

**Public Accounts Committee**

**Report on  
NI Water's Response to a Suspected Fraud &  
DRD: Review of an Investigation of a  
Whistleblower Complaint**

**Together with the Minutes of Proceedings of the Committee  
Relating to the Report and the Minutes of Evidence**

**Ordered by the Public Accounts Committee to be printed 9 April 2014  
Report: NIA 172/11-15 (Public Accounts Committee)**

**REPORT EMBARGOED UNTIL  
00:01 am on 7 May 2014**



# Membership and Powers

The Public Accounts Committee is a Standing Committee established in accordance with Standing Orders under Section 60(3) of the Northern Ireland Act 1998. It is the statutory function of the Public Accounts Committee to consider the accounts, and reports on accounts laid before the Assembly.

The Public Accounts Committee is appointed under Assembly Standing Order No. 56 of the Standing Orders for the Northern Ireland Assembly. It has the power to send for persons, papers and records and to report from time to time. Neither the Chairperson nor Deputy Chairperson of the Committee shall be a member of the same political party as the Minister of Finance and Personnel or of any junior minister appointed to the Department of Finance and Personnel.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

- Ms Michaela Boyle<sup>3</sup> (Chairperson)
- Mr John Dallat (Deputy Chairperson)<sup>5</sup>
- Mr Trevor Clarke<sup>8</sup>
- Mr Michael Copeland
- Mr Alex Easton<sup>12</sup>
- Mr Paul Girvan
- Mr Chris Hazzard<sup>10</sup>
- Mr Ross Hussey
- Mr Daithí McKay<sup>7</sup>
- Mr Adrian McQuillan<sup>1</sup>
- Mr Seán Rogers<sup>6</sup>

- 1 With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew
- 2 With effect from 23 January 2012 Mr Conor Murphy replaced Ms Jennifer McCann
- 3 With effect from 02 July 2012 Ms Michaela Boyle replaced Mr Paul Maskey as Chairperson
- 4 With effect from 02 July 2012 Mr Conor Murphy is no longer a Member of the Committee
- 5 With effect from 07 September 2012 Mr John Dallat replaced Mr Joe Byrne as Deputy Chairperson
- 6 With effect from 10 September 2012 Mr Seán Rogers was appointed as a Member
- 7 With effect from 10 September 2012 Mr Daithí McKay was appointed as a Member
- 8 With effect from 01 October 2012 Mr Trevor Clarke replaced Mr Alex Easton
- 9 With effect from 11 February 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
- 10 With effect from 15 April 2013 Mr Chris Hazzard replaced Mr Mitchel McLaughlin
- 11 With effect from 07 May 2013 Mr David McIlveen replaced Mr Sammy Douglas
- 12 With effect from 16 September 2013 Mr Alex Easton replaced Mr David McIlveen





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## List of Abbreviations

|                |  |
|----------------|--|
| the Committee  | Public Accounts Committee (PAC)                            |
| C&AG           | Comptroller and Auditor General                            |
| the Department | Department for Regional Development                        |
| PACE           | Police and Criminal Evidence (Northern Ireland) Order 1989 |
| DFP            | Department of Finance and Personnel                        |
| DARD           | Department of Agriculture and Rural Development            |
| FOI            | Freedom of Information                                     |
| CPD            | Central Procurement Directorate                            |
| MOR            | Memorandum of Reply  |
| LEDU           | Local Enterprise Development Unit                          |
| PSNI           | Police Service of Northern Ireland                         |
| NICS           | Northern Ireland Civil Service                             |
| MP             | Member of Parliament                                       |
| CPD            | Central Procurement Directorate (DFP)                      |
| BBC            | British Broadcasting Company                               |
| NDPB           | Non-departmental Public Body                               |
| MPMNI          | Managing Public Money Northern Ireland                     |
| BELB           | Belfast Education and Library Board                        |

# Foreword

## The Conduct of Investigations in the Northern Ireland public sector

1. In September and October 2013 the Committee held evidence sessions on two Audit Office reports reviewing investigations in NI Water and Roads Service overseen by the Department for Regional Development. The Committee has identified a number of significant weaknesses specific to each investigation. The Committee considers that there are a number of themes common to each investigation and, in this foreword, we have taken the opportunity to explore these themes and to consider the future provision of investigative services in the public sector.

### **The threat to the public sector from fraudsters is high but the provision of fraud investigation services is patchy**

2. The level of fraud against the Northern Ireland economy was estimated in 2010 at between £600 and £1,200<sup>1</sup> million a year. DFP reports annually on cases of actual, suspected and attempted fraud against the public sector<sup>2</sup>. In 2012-2013, DFP reported 404 fraud cases with an estimated value of £0.7 million. Almost half of these cases (41%) fell into the category of theft of assets. In the Committee's view, these figures point to significant levels of under-reporting of fraud and a focus on those frauds which are easily identified and quantified. DFP does not report on the number of prosecutions for fraud against the public sector or the number of convictions. However, the Committee has examined a number of fraud cases over the years and our experience is that there is a lack of focus on securing successful prosecutions.
3. There are a number of fraud investigation units within the Northern Ireland public sector, but they are specialist units, for example in health, social security and agriculture. Many government departments and most public bodies have no ready access to a dedicated, specialist service and rely on non-specialist internal auditors or on hiring expensive private sector consultants to conduct investigations.

### **The NI Water and the Department for Regional Development cases point to fundamental weaknesses in fraud investigation practice**

4. The Committee identified a number of fundamental weaknesses in how these cases were investigated:
  - investigations were conducted by internal auditors with little, if any, experience in investigating fraud and no relevant fraud qualifications or training;
  - terms of reference for the investigations were flawed, there was inadequate planning, and inappropriate investigative methodologies were used;
  - record keeping was poor;
  - investigations were not driven by the need to prove a specific breach in the law and gather evidence capable of supporting a criminal prosecution;
  - there was a lack of professional scepticism and a readiness to accept irregularities as human error or systems weaknesses rather than indicators of fraud;
  - there was a lack of engagement with PSNI or other fraud specialists; and
  - there was a failure to take whistleblower complaints seriously and properly investigate allegations.

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1 David Hanson, Home Office Minister, at a conference organised by DFP in 2010.

2 Excluding benefit fraud and environmental crime which are reported separately

5. In the Committee's view, most of these deficiencies can only be effectively addressed by ensuring investigations are led by professional investigators with an understanding of relevant laws.

**The Committee identified further significant weaknesses common to both investigations**

6. The Committee considers that oversight of these investigations by senior management and by the respective Audit Committees was poor. They failed to properly review and challenge the terms, the process and the outcomes of the investigations. In the Committee's view, those charged with governance of public bodies must exercise particular care in their oversight of fraud cases; it is never appropriate to pass this responsibility on to others.
7. The need for better guidance to shape the direction of investigations was highlighted in both studies. The Committee considers that DFP should review current guidance on the handling of investigations, identifying any gaps, and disseminating best practice to public sector bodies. Revised guidance should highlight the lessons learnt from the DRD Whistleblower and NI Water investigations and should provide greater clarity on which steps in an investigation DFP considers mandatory and which are discretionary.
8. When public employees appeared to favour one contractor over another, the Committee found that senior management tended to attribute this to simple error or to a procedural failing. We found a lack of will to treat perceived acts of favouritism as potential indicators of fraud or to take strong disciplinary action.

**Previous PAC recommendations designed to improve the public sector response to fraud have not been fully implemented**

9. The Committee found it unacceptable that departments have not fully implemented previous PAC recommendations designed to improve the public sector response to fraud. Details of relevant recommendations are at Annex A. Specifically, the Committee made recommendations on the need for timely, independent and thorough investigations; for appropriate disciplinary action; and for the absolute necessity of reporting all fraud cases to the C&AG. The failure to act on these recommendations indicates to the Committee that the public sector generally is not where it must be in terms of installing a strong anti-fraud culture as an immediate requirement.
10. In our 2008 report on Tackling Public Sector Fraud, the Committee was very clear that "efforts to detect, investigate and prosecute fraud are not undermined by a lack of capacity and expertise in the wider public sector." The Committee pressed for an assessment of investigative skills in the public sector and a strategy to fill any gaps identified. It is clear to us that there has been a lack of will on the part of senior officials to act on this recommendation and strengthen investigative capacity in the public sector. Only this year, the Permanent Secretaries Group, composed of the top official in every government department, rejected a proposal to establish an investigations unit for government departments within a new centralised internal audit service. We find this decision incomprehensible.

**The future development of investigative skills and capacity in the public sector**

11. In two recent reports, the Audit Office has recommended the establishment of a Northern Ireland public sector fraud investigation service, independent of the internal audit function, to provide a reserve of experienced experts to assist in complex investigations. The Committee considers that the poor quality of investigations we have examined points to the merits of such an approach. In the Committee's view, the future development of fraud investigation services in the public sector should:
  - establish a pool of qualified, experienced investigators to advise public bodies on the investigation of simple cases and to lead complex investigations;
  - facilitate the setting-up of multi-disciplinary investigation teams to include investigators, forensic accountants, legal, human resources, and IT expertise;

- set-up a centre of expertise which can develop and disseminate good practice, liaise with PSNI and other investigating bodies, and promote an anti-fraud culture throughout the public sector;
- develop expertise in complex forensic techniques, utilising information technology (for example, data mining) not only to investigate reported fraud but to identify potential fraud and irregularity;
- form a body of staff large enough to support a structured approach to acquiring qualifications, providing training and quality assuring investigations; and
- provide a career path for investigators to ensure hard-won skills are not lost to the public sector.

12. Overall the Committee is strongly of the view that DFP should reconsider the options for strengthening the investigative capacity in the public sector, including the establishment of a centralised service, and it should report back to the Committee on the outcome of this review.

# Report by the Public Accounts Committee on Northern Ireland Water's Response to a Suspected Fraud

## Executive Summary

1. In December 2009, internal auditors identified a case of 'invoice slicing' in NI Water. They found that an NI Water manager had instructed the firm (Company E) contracted to install water meters to limit the value of invoices submitted for payment to below £20,000. Limiting the value of invoices in this way is regarded as an indicator of fraud. Following an internal fraud investigation, Internal Audit found no evidence of fraud but did find significant weakness in NI Water's control over the metering contract. A disciplinary hearing in August 2010 considered the actions of two managers responsible for the contract with Company E and found that they had no case to answer.

## How the investigation was established and the contract between NI Water and Company E

2. The Committee considers that the disciplinary process established by NI Water showed no regard for employees' rights or for due process. The manager who gave the instruction to invoice slice was interviewed by telephone while he was on holiday. He was given no written warning that a disciplinary process had started and had no opportunity to have a trade union representative or a colleague present. The defects in this process should have been obvious to senior management in NI Water.
3. The disciplinary letters setting out the case against two managers had not been quality assured internally and, as a result, the letters contained a significant error of fact. The Committee was initially told that responsibility for the error lay with the legal firm which prepared draft letters. The Committee considers that the responsibility for this lapse lies squarely with the senior NI Water officials involved and we take a very dim view of the attempt to shift the blame on to others.
4. The fraud investigation identified a number of serious control weaknesses in management of the contract with Company E, in addition to the issue of invoice slicing. For example, Company E was paid £111,000 for 12,000 abortive visits to install meters, due to errors in NI Water's instructions. The Department for Regional Development (the Department) takes the view that the control weaknesses "*pointed to some significant shortcomings in contract management practice, as opposed to fraud*". The Committee considers that all of the weaknesses identified by Internal Audit were indicators of fraud and should have been treated as such.

## The scope of the investigation and the quality of the investigative process

5. The Committee considers that allegations of serious wrongdoing and suspected fraud must be investigated vigorously and promptly by skilled and experienced fraud investigators. Having the right team in place is key to ensuring investigations are conducted to professional investigation standards.
6. The fraud investigation team members were qualified accountants but they had limited experience of fraud investigations and no specialist fraud investigation training. Specifically, they had not been trained to gather evidence in accordance with the requirements of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). Given this lack

of expertise, the Committee is concerned that PSNI was not consulted in this case, particularly when this was best practice set out in DFP guidance and in NI Water's own Fraud Response Plan.

7. The fraud investigation team did not conduct its own interviews but relied entirely on the earlier interviews carried out by the disciplinary investigation led by the Director of Customer Services. This approach was flawed because:
  - suspects were alerted before relevant evidence had been secured; and
  - the disciplinary interviews were not conducted under PACE conditions and, as a result, their value in any subsequent fraud prosecution was seriously undermined.
8. The Director of Customer Services had a role in both the disciplinary and the fraud investigations. The Committee considers that a fair and impartial disciplinary process required that decisions about disciplinary action should have been made by a director with no involvement, of any kind, in the fraud investigation. The Committee is also of the view that the Director of Customer Services should not have had any role in a fraud investigation within the business unit for which he was responsible.
9. The Committee considers that the fraud investigation's terms of reference were not fit for purpose, the scope was too restrictive and there was no reference to relevant legislation or the evidence to be collected to prove a breach. The Committee's view is that the investigation simply did not dig deep enough and a number of relevant matters were never properly explored.
10. The departmental Accounting Officer told the Committee that he did not believe a fraud had occurred and, while the investigative process was "*slightly flawed*", there was not a "*flawed outcome*" and the investigation had arrived at the right conclusion. The Committee finds these assurances to be wholly unconvincing given the weak investigative process, the serious contract management weaknesses, and the extent of the contract irregularities. The notion that a flawed investigation can somehow arrive at the right conclusion is perverse.

#### **Governance and oversight of the investigation**

11. The Committee was concerned that witnesses introduced new information at our evidence session which had not been disclosed to the Comptroller and Auditor General (C&AG) during the preparation of his report. The Department also wrote to the Committee after our evidence session pointing out an error in the report it had agreed with the C&AG in March 2013. The Audit Office engages with departments in agreeing the facts of the case before its reports are published. Therefore, the Committee finds it completely unacceptable for witnesses to provide us with new material which was not brought to the C&AG's attention and which he did not have the opportunity to critically assess.
12. The fraud investigation's terms of reference were agreed by the Department, the Chair of the NI Water Audit Committee, the former Chief Executive and other senior NI Water officials. All failed to identify or address the clear weaknesses in the planned scope and methodology. The Committee also considers that, given the limited investigation work undertaken, NI Water senior management should have considered further analysis and testing; they were simply too quick to close down the investigation on the basis of inadequate and incomplete evidence.
13. The Department failed to inform the C&AG of the suspected fraud in accordance with DFP guidance. This contravenes a long established and key accountability control. The Committee finds this breach to be unacceptable. We welcome the Accounting Officer's apology both to the Committee and to the C&AG for this lapse.

**The framework for investigating fraud in the Northern Ireland public sector**

14. The Treasury Officer of Accounts acknowledged that DFP's guiding principles for investigating fraud were "*not followed particularly well*". The Committee considers this is something of an understatement; the principles simply were not followed. Shortcomings included:
  - the investigation team were not trained in, and had no experience of, gathering evidence in accordance with PACE provisions;
  - the investigation was not led by an experienced counter fraud specialist;
  - advice was not sought from the PSNI or other public sector counter fraud specialists;
  - all aspects of the suspected managers' work were not investigated; and
  - control weaknesses discovered during the investigation were not strengthened immediately.
15. The Committee also found that there was no documentary evidence explaining why the guiding principles for investigating fraud were not applied. The Committee considers that departments and other public bodies should always document the rationale for any departures from their own fraud response plan or from DFP's guiding principles for investigating fraud and that the principle of 'comply or explain' should be built into all DFP guidance.
16. The Committee considers that the poor quality of this investigation supports the case for establishing a Northern Ireland public sector fraud investigation service. The Committee was extremely concerned to learn that even the limited proposal to include a fraud investigation unit within a centralised internal audit service was not taken forward by the NICS Permanent Secretaries Group. The Committee strongly recommends that DFP reconsiders the options for strengthening the investigative capacity within the public sector, including the establishment of a centralised service, and reports back to the Committee on the outcome of this review.



# Summary of Recommendations

**Recommendation 1**

The Committee considers that fraud investigations can only be effective where investigators have an appropriate level of expertise and understanding of relevant law. Public bodies must understand that internal auditors will not necessarily have these skills. The Committee recommends that DFP issues guidance clarifying the distinction between these separate and distinct roles and requiring public bodies to ensure that only suitably qualified and experienced staff lead fraud investigations.

**Recommendation 2**

The Committee strongly recommends that departments and their arms length bodies properly and thoroughly check the facts contained in the C&AG's draft reports. The Committee should not be placed in the position of having to remind Accounting Officers of such a basic requirement.

**Recommendation 3**

The Committee recommends that DFP makes clear to the departments and their arms length bodies that significant matters, which are relevant to an Audit Committee's work, must be brought to its attention regardless of the source, that is, whether a conventional audit, or an ad hoc internal or external investigation.

**Recommendation 4**

The Committee recommends that DFP reviews its guidance on fraud investigations to identify any gaps and to provide greater clarity, where needed, on which actions it considers mandatory and which are discretionary.

**Recommendation 5**

The Committee recommends that departments and other public bodies should always document the rationale for any departures from their own fraud response plan or from DFP's guiding principles for investigating fraud and that the principle of "comply or explain" should be built into all DFP guidance.

**Recommendation 6**

The Committee finds it concerning that no progress has been made in establishing a centralised fraud investigation service, despite the clear advantages of this approach. The Committee strongly recommends that DFP reconsiders the options for strengthening the investigative capacity in the public sector, including the establishment of a centralised service, and reports back to the Committee on the outcome of this review.

# Introduction

1. The Public Accounts Committee (the Committee) met on 25 September 2013 to consider the Comptroller and Auditor General's report '*Northern Ireland Water's Response to a Suspected Fraud*'. The witnesses were:

- **Mr Richard Pengelly**, Accounting Officer, Department for Regional Development (the Department);
- **Ms Deborah McNeilly**, Acting Deputy Secretary, Department for Regional Development;
- **Mr Gary Fair**, Director, Shareholder Unit, Department for Regional Development;
- **Ms Sara Venning**, Interim Chief Executive, Northern Ireland Water;
- **Mr Kieran Donnelly**, Comptroller and Auditor General (C&AG); and
- **Ms Fiona Hamill**, Treasury Officer of Accounts.

The Committee was provided with further information by the Department on 25 October 2013.

2. In his report on "Northern Ireland Water's Response to a Suspected Fraud" the C&AG reviewed a 2010 investigation by NI Water's Internal Audit unit into a suspected fraud. The C&AG considered the extent to which the investigation complied with best practice, specifically with the Department of Finance and Personnel's (DFP) 2006 guiding principles<sup>3</sup> for the proper conduct of a fraud investigation, as well as with NI Water's own fraud response plan.
3. In December 2009, NI Water's Internal auditors discovered that an instruction had been given by an NI Water manager to a firm known as 'Company E', to limit the value of invoices it submitted to below £20,000. Limiting the value of invoices in this way is known as 'invoice slicing' and it is regarded as an indicator of fraud because it brings payments to contractors under the radar of proper control arrangements. The former Chief Executive ordered a disciplinary investigation to establish the facts and, three days later, he ordered a separate fraud investigation into the case. In the fraud investigation final report of 1 April 2010, Internal Audit concluded that, based on the work it performed, there were no indicators of fraudulent activity. The disciplinary process ended in August 2010 when a hearing considered the actions of two managers responsible for the contract with Company E and determined that they had no case to answer.
4. The Audit Office had concerns about the conclusions drawn by the fraud investigation; it considered that the scope of the investigation was limited and there were inadequacies in the methodology employed. The Audit Office found that, on the whole, DFP's guiding principles for fraud investigations were not followed.
5. In taking evidence, the Committee explored four themes:
  - how the investigation was established, with particular focus on the contract with Company E;
  - the scope of the investigation and the quality of the investigative process;
  - governance and oversight of the investigation; and
  - the framework for investigating fraud in the Northern Ireland public sector.

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3 Updated in December 2011 and contained in DFP's "Managing the Risk of Fraud (NI) A Guide for Managers"

## How the investigation was established and the contract between NI Water and Company E

### **The former Chief Executive set up two investigations into invoice slicing**

6. In early December 2009, NI Water's Internal Audit unit investigated payments of £465,000 to Company E under a £4.1 million contract to install water meters. The payments, made between April and July 2009, did not have budgetary approval. During this review, Internal Audit also found that in 2009 the contract had been extended for more than one year beyond the agreed contract period. This unapproved extension was a potential breach of European Union Utilities Procurement Regulations.
7. Internal Audit identified that a large number of payments to Company E were for amounts close to, but not exceeding, £20,000. Internal Audit established that an NI Water manager, the "Contract Manager", had instructed Company E to invoice in this way. In peak periods, Company E was invoicing NI Water up to seven times a day. The Contract Manager claimed to have acted under the instructions of more senior staff: his Line Manager and his Director. Both his Line Manager and Director denied any knowledge of, or role in, the instruction to invoice slice.
8. On 20 January 2010, the former Chief Executive instructed the then Director of Customer Services to conduct interviews, under the disciplinary process, to understand why invoice slicing had taken place and clarify who had given the instruction. On 23 January 2010, the former Chief Executive established a separate fraud investigation led by the Head of Internal Audit. In her final report on the fraud investigation in April 2010, the Head of Internal Audit concluded that there were no indicators of fraudulent activity but identified a wide range of significant control weaknesses affecting all aspects of the metering contract.

