I do not think so at all, because the way in which the contract was managed meant that there were numerous meetings between the contract management team, which was CPD, which was the experts on this, and the suppliers to ask them to address issues around delivery. Companies were aware that delivery was an issue and needed to improve. I do not see how they could therefore be disadvantaged.

**Mr Copeland:** What measures of quality do you look for in a road sign, assuming that you get it at the required price and when you need it? What defines quality in a road sign, and how did you ask the applicants to demonstrate good quality in that buying round, if that is the right term?

**Mr G Allister:** A specification will outline what is needed from the road sign in the areas of reflectivity, robustness — in other words, how long it will last — how it is attached to the frame, and so on.

**Dr Murray:** It has varied from competition to competition. We sometimes give a specification of a sign and ask for a sample to be produced, and that is assessed for quality.

**Mr Copeland:** Why only sometimes?

**Dr Murray:** In more recent times, there is now a sector scheme in place for the manufacturing of signs. We take the view that the sector scheme will define how companies do the manufacturing, but other elements — for example, delivery, invoicing arrangements, record-keeping systems, health and safety at the plant, and environmental considerations — can be considered as part of the quality mix.

**Mr Copeland:** I will move on from the contract being awarded to the contract being in place. Did the shift in the quality:price ratio do what it was supposed to do? In other words, was there a change in the achievement of delivery targets? Did the contract, in its altered form, bring forth the fruits that it was supposed to?

**Mr G Allister:** I do not think that it brought them forward totally, but it certainly effected an improvement, and that was reflected in the monitor sheet that I introduced in 2002 along with the contract. That monitor sheet had a number of purposes. It was to provide evidence that the correct contract had been used to provide the correct order for the signs, and it was also used to monitor the performance of the various contractors who had won the contracts. Therefore, in response to the 2002 contract, yes, there were improvements.

**Dr McKibbin:** I can be slightly more specific. We were looking to see whether there was some improvement as a result of the actions that were being taken. When I was chief executive, I took some assurance from seeing the results of the CPD investigation by John McMillan, who wrote back to Mr Connolly on 17 September pointing out that Mr Connolly had advised him that, based on the performance over the past year — 2003-04 — the misplaced orders issue that had arisen previously was no longer an issue. We took some comfort from that.

I am also aware that, more recently, between April 2011 and September 2012, the delivery timeliness of PWS was rated at 86%, and for traffic signs and equipment, it was 78%. That is vastly better than in the figures from 2001 and 2002.

**Mr Copeland:** This is my last question, Geoff, you will be glad to hear. Was there any stipulation about the materials from which the signs had to be made? I do not mean the properties of the materials but the materials themselves. Did Roads Service stipulate in the contracts the materials from which the signs were to be made, as opposed to the properties of the materials?

**Mr G Allister:** I am afraid that that is too detailed for me. Andrew might have an answer to that. I do not know the answer.

**Dr Murray:** There is a detailed specification with the signs, and different materials are sometimes allowed. I cannot answer the question in detail either. Sometimes we allow plastic signs as well as aluminium signs, and we sometimes allow composite signs. There are specifications for each.

**Mr Copeland:** Is it possible, even after all this time, to get the specifications as they pertain to the contract, or is that too difficult? I do not want to ask something that is impossible and wastes a lot of time.

**Dr Murray:** For the contract that was awarded in 2002?

**Mr Copeland:** Yes.

**Dr Murray:** It is quite a bit outside our normal retention period. We normally keep things for seven years. We might have something.

**Mr Copeland:** If the Chair does not consider it to be a complete waste of time, I would not mind, if that is possible. I would also like to —

**The Chairperson:** Mr Copeland, I think that Mr Girvan wanted in with a supplementary question, if you do not mind.

**Mr Girvan:** Andrew, you went through a list of elements that could be considered as part of the quality mix. The phrase "can be" was used. That leaves room for wriggle whenever an assessment is done of environmental statements and health and safety records. Should the phrase not be "should be" as opposed to "can be"? When you say "can be", some people assume that it is to rule out a company because it has, for example, a bad health and safety record. I would have used the term "should be".

**Dr Murray:** You cannot put those things in to rule somebody out or to disadvantage someone. Those things are assessed only via the submission that the contractor makes as part of his tender and by a site visit that takes place after that. The factors are determined before that process starts.

**Mr Girvan:** But they are required in the tender document.

**Dr Murray:** Yes. You specify what you want at the start. You specify the elements of quality that you are going to assess and how you are going to assess them. When the tenders come in, that is what you assess for all the tenderers.

**Mr Girvan:** It is great to hear about all the things that have been put in place. Malcolm, you mentioned all the training that went in after 2001. In Paul Priestly's time, when the second report came out, which covered the 2005 period, we still had the same problems. I want to start to focus on that. We talked about what happened 11 to 13 years ago, all the improvements that were put in place and all the measures that were being followed up on. When we are dealing with another report from a few years later, why do we find exactly the same things manifesting themselves? If I were a general and I instructed the underlings to carry out certain orders and they did not, heads would roll. That is why I went down that route. I appreciate the action that happened when we discovered that so-called measures, practices and procedures were not being carried forward. Whose head rolled, and what happened?

**Mr Paul Priestly:** Are you asking me?



**Mr Girvan:** I am indeed, Paul.

**Mr Priestly:** When the 2010 report finally came to me, I considered the question of disciplinary action. I discussed the issue directly with Mr Balfour, and separately with Mr Allister. The fact is that the Balfour report concluded that there was not any evidence of collusion, favouritism or bias. It concluded, disappointingly, that orders were not placed with the correct suppliers owing to a combination of procedural shortcomings, human error and — this word again — expediency rather than through deliberate intent. In those circumstances, I judged that there were insufficient grounds for pursuing disciplinary action. I briefed the Minister and the Chair of the Regional Development Committee at the time. I also noted my disappointment that the investigation had identified deficiencies in the Department's processes.

If you run a very large organisation, it is a constant battle to try to achieve compliance and adherence to policies and processes. In this case, they failed again. There is no alternative but to keep going back and training people and insisting on compliance.

**Mr Clarke:** Mr Priestly, are you suggesting that if we are all living and spared, we will be coming back here in a few years and talking about the next time?

**Mr Priestly:** Sorry, I did not pick up that point.

**Mr Clarke:** If we are all living and spared, and we all live a healthy life, are you suggesting by your statement that we will be back here in a few years talking about the next time that Roads Service does it?

**Mr Priestly:** I certainly hope not, but —

**Mr Clarke:** If that is the case, given that Mr Allister was involved previously, what has the Department learnt, or what did you learn from your time in the Department? You inherited the examples of the past, and they continued in the regime. What have you learnt from it?

**Mr Priestly:** I learned that you can never do enough when training your staff and putting in place control measures to ensure adherence and compliance with policies and processes.

**Mr Clarke:** The problem with your control measures previously and up until your time is that they did not work. I listened to what Mr Murray said in response to my colleague. I think that he tried to roll back slightly from when he said that sometimes you can do this. In DRD, signage is probably the most simple thing. Surely it is a case of specification, materials used, gauge of metals and price. How come the Department continually gets it wrong? I will take you up to the time when you were there. You were the chief executive in 2010. How did you get it wrong?

**Mr Priestly:** I was the accounting officer of the Department, not the chief executive of Roads Service. My understanding is that the contracts — Andrew and Geoff can talk about this in greater detail than I can — have a number of schedules. Some were in the teens. The confusion came for staff in choosing which schedule was owned by which contractor to order the right signs from. I think that Geoff and Andrew are better placed to answer.

**Mr Pengelly:** I think —

**Mr Clarke:** Just let me finish, Richard. I have come here today with an open mind, as I have done previously. Listen to the language that we are using in how we are arriving at this, and look at the allegations from the whistle-blower and what he suggested. From Mr Allister's opening remarks, I think that it seems to be common practice in the Department to use the word "expediency". We then had Mr McKibbin's explanation for 12 signs being ordered from one schedule as opposed to 11 being ordered from one and one from another. It seems that the practice has not changed. Those who may be disadvantaged or otherwise — perhaps they were fairly disadvantaged and lost out for good reason — are given grounds for grievance because of the systems that were in place previously in Roads Service.

**Mr Priestly:** I do not disagree with that. The important point —

**Mr Clarke:** You do not disagree, and, as you corrected me, you were the chief accounting officer in 2010. What did you do to change it in your time? I do not want to come back here to talk about this again.

**Mr Priestly:** If I can just try to finish the point. Systems and procedures have changed since those events. I think that they go back to 2005. There is now an electronic accounting system that, as I understand it, will not allow you to allocate an order to the wrong company. I am not in touch with the full detail. Others here can talk in better terms about it.

**Mr Pengelly:** I think that Andrew, better than any of us, can give an illustration of the sense of complexity. Like you, Mr Clarke, I came to this with relatively fresh eyes. One of the first things that I said to the guys was that signs are pretty straightforward things. However, as Malcolm said earlier, at one point, we had one schedule for triangular signs and a separate schedule for warning signs. The problems arose when you had to order a triangular warning sign.

In the early stages, signs were being ordered from across 70 different cost centres, with no electronic system to support that. One of the big concerns for us was the issue of collusion or bias as opposed to simple mistakes. The reality is that mistakes happen. We try to eradicate them and try to create a control environment. Of the eight mistakes that were discovered, seven favoured PWS. One of them actually favoured Traffic Signs and Equipment. Some of the cases arose because, for example, an order was placed on 14 May but a new contract had been put in place on 1 May, so the order had defaulted. That is a credible, simple mistake. We now have an i-procurement module. We have tried to streamline and simplify the number of schedules. When people go online, they try to specify the product that they want. That directly points them to the contract that they have to use.

**Mr Clarke:** Does that system prevent supplying signs two years before they are due?

**Mr Pengelly:** That is a separate issue.

**Mr Clarke:** Not really, because it comes back to procurement and people's perception of procurement. From the report, we know of an example of someone procuring signs two years before they were needed. We have all experienced how Roads Service works: schemes come on and schemes drop off. I would be alarmed to find that we are ordering signs, and continuing to order signs, two years before a scheme starts, given that projects can be thrown up at any stage.

**Mr Pengelly:** Looking at the evidence base for that, clearly it was wrong that it happened. The explanation that I can see — wearing a previous hat, I know about this all too well — is that in 2004, when this was happening, the reality was that at block level, and it consumed a vast amount of my time, we had a fundamental and systemic problem with underspend. Money that was allocated to Departments was not spent, and it went back to the Treasury. The consequence was that Northern Ireland lost several hundred million pounds that could, and should, have been spent here but was not.

The manifestation of that in this case was that a small business unit was moving towards the end of the financial year, had money left over and had a contract in place. It knew that it would need a sign in future so could order it now. It was payment in advance of need. That was wrong and should not have happened, but —

**Mr Clarke:** The perception of contractors by the wider public is that if a contract was coming near an end and there was a danger of the company not getting the new contract, it got awarded the signs contract in that financial year. That perception would be shared by many people. I do not buy something for my house two years before I need it.

**Mr Pengelly:** No, absolutely.

**Mr Clarke:** I will wait until I need it and buy whatever is cheapest that day, and I am not running a budget of hundreds of thousands of pounds. The wider public will ask why you procure signs two years before you require them. The automatic perception of most of those who have suspicious minds about the public sector is that you were trying to keep the contracts for preferred bidders.

**Mr Pengelly:** I absolutely take the point about perception. I cannot do anything about that, but what I can do is, having looked at the evidence base —

**Mr Clarke:** Richard, you can, because that is now your role.

**Mr Pengelly:** Yes, absolutely.

**Mr Clarke:** We want to make sure that things like that do not happen again.

**Mr Pengelly:** Absolutely. I accept the perception point, but, in my review of the evidence base, that happened because somebody, for what the person thought were valid reasons, was trying to prevent the possibility of money being lost to Northern Ireland. It was not about a contractual issue.

**Mr Clarke:** As an aside to that, the A5 scheme was stopped. Was the signage ordered for that?

**Mr Pengelly:** I would not have thought so at this stage.

**Mr Clarke:** That is still to be ordered, then.

**Dr Murray:** We moved on to that issue of signs on the M2 before we bottomed out on the procurement thing.

**Mr Clarke:** I was on the A5.

**Dr Murray:** Well, we moved on to the A5 before we finished with the M2. I am happy to deal with the procurement issue or the M2 issue. Would you like to finish the procurement issue first?

**Mr Clarke:** I think that I have an explanation now, but I do not accept it was about specification. It is time that the Department streamlined the process. The process in the past was far too complex, with all those specifications. When it came to signage, it should have been pretty basic: we need galvanised steel signage of a certain gauge with the correct reflective material. That is pretty basic. In the majority of cases, the public sector makes it complicated and difficult for people to bid for some tenders.

**Dr Murray:** This part of the public sector has been making it simpler over the years. There are hundreds of —

**Mr Clarke:** When did that start? In 2011 or 2012?

**Dr Murray:** No, it started after the review in 2002. There are hundreds of possible sign combinations split between different schedules that are awarded to contractors. That is a complicated process to get right. In 2002, buyers all around the Province were doing that. Lots of people were able to buy off that contract, and there were inconsistencies.

We tidied up the schedules to make them simpler. In 2005, I believe, we introduced a system whereby all orders had to go through four divisional buyers, instead of the widespread system that we had. We have now moved on. We have an Account NI system throughout the Civil Service, but it is used in DRD. That system has allowed us to go back to having individuals buying the signs, but there are safeguards. We simplified the schedules, which are loaded on to our IT system. Anyone who wants to buy a sign looks up the IT system, gets the reference number and puts it into our i-procurement module, which tells them what supplier to go to. They can still buy early, and we will deal with that separately. They can still go to the wrong contractor, because they can overrule the system, but it is monitored. We can easily identify any sign that does not go to the contractor that it is supposed to go to.

**Mr Clarke:** What is the purpose of having the system if someone can overrule it? I thought that the whole purpose was to build in protection for the contractors, Roads Service and the officials using it. Why would you have a system that you can override? You can still manipulate it and get the signs from wherever you wish.

**Dr Murray:** It is quite simple: some signs are specials, and they are not included in the schedule, so there has to be a facility to allow you to go to a particular contractor to get a sign that is not included.

**Mr Clarke:** I must say that I disagree with you. I think that once you go out to the original tender, whatever is there, those who are on the list should be tendering for the whole ambit. I am worried by what I am hearing today, which is that we have now a new electronic system in place but can manipulate it and go wherever we want, basically. That is what we are hearing.

**Dr Murray:** That is certainly not the case. What I have said is that we carry out a monitoring exercise to make sure that any sign that is bought off-contract is bought for appropriate reasons.

**Mr Clarke:** When did that system come into place, Dr Murray?

**Ms Deborah McNeilly (Department for Regional Development):** That Account NI system came in in 2009.

**Mr Clarke:** Dr Murray, you have access to this system. Given that you can monitor the system in such a way, would you be happy to send us a copy of all the occasions on which someone has given a contract to someone who should not have been getting it?

**Dr Murray:** Yes. I will give you information on the monitoring that we have carried out.

**Mr Clarke:** And the reasons why?

**Dr Murray:** Yes.

**Mr Clarke:** And the number of times overall?

**Dr Murray:** Yes.

**Mr Dallat:** I hope that there is not an exam at the end of this, because I would fail it. We are an hour and a half into the meeting, and I have not learnt very much. It is worth recalling that today we published our own report on whistle-blowers. We know of the experience that they had in the Fire Service before they got justice. I keep reminding myself that this report is also about a whistle-blower complaint.

I must ask Mr Allister some questions. However, to follow on from what Mr Priestly said, does he agree that whistle-blowers are very important people who should be given every opportunity to ventilate their concerns?

**Mr Priestly:** Absolutely.

**Mr Dallat:** Mr Priestly, you took the unprecedented step of writing to the controller of the BBC to denounce the whistle-blower. I will quote what you said to him, or a part of it:

*"The report was inaccurate, unbalanced and failed to follow BBC guidelines on several counts: truth and accuracy; fairness and impartiality; and diversity of opinion."*

You did not stop at that. You went on. You claimed that the report was unfavoured at the time with investigation of the procurement process and how long it was taking.

Do you want to reflect on that, now that we have this report?

**Mr Priestly:** The letter that I wrote to the BBC was to complain about an item that it broadcast that the Department felt was unfair and did not give the Department an opportunity to respond to some of the allegations made. Those allegations were under investigation at the time. I repeat this: when the Balfour report was finally produced, it showed that there was not collusion, favouritism or bias. It identified a number of human errors, compliance issues and procedural mistakes. Therefore, no, I do not reflect on being wrong about the BBC report.

**Mr Dallat:** I did not think that you would.

**Mr Priestly:** The BBC also conceded, although I cannot remember on which point, that it had — I cannot remember the point.

**Mr Dallat:** Did the BBC agree that the report was one-sided and showed a lack of even-handedness?

**Mr Priestly:** I cannot remember the point.

**Mr Dallat:** I am quite sure that it did not.

**Mr Priestly:** It gave me a reply conceding on one point, and it broadcast a correction.

**Mr Dallat:** Generally, you would say that the whistle-blower's concerns were legitimate and worthy of airing.

**Mr Priestly:** The whistle-blower's concerns were legitimate. It was right that they were properly investigated. My letter of complaint to the BBC was about it not being fair towards the Department and its staff.

**Mr Dallat:** I mention it only because this is a very robust complaint. It pulls no punches, and it rubbishes the report from end to end, accepting that nothing was wrong. Surely, that is a recipe for ensuring that the things that are wrong regarding whistle-blowers just continue. Do you think it was the best use of your time, as the permanent secretary at the time, to be involved in that?

**Mr Priestly:** I disagree that anything I did in relation to the BBC was to denigrate the whistle-blower. The Department was in the middle of an investigation of the whistle-blower's allegations. That was entirely right and proper. Equally, I think it is legitimate for a permanent secretary to stand up for the Department and defend its reputation. I repeat that the Balfour report did not find collusion, favouritism or bias.

**Mr Dallat:** What did you do to help the whistle-blower?

**Mr Priestly:** I think the Audit Office's report shows that, since I became the accounting officer of DRD, I took an active interest in this. I frequently met Ronnie Balfour to ensure that he was being given full cooperation from all the agencies that were covered by the investigation, that he was given unfettered access to all papers and files to try to understand the delays — I was concerned about how long all that was taking — and to try to get to a position where he could complete his report whilst not wanting to inhibit the whistle-blower from providing any additional evidence that he had.

**Mr Dallat:** Madam Chairperson, can Mr Priestly tell us precisely what he did to ensure that that long-running saga — almost as long as 'Coronation Street' — came to an acceptable conclusion?

**Mr Priestly:** I can repeat what I said. I did seek to ensure that Ronnie Balfour had no obstacles put in front of him in completing the report and that he had all the available information. I encouraged him on several occasions to write to the whistle-blower to ascertain that he had provided all the evidence. In the end, I wrote to the whistle-blower in, I believe, September 2008 asking him to confirm that he had submitted all his evidence. He eventually replied through the Audit Office in January 2009 confirming that he had. At that point, I asked Ronnie Balfour to expedite the conclusion of the investigation and to complete his report.

**Mr Dallat:** Chairperson, with your permission, maybe I could learn more by asking Mr Allister, who had responsibility for the whistle-blower. Will you just take us through the process, when that became your responsibility, step by step? I take on board that you have massive experience in the industry, having joined up in 1975. Bearing in mind that whistle-blowers are now a critical part of the whole process of integrity, honesty, truthfulness and lack of fraud, tell us what you did to help that whistle-blower?

**Mr G Allister:** I will start off by saying that, when I first knew Mr Connolly, he was not a whistle-blower; he was an aggrieved contractor, and he had some genuine concerns at that time about the 2002 contract, which we have had a debate about. When the internal audit investigation started at the end of 2005, I had no role whatsoever in handling the whistle-blower at that time.

**Mr Dallat:** Sorry?

**Mr G Allister:** November 2005.

**Mr Dallat:** You had no role?

**Mr G Allister:** No. At that stage, I was a director in Roads Service and subsequently became chief executive. The investigation was being taken forward by the Department, and I made sure to the best of my ability that as much information as we had in Roads Service — I did that particularly after 2007, when I was chief executive — was made available for Mr Balfour's investigation.

**Mr Dallat:** Just to clarify: whether we call him a whistle-blower or not — we will park that for a moment — when you became aware that that contractor, whistle-blower, or whatever you want to call him, had a problem, how did you take him through the process of resolving his problem step by step?

**Mr G Allister:** I will go back to, I think, 2001, when I was first made aware of the issue. The issue at that stage was that Mr Connolly's firm had been excluded from the restricted list that had been drawn up at that time for that contract. I was asked to look at that and carry out a review as a fresh pair of eyes. I did so, and, when I did, I felt that it was a marginal decision. My advice at that stage was that Mr Connolly should appeal the decision. He did that, and he was then put back on the list.

In the middle of 2002, after the contract had been awarded, I was asked to carry out a debrief with Mr Connolly, which I did. I debriefed him on the contract; in other words, on how he had performed on the assessment against the various criteria. In association with CPD, which was with me at that meeting, I also sat down with Mr Connolly and talked about how the contract would be managed going forward. I also appointed CPD as the contract managers, if you like, or the central point of contact.

My next engagement was, I believe, towards the end of 2004 when Mr Connolly came to me with a number of allegations. One of them was about some substandard signs that he had found and others were about the buying off tender that we discussed earlier. In 2002, I wrote to internal audit and asked it to commission a report, which became the 2002 report. I took his concerns very seriously at that time, explained what was being done and commissioned the 2002 report.

**Mr Dallat:** Just so that I understand fully what you are saying: you debriefed the whistle-blower in 2002, you gave him advice on how he might win contracts and then the wheels came off the wagon in 2004.

**Mr G Allister:** No; I did not give him advice on how to win contracts. I debriefed him on the specific contract bid that he had submitted in 2002. There are two purposes of a debrief: one is that we, as clients, learn from the process that we have been through, and there has been some discussion about how we constantly try to improve processes; and the other is to advise the contractor how he can possibly improve the next time by giving him a better understanding —

**Mr Dallat:** But, that is the same thing, is it not, as giving him advice on how to win contracts?

**Mr G Allister:** We tell him what he has done and how he has done against the various criteria that were set in the contract. We move forward, then, to 2002, and, as I said, I commissioned the internal audit report, which found similar instances to the 2001 report. A number of other issues came up at that time that I referred to CPD, so that was up to 2002.

My next engagement, as I understand it, was to attend a meeting with a Minister, which Mr Connolly's MP attended, and I provided information at that meeting. Immediately following that meeting, I wrote to Mr Connolly and provided him with further financial figures. There was considerable debate around figures, and that led up to a meeting that I had with his MP and Mr Connolly in 2006, after Mr Connolly's MP had written to one of our Ministers and asked some questions around the spend figures. I held that meeting to try to clarify the spend, and I brought one of my members of staff with me who was able to go through various spreadsheets that we had at that time.

The next, and, I think, final meeting that I had with Mr Connolly was in 2007, again with his MP at Stormont. Sorry, I should have said that, after the 2006 meeting, I wrote to Mr Connolly clarifying and giving him more information in response to his requests. In 2007, I attended a meeting at Stormont at which he, his MP, Ronnie Balfour and, I think, Dr Murray were present. Over that period, and certainly when I was chief executive, I tried to do my best to make sure that Mr Connolly had all the information that he had requested from us, and I tried to clarify that information on a number of occasions.

**Mr Dallat:** So, were you able to convince the whistle-blower that company A was getting these contracts properly and that it was just pure coincidence that contracts were being held back until company A got grants from LEDU and so on? How did you convince him that —

**Mr G Allister:** I was not able to convince him. I tried to explain the investigations that had been held in 2001 that I was aware of — the internal audit; I explained the outcome of the 2002 internal audit investigation; I took him through the 2004 investigation by CPD; I tried to explain to him how our figures had come from a roads accounting system and how we had arrived at them; and I tried to compare them with his system through a series of spreadsheets. However, I would not say that I was able to convince him at all.

**Mr Pengelly:** I think that it would be helpful if we tried to differentiate between allegations and the evidence base. The investigation looked at the LEDU point in some detail. We are talking about Mr Allister trying to convince Mr Connolly about a series of facts. The investigative report adopted an objective analytical approach to that and looked at the evidence base and concluded that. It was not Mr Allister's role to explain and analyse allegations.

**Mr Dallat:** OK; I will leave it at that. We have to take our evidence. I think that we are also entitled to ask people for their views. When you are told that one of your officials turned up at a stand in Amsterdam with a successful contractor, how is anyone supposed to interpret that?

**Mr Pengelly:** I can understand how that would be a cause for concern. However, I can only point to the investigation, which spoke to the contractor concerned who made the point that the individual was there for no more than 10 or 15 minutes. He was legitimately there as a representative of his professional body at the trade show where he visited a number of stands. The evidence is that it was a 10- to 15-minute visit, as he did at a number of other stands.

**Mr Dallat:** Mr Pengelly, even if it was only one minute, he was on the stand. That is fact.

**Mr Pengelly:** It is fact, but I also think, Mr Dallat —

**Mr Dallat:** Do you think that it was all right that he just spends 15 minutes and does not spend three hours?

**Mr Pengelly:** I think that it is —

**Mr Dallat:** He should not have been there.

**Mr Pengelly:** He was there as a representative of his trade body. If we look to our professional colleagues in Roads Service to maintain their place at the cutting edge of technology to ensure that we deliver the best possible roads infrastructure to the people of Northern Ireland, they need to be abreast of emerging technology, and that emerging technology tends to be discussed and aired at trade shows. I think that it was entirely legitimate for him to be at the show, particularly as he was there as part of his professional body. It happens not just in the engineering profession, but in the accounting profession, the legal profession and across all professions in the public and private sector.

**Mr Dallat:** Chairperson, this will be my final question, as I know that other people have to ask questions.

All things considered to date — I address this question to Mr Priestly — do you seriously believe that the whistle-blower has not got a legitimate complaint, given your role in the BBC saga and everything else that happened after that?

**Mr Priestly:** I think that the whistle-blower, Mr Connolly, has a legitimate grievance about the misallocation of orders that should have gone to him but went to some of his competitors. There were means under the contracts for him to seek redress to those issues. On the wider question of whether there was collusion, favouritism or bias in favour of Mr Connolly's competitors, there is no evidence to substantiate those allegations. They have been exhaustively investigated. I stand over the Balfour investigation on those points.

**Mr Pengelly:** I share Paul's views. I want to differentiate: were mistakes made as opposed to were those mistakes driven by favouritism, bias or collusion? Undoubtedly, mistakes were made. There were remedies available to Mr Connolly. With regard to the overall conclusions of the investigation — I will accept that we might come on to this, Chair — was the investigation process absolutely perfect? No, it was not, and the Audit Office has helpfully identified some principles that will help us to do such investigations in the future. I do not think that those process flaws undermine the legitimacy of the conclusions, and I receive most comfort on that point from the 2011 High Court judgement, which, after 16 days of evidence, considered fundamentally the points about bias and collusion. It specifically commented on the official's attendance at the trade show. I take a lot of comfort from that, too.

**The Chairperson:** OK; thank you, Mr Pengelly. Before I let you in, Dr Murray, Mr Clarke wanted to ask a supplementary to that.

**Mr Clarke:** I want to supplement the Deputy Chair's question and go back to Mr Priestly about the timing of his correspondence with the BBC. I will give you another opportunity to reflect, Mr Priestly. Whistle-blowing is in the public arena currently. Do you think that, given that an investigation was going on at the same time, the timing of your writing to the BBC was appropriate?

**Mr Priestly:** Maybe I should take some time to reflect on that and come back to you.

**Mr Clarke:** You have had a few years.

**Mr Priestly:** I am coming to these issues afresh having been away from that area of business.

**Mr Clarke:** Are you suggesting for one moment that you did not polish up your performance before you came here today?

**Mr Priestly:** I had one week.

**Mr Clarke:** Can you not reflect in a few moments? The Deputy Chair asked you the questions about 15 or 20 minutes ago, and I am phrasing it slightly differently. This will give you a few more seconds. There is a background of whistle-blowing, and you still hold a fairly senior position. Now that you have had an extra few minutes to reflect on it, do you think that the timing of your letter to the BBC was proper?

**Mr Pengelly:** Could I —

**Mr Clarke:** No, Richard, no. I would prefer Paul Priestly to answer that, because he was the guy who wrote to the BBC. I want to hear whether, on reflection, he thinks that it was appropriate.

**The Chairperson:** Thank you, Mr Clarke. We will give Mr Priestly time. You said that you would need time to reflect. Are you prepared to answer that now, or do you want to come back to us after you have reflected?

**Mr Priestly:** I would prefer time to reflect on it.

**Mr Clarke:** Chair, that is disappointing. Mr Priestly has had years to reflect on it. Since he typed that letter to the BBC, the contractor has had years to reflect on his remarks. Whilst I do not know the contractor, I know that I would be deeply offended. If I worked for a Department and was of the mind to use my opportunity to be a whistle-blower, I would question it if the then permanent secretary of that Department felt justified to write in a demeaning manner to the BBC about a whistle-blower. It does not bode well for us going forward in the Civil Service.

**Mr Priestly:** Can I say one thing in response?

**Mr Clarke:** No, I would rather you hold your counsel on this one until you make up your mind what you want to say after reflecting on those remarks.

**The Chairperson:** I think it is fair to Mr Priestly to let him comment. Do you want to come back in on that or are you OK to leave it there?



**Mr Priestly:** OK.

**The Chairperson:** Mr Pengelly, Mr McKay wants in very briefly and I will then let you in.

**Mr McKay:** I will keep it on the same issue. Paul, do you stand over everything that you said in the letter to the BBC?

**Mr Priestly:** I know of the letter; I have not reread it. That is the honest position. My memory of it is that, at the time, an investigation was going on in the Department. We were going thoroughly through the whistle-blower's allegations. At that time, he was feeling free to go to the media and make those allegations publicly about the Department. My letter was a complaint to the BBC that it had not given the Department a fair opportunity to respond, to set the context and to explain that there was an investigation. I was the permanent secretary, and staff in the Department had been under those accusations for five, six, seven years and felt aggrieved to be constantly accused of those things. The purpose of my letter was to bring that to the BBC's attention and say that I did not believe that it was fair.

**Mr McKay:** You have agreed to reflect on it. Could you do two things? First, will you come back to us in writing to indicate whether you stand over everything that you said in the letter to the BBC? Secondly, you said in the letter that the report was inaccurate. I want to know in writing what was inaccurate in the report.

**Mr Priestly:** OK.

**Mr Clarke:** Chairperson, I want to go back again. I know that it is some years since he wrote that letter. The Deputy Chair said that, when writing about the whistle-blower, you used the term "unfounded". I appreciate that whoever in the Department the allegations were made against would feel like defending the Department. However, using words such as "unfounded" was wrong and you should have waited until the end of the independent review of your Department. Maybe you will reflect that when you respond at some stage in the future.

**The Chairperson:** Thank you, Mr Clarke. Before I bring in Mr Copeland, Mr Pengelly wants to make a comment.

**Mr Pengelly:** It is more on the generality of the point. Mr Priestly has obviously undertaken to come back to the Committee. Media criticism is a fact of life. Unfortunately, that is more the case for Committee members than it is for us. However, if an article is run in the media and the view in the Department is that it is manifestly wrong, the only time to deal with that is at the time that the allegation is made. We cannot allow six months' reflection.

**Mr Clarke:** I disagree.

**Mr Pengelly:** A frustration came out today about the bureaucracy and the risk-averse culture in the Civil Service. Malcolm and my other colleagues who are permanent secretaries are acutely aware of that issue and want to fix it. We are providing vital public services and we must do that efficiently and effectively.

**Mr Clarke:** And fairly.

**Mr Pengelly:** Absolutely. Unfair or ill-judged comments have a debilitating effect on those people at the front line who provide services. The consequence of that is that people clam up. They become more bureaucratic and risk-averse and we fail to deliver the services that we are paid to deliver. It is that wider cultural point. I think that we need acknowledge—

**Mr Clarke:** Richard, do you not accept that Mr Priestly should have said something along the lines of that he did not want to comment further until the outcome of the investigation and that he would make further comment at a later date? Instead, he came out with a prejudged and preconceived notion of what the outcome of that investigation was going to be by suggesting something was unfounded in the first place. In my opinion, he undermined the investigation by coming to a predetermined outcome of that investigation before it was completed.

I appreciate where you are coming from, Richard, and, to a degree, I think that permanent secretaries should defend their Departments. However, in this case, I think that the defence should have been

that he did not want to comment until the outcome of the independent review. He should have held his counsel until that time. He chose to use words such as "unfounded", which undermines the whole basis of an investigation. If I was the whistle-blower, I would have thought that I had not got a fair trial.

**Mr Pengelly:** I will deal with that very quickly, because I am sure that members want to move on. We should bear in mind that Mr Priestly did not lead the investigation. He was the recipient of an independent investigation, so I am not sure that it would have bled through it in that way. It was not the case that the report was that an allegation had been made and was being investigated. If that had been the case, I do not doubt for one second that Mr Priestly would not have felt the need to respond. However, the substance of the report was that the allegations were presented as matters of fact. Of the 22 allegations that are set out in the Balfour report, a number are unfounded and the evidence shows that they have no merit. They were all presented as matters of fact, so I think that there was a legitimate —

**Mr Clarke:** A number were but not all.

**Mr Pengelly:** Well, the key —

**Mr Clarke:** I think that it was a number, Richard.

**Mr Pengelly:** It goes back to the point that mistakes were made. However, the key allegation was one of collusion and bias against Mr Connolly. That was underpinned by the High Court hearing. There is an essential right of reply when things are distorted so much. When he comes back, I think that Mr Priestly will clarify the detail of that.

**The Chairperson:** Thank you, Mr Pengelly. The Auditor General, Mr Kieran Donnelly, wants to come in.

**Mr Kieran Donnelly (Comptroller and Auditor General):** I want to make a comment about the High Court judgement that Richard referred to. The High Court only dealt with three of the numerous allegations. That is recorded in paragraph 75 of the report. I just want to put that on the record.

**Mr Pengelly:** The Department has a different view, which is recorded in the agreed report. In the judge's ruling of February 2011, he recorded that many of the points of the High Court case related to the procurement competitions that preceded the High Court case and were part of the 2010 investigation. It is a blurred area, and we believe that there is a much greater degree of overlap than the Audit Office has thus far accepted.

**The Chairperson:** Thank you, Mr Pengelly. We will return to the line of questioning. Mr Girvan and Mr Copeland may want to finish their questions.

**Mr Girvan:** I want to come back to Mr Priestly on this matter. The Department's most recent investigation officially began in 2005. What had been done by the time you arrived in 2007? What work had been undertaken?

**Mr Priestly:** I arrived in the Department in December 2007. I cannot remember when I first became aware of the Balfour investigation, but I suspect that it was in spring 2008. At that point, I met Ronnie Balfour to take stock of what had been done and the progress of his investigation. From that point, I expressed concern to him about the pace of the investigation and what had been done. I cannot remember the detail of what had been done by then, but I know that, even at that stage, I was concerned about the pace. His explanation to me was that Mr Connolly was passing his accusations to the Department through the NIAO in a sort of drip-feed manner, that they were coming quite slowly and were continuing to come. That was part of the reason why things were progressing very slowly. I am sorry that I cannot remember more of the detail.

**Mr Girvan:** I appreciate that we are going back quite a bit of time. We alluded to a list of procedures and policies that were being put in place to ensure that things would not create a problem in the future. As a consequence, what arrangements did you find in place to address those allegations when you arrived?

**Mr Priestly:** I would have discussed those issues with Geoff during accountability meetings and sought assurance from him that similar things could not happen in the future. Again, I cannot

remember the detail of that, but he would have told me all the steps that were taken to prevent a recurrence.

**Mr Girvan:** In your response to the Audit Office, you stated that the plan was compiled over the duration of the investigation and evolved as you reviewed the documentation. Did you set out a plan for how many investigators were needed and what skills and competencies they required to ensure that the investigation was thorough? What rules and regulations were alleged to have been broken? What about issues such as that? Did you put those in place?

**Mr Priestly:** All that would have been done before my time in post.

**Mr Girvan:** Were those all in place by the time that you were there?

**Mr Priestly:** As far as I know. At the time, I would have asked Ronnie Balfour whether he had the necessary resources, whether he was being obstructed and whether he was getting cooperation and access to papers. I would have asked him what the difficulties were, what was causing delay and when we could bring the thing to a conclusion. I would have expected Ronnie Balfour to tell me had there been difficulties or obstruction of his investigation. I have to tell you that he did not say that there had been.

The sorts of things that were getting in the way were the long, slow feed of allegations from Mr Connolly through the Audit Office and people being on leave and summer holidays. I will give you a concrete example. When we finally got Mr Connolly's confirmation that he had submitted all his evidence, I asked Ronnie for a specific timeline for finishing the investigation and giving me the report. I met him several times and wrote to him formally in the autumn telling him that six more months had passed and asking him when we could bring the issue to a firm conclusion. I think that that was in November. He told me that it would be in the new year, and the report was concluded by then.

**Dr Murray:** I want to make a point that is relevant to the current line of questioning and to the very legitimate question that the Deputy Chair asked about how we facilitated the whistle-blower. Whistle-blowers do not start out with all the information that Departments have at their disposal. It is important that that information is made available to whistle-blowers. This case resulted in a freedom of information request. Mr Priestly asked me to make sure that I fully facilitated that FOI request, which I did. It was a very extensive request, and we did all that we could to make all the documentation that was held in the Department available to Mr Connolly. It was an extensive amount of documentation. It took Mr Connolly an extensive amount of time to, first of all, access that information and then consider it. So, how we facilitated the whistle-blower is partly relevant to your question and partly relevant to why allegations were coming in over a period of time and not all at the very start of the process.