### **The disciplinary investigation was seriously flawed**

9. Within two hours of the former Chief Executive's instruction to conduct interviews under the disciplinary process, the Director of Customer Services had interviewed the Contract Manager, by telephone, while he was on holiday. The Committee is astonished that any senior official would consider it appropriate to launch a disciplinary investigation in this way. The Contract Manager was given no written warning that a disciplinary process had started and had no opportunity to have a trade union representative or a colleague present during the interview. In the Committee's view, this was, from the outset, a mismanaged and unfair disciplinary process which showed no regard for employees' rights or for due process.
10. The Committee considers that the flaws in the disciplinary process were as a direct result of the former Chief Executive's undue haste in setting up this investigation. It is a concern that there seems to have been no effective challenge to this approach by senior management. It should have been obvious to the very senior people involved that this was no way to run a disciplinary process.
11. The disciplinary investigation found there had been a breach of duty on the part of the Contract Manager and his Line Manager and it recommended that Human Resources pursue disciplinary action. A formal disciplinary hearing took place in July 2010 to consider the charges against them, principally that they had breached their delegated limits for approving invoices. However, the letters notifying the managers of the charges to be considered contained a significant error, in that the wrong delegated limits were quoted. This error seriously undermined NI Water's case and the hearing found that the managers had no case to answer.
12. The disciplinary letters had not been adequately quality assured either by the Company Secretary (the senior official responsible for the process), Human Resources, or the disciplinary investigation team. It is extremely disappointing that no one within NI Water was

held to account for what this Committee considers to be gross incompetence. What is equally troubling is that witnesses initially told the Committee that responsibility for this error lay with the legal firm which prepared the draft letters. It was only when challenged by the Committee that the Interim Chief Executive responded *"I suppose we have to hold our hands up and say that those letters were not sufficiently checked internally"*. The Committee considers that the responsibility for this lapse lies squarely with the senior NI Water officials involved and we take a very dim view of the attempt to shift the blame on to others.

**The fraud investigation revealed significant weaknesses in the Company E contract and lax contract management by NI Water**

13. In addition to the issue of invoice slicing, the fraud investigation identified a number of serious control weaknesses in the management of the contract with Company E, including:
  - extending the contract without authorisation for a total of nineteen months, resulting in irregular expenditure of over £867,000;
  - expenditure of £465,000 between April 2009 and July 2009 which did not have the required budgetary approval;
  - an extremely high number of abortive meter installation visits by the contractor, which cost NI Water an additional £111,000; and
  - NI Water was unable to reconcile the quantity of work invoiced by Company E to original work orders.
14. The Committee was told that, as Internal Audit had satisfactorily checked all invoices back to contract rates and to the work done, the Department and NI Water were satisfied that no fraudulent payments were made. What they failed to mention in this context was that £1.4 million in surveying work (over a third of the contract value) could not be checked to the work done. Also, it was not possible to reconcile any invoices to original work orders so that, while the rates applied may have been correct, the quantities ordered could not be verified. The Committee is appalled that such a basic purchasing control was not in place and our view is that this mismanagement left NI Water wide open to the possibility of fraud.
15. The Committee was dismayed to learn that Company E was paid £111,000 for 12,000 abortive visits to install meters, due to errors in NI Water's instructions. The total number of meters installed was 18,000; this equates to 2 abortive visits for every 3 installations. It is difficult to understand how NI Water put itself in a situation where it paid this amount of public money for work not to be done. Since the period in which these payments were made, the Committee has made a number of recommendations<sup>4</sup> designed to strengthen procurement procedures in NI Water and to improve contract management throughout the public sector. These recommendations must be fully implemented if NI Water is to avoid wasting public money in this way again.
16. The Committee is concerned that the serious control weaknesses identified by the fraud investigation team in 2010 were dismissed as further examples of poor contract management in NI Water and not seen for what they were: fraud indicators. It is equally concerning to the Committee that the Department still takes the view that the control weaknesses *"pointed to some significant shortcomings in contract management practice, as opposed to fraud"*. The Committee considers that all of the weaknesses identified by Internal Audit were indicators of fraud and should have been treated as such.

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4 In PAC's February 2011 report "Procurement and Governance in NI Water" and in its March 2013 report "Northern Ireland Housing Executive: Management of Response Maintenance Contracts"

17. The Committee considers that NI Water's Internal Audit and senior management were, and continue to be, far too ready to dismiss systemic weaknesses in procurement and contract management as nothing more than poor practice. The Committee's view is that DFP should ensure that both senior managers and internal auditors in the public sector are absolutely clear that, where control weaknesses are as extensive as they were in this case, they must be alert to the possibility of fraud and must actively investigate that possibility.

## The scope of the investigation and the quality of the investigative process

18. All fraud investigations should follow a number of basic guiding principles designed to get to the heart of the allegations; DFP has established the principles to be followed in departments and their arms length bodies. These include having investigators with the right skills and experience, consulting with experts, and getting the scope of the investigation right.

**The investigation team had little fraud investigation experience, no relevant qualifications and failed to consult with relevant experts**

19. The investigation team for the suspected fraud was selected by the former Chief Executive and included the Head of Internal Audit and the Deputy Internal Audit Manager. Both were qualified accountants but had limited experience of fraud investigations and no specialist fraud investigation training. Specifically, they had not been trained to gather evidence in accordance with the requirements of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).
20. It is a serious concern to this Committee that NI Water did not seek advice from PSNI or other public sector counter-fraud specialists in this investigation, despite the lack of specialist in-house fraud expertise. Consultation with PSNI is regarded by DFP as best practice and it is recommended in NI Water's own fraud response plan. The Committee welcomes the assurances provided that PSNI are now consulted in most suspected fraud cases. The only exceptions are cases involving the theft of water which are not routinely reported to PSNI. We welcome the Accounting Officer's decision, following our evidence session, to ask NI Water to raise the generic issue of water theft with PSNI, to ensure that the police are content with the current approach.
21. The Committee was told that the forensic consultants appointed to interrogate the hard drives and email communications of the two managers under investigation had also given some ad-hoc and informal advice on how the investigation was being framed. The Committee notes that the Audit Office found no documentary evidence to support this contention. The Committee considers that the witnesses over-emphasised the role played by these consultants. They were contracted to undertake a very defined and narrow piece of work and there is little evidence that they performed any role beyond that.
22. The Committee considers that allegations of serious wrongdoing and suspected fraud must be investigated vigorously and promptly by skilled and experienced fraud investigators. Having the right team in place is key to ensuring investigations are conducted to professional investigation standards.

### Recommendation 1

**The Committee considers that fraud investigations can only be effective where investigators have an appropriate level of expertise and understanding of relevant law. Public bodies must understand that internal auditors will not necessarily have these skills. The Committee recommends that DFP issues guidance clarifying the distinction between these separate and distinct roles and requiring public bodies to ensure that only suitably qualified and experienced staff are involved in fraud investigations.**

**The fraud investigation should not have relied on interviews conducted as part of the disciplinary process**

23. It is clear to the Committee that the disciplinary process should not have started in advance of the fraud investigation. The fraud investigation team did not conduct their own interviews

but relied entirely on the earlier interviews carried out by the disciplinary investigation team led by the Director of Customer Services. This approach was flawed because:

- suspects were alerted before relevant evidence had been secured; and
- the disciplinary interviews were not conducted under PACE conditions and, as a result, their value in any subsequent fraud prosecution was seriously undermined.

24. The Committee also considers that, in giving the Director of Customer Services a role in both the disciplinary and the fraud investigations, NI Water had compromised the independence of both investigations and raised a significant conflict of interest. A fair and impartial disciplinary process required that decisions about disciplinary action should have been made by a director with no involvement, of any kind, in the fraud investigation. It is also a guiding principle in fraud investigations that the investigation team should be independent from the business area where the suspected fraud was committed. The Director of Customer Services should not therefore have had any role in a fraud investigation within the business unit for which he was responsible.

**There were significant weaknesses in the fraud investigation scope and methodology**

25. The Committee considers that the fraud investigation's terms of reference were not fit for purpose and it is worrying that the Accounting Officer still maintains that they were adequate. There was no reference to relevant legislation or the evidence to be collected to prove a breach. The focus of the investigation was limited to the part played by the Contract Manager and his Line Manager but not the actions of others who also had a role in the contract. The Committee considers that a complete and thorough investigation could not have been completed without interrogating the hard drive of the Director responsible for the contract. The Director had taken early retirement in June 2009 but witnesses could not explain why backup copies of his hard drive had not been retrieved for interrogation.
26. The Committee is seriously concerned by the extent of the investigative failings in this case. The investigative work undertaken was not sufficiently detailed and rigorous, given the extent of the serious control weaknesses uncovered and the significant level of spend under the contract (£4.1 million). The investigation also did not cover all aspects of the Contract Manager's work. It did not consider whether invoice slicing was happening on other contracts and the process for awarding the contract to Company E was not scrutinised.
27. The Committee considers that, in this case, the investigation did not dig deep enough and a number of relevant matters were never properly explored. The Committee's view is that any approach based on a limited initial investigation, which will be expanded only when new evidence is found, is doomed to fail.
28. The Accounting Officer told the Committee that he did not believe a fraud had occurred and, while the investigative process was "slightly flawed", it was not a "flawed outcome" and the investigation had arrived at the right conclusion. The Committee finds these assurances to be unconvincing given the weak investigative process, the serious contract management weaknesses, and the extent of the contract irregularities. The notion that a flawed investigation can somehow arrive at the right conclusion is perverse.
29. The Committee takes some assurance from recent steps taken by NI Water to improve the investigation of fraud. It now engages with PSNI on most cases of suspected fraud, and is to consult with PSNI on its approach to cases involving the theft of water. NI Water has also established informal links with the fraud investigation unit within the Department of Agriculture and Rural Development (DARD). Six NI Water staff are being trained in investigative practice, including the requirements of PACE.



## Governance and oversight of the investigation

### **The Committee is concerned by the quality of evidence provided by witnesses**

30. The Committee was concerned that, at its evidence session, witnesses introduced new information which had not been disclosed to the C&AG during the preparation of his report. The Department also wrote to the Committee after our evidence session pointing out an error in the Audit Office report which it had agreed with the C&AG prior to publication in March 2013. Examples of new information provided are:
- the C&AG reported that invoice slicing was identified by internal audit and that, when questioned, only the Contract Manager accepted any role in the instruction to limit invoices. However, at the evidence session witnesses told the Committee that the two individuals involved had offered up this information to internal audit unprompted;
  - the Interim Chief Executive offered an explanation for the Contract Manager's actions in invoice slicing (to ensure large payments to the contractor were not held-up by a query on one item on the invoice) that had not been provided to the C&AG. This explanation had also differed from that provided by the Contract Manager to the Audit Office. He maintained that he acted on the instruction of his superiors, who did not wish to deal with approving invoices; and
  - the email to the Director for Customer Services instructing him to conduct interviews under the disciplinary process was supplemented by telephone calls clarifying that this was a fact-finding exercise only.
31. The Audit Office engages with departments in agreeing the facts of the case before its reports are published. The Committee therefore finds it completely unacceptable for witnesses to provide it with new facts which were not brought to the C&AG's attention and which he did not have the opportunity to critically assess.
32. The Committee found that some of the evidence provided by witnesses was confused and inconsistent. For example, the Committee was told, at various points in the evidence session, that the telephone call to the Contract Manager was part of the disciplinary process; that it was part of a fact-finding exercise; and that it was actually part of the fraud investigation.

## Recommendation 2

**The Committee strongly recommends that departments and their arms length bodies properly and thoroughly check the facts contained in the C&AG's draft reports. The Committee should not be placed in the position of having to remind Accounting Officers of such a basic requirement.**

### **Those charged with governance failed to provide effective oversight of the investigation**

33. The Investigation Team's terms of reference were agreed by the Department, the Chair of the Audit Committee, the former Chief Executive and other senior NI Water officials. All failed to identify or address the clear weaknesses in the planned scope and methodology. Given the limited investigation work undertaken, the Committee considers that NI Water senior management should have considered further analysis and testing; they were simply too quick to close down the investigation on the basis of inadequate and incomplete evidence.



34. While Internal Audit identified “*a number of serious control issues*” during its investigation, it did not conduct a follow-up audit to ensure its recommendations had been addressed by NI Water management. The Committee was also concerned that these significant control weaknesses were not brought to the attention of the Audit Committee, so that it could monitor implementation of the recommendations. Indeed, at that time, ad hoc investigations were not routinely reported to the Audit Committee. The Committee welcomes the assurance from the Interim Chief Executive that this is no longer the case.

### Recommendation 3

**The Committee recommends that DFP makes clear to the departments and their arms length bodies that significant matters which are relevant to an Audit Committee’s work must be brought to its attention regardless of the source, that is, whether a conventional audit, or an ad hoc internal or external investigation.**

35. The Department was not involved in the conduct of the investigation but its Shareholder Unit was copied into the terms of reference for the investigation. The Committee considers that the Department should have ensured the guiding principles for suspected fraud investigations were being followed and it should have identified that the terms of reference for the suspected fraud investigation were inadequate. The Head of the Shareholder Unit now accepts that, before agreeing the terms of reference, he should have sought advice from those with fraud expertise within the Department.
36. The Public Accounts Committee recommended in December 2007<sup>5</sup> that whenever an arms length body is investigating allegations of serious suspected fraud, the sponsoring department must assist the investigation and the departmental Accounting Officer must satisfy himself that the investigation is thorough and professional. It is not acceptable to this Committee that the recommendation made by our predecessors was not followed through in this case.

**The Department failed to inform the C&AG of the suspected fraud**

37. The Department failed to inform the C&AG of the suspected fraud, in accordance with DFP guidance. This contravenes a long established and key accountability control. The Committee finds this breach to be unacceptable. We welcome the Accounting Officer’s apology both to the Committee and to the C&AG for this lapse.

## The framework for investigating fraud in the Northern Ireland public sector

38. There is no centralised fraud investigation unit in the Northern Ireland public sector. There are a number of specialist units within five government departments<sup>6</sup> each of which focuses on its own area of expertise, for example, health, agriculture, legal aid and social security. The investigation unit within DARD provides an investigation service to two further departments<sup>7</sup> and advises four other public bodies.
39. It is not practical or cost effective for all public bodies to maintain their own fraud units. If fraud is suspected, many public bodies are reliant on non-specialist auditors or on contracting in expensive private sector firms to do the work.

### **NI Water did not follow DFP's guiding principles for investigating fraud**

40. In evidence, the Treasury Officer of Accounts agreed that DFP's guiding principles for investigating fraud were "*not followed particularly well*". The Committee considers this is something of an understatement; the principles simply were not followed. Shortcomings included:
- the investigation team were not trained in, and had no experience of, gathering evidence in accordance with PACE provisions;
  - the investigation was not led by an experienced counter fraud specialist;
  - advice was not sought from the PSNI or other public sector counter fraud specialists;
  - all aspects of the suspected managers' work were not investigated; and
  - control weaknesses discovered during the investigation were not strengthened immediately.
41. The Accounting Officer told the Committee that DFP's guiding principles for fraud investigations are not requirements and their implementation is optional. The Treasury Officer of Accounts stated that DFP needs to strike a balance between mandatory requirements and allowing organisations the scope to decide what is appropriate in certain circumstances. The Committee considers there is a general lack of clarity as to where that balance should be struck. In this investigation, there was no documentary evidence explaining why the guiding principles were not applied. The Committee considers that, where DFP has stated that something "should" be done during the course of an investigation, then there must be a very good reason for not doing it<sup>8</sup>, and that reason must be recorded.
42. NI Water had a well-established fraud response plan yet the investigation initiated by the former Chief Executive by-passed procedures set out in the plan. The Head of Corporate Governance was not informed about the suspected fraud until after the disciplinary and fraud investigations had already started. The role of the independent director acting as Case Manager was diminished. NI Water did not consult with PSNI. The Committee considers that these significant departures from the requirements of the plan, which was set aside, should never have been permitted.

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6 Department of Agriculture and Regional Development; Department for Social Development (benefit fraud, housing); Department of the Environment (Planning and Driver and Vehicle Agency); Department of Health, Social Services and Public Safety; and Department of Justice (legal aid)

7 Department of Finance and Personnel and Department of Culture, Arts and Leisure

8 DFP guiding principles state that "all aspects of the suspected officer's work should be investigated, not just the area where the fraud (or suspected fraud) was detected".

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## Recommendation 4

**The Committee recommends that DFP reviews its guidance relating to fraud investigations to identify any gaps and to provide greater clarity, where needed, on which actions it considers mandatory and which are discretionary.**

## Recommendation 5

**The Committee recommends that departments and other public bodies should always document the rationale for any departures from their own fraud response plan or from DFP's guiding principles for investigating fraud and that the principle of "comply or explain" should be built into all DFP guidance.**

### **The approach to the investigation of fraud in the Northern Ireland public sector**

43. The Public Accounts Committee's December 2007 report (see footnote 2) noted the importance of ensuring that efforts to detect, investigate and prosecute fraud are not undermined by a lack of capacity and expertise in the wider public sector. It recommended that DFP completes a stock take across the wider public sector to assess the availability and skill levels of trained investigation staff on front line investigation work and, if necessary, devise a strategy to fill any skills gaps identified. DFP told the Committee that the stock take *"was rolled into the work that they undertook in looking at the review of internal audit and fraud services"* across the NICS. This was not what the Committee had asked for or what DFP had agreed to do (by March 2009) in its March 2008 Memorandum of Reply. The Committee is not convinced that, by subsuming the review of fraud capacity into a wider examination of internal audit, DFP gave fraud investigation the level of focus required. The Committee was extremely disappointed to learn that even the limited proposal to include a fraud investigation unit within a centralised Departmental internal audit service was not taken forward by the NICS Permanent Secretaries Group. However, the Committee welcomes the Department's support for this proposal.
44. In these two reports, the Audit Office has recommended the establishment of a Northern Ireland public sector fraud investigation service, independent of the internal audit function, to provide a reserve of experienced experts to assist in complex investigations. The Committee considers that the poor quality of investigation in the NI invoice slicing case points to the merits of such an approach.

## Recommendation 6

**The Committee finds it concerning that no progress has been made in establishing a centralised fraud investigation service, despite the clear advantages of this approach. The Committee strongly recommends that DFP reconsiders the options for strengthening the investigative capacity in the public sector, including the establishment of a centralised service, and reports back to the Committee on the outcome of this review.**

# Report by the Public Accounts Committee on the Department for Regional Development's Review of an Investigation of a Whistleblower Complaint

## Executive Summary

1. In 2005, a whistleblower made allegations against Roads Service staff involved in the procurement of road signs. The allegations included collusion, favouritism to a preferred contractor, and works orders not given to the appointed contractor. Internal Audit reported in January 2010 that it had found no evidence to support most of the allegations, nor of impropriety, nor of staff deliberately showing favouritism to a particular contractor.

### **The treatment of the Whistleblower**

2. In previous reports, the Committee has emphasised the vital role that whistleblowers play in ensuring that genuine concerns about the proper conduct of public business are raised with public bodies. The Committee is very disappointed that, in this case, the Department failed to open a meaningful channel of communication with the whistleblower, failed to understand his concerns, failed to manage his expectations and failed to help him obtain the information he required to support his allegations, thereby necessitating freedom of information (FOI) requests. The Committee's view is that the whistleblower was perceived as merely a disgruntled contractor and normal whistleblowing procedures were not followed.
3. The Committee admires the dogged determination and persistence by the whistleblower over many years, to get to the truth. Despite losing his business during this period, the Committee commends this whistleblower for his sterling efforts, despite the stress that it has caused to him, his family, and his employees.

### **The quality of the investigative process**

4. The Committee considers that the investigation team did not have the expertise to conduct a proper investigation into the complex issues in this case. In our opinion, fraud investigations will fail if the appropriate expertise is not used. The Committee considers that this case reinforces the need for a review of the options for strengthening the investigative capacity in the public sector, one of which should be the establishment of a centralised investigation service.
5. The Committee is concerned at the very lengthy delay in the investigation of allegations. The allegation that orders which should have been allocated to the whistleblower's firm were given to a competitor was passed to the investigation team in 2005 but was not investigated until 2009. The Committee considers that there was a lack of effective challenge at the top of the Department and this was reflected in the quality of the investigation. In the Committee's opinion, the responsibility for this intolerable delay lies with the Department.
6. The Committee is very concerned that the allegation of collusion was not a priority for the investigation. The Department assured the Committee that a substantive piece of work was undertaken into this allegation, while at the same time arguing that the allegation of collusion lacked credibility because of the number of bodies involved. The Committee does not accept this assurance given that none of the investigative work had been documented. There were clearly serious questions that needed to be addressed and the Committee is not convinced that this happened.

7. The Committee noted that the investigating team treated the whistleblower less favourably than other contractors under scrutiny in the investigation and the Department could not provide a proper explanation as to why this happened.
8. The Committee was astounded to learn that in October 2009 the head of the investigation team moved to work in the roads secretariat of Transport NI, formerly Roads Service. This was three months prior to conclusion of the investigation in January 2010. The Committee considers that it was wholly inappropriate for the person leading an important investigation to be transferred into the entity being investigated, before the investigation was closed.
9. The Accounting Officer conceded that there were flaws in its investigation but has clung tenaciously to the view that the conclusions reached were sound. The Committee is not convinced and, in its view, the Department's stance is untenable.
10. The Department attached considerable weight to a 2011 High Court judgement in which 3 of the 22 allegations were examined. The Court found there was no substantive evidence for bias, collusion or favouritism but did not examine or come to any conclusion on the quality of the investigation. **The Court's findings do not lessen or conflict with the Committee's concerns about the inadequacies of this investigation.**
11. The investigation of allegations of fraud and collusion require a forensic review by a competent and experienced fraud investigator to prove or disprove the allegations. The Committee considers that this investigation lacked the professionalism and thoroughness needed to get to the heart of the issues. There were serious failings and a catalogue of errors in what was a shoddy and incompetent investigation and it is hard to avoid the impression that the Department did not have the appetite to get to the truth.

#### **Governance and oversight of the investigation**

12. The former Accounting Officer emphasised the reliance he placed on the professionalism of the investigating team to such an extent that, it seems to the Committee, he was attempting to absolve himself from responsibility for the investigation. The Committee considers that there was a lack of effective challenge at the top of the Department and this was reflected in the quality of the investigation.
13. The Committee found that the Accounting Officer took 15 months to agree the factual accuracy of the draft report with the Comptroller and Auditor General and concludes that the Department was simply using the clearance process as a delaying tactic. Clearance should not be used by departments in an attempt to delay publication or to dilute the C&AG's independent audit opinion.

#### **The award and management of road signage contracts**

14. The Committee is concerned that the Department placed a significant focus on quality over price in assessing tenders for a standard product. The Committee understands how the whistleblower, or indeed any contractor, could have formed a view that the assessments were deliberately weighted towards subjective elements, such as quality, to control the outcomes of the competitions. The Committee considers that the Department, by its actions, left itself open to perceptions of favouritism.
15. In 2002, the public sector in Northern Ireland adopted 12 principles as the basis for public procurement. The first principle is transparency which is defined as "openness and clarity in its policy and delivery". The attempt by the Department, in this case, to explain away the absence of transparency as a "*very technical point*" showed a lack of understanding of the principles underlying public procurement. The Department's attitude also demonstrates how out of touch it is with the concerns of the small business sector in Northern Ireland. The Committee considers that the Department has much work to do to bring about a cultural shift to one of openness and transparency.

16. The Committee is shocked that over a long number of years, orders which should have been given to the whistleblower's firm were given to his main competitor. It is difficult not to conclude that something other than simple error was at play.
17. In 2004, Roads Service ordered and paid for 24 replacement signs for the M2 motorway but these were not delivered and erected until 2006. The Committee is deeply concerned that the Department could not offer a credible reason for this decision. The Department explained that replacement signs were needed on safety grounds. However, the Committee is not convinced with this explanation because the two year gap does not suggest that the work was urgent. The Department also explained that it had surplus funds in 2004 which it wanted to use before the end of the financial year. The Committee strongly disapproves of any flaunting of the basic rules for public spending which precludes paying for goods in advance of need. In correspondence with a MP in this case, a senior official, who later became the Chief Executive, failed to disclose all relevant facts. The Committee considers that he did not comply with two of the Nolan Principles of Public Life, that is, openness and accountability.
18. Two separate investigations, in 2001 and 2010, reported that officials did not place orders with the appointed contractor and the Department acknowledged that this placed it in breach of contract. The Committee considers that disciplinary action is needed in circumstances where there are repeated mistakes which have the potential to damage the business of a properly appointed contractor and leave the Department open to legal action.

# Summary of Recommendations

**Recommendation 1**

The Committee recommends that, when contractors take the important step of raising genuine concerns about the proper conduct of public business, they are classified as whistleblowers and treated as such. The Department of Finance and Personnel should ensure that this recommendation is reflected in its guidance on dealing with whistleblowers.

**Recommendation 2**

This case proves the need for better guidance to shape the direction of investigations. The Committee recommends that the Department of Finance and Personnel reviews and collates all best practice on the handling of investigations and disseminates it to public sector bodies, highlighting the lessons learnt from this case and from the NI Water investigation.

**Recommendation 3**

It is important that Audit Office reports are not unreasonably delayed by a protracted clearance process. The Committee recommends that departments complete the clearance process in full within three months of receiving a first draft. This allows ample time for departments to agree the factual accuracy of the C&AG's reports. The Committee wants the C&AG to bring any unacceptable delays to its attention.

**Recommendation 4**

The Committee recommends that the Department of Finance and Personnel requires departments and public bodies to review their Codes of Conduct to ensure that they give adequate weight to the seriousness of a contractual breach by officials. This would make it clear that officials responsible for breaches may be subject to a disciplinary process.



## Introduction

1. The Public Accounts Committee (the Committee) met on 16 October 2013 to consider the Comptroller and Auditor General's report '*Department for Regional Development: Review of an Investigation of a Whistleblower Complaint*'. The witnesses were:
  - **Mr Richard Pengelly**, Accounting Officer, Department for Regional Development;
  - **Dr Andrew Murray**, Chief Executive, Transport NI;
  - **Ms Deborah McNeilly**, Acting Deputy Secretary, Department for Regional Development;
  - **Dr Malcolm McKibben**, Head of the Northern Ireland Civil Service and former Chief Executive of Roads Service;
  - **Mr Paul Priestly**, Strategic Investment Board and former Accounting Officer, Department for Regional Development;
  - **Mr Geoff Allister**, retired and former Chief Executive of Roads Service;
  - **Mr Kieran Donnelly**, Comptroller and Auditor General (C&AG); and
  - **Mr Mike Brennan**, Acting Treasury Officer of Accounts.

The Committee was provided with further information by the Department on 22 November 2013.
2. In 2005, a whistleblower made 15 allegations against Roads Service staff involved in the procurement of road signs. The Department commissioned its Internal Audit unit to investigate these allegations and a further 14 allegations received between 2005 and 2007. The allegations included collusion, favouritism to a preferred contractor, and works orders not given to the appointed contractor. Internal Audit reported in January 2010 that it had found no evidence to support most of the allegations, nor of impropriety, nor of staff deliberately showing favouritism to a particular contractor.
3. The Audit Office found that there were major weaknesses in the conduct of the investigation leading to the 2010 report and, as a result, the credibility of the investigation's findings were seriously undermined. The investigation took over four years to reach a conclusion, proceeded without a properly constructed plan, failed to apply professional investigative standards and failed to investigate recurring themes across allegations, such as favouritism.
4. In taking evidence, the Committee examined the extent to which the Department's investigation of the whistleblower's allegations complied with good practice. The Committee focused on four of the allegations made by the whistleblower:
  - there was collusion in the award of a contract between LEDU<sup>9</sup>, the Central Procurement Directorate (CPD) of the Department of Finance and Personnel and the Department's Roads Service;
  - the tender criteria were weighted towards subjective elements, such as quality, to control the outcomes of the competitions;
  - orders for the manufacture of signs which the whistleblower should have received were given to a competitor; and
  - replacement signs for the M2 motorway were ordered and paid for two years before they were delivered and erected and a MP was misled when she asked questions about the contract.

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9 The Local Enterprise Development Unit (LEDU) is a former NDPB of the Department of Enterprise, Trade and Investment and was subsumed within Invest NI.

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5. The Committee's consideration of these matters is explored under three broad themes:
- the quality of the investigative process;
  - governance and oversight of the investigation; and
  - the award and management of road signage contracts.

## The Quality of the Investigative Process

### **The Department failed to engage with the Whistleblower**

6. In previous reports, the Committee has emphasised the vital role that whistleblowers play in ensuring that genuine concerns about the proper conduct of public business are raised with public bodies and fully addressed through a properly planned and thoroughly executed investigation.
7. Despite the large number of allegations and supporting documentation provided by the whistleblower, the Department's engagement with him was minimal, with only two meetings and one telephone conversation taking place between 2005 and 2010. A formal interview did not take place and the Department avoided direct contact. The Department gave the Committee a weak excuse that the whistleblower wanted to deal with the Audit Office.
8. The Committee is very disappointed that the Department failed to open a meaningful channel of communication with the whistleblower, failed to understand his concerns, failed to manage his expectations and failed to help him obtain the information he required, thereby necessitating FOI requests. In these circumstances it is not surprising that the whistleblower sought dialogue with the Audit Office. The Committee's view is that the whistleblower was perceived as merely a disgruntled contractor and normal whistleblowing procedures were not followed. The Department told the Committee that it now recognises that when someone raises concerns with the Department, it needs to reach out and proactively engage with the whistleblower.
9. The Committee admires the dogged determination and persistence by the whistleblower over many years to get to the truth. Despite losing his business during this period, the Committee commends this whistleblower for his sterling efforts, despite the stress that it has caused to him, his family, and his employees.

## Recommendation 1

**The Committee recommends that, when contractors take the important step of raising genuine concerns about the proper conduct of public business, they are classified as whistleblowers and treated as such. The Department of Finance and Personnel should ensure that this recommendation is reflected in its guidance on dealing with whistleblowers.**

### **There were fundamental weaknesses in the Department's investigation**

10. The investigation of allegations of fraud and collusion require a forensic review<sup>10</sup> by a competent and experienced fraud investigator. In this case, these techniques were necessary to prove or disprove the serious allegations of fraud and collusion. The Committee does not agree with the Accounting Officer's assertion that nothing more of a forensic nature could have been done. It considers that more sophisticated techniques, such as the interrogation of computer hard drives, could have been used in this investigation.
11. The Committee considers the investigation lacked the professionalism and thoroughness needed to get to the heart of the issues. The Committee was disappointed to find:
  - serious methodological failings in areas such as interviewing, sampling and in the examination of allegations;

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10 Forensic audit is the application of accounting methods to unambiguously resolve allegations of fraud and determine if an illegal act has been committed. Forensic audit techniques seek to identify the persons involved, support the findings by evidence and present the evidence in an acceptable format, in any subsequent criminal or disciplinary proceedings.

- a lack of professional scepticism exercised throughout all aspects of the investigation, for example, errors were always treated as simple mistakes rather than investigated as indicators of fraud;
- all allegations were not investigated and more particularly the very serious overarching allegation of favouritism that was embedded in most allegations; and
- key aspects of the investigation were not documented.

It is clear to the Committee that this catalogue of errors could have been avoided if qualified and experienced fraud investigators had been used from the outset.

12. The Committee considers that the investigation team did not have the expertise to conduct a proper investigation into the complex issues in this case. Internal auditors are not fraud investigators and the difference between these specialised roles needs to be clearly understood. In our opinion, fraud investigations will fail if the appropriate expertise is not used. The Committee considers that this case reinforces the need for a review of the options for strengthening the investigative capacity in the public sector, one of which should be the establishment of a centralised investigation service.
13. In the Committee's view, this was a shoddy and incompetent investigation and it is hard to avoid the impression that the Department did not have the appetite to get to the truth. Instead, the Department undertook an investigation which side-stepped many of the serious questions being posed by the whistleblower. The Committee notes the Department's undertaking to incorporate the Audit Office's guiding principles into its fraud investigation guidance.

## Recommendation 2

**This case proves the need for better guidance to shape the direction of investigations. The Committee recommends that the Department of Finance and Personnel reviews and collates all best practice on the handling of investigations and disseminates it to public sector bodies, highlighting the lessons learnt from this case and from the NI Water investigation.**

### **The investigation took far too long**

14. The Committee is concerned at the very lengthy delay in the investigation of the whistleblower's allegations. The Department attributed the delay to the whistleblower but the Committee found that specific tranches of work were not undertaken until the latter stages of the investigation. For example, the allegation that orders which should have been allocated to the whistleblower's firm were given to a competitor was passed to the investigation team in 2005 but was not investigated until 2009. In the Committee's opinion, the responsibility for this intolerable delay lies with the Department.

### **The investigation of the allegation of collusion was inadequate**

15. The whistleblower had made an allegation of collusion by LEDU, CPD and the Department's Roads Service to give preferential treatment to one of his competitors. He alleged that Roads Service deferred the award of the 1999-2001 road signage contract to provide this competitor with sufficient work to satisfy LEDU's eligibility criteria for a major financial injection.
16. The Department assured the Committee that a substantive piece of work was undertaken into this allegation, while at the same time arguing that the allegation of collusion lacked credibility because of the number of bodies involved. **The Committee does not accept this assurance given that none of the investigative work had been documented.** The Committee is very concerned that the allegation of collusion was not a priority for the investigation. There were clearly serious questions that needed to be addressed and the Committee is not convinced that this happened.

### **The investigation lacked objectivity**

17. The Committee considers that investigators must act and take decisions impartially and fairly, using the best evidence and without discrimination or bias. The Committee received evidence that, in 2002, the Head of the Investigation team may not have been impartial in his views about the whistleblower. The Committee also noted that the investigating team treated the whistleblower less favourably than other contractors under scrutiny in the investigation. It shared a complete draft of its report with the whistleblower's main competitor and extracts with other firms, but nothing was sent to the whistleblower. The Department could not provide a proper explanation as to why this happened.
18. The Committee is firmly of the view that the whistleblower should have had the opportunity to scrutinise the draft report. He had invested a lot of time and effort in researching the issues and could therefore legitimately challenge aspects of the report.
19. The Committee was astounded to learn that in October 2009 the head of the investigation team moved to work in the roads secretariat of Transport NI, formerly Roads Service. This was three months prior to conclusion of the investigation in January 2010. The Accounting Officer in post at the time told the Committee that he was not aware of the move and the current Accounting Officer added that the investigation work was substantively finished before the move took place.
20. The Department shared the Committee's concern about the move giving rise to a perception of cosiness and reward, but did not believe the independence of the investigation was damaged. The Committee's view is that perceptions of fairness and independence matter. We consider that it was wholly inappropriate for the person leading an important investigation to be transferred into the entity being investigated, before the investigation was closed.

### **The investigative conclusions were derived from a flawed investigative process**

21. The Accounting Officer conceded that there were flaws in the investigation but clung tenaciously to the view that the conclusions reached were sound. He made the same argument at our previous Session examining an NI Water investigation. The Committee was not convinced in either case. It is unsafe to rely on conclusions drawn from a flawed process and the Committee believes that it is highly improbable that the investigation team could accidentally stumble to the right conclusion. In the Committee's view, the Department's stance is untenable.
22. The Department attached considerable weight to a 2011 High Court judgement in which 3 of the 22 allegations were examined. The Court found there was no substantive evidence for bias, collusion or favouritism but did not examine or come to any conclusion on the quality of the investigation. **The Court's findings do not lessen or conflict with the Committee's concerns about the inadequacies of this investigation.**

# Governance and Oversight of the Investigation

## Oversight of the investigation

23. The former Accounting Officer took up that role in December 2007 and was ultimately responsible for the conduct of this investigation. In evidence, he emphasised the reliance he placed on the professionalism of the investigating team to such an extent that, it seems to the Committee, he was attempting to absolve himself from responsibility for the investigation. The Committee considers that there was a lack of effective challenge at the top of the Department and this was reflected in the quality of the investigation.

## The former Accounting Officer's letter to the BBC

24. In October 2008, the BBC broadcast a news item about the investigation, which included an interview with the whistleblower. The Department had briefed the BBC through a formal response and informal comments. Following the broadcast, the former Accounting Officer complained to the BBC that the item was unfair and had failed to give the Department an opportunity to correct serious factual inaccuracies. The Committee believes that he was wrong to intervene while the investigation was ongoing, in a way that could be perceived as lacking neutrality or even prejudging the outcome of its investigation.

## The time taken to agree the report with the Audit Office was unacceptably long

25. The Committee recognises the need for the facts in the C&AG's report to be accurate and comprehensive. In this case, however, the Accounting Officer took 15 months to agree the factual accuracy of the C&AG's report. This is unacceptable and it is clear that the Department was simply using the clearance process as a delaying tactic. Clearance should be used to agree factual accuracy. It should not be used by departments in an attempt to delay publication or dilute the C&AG's independent audit opinion.

## Recommendation 3

**It is important that Audit Office reports are not unreasonably delayed by a protracted clearance process. The Committee recommends that departments complete the clearance process in full within three months of receiving a first draft. This allows ample time for departments to agree the factual accuracy of the C&AG's reports. The Committee wants the C&AG to bring any unacceptable delays to its attention.**

# The Award and Management of Road Signage Contracts

## How contracts were awarded

26. In 1997-1998, the outcome of road signage contracts was determined wholly on price. Each contract since then has been awarded on the basis of both price and quality criteria, moving from a 80/20 split in favour of price in 1999-2001 to a 60/40 ratio in 2002-2003. A further change took place in the 2005-2007 and 2009 contracts when the price/quality ratio was set at 30/70. The whistleblower alleged that the changes to the evaluative criteria were a mechanism used by Roads Service to ensure that a competitor obtained the lion's share of the work.
27. The Committee is concerned by the potential for manipulation of the price/quality criteria and also by the significant focus on quality over price in assessing tenders for a standard product. Road signs are standard products and the required quality is set out in the Roads Service specification. The Department blamed poor delivery by its main suppliers as the reason for its focus on quality. The whistleblower's firm delivered about 75 per cent of its orders late and his competitor delivered about 30 per cent of its orders late, so quality was clearly an issue to be addressed. The Committee considers that this should have been achieved through contract compliance, rather than an evaluation of subjective criteria in the tender assessment.
28. The Committee understands how the whistleblower, or indeed any contractor, could have formed a view that the assessments were deliberately weighted towards subjective elements, such as quality, to control the outcomes of the competitions. The Committee considers that the Department, by its actions, left itself open to perceptions of favouritism. The Committee notes that, since 2012, the Department appears to be on the right path in awarding contracts by making price a main determinant at the final stage in a three-stage tender selection process.

## Transparency in how price/quality criteria are set

29. The whistleblower initiated legal proceedings against the Department's decision on a 2010 tender. The High Court judgement found that the Department was *"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."* The Judge said *"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."*
30. In 2002, the public sector in Northern Ireland adopted 12 principles as the basis for public procurement. The first principle is transparency which is defined as "openness and clarity in its policy and delivery". In the light of this, the Committee rejects the Department's argument that the requirement to be transparent with contractors about tender evaluation criteria, such as price/quality, only came into play in 2011. The attempt by the Department, in this case, to explain away the absence of transparency as a *"very technical point"* showed a lack of understanding of the principles underlying public procurement. The Department's attitude also demonstrates how out of touch it is with the concerns of the small business sector in Northern Ireland. The High Court judgement in this case demonstrates the extent to which business fortunes can rise and fall on the basis of price/quality weightings. The Committee considers that the Department has much work to do to bring about a cultural shift to one of openness and transparency.

**Over a number of years orders for signs were not given to the appointed contractor**

31. The Department's investigation upheld the whistleblower's 2005 allegation that orders that should have gone to him as the appointed contractor were given to a competitor. The whistleblower had made this complaint twice before. In 1999, the complaint was not upheld. The 2001 complaint resulted in an investigation which confirmed that a £7,000 contract which the whistleblower's firm should have received was given to a competitor. The 2001 investigation found no evidence of fraud and concluded that orders were allocated on the basis of the '*rash expediency*' by officials.
32. The Committee is shocked that over a long number of years orders which should have been given to the whistleblower's firm were given to his main competitor and it is hard to avoid the conclusion that something other than simple error was at play.
33. The Department told the Committee that it has installed a new procurement system that automatically allocates work orders to the correct contractor. However, there is a facility to override this allocation in certain circumstances. The Committee considers that it is important that there are effective controls to prevent unauthorised overrides of this system.

**Motorway signs were ordered and paid for in advance of need**

34. The whistleblower alleged that in 2004, Roads Service ordered and paid for 24 replacement signs for the M2 motorway from the nominated supplier. The signs should have been delivered within 15 days but were not delivered and erected until 2006. However, in 2005, a new firm was awarded the contract and the whistleblower's contention was that this second firm should have been awarded this work. The whistleblower also alleged that Roads Service had failed to tell a MP the truth when she asked questions about the contract.
35. The investigation report confirmed that the signs were ordered and paid for in 2004 but not erected until 2006. Between 2004 and 2006 they were stored by the manufacturer. There are a number of issues relating to the M2 signs that are deeply worrying to the Committee:
  - the company awarded the contract in 2005 should have received the order for the M2 signs;
  - Roads Service knew that it was planning a widening scheme for the M2 motorway when the replacement signs were ordered in 2004. Some of the replacement signs, erected in 2006, were taken down again in 2009. This clearly represented poor value for money;
  - a senior official of Transport NI failed to disclose all relevant facts to a MP when she asked questions about the contract. In the Committee's view, the senior official who later became Chief Executive did not comply with two of the Nolan Principles of Public Life, that is, openness and accountability;
  - the Department justified the need to replace the signs on safety grounds stating "the condition of the old signs had been giving them cause for concern". However, in the Committee's view this explanation lacks credibility because the two year gap between ordering and erecting the signs does not suggest that the work was urgent; and
  - the Department justified its purchase of the signs in 2004 because it had surplus funds it wanted to use before the end of the financial year. It is a basic requirement of public expenditure that goods are not purchased before they are needed. The Committee strongly disapproves of any flaunting of the basic rules for public spending which precludes paying for goods in advance of need.