**The Chairperson:** Dr Murray, may I come back in there? The whistle-blower obviously felt that he needed to go through freedom of information (FOI) to have his allegations addressed. Do you believe that that is correct?

**Dr Murray:** No. Had the whistle-blower asked us for access to the information, we would have provided it. FOI has not actually had a very large effect on DRD, because, generally, where we could provide the information and make that available to people, we did so. So it has not made a difference. Quite a lot of people use FOI in their letters, and we comply with that. It does give them the ability to go to the commissioner of complaints if they are not content with the way in which they have been dealt with.

**The Chairperson:** Paragraph 35 of the Audit Office report states that the Department made contact with the whistle-blower twice in five years. What was the reason for that — two times in five years?

**Mr Pengelly:** The sense I got from reviewing this and speaking to people involved is that there was a clear sense that Mr Connolly preferred to engage through the Audit Office. That is the explanation. I accept the point that we should have done more to facilitate and engage.

**The Chairperson:** It does not negate your responsibilities either.

**Mr Pengelly:** Absolutely. I am not shirking those at all. I think that it is one of the key learning points and guiding principles that the Audit Office helpfully brought out that when we have a whistle-blower, we need to do more to reach out and proactively engage, notwithstanding assent. It is ultimately the

whistle-blower's choice whether he or she engages with us. I think that we need to do more to reach out in order to try to make that connection.

**The Chairperson:** Obviously, if the whistle-blower is not engaging with you, it is very difficult for the Department to understand what their concern or allegation is.

**Mr Girvan:** I just want to go back to Mr Priestly's point about the evolving plan. If the basic things to be carried out over the duration of the investigation were set out in that plan, what was your involvement in how the plan evolved? Is that plan in place now and will it be used for future investigations?

**Mr Priestly:** I will leave the second part of the question to Richard because I am not there now. I can only speak of my experience at the time, and, as I said to you before, the plan was in place before I arrived in office.

**Mr Girvan:** In totality, but you alluded to the fact the report states that the plan evolved during the investigation.

**Mr Priestly:** The plan evolved in the sense that further allegations were coming forward, so the scope of the work was broadening and the plan of action to deal with that evolved. My understanding is that Ronnie Balfour amended his plan and work programmes as more allegations came in. What I was seeking from him was an assurance that he had the resources he needed to get on and get the job done, because I was concerned about how long it was taking.

**Mr Girvan:** On the back of what Paul just stated, is it possible, Richard, to say whether lessons have been learned and whether those lessons been implemented in what is being carried forward?

**Mr Pengelly:** Absolutely. The Audit Office report was published in early February 2013. In that same month, we commissioned and drafted what is now called standard operating procedure (SOP) 16. It is a document that now guides all internal audit investigations. At the heart of that document are the guiding principles established by the Audit Office. We drafted that document in March, shared it with the Audit Office and invited comments on it. It indicated to us that it is content with it as a planning document for undertaking future investigations.

**Mr Girvan:** I want to go right back to what has transpired in the report, and this goes back to Mr Priestly. It states that there were indicators of either favouritism towards one contractor or bias against another. I appreciate the historic issue of what happened in 2001 and how that had worked in, but, as the report identifies, there were clear indicators. When did you become aware of that, Mr Priestly?

**Mr Priestly:** The first time I saw the term "indicators" of bias or favouritism was in the Audit Office report. I do not believe that the Balfour investigation showed any evidence of bias, favouritism or collusion. There is the difference between indicators and evidence. In my view, the accusations and allegations made about the Department were investigated thoroughly and there was not the evidence to substantiate them.

**Mr Girvan:** We will move forward. When did you become aware of the evidence associated with the evaluation criteria having been amended — that is probably a nice way of putting it — in relation to the procurement exercise?

**Mr Priestly:** It long predates my time in DRD.

**Mr Girvan:** When did you become aware of it? Having listened to what we heard previously, about how certain things had happened in procurement —

**Mr Priestly:** Sorry. Can I try to clarify what you are asking? Are you asking me about the change in the criteria to increase the contribution made by quality?

**Mr Girvan:** Yes.

**Mr Priestly:** I would have been aware of that as a change in government policy. So the fact that it was changing in Roads Service procurement would not have been a surprise.

**Mr Pengelly:** For context, can I just bring that right up to date? The movement along the price/quality continuum —

**Mr Girvan:** Just before you come in, I want to pin down this change in quality. That policy was not written specifically to suit a sign-manufacturing company. It was a broad, overarching policy, covering all tendering processes. As a consequence of that, and if that were the case, why did we not hear of more people who felt that they had been disenfranchised in other areas? My reading of what we have heard is that this happened during the tendering process. It changed its course. Is that correct?

**Mr G Allister:** Chair, if I could just come in. I covered this point earlier and I want to be absolutely clear about it. The quality/price criteria — in other words, the split, whether it is 40:60, 70:30 or whatever — is agreed at the outset.

**Mr Girvan:** Who set that?

**Mr G Allister:** The evaluation team set that and it set that at the outset of the procurement process. It does not change.

**Mr Girvan:** Who is on that team?

**Mr G Allister:** There is a different evaluation team for each contract. The other point that I want to make clearly is that it is specific to each contract.

**The Chairperson:** Mr Girvan, are you content with that?

**Mr Girvan:** Maybe, this is a softer question to answer. Did you feel that those changes to the evaluation process benefited the Department?

**Mr Priestly:** I think actually the question —

**Mr Girvan:** Well, you were there at the time.

**Mr Priestly:** My honest reply is that I did not have any thoughts about it whatsoever. It was in the hands of professional Roads Service colleagues who were civil engineers and who know this business inside out. They are better placed than me, at the top of the organisation, to judge those things.

**Mr Girvan:** The reason why I use that term is that some people say, that by putting a greater emphasis on the quality as opposed to the price, that could have had a material impact on the cost, and whether we were getting value for money.

There are indications that we were paying — and I am not going to be hard or fast about it — a large percentage more for what we got, with the way the contract was. I appreciate that it was stated that no fraud had taken place. That might well be true, but it does not necessarily mean that we were getting value for money.

**Mr Pengelly:** I think that in public procurement the move along price/quality is driven by procurement experts. Also, we need to clearly differentiate between the concept of cost and that of value for money. Quality goes to whole-life cost, as opposed to the price you pay on day one at the entry point of the product into your system. Signs are something that will be with us for a number of years. To pay 5% more for a sign that lasts 50% longer is a good value-for-money decision.

**Mr Girvan:** I am not talking about a discrepancy of 5%. It was indicated to be a lot higher.

**Mr Pengelly:** It was alleged to be 30%.

**Mr Girvan:** Correct. Well, alleged —

**Mr Pengelly:** Two benchmarking exercises showed that not to be the case. No evidence was provided by Mr Connolly to indicate the 30% variation.

**Dr McKibbin:** This is one of the difficulties sometimes when we do not have an evidential base in certain areas.

**Mr Girvan:** I think it is good to tease it out, so that we know.

**Dr McKibbin:** So do I. An allegation was made that the Department was paying 30% above market rates. DRD compared the rates for the schedules in the 2005 contract and noted that the rates for primary route, motorway and triangular, circle and stop signs were broadly comparable with those being paid by Perth and Kinross and in Cheshire, which were two councils picked for comparison.

A further benchmarking exercise in July 2013 compared the cost to Roads Service with other road authorities in Gloucestershire and Leicestershire. Contact was also made with Glasgow. There appears to be a variation in rates across the UK but Roads Service performed well in those benchmarking exercises. For instance, we were 33% and 12% cheaper on some circular signs in relation to Gloucestershire and Leicestershire. The larger circular signs, which Roads Service does not purchase that much of, were 30% dearer than —

**Mr Clarke:** Can we get back to what we are here for?

**Dr McKibbin:** An allegation was made that we were not getting value for money or were overpaying.

**Mr Clarke:** Yes, we will get back to that.

**Dr McKibbin:** I was responding to Mr Girvan's point.

**The Chairperson:** I think that you want to come in, Mr Clarke.

**Mr Clarke:** Yes. Malcolm, as you were in full flow, we will come back to you first.

**Dr McKibbin:** I was in full flow until you stopped me. *[Laughter.]*

**Mr Clarke:** That is what I was trying to do. *[Laughter.]* We talk about the perceived 80:20 and 60:40 split. We eventually had a very detailed answer from Mr Allister that that was agreed before the contract was awarded. Can you accept that someone could come to the mind that that could be done to advantage a contractor or otherwise?

**Dr McKibbin:** I can understand how they could come to that point but they would be wrong. We had a problem with the contract. Signs and Equipment and PWS both —

**Mr Clarke:** In terms of signs, which is more important: quality or price?

**Dr McKibbin:** They are weighted.

**Mr Clarke:** In your opinion.

**Dr McKibbin:** It depends.

**Mr Clarke:** I am asking you for an opinion.

**Dr McKibbin:** That is not a realistic question.

**Mr Clarke:** It is a realistic question.

**Dr McKibbin:** No, I do not believe that it is. Are we talking about signs being delivered? Is that what you mean by quality? Define what you mean by "quality" and I will give you an answer.

**Mr Clarke:** Like for like, two metal signs of the same specification are the same. Once you have agreed the specification, Paul and I will supply two signs of identical specification. Which is more important: the quality of the signs, given that the specifications are the same, or the price?

**Dr McKibbin:** The first thing that I need is the sign. The delivery aspect of quality is very important because without the delivery, I do not have a sign.

**Mr Clarke:** How do you measure that?

**Dr McKibbin:** We measure that against a five-day and 15-day ordering period.

**Mr Clarke:** OK. Going back to Mr Allister, I think it was he who said that this changed to 60:40. Is that still the formula that you use for procurement of signs and what have you?

**Dr McKibbin:** I will ask Dr Murray to answer that because he is bang up to date.

**Dr Murray:** We have moved to a three-stage process for buying signs. This is the —

**Mr Clarke:** When did that change?

**Dr Murray:** Just before the last competition in 2012.

**Mr Clarke:** So that is the fourth change since the one we are talking about?

**Dr Murray:** It is worth stressing that procurement is not something that you do and set in stone and every future competition is done in the same way. It is an evolving process.

**Mr Clarke:** Why did you change it four times since 2001?

**Dr Murray:** There is always a reason for changing it. When we moved from 2001, there was an increasing move in the profession to build in quality factors. When we built in a quality price mix, we took that professional view into account and problems that we had with a previous contract. Those two things informed the quality price mix that we went to.

**Mr Clarke:** Malcolm, were you in the Department in 2001?

**Dr McKibbin:** No.

**Mr Clarke:** In 2002?

**Dr McKibbin:** Yes.

**Mr Clarke:** In 2001, we had a 60:40 split in terms of price. Was it you, Malcolm, who introduced the change to the matrix or someone else?

**Dr McKibbin:** No. The decision to make the quality price assessment is made by the tenderer, the evaluation panel, as Mr Allister has said on a number of occasions. That is done by the procurement specialists and the people with professional knowledge in that area, whether it is signs or gullies.

**Mr Clarke:** We have established that. With regard to your explanation earlier about the delivery, you have put an awful lot of weight on delivery.

**Dr McKibbin:** If they do not deliver it, I do not have a sign.

**Mr Clarke:** That is right. Why, then, in 2002 and 2003, under your watch, was price making up 60% as opposed to 40% and 20% previously? I think that you got it right, if that is any consolation to you. When it comes to signage, price is more important than some other aspects, given that we can order signs two years before we need them. However, we have 60% on price in 2002 and 2003 under your watch.

**Dr McKibbin:** During my time, there was a shift towards increased emphasis on quality from the previous contracts. In 1999, it was 100% price, for instance. So there had been an ongoing shift. As Mr Allister has said repeatedly, it was in line with government policy at that time and in line with the

assessment of the most economically advantageous tender looking at whole-life costs rather than pure price. I think that the direction of movement was completely correct, particularly because of the difficulties that we had had with the contract regarding delivery.

**Mr Clarke:** With regard to 2002-03?

**Dr McKibbin:** Before that, there was a problem with delivery for the 2001-02 contract.

**Mr Clarke:** In 2002-03, we have 60% price. In 1999-2001, we were talking 20% price.

**Dr McKibbin:** Sorry, what year?

**Mr Clarke:** In 1999-2001. I know that that was before you came.

**Dr Murray:** There were two different elements; there were two different schedules in the 1999-2001 contract. The quality/price was 20%:80% for some of the schedules and 40%:60% for other schedules.

**Mr Clarke:** Who decided that?

**Dr Murray:** The evaluation panel.

**Mr Clarke:** Is that not where the whistle-blower, in this case, believed that they were disadvantaged?

**Dr Murray:** They could not have been disadvantaged, because those factors applied to all of the tenderers.

**Mr Clarke:** We then go on to 2005-07, where we drop from 60% price to 30% price, and 30% in 2009. What are we currently? Can we get the methodology of the current system?

**Dr Murray:** Yes, we can give you the details of that, but, broadly, we have moved to a three-stage process. The first two stages are pass/fail, and the third stage is price only. That is the system that we are using at present.

**Mr Clarke:** So, delivery is no longer important? Taking Dr McKibbin's point earlier, delivery seemed to be a big factor in 1999-2001. We are now in 2013 and delivery is no longer important; it is down to price.

**Dr Murray:** I have not said that. We —

**Mr Clarke:** No, you have not said that, but Dr McKibbin said that delivery was important in 1999-2001. Dr Murray, you are now saying that we are down to price.

**Dr Murray:** No. I am saying that we have a three-stage process —

**Mr Clarke:** Yes, you have a pass/fail.

**Dr Murray:** — and we will provide you with the details of that three-stage process. Bear in mind that the delivery problems that we had back in the early years of 2000 to 2001 are no longer with us.

**Mr Clarke:** What were those problems?

**Dr Murray:** The problems were that one of the suppliers, in particular, was delivering 75% of the signs outside of the required period.

**Mr Clarke:** So, that is where some of us could come to the conclusion that there is bias and that some of this was changed to the disadvantage of a particular supplier.

**Dr Murray:** No, because the quality —



**Mr Clarke:** But you are only after saying that it was changed because of problems with delivery with a previous supplier who is no longer part of the problem.

**Dr Murray:** We do not take past performance into account. We were taking the offer that was made at that time into account.

**Mr Clarke:** Why does that not affect things today, given that that problem may be from a supplier who could currently be supplying, because you do not take past performance into account, and you have now gone solely to price?

**Dr Murray:** No.

**Mr Clarke:** Yes.

**Dr McKibbin:** It is a three-stage process. Maybe Dr Murray could explain the three-stage process, because it involves quality.

**Mr Clarke:** Dr McKibbin, who fails? Who chose in terms of failure?

**Dr Murray:** One of the stages of the current procedure is a sector-scheme approval. A scheme is set up, and we can give you the full details of that.

**Mr Clarke:** That would be useful.

**The Chairperson:** I think that the three-stage process that is now in place is key to the question that we are asking and where we want to go with it.

**Mr Clarke:** I am happy for you to talk me through that, Dr Murray, when we are here today.

**Dr Murray:** I am not sufficiently closely involved in it to take you through the three-stage process. It would be better if —

**The Chairperson:** You will have to come back with that information.

It is 4.20 pm, and time is moving on. We still have members who have questions to ask. I suggest that we take a comfort break for 10 minutes.

*Committee suspended.*

*On resuming —*

**The Chairperson:** Welcome back, and I hope that you had time to avail yourselves of refreshments. Moving on — I know that we have spent considerable time on this so far — quite a number of members have still to ask their questions. We will start with Mr Sean Rogers.

**Mr Pengelly:** Do you mind if some of the witnesses take their jacket off?

**The Chairperson:** Absolutely not. That goes for members as well. Whatever you are comfortable in, as long as it is only the jackets. *[Laughter.]*

**Mr Rogers:** At this stage, you could ask the question — the 2002 internal audit report had 20 recommendations. The public out there would say, "Why are we here today?".

**Mr Pengelly:** It is a reasonable question. To go back to what we said earlier, and as much as I may regret ever saying this, we are not going to get it right 100% of the time. We are in a constant battle to try to minimise and eliminate errors. We look at our control environment and, as Malcolm said, we look to the training of our colleagues throughout the Department. The recommendations made in the 2002 report have all been accepted and implemented. We are now working within the completely new environment of Account NI's procurement modules, and, as Andrew said, that still allows exceptions

for good business reasons. We monitor that, and we have learned lessons. I am not sure that any organisation of this size and scale in the public sector will ever get to the situation where we have a zero error rate. We all aspire to be there, but it is a constant journey. Mistakes will be made, but it is our job to eliminate them.

**Mr Rogers:** The sceptic in me, like Trevor, hopes that we are not back here in two or three years' time.

**Mr Clarke:** Absolutely.

**Mr Rogers:** Can I take you to the informal investigation plan? Who drew that up in 2005?

**Mr Pengelly:** That would have been drawn up by the then head of internal audit, Ronnie Balfour. He drew up the terms of reference.

**Mr Rogers:** Would he have taken into consideration all of the recommendations in the internal audit report from three years prior?

**Mr Pengelly:** I am not sure whether he would have taken them into account at the stage of drawing up the terms of reference. He certainly had access to them as his work progressed. The terms of reference were drawn up in 2005 and were amended in 2006 and 2007 as the work progressed. It is clear from a review of his working papers that there was a review of the previous work, but as to whether they were specifically taken into account, the terms of reference were just a broad-brush driver of the work.

**Mr Rogers:** Was this plan just a normal audit plan or was it a specific investigation plan?

**Mr Pengelly:** To characterise it, we need to differentiate the planning process from the plan. There were terms of reference that initiated the work, and that was then underpinned by a very detailed work plan. That work plan was drawn up absolutely in line with the professional standards that applied to the internal audit unit, and that drove the operational work for the duration of the investigation.

**Mr Rogers:** When you look at that and the CPD report of 2004, and consider that there was another investigation in 2005, do you think in retrospect that the plan or the investigation was too narrow?

**Mr Pengelly:** It would be easy to default to a bland "yes" on the basis of hindsight. Looking back, it is one of the key criticisms of the Audit Office. We need to bear in mind that, at the point in time when the plan was drawn up, not all of the allegations, and far short of all of the evidence from Mr Connolly, were available. It was, by definition, incomplete, because the whole picture of allegations and evidence was incomplete. Could a bit more time have been spent on planning? I think maybe yes, drawing up the scope of it and getting a better sense of what the work would be. However, that work was in the detailed working plan that drove the work as it happened on the ground; it is not in the terms of reference. We are nearly dancing on pinheads in terms of a reference that that was in there. The key point is: did it undermine the quality of the investigation? I do not see any sense that it did that, but the planning document could have been improved a little.