**There was a lack of disciplinary action**

36. Two separate investigations, in 2001 and 2010, reported that officials did not place orders with the appointed contractor and the Department acknowledged that this placed it in breach of contract. In 2001, the then Chief Executive of Roads Service viewed this practice as “*a very serious offence and a possible breach of the NICS Code.*” The Committee considers that in view of this strong statement, there was an expectation that disciplinary action would be taken against staff involved in the later case. This did not happen.
37. The former Accounting Officer explained that he had considered the question of disciplinary action but judged that there were insufficient grounds. He believed that the allocation of orders to firms that were not the appointed contractors was due to a combination of procedural shortcomings, human error and expediency rather than through deliberate intent. The Committee accepts that “*mistakes happen*” but finds it wholly unacceptable that a culture of flaunting the rules should have been allowed to exist over a long period. The Committee considers that disciplinary action is needed in circumstances where there are repeated mistakes which have the potential to damage the business of a properly appointed contractor and leave the Department open to legal action.

## Recommendation 4

**The Committee recommends that the Department of Finance and Personnel requires departments and public bodies to review their Codes of Conduct to ensure that they give adequate weight to the seriousness of a contractual breach by officials. This would make it clear that officials responsible for breaches may be subject to a disciplinary process.**



## Annex A

### PAC recommendations

| PAC Report   | Recommendation   | DFP Memorandum of Response (MOR) Details   |
|--|--|--|
| <b>NATIONAL AGRICULTURE SUPPORT: FRAUD. 4th Report from Session 2000/2001</b>                                | We were surprised at the confusion in the Department over the requirement to notify the C&AG of all frauds. We would like to be assured by DFP that there is no scope for further misunderstanding on this important point.  | <b>MOR 1 June 2001 Accepted</b><br>To ensure there is no further scope for misunderstandings on reporting requirements, DFP has written to AO's, reminding Departments of the requirement in GANI to report immediately all frauds, proven or suspected, to the C&AG and DFP |
| <b>Report on Internal Fraud in the Local Enterprise Development Unit. 11th Report from Session 2001/2002</b> | We found it disturbing that some sixteen months elapsed between the discovery of Gribben's first fraud and the launch of a proper fraud investigation.   | <b>MOR 4 September 2002</b><br>Department notes the Committee's concerns and accepts that a more wide-ranging and prompt investigation should have been conducted and that the advice of the Department's Internal Audit Service should have been taken on board sooner.     |
|  | It is difficult to avoid the impression that LEDU did not act vigorously or with proper regard to good practice and that the Department did not exercise proper control when LEDU failed to take immediate and decisive action. In our view, once fraud has been confirmed it is imperative that an immediate wide-ranging and thorough investigation is undertaken to determine the full extent of fraudulent activity. | The Department notes the Committee's view and agrees that, once fraud has been confirmed, it is imperative that an immediate wide-ranging and thorough investigation is undertaken to determine the full extent of fraudulent activity.                                      |
|  | We are concerned at the lack of urgency, indeed complacency, in the follow up to both the Atwell and Gribben frauds. We expect departments to accord the highest priority to the investigation of fraud and to the implementation of lessons arising from the fraud.   | The Department notes the Committee's comments and would assure the Committee that it does accord the highest priority to the investigation of fraud and implementation of lessons learned.   |

| <b>PAC Report</b>  | <b>Recommendation</b>  | <b>DFP Memorandum of Response (MOR) Details</b>   |
|--|--|---|
| <b>Report on Brangam, Bagnall &amp; Co: Legal Practitioner Fraud Perpetrated Against the Health and Personal Social Services. 8th Report from Session 2008/2009.</b> | <p>Procurement processes in the public sector often take many months to complete. The Committee recommends that all Departments review their contingency arrangements to ensure they have:</p> <ol style="list-style-type: none"> <li>an up to date Fraud Response Plan in order to minimise the time required to think through the scope and nature of any investigation once a fraud is notified; and</li> <li>appropriate standby measures in place to allow them to get forensic investigations up and running quickly.</li> </ol> | <p>DFP will ask departments to ensure that appropriate standby measures are in place to allow them to get forensic investigations up and running quickly where they are deemed necessary.</p>   |
| <b>Report on Brangam, Bagnall &amp; Co: Legal Practitioner Fraud Perpetrated Against the Health and Personal Social Services. 8th Report from Session 2008/2009.</b> | <p>The possibility of collusion should never be ruled out prematurely and always be carefully explored in the terms of reference for any fraud investigation. When major contract fraud occurs, the Committee expects that investigations would automatically cover hospitality registers and registers of interest.</p>   | <p><b>MOR 24 April 2009</b><br/>DHSSPS accepts this recommendation.</p>   |
| <b>Report on Brangam, Bagnall &amp; Co: Legal Practitioner Fraud Perpetrated Against the Health and Personal Social Services. 8th Report from Session 2008/2009.</b> | <p>The Committee recommends that terms of reference for forensic investigations should be pitched sufficiently widely to identify the full extent of the fraud and the possibility of supervisory negligence. DFP should also ensure that departmental guidance on fraud investigations includes consideration of supervisory negligence as a matter of course. The Committee expects in cases of major fraud that departments should consult with NIAO to adequately scope their terms of reference.</p>                              | <p>DFP agrees that terms of reference for forensic investigations should be pitched sufficiently widely to identify the full extent of the fraud including the identification of control weaknesses and lack of supervisory checks and will highlight this to departments. Managing Public Money Northern Ireland states "Departments should also take appropriate disciplinary action where supervisory or management failures have occurred". DFP will also highlight to departments that in cases of major fraud they should consult with NIAO to ensure they adequately scope their terms of reference.</p> |

| <b>PAC Report</b>  | <b>Recommendation</b>   | <b>DFP Memorandum of Response (MOR) Details</b>  |
|--|---|--|
| <b>BELB : Report on the Investigation of Suspected Contract Fraud. First Report from Session 2009/2010</b> | The Whistleblower's role was central to triggering the investigation in this case. The Committee recommends that Audit Committees be informed of any whistleblowing cases and how they are handled, and that DFP takes the opportunity to draw attention to this case in its next Annual Fraud Return, and that any future training on fraud awareness pays particular attention to the value and effective use of Whistleblower information. | <b>MOR 10 November 2009</b><br>DFP notes the Committee's comments.   |
|  | The Committee recommends that whenever a sponsored body is investigating allegations of serious suspected fraud, the sponsoring department should ensure that its own expertise is available and whatever other expertise is required, to assist in the investigation, and the department's Accounting Officer must, of course, be satisfied that the process is thorough and professional.   | DFP accepts this recommendation. Under MPMNI, sponsored bodies are required to notify their sponsor department of all suspected and actual cases of fraud as they are identified. Where cases are considered serious or significant, departments will no doubt wish to assure themselves that investigatory arrangements being put in place are satisfactory. This may include providing expertise from within the sponsor department where such expertise exists. Where an individual department does not itself have the necessary skills required, the department will wish to ensure that such skills are acquired externally and that the department is kept fully informed of the progress of the investigation. |
|  | The Committee has made it clear that it expects public bodies to operate effective whistleblowing policies; proactively encourage and promote those policies; and rigorously investigate all whistleblowing concerns. The Committee recommends that DFP should draw attention to the Department's handling of this Whistleblower as a model for any future cases.   | DFP accepts this recommendation. In addressing the Committee's previous recommendations on this issue, DFP has worked with Public Concern at Work to develop a whistleblowing model template for use by public bodies and a whistleblowing implementation pack for departments and agencies. An event was held by DFP in January 2009 and was attended by a wide range of public sector bodies. Issues such as those raised above by the Committee were fully discussed at this event.   |

| <b>PAC Report</b>   | <b>Recommendation</b>   | <b>DFP Memorandum of Response (MOR) Details</b>   |
|---|---|---|
|   | <p>The Committee is very concerned that it has to repeat a previous recommendation that all members of an investigation team, including its leader, should be totally independent of the management of the business unit where the fraud or suspected fraud occurs.</p>   | <p>DFP accepts this recommendation. Guidance issued by DFP highlights that a Fraud Investigation Oversight Group should ensure that any investigatory team established is independent from the business areas where a fraud or suspected fraud took place.</p>  |
|   | <p>BELB should have initiated independent investigations of these letters which could have dealt with the matter properly. The Committee recommends that where a Whistleblower makes serious allegations of fraud, management must respond by conducting an appropriate investigation.</p>  | <p>DFP accepts this recommendation. MPMNI advises that a thorough investigation should be undertaken in all cases where there is suspected fraud. DFP expects this to be applied, regardless of the route that a body or a department may become aware of such cases.</p>   |
| <p><b>Report on Tackling Public Sector Fraud. Fifth Report from Session 2007/2008</b></p> | <p>The Committee would like to see much more emphasis given to whistle-blowing as an important means of identifying potential fraudulent activity. There is no excuse for 25% of departments and agencies not having whistleblowing policies in place and we expect DFP to ensure this deficit is addressed and that full compliance is achieved. The Committee also expects DFP to ensure that departments are proactive in training and encouraging staff to blow the whistle and for DFP to include an analysis of activity levels of whistleblowing across departments, as part of its annual Fraud Report.</p> | <p><b>MOR 21 March 2008</b></p> <p>DFP accepts this recommendation. A corporate policy on whistleblowing was published in the NICS Staff Handbook, which applies to all NICS departments and agencies, in February 2003. DFP has initiated further work in this area and intends to issue guidance, and provide further training, to assist public sector bodies implement effective whistleblowing procedures tailored to their specific organisational structure.</p> <p>DFP will also include information on the level of whistleblowing activity across departments as part of its 2007/08 annual fraud report.</p> |
|   | <p>It is important that efforts to detect, investigate and prosecute fraud are not undermined by a lack of capacity and expertise in the wider public sector. The Committee recommends that DFP undertakes a stocktaking exercise across the wider public sector to assess the availability of trained investigation staff on front line investigation work, and, if necessary, devises a strategy to fill any skills gaps identified by this exercise through mechanisms such as training programmes or short-term redeployment of existing resources.</p>   | <p>DFP agrees with this recommendation and will undertake a stock take survey of investigatory resources by the end of 2008/09. The results of this survey will be used by DFP to assess the need to develop a strategy to fill any skills gaps identified.</p>   |



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings of the Committee Relating to the Report



## Wednesday, 11 September 2013

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr Ross Hussey  
Mr David McIlveen  
Mr Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** None

**2:09 pm** The meeting opened in public session in Room 29.

**2.13pm** Mr Girvan left the meeting

**2.14m** Mr Girvan re-joined the meeting

**2.14pm** Mr Clarke left the meeting

**2.14pm** Mr McQuillan left the meeting

**2.15pm** Mr Clarke re-joined the meeting

**2.16pm** Mr McQuillan re-joined the meeting

**2.56pm** Mr Hussey left the meeting

**3.10pm** Mr Copeland left the meeting

**3.15 pm** Mr Girvan left the meeting

**3.16 pm** Mr Copeland returned

**3.19 pm** Mr Hazzard left the meeting

#### **5. Briefing on the Inquiry into NI Water's response to a Suspected Fraud and Review of an Investigation of a Whistleblower's Complaint**

The Chairperson welcomed Mr Kieran Donnelly, Comptroller and Auditor General and Northern Ireland Audit Office Officials Richard Emerson; Mr Patrick O'Neil; and Ms Jacqueline O'Brien to the meeting and invited them to brief members on the above inquiry.

**3.24 pm** Mr Girvan re-joined the meeting

**3.31 pm** the meeting moved into closed session in order that the Committee receive legal advice

**3.38 pm** Mr Hazzard returned

**3.46 pm** Mr McIlveen left the meeting

**3.52 pm** Mr Clarke left the meeting

**3.55 pm** Mr Clarke re-joined the meeting

**4.07 pm** Mr Dallat left the meeting

**4.10 pm** Mr Copeland left the meeting

**4.12 pm** Mr Copeland re-joined the meeting

**4.14 pm** The Committee agreed to suspend the meeting

**4.29 pm** The meeting resumed in closed session

**4.30 pm** Mr Dallat re-joined the meeting

**[EXTRACT]**



## Wednesday, 18 September 2013

### Room 29, Parliament Buildings

**Present:** 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 Daithí McKay  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Ross Hussey  
Mr Adrian McQuillan

**2:07 pm** The meeting opened in public session in Room 29.

**4. Northern Ireland Audit Office Reports on ‘NI Water’s Response to a Suspected Fraud’ and ‘Review of an Investigation of a Whistleblower Complaint’ – Briefing Session**

Members noted copies of the NIAO’s Reports on ‘NI Water’s Response to a Suspected Fraud’ and ‘Review of an Investigation of a Whistleblower Complaint’.

**2.11pm** The meeting moved to closed session

The C&AG briefed members on the content of the Reports.

**2.12pm** Mr Girvan joined the meeting

**2.15pm** Mr Hazzard left the meeting

**2.47pm** Mr McKay joined the meeting

**2.58pm** Mr Copeland left the meeting

**3.00pm** Mr Copeland re-joined the meeting

**3.06pm** Mr Hazzard re-joined the meeting

**5. Northern Ireland Audit Office Reports on ‘NI Water’s Response to a Suspected Fraud’ and ‘Review of an Investigation of a Whistleblower Complaint’ – Preparation Session**

**3.09pm** The external advisers left the meeting

The Committee explored core issues arising from the Audit Office reports in preparation for its forthcoming evidence session on 25 September 2013.

**3.30pm** Mr Clarke left the meeting

**3.34pm** Mr Copeland left the meeting

**Agreed:** The Committee agreed to consider the reports separately and to call specified additional witnesses for each.

**3.39pm** Mr Clarke re-joined the meeting

**3.50pm** Mr Copeland re-joined the meeting

**3.58pm** The external advisers re-joined the meeting

**4.03pm** Mr Girvan left the meeting

**4.05pm** Mr Girvan re-joined the meeting

*Agreed:* The Committee agreed to an informal meeting prior to the evidence session.

**[EXTRACT]**

## Wednesday, 25 September 2013

### Senate Chamber, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan  
Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Chris Hazzard  
Mr Ross Hussey

**2:04 pm** The meeting opened in public session in the Senate Chamber.

#### 4. **Evidence session on the Northern Ireland Audit Office Report on the Inquiry into Northern Ireland Water's Response to a Suspected Fraud**

The Committee took oral evidence on the above inquiry from:

- Mr Richard Pengelly, Accounting Officer, Department of Regional Development
- Ms Deborah McNeilly, Acting Deputy Secretary, Department for Regional Development
- Ms Sara Venning, Interim Chief Executive Officer, NI Water
- Mr Gary Fair, Director, Shareholder Unit

The witnesses answered a number of questions put by the Committee.

**2.25 pm** Mr Rogers joined the meeting

**2.27 pm** Mr McKay joined the meeting

**3.08 pm** Mr Dallat left the meeting

**3.09 pm** Mr Dallat re-joined the meeting

**3.19 pm** Mr Girvan left the meeting

**3.20 pm** Mr Copeland left the meeting

**3.20 pm** Mr Girvan re-joined the meeting

**3.38 pm** Mr Coplenad re-joined the meeting

**3.50 pm** Mr McKay left the meeting

**4.04 pm** Mr McKay re-joined the meeting

**4.14 pm** Mr Clarke left the meeting

**4.20 pm** Mr Clarke re-joined the meeting

**4.24 pm** Mr Dallat left the meeting

**4.27 pm** Mr Easton left the meeting

**4.30 pm** Mr Easton re-joined the meeting

*Agreed:* The Committee agreed to request further information from the witnesses.

**4.41 pm** Mr Copeland left the meeting

**4.41 pm** Mr Dallat re-joined the meeting

**4.47 pm** Mr Copeland re-joined the meeting

**4.54 pm** The meeting moved to closed session

**4.54 pm** Mr Clarke, Mr Copland and Mr Girvan left the meeting

**4.55 pm** Mr Copeland re-joined the meeting

**4.56 pm** Mr Clarke re-joined the meeting

**4.59 pm** Mr Girvan re-joined the meeting

**5.01 pm** Mr McKay re-joined the meeting

**5.04 pm** Mr McKay left the meeting

Members noted correspondence relating to witnesses scheduled to appear before the Committee.

*Agreed:* Members noted the correspondence, discussed the issue and agreed that the Chairperson and Deputy Chairperson would meet with the proposed witnesses, as per the Committee's discussion. It was agreed that the Chairperson and Deputy Chairperson would provide feedback on the outcome of the meeting.

**5.19 pm** Mr Easton left the meeting

**5.20 pm** Mr Clarke left the meeting

**[EXTRACT]**

## Wednesday, 2 October 2013

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** Mr Chris Hazzard  
Mr Ross Hussey  
Mr Adrian McQuillan  
Mr Seán Rogers

**2.04 pm** The meeting opened in public session

**3.23 pm** Mr Girvan left the meeting

**3.26 pm** Mr Copeland left the meeting

**3.27 pm** the meeting was suspended

**3.32 pm** the meeting resumed in closed session with the following members present:

Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan

**3.33 pm** Mr Clarke left the meeting

**3.36 pm** Mr Dallat left the meeting

**3.36 pm** Mr Clarke re-joined the meeting

**3.46 pm** Mr Dallat re-joined the meeting

#### **7. Inquiry into NI Water's Response to a Suspected Fraud – Issues Paper**

The Committee noted an issues paper by the Northern Ireland Audit Office on the above inquiry.

The Committee discussed the evidence session and proposed amendments.

**4.03 pm** Mr Girvan left the meeting

**Agreed:** The Committee agreed the issues paper, as amended, to form the skeleton of the report.

## **8. Inquiry into DRD: Review of an Investigation of a Whistleblower Complaint – Briefing Session**

### **4.11 pm** Mr Girvan re-joined the meeting

The Chairperson and Deputy Chairperson updated the Committee on the informal meeting they had had with senior NICS officials in respect of witnesses selected to give evidence in relation the above inquiry.

### **4.34 pm** Mr Easton left the meeting

The Committee considered the letter of 2 October of the Head of the Civil Service, Dr Malcolm McKibbin in summary of the concerns conveyed at that meeting.

The Committee considered a Clerk's brief setting out the issues which a response might reasonably be expected to outline.

*Agreed:* The Committee agreed terms in which to respond to Dr McKibbin on the issues of witness selection; clarification of roles; Cabinet Office and similar guidance; arrangements for clearance of NIAO reports; and rescheduling of the evidence session.

Audit Office officials briefed the Committee on the above inquiry.

Members put questions to the Audit Office officials.

*Agreed:* The Committee agreed to consider the Forward Work Programme in order to establish a suitable time to table a motion in the Assembly which would share with other MLAs the work of the Committee.

**[EXTRACT]**

## Wednesday, 9 October 2013

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan  
Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** Mr Chris Hazzard  
Mr Ross Hussey

**2.05pm** The meeting opened in public session

**2.10pm** Mr Girvan joined the meeting

**2.11pm** the meeting moved to closed session

**4. Inquiry into Department for Regional Development: Review of an Investigation of a Whistleblower Complaint – Preparation Session**

The Committee explored core issues arising from the Audit Office report in preparation for its forthcoming evidence session on 16 October 2013.

**2.42pm** Mr Clarke left the meeting

**2.45pm** Mr Clarke re-joined the meeting

**2.56pm** Mr Copeland left the meeting

**6. Inquiry into Department for Regional Development: Review of an Investigation of a Whistleblower Complaint – Preparation Session**

**3.09pm** External advisers joined the meeting

The Committee continued its consideration of the core issues arising from the Audit Office report in preparation for its forthcoming evidence session on 16 October 2013. Members of the Committee put questions to the NIAO officials.

**3.18pm** Mr Rogers left the meeting

**3.23pm** Mr Girvan left the meeting

**3.26pm** Mr Rogers re-joined the meeting

**3.30pm** Mr Clarke left the meeting

**3.31pm** Mr Clarke re-joined the meeting

**3.36pm** Mr Girvan re-joined the meeting

**3.46pm** Mr Clarke left the meeting

**3.50pm** Mr Girvan left the meeting

**3.54pm** Mr McKay joined the meeting

**[EXTRACT]**



## Wednesday, 16 October 2013

### Senate Chamber, Parliament Buildings

**Present:** 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 Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**2.02pm** The meeting opened in public session

#### 4. **Inquiry into Department for Regional Development: Review of an Investigation of a Whistleblower Complaint – Evidence Session**

The Committee took oral evidence on the above inquiry from:

- Mr Richard Pengelly, Accounting Officer, Department of Regional Development
- Ms Deborah McNeilly, Acting Deputy Secretary, Department for Regional Development
- Dr Andrew Murray, Chief Executive, Transport NI
- Mr Paul Priestly, Former Accounting Officer, DRD
- Dr Malcolm McKibbin, Former Chief Executive, Roads Service
- Mr Geoff Allister, Former Senior Roads Service Official

The witnesses answered a number of questions put by the Committee.