**Mr Rogers:** Mr Priestly, why were the earlier inquiries not used as a background for this particular inquiry?

**Mr Priestly:** My starting point in replying is that the planning of the Balfour investigation was done before I arrived in the Department. My understanding is that, in taking forward his investigation, Ronnie Balfour did take into account the findings of the earlier investigation.

**Mr Rogers:** So all of the previous inquiries were taken into consideration when you were doing this particular investigation?

**Mr Priestly:** That is my understanding. He had access to the results of those investigations, and took them into account in drawing up his plan of work and his review of what had gone on before, in taking forward his investigation.

**Mr Rogers:** Maybe it is a point that we can get clarified, particularly in terms of the Audit Office. I would really like that point to be clarified. You say it is your understanding, but I think it really needs to be clarified.

**Mr Pengelly:** I have talked to the investigator specifically on that point, and he has confirmed that he did review all of those previous pieces of work. He had them on file. In fact, two of the previous pieces of work were carried out by the internal audit unit that Mr Balfour worked in and headed, so he would have been very familiar with the previous work on that.

We may come on to other points, but I think one of the key failings throughout this work — and it goes beyond this investigation; I think it is a failing that is all too common — is that sometimes we take very coherent and rational decisions, but fail to record the basis for those on file at the time we do them in order to permit the retrospective view of whether that was the right decision to make. So, there is a lack of evidence about the review of those earlier documents, but I am absolutely assured that it happened. The reports from the 2000-01 internal audit work and the 2004 CPD work are on file as part of the working papers. It is on the record that Ronnie spoke to the CPD colleague who headed up the 2004 investigation.

**Mr Rogers:** But you agree with what the Audit Office said — I think it is in paragraph 21 — that there was no formal plan prior to the start of the investigation, or words to that effect?

**Mr Pengelly:** There was a plan. There are terms of reference.

**Mr Rogers:** Sorry, the wording was:

*"a poor substitute for a formal plan drawn up prior to the commencement of investigative work".*

That is on page 15.

**Mr Pengelly:** It says that. I must confess that I am not entirely sure, because the sentence starts:

*"We consider that this type of planning is acceptable as far as it goes"*

but that is juxtaposed with:

*"a poor substitute for a formal plan".*

I think the plan could have been more voluminous and could have had a wider scope. I do not think that that undermined the work that followed thereafter. It is a very reasonable point that a bit more time spent on planning and scoping who would be spoken to and the nature of the investigation would be a good thing.

**Mr Rogers:** To go back to you, Mr Priestley, how do you think the plan took full account of the allegations of favouritism?

**Mr Priestly:** I can only repeat that the plan was put in place long before I arrived in DRD. As a permanent secretary and accounting officer, I have to rely on the professionalism of the investigator, who is a qualified internal auditor. He knows his business and knows how to plan an investigation. I sought assurances from him that it was proceeding properly, that he was not being obstructed and that he had the resources necessary. I did not get into the detail of the plan. As more and more allegations came forward, he told me that he was putting them into the plan and putting in place the necessary arrangements to have them investigated. That is what I sought assurances about.

**Mr Rogers:** Refresh me again: when did you start in DRD?

**Mr Priestly:** December 2007.

**Mr Rogers:** When he gave you those assurances, did you check them out in any way?

**Mr Priestly:** Only with him. I basically asked him whether he was being obstructed by anybody, whether anybody was refusing to cooperate with the investigation, and whether he was confident that he was being given access to all the available information and files. I also asked what was causing

the delays, because I was anxious to progress it. In addition, I asked what stage he was at in the investigation, what more needed to be done and what the emerging findings were. Those were the types of questions that I asked him. Given the relationship that we had — he had automatic access to me on request — I would have expected that, if he had difficulties or did not have resources or if he was not getting cooperation, he would have brought that to my attention. At no stage did he.

**Mr Rogers:** There has been a lot today about self-reflection and so on. In light of what happened, if something like that was to turn up again, would you deal with it in the same way or slightly differently?

**Mr Priestly:** I would probably deal with it slightly differently. I can see the benefits of the Audit Office's recommendation for some sort of central resource to look at these very large scope investigations almost completely detached from the Department. That would bring its own benefits.

**Mr Dallat:** Dr Murray, you told us earlier that you would make available all documentation, and so you did not really need FOIs. Is there no truth in the rumour that the former Minister, Conor Murphy, had to instruct you to hand over documents?

**Dr Murray:** No.

**Mr Dallat:** No truth whatsoever?

**Dr Murray:** No. The former Minister was written to. He wrote back to say that I was appointed to provide all the information necessary.

**Mr Dallat:** So you gladly handed it over? You did not say that it was in a warehouse somewhere?

**Dr Murray:** No reluctance whatsoever.

**Mr McQuillan:** Mr Priestly, you talked about Mr Balfour. You seem to pass the ball to him all the time. What grade was Mr Balfour?

**Mr Priestly:** If you have taken that I was passing the ball to him, that is absolutely not what I intended you to take.

**Mr McQuillan:** Well, that is what I am getting sitting here.

**Mr Priestly:** I reassure you that I was not passing the ball to him. I saw that I had a senior management responsibility to oversee Mr Balfour's investigation and to assist him with it where necessary. The account —

**Mr McQuillan:** That did not happen. You failed.

**Mr Priestly:** I believe that it did.

**Mr McQuillan:** Well, I believe that it did not.

You did not answer me; what grade was Mr Balfour?

**Mr Priestly:** He was a grade 7, a principal.

**Mr McQuillan:** That is below your grade.

**Mr Priestly:** Yes.

**Mr McQuillan:** I will ask one more question. I am sorry for interrupting. Who benchmarked the investigation right through the whole process? Was it you, or was somebody else appointed to do that?

**Mr Pengelly:** As the investigation progressed, on a regular basis the emerging findings — it is in the terms of reference — were shared and discussed with the Audit Office. Indeed, draft reports, as they emerged, were shared with the Audit Office. We sought feedback and input from it.

**Mr McQuillan:** So, was the Audit Office benchmarking it? Is that what you are saying?

**Mr Pengelly:** Well, it was not a formal benchmarking process. We were keeping the Audit Office up to speed and discussing issues with it. Obviously, Mr Connolly was in contact with the Audit Office, so additional evidence and allegations were emerging. There were very regular meetings. The head of internal audit updated the Audit Office on the work that we had done, the direction in which the investigation was going and the emerging findings. That was an opportunity for push-back in terms of any critique in our work.

**Mr McQuillan:** Where is Mr Balfour working now? Is he still working?

**Mr Pengelly:** He is now working in Transport NI, under Andrew's command.

**Mr McQuillan:** When did he move?

**Mr Pengelly:** October 2009.

**Mr McQuillan:** That was around the time of the investigation finishing.

**Mr Pengelly:** The investigation formally concluded in January 2010, but the final draft report was concluded about two months before Mr Balfour moved across to Roads Service.

**Mr McQuillan:** Is there any significance in his moving to Roads Service, or to Transport NI?

**Mr Pengelly:** There is not. In the two or three years before the work concluded, Mr Balfour indicated at each of his annual performance appraisals that, for career development purposes, he was keen for a move within the Department. He is a valued member of staff in the Department. He made a good contribution. I actually looked back: the areas of the Department that he had covered with internal audit investigations throughout that period touched on every part of the Department. We were clearly in a situation in which we could not rehouse him because he had worked there.

**Mr McQuillan:** Do you agree that it send out a message that there is collusion or something to people who are looking from outside in?

**Mr Pengelly:** The work was substantively finished before he moved, and he had to move somewhere.

**Mr McQuillan:** What message does that send to people outside?

**Mr Pengelly:** We cannot control perception. To be clear, if somebody is moving from a business area into internal audit, where they will undertake investigations, we put a very firm Chinese wall in place so that they cannot undertake reviews of the area that they have come from for a period of time.

**Mr Clarke:** Richard, you joined the organisation in 2013.

**Mr Pengelly:** Yes.

**Mr Clarke:** So how do you have such sound knowledge of Mr Balfour and his career move in 2009?

**Mr Pengelly:** Because I have asked questions, reviewed files and talked to colleagues who were about at that time.

**Mr Clarke:** What role has he now in the Department?

**Mr Pengelly:** He is in what is called our roads secretariat.

**Mr Clarke:** What was he then?

**Mr Pengelly:** He was the head of internal audit.

**Mr Clarke:** Is that current role a good use of the talent of someone with an audit background?

**Mr Pengelly:** Yes.

**Mr Clarke:** It works OK?

**Mr Pengelly:** It does indeed. He is in Andrew's area, but he continues to make a valuable contribution to the work of the Department.

**Dr Murray:** Absolutely. He carried out audits on a wide range of Roads Service business, so it is useful to have him in the secretariat, where he deals with correspondence on a wide range of Roads Service business.

**Mr Clarke:** As my colleague said, you can understand the perception of someone being moved. Did he get moved to somewhere where you value him because he gave a glowing report, or is it just by consequence?

**Dr Murray:** The move was nothing to do with me.

**Mr Clarke:** No; nor did I suggest that. I am just looking at the sequence of events, which Adrian mentioned. He moved two months after he did a report in which some in Roads Service may think that they have escaped somewhat. Was that a promotion?

**Mr Pengelly:** No, it was a sideways move.

**Mr Clarke:** How long was he in internal audit?

**Ms McNeilly:** Around 10 years.

**Mr Clarke:** And, two months after he did the report, he got a sideways move?

**Mr Pengelly:** But he had been asking for a move, and —

**Mr Clarke:** Richard, you came in 2013.

**Mr Pengelly:** That is right.

**Mr Clarke:** Who was there in 2009?

**Mr Priestly:** I was there, and Geoff was.

**Mr Clarke:** Right, Paul. Your memory has not been good up to now, but in 2009, what is your recollection of why Mr Balfour moved?

**Mr Priestly:** I had nothing to do with his move.

**Mr Clarke:** Did you work for Roads Service in 2009?

**Mr Priestly:** Sorry?

**Mr Clarke:** Did you work at all for Roads Service? Your recollection of most of what happened in your period of time has been pretty vague.

**Mr Priestly:** I was the permanent secretary of DRD. The permanent secretary does not get involved in internal moves.

**Mr Clarke:** What do permanent secretaries do? What did you do as permanent secretary? You have no recollection of a letter that you wrote to the BBC. You have no recollection of many of the questions that have been asked today. What exactly did you do in your time as permanent secretary?

**Mr Priestly:** The question is very unfair. I have tried to the best of my ability to give honest replies to the questions that I have been asked about this report.

**Mr Clarke:** I suggest that you have been fairly evasive. Your answers have been fairly vague. I would go as far as to say that you have been obstructive, but I am happy to hand back to some of my colleagues.

**Mr Rogers:** Mr McKibbin, paragraph 69 states:

*"We found a number of significant weaknesses in the application and use of forensic audit techniques employed by the Investigation Team".*

What is your comment on that?

**Dr McKibbin:** I have no comment. I had no involvement in this investigation. I was not part of the DRD core, nor was I permanent secretary at any stage, so I was not involved in that audit.

**Mr Rogers:** I will go to the accounting officer then. Paul, what is your comment on paragraph 69 about the significant weaknesses in forensic audit techniques?

**Mr Priestly:** The only comment I can make is that, as the permanent secretary and accounting officer, I rely on a professional head of internal audit, who is properly qualified to know how to carry out an investigation. I personally have no knowledge of forensic audit techniques.

**Mr Rogers:** When you saw that appear in the report, what did you do about it?

**Mr Priestly:** I am not in a position to do anything about it. I only saw the report a week ago.

**Mr Rogers:** Who is taking responsibility for this?

**Mr Pengelly:** I absolutely accept the recommendation that forensic audit techniques should be used where appropriate. Paul mentioned that we rely on a professionally qualified head of internal audit. My immediate supplementary question to that is: what specific forensic technique could we have used in that set of circumstances that would have facilitated a better outworking of the investigation? No one has been able to give me an answer to that question. As a generic point, I absolutely accept the recommendation. It will now be enshrined in our new standard operating procedure for taking forward investigations, which I mentioned earlier. That is fundamentally about securing, where appropriate, the relevant degree of input and expertise in future investigations.

**Mr Rogers:** You said that you accept the use of forensic audit techniques where appropriate, but here it says that there were significant weaknesses in the application and use of forensic audit techniques. Do you accept that as it is?

**Mr Pengelly:** The Audit Office says that. The reason I struggle to accept it is that I cannot think of a specific technique. In all the papers that I have reviewed for this investigation, I cannot point to somewhere where there is a very clear gap where a forensic technique would have illuminated the evidence base in a way in which the techniques applied by the professionally qualified head of internal audit did not.

**Mr Rogers:** If that is your position, surely, then, it will be hard to improve on forensic audit techniques if we do not know where the gap is.

**Mr Pengelly:** I think that there is an application. We were here a couple of weeks ago about Northern Ireland Water. We brought in IT specialists to interrogate the hard drives of computers that were seized as part of a suspected fraud investigation. What we will do at an early stage in the planning process is reach out to get the expertise. We look to our colleagues in DFP and the Audit Office to

give us pointers on what specific techniques would be useful in the circumstances we face, and bring them to the investigative team.

**Mr Rogers:** Paragraphs 83 to 85 deal with the fact that the scope of the investigation was reduced. At the top of page 36 is the very strong statement:

*"All allegations were not adequately investigated".*

In the conclusions and recommendations on page 37, it states:

*"A number of allegations were edited, which resulted in important aspects of the original allegation by the Whistleblower not being adequately investigated."*

Would you like to comment on that?

**Mr Pengelly:** Yes, I am happy to comment. The starting point is that the Audit Office report refers to 29 allegations. In its view, seven were not investigated and, of the 22 that were investigated, the wording of seven of them was amended. The one contextual point is that, at no stage in this process, were 29 very neat, short bullet-point allegations put to us. The allegations that Ronnie Balfour investigated as part of his report were extracted from the vast weight of allegations and evidence that was put to us across a three-year period. The 22 allegations that he set out in his report were his summary, trying to get into a manageable form what the main point of the allegation was. I talked at length to the investigator. He has been absolutely clear that he worked through all the allegations and all the evidence presented by Mr Connolly, and investigated that as part of his work. So the 22 allegations there are a shorthand descriptor.

I think that, moving forward, that Audit Office recommendation is absolutely essential. I accept absolutely that a whistle-blowing report should include a verbatim record of all allegations. In respect of its application, I am not sure how that would have worked in this case, given that the allegations came through minutes of meetings, notes of phone calls, letters and large volumes of evidence presented over a three-year period, but where it is possible to do that, we should do it, and where it is not possible, it gets to the point where we need to engage with the whistle-blower. If there is that amount of evidence, we need to summarise what we think the key allegations are, ask the whistle-blower to sign off on that and say, "Are we content that that is the scope of the allegation that we are investigating?". I am happy to accept that going forward, but I am just highlighting some issues about application.

**Mr Rogers:** Finally, Mr Priestly, Dr McKibbin talked earlier about this being a "misplaced orders" issue. Are you happy with that analysis?

**Mr Priestly:** Again, I rely on what the Balfour investigation said. It said that there were human errors and that there was non-compliance with processes. That was unfortunate and should not have happened. The Department needs to take action to try to ensure that that does not happen again. I stand over that as being the cause of what happened in this case.

**Mr Rogers:** Was it just an issue of misplaced orders: yes or no?

**Mr Priestly:** I think it goes wider than that. There was a lot of human error and non-compliance with processes.

**Dr McKibbin:** Sorry, Mr Rogers, just to clarify: when I said "misplaced orders", I was referring to the 2001 investigation. That was the issue that it was investigating.

**Mr Dallat:** There is one thought running through my mind, and Mr Pengelly jolted it. You mentioned Northern Ireland Water. During that period, enormous lengths were gone to in order to deal with things that were not right in Northern Ireland Water. Four non-executive directors were sacked, and the then chief executive flipped his lid and offered his resignation, but you told me a few minutes ago, Mr Priestly, that your role had nothing to do with the problems in Roads Service. Why the contrast between the two?

**Mr Priestly:** I do not accept that I said that my role had nothing to do with the problems in Roads Service.



**Mr Dallat:** I am sorry; that is what I picked up. Whatever it was, you are welcome to repeat it.

**Mr Priestly:** I considered myself to be the accounting officer and to have a responsibility for having those problems properly investigated, for bringing that investigation to a conclusion and for implementing whatever recommendations came forward in Ronnie Balfour's report.

**Mr Dallat:** In hindsight, perhaps it is a good job that you did not apply the same enthusiasm to the Roads Service as you applied to Northern Ireland Water, because that was some mess.

**Mr McKay:** Just following on from some of Sean's points, we certainly get the impression today that many within Roads Service and DRD were asleep in 2008 and 2009. When you delve into some of the comments from the Audit Office, there are still a lot of questions that are unanswered in my view. Look at points 49 and 50:

*"six errors favoured Firm A (valued at £2,813)".*

Another error — and we have heard that word time and again today — was valued at £850. However, the most concerning thing about this is not the monetary value, but that:

*"The Investigation Team viewed the errors as mistakes rather than as an indicator of potential wrongdoing and undertook neither further forensic work nor more targeted sampling to determine whether favouritism or bias was a cause."*

It is absolutely bizarre if that is down to error alone. It is totally unprofessional and, in my view, there is a lot more digging to be done on that.

**The Chairperson:** Can you just speak up a wee bit, Mr McKay?

**Mr McKay:** OK. The report goes on to say that:

*"The approach taken demonstrates a lack of desire to determine the true level of error or assess whether favouritism or bias was present."*

Do you agree with that point, Paul?

**Mr Priestly:** I am afraid that I do not. I think —

**Mr McKay:** So, you take issue with the report?

**Mr Priestly:** I do. I think that the Balfour investigation was thorough. I am not saying that it was perfect, but I think that it went through these allegations and accusations in great detail, and I stand over its findings.

**Mr McKay:** Surely the Audit Office is there to provide an independent assessment of the goings-on in Departments. It has a good track record. Is it not the case that this is because it was on your watch as opposed to the credibility of the Audit Office? There are some pretty damning findings here. I agree with other members in that you say that you agree fully with the Balfour report but also say that you cannot remember half of the things that took place at that time. So, there is a contradiction in that alone. Do you agree with that?

**Mr Priestly:** No, I do not. I have read the Balfour report and refreshed my memory to the best of my ability in the time available, and my view on the thoroughness and the outcome of the Balfour investigation has not changed.

**Mr Donnelly:** My decision to report on this was not taken lightly. If I had been reasonably content with the Balfour report, I would not have produced my own report on it. It is as simple as that.

**Mr McKay:** How do you rate the performance of the investigation team, Paul?

**Mr Priestly:** As I said, I think that it did a thorough job in investigating the allegations and accusations about the Department. I accept a number of the criticisms that have been made about the planning of the investigation. It took far too long. When I became the permanent secretary, I sought to try to get the thing moving and brought to a conclusion. I still think that the investigation dealt thoroughly with the accusations and, on the basis of the evidence available, came to the right conclusions.

**Mr McKay:** During the investigation, there were two occasions on which two officials were interviewed together. Is that good practice? Yes or no?

**Mr Priestly:** I am not a professional auditor. I do not know the reasons why Ronnie Balfour decided to interview those officials together.

**Mr McKay:** You are standing four-square behind his conclusions, yet you are now distancing yourself from his methodology. Which one is it?

**Mr Priestly:** I am saying that I do not know whether that is good practice or not. You asked me whether it is good practice.

**Mr McKay:** It is obvious that it is not good practice.

**Mr Priestly:** I do not know whether it is or not.

**Mr McKay:** Do you not accept that the technique of interviewing two witnesses together was fundamentally wrong? Also, there is more.

**Mr Dallat:** Much more.

**Mr McKay:** Much more; that is right. The whistle-blower was not interviewed even though he was a material witness, and that has been referred to before. Further to that, there was no structured interview with the whistle-blower. Do you agree that that was wrong?

**Mr Priestly:** With hindsight, it would have been sensible for Ronnie Balfour to interview the whistle-blower. However, he did attend a number of meetings with Mr Connolly along with the Northern Ireland Audit Office.

**Mr McKay:** How can you be so conclusive that it was just human error?

**Mr Priestly:** On the basis of —

**Mr McKay:** Can you be that conclusive?

**Mr Priestly:** On the basis of the investigation, which I believe was carried out professionally and thoroughly, I accept the conclusion.

**Mr McKay:** But you are not across the detail of the investigation, from what you have said. So, how can you be so conclusive about the fact that there was no favouritism or bias?

**Mr Priestly:** As the permanent secretary and accounting officer, you have to rely on the professionalism and capabilities of your head of internal audit.

**Mr McKay:** You also have to take responsibility.

**Mr Priestly:** Yes, absolutely.

**The Chairperson:** Mr Priestly, I am sure that you are across all the detail and the guiding principles of any investigation. Investigators conduct their work in accordance with the highest standard of public principles, particularly objectivity. The investigating team, in this instance, gave less-favourable treatment to the whistle-blower, and I will give an example. It shared a complete draft of its report with firm A and extracts with firms B and C, but nothing was sent to the whistle-blower. The whistle-blower was an interested party and had a vested interest. Why did that happen? Is that how whistle-blowers should be treated, Mr Priestly?

**Mr Priestly:** I do not know why that did not happen.

**The Chairperson:** Mr Pengelly?

**Mr Pengelly:** I do not know why that happened. I suspect it was because they had received the allegations, so it was a question of investigating the evidence base on the side of the Department and firm A. I am surmising what happened; I am not recording it as fact. I think the recommendations in the report set out what good practice should be.

**The Chairperson:** So, the investigating team gave less-favourable treatment to the whistle-blower when there was no real rationale for that, is that what you are saying?

**Mr Pengelly:** I think it goes to my earlier point, Chair, that experience shows at times that decisions that are often rational and sensible are taken without the clear articulation of the basis for that. The file review does not show the complete rationale for this. From speaking to individuals concerned, I do not get the sense that it was because of any favouritism to any particular recipient or non-recipient of the report. As I said, however, the Audit Office recommendations make for strong best practice in this regard.

**The Chairperson:** Before I go back to Mr McKay, I want to ask a question of you, Mr Priestly. At the time, you were at the highest governance level in this investigation. Like it or not, that gives you significant responsibility in your duties as the accounting officer. I have heard nothing to suggest that the Department was motivated by any instinct other than to cover up. What did you do at the time to help the whistle-blower?

**Mr Priestly:** I said earlier, and all I can do is repeat the actions I took.

**The Chairperson:** Which were?

**Mr Priestly:** I sought to support Mr Balfour in progressing the investigation. I sought reassurance from him that he was not being obstructed, was getting cooperation and had unfettered access to information and files. I sought reassurance from him that he had the resources he needed to progress the investigation. On no occasion did he tell me that there was a problem with any of that.

**The Chairperson:** Were you not concerned about the fact that twice in five years the whistle-blower was met and spoken to? Did that not raise any concern with you at all?

**Mr Priestly:** When I got actively involved in this investigation, the issue, as it was put to me, was that Mr Connolly preferred to put his allegations and deal directly with the Audit Office. I can assure you that I did, on a number of occasions, say to Ronnie Balfour, "Make contact directly with him." That was primarily to check whether he had given us all the information he wished to give us. We had already given an assurance to Mr Connolly and his MP that he would be given as much time as he needed and access to information.

I eventually said to Ronnie Balfour, "Make direct contact with him and ascertain that." In the end, I wrote to Mr Connolly and sought confirmation that he had given us all his evidence.

**The Chairperson:** Do we have the correspondence that Mr Priestly sent to Mr Connolly? Can we get that correspondence?

**The Committee Clerk:** We can check.

**Mr Clarke:** I think that Daithí is going to let me in here. I will take you back to Daithí's question, Mr Priestly, because you maybe moved on slightly. Going back to Mr Balfour, what did you say earlier about your thoughts on his report and its findings?

**Mr Priestly:** In terms of the report, I think he did a thorough investigation of the issues. Could it have been better planned? Yes. Was it perfect? No. He could have progressed the matter more quickly. However, I understand the context in which he was operating.

**Mr Clarke:** So, you believe it was thorough.

**Mr Priestly:** I do believe it was thorough.

**Mr Clarke:** Do you still believe it was thorough?

**Mr Priestly:** I do.

**Mr Clarke:** Do you believe it was thorough after Daithí McKay asked you about Mr Balfour not interviewing the whistle-blowers?

**Mr Priestly:** I can only repeat —

**Mr Clarke:** No, no, you can only repeat. Can you only give me a yes or no. After it was brought to your attention that Mr Balfour did not contact the whistle-blowers and ask them for input into the investigation, has your opinion changed or is it still the same about Mr Balfour's report?

**Mr Priestly:** I do not think that I can give you a yes-or-no reply.

**Mr Clarke:** Then give me no reply, because I take that as a no. You have not changed your opinion. You still think that your original decision will be upheld. If it was anything else, you would have said that you would not have thought so.

**The Chairperson:** Before I turn to Mr McKay, I will let Mr Copeland ask a small supplementary question. He is itching to get in there.

**Mr Copeland:** Thanks Paul. I apologise for coming back to you yet again.

It strikes me that consultation process will generally give the results that those who design the consultation process seek to achieve. It also strikes me that, in any investigation, the most important thing is its terms of reference, because that dictates what you are going to investigate and how you will investigate it. Did Mr Balfour, who conducted the investigation, establish and set his own terms of reference? If he did not, who set those terms and who signed off on them?

The reason I ask is that I spent more than three hours in Derry/Londonderry last week, discussing whether there should be an s on the end of the word "Minister". The outcome of that investigation would be totally different, depending on whether there is an s at the end. The bottom line is this: who set the terms of reference? When you say it was a well-conducted investigation, do you mean that it was well-conducted in the sense that it met the terms of reference, achieved the right outcome or got at the truth? Those three things are quite different. Who set the terms of reference and, more importantly, who checked them?

**Mr Priestly:** The terms of reference were set long before I joined DRD. My understanding is that they were set by Stephen Quinn, when he was the permanent secretary and accounting officer in 2005. When you ask me whether I believe that the review was well conducted, I respond that the allegations and accusations against the Department were properly investigated on the basis of the evidence that was available. Sometimes, there was no evidence to substantiate allegations one way or the other. On that basis, the outcome of the review was fair and reasonable. It got to the basis of what could be got at, on the evidence available. Mr Connolly kept on saying that he had more evidence. Ronnie Balfour told me that Mr Connolly told him that he was about to produce something that would blow the whole case apart. It never turned up. That is my clear recollection of it.

**Mr Copeland:** So it was never considered because it did not exist, according to you.

**Mr Priestly:** It was not provided, and we could not find it.

**Mr Copeland:** This troubles me to some degree. I come, not from a procurement background, but from a background of acquiring stuff. It looks as though the small man dared to take on the government Department. The Department did not like it very much because Departments are not used to being challenged. It conducted an investigation that proved that he was wrong, but he would not go away. And the difficulty is what happened to him, from the point of view of other whistle-

blowers? In other words, he enjoyed a degree of a business relationship prior to this. Did that continue after this?

More importantly, perhaps, the fact is that past performance should not figure in the award of contracts. Until 1999, past performance was actually on the sheets. Is it conceivable that, in the two years or so that passed between 1999 and 2001, when this happened, although it may not have been on the sheet, it might still have been in the minds of those who took the decision, if they were taking decisions similar to that two years previously?

I guess that, in some ways, you are sitting there wondering what all the fuss is about. It seems to be only a total loss of the profit on £7,000. However, for us, it is much more than that. It is the relationship between the way in which the whistle-blower was treated and the way in which the investigation was conducted internally. That is why I, personally, have issues with it.

Can you tell me whether past performance figures in the decision? What steps were taken to ensure that it did not figure as a disincentive to award a contract subsequently, even though, on paper, it was not being taken into account? Any ideas on that?

**Dr Murray:** Yes. We now do not take past performance into account. We take the quality submission and the interviews and sampling and those sorts of things into account. While it might look like it, we do not exercise favouritism against the contractor that has given us trouble in the past by raising complaints. An example of that would probably be the 2002-03 competition. The background to the competition was that we had delivery problems previously with both main contractors. When we ran the 2002 competition, PWS won it, but we were concerned about giving it all the work, so we split the work between PWS and the whistle-blower's firm at that stage. If there was a suggestion that we were exercising bias against the whistle-blower and trying to put him out of business, we would simply have gone with PWS and given it the work that it was rightfully entitled to. We did not do that.

**Mr Copeland:** What were the reasons for that?

**Dr Murray:** We were concerned with delivery issues in both cases and their ability to deal with all the work. We have a road safety need to supply signs, and we were concerned that if we put all our eggs in the one basket and that contractor let us down, we would be in trouble.

**Dr McKibbin:** Can I just deal with the issue of favouritism and collusion? I was thinking about it before this hearing. By way of preliminary observation in respect of favouritism, bias or collusion, this allegation is aimed at a very large number of individuals and organisations. It is being alleged that Roads Service colluded with CPD, GPA, LEDU or INI, and with the core of its own Department at senior and junior levels. That is compounded when you think about the separation of roles of people: some are clients, some are buyers, some are in Omagh, some are in Belfast and some are in Derry. I suggest that the more people there are involved in an allegation, the less likely it is that such an allegation has any serious credibility.

I also struggle with what the common motivating factor is between all these people in all these different organisations, in these different jobs, at different levels of seniority, that is getting them to favour one particular firm. I then looked at the NIAO investigation. It has indicators — but no evidence — of favouritism. Four investigations have been carried out by DRD, Roads Service and DFP, through CPD, and not one of them found any favouritism, bias or collusion allegations.

**Mr McQuillan:** Do you think that it was handled properly? Is that what you are saying?

**Dr McKibbin:** I have not even mentioned the 2005 Balfour investigation. I am looking outside of that. Even if you have concerns over that, I am not even looking at that as justification.

**Mr McQuillan:** Do you have concerns over the Balfour investigation?

**Dr McKibbin:** I was not involved in the detail of it.

**Mr McQuillan:** Do you have any concerns over it?

**Dr McKibbin:** Let me finish the point that I was trying to make regarding allegations of favouritism and collusion. I will come back to your point if that is OK.

We also believe that the information given in court had much greater weight on it than the Comptroller and Auditor General infers, and I am happy to go through each of them if you wish. The court refers to eight allegations. So, although the final judgement only talks about three —

**Mr Clarke:** Why did you not appeal it then?

**Dr McKibbin:** Sorry; what I said was that I believe that the court judgement dealt with eight of the allegations. The only appeal point that we would have had regarding the 2010 court case was over the transparency of the decision-making process behind the quality/price split, and it was decided not to appeal.

**Mr Clarke:** Which can raise concerns of bias.

**Dr McKibbin:** Yes, it can raise perceptions of bias, but I would have hoped that, from the evidence that Mr Allister has given about the trend throughout the United Kingdom and in Northern Ireland in contracts accepted by the executive that we involve a greater element of quality in tender assessment and tender award, it should show that it is a reasonable approach to take to increase that quality threshold. I certainly believe that it is, and it is one of the reasons why quality has improved over the past number of years.

**Mr Clarke:** In all the public sector?

**Dr McKibbin:** I am talking about —

**Mr Clarke:** Let us generalise it, given the position that you now hold over all the different Departments. Do you share that opinion for all the Departments that you are responsible for in respect of the procurement process?

**Dr McKibbin:** The only Department that I am responsible for directly is OFMDFM.

**Mr Clarke:** Which is overarching, obviously.

**Dr McKibbin:** No. Each permanent secretary is responsible to the Minister of that Department. That is the political settlement that we have here.

**Mr Clarke:** Are you suggesting that you have no influence over any of the other Departments?

**Dr McKibbin:** I certainly did not say that.

**Mr Clarke:** Let us go back to the influence that you have.

**Dr McKibbin:** Let us debate it —

**Mr Clarke:** No, Dr McKibbin, let us go back to the influence that you have over all the Departments. You are the head of the Civil Service in Northern Ireland. Bearing in mind some of the cases that have been brought by the Public Accounts Committee in the past number of years, are you suggesting that everything is right and everything is rosy in the garden of procurement and processes?

**Dr McKibbin:** You will very rarely hear me use words such as "everything" or "all" because there are always exceptions.

**Mr Clarke:** You are doing a great salesman's job of distracting us from where we are at with this, because you are trying to sell it as a rosy garden and say that everything is wonderful and that DRD is brilliant and never does anything wrong. You want to dismiss some things that the judge did, and that is fair enough. I accept that. However, let us focus on some of the stuff that the judge found against the Department. Let us look at the negatives rather than the positives, because that is what most of us are here to do today. There are negative aspects in the report, and we want to drill down and find out who is responsible, what is being done, what lessons have been learned and where we go from here. Mr Priestly has amnesia today, and I do not want to come back in a number of years to repeat this, but there seems to be a pattern of problems from the past.

Let us go back to the court decision. What is your general opinion on that case?

**Dr McKibbin:** Can I go back to the point —

**Mr Clarke:** Just summarise that for me.

**Dr McKibbin:** You asked three or four questions, and I want to try to answer them.

**Mr Clarke:** I am happy to just gloss over those. Just go back to the summarising point.

**Dr McKibbin:** I do not want to gloss over them, because that implies that I accept some of the things that you said.

**Mr Clarke:** I am sure you would not, but go ahead.

**Dr McKibbin:** Do I believe that procurement has improved across the NICS? I believe that, in general, it has. Consider the context of Roads Service for a second. It manages over 400 contracts a year, and we are here discussing one that is worth roughly £0.75 million — that is the total contract value a year — in a situation where we deal with contracts up to £350 million. I accept Mr Copeland's point that that does not mean that this does not deserve attention, but —

**Mr Clarke:** Is that because this is the only one that has come to light and none of the other contracts have? We could suggest that there could have been errors in other contracts. You may have a large budget, but there could be other errors that have not come to light yet. Is it fair to say that?

**Dr McKibbin:** It is very difficult for me to know what I do not know.

**Mr Clarke:** Let us go to the court case then.

**Dr McKibbin:** The court case found that there was no substantive evidence for bias, collusion or favouritism.

**Mr Clarke:** I read that differently, based on the one that I read into the record earlier.

**Dr McKibbin:** That was not about favouritism allegations; it was about the transparency of the quality/price process.

**Mr Clarke:** It said that the person was disadvantaged, and you could conclude from that that there was bias. I see Dr Murray getting excited there.

**Dr McKibbin:** You made an accusation and stated that the court said that the person was disadvantaged.

**Dr Murray:** The judgement said that he either was disadvantaged or could have been disadvantaged as a result of the lack of transparency.

**Mr Clarke:** You are making me look for this again. He said that he is:

*"satisfied that the Defendants are in breach of the duty owed under the regulations [Public Contract Regulations 2006]."*

That is clear.

**Dr McKibbin:** Yes, that is clear and specific.

**Mr Clarke:** You are quick to diminish some aspects of the court case when some of those were quashed. Who was awarded costs? The Department or the person who took the case?

**Dr Murray:** I believe that the Department had to pay its own costs and 80% of the plaintiff's costs.

**Mr Clarke:** That suggests that the court is in favour of the case against the Department. Is it fair to say that, Dr Murray?

**Dr Murray:** No. You need to look at the pattern of court judgements on individuals taking cases against Departments.

**Mr Clarke:** You are not suggesting that the judge would find in favour of a malicious case taken against the Department?

**Dr Murray:** I am saying that you need to look at the pattern.

**Mr Clarke:** No, I am asking you whether you are suggesting that the judges would find in favour of what you would deem to be a non-allegation or a malicious case.

**Dr Murray:** I would not make that suggestion.

**Mr Clarke:** So, is it fair to assume that, if the judgement was awarded to the whistle-blower in this case, the judge is fair-minded to support that person, given that he awarded costs against the Department?

**Dr Murray:** Sorry?

**Mr Clarke:** Right.

**Dr Murray:** What I am really saying is that I do not think that that is an indication that the judge thought that the allegations had some basis.

**Mr Clarke:** You do not think that?

**Dr Murray:** No.

**Mr Clarke:** So, you think that the judge was unfair to award costs against the Department?

**Dr Murray:** It is not putting me in a fair position to try to put me inside the mind of a judge, but there is a pattern of decisions that Northern Ireland courts have made against Departments.

**Mr Clarke:** Perhaps, given that you have provided that as an example, you should furnish us with some other examples.

**Dr Murray:** Sorry, I should have said in terms of awarding costs.

**Mr Clarke:** Sorry?

**Dr Murray:** I should have said in terms of the award of costs. I should have made that point.

**Mr Clarke:** I am sorry; I cannot make you out.

**Dr Murray:** I should have said in terms of the award of costs.

**Mr Clarke:** Yes. Maybe you could give us some examples and some background on some of the cases that you are referring to. Could you supply the Committee with that?

**Dr Murray:** Well, I do not have that information at my disposal.

**Mr Clarke:** You are putting forward a suggestion that I should study something, which brings me to the opinion that you have knowledge of some of these cases. So, if you want to furnish the Committee with that, we can look at and draw our own judgement on those.

**Dr Murray:** I am saying that you should study that before making a conclusion.



**Mr Clarke:** But you are leading me to assume that I am going find something different if I study it. So, do you have knowledge of what may be different? If you have, will you furnish the Committee with some of the examples that you are referring to, so that we can draw our own conclusion? Is that reasonable?

**Dr Murray:** Well, that would require a separate piece of research, and I am not sure what its value would be.

**Mr Clarke:** The value would be to hold up your argument to see whether or not it holds water.

**Dr Murray:** No, you —

**Mr Clarke:** You are putting forward a presumption that I should go and study some of these judgements. It seems that you are suggesting that judges, on some occasions and regardless of the case, would find in favour of others against the Department. So, if you want to furnish us with some of those examples, I am happy to look at them, and I may or may not come back and share your optimism.