**2.53pm** Mr Hussey left the meeting

**3.01pm** Mr Hussey re-joined the meeting

**3.15pm** Mr Hussey left the meeting

**3.16pm** Mr Easton left the meeting

**3.22pm** Mr Easton re-joined the meeting

**3.23pm** Mr Girvan left the meeting

**3.28pm** Mr McQuillan left the meeting

**3.32pm** Mr Girvan re-joined the meeting

**3.33pm** Mr Clarke left the meeting

**3.40pm** Mr Hazzard joined the meeting

**3.41pm** Mr Clarke re-joined the meeting

**3.47pm** Mr McQuillan re-joined the meeting

**3.57pm** Mr Easton left the meeting

**4.02pm** Mr Dallat left the meeting

**4.03pm** Mr Easton re-joined the meeting

**4.05pm** Mr Dallat re-joined the meeting

**4.19pm** the meeting suspended

**4.31pm** the meeting resumed with the following Members present

Ms Michaela Boyle (Chairperson)

Mr John Dallat (Deputy Chairperson)

Mr Alex Easton

Mr Chris Hazzard

Mr Adrian McQuillan

Mr Seán Rogers

**4.32pm** Mr Copeland re-joined the meeting

**4.34pm** Mr Clarke and Mr Girvan re-joined the meeting

**4.44pm** Mr McKay re-joined the meeting

**5.14pm** Mr Dallat left the meeting

**5.43pm** Mr Clarke left the meeting

**5.44pm** Mr Copeland left the meeting

**5.44pm** Mr Clarke re-joined the meeting

**5.45pm** Mr Girvan left the meeting

**5.51pm** Mr Girvan re-joined the meeting

**6.15pm** Mr McKay left the meeting

**6.39pm** Mr McKay re-joined the meeting

*Agreed:* The Committee agreed to request further information from the officials.

**[EXTRACT]**

## Wednesday, 6 November 2013

### Senate Chamber, Parliament Buildings

**Present:** 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 Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Trevor Allen (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** None

**2.05pm** The meeting opened in public session

**2.06pm** Mr Girvan joined the meeting

**2.08pm** Mr Clarke and Mr Dallat joined the meeting

**2.11pm** Mr Copeland and Mr Hazzard joined the meeting

**2.12pm** the meeting moved to closed session; the C&AG and NIAO Officials left the meeting

**2.15pm** an Assembly Legal Advisor joined the meeting

**2.23pm** the Assembly Legal Advisor left the meeting

**2.23pm** the C&AG and NIAO officials re-joined the meeting

#### **8. Inquiry into Department for Regional Development: Review of an Investigation of a Whistleblower Complaint – Issues Paper**

The Committee discussed an issues paper on its inquiry into the Review of an Investigation of a Whistleblower Complaint.

**Agreed:** the Committee agreed to request from the Department for Regional Development a copy of correspondence to the BBC and an internal audit report in relation to this matter.

**2.40pm** Mr Hussey left the meeting

**2.46pm** Mr McKay joined the meeting

**Agreed:** The Committee agreed that the issues paper should form the basis of the Committee's report on this inquiry.

**[EXTRACT]**

## Wednesday, 29 January 2014

### Room 29, Parliament Buildings

**Present:** 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

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Ms Lucia Wilson (Assembly Clerk)  
Mr Trevor Allen (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Adrian McQuillan  
Mr Seán Rogers

**2.28pm** The meeting opened in public session

**2.30pm** Mr Clarke left the meeting

**2.50pm** Mr Hazzard joined the meeting

**3.06pm** Mr Copeland left the meeting

**3.07pm** The meeting moved to closed session

NIAO officials left the meeting.

**3.10pm** Mr Clarke re-joined the meeting

**3.14pm** Mr Dallat left the meeting

**3.16pm** Mr Copeland re-joined the meeting

**3.29pm** Mr McKay left the meeting

**3.30pm** Mr Girvan left the meeting

**3.31pm** Mr Hussey left the meeting

NIAO officials returned to the meeting.

**3.39pm** Mr Girvan re-joined the meeting

#### **7. Inquiry into NI Water's Response to a Suspected Fraud and DRD: Review of an Investigation of a Whistleblower Complaint – Correspondence and draft report**

Members noted correspondence received from Mr Richard Pengelly, Accounting Officer, Department for Regional Development, and from the whistleblower.

**4.10 pm** Mr Clarke left the meeting

*Agreed:* The Committee noted the correspondence and agreed to defer consideration of the draft report until Members should have sufficient time to consider additional issues raised in the correspondence.

*Agreed: The Committee also agreed to write to the whistleblower acknowledging his very helpful submission and declining oral briefing from him on the matter.*

**4.15 pm** Mr Clarke re-joined the meeting

**[EXTRACT]**

## Wednesday, 19 March 2014

### Room 29, Parliament Buildings

**Present:** 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 Seán Rogers

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Trevor Allen (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Daithí McKay  
Mr Adrian McQuillan

**2.39pm** The meeting opened in public session

**2.40pm** Mr Rogers joined the meeting

**2.46pm** The meeting moved to closed session

**2.57pm** Mr Copeland joined the meeting

**3.00pm** Ms Boyle left the meeting; Mr Dallat took the Chair

#### **5. Inquiry into NI Water's Response to a Suspected Fraud and Inquiry into DRD: Review of a Whistleblower Complaint – Consideration of Draft Report**

**Agreed:** The Committee agreed to defer consideration of the draft report on the above inquiries until the meeting of 26 March 2014.

**[EXTRACT]**

## Wednesday, 26 March 2014

### Room 29, Parliament Buildings

**Present:** 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 Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Trevor Allen (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** Mr Ross Hussey

**2.06pm** The meeting opened in public session

**2.09pm** the meeting moved to closed session

**2.11pm** Mr Clarke joined the meeting

**2.15pm** Mr Rogers left

**2.16pm** Mr Hazzard joined the meeting

**2.20pm** Mr Rogers re-joined the meeting

**2.21pm** Mr Girvan left the meeting

**2.25pm** Mr Copeland left the meeting

**2.26pm** Mr Clarke left the meeting

**2.31pm** Mr Clarke re-joined the meeting

**2.32pm** Mr Copeland re-joined the meeting

**2.38pm** Mr Girvan re-joined the meeting

**2.39pm** Mr Clarke left the meeting

**2.40pm** Mr Clarke re-joined the meeting

#### **4. Inquiry into NI Water's Response to a Suspected Fraud and Inquiry into DRD: Review of a Whistleblower Complaint – Consideration of Draft Report**

The Committee noted correspondence from the whistleblower concerned with the inquiry into DRD: Review of a Whistleblower Complaint.

**2.49pm** the meeting suspended

**2.54pm** the meeting resumed in closed session with the following members present

Ms Boyle  
Mr Dallat  
Mr Clarke  
Mr Copeland  
Mr Easton  
Mr Girvan  
Mr Hazzard  
Mr McQuillan  
Mr Rogers

The Committee considered the draft report on the above inquiries.

### **Forward Section**

Paragraphs 1 to 3 read and agreed

**2.55pm** Mr McQuillan left the meeting

**2.56pm** Mr McQuillan left the meeting

Paragraphs 4 to 6 read and agreed

Paragraph 7 deleted

Paragraphs 8 read and agreed

Paragraphs 9 and 10 read, amended and agreed

Paragraph 11 read and agreed

**3.05pm** Mr Copeland left the meeting

Paragraph 12 read and agreed; moved to replace deleted paragraph 7

**3.06pm** Mr Easton left the meeting

Paragraph 13 read, amended and agreed

NI Water's response to a suspected fraud – body of report

Paragraphs 1 to 5 read and agreed

Paragraphs 6 and 7 read and agreed

**3.11pm** Mr Hazzard left the meeting

Paragraphs 8 to 14 read and agreed

Paragraph 15 deferred to the meeting of 2 April 2014

Paragraph 16 read and agreed

**3.15pm** Mr Copeland re-joined the meeting

**3.18pm** Mr Clarke left the meeting

**3.20pm** Mr Clarke re-joined the meeting

Paragraph 17 read and agreed

Paragraphs 18 and 19 read and agreed

Paragraph 20 deferred to the meeting of 2 April 2014



**3.27pm** Mr Copeland left the meeting

**3.27pm** Mr McQuillan re-joined the meeting

Paragraphs 21 to 22 read and agreed

Recommendation 1 read and agreed

Paragraphs 23 to 28 read and agreed

Paragraph 29 deferred to the meeting of 2 April 2014

Paragraphs 30 to 32 read and agreed

Recommendation 2 read and agreed

Paragraph 33 read and agreed

Paragraph 34 read, amended and agreed

Recommendation 3 read and agreed

Paragraph 35 read and agreed

**3.35pm** Mr Easton re-joined the meeting

**3.35pm** Mr Clarke left the meeting

**3.36pm** Mr McKay joined the meeting

Paragraph 36 read, amended and agreed

Paragraph 37 read and agreed

Paragraphs 38 to 41 read and agreed

**3.42pm** Mr Girvan left the meeting

Paragraph 42 read, amended and agreed

Recommendations 4 and 5 read and agreed

Paragraph 43 read and agreed

Paragraph 44 read, amended and agreed

Recommendation 6 read, amended and agreed

**NI Water's response to a suspected fraud – Executive Summary**

Paragraphs 1 to 3 read and agreed

Paragraph 4 deferred to the meeting of 2 April 2014

Paragraphs 5 to 15 read and agreed

Paragraph 16 read, amended and agreed

**NI Water's response to a suspected fraud – Summary of Recommendations**

Recommendations 1 to 5 read and agreed

Recommendation 6 read, amended and agreed

**DRD: Review of a Whistleblower Complaint – body of report**

Paragraphs 1 and 2 read and agreed

Paragraph 3 read, amended and agreed

Paragraphs 4 and 5 read and agreed

Paragraphs 6 to 9 read and agreed

Recommendation 1 read and agreed

Paragraphs 10 to 13 read and agreed

Recommendation 2 read and agreed

Paragraphs 14 to 25 read and agreed

Recommendation 3 read and agreed

Paragraphs 26 to 31 read and agreed

**4.01pm** Mr Girvan re-joined the meeting

Paragraphs 32 to 37 read and agreed

Recommendation 4 read and agreed

Annex A read and agreed

**DRD: Review of a Whistleblower Complaint – Executive Summary**

Paragraphs 1 to 8 read and agreed

**4.08pm** Mr McKay left the meeting

Paragraphs 9 to 18 read and agreed

**DRD: Review of a Whistleblower Complaint – Summary of Recommendations**

Recommendations 1 to 4 read and agreed

*Agreed:* The Committee agreed to defer final consideration of the draft report on the above inquiries until the meeting of 2 April 2014.

Wednesday, 9 April 2014  
Northern Ireland Audit Office,  
106 University Street, Belfast

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr Ross Hussey  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Trevor Allen (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** Mr Alex Easton  
Mr Daithí McKay

The Committee undertook a visit to the Northern Ireland Audit Office, 106 University Street, Belfast and, after meeting staff in their offices, Members were briefed on the NIAO's Value for Money Work Programme.

**3.29pm** The meeting opened in closed session

**3.58pm** Mr McQuillan left the meeting

**4.00pm** Mr McQuillan re-joined the meeting

**4.02pm** Mr Hazzard left the meeting

**4.04pm** Mr Hazzard re-joined the meeting

**4.10pm** Mr Dallat left the meeting

**8. Inquiry into NI Water's Response to a Suspected Fraud and Inquiry into DRD: Review of a Whistleblower Complaint – Consideration of Draft Report**

The Committee continued its consideration of the draft report on the above inquiries.

Members noted correspondence from the Northern Ireland Audit Office clarifying issues raised during the meeting of 26 March 2014.

**NI Water's response to a suspected fraud – body of report**

Paragraph 15 read, amended and agreed

Paragraph 20 read, amended and agreed

Paragraph 29 read, amended and agreed

**NI Water's response to a suspected fraud – Executive Summary**

Paragraph 4 read, amended and agreed

### **Forward Section**

Paragraphs 1 to 3 read and agreed

**4.10pm** Mr Dallat left the meeting

*Agreed:* The Committee agreed the minutes, minutes of evidence and correspondence to be included as appendices to the report.

*Agreed:* The Committee ordered the report to be printed.

**[EXTRACT]**



Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence



## 25 September 2013

### 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 Daithí McKay  
 Mr Adrian McQuillan  
 Mr Sean Rogers

### Witnesses:

|                     |                         |
|---------------------|-------------------------|
| Mr Gary Fair        | <i>Department</i>       |
| Ms Deborah McNeilly | <i>for Regional</i>     |
| Mr Richard Pengelly | <i>Development</i>      |
| Ms Sara Venning     | <i>Northern Ireland</i> |
|                     | <i>Water</i>            |

### In attendance:

|                    |                                    |
|--------------------|------------------------------------|
| Mr Kieran Donnelly | Comptroller and<br>Auditor General |
| Ms Fiona Hamill    | Treasury Officer of<br>Accounts    |

1. **The Chairperson:** We have with us Mr Kieran Donnelly, the Comptroller and Auditor General (C&AG); Ms Fiona Hamill, the treasury officer of accounts; Mr Richard Pengelly, accounting officer in the Department for Regional Development (DRD); Ms Deborah McNeilly, the acting deputy secretary of DRD; Ms Sara Venning, the interim chief executive officer (CEO) of NI Water; and Mr Gary Fair, the director of the shareholder unit of NI Water. Richard, you and your team are very welcome. Today we are considering the Audit Office report on the inquiry into NI Water's response to a suspected fraud. Does any Member want to declare an interest? There are no declarations. We have a line of questioning, and I will start.
2. At the heart of the Audit Office report is the commercial relationship between NI Water and contractor company E.

Invoice slicing, a practice that brings payments to contractors under the radar of proper control arrangements, drew attention to this case. However, the unauthorised extension of the contract, unapproved expenditure under the contract, and an additional £1.4 million of survey work awarded over and above the original contract, also suggests that that contract operated in the interests of company E rather than those of NI Water. Was that the case?

3. **Mr Richard Pengelly (Department for Regional Development):** Chair, thanks for that. It is difficult to say that getting over £1.4 million worth of work, as you suggest, that was not within the terms of the defined contract is not somehow in the interests of the company. However, I am confident that there was no malign act at play. It was a point in time. The Committee has very helpfully looked at the issue and drawn out some conclusions that we are working on. The issue was that it was a time when there were well-acknowledged difficulties in contract management, particularly contract extensions, throughout 2009 and 2010. The reality was that all the work was needed. The work was undertaken, and it was paid for in accordance with rates that had been agreed under the terms of the appropriately-let contract, recognising that it was inappropriately extended. The nub of your question was whether there was any malign force at play in the extension. None of the work undertaken shows that to be the case.
4. **The Chairperson:** Obviously, it is a key accountability control and long-established Department of Finance and Personnel (DFP) guideline that the C&AG is notified of suspected fraud. Why did the Department not take that important step at that time to inform the C&AG?
5. **Mr Pengelly:** We absolutely recognise the importance of doing that. It is a

- widely-accepted principle. It should have been done in that case, but was not. It was an administrative oversight. There was a small tangential reference to it in an e-mail that went to the C&AG about that time, but that does not excuse the lack of formal and appropriate notification that should have been made at the time that the suspected fraud —
6. **The Chairperson:** You say that there was a small reference in an e-mail.
  7. **Mr Pengelly:** There was an e-mail from the accounting officer of the time updating the C&AG on some other work that was happening. There was a small reference in it, but I am just mentioning that, Chair; that does not excuse the lack of formal notification to the C&AG that should have happened but did not.
  8. **The Chairperson:** The Committee will now draw out key aspects of the case — each member will do so — particularly the aspect of learning for investigative good practice. I ask members to keep their questions brief and to the point.
  9. **Mr Girvan:** I will attempt to keep my questions brief, but that will be very difficult.
  10. Thank you very much for coming along. I have concerns about why a disciplinary procedure was in place before a fraud investigation was called for or completed. I have concerns about how that transpired. Richard, maybe you could explain what brought that about.
  11. **Mr Pengelly:** I will say a few words on this, but the disciplinary case was a matter for the employer. The legal employer was Northern Ireland Water, so Sara might want to supplement what I say.
  12. The guidance, then and now, is clear that disciplinary procedures should not precede the fraud investigation. That should not have happened. I will make one contextual point. I want to be very careful about how I express it to the Committee. I do not offer it as an excuse; it is just a contextual point. There were previous difficulties in Northern Ireland Water with contractual issues. This was at the height of that time. The senior management team and other key officials, such as the head of the internal audit team, were very heavily loaded with carrying out that work. To be fair to Northern Ireland Water, there was a rapid response to the identification of the issue. To be critical, more speed and less haste might have been the plan that it should have adopted. The then chief executive asked for investigations to proceed under the disciplinary process. Part of that was lax language on his part, because it was about saying that those team members put their hands up and said that they were doing something which we believe was inappropriate and that it was also recognised as a potential indicator of fraud. He clearly wanted to find out more about that, but he was also cognisant of the fact that you need to tread carefully when interviewing somebody in those circumstances to capture the evidence. That process preceded the full fraud investigation.
  13. As I said, the guidance recognises that that should not happen. It is not a position that we would want to allow to happen again. Our guidance has been refreshed and renewed; we have drawn the point out. Northern Ireland Water's guidance, our guidance and DFP guidance brings that out very clearly.
  14. **Ms Sara Venning (Northern Ireland Water):** I concur with what Richard has said. We accept that disciplinary proceedings should not precede any fraud investigation. We are very clear on that internally, and we have been very clear on that internally as we have communicated with staff since we have received the report. Again, I would back that up by saying that, at that time, the former chief executive wanted to establish the facts. He asked for interviews to be carried out under the disciplinary process, and we believe that that was to afford the individuals and the company the protection that the facts would have been gathered in a way that meant that they could be used in any subsequent investigation if required. However, we accept that in



- no circumstances should a disciplinary proceeding happen before a fraud investigation.
15. **Mr Girvan:** That makes me wonder why a fraud investigation was ongoing at the same time as disciplinary proceedings were going ahead. The report mentioned someone receiving a telephone call about disciplinary proceedings being taken. I do not know whether that sort of process is the norm. It does not seem right to me that you would do anything associated with disciplinary proceedings over the telephone; you would deal with it in a proper format. Who instructed that that phone call happen or who made that phone call?
  16. **Mr Pengelly:** I think that Sara may want to come in with more of the detail, but the telephone call you refer to was made around 20 January. I made a point about lax language: the chief executive instructed that interviews under the disciplinary process should take place, and the telephone call that followed soon after was not made under the formal disciplinary process. The employee concerned was on leave at the time, so it was an initial contact to try to find out the facts of the case.
  17. One key reason why it is very important not to undertake disciplinary proceedings in advance of a fraud investigation is because it could put people on alert. While not excusing it, in this particular case the individuals concerned were already well aware of that because their involvement had come out in the review by the head of internal audit that was commissioned in early January. To answer your main question, it was not a formal disciplinary interview; it was a fact-finding discussion.
  18. **Mr Girvan:** You must appreciate that, in the interests of openness and transparency, that would definitely not be encouraged. It should not have been dealt with on that basis.
  19. **Mr Dallat:** Can you tell the Committee whether it was Laurence MacKenzie, the former CEO, who, in his usual cavalier fashion with no regard for any kind of procedures, ordered this disciplinary procedure thereby jeopardising the investigation?
  20. **Mr Pengelly:** The chief executive at the time was Mr MacKenzie.
  21. **Mr Dallat:** Yes. I think that that helps to give a flavour to it given all the other things that were going on at NI Water at the time, for which your Department was responsible.
  22. Thanks, Paul.
  23. **Mr Girvan:** You mentioned a couple of dates, there. I appreciate that the CEO directed staff to begin the investigations on 23 January. What role did senior managers play in advising him of the risks of running both concurrently? Procedurally, that seems wrong.
  24. **Mr Pengelly:** I have to confess, I do not have any documentary evidence of any advice given to the chief executive at the time, and I was not privy to any conversations that were taking place at senior management level. Sara, I do not know whether you want to add anything?
  25. **Ms Venning:** No, other than that the senior team made the chief executive aware of the fraud policy and the need to escalate the suspected fraud in line with the fraud policy. That was communicated to our corporate governance team on 27 January, and the initial investigation and confidential inquiry form was completed on 28 January, which kicked off our notification formally to the Department. There would have been advice and conversations between the management team and the chief executive in that regard at that time.
  26. **Mr Girvan:** I want to just step back slightly from that date. What was the first indication that the problems were associated with suspected fraud? How many weeks or months prior to the telephone call was that?
  27. **Mr Pengelly:** The key indicator of fraud was the invoice-slicing. I do not know the precise date, but the chief executive

- commissioned work from internal audit on 3 December 2009, and the report was presented to the executive committee on 11 January; so, it was sometime within that piece of work that the head of internal audit identified invoice-slicing.
28. I hope that this does not come across as being overly pedantic, but invoice-slicing is an indicator of fraud. There was no evidence of actual fraud at that stage. That said, to internal audit, that should get the antennae wobbling. It was an indicator of fraud, so it was brought forward some time in that period between early December and 11 January.
29. **Mr Clarke:** I have difficulty with respect to what you are saying, Richard, and what Sara has said. Sara talked about an instruction under the former chief executive to carry out the disciplinary process, which was a process. Your words were that it was just initial contact. Can we clear up whether the telephone call that my colleague is talking about was initial contact or was part of the disciplinary process? Given that you said earlier that you do not have responsibility for Northern Ireland Water, albeit you oversee it, if what Sara is saying, which is that the former chief executive said that it was part of the disciplinary process, then it was part of the disciplinary process, but can we get clarification on that?
30. **Mr Pengelly:** The instruction was to carry out an investigation under the disciplinary process.
31. **Mr Clarke:** So, it was not just initial contact.
32. **Mr Pengelly:** No, but the person who then undertook the disciplinary process prior to going into the full disciplinary review conducted an initial telephone conversation with the employee.
33. **Mr Clarke:** My reading of the report was that the process started with a telephone conversation. Sara, when a member of staff is off, does Northern Ireland Water conduct disciplinary processes over the telephone?
34. **Ms Venning:** Absolutely not. We have a well defined disciplinary process.
35. **Mr Clarke:** So, that is not your process. Can you see how some of us were sceptical that you were tipping off some of those who were alleged to have been involved in invoice-slicing and suspected fraud?
36. **Ms Venning:** If I can take you back to the CEO's instruction to conduct interviews under the disciplinary process, which is in the report and was given via e-mail on 20 January. Following that, there were a series of telephone conversations between the chief executive and the person asked to do this work, thereby setting the scene from the chief executive to the then director of customer services asking him to establish the facts. The formal disciplinary hearings took place in July. Are you satisfied with that answer?
37. **Mr Clarke:** OK.
38. **Mr Dallat:** Was the disciplinary process that we are talking about initiated by the chief executive by way of a telephone call?
39. **Ms Venning:** No. The chief executive set out, in an e-mail on 20 January which is laid out in this report, to the director of customer services asking him to conduct interviews under the disciplinary process to clarify the three points that are in the report, to understand the reasons, to find out who gave the instructions and to consider what steps might need to be taken. It was not, under our policy, a formal disciplinary hearing. Those hearings were conducted later in the year when charges were framed and individuals were written to. You cannot have a disciplinary process unless you have evidence of a charge to put to the individuals, so what was happening was fact-finding in order to understand what the facts were.
40. To take you back to alerting staff if a suspected fraud had happened; to be very clear, in this instance, the invoice-slicing was offered up unprompted by the individuals involved. So, there was no danger through the telephone

- conversations that were had in this particular instance that they were alerted to us being aware of the activity that they had carried out because they made us aware of the activity.
41. **Mr Clarke:** That is not my understanding from reading the report. The person had suggested in the initial conversation that it was his line manager. Then, later, he changed that to the director. So, I am still concerned about NI Water's fishing exercise. At the very start of today's conversation, my colleague talked about starting the disciplinary process before the fraud investigation. I think there has been an acceptance that that may have been the case here. How, Sara, can you then suggest that you can go on fishing exercise, when we already have a suspected fraud? Now, you are telling us that you went on a fishing exercise to try to get some information before you started the disciplinary process. That is what it sounds like.
42. **Mr Pengelly:** I think that —
43. **Mr Clarke:** Maybe if Sara could answer.
44. **Ms Venning:** The director of customer services was —
45. **Mr Girvan:** Is that Liam Mulholland?
46. **Ms Venning:** It is.
47. The interviews that Liam carried out, in conjunction with the head of internal audit and a member of the human resource (HR) team, were to understand the reasons behind suppressing the invoices to £20,000, to get clarity on who gave that instruction and to then take that back to the chief executive to consider what the next steps would be.
48. **Mr Clarke:** Do you think that the best way to carry that out was over the telephone?
49. **Ms Venning:** No, I do not think that the best way to carry that out was over the telephone. There was an initial telephone —
50. **Mr Clarke:** Given that this arose two to three months prior to the telephone call, what was the urgency to make the phone call, as opposed to waiting until that member of staff had returned to work? Has somebody else something to cover up?
51. **Mr Pengelly:** I think that it was a matter of days before the phone call.
52. **Ms Venning:** The report came —
53. **Mr Clarke:** The internal audit bringing forward the suspected fraud was some months —
54. **Mr Pengelly:** The report was on 11 January.
55. **Ms Venning:** The report came to light on 11 January.
56. **Mr Pengelly:** The phone call was on 20 January, I think.
57. **Mr Clarke:** I make it 3 December actually.
58. **Mr Pengelly:** On 3 December the work was initiated, but the internal audit work ran from 3 December —
59. **Mr Clarke:** The work may have been initiated on 3 December, but it had already come to light at that stage that there was a problem.
60. **Mr Pengelly:** At 3 December, the chief executive was aware that the contract had been extended. The invoice-slicing became —
61. **Mr Clarke:** And also on 3 December, they knew that they did not have budget approval for spending that extra £465,000. So, they knew, on 3 December, that something was going wrong. The telephone call did not take place until 20 January.
62. **Ms Venning:** There was no —
63. **Mr Clarke:** Two months had passed by that date. Then, there seems to have been an urgency to make a phone call, as opposed to waiting until the member of staff returned to work.
64. **Mr Pengelly:** The phone call was very much in the context of the invoice-slicing. That became apparent only in the period between 3 December and

- 11 January. That was the indicator of fraud. It was the invoice-slicing that prompted the suspected fraud investigation, not the contract extension. That was a contract management issue on which a parallel piece of work was ongoing, and a series of actions and recommendations have been taken forward. This was a particular fraud indicator.
65. **Mr Girvan:** Was this the first fraud investigation in Northern Ireland Water?
66. **Ms Venning:** I would not think so. There was a well-established fraud response plan. So, no, I would not say that it was the first, although I could not say to the Committee what the previous frauds that have been investigated were. However, I am aware that we have investigated fraud since.
67. **Mr Girvan:** I appreciate that there might well have been lessons learned from that, which have probably led to some changes being made to how the organisation deals with matters such as that.
68. At that stage, I wonder what the capacity was to do internal investigations — because it is internal. If there was a lack of capacity, was there ever a time when you thought that you should look outside your organisation and bring some other independents in to undertake such a body of work?
69. **Ms Venning:** Yes. In the context of this review, external assistance was sought in the form of forensic accountants. So, it was recognised, even through this investigation, that the internal team could benefit from some external support. Those forensic accountants were brought in and carried out some forensic work in relation to electronic data by looking at hard drives and e-mail communication that had been carried out. They also gave some ad hoc and informal-type advice to the head of internal audit on how the investigation was being framed. However, their main remit was to provide support in relation to the electronic data.
70. **Mr Girvan:** I just want clarification on one point. I want to know what the capacity in Northern Ireland Water was, at that time, to deal effectively with that type of investigation. Was it just its own internal accounting department or was there expertise to actually deal with that?
71. **Ms Venning:** At that time, we had an internal audit department, so qualified auditors were part of the company. We also had a finance department. However, the internal audit team was asked to head up the investigation.
72. **Mr Dallat:** Paul's question is very useful, but we have not got to the bottom of why your former chief executive went about this in such a cavalier fashion. Can I be helpful, perhaps, in jolting your memory? He was having problems with his non-executive directors, he needed to sack them, and invoice-slicing was commonplace in NIW for years. He found the reason, and he succeeded in what he wanted to achieve, namely to dump the non-executive directors who were causing him problems with the manner in which he was running NIW. Is there any element of truth in that? Remember that your Minister has apologised for that.
73. **Mr Pengelly:** From my perspective, Mr Dallat, I know that those issues have been aired before. I have no personal memory of that; I was not in the organisation at the time. I have not sought to look at the detail of that, because it is not within the scope of the report that I am here to answer questions on today. I cannot offer you any assistance with that point.
74. **Mr Dallat:** That is the problem. There are people who came before you who do know about that. However, I understand that your Department is resisting having those people appear before this Committee. Therefore, a lid can be kept on the most appalling period in NIW's history. Quite frankly, this Committee needs to know about that.
75. **Mr Girvan:** I appreciate that the audit would have looked at papers and

- ensured that they all followed, but I have heard a statement that paper reviews mean nothing.
76. **Mr McQuillan:** Sara, in an earlier answer to Paul, you talked about the period when the investigation started. At what stage did you decide that it was to be a fraud investigation?
77. **Ms Venning:** On 23 January, the chief executive wrote to the head of internal audit and asked her to commence an investigation into suspected fraud.
78. **Mr McQuillan:** You went on to say that you had a well-rehearsed fraud response plan. Was that enacted when it should have been or was it veered away from? I envisage that what John Dallat said is correct — it was not enacted at all but was left sitting on a shelf while the chief executive went off on a solo run.
79. **Ms Venning:** On 23 January, the chief executive instructed the head of internal audit. That was a Saturday. There was a delay from 23 January to 27 January, and, on 27 January, the head of corporate governance was made aware that there was to be an investigation into suspected fraud, at which point the fraud response plan —
80. **Mr McQuillan:** — should have been enacted.
81. **Ms Venning:** — should have been enacted.
82. **Mr McQuillan:** Was it enacted?
83. **Ms Venning:** There were certainly deficiencies. It was enacted in the sense that that was when the initial confidential inquiry form was completed and passed to the Department, but the deficiencies that we are discussing today are about the fact that the disciplinary interviews and that disciplinary work had commenced in advance.
84. **Mr Copeland:** Richard, do you think that a fraud took place?
85. **Mr Pengelly:** Based on the evidence that I have reviewed, no; I do not.
86. **Mr Copeland:** You do not think a fraud took place?
87. **Mr Pengelly:** I do not believe that the invoice-slicing was fraudulent.
88. **Mr Copeland:** I am no great believer in coincidence, but 386 invoices is four short of 390, and 390 looks to have a certain connection with £3.9 million. I am not saying that that is case, but it just looks like it to me. Paragraph 48 states that 18,000 meters were checked and 50,000 properties were surveyed. In my view, it uses a very curious form of words. It says that they checked the values against the invoices. In other words, the rates for the work that had been invoiced were correct. It does not say whether the work was done or whether anyone checked that it was done. It also wanders into rather strange language when it states:
- “against relevant customer billing records; meters were not physically inspected”.*
89. That takes me back to how company E ever became involved in Northern Ireland, what the structure of the company was, how it got the work, and what it actually did. It seems that its main function was to send out invoices that correlated to the requirements of the slicing operation. I will come back to that later.
90. **Mr Pengelly:** Again, I will cover my knowledge of it, and Sara can add any detail that I miss. The contract was for the installation of meters. It states that invoice rates were agreed. You need to bear in mind that, at that stage, there had been a contract extension that should not have happened. However, as for the contract that was let and erroneously extended, the check was to make sure that the rates on the invoice agreed with the contract so that the company was being charged what the contract anticipated it being charged.
91. **Mr Copeland:** Was there a check that the company had done the work that justified the raising of the invoice?
92. **Mr Pengelly:** There were three stages to check whether the work had been



- done. After every meter was installed, the company took a photograph of it and sent it to Northern Ireland Water. The meter was then added to Northern Ireland Water's billing system. The first check was to make sure that there was a post-installation photograph of every meter for which there had been an invoice.
93. Secondly, there was a check that they were all on the billing system. The third check, which was conducted after the first two had been concluded satisfactorily — this is specifically drawn out in the report — was to see whether a meter reader, who was independent of the whole process of installation and had nothing to do with the company, had physically visited the installation to take a meter reading to confirm its existence. Of the sample, the report highlights that there were, initially, 14 cases in which that was not possible. In a number of cases, the reason was that the meter had not reached the point at which it was due to be read by the independent reader. In the other eight cases, the report concluded that that needed to be followed up. That takes us beyond the quality of the investigation. Post the investigation, those eight cases were followed up and the meters were physically inspected.
94. **Mr Copeland:** And found to be there?
95. **Mr Pengelly:** And found to be there.
96. **The Chairperson:** I remind members to stick to their line of questioning. I know that some members will be covering that area later. Mr Girvan, are you finished?
97. **Mr Girvan:** I am happy enough for now. I think that Trevor is going to follow up on the issues that I raised.
98. **Mr Clarke:** Actually, I want to go back, because I still do not have clarity in my mind. We are struggling with the timing of the suspected fraud and the disciplinary procedure. I am not satisfied with what Sara said about the disciplinary procedure because, clearly, the chronology in the Audit Office report suggests that the chief executive sent an e-mail on 20 January instructing interviews under the disciplinary process to start. Are we to accept that it was not a fishing exercise on 20 January, but that it was the start of a process? Sara, are you satisfied with the report, how the Audit Office has presented it and the facts in it?
99. **Ms Venning:** I am satisfied that this is an accepted report. On that basis, we have to accept what is laid before us.
100. **Mr Clarke:** So you accept that it was not a fishing exercise? I think that the words that you used —
101. **Ms Venning:** Fact-finding.
102. **Mr Clarke:** If you accept the report, it was not fact-finding; it should have been a disciplinary process — if you accept the report, that is.
103. **Ms Venning:** We are accepting the report.
104. **Mr Clarke:** So the chief executive sent an e-mail to start a process on 20 January. Is that right?
105. **Ms Venning:** He did.
106. **Mr Clarke:** And instead of starting a process, you went fact-finding?
107. **Ms Venning:** The chief executive e-mailed on 20 January to start the disciplinary process, but he qualified his e-mails with telephone conversations with the person whom he had e-mailed, advising what he wanted, which was to find the facts. The formal hearings —
108. **Mr Clarke:** In that comment, you will accept the difficulty that we have with telephone calls. It is the same as the difficulty with starting a process with telephone calls. Let us work on the facts. We have e-mails in which the chief executive contacted someone to start a process. Anything else other than that, including telephone conversations, is hearsay. Is that fair?
109. **Ms Venning:** I can accept that.
110. **Mr Clarke:** Someone suggested that the audit team was a qualified audit team; is that correct?

111. **Ms Venning:** Yes.
112. **Mr Clarke:** And you accept the report?
113. **Ms Venning:** Yes.
114. **Mr Clarke:** Will you then accept the criticism that the audit team was not qualified in dealing with fraud?
115. **Ms Venning:** Yes.
116. **Mr Clarke:** So you will understand the scepticism because, although Richard has said that he is satisfied that fraud has not taken place, by your own admission, your internal audit team was not experienced in dealing with fraud cases.
117. **Ms Venning:** I accept that our audit team had limited experience in fraud cases. It was supplemented by a forensic team that was external to the company, which had extensive experience in fraud cases and provided the internal team with some support. I back and support Richard's comments about the belief over whether fraud had happened in that case.
118. **Mr Pengelly:** May I add, Mr Clarke, that DFP guidance, our departmental advice and the Northern Ireland Water fraud response plan recognise that there is a range of people who may be appropriate to lead fraud investigations. Sometimes, it is the head of internal audit and, sometimes, it is an external specialist. Indeed, our normal default position is to use the relevant director within the business area. The key is to supplement that person with the right skills, as happened in this case, or, in more complex or novel cases, to bring in a lead investigator who has the appropriate skills. I am not saying that, in this case, it was perfectly right, I am just highlighting the subtlety that the guidance recognises that it does not have to be a qualified fraud specialist that leads every fraud investigation.
119. **Mr McQuillan:** On that point, the recommendation in paragraph 42 states that investigations should be carried out by people who have knowledge of:
- "collecting evidence in accordance with the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989."*
120. Did the external auditors that you brought in have that experience?
121. **Ms Venning:** Yes. They were brought in to carry out the electronic data capture, and they had that experience. However, at that time, the head of internal audit was not qualified. She since has qualified, and has taken six members of staff from across NI Water and is taking them through training and getting them qualified in the gathering of evidence. However, the answer to your question is yes; they did have that knowledge.
122. **Mr McQuillan:** Things may look up in the future if those six qualify.
123. **Ms Venning:** Yes. It is a range of people from across the organisation, from internal audit, corporate governance and our accounting and legal teams.
124. **Mr Clarke:** I just want to come back on that point and follow up on your last response, Richard. I accept that internal audit is not always looking for fraud, but, looking at paragraph 43, why were the services of the PSNI not engaged, given that they would have relevant experience? Also, bearing in mind that there was a suspicion of fraud on 23 January, and given your admission that there would not have been expertise internally, why did no one go to an external organisation such as the PSNI, which does have that experience and has people trained in looking for fraud?
125. **Mr Pengelly:** Unfortunately, I can only speculate in answer to that. I suspect that, at the time, the guidance was not absolutely prescriptive about contact with the likes of the PSNI. The view was that the individuals concerned had held their hands up and said that that is the operating procedure. It was not seen as particularly complex. I think that, in hindsight, the phone call should have been made to PSNI. In conversations that I have had with Sara over the past couple of days, she has assured me that, in every case of suspected fraud

- since, contact is made with the PSNI at an early stage.
126. **Mr Clarke:** I accept what you are saying Richard, and I think that that is useful. However, for someone who is a bit cynical about how this stuff works or someone from the outside looking in, can you see that you have not invited in an organisation that has expertise, you have taken on board people allegedly putting their hands up to a degree, but that you could also read this as a bit of a cover-up within Northern Ireland Water — that it did not want to uncover the fraud?
127. **Ms Venning:** You could, but I would not accept that as being the case in any shape or form. I would suggest that the thinking in the organisation at that time was that they had uncovered an indicator of fraud but, at that time, they had no evidence of fraud. In dealings with the PSNI, it is always useful to be able to bring to them the evidence. Before they will take anything forward or offer a case number, they will seek evidence, although I assure the Committee that we are very clear on this and have engaged with the PSNI on every case of fraud, no matter how small, since this report was issued. We have very close links with the crime unit.
128. **The Chairperson:** Before I let Mr Easton in to ask a question, the Deputy Chair wants to ask a follow-up.
129. **Mr Dallat:** Just remind me, as I just skim through this, who were the external people brought in to look at this fraud.
130. **Ms Venning:** The company was Deloitte. It had been engaged by us at that time to look at another major contract.
131. **Mr Dallat:** So Deloitte was already well immersed and involved in NIW's activities?
132. **Ms Venning:** It had an assignment and was working for us at that time. We were able to go to Deloitte with this assignment, and we engaged it to take on that work.
133. **Mr Dallat:** I asked that question, Chairperson, because the issue has arisen previously. We have internal auditors and we have external auditors, and then we have auditors who investigate alleged fraud. You were using the same people who were already well immersed in NIW. They were in a position to be biased, if you like.
134. **Ms Venning:** They were engaged in a specific commission for NIW. They were neither our internal nor external auditors; they were engaged in a specific piece of forensic accountancy work for NIW at that time.
135. **Mr Dallat:** Were Deloitte the only people who were involved? Was Ernst and Young involved in anything?
136. **Ms Venning:** Initially, it was the company that provided internal audit services —
137. **Mr Dallat:** Chairperson, why do I have to drag everything out? I expected, Sara, that you would say that. Ernst and Young was involved.
138. **Ms Venning:** Ernst and Young was the company that provided NI Water's internal audit services in advance of NI Water establishing its own internal audit department.
139. **Mr Dallat:** Yes.
140. **Ms Venning:** It was not involved —
141. **Mr Dallat:** Is it not rather interesting that Ernst and Young, which runs international awards for the most successful businesspeople, has, this year, nominated Peter Dixon, whom your former chief executive appointed to head up the independent review team that sacked the four directors? I think that, from this moment on, we want to get all the details and not just have another skimming process. We want to hear exactly what was going on. This Committee's work is of no value if we are just having something that was rehearsed for two or three days presented to us. I am sorry, but that is not on.
142. **The Chairperson:** I remind the Deputy Chair that Mr Dixon has nothing to



- do with this inquiry. That is just for information.
143. **Ms Venning:** We are looking at 2010. In 2010, the internal audit function was entirely provided by NI Water by its own internal audit team. Ernst and Young had no input into the internal audit function in NI Water in 2010, when these events took place.
144. **Mr Easton:** I want to focus on the disciplinary investigation. The disciplinary letters issued to two members of staff contained an error of fact. Sara, can you tell us more about that, please?
145. **Ms Venning:** Certainly. Under the disciplinary procedure, letters needed to be framed and charges placed to the individuals concerned. Given the procurement issues that had arisen in the organisation, the head of HR considered herself conflicted in that regard and felt that she could not take any part in advising on the disciplinary process. Therefore, not having access to HR advice internally, external advice was sought. The external people were provided with the information available at the time and asked to frame charges letters. That was done, and the letters were put to the individuals. The disciplinary hearing then proceeded to hear the case, based on the charges letters that were framed.
146. **Mr Easton:** What were the errors in the letters?
147. **Ms Venning:** The letters stated that the individuals were in breach of the financial delegations because they had limited invoices to £20,000 the emphasis being on the value of £20,000 when, in fact, those individuals had authority, under financial delegations, to authorise invoices of up to £50,000.
148. **Mr Easton:** Why were the facts not checked before the letters went out?
149. **Ms Venning:** That is a very valid point. We had, I suppose, outsourced that activity to specialists, and we took the output of their work and used it. We had engaged them in a professional capacity, we had given them all of the information that was available, and we had accepted their professional output.
150. **Mr Easton:** So you are placing blame for the mistake on the outsourced work?
151. **Ms Venning:** I suppose that we have to hold our hands up and say that those letters were not sufficiently checked internally.
152. **Mr Easton:** OK, but you did it because of the outsourcing.
153. **Ms Venning:** We bought that expertise.
154. **Mr Easton:** To put my mind at ease, and so that we all know where we are coming from, can you tell me who was in the fraud team and who was in the disciplinary team? Can you break that down slowly?
155. **Ms Venning:** Certainly. The fraud investigation was carried out by the head of internal audit and supported by Liam Mulholland. Paddy Murray was involved. He is a member of the HR team. I was chairperson of the disciplinary panel for the disciplinary hearing and was accompanied by a member of the HR team.
156. **Mr Easton:** Who was that?
157. **Ms Venning:** Kathleen Simpson. To give some context, I was the chair of the disciplinary panel, but I joined NI Water in late April/early May 2010. When I was asked to be the chair, as someone who was in no way involved with any of the preceding events, I specifically asked that those charges be framed for me, having not had sufficient knowledge of the events that had taken place. I specifically asked that those charges be framed. That was done via the external advice.
158. **Mr Easton:** Why was Northern Ireland Water's policy for disciplinary processes not followed?
159. **Ms Venning:** With regard to the earlier phone calls?
160. **Mr Easton:** Yes.