**The Chairperson:** OK. He is making a fair point, Mr Murray. If you are able to furnish us with that, then —

**Mr Clarke:** And if not, we have to disregard what Mr Murray has said.

**Dr Murray:** I would be happy for you to disregard it, because what I am saying is that the court —

**Mr Clarke:** So, you are disregarding your own point?

**Dr Murray:** What I am saying is that the court judgement stands on its own. You were trying to take account of the cost issue to say that perhaps the court judgement meant something a little different from what it said.

**Mr Clarke:** No, I am clear what the judgement says. I am clear in my own mind what the judgement states. I am clear that the court found in favour of the whistle-blower and that the judge was minded to support the applicant. Now, if you want me to forget what you said earlier about my studying some of these other ones — I took that as you coming with the knowledge that costs would more often be awarded against the Department. Furnish those examples if you want to, but if you want to disregard them you are disregarding your information not mine.

**Dr Murray:** Chair, I think that we are entirely agreed on the court judgement.

**Mr Clarke:** I think not.

**Dr Murray:** I think that we are entirely agreed that the judge found against the Department on one point of compliance with the regulations. I think that we are agreed on that.

**Mr Clarke:** We are agreed on that part. I am then drawing the parallel in terms of costs.

**Dr Murray:** Are you suggesting that, because costs were awarded against the Department, the judge found against us on more than that point?

**Mr Clarke:** No; I never used a number. You tried to cause disparity between that and other judgements.

**Dr Murray:** Sorry; I think that you were trying to infer that, because costs were awarded against the Department, the judge actually found against us on more than that point.

**Mr Clarke:** No; I did not use a number, but I think that the spirit of the judge's decision is that he found against the Department.

**Dr Murray:** If you are content that he found against us on that point and I am content, I do not think that there is a need for any further information.

**Mr Clarke:** I am content that he found against the Department.

**The Chairperson:** OK. Moving on; just before I left Mr McKay, and I am conscious of the time, Richard, the word "collusion" was used. That is obviously a very serious allegation. How should collusion between LEDU, DFP and your Department be investigated?

**Mr Pengelly:** It was investigated as part of the Balfour report.

**The Chairperson:** How did you conduct that investigation?

**Mr Pengelly:** There was an engagement with Invest NI, DETI and LEDU. A series of questions were put to them, information was put back, the position was analysed and explanations were offered. I think your question is about —

**The Chairperson:** We have been told that the team examined the files in DETI, but the Audit Office report states that there was no audit trail. So, we do not really know what was done. Will you tell us now what has been done to investigate collusion?

**Mr Pengelly:** I can tell you categorically that the head of the investigation told me that he went through 12 boxes of files in DETI/Invest NI. I absolutely accept —

**The Chairperson:** Mr Balfour?

**Mr Pengelly:** Yes. I absolutely accept the criticism of the Audit Office that the audit trail was not properly documented. I absolutely would say that I do not think that it would have been reasonable for Mr Balfour to photocopy 12 boxes of files to put them in an audit file in DRD to show an audit trail. So, the investigation of that allegation took place. As Malcolm said, the number of players involved in this is relevant. Had there been collusion, the evidence would have pointed to it pretty quickly, given the number of players. There was a substantive piece of work; there were 12 boxes of files.

If we think about the timeline and the idea that the procurement contest was held up to allow the award of grant, I think that the letter of offer was dated the early part of 1998 and the contract was awarded in 1999. The shares that were taken were preferential shares, so there was no sense of any public sector organisation owning or controlling the company that was alleged to be the beneficial recipient.

I think that there is also an allegation that Signs and Equipment had applied for many grants of support from LEDU but did not receive anything until very close. The evidence shows that they made one application, which was successful to the tune of something in the region of £70,000. So, there was a very significant accumulation of evidence. There was nothing to suggest any form of collusion.

**The Chairperson:** Adrian, do you want in on that point?

**Mr McQuillan:** Yes. You are saying all that, but you have been there only since 2013. The permanent secretary of the time cannot remember that, so I find it hard to sit here and listen to you saying that. If Mr Priestly was saying it to us, I could understand it and agree to it. You cannot do that, however, and I find that very disturbing.

**The Chairperson:** Mr Pengelly said at the outset that you have been preparing for this.

**Mr McQuillan:** I understand that.

**Mr Pengelly:** The advantage that I have over Paul on a daily basis is that I turn up in the Department in the morning, and I spend all day speaking to people there. Paul is obviously working outwith the Department now.

**Mr McQuillan:** Did he not do that at the time? Did he not turn up in the Department every morning and speak to people to get a handle on it?

**Mr Pengelly:** I am fairly certain that he did.

**Mr McQuillan:** It does not sound as though he did.

**Mr Pengelly:** I think that the point that Paul is making is that he is coming back to this in excess of three years after he left the Department.

**Mr McKay:** To follow on, Richard, do you accept that the Balfour investigation was flawed?

**Mr Pengelly:** I accept that the process was flawed; I do not accept that the conclusions were flawed.

**Mr McKay:** Yes or no? Do you accept that it was flawed?

**Mr Pengelly:** I accept that the process was flawed; I do not accept that the conclusions were. There are two different strands to it.

**Mr McKay:** No, there is just one report. If either part is flawed in a substantial way, as you are saying, you accept that it is flawed.

**Mr Pengelly:** I did not say that it was flawed in a substantial way.

**Mr McKay:** But you are saying that it is flawed.

**Mr Pengelly:** No. If you want to define the report by its conclusions —

**Mr McKay:** It is a simple question. Do you accept that the report was flawed?

**Mr Pengelly:** I think that there is more subtlety to the question. If you want to define the report by its conclusions, I do not accept that it is flawed.

**Mr McKay:** Yes, but if you are saying that the process is flawed, obviously, the conclusions are flawed.

**Mr Pengelly:** There were some flaws through the process.

**Mr McKay:** Then the report was flawed.

**Mr Pengelly:** No. The conclusions are not flawed.

**Mr McKay:** It is a contradiction. Following on from Paul's answers, you are contradicting yourselves on your position on this report —

**Mr Pengelly:** I am genuinely not trying to be difficult, but I do not think that I am.

**Mr McKay:** If you would let me finish. We have a report in front of us that shows, quite starkly, again and again in a number of different areas, that this report is flawed. Malcolm, do you accept that it is flawed?

**Dr McKibbin:** I am not across the detail of it to the same extent as those who were involved in the process. So, I do not feel that I am informed enough to make a comment. I was not there. I did not interview people.

**Mr McKay:** Were you in the Department at the time?

**Dr McKibbin:** No, the investigation was complete before I took over as accounting officer. That was a year and a half before I arrived.

**Mr McKay:** OK, but you would be across the detail of it, obviously, if you arrived —

**Dr McKibbin:** It was finished a year and a half after I was there, and the Audit Office was carrying out its two-and-a-half year investigation.

**Mr McKay:** So, between then and coming to the Committee today, you have not had a chance to analyse the report?

**Dr McKibbin:** I have read the report, but —

**Mr McKay:** If you have read the report and you have read the Audit Office report, and you weigh up the evidence in each, which one do you think is flawed? The Audit Office report or the Balfour report? Both cannot stand as correct, because they contradict each other.

**Dr McKibbin:** First of all, I did not agree the Audit Office report, and I have difficulties with some aspects of it.

**Mr McKay:** So, the Audit Office report is flawed.

**Dr McKibbin:** Please do not put words in my mouth.

**Mr McKay:** That is essentially what you are saying.

**Dr McKibbin:** What I am trying to say is that I believe that there are flaws in both reports.

**Mr McKay:** What are the flaws in the Audit Office report?

**Dr McKibbin:** I talked earlier about the weight that was given to the 2010 court case. The evidence in that court case, which, as I said, went on for 16 days and which had people giving evidence from before the 2010 competition, carries a lot more weight than the Audit Office would attribute to it. That is my opinion. So that, for instance, would be a difference.

**Mr McKay:** What about the flaws in the Balfour report? Do you accept that we cannot accept its conclusions, given the substantial flaws that we are looking at?

**Dr McKibbin:** I go along with the accounting officer, who has gone through it in considerably more detail. The fundamental conclusions do not seem unreasonable to me.

**Mr McKay:** OK. If you look at paragraph 65 of the Audit Office report, you will see that there is, of course, the issue of the sample. It was:

*"extracted in 2009, yet the original allegation was received in ... 2005".*

That paragraph continues that:

*"the Whistleblower had ... particular concern in relation to Northern and Western Divisions, the basis of sampling was inappropriately focused."*

There should have been a weighted sample.

It goes on:

*"Western Division accounted for five of the seven wrongly placed orders ... yet a larger additional sample was not extracted in that Division to help make a more accurate assessment".*

Furthermore:

*"the sample covered the period 2002 to 2008".*

The Audit Office correctly, in my view, points out that:

*"The correct sequence should have been to sample the period covering the Whistleblower's concerns".*

about the initial complaint, rather than extending the sampling to later periods.

*"The Investigation Team drew its sample from across all orders for road traffic signs when ... the focus of the sample should have been on orders placed with Firm A".*

in the report.

So, to me and this Committee, it is bad practice all round. That is obvious to us and to the public, and it will be obvious to the media as well. Yet, with those who were at the coalface of this issue over a number of years, it does not seem to register, and, in a number of cases, you cannot even remember the detail.

In my view, this is an appalling display of defending the indefensible. Permanent secretaries come to this Committee and show some leadership and responsibility. When things are wrong and it is quite obvious that they are, they hold their hands up and say that they have got things wrong. I do not think that this is acceptable today, in that, in my view, the officials are defending the indefensible.

**Mr Hazzard:** Mr Pengelly, I want to go back to a point that my colleague raised. You said that you believed that the processes were flawed, but not the conclusions. Can you explain to me why you feel that that is the case? I am baffled about how, if the processes of something are wrong, you can just stumble upon the right conclusions by accident. I simply cannot see, if the bones of something are not in place or if they are wrong, how conclusions can be correct.

**Mr Pengelly:** I think that it is an amalgam of things. We need to be absolutely clear that we are reviewing in 2013 work that was happening in real time throughout the period from the tail end of 2005 to the end of 2009. I accept that there were some flaws in the process. The terms of reference could have been better. The Department could have reached out a bit more to the whistle-blower. However, the whistle-blower was clear that he had a preference for engaging through the Audit Office. I do not think that anybody would be in any doubt that the whistle-blower was at any stage reluctant about putting on the table allegations or information that he had that was becoming part of the review. So, I think that there were process flaws that we could have dealt with.

The Audit Office made the very good point that it is important that whistle-blowers are given "a reasonable but definitive" timetable. To me, the word "definitive" is key. I think that we should have moved earlier to close this down. I spoke to the person who undertook the inquiry. He told me that it is easy to look back and say that a four-and-a-half-year investigation is too long. He should just have said, "By the end of next month, give us all the allegations.". He was being continually told that there was just one more piece of evidence that was going to fundamentally change everything that happened before. When you are on the ground dealing with that, I can understand why you would keep the investigation going.

There is another point on which I think the investigation was not flawed. If we are going to conclude that it is fundamentally flawed, we need to put our minds to events at the time. One thing is clear to me: at the time that the terms of reference and the investigative work was drawn up and all the investigations were done, that was shared and briefed to the Audit Office on a very regular basis. The Audit Office had sight of the draft report, and it understands a lot of this issue.

I take some comfort from the fact that, at that time and place, as events were unfolding in live time, the Audit Office was not identifying any fundamental flaws that meant that the investigation should have taken a radically different shape. In looking back, it very helpfully, for us, extracted a number of guiding principles that we have adopted and written into the core of our guidance for moving forward, and that is a very helpful piece of work that it has done for us. However, from all the evidence, we could have done this a bit better. I genuinely do not believe that it undermined the conclusions, and, having read the 2011 court judgement in some considerable detail many times, I have seen the number of times that the judge said that he did not see any evidence of bias, collusion or favouritism after taking 16 days' worth of evidence. So, I take a huge amount of comfort in the underpinning of those conclusions.

**Mr Hazzard:** I do not take anywhere near the same level of comfort. Indeed, I am reminded that, at school, whenever you did not get full marks in maths equations, if you did not show how you worked it out, the teacher would be suspicious that you somehow got the answer without the correct working out. This situation reminds me of that. So, if the processes are not right, I am baffled about how you can come to the correct conclusions.

Mr Priestly, if I could move on to the independence of the investigation, can you outline to me the dynamics at play, bearing in mind the considerations or findings of previous investigations, while making sure that future investigations are independent?

**Mr Priestly:** The Audit Office report has the suggestion — I do not think that it has been as strongly worded as a "recommendation", although I think that it may have been a recommendation in earlier Audit Office reports — that a central resource be provided to investigate very complex and detailed allegations and accusations of this type. I think that that is a strong way to ensure that type of impartiality, objectivity and detachment from the Department that has responsibility. I would support that.

**Mr Hazzard:** I am reading paragraph 114 of the report. When did you first have knowledge that the head of the investigation team was going to Roads Service?

**Mr Priestly:** As I said in my earlier reply, I became aware of it only after it had happened.

**Mr Hazzard:** What was his role in Roads Service?

**Mr Priestly:** From earlier replies, I think that he was appointed as the head of secretariat.

**Dr Murray:** That is right. He deals with ministerial correspondence.

**Mr Hazzard:** What are your thoughts on the head of the investigation team joining you when he was still involved in the investigation?

**Mr Priestly:** On reflection, I share the Committee's concerns about that giving rise to a perception of cosiness and reward. All that I can tell you is that, at the time, I do not think that those were considerations in the minds of the people who made the decisions. I think that the situation was that Ronnie Balfour had been seeking a career-development move for quite a long time. He wanted to move within the Department, and that opportunity was given to him. However, I accept that that gives rise to an unfortunate perception.

**Mr Hazzard:** Is it a perception, or is it fair to say that the independence of the investigation was damaged?

**Mr Priestly:** I personally do not believe that the independence of the investigation was damaged. I believe that Ronnie Balfour gave me a final draft report in, from memory, June 2009. He then went through a process of consultation with those who provided evidence to him. I know that we discussed where the weaknesses were in the consultation process, but that is what he did. That started in June and was interfered with by the summer leave season. He engaged with the Audit Office, which asked for further work to be done. In November of that year, I said to Ronnie, "I am concerned. You told me that it would be completed in the spring, but six months have passed. I am going to provide that correspondence to the chairperson. Can we please draw it to a conclusion?" He told me that he was considering some final comments, that the Audit Office had asked for further consideration or investigation of issues and that he would give me the report in the new year of 2010. He did so. At that stage, he had a final draft report, and I do not believe that — I am told that — it did not change substantially between the draft that he had after the summer and the final draft. So, I do not believe that the investigation was prejudiced by his move to Roads Service. However, it does give rise to an unfortunate perception.

**Mr Hazzard:** Why do you think internal audit failed to carry out a robust and proper investigation?

**Mr Priestly:** In my earlier replies, I said that I believed that it had carried out a robust and proper investigation. Was it perfect? No. Could it have done things better? Yes. As the Audit Office report identified, there were areas in which it could have done better and the review could have been strengthened. As Richard said, those are process issues. I do not believe that they relate to the findings and conclusions of the Balfour investigation.

**Mr Hazzard:** I remain unconvinced, but I am happy to leave it there.

**Mr McQuillan:** I want to follow on from Chris's question. What did Mr Bellingford do as well as investigate this during those four years? Did he have another job in the Department?

**Mr Pengelly:** He headed up the internal audit unit. It has an ongoing programme of risk assurance work that it rotates through the Department and looks at various control systems and forms views. So, that was his day job.

**Mr McQuillan:** That was his normal job and why he took four years to investigate this.

Mr Priestly, in an earlier answer, you referred to a letter that was sent to an MP of the time. The impression from that letter was that the signs that were bought from firm A in 2004 had been received at that time. Did that raise any issues for the investigation team?

**Mr Priestly:** I am very sorry, but I am not following the point.

**Mr McQuillan:** A letter was sent to an MP — I have a copy of it here. Mr Murray was the author of that letter, and he suggested that the signs had been received in 2004 when the order was put in. That was not the case; the signs were not received until 2006.

**Dr Murray:** I can perhaps clarify that. I must say that, when I was asked about that letter, I did not think that it was in the least bit misleading. Others have assured me that it is a little bit misleading. Let me explain: when I said that the signs were received, I meant that they were received into Roads Service's ownership. We had inspected them and paid for them, and they were in our ownership.

**Mr McQuillan:** They were still in the warehouse of the company that made them.

**Dr Murray:** Yes, exactly. They were not in our depot. That was loose drafting, and I apologise for that.

**Mr McQuillan:** Do you agree that you were a bit candid with your advice to Mrs Robinson, who was an MP at the time?

**Dr Murray:** As I said, they were in our ownership at the stage. That is what I meant in the letter.

**Mr McQuillan:** Mr Priestly, an allegation has been made that a decision was taken not to investigate this at the time. The MP was trying to establish the truth about the Department's handling of the contracts. Do you accept that a cover-up seems to be the only explanation for why you did not investigate this at the time?

**Mr Priestly:** If we are dealing with 2004, I was not even in the Department. I did not join the Department until —

**Mr McQuillan:** The letter was written in 2006.

**Mr Priestly:** I did not join the Department until December 2007. So, I am afraid that I have no knowledge of those issues.

**Mr McQuillan:** What do you think, Mr Murray? You were there.

**Dr Murray:** What was the question?

**Mr McQuillan:** Do you think that this part of the MP's letter should have been part of an investigation at the time? Do you also think that, because Mr Bellingham did not take that into consideration, there was some sort of cover-up? That is what it looks like from the outside. Allegations were written down, yet and all, you chose to ignore them. Mr Bellingford —

**Dr Murray:** Mr Balfour.

**Mr McQuillan:** Yes. He chose to ignore them.

**Dr Murray:** Was that one of the allegations that was investigated in the Balfour report?

**Mr McQuillan:** Yes. It should have formed part of the investigation of the whole set of circumstances, but it did not. As that was not done, it gives the impression that there was a cover-up. Do you agree with that or not?

**Dr Murray:** Sorry, I am a little confused. That was investigated as part of the Balfour report. The suggestion was that we had deliberately bought the signs early so that they could be given to our favoured contractor before a contract expired and not bought later when that favoured contractor might not have had the contract. That is an explanation that someone could put on that, but it is not the true explanation. The true explanation, which was mentioned, was that we had the finance for the signs in the 2003-04 financial year and that we bought them at that stage with the intention of erecting them shortly afterwards. A number of delays conspired to create a two-year gap between purchasing and erecting the signs. That was not intended when we purchased the signs.

**Mr McQuillan:** Do you not understand how that looks from the outside looking in and how it looked from the whistle-blower's point of view?

**Dr Murray:** A number of things looked a certain way for the whistle-blower, but, when you delve deeper, you find that there are different explanations.

**Mr McQuillan:** We have been round in circles on this investigation today. When Roads Service ordered the signs, I think that it thought that they were only signs and that nobody would pay one bit of notice to them. However, the Audit Office picked it up, and it has ended up here today. I think that the Department showed a bit of a gung-ho attitude to the whole thing.

**Dr Murray:** We had the finance for the signs. As I said, the intention was that they would have been erected early in 2005, but a series of delays prevented that from happening.

When these allegations were made, I was as keen as anybody else to get to the bottom of them, and members of senior management in the Department were also very keen. I remember attending a meeting with the whistle-blower, his Member of Parliament and others, including Mr Allister. At the end of that meeting in which he made a number of allegations, I said to him, "If there is any truth in these allegations, I want to find out just as much as he does.". We do want to; we are not in the business of covering things up.

**Mr McQuillan:** Do you think that we have got to the truth in the investigations that have taken place?

**Dr Murray:** Yes. I do not like everything that is in the report. Some of it is uncomfortable reading for me. Things did go wrong. However, I think that it is commensurate with the scale of the allegations. It is a small part of Road Service's work, but the allegations were very serious, and we needed to find out the truth. The investigation followed four previous investigations of a number of allegations that were made against us.

**Mr McQuillan:** OK. I am not going to labour it any more at this time of the evening.

**Mr McKay:** I am not going to labour the point either. However, I think that it would be useful, given the discussions today, if we could have something from the Department that outlines its concerns about the Audit Office and Balfour reports and their recommendations and findings. That will allow us to know clearly what the Department's view is of those.

**The Chairperson:** That is a good idea. Thank you.

**Mr Donnelly:** This is an agreed report. The accounting officer signed off on it. I know that some of the witnesses did not have an opportunity to see it. It took a long time to agree, and it went through at least seven drafts. It has been mentioned that the report took two and a half years. It was one of the most difficult clearance processes of any report that we have had because every line was fought over. The actual fieldwork was done quite quickly in about three months. However, the clearance of the facts went through seven drafts before we finally signed off on it. So, I wanted to put that on the record.



**Mr Pengelly:** Kieran is right: it was a long and difficult clearance process. However, I think that there are two sides to a difficult clearance process. Mr McKay asked about our concerns. This is an agreed report. A key point in the clearance process is to agree the facts. We did that. Where we had concerns about the conclusions that the Audit Office drew from those facts, we recorded them in the body of the report. That got us to the point where we were happy for it to be an agreed report. Kieran was helpful in doing that for us. So, our concerns are recorded.

**Mr Clarke:** Sorry to cut in, Richard, but maybe we could hear from Paul on this. He was the one who delayed the signing off. He was the permanent secretary at the time that the report was getting signed off. Was he not?

**Mr Priestly:** I did not delay anything.

**Mr Clarke:** When was it signed off?

**Mr Pengelly:** Much of the work took place in 2012.

**Mr Clarke:** So, you had six drafts and a final version.

**The Chairperson:** Sean, do you want to come in now?

**Mr Rogers:** I have a very quick question on a point that seems to be confusing us all. It relates to the processes in the Balfour report and to its conclusions. It might be helpful if the Department came back to us on that and on how you, Richard, see that there are issues with the processes but none with the conclusions. I cannot get my head round that either.

**Mr McKay:** Even a timeline of the Balfour process would be useful.

**The Chairperson:** Mr McQuillan, are you satisfied with your line of questioning?

**Mr McQuillan:** I am not satisfied, but it will have to do. I do not think that we will ever get to the bottom of this.

**The Chairperson:** Mr Clarke, I will afford you the opportunity to come back in.

**Mr Clarke:** Richard, maybe you could help me with this. I was wrong, in that Paul was not in post, so I stand corrected. Although you were not in post either, Richard, can you tell me, from the Department's point of view, who was responsible from the first draft to the final draft? Are any of those people here today?

**Mr Pengelly:** They would not be here today. I would need to double-check, but my understanding is that it would have been my predecessor, David Orr, who was accounting officer throughout the clearance process.

**Mr Clarke:** The whole clearance process?

**Mr Pengelly:** I think that that is the case. Kieran is nodding behind you.

**Mr Clarke:** What is David doing now?

**Mr Pengelly:** David retired at the end —

**Mr Clarke:** He is retired?

**Mr Pengelly:** David was acting into the accounting officer post when I took up post on 1 January. He reverted into the post that Deborah is now in, but he retired at the end of September.

**Mr Clarke:** Would it be in order, Chairperson, for us to write to Mr Orr to ask him to outline who he consulted during the seven drafts, and who was raising concerns in the Department, to try to establish who was resisting what? Would you not agree, Richard, that that number of attempts is probably unprecedented? You are not responsible. However, in trying to get something agreed by the

Northern Ireland Audit Office, which, I hope we all accept, is impartial when it comes to reports, would you not say that seven attempts to get a report signed off is unprecedented? Have you any experience of anything taking as many attempts?

**Mr Pengelly:** Close to it. Kieran would know better than me — Kieran is smiling behind you.

**Mr Donnelly:** Normally, we would have about three. It is important that the Department has an opportunity to check factual accuracy so that, when reports come to the Committee, there is no dispute on the facts and it can concentrate on the issues. So, that process is very important.

I do not want to create the impression that this draft softened during the clearance process. It is quite the contrary. The first draft was a lot softer than the final draft, because we constantly had to refute counterarguments, which caused us to gather more and more evidence. We put in more examples, and the report strengthened through that process.

**Mr Clarke:** I asked whether we can write to Mr Orr. Mr Murray and Mr Allister, both of you would have been there at that time, I presume. Did you have any input to the report?

**Mr G Allister:** I had none whatsoever, other than providing information. Indeed, when I was chief executive from 2007 onwards, I went so far as to make sure that, because Roads Service was subject to those serious allegations, I distanced myself from it. However, I left very clear instructions with my team and my staff that they were to make all the information available. I kept in touch with the head of the investigating team and with Mr Priestly at the time.

I want to pick up on Andrew's point. I really wanted this to be a thorough investigation, because there were serious allegations that I, personally, had been aware of going back a long number of years. When I first heard that it was going to be investigated externally for Roads Service, I thought that that was a good thing. My view was to take it away from Roads Service and to let us have a thorough investigation of it. From that point of view, therefore, I was supportive of the investigation the whole way through.

The other thing that I said to the investigating officer and to Mr Priestly on a number of occasions — this is a point that Andrew Murray has made — was that the minute they found anything that they thought was not done properly, procedurally or whatever it happened to be, they needed to let me know immediately so that I could take action. I think that a couple of points were picked up, and we immediately actioned those for staff in Roads Service to do something about, in advance of the approved audit improvement plan coming out at the end of it.

**Mr Clarke:** Thank you, Mr Allister. So, it seems that you have nothing to do with that process. However, I just want to disagree with you on one aspect of that. I do not think that the investigation was remote enough from Roads Service, because it was probably, to a degree, within the same Department. I do not think that there was as much independence as there should have been, and I think that we should learn from that. Dr Murray, had you any input to agreeing the report?

**Dr Murray:** The NIAO report was effectively an audit on the Department's internal audit branch's work, so it was outside of Roads Service. I do not think that I had any involvement. I might have been asked for some facts, but I do not think that I had an involvement.

**Mr Clarke:** To go back to some time earlier, did you not still dispute some aspects of the report?

**Dr Murray:** I would not have been in a position to dispute any aspects of the report.

**Mr Clarke:** So, you were content with every aspect of the report's findings?

**Dr Murray:** Do you mean on the facts of the report?

**Mr Clarke:** No. We have a report in front of us that has been signed off. It took seven attempts from the Department. Are you content now that you accept the facts in that report as you have read it?

**Dr Murray:** Yes, the Department has signed off that it is content —

**Mr Clarke:** No, I am asking you for your own opinion.

**Dr Murray:** — and I am personally content with the facts that are stated. There are differences of opinion, which are highlighted in the report.

**Mr Clarke:** But, you have accepted those. There may be differences of opinion, but you have accepted the report as it stands, which calls into question the terms of the Department.

**Dr Murray:** There are areas where the Northern Ireland Audit Office has stated an opinion and the Department has stated a different opinion. I am content that that is a fair reflection of the two sides of the argument.

**Mr Donnelly:** The process deals with facts, and that is important, but my conclusions on opinions are my own. There was one particular issue on which there was a difference of opinion where I was clear, from a rounded view of the evidence, that there were indicators of favouritism that needed to be further probed. That was the particular sentence that caused most debate.

**Mr Clarke:** Kieran, can you direct us to that paragraph, so that we can read it?

**Mr Donnelly:** It is paragraphs 14 and 15.

**Mr Clarke:** Dr Murray, do you have a copy of the report there?

**Dr Murray:** I remember that bit of it.

**Mr Clarke:** So, you are happy to accept that there were significant weaknesses in the conduct of the investigation in 2010? You are no longer disputing that?

**Dr Murray:** Yes; the point that you are raising is at the end of paragraph 15.

**Mr Clarke:** No, I am reading the second and third lines of paragraph 14, which state:

*"Our findings in this case lead us to conclude that there were significant weaknesses in the conduct of the investigation leading to the 2010 report."*

So, you are now content with that?

**Dr Murray:** The Department's position, which I take, is that the Department notes the NIAO's comments about the credibility —

**Mr Clarke:** No, the Department accepted the report.

**Mr Pengelly:** Read paragraph 16, which gives our view on the report. That is why it is agreed — because the two contrary views are recorded in it.

**Dr Murray:** To clarify, our issue was that there were some things that happened that could have been the result of bias or favouritism, or could have had several other explanations. When they were investigated, it was the other explanations that were found to be the case, not favouritism or bias.

**Mr Clarke:** You could come to that conclusion because — as some of us would be of the opinion — the investigation was not full or thorough, so that gets you the conclusion that the Department wishes to have; that it was not bias. However, if something is not full and robust, you can come to any conclusion you want.

**Dr Murray:** There were four investigations before this one. There was the Balfour investigation, which was an extensive investigation —

**Mr Clarke:** Yes, that is the one where Balfour did not contact the whistle-blowers to give them any input to the investigation. Is that the one you are referring to?

**Dr Murray:** I am referring to the one where the whistle-blower preferred to go to the NIAO.

**Mr Clarke:** I am referring to Mr Balfour supposedly being on record as suggesting that he did not take the opportunity to interview the whistle-blowers. So, you are holding up a report on the basis that Mr Balfour, in the investigation, did not go to the whistle-blowers to get their side of the story verbally?

**Dr Murray:** We have been through that.

**Mr Clarke:** So that discredits the Balfour report.

**Dr Murray:** The narrow point that I am discussing here is that certain incidents were investigated. There were investigations into 168 orders. A small proportion of those orders went to a rival of the whistle-blower rather than the whistle-blower's firm.

**Mr Clarke:** I accept that.

**Dr Murray:** When that small proportion of orders was investigated, it was found that there was an explanation other than favouritism or bias.

**Mr Clarke:** Do you also accept the point that I am trying to make? You can draw any conclusion you wish — anyone can draw a conclusion — but the point is that, in his investigation, Balfour did not take the opportunity to take evidence directly from the whistle-blowers and, therefore, it could not be full or robust.

**Dr Murray:** Well, there is a learning process there —

**Mr Clarke:** No, no. It is a yes or no that I am looking for from you. You are still in a very senior position in the Department, and, as a member of the Public Accounts Committee, I need to get confidence that we have learned lessons here. Do you accept that the Balfour investigation could not have been robust, given that he did not take the opportunity to interview the whistle-blowers? A yes or no will be sufficient.

**Dr Murray:** No, I would not accept that.

**Mr Clarke:** That is disappointing.

**Dr Murray:** I think that it was still robust. However, when you look at the points that you are making here —

**Mr Clarke:** No, I am happy to leave it at that. I am trying to establish whether you accept that something is robust or otherwise. As a senior civil servant, you are satisfied that, even though evidence has not been taken, an investigation is robust. I have to say that that is disappointing.

**Dr Murray:** It was not taken directly, but it was taken. It is a fine point, but the evidence was taken.

**Mr Clarke:** The whistle-blower should have had every opportunity afforded to them, given that they were the person who made the allegations.

**Dr Murray:** You have probably seen the correspondence.

**Mr Clarke:** It is disturbing, Chairperson, that we have senior civil servants at the table today who do not believe that lessons could be learned from the Balfour review, where whistle-blowers' evidence —

**Dr Murray:** I am sorry —

**Mr Clarke:** That is the consequence of your comments, Dr Murray.

**Dr Murray:** No, I am sorry; I must take issue with that. I did not say that lessons could not be learned. I said that I was content with the robustness of the findings.

**Mr Clarke:** Well, then, if you are suggesting that lessons could be learned, I cannot understand how you can suggest that you are content with the findings.

**Dr Murray:** The lesson is that in a future investigation of this nature we would — not we, because it is the core of the Department, not the part of the Department that I am in — engage directly with a whistle-blower to avoid the sort of criticisms that are being made now.

**Mr Clarke:** I take confidence from that but not from the fact that you believe that there were failings in this investigation where you did not do that.

**The Chairperson:** On that point, Mr Pengelly, none of the Committee's recommendations on suspected fraud — in this case, on fraud investigations — have been observed. On Mr Clarke's point, what are you now going to do in response to the Audit Office report?

**Mr Pengelly:** As I mentioned, Chair, the guiding principles that have been identified have already been embedded in our guidance for taking forward further investigations. Throughout the course of this year, we have been completely revamping our internal fraud policy and fraud action plan. We concluded that work last month and those have been circulated throughout the Department.

**The Chairperson:** What does that entail? What does that consist of?

**Mr Pengelly:** It is a whole suite of guidance for the Department. It covers fraud from the first time that it is identified and outlines the steps that individuals at operational and managerial level should take to highlight the fraud, bring it to the attention of the appropriate senior staff in the Department, undertake a preliminary investigation and move forward to a full-blown fraud investigation. It is about securing evidence, deciding the composition of the team that will carry out the investigation and sourcing external experts where they are required given the nature of the fraud. It is a complete guidance pack, which applies across the Department. It was also the subject of a senior management conference that took place earlier in the year. We took time during that conference to talk through issues. We are doing a considerable piece of work on that, and we continue to do so.

**The Chairperson:** How will that be implemented from the top tier down in your Department?

**Mr Pengelly:** It has been circulated throughout the Department. It has been brought to the attention of staff through our e-mail system and our internal communications. It will be cascaded through team briefs.

**The Chairperson:** With respect, Mr Pengelly, you know that when you circulate a circular it can sometimes be ignored. What actions are you taking to ensure that, from the top tier down, staff look at the guidance and implement it and have it as a rule of thumb beside them day by day?

**Mr Pengelly:** Hopefully, people will not need it beside them day by day because fraud investigations are few and far between. Everyone is aware of it. There will be regular reminders to people about it being there. The entry point to fraud in our system is that, as and when anyone becomes aware of fraud, the procedures will be invoked. We have made everyone aware of it at operational, managerial and senior management level. When an allegation of or an issue about suspected fraud is alerted, the people who know about it will go to the plan and engage with Deborah and her expert team and our finance directorate, and we will take it forward from there. I am struggling to provide you with the comfort that you are looking for. If you randomly stop any individual in the street who works in DRD, how can you be certain that he or she knows exactly about it? The key point is that they do not —

**The Chairperson:** It is incumbent on the Department. You have that responsibility to ensure that they do.

**Mr Pengelly:** I accept that entirely. We are doing that. However, it is not essential that everybody today knows the detail of what is in the plan. It is absolutely essential that they know about the existence of the plan and that it is the first place that they should go to in the event that any issue about fraud, suspected or actual, arises. That will guide them through the process of who they need to notify, what the immediate steps are and how we take the process forward. That will be a process of continually reminding staff through e-mail circulations and team briefs, and mentioning it in staff conferences and seminars.

**Mr Rogers:** I am glad that you have given us some confidence. We cannot have the situation again in which, when some investigation is taking place, two people are interviewed at the one time. Can that not happen again?

**Mr Pengelly:** As was said earlier, that is in the standard operating procedure for the undertaking of investigations. It should not happen. That goes to professional standards. The subtlety is that, when an organisation, through the head of internal audit or otherwise, is investigating someone, that is a pretty serious issue for the individual. We have obligations and a duty of care to employees. They are entitled to bring someone to an interview with them. In one of the two cases that was mentioned earlier and which is in the report, one of those individuals chose to exercise their right by bringing someone else to the interview with them. In the other case, it was a simple logistical problem: we had set aside time to interview two people, but they were called away on urgent business that could not be rescheduled. A quick decision was taken to do the two of them together rather than reschedule and delay. The head of internal audit accepts in hindsight that that decision should not have been taken.

I accept your point that it should not happen, but the caveat is that we have to maintain our obligations in affording individuals the right to bring someone. Normally, it is a trade union representative. As a matter of routine, two key witnesses in an investigation should not be interviewed together as part of an evidence-gathering situation.

**Mr Rogers:** They should not, but could it happen again?

**Mr Pengelly:** If there were two individuals and we wanted to interview one of them, and the other key witness happens to be their trade union member, my assumption is that we would want them to bring someone else as their trade union representative. Ultimately, we may need to seek a legal opinion on whether the rights of that individual would allow them to do that. Our starting assumption and desire would be that it should not ever happen again.

**Mr Rogers:** If that does happen again, is there a disciplinary procedure built in?

**Mr Pengelly:** For the person conducting the investigation?

**Mr Rogers:** If two people are involved in an investigation and the two come to an interview, will any disciplinary action be taken against the person in charge if they just keep doing the same thing?

**Mr Pengelly:** Now that our guidance is much clearer, I sincerely hope that it will not happen again. It is an issue that needs to be considered. Intuitively, it sounds like it is a bit more than a performance issue if our guidance is clear that it should not happen, subject to the caveats that I have outlined. If it is knowingly done, that takes it beyond a performance issue; it is not an innocent mistake. We would want to look very closely at the circumstances. We certainly would not rule it out, if that gives you any comfort.

**Mr Clarke:** Malcolm, you were at pains to explain what, during your previous role, the Department spent and the value of its work each year for Roads Service. You made a play about the overall loss. Although some of us would suggest that the loss could have been more, that £7,000 is what came to light. How much did the Department pay out in legal costs?

**Dr McKibbin:** Did the Department pay the legal costs of the 2010 case?

**Mr Clarke:** Yes.

**Dr McKibbin:** I have no idea. I was not in the Department.

**Mr Clarke:** Are you across that, Richard?

**Mr Pengelly:** I do not know. I would need to come back to you.

**Mr Clarke:** It would be interesting to know that in the context that you, Malcolm, are to a degree trying to play down the value of this contract in the overall amount that the Department spends. Its £7,000 value would be enough to make or break a company, however. It would be interesting to know how

much public money the Department spent trying to defend the indefensible. I would like that information, Chairperson, so that we can have it in the report.