161. **Ms Venning:** I can only say that, at that time, I suppose that it occurred in the interests of trying to achieve speed over substance. There was an intention to try to get to a speedy conclusion with the suspected fraud; the organisation did not want a delay. I cannot condone that. We are all very clear on the disciplinary procedure that must be followed: of the need to notify people and the need to afford people representation. That is what happened in the part of the process in which I was involved.
162. **Mr Easton:** So the people who messed up in the process, with the letters, before you came along, should have known the process for disciplinary hearings?
163. **Ms Venning:** The external advisers? They were aware of our process.
164. **Mr Easton:** And what about your staff, before you came along? Would they have known all of that; known the process?
165. **Ms Venning:** Yes.
166. **Mr Easton:** Who was in charge before you came along?
167. **Ms Venning:** My role was split between two individuals.
168. **Mr Easton:** Were they both doing the disciplinary work before you came along?
169. **Ms Venning:** Initially, the disciplinary process was headed by Liam Mulholland.
170. **Mr Easton:** Is that not a conflict of interest because he was dealing with the fraud at the same time?
171. **Mr Pengelly:** That is one of the key issues, and it goes to the points that Mr Clarke was asking about. I could take the line that the disciplinary process did not start until after the fraud investigation, because those preliminary investigations were not disciplinary investigations, and it was really July, when the letters kicked off. The fact is that, in January, the chief executive e-mailed, asking for interviews under the disciplinary procedure. To my mind, the first time you mention it, it is started. The substantive nature of the work and the early interviews that Liam Mulholland did were, realistically and pragmatically, more part of the early fraud investigation work than a disciplinary process. That is why we refer to them as preliminary inquiries and interviews.
172. It is interesting — I suspect that we may get to this later — that the terms of reference for the fraud investigation report do not refer to any interviews with the key players. That in itself would be a key failing were it not for the fact that there was a parallel process of ongoing interviews. Those were much more part of the fraud investigation than of a disciplinary process. As I said earlier, the terminology was very lax. I do not think that it was so much a conflict of interest with Liam leading those early interviews; that was done more with a fraud investigation hat on. It was really around July that the charges were framed, and you —
173. **Ms Venning:** I took over.
174. **Mr Pengelly:** — took over the panel. There was not much happening, disciplinary wise, before July.
175. **Mr Easton:** I do not accept that. We have the director of customer services, Liam Mulholland, directly involved in a disciplinary process, and you took over that and the fraud. That is a complete conflict of interest because he was doing both roles. Somebody in that senior position should know 100% how to do a disciplinary hearing, and the process. It is quite clear that he must have known about those phone calls and letters. Would he not have given —
176. **Ms Venning:** The letters were within my time. It goes back to the crux of the matter being the conversations — I accept that they can only be called hearsay — that Liam had with the former chief executive. Liam would tell us that he is very clear that he was asked to find facts.
177. **Mr Easton:** He was doing the disciplinary process. It is not about

- facts. He was doing both roles. Did he know about those two letters going out?
178. **Ms Venning:** He had no involvement in that because he had been involved in the initial investigation.
179. **Mr Easton:** Did he see those letters?
180. **Ms Venning:** No. He had no involvement in that.
181. **Mr Easton:** He did not see those letters at all?
182. **Ms Venning:** No. He had no involvement.
183. **Mr Easton:** Who saw those letters apart from you?
184. **Ms Venning:** The letters came into the organisation through the company secretary because they engaged the external advice.
185. **Mr Easton:** Who was the company secretary?
186. **Ms Venning:** The company secretary's name is Mark Ellesmere. The letters were not checked internally. We took the advice of the external advisers.
187. **Mr Easton:** Is that not gross incompetence?
188. **Ms Venning:** The HR team also saw the letters, but it did not check them.
189. **Mr Easton:** And Mark Ellesmere appointed the legal firm to advise on the disciplinary case?
190. **Ms Venning:** Yes.
191. **Mr Easton:** So really nobody in your organisation knows how to carry out a disciplinary process. Nobody seems to know how to do it properly.
192. **Ms Venning:** We do know how to carry out a disciplinary process, but I have to accept that, in this case, it was not handled well.
193. **Mr Easton:** Do you accept that the disciplinary process was extremely flawed and not carried out in line with the proper rules and regulations?
194. **Ms Venning:** Yes.
195. **Mr Easton:** Who is holding those people to account for this debacle of a disciplinary process? Has anybody been held to account for not knowing how to carry out a disciplinary process?
196. **Ms Venning:** The disciplinary process has concluded. The interviews have taken place with the individuals involved. I am comfortable that the account that was given to me through that process indicates that, in relation to the invoice-slicing or the facts that were put to those people, there was nothing further to take through that disciplinary process.
197. **Mr Easton:** You reached that decision because the letters that you sent out were flawed in the first place.
198. **Ms Venning:** I accept that the letters that were sent out in the first place were flawed. However, the delegation authority that those people had was clear to me when I spoke to them. That was subsequently picked up in the letter that I issued to them following the disciplinary proceedings, which accepted that their delegation authority was £50,000 and not £20,000.
199. **Mr Easton:** Do you not think that, because the whole process was flawed, the whole thing should have been done again properly?
200. **Ms Venning:** On the issue of the £50,000 and the £20,000 figures, the individual who spoke to the company was clear that he asked for those invoices to be limited. From the conversations that I have had with individuals since and from the way in which we have managed the metering contract since, it is clear to me that, in limiting the invoices, the intention was to limit the amount of work that needed to be checked and thereby make it easier to manage the contract.
201. I will take you back to the work that was carried out. There were large volumes of low-value transactions, and when invoices were very large, if one transaction was queried — if one meter could not be found or if one photograph was not there — the whole invoice could

- get held up, and the contractor would not get paid. Subsequently, we have made sure that we issue and call for work in smaller batches so that we can check and clear that work, and, if there is a query, we are not holding up large amounts of work and money to which people are rightfully entitled.
202. **Mr Pengelly:** There is a wider point about the disciplinary process being run again. The disciplinary process concluded, and we accept that it was flawed. The first thing to recognise is that, as an employer, NI Water owes a duty of care to the people who were subject to the disciplinary proceedings and, given that it concluded that there was a flaw in the process — you could debate the significance of the flaws for quite a while — it would have been unfair to those two individuals to rerun the process. As I said in answer to Mr Copeland's question, based on all the evidence that I have seen, I have not seen any evidence of fraud. I have seen evidence of poor practices in contract management. That was rife throughout Northern Ireland Water at the time, and this Committee has had a number of sessions on that. It was about organisational failings, not about singling out two individuals and rerunning a disciplinary process a couple of times to have a go at them. The vast majority of the recommendations from the earlier internal audit work were very much focused on contract management. They have been picked up and actioned organisationally, and that is the right way to deal with the culture of contract management throughout the organisation rather than targeting two individuals who were caught up in the process.
203. **Mr Easton:** I am not here to have a go at the two individuals. I am trying to point out to you the gross incompetence of staff in NI Water and how they handled the whole process. Not only were the two individuals, whether they were innocent or guilty, tipped off before a fraud investigation but there were numerous phone calls and messing about with letters, and so on. For such senior management, the whole process is beyond belief. I want to know why that happened. We need to get to the bottom of it because that is not acceptable, and we need to know that that has been rectified and will never happen again. It is up to you to convince me of that.
204. **Mr Pengelly:** I appreciate that, and I hope that I can go some way towards doing that. In looking forward, NIW and the Department have refreshed their guidance. Indeed, we will certainly do so again in light of the report from the Committee in due course. There were problems with the disciplinary process. If, in a hypothetical situation, we were able to airbrush the then chief executive's e-mail in January that said to conduct investigations under the disciplinary process, the work that took place would be valid as part of an early fraud investigation. There was work by internal audit, and there were preliminary interviews with the employees concerned. That led to a report that formed the basis, in and around July, of the framing of disciplinary charges. The reason we say that the disciplinary process started early was because of that e-mail, but there were no other substantive elements of a disciplinary process that started ahead of July. However, I do not want to argue that a disciplinary process did not start because the word was used, and, as I said, I absolutely take the point that it should not have started then because there was a real risk of putting individuals who would be subject to disciplinary mechanisms on guard or on alert. In this case, we need to keep reminding ourselves that the two individuals concerned identified the problem to management in the first instance. So, to the extent that they needed to be on alert, they were, and they were put on alert by their telling management about what they had done.
205. **Mr Easton:** I have one final question. Why did DRD fail to inform the Auditor General of the suspected fraud, in accordance with the Department of Finance and Personnel's guidance? Is that not a serious breach of procedure

- by DRD? Who made the decision not to report that? It is in the report.
206. **Mr Pengelly:** I will start at the back. Nobody made a decision not to inform the C&AG. The notification to the C&AG did not happen because of an administrative oversight. It was a serious lapse on our part, for which we apologise to the Committee and to the C&AG. It should have been reported the first time we knew about it, but it was purely an administrative oversight. It was not a conscious decision not to tell the C&AG.
207. **Mr Easton:** Has it happened before?
208. **Mr Pengelly:** I suspect that it may have done, but I do not know what I do not know. If I did not know about something and did not tell the C&AG, I am not aware of it.
209. **Mr Easton:** Do you not know your guidelines?
210. **Mr Pengelly:** We do. This should not have happened. It was an oversight.
211. **Mr Easton:** How many oversights were there? There were oversights in how you handled grievance procedures, and so on, and now this one. How many oversights were there in Northern Ireland Water?
212. **Mr Pengelly:** You used the word “oversight”. I think that the grievance procedure could have been handled better, but there was no oversight with that. This was a notification.
213. I want to be absolutely clear that this was important: it should have been done, and it is a matter of regret that it was not. However, the failure to notify the C&AG in no way undermined the way that we treated the issue from that point on. Notification to the C&AG just puts it on his radar. The C&AG is not part of the investigative process, and he certainly does not come along at that stage and make sure that we are doing things correctly. It is a much more reflective view, so I do not think that it undermined the process. However, it was an oversight on our part, and it should not have happened.
214. **Mr Easton:** Whose job would it have been to inform the C&AG if there had not been that oversight?
215. **Mr Pengelly:** It should have been the shareholder unit in the Department when it received notification from Northern Ireland Water about the suspected fraud. There is a standard form, and the details should have been put on that and sent to the C&AG.
216. **Mr Easton:** Did anyone discuss not informing the C&AG? Were you party to anything like that?
217. **Mr Pengelly:** The explanation that I have been given, which I fully accept, is that it was an administrative oversight.
218. **Mr Easton:** If the staff of Northern Ireland Water were politicians, they would not get elected if they kept doing what they are doing. They might need to buck their ideas up a wee bit.
219. **The Chairperson:** Thank you, Mr Easton. A number of members want to ask supplementary questions. Alex, are you finished with your line of questioning?
220. **Mr Easton:** Yes.
221. **The Chairperson:** Trevor Clarke, Paul Girvan and Adrian McQuillan want to ask supplementary questions. Please keep them brief, because I want to move on to Mr Rogers’s questions.
222. **Mr Clarke:** Thank you, Chairperson. My question is along the same lines as my colleague’s. I suppose that it is back to the idea of perception. With the catalogue of all the different things that happened, one could perceive that there may have been a different motive.
223. Sara, from the report, I am a wee bit unclear about the telephone call. I am concerned about how that happened. I accept that you said that it should not have happened in the way that it did and that it should not happen in the future. In the first telephone conversation with the individual concerned, he suggested



- that it was his line manager. What grade was that line manager at that time?
224. **Ms Venning:** The line manager is what is known in NI Water as a level 3.
225. **Mr Clarke:** Is that individual still with the organisation?
226. **Ms Venning:** Yes.
227. **Mr Clarke:** He then suggested that it was someone else. Is that person still with the organisation?
228. **Ms Venning:** No. There was an initial suggestion that the instruction came from a director. However, that was subsequently clarified in face-to-face interviews, in which the contract manager was very clear that the instruction had come from his line manager.
229. **Mr Clarke:** Sorry, from whom?
230. **Ms Venning:** His line manager.
231. **Mr Clarke:** Is that the grade 3 who is still with the organisation?
232. **Ms Venning:** Yes. However, he absolutely and categorically denied that that was ever the case. No evidence was uncovered in the electronic sweep, which was able to pick up any deleted material. There was no evidence to back that up, and the team was unable to categorically discover who gave that instruction.
233. **Mr Clarke:** Given that you have depended on other telephone conversations and verbal material, there is nothing to suggest that, in this case, given that verbal is acceptable in other cases, that it was not a verbal instruction.
234. **Ms Venning:** That is correct, and you have no means to —
235. **Mr Clarke:** So you could cast reasonable doubt on that.
236. What level is the person at now who was the level 3 manager at that time?
237. **Ms Venning:** That person is still a level 3 manager in the organisation.
238. **Mr Girvan:** I want to come back to Alex's earlier question. Given that Northern Ireland Water was seen as a Go-co, did that make a cultural change to the organisation whereby it felt that it was less in the line of scrutiny or accountability? Was there a possibility that that was the case? It appears that the company did things that do not necessarily equate with a well-run Department. It is evident that a culture may have been created in the organisation when it became a Go-co in 2007. A few years in, and things have been quite lax.
239. **Ms Venning:** I am not sure that that would necessarily be the case, in that the obligations on a company under the Companies Act are equally onerous on ensuring that money is properly accounted for and that contracts are properly let. Therefore, there is no freedom to say that a company can have a culture of not having expenditure properly approved because it is a Go-co. I accept that a number of irregularities were uncovered. From 2010, there has been an extensive programme to regularise contracts. Last year, the NI Water accounts were clean in that regard; they were unqualified, as they were the previous year. Therefore, I would not link it to the fact that the company was a Go-co. I would say that there was work to be done, but extensive work has been carried out in that regard.
240. **Mr Girvan:** I accept that there have been dramatic improvements in the accounts of the past two years with regard to their being signed off and clarified, and everything has been OK. Is that not due to the fact that, had the spotlight not be shone on certain issues, what happened would have continued, and we could be investigating much more had it not been picked up? By today, it could have been a lot worse. As I said, I appreciate that paper refuses nothing; accounts can be signed off, but that does not mean that everything is 100%. It seems to me that there was a culture whereby NI Water felt that it could do what it wanted. To allow that to happen, somebody

was giving certain people cover, which allowed them to slice invoices — or whatever way you want to put it. That culture must have been there. Maybe it did not happen with one contract only; it could have happened with several.

241. **Mr Gary Fair (Department for Regional Development):**

I will speak from the Department's point of view at the time. The governance letter that was put in place, which outlined the governance relationship between DRD and Northern Ireland Water when it was established as a Go-co in 2007, was still in place. There would have been expectations that the company was not doing what you were describing and that it was managing its affairs properly and in every way that would be appropriate.

242. **Mr Girvan:** Expectations.

243. **Mr Fair:** Yes, but the company was established at arm's length from the Department. Changes came about from January 2009 with the reclassification to a non-departmental public body rather than a public corporation, which the Go-co was when it was established. It had an immediate impact on the Department's budget and there were public expenditure (PE) implications. Further to that — it was probably when all this came to light — it was at a transitional time when the governance relationship between DRD and Northern Ireland Water was being strengthened, and we were requiring more information than would have been anticipated if charging had been introduced as planned and the company had become self-financing. So it was a transitional period from everyone's point of view. Things would have developed automatically around that time and onwards, and things such as this probably would have come to light because of the more stringent governance requirements as a result of the amount of public money that was going into the company.

244. **Mr Copeland:** Perhaps Richard or one of his colleagues could answer this question. How does invoice slicing occur? Did that happen in Northern

Ireland Water when it was realised that a specific invoice from company E exceeded the permitted payments? Was there any communication between that person and the person in company E who would have been required to rejig the invoices to suit the requirements? What is the mechanism for that?

245. **Mr Pengelly:** It goes back to the point that a lot of this emerged through oral interview as opposed to being documented. The view that was put forward from the contract manager, who did not initiate the instruction to company E to slice invoices but who inherited that position, made a lot of sense. His view was that the volume of installations, which are of fairly low value individually but were being rolled up and put on one invoice, meant that when it came into Northern Ireland Water, it was a monumental task to check each and every one. If there was one query on one small installation, it delayed the payment of a very substantial invoice, which caused cash flow difficulties for the company and, presumably, for its subcontractors.

246. The view was that each and every one of those items must be checked to a certain standard, but rather than send us an invoice for a very large amount, the company should invoice us more frequently, which means that we can do the checks in smaller batches. It means that, if there is a query, it does not delay the processing and payment. The problem is that as an indicator of fraud, looking at it from the other end of the telescope, an invoice value of £20,000 in this case needs to be checked by a certain level of employee in the company. If an invoice goes over £50,000, a more senior manager needs to check that and approve it for payment. The reason why invoice slicing is an indicator of fraud is that it can bring the level of scrutiny of invoices prior to payment down a notch, and senior managers do not see them.