**Dr McKibbin:** Maybe I could clarify. When I referred to the scale of Roads Service contracts at 400 a year and a budget of several hundred millions of pounds, I was saying that this was an issue that was being treated at board level. Geoff was put in as point man, if you like, on the investigation. That was most unusual for something of that scale. However, it was because of the gravity of the allegations and how seriously Roads Service took them that it put somebody that senior in charge.

Geoff would, at the same time, have been dealing with multi-million pound contracts, yet here he was being given this matter for the very fact that we did take it seriously. That is the point that I was trying to make, rather than the loss. I appreciate that a relatively small amount, and I am not sure of the exact figure, Trevor, so I do not want to be quoted on that —

**Mr Clarke:** But you would accept that that is enough to make or break any small business.

**Dr McKibbin:** Quite clearly, it depends on the circumstances overall. However, I accept what you say.

**Mr Easton:** Hello. Mr Priestly, was Mr Balfour in charge of the investigation?

**Mr Priestly:** Mr Balfour was the head of the investigating team.

**Mr Easton:** Was there a whole team below him?

**Mr Priestly:** I believe that he had a couple of people also working on aspects of the investigation.

**Mr Easton:** Could I know who they were, please?

**Mr Pengelly:** I do not have the names to hand, but we could get you those. I think that a small team in the internal audit unit supported him.

**Mr Easton:** Would you also be able to provide a breakdown of what they were involved with?

**Ms McNeilly:** There would have been audit managers at DP grade and potentially some SO auditors involved at different times throughout the investigation, depending on the work plan at the time. That team would also have been involved in the ongoing work of internal audit, which is part of the risk-based approach, where they do rolling internal audits across the Department.

**Mr Easton:** So, you will provide clarification. That is great.

Mr Priestly, you were in post during the crucial last two years of the investigation. Appendix 5 of the report sets out the meetings where, we are told, the progress of the investigation was discussed. There were quite a lot of those meetings. Paragraph 14 of the report states that:

*"there were significant weaknesses in the conduct of the investigation".*

Why did your governance arrangements not uncover those significant weaknesses in the investigation?

**Mr Priestly:** All I can tell you is what happened at the time. When I took up the permanent secretary post, the terms of reference and plan for the investigation had been settled, and it was being led by Mr Balfour. When I became permanent secretary and became aware of the investigation, I met him frequently and had the matter raised at the audit committee. There were opportunities for people to question and challenge. I sought to support and hold Mr Balfour to account, but I was not in touch with the day-to-day things he was doing. Reading the Audit Office report, it is clear that there were weaknesses in the process that he followed.

**Mr Easton:** Do you accept that?

**Mr Priestly:** I accept that, yes.

**Mr Easton:** Does Mr Balfour accept that?

**Mr Priestly:** I cannot answer for Mr Balfour; I have not seen him for three years. I accept it. However, I do not believe that that undermines the conclusions that he came to as a result of his investigation.

**Mr Easton:** Yes, but no constructive plan was in place, according to the report. There was a plan, but it was not a very good one.

**Mr Priestly:** There is a difference of opinion about that between the Department and the Audit Office. The latter believes that it was not adequate and not comprehensive enough. I think that "comprehensive" is the word that is used, and Richard said earlier that there is an acceptance that it could have set things out in more detail. We accept that the investigation could have been better planned.

**Mr Easton:** You sought to keep Mr Balfour under —

**Mr Priestly:** I was trying to do two things. When I became aware of the investigation, the first thing that I tried to do was to provide support to Mr Balfour to ensure that he was not being hindered, that he was not being obstructed, that he had access and cooperation, that he was being provided with all the information necessary and that he had the resources necessary to do the investigation. I was also checking progress with him and asking him how he was getting on, how long this would take and what his emerging findings were. That was to provide reassurance to me because, just as Geoff had asked, if there were big things coming out of this that we needed to take action on, I needed to know. I was doing that with Mr Balfour, and part of that was a concern about how long the whole thing was taking. I will not go over the ground again, but I have said that I will send to the Chair an e-mail that I sent to him saying that I was concerned about how long this was taking and that six months had elapsed since he had told me that he was close to finishing. I told him that I now needed a definite date for the completion of it. Part of that was also going to Mr Connolly. I did that in September, and I think that my e-mail to Mr Balfour was in November, seeking confirmation that he had submitted all his evidence. We did not actually get that until February 2009.

**Mr Easton:** Was your predecessor not holding Mr Balfour to account as well?

**Mr Priestly:** I am afraid that I cannot answer for my predecessor.

**Mr Easton:** OK. Mr Priestly, paragraph 96 and appendix 5 state that, throughout the four-year period, there were 39 oversight meetings at which the progress of the investigation was discussed. However, there were only eight occasions on which the minutes of the meetings recorded a discussion on the investigation, and, on those occasions, there was no evidence of challenges from those charged with governance. Why were eight meetings minuted and the rest not? Surely, given such a serious allegation, all 39 of those meetings should have been minuted.

**Mr Priestly:** You have to separate out formal meetings of audit committees and stocktake meetings, where I was meeting Ronnie Balfour. I had stocktake meetings with most of my senior management team, none of which was minuted unless there was something absolutely crucial that had to go on the record. They were fora in which I would provide support to and hold to account the members of my team. It was not standard practice to record them. Recording them would have been a whole industry on its own.

I have not checked the record, but I think that I am right in saying that it was me who began to raise the issue at the audit committee so that our non-executive directors would have the ability to know that this investigation was being carried out and to give that sense of detached and independent challenge. I can tell you that they too expressed concern about how long all of this was taking.

**Mr Easton:** Therefore, those 39 meetings were a mixture of stocktakes and audit committee meetings. Is that correct?

**Mr Priestly:** That is correct.

**Mr Easton:** How many of those 39 meetings were audit committee meetings?



**Mr Priestly:** Twenty-four.

**Mr Easton:** How many of the 24 audit committee meetings were minuted?

**Mr Priestly:** The report states that eight were, but those eight were a minuted discussion about the investigation. There were minutes for all the audit committee meetings.

**Mr Easton:** All 24 had minutes?

**Mr Priestly:** All 24 had minutes, but in eight of those meetings, there was discussion of this investigation.

**Mr Easton:** There was not discussion of it in the other meetings?

**Mr Priestly:** Apparently not.

**Mr Easton:** OK. Apparently not, or are you not sure?

**Mr Priestly:** I go back to the point that I can answer only for the period when I was the accounting officer, which was from December 2007 to August 2010. The minuted meetings occur most during that period.

**Mr Easton:** None of your colleagues was at those meetings?

**Mr Priestly:** Mr Allister would have been at the Roads Service audit meetings and the departmental audit committee meetings. That would have been an opportunity for the whole of the audit committee to question Mr Allister.

**Mr Easton:** Mr Allister, out of the 24 meetings, it was discussed only eight times.

**Mr G Allister:** It was minuted eight times. That is the evidence.

**Mr Easton:** Was it discussed more than eight times? Was it discussed during the rest of the meetings?

**Mr G Allister:** I really cannot be sure.

**Mr Easton:** You are not sure, or you do not want to say?

**Mr G Allister:** I cannot be sure.

**Mr Easton:** OK.

**Mr Allister:** That goes back to 2007 when I was chief executive. I just cannot remember every meeting that I was at.

**Mr Easton:** Were any of the stocktaking meetings minuted?

**Mr Priestly:** The stocktaking meetings were not routinely minuted. As I said, there would have needed to be a minor industry to record such meetings.

**Mr Easton:** So is our Committee here, but it still gets done.

The whistle-blower was met only twice in five years. Is that correct?

**Dr Murray:** On this business, yes, but he was doing work for us as well.

**Mr Easton:** But as part of the investigation.

**Dr Murray:** Yes.

**Mr Easton:** And there was one phone call. There were no other phone calls?

**Mr Pengelly:** None that I am aware of.

**Mr Easton:** Andrew Murray, did you meet the whistle-blower in 2007?

**Dr Murray:** Yes.

**Mr Easton:** Was that one of the two meetings?

**Dr Murray:** I recall the meeting with a Member of Parliament. I was also involved in a meeting to discover what documents were required under the freedom of information request.

**Mr Easton:** Are those the only two meetings?

**Dr Murray:** I think so, yes. I clearly recall those two meetings and —

**Mr Easton:** You do not recall any other ones?

**Dr Murray:** I do not think that I was involved in any others.

**Mr Easton:** Mr Allister, did you meet the whistle-blower?

**Mr G Allister:** I had a meeting with Mr Connolly, again with his MP, in 2006. I attended the 2007 meeting, which I referred to earlier, with his MP, Dr Murray and Ronnie Balfour.

**Mr Easton:** So there were three meetings instead of two. Is that correct? There was one with you, Dr Murray, and two with you, Mr Allister.

**Mr G Allister:** To be clear, the 2006 meeting that I held was in response to a request from his MP to a Minister, and I was asked to deal with that. That was not part of the investigation, albeit Mr Connolly asked for a significant amount of information at the meeting. I provided as much as I could at that meeting and then gave him a very comprehensive reply about a month later.

**Mr Pengelly:** To be clear, the report talks about two meetings. Those were in the context of the investigation, where the investigator met him. Geoff is referring to separate meetings that were more normal, business-type meetings. There were only two meetings as part of the investigation. We are not trying to add to that or dispute it.

**Mr Easton:** Mr Allister, did you feel during the meeting that he was trying to move in towards the investigation?

**Mr G Allister:** The 2006 meeting?

**Mr Easton:** Yes.

**Mr G Allister:** The 2006 meeting was convened after a letter was sent from his MP to a Minister requesting clarification on financial spend. That is the meeting — again, I gave evidence on this earlier — to which I brought along a member of senior staff who understood the financial figures much better than I did and was able to provide spreadsheets, and so on. The meeting covered a wide range of issues, going back a long number of years, that Mr Connolly wished to raise with us. We were not able to answer all those issues at the meeting. To the best of my recollection, he then either left a long list or wrote in with one the next day — I cannot remember — and that necessitated our going back with further information fairly quickly after the 2006 meeting.

**Mr Easton:** You have a good memory, Mr Allister.

**Mr Clarke:** Of that part.

**Mr Easton:** Absolutely.

There was one letter as part of the investigation.

**Mr Pengelly:** Yes.

**Mr Easton:** Is it not strange that, over a four-year investigation, only one letter was written and only two meetings held?

**Mr Pengelly:** To clarify, there was one letter between the investigation and the whistle-blower. There was a fairly significant amount of activity between the whistle-blower and the Audit Office and between the Audit Office and the investigation. I say that for clarity. Your point is well made, and we absolutely accept that, as a Department, we should have reached out to the whistle-blower on a more timely basis and sought to engage with him to give him the opportunity to add to his evidence base.

**Mr Easton:** Do you accept that governance arrangements were meant to keep this investigation on track? Do you accept that there were serious governance failures?

**Mr Pengelly:** There were failings, but it is about how we define "serious". It goes back to the point about records of meetings. There was governance and oversight, and Ronnie Balfour was taking the issue forward. There were stocktakes with Paul and with the then deputy secretary, too. The issue was discussed at the Roads Service audit committee and the departmental audit committee. Therefore, there was a governance environment. I absolutely accept that we did not document steps in that governance arrangement. I agree with Paul that informal stocktakes do not need to be minuted, but a better record of specific governance decisions would have been beneficial to us all to drive the work forward.

**Mr Easton:** Are all audit committee meetings minuted now?

**Mr Priestly:** They always have been minuted. The Audit Office report has recorded that eight meetings involved a discussion about Signs and Equipment. That was minuted, but I can assure the Committee that each of those meetings was minuted. Audit committee meetings are minuted.

**Mr Pengelly:** Prior to 2010, the departmental audit committee specifically monitored delivering against recommendations from internal audit reports and external audit. Since 2010, we have had another category of special investigation reports, which are outside the routine. The departmental audit committee now has a much more formal and robust role in monitoring such work, and that is as a consequence of our lessons learned.

**Mr Easton:** Mr Priestly, paragraph 4 of the C&AG's report shows that you considered the findings of the internal audit report and were reassured that the internal audit had not found any evidence to support most of the allegations. What persuaded you that there was a robust and proper investigation? Before you signed off on the investigation report, did you quality-assure it yourself or did you get somebody else to do that for you?

**Mr Priestly:** As I said earlier in the hearing, I took the fact that a professionally qualified internal auditor at a relatively senior level was leading, planning and overseeing the investigation, and doing large parts of it himself, as sufficient assurance that a thorough job was being done. As I said, the Audit Office report identified some process issues that could have been better and stronger. I accept that, but I do not believe that it undermines the fundamental findings of the investigation.

**Mr Easton:** Did you read the report before it went out?

**Mr Priestly:** Absolutely.

**Mr Easton:** The report states that official C, Catherine Denyer, was not interviewed for six months owing to being on a career break. Do you find it appropriate that somebody who needed to be interviewed as part of the investigation into such a serious allegation was not interviewed for six months? Is that proper?

**Mr Priestly:** With hindsight, it would have been preferable for her to be interviewed sooner.

**Mr Easton:** Why was she not?

**Mr Priestly:** She was on a career break. I do not even know where she was.

**Mr Pengelly:** That is the only explanation. I am not saying that that validates it.

**Mr Easton:** I took a career break from the health service, but had I been part of an investigation into fraud, I would have been brought back in. Would you accept that there was a failing there?

**Mr Pengelly:** I accept that. My only caveat is that I do not know whether she had taken a career break to go overseas. I do not know. However, the generality of your point stands. I do not think that the fact that someone is on a career break should mean that we press the pause button and do not try to engage with that person as part of the investigation. To be clear, this was not a fraud investigation.

**Mr Easton:** Considering the time that it took to investigate the whole thing, delay meant that it was difficult to source relevant papers and contact people. Do you accept that the length of the investigation made it even more difficult to do?

**Mr Priestly:** I have said on a number of occasions during the hearing that a chief concern of mine, when I heard about this investigation and was briefed on it, was the length of time that it was taking. I can only assure the Committee that I sought to be active in moving the thing along. I tried to hold Ronnie Balfour to account to the best of my ability. The responses that he gave me were that we had given assurances to Mr Connolly's MP, Iris Robinson, that Mr Connolly would be given all the time that he needed to submit the evidence that he wanted to submit and that we had given assurances that he would be provided with information. I was being told that Mr Connolly was not content to provide that information directly to the Department. It was provided through the Audit Office, and he had not completed providing his information, which is why I encouraged Mr Balfour to contact him directly and ascertain whether he had submitted all his information. Eventually, in a letter to Mr Connolly, I asked him to confirm, in September 2008, that he had submitted all his evidence, and I got confirmation back from the Audit Office in February 2009 that he had done so.

**Mr Easton:** In the report, there is a recommendation that all sources of evidence should be gathered as early as possible in an investigation process. You now accept that that is how it should have been done?

**Mr Priestly:** It is a principle of investigation that the evidence should be secured as far as possible at the outset.

**Mr Pengelly:** I think that it is a principle that is absolutely sound. Again, and I am sorry to keep repeating this, we need to be clear that some of the allegations and evidence did not emerge until two years after the investigation had started. Therefore, we were always going to face that difficulty in this particular investigation.

**Mr Easton:** Yes, but it took you another two years after that to get it finished.

**Mr Pengelly:** That is a fair point, but I am just responding to the earlier point.

**Mr Easton:** OK. I do not want to leave you out, Dr McKibbin.

**Dr McKibbin:** Feel free to.

**Mr Easton:** You were the chief executive of Roads Service between 2002 and 2007? Sort of?

**Dr McKibbin:** For most of that time.

**Mr Easton:** The investigation report by internal audit clearly shows that Roads Service was still giving work to firm A, which should have been given to the whistle-blower's firm. Is that correct?

**Dr McKibbin:** I am sorry, are you talking about the Ronnie Balfour report? I would not have been aware of that.

**Mr Easton:** OK, but do you accept that?

**Dr McKibbin:** That some work went to firm A?

**Mr Easton:** Yes, that should have gone to the whistle-blower's firm.

**Mr G Allister:** Is that as a result of the 2002 internal audit report?

**Mr Easton:** Yes.

**Dr McKibbin:** On the back of the 2002 internal audit report, we did our follow-up action. As I said, I took some solace from John McMillan's letter to Mr Connolly of 17 September 2004. It stated that Mr Connolly had said that the problems that people were having with misplaced orders, based on the performance over the past year, had been resolved. Therefore, from my point of view, the information that I was getting back at that time was that the extent of the problem was nothing like it previously had been. In fact, Mr Connolly, according to Mr McMillan, said that the issue had been resolved.

**Mr Easton:** OK, but there was still work given to firm A that should have gone to the whistle-blower's firm?

**Dr McKibbin:** I am not aware of any complaints received after the 2002-05 contract. Certainly, there were none in my time.

**Mr Easton:** Were there no more complaints about that afterwards?

**Dr McKibbin:** Some of the complaints in the Balfour review looked back to that time, but, as I said, I had left Roads Service long before that report had come out.

**The Chairperson:** OK. It is now 6.40 pm. The day has been long.

The Committee will draw its own conclusions. You will not be surprised to hear, and I think that I can say this on behalf of the Committee, they will not be similar to your conclusions. We will consider the evidence and produce a report in due course. I think that the Deputy Chairperson mentioned this earlier, but we launched our report into whistle-blowing in the Fire Service, and I think that it would be remiss of me not to quote our recommendations and, indeed, the overall conclusion from the Auditor General, which is on page 13. It states that:

*"The role of whistleblowers is a vital one in ensuring that genuine concerns about the proper conduct of public business are raised and fully addressed. This point has been emphasised by the Public Accounts Committee in a number of its reports. Where a whistleblower takes the significant step of coming forward with serious allegations, it is incumbent upon the relevant public body to carry out a prompt, properly planned and thoroughly executed investigation of the issues raised. This is the best way in which the substance of the allegations can be confirmed or denied."*

To go back to a thought that I had earlier about the length of time that it took to come to a conclusion in this investigation, throughout this inquiry today, the words "fester", "infected" and "autopsy" have come to mind. The issues have been left to fester, to become infected and here we are today with an autopsy.

I commend the whistle-blower for his efforts in pursuing this, despite the stress that it has caused to his family, to him and to his employees. Mr Donnelly, do you want to add anything to that?

**Mr Donnelly:** No.

**The Chairperson:** Thank you.

Members have further requested a number of pieces of information. The Clerk has taken note of that and will be in contact with you in due course, Mr Pengelly.

Thank you on behalf of the Committee for attending today. It has been a lengthy inquiry. Thanks for coming here at such short notice and taking time to deal with this historical issue. I know that recollecting has been part of the problem as well. I also thank Mr Donnelly and his team for the inquiry, and, on behalf of Fiona Hamill, I thank Michael for coming today. I thank Hansard for its coverage of today's discussion.