247. No one has admitted to giving the instruction so we cannot know definitively, but the contract manager who was in place post-April 2009 had a

- view that, perversely, it led to a stronger control environment because it meant that more checking of individual items could be done at a quicker pace.
248. **Mr Copeland:** Did it require any actions in company E?
249. **Mr Pengelly:** Company E, again based on information from interviews, received the instruction to do it. It was not about inflating invoices; instead of sending us an invoice every fortnight, it was asked to send us an invoice every week. That was the sort of instruction that was given.
250. **Mr Copeland:** Do we know who sent the company that e-mail?
251. **Ms Venning:** We know that the contract manager gave that instruction to the company. We know that, in a meeting with the company, he asked the company to send us invoices with lower amounts of work in them and to keep them below a certain value.
252. **Mr Copeland:** Was he acting within his own employment remit in doing that?
253. **Mr Pengelly:** His story is that it was either his level 3 or his director —
254. **Mr Copeland:** I did not ask you that. I asked whether he was capable, within the terms of his employment, of taking that decision.
255. **Ms Venning:** He did not take the decision.
256. **Mr Pengelly:** He maintains that he did not take the decision and that he was instructed by his boss to pass that instruction to the company. According to the contract that was in place, the company invoices for work done.
257. **Mr Copeland:** Is it correct that this individual's computer hard drive was examined?
258. **Ms Venning:** Yes, and his boss's.
259. **Mr Copeland:** And his boss's?
260. **Ms Venning:** Yes.
261. **Mr Copeland:** And there was no evidence?
262. **Ms Venning:** There was no evidence.
263. **Mr Copeland:** Was a director involved somewhere above that?
264. **Mr Pengelly:** There was a director, but the director left the company about six months previously.
265. **Ms Venning:** In June 2009.
266. **Mr Copeland:** Did he take his hard drive with him?
267. **Ms Venning:** He had left six months previously. What usually happens is that computers are redistributed.
268. **The Chairperson:** I do not want to go over old ground, but given that the disciplinary process happened before there was an opportunity in advance of any internal fraud investigation — we talked about the lack of best practice and good governance and what should have happened — was there a concern at any time about further exposing NI Water's funds? In other words, was there a concern for the organisation's assets? If so, when did that arise?
269. **Mr Pengelly:** There was. At no point in the documentation that I worked through did I read about anyone expressing a concern about the assets or cash flow of Northern Ireland Water. The only thing identified in the initial work, and then the fraud investigation, was that there was an indicator of fraud in the invoice slicing. No evidence was uncovered at any stage of actual fraud being perpetrated on Northern Ireland Water or company E by employees or by company E. There was no evidence of fraud. All payments were traced to invoices; all invoices were traced back to agreed rates in a contract; and it was confirmed that the work on all items charged on those invoices, on a sample basis, had been done. So there was no evidence of fraud.
270. **The Chairperson:** You were satisfied at that time that the organisation's assets were —



271. **Mr Pengelly:** Yes.
272. **Mr Rogers:** Apologies for missing the start of the meeting. You said something that struck me when you talked about a well-established fraud investigation plan. Was the PSNI part of that plan?
273. **Ms Venning:** Yes. The plan stated that early involvement of the PSNI would be beneficial. That was in the policy at the time.
274. **Mr Rogers:** So it was not followed.
275. **Ms Venning:** That is correct.
276. **Mr Rogers:** What were the plan's recommendations on when you should bring in the central investigation service experts? You did not have real expertise to deal with fraud. What did your plan say about that?
277. **Ms Venning:** The plans state that a case manager is assigned when a fraud investigation is kicked off, and the case manager can decide what assistance is required. In any fraud investigation, you need to decide on the appropriate team to form around the investigation. The plan allowed for that. In this instance, the additional support that was provided came in the form of the forensic accountants who were used for the electronic work.
278. **Mr Rogers:** In retrospect, do you believe that that was sufficient?
279. **Ms Venning:** In retrospect, it is preferable if those tasked with conducting the investigation and the investigatory interviews are qualified to take them in line with the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). That is why we have taken six individuals in our company through the CIPFA qualification, which means that we have internal capacity. We engage with the PSNI at an early stage, and we also have links with the team in DARD. We work through that team to agree terms of reference, speak to them as investigations proceed and take feedback from them. I hope that that answers your question.
280. **Mr Rogers:** I have heard on a number of occasions that there was no evidence of fraud. Could that possibly be down to the fact that the investigation was not sufficiently forensic to uncover the fraud?
281. **Mr Pengelly:** I genuinely do not believe so, because fraud would be defined as a payment by NIW in excess of agreed rates or for work that was not completed. That work is financial accountancy investigation. It was undertaken by a fully qualified chartered accountant who headed the internal audit team. Forensic audit techniques are much more sophisticated techniques that are undertaken very rarely. There is, therefore, some expertise. This was fairly standard audit work that was undertaken by a professionally qualified individual, and no irregularities were found. I genuinely do not think that additional forensic work is the issue in this case. The big point from my perspective and from Sara's is this: had there been more subtleties to a case, other than this, and we had not brought in that additional resource, there could have been significant problems. However, in this case, I do not think that it led to any problems.
282. **Mr Rogers:** However, there is an acknowledgement that it was not the plan that was the problem but the implementation of the plan.
283. **Mr Pengelly:** Yes and no. We need to bear in mind that when Sara talks about the plan, it is guidance for those undertaking investigations. Guidance is only guidance: it is not a prescriptive, tick-box approach that says that in certain circumstances, you do this, because it covers a range of circumstances. The guidance states that you should consider drawing in other experts or that early engagement with the PSNI would be beneficial, but it does say that it is mandatory. The flaw was that the full thinking on whether those options should have been pursued was not taken or documented. I do not believe that the fact that those options were not pursued undermined the legitimacy of this investigation.

284. **Mr Rogers:** Why were only two hard drives to be investigated? In answer to Mr Copeland, you said that a previous director had left six months previously and you told us what happened to his hard drives. Are these hard drives stand-alone computers? Surely there must be a backup. All the systems that we use in our offices allow us some form of backup. Is there no way that you could go back into the records of the person who left six months previously?
285. **Ms Venning:** You could, and, given that the terms of reference were framed and the initial work asked for the hard drives of the two individuals to be examined, if any evidence that pointed to the director had been uncovered, the scope could have been widened. However, there was not, and it was felt that, in securing evidence, the financial system that the invoice was passed through meant that the evidence was secure. It could not have been tampered with, was held centrally and was examined. The other two individuals had contact with the company — they had a transactional interaction with company E — which is why their hard drives were selected to be isolated and forensically examined.
286. **Mr Rogers:** In the context of the wider investigation, this happened on this director's watch as well. Would it not have been advisable to examine the hard drives of other people involved?
287. **Ms Venning:** The team leading the investigation felt very clearly that nothing pointed towards the director that would have warranted that hard drive to be lifted and searched.
288. **Mr Pengelly:** Given that the team was looking at the machines of the level 3 and the contract manager, any direction from the director to either of those two individuals would have been present on the machines. They were being examined because an e-mail or an instruction goes somewhere, so it would have been within the scope. I accept your point; the terms of reference should have been more specific about looking at the directors to the furthest extent possible. I absolutely accept the assurances that I have been given by Sara and the team who were doing the work that, had any evidence emerged, it would have been pursued. However, looking at one side of the situation would have uncovered whether there had been anything in the form of a direction from the director.
289. **Mr Rogers:** When you talk about the team, are you referring to your team or the forensic experts that you brought in?
290. **Mr Pengelly:** It is the internal team led by the head of internal audit.
291. **Mr Rogers:** The internal audit team had limited expertise in forensic audits.
292. **Mr Pengelly:** Yes, that is right.
293. **Mr Rogers:** Was that a possible weakness?
294. **Mr Pengelly:** Its obvious weakness was in interrogating IT, and it secured external expert help for that. Other forensic techniques may have been useful — clearly, I am not a forensic expert — but we are not aware of any obvious gaps when the team could have utilised external skills.
295. **Mr Rogers:** Why did the investigation not cover all aspects of that suspected officer's work, his earlier place of employment and so on? Is that down to your team doing this rather than the forensic experts?
296. **Mr Pengelly:** No, it is because we were dealing with a specific issue in a well-defined area. If the initial investigation had uncovered actual fraud, we would have taken stock and looked at how we could have investigated other areas. As for investigating previous work, I do not know how you would begin to do that. The nature of the allegation did not point to anything else in his previous work. This was about the splitting of invoices for one company. They were subject to examination. Had that identified anything, the chain of evidence and indicators would have been pursued.
297. **Mr Rogers:** The man on the street would say that you did not dig deeply enough.

298. **Mr Pengelly:** That goes back to my point: the guidance says that you should consider other work and previous employment. The guidance is to guide and inform. If there was a failure in that circumstance, it was not the consideration of that point. Its legitimate elimination in the early work was not appropriately documented. The evidence when the investigation was initiated contained the phrase “look at earlier periods of employment”. Look at what? If it were a middle-aged man, I do not know how far we go back or what we look at. We need a signpost to point us where to go. The preliminary work was to see whether there was any fraud.
299. **Mr Rogers:** Is the guidance inadequate?
300. **Mr Pengelly:** The guidance is absolutely adequate. However, before we talk about arm’s-length bodies, we need to bear in mind that there are 25,000-odd employees in the Civil Service dealing with a massively complex range of different scenarios. The guidance is there to try to help us all through the process; it needs to be used intelligently. If there is a failing, it is not a failing of the guidance; it is the failing in saying that we need to think about this and document the thought process and the conclusion drawn from it.
301. **Mr Rogers:** Do DFP guidelines and NI Water’s fraud policy not require you to investigate all aspects of that particular person in employment?
302. **Mr Pengelly:** No. DFP may have a view, but my view is that they do not require it. It is a piece of guidance that it should be considered, and, where appropriate, pursued. DFP may want to clarify that.
303. **Mr Rogers:** In light of the investigation, are there any plans to revisit the guidance to tighten it?
304. **Mr Pengelly:** Our guidance and Northern Ireland Water’s guidance flows from the DFP guidance. As I said, DFP might want to — Fiona is here — clarify whether, in the light of that, it wants to revisit its guidance.
305. **Ms Fiona Hamill (Treasury Officer of Accounts):** In this instance, Mr Pengelly is absolutely right. The guidance is clear: if there are indicators, consideration should be given to investigating an employee in their previous positions. However, it is a “consideration”; it is not a requirement. It has to be a judgement case by case.
306. **Mr Rogers:** We have talked about invoice slicing as well. Are there other examples of invoice slicing in Northern Ireland Water?
307. **Ms Venning:** Not to our knowledge.
308. **Mr Kieran Donnelly (Comptroller and Auditor General):** The guiding principles on handling fraud are in figure 1 of the report. Principle 5 states:
- “All aspects of the suspected officer’s work should be investigated, not just the area where the fraud (or suspected fraud) was discovered.”*
309. That was not challenged when we were clearing the report.
310. **Mr Pengelly:** To be clear, I am not challenging it now as a guiding principle. It is not a mandatory requirement for each and every circumstance.
311. **Mr Rogers:** Should it not be?
312. **The Chairperson:** Should it be made a mandatory requirement?
313. **Mr Pengelly:** My personal view is no, but, ultimately, it is DFP’s guidance; it might want to consider that.
314. **Ms Venning:** It is included in the fraud response plan of NI Water.
315. **Mr Rogers:** This is not the first time that NI Water has been before the Public Accounts Committee, and it may not be the last. Could you be back in two years’ time with the same story again?
316. **Ms Venning:** I do not believe so.
317. **Mr Rogers:** Why?
318. **Ms Venning:** Because we have taken on board the report and the investigations. I have seen evidence of changes since

- March 2013 in investigations that have happened. However, I have to bear in mind that people run processes. The responsibility on us is to make sure that people are aware of our plans and the standards to which they should operate. We do that. We have communicated that with people. It is our responsibility to provide them with training, and we do that. I cannot give an absolute guarantee that I can control every action of every individual in an organisation. However, we do all in our power to take the recommendations from reports such as this and incorporate them into our guidance to make sure that the guidance lives in the organisation, because if people are familiar with it and live with it day and daily, when something is invoked in a crisis they are much more likely to say, "I know the plan: on day one, I must escalate this" rather than get caught up in a well-intentioned set of actions that possibly falls outside a plan.
319. **Mr Pengelly:** One small indicator, Mr Rogers, is that since the work with the Audit Office on this report, I think that I am right in saying that in every incident of suspected fraud, without exception, there has been a conversation at an early stage with the PSNI about taking forward the investigation. That is one small indicator of the change in approach.
320. **Mr Rogers:** In future, will that "should" become "must"?
321. **Ms Venning:** In every aspect of a suspected officer's work?
322. **Mr Rogers:** Yes.
323. **Ms Venning:** There has to be proportionality and judgement. It is guidance, and we have to balance risk with being thorough. I think that, as it is, the fraud plan is sufficient and allows for terms of reference to start and to widen. It certainly encourages that. A case manager is assigned to each fraud case and is responsible for interrogating, setting the scene and ensuring that adequate people are brought into the investigation and that the investigation is wide enough.
324. **Mr Rogers:** With all due respect, that sounds great in theory, but the practice has worked out to be different. You said that there was no evidence of other examples of invoice slicing in NI Water, is that right?
325. **Ms Venning:** Yes.
326. **Mr Rogers:** Has an investigation been carried out in that area in other departments?
327. **Ms Venning:** Other departments outside NI Water?
328. **Mr Rogers:** No, in NI Water. You say that this —
329. **Ms Venning:** I am not aware of any evidence. Through our annual internal audit plan, we now have contracts that we check routinely. You could say to me, "How can you know?" Through our internal audit plan, we carry out checks on some of our larger contracts and contracts of importance, and none of that work has indicated any invoice slicing. We have a routine programme whereby we look at contracts and rotate that around the variety of contracts that we have, and we have not uncovered any evidence of that.
330. **Mr Rogers:** That leads me to another point about the rigour of this. The sample of invoices was just 8% of the total, and a sample of meter installation represented 0.8% of the total number and 3% of the total value of invoice to meter. Are those not very small samples?
331. **Ms Venning:** The sample was 8%, which accounted for nearly 15% of the value of money spent under the contract, which was significant, reasonable and proportionate. For that 15% of value in all the invoices that were checked, we were able to link the work back the whole way through to the contract rates.
332. **Mr Rogers:** In your previous answer about invoice slicing, you said that you take a sample. I am concerned that if you have such a small sample in this

- case, there could possibly be other examples of invoice slicing slipping through the net.
333. **Mr Pengelly:** That is an issue when you take a sample, but we said earlier that the guidance says, “You must consider the use of appropriate experts.” That was in the context of, for example, forensic auditing techniques. The use of sampling is very basic; it is one of the first things that you learn when you start to train as an accountant or auditor. The sample size was determined by someone who was both a fully qualified chartered accountant and a qualified internal auditor, and it was her professional judgement that the sample size was appropriate. She is appropriately and professionally qualified. That is the basis upon which the sample was determined; it was not determined by people at head office plucking a number out of the air. In my experience as an auditor, many years ago, it is not out of line with any sample size that I would have used.
334. **Mr Rogers:** You emphasise the bigger percentage, but the sample of meters that was installed was 0.8% of the total.
335. **Ms Venning:** The work under that contract involved meter installation and carrying out surveys. Think about carrying out a survey. There is no physical evidence; you cannot physically verify a survey, because a survey is a piece of work that says which property is supplied from where. For the invoices in the sample that had meter installations, a number of the meter installations on each invoice, either five or three, were then selected to be checked further to verify them. We asked to see a picture of the meter as it was installed in the ground; we checked to ensure that the meter reading appeared in the billing system and that matched the photograph of the meter installed in the ground; finally, we checked to see whether we ever saw the meter-read for the meter that was photographed, subsequently in the billing system, and then verified by a meter reader. That is where the 140 meters that were selected came from. They were the installations that you could physically go and look at. You cannot physically see a survey.
336. **Mr Rogers:** Was it that eight of those 140 meters could not be located? There was no evidence of site visits to look for them.
337. **Ms Venning:** For each of those eight we saw a photograph so that we could see it in situ. The contractor said: “Here is the photograph of this meter as installed in the ground.” For each of those eight, we were further able to see that it was recorded and uploaded in the billing system. The final check was for the meter reader to read the meter, and, in those instances, they had not got to it in their reading schedule. NI Water reads meters once every six months, so the team had agreed with management that once the meters had been read, that that information would be fed back. That was the third check in a series of three. The first two checks were deemed to be sufficient to substantiate the existence of the meter.
338. **Mr Rogers:** How do you know that it was that particular meter and not some other?
339. **Ms Venning:** The meters have unique serial numbers.
340. **Mr Rogers:** OK. The team did not interview any suspects or witnesses as part of the investigation, but placed its reliance on the interviews conducted as a part of the disciplinary investigation, which had started before the fraud investigation commenced. Were no interviews of suspects carried out as a part of the fraud investigation? Is that what happened?
341. **Ms Venning:** Yes. That goes back to the blurring of the distinction between the disciplinary and the fraud investigation. The same people carried out interviews at the outset in order to establish facts, and, based on those interviews, conclusions were reached and transactional testing occurred. What we have been talking about at this point in the hearing has been the transactional



- testing that took place. Yes, you are correct.
342. **Mr Rogers:** I apologise if this question was asked before: was it done the wrong way round? Should the fraud investigation have happened first?
343. **Ms Venning:** Absolutely. The fraud investigation should have come first.
344. **Mr Clarke:** I want to ask about some matters supplementary to the questions that Sean has asked. Let us go back to the guidance. I am a bit sceptical, as usual, as to how this has been treated. Sara said that procedures would be put in place, people would be trained and they would live with it day and daily. Yet and all, the person who started the disciplinary process was a director. When you made that statement, I assumed that we were talking about middle management rather than directors. Surely your director should have been living with it day and daily — I am not talking about guidance, but disciplinary procedures. What confidence are you giving us with that bland statement that you are going to bring these people in, basically re-educate them and that they are going to live with it day and daily? Are you for one moment suggesting that they were not familiar with their procedures on a day-and-daily basis up until today?
345. **Ms Venning:** No; I am not suggesting that at all. I suppose that I have to go back to the instructions that were given to Liam and the clarification that he received from the chief executive, whereby he was to find out the facts.
346. We have taken six people from the organisation and put them through training. I have seen, at first hand, the rigour that is now put into our fraud investigations. This document has been used in the organisation, if you like, in check-list format to make sure that we are doing what is in our fraud response plan and how that meets what is in this document. I know that you need to see the evidence of that, and I suppose that the evidence will be that you do not see me here again. I see the evidence of it working in the organisation.
347. **Mr Clarke:** Paragraph 32 of the report states that company E admitted that this came from it since 2008. Sara, what is your definition of invoice slicing?
348. **Ms Venning:** Invoice slicing is limiting the value of invoices to below a certain value.
349. **Mr Clarke:** In Richard's answer to, I think, Sean, he gave two aspects of what fraud could mean. However, Richard, there was a third one that you left out. When you have an opportunity with an organisation that is in agreement with the contract manager to slice an invoice, you also have the opportunity, which was not touched on, to increase an invoice as a benefit to the person who sliced it in the first instance. Is that not a third aspect of fraud?
350. **Mr Pengelly:** I think that it is a third aspect of fraud —
351. **Mr Clarke:** You did not touch on that one.
352. **Mr Pengelly:** — but my answer was about invoice slicing. Invoice slicing is about chopping a big invoice into smaller pieces; it is not about making a small invoice bigger.
353. **Mr Clarke:** It is. The practice should never have started in the first place. Whenever you allow contractors the opportunity to slice invoices, there is also a possibility that, as an inducement to them for doing that, they could benefit on the other end of that invoice.
354. **Mr Pengelly:** There is. Absolutely. I would point —
355. **Mr Clarke:** The difficulty with the fraud investigation that we are looking at is that, given some of the people who have been involved in it, there is no way of proving categorically whether fraud took place with the invoice slicing or the meters. However, the practice makes you suspicious that fraud could take place.

356. **Mr Pengelly:** The only way to prove categorically that no fraud took place would be through a 100% check of all payments. However, a commonly applied audit technique is sampling. From the samples that were selected, there was evidence in all cases that the rate used was the appropriate rate for the contract and that the work charged for had been completed.
357. **Mr Clarke:** If you take that to its conclusion, the person who signed off on that is most likely the contract manager, who had entered into the arrangement of invoice slicing in the first place. He could also sign off on work that had not necessarily been done.
358. **Mr Pengelly:** There is separate and independent evidence of the work having been done. For the sample selected there was physical verification. We have talked at length about the installation of meters.
359. **Mr Clarke:** How was that carried out and by whom?
360. **Mr Pengelly:** In this case, it was by physical inspection by a meter reader. In eight cases, that information was not available, because the meter had not been due to be read by the time the audit investigation was done. However, it subsequently became available and was checked. The meter reader was totally separate from this line management chain and this part of the business. Is that correct?
361. **Ms Venning:** Yes; that is correct.
362. **Mr Copeland:** Returning to what Trevor said, how was that sample, which gave such a magnificent response, selected?
363. **Mr Pengelly:** It was the professional judgement of the qualified accountant who headed the audit team.
364. **Ms Venning:** She looked at the number of meters on the invoice. Depending on the value, she took a random sample — perhaps three or five — and randomly selected whether to take the first, third, fifth or seventh meter. It was a random selection based on an algorithm.
365. **The Chairperson:** I will bring in Mr Dallat in a moment. Who was responsible for designing and approving the process for making and monitoring payments to company E?
366. **Ms Venning:** That would have been the members of what was known as the customer service team at the time. When that contract was established, a manager was in place and those processes would have been set up when the contract was initially let.
367. **The Chairperson:** Would that have been a line manager?
368. **Ms Venning:** It would have been a level-3 manager, so a fairly senior individual in the organisation.
369. **The Chairperson:** Sara, in response to Mr Clarke's earlier question, you said that six individuals are being trained. Will they be trained in the expertise and knowledge in fraud investigation for NI Water? Will they be the in-house expertise?
370. **Ms Venning:** They are in-house, and they are trained not in fraud investigation in NI Water specifically but in fraud investigation in general. They will be the team that we can draw on if we need fraud investigation officers to carry out a fraud investigation. The case managers will still be able to seek external assistance should it become necessary. For example, we do not possess forensic expertise in examining hard drives and IT, so we could still go outside the company for that. However, we have trained six people in the organisation to gather evidence in accordance with the Police and Criminal Evidence Act (PACE).
371. **The Chairperson:** Has NI Water trained them?
372. **Ms Venning:** They have been on a Chartered Institute of Public Finance and Accountancy (CIPFA) course. We released them to train.
373. **Mr Pengelly:** The training is provided by the Chartered Institute of Public Finance and Accountancy, a respected independent body. That is in NI Water. I

- think that we have trained eight people in the Department's internal audit unit, but two have subsequently moved on to other posts outside the Department. Therefore, since the time of the report we have trained six people and are building up a cadre of people who understand the legal requirements of a fraud investigation.
374. **Mr Dallat:** I was just checking up. Richard, you were before the Public Accounts Committee in July 2010. Is that right?
375. **Mr Pengelly:** Can you remember the title of the report? Off the top of my head, I cannot.
376. **Mr Dallat:** Sorry, when I said "you", I meant the Department.
377. **Mr Pengelly:** Yes, we were here to discuss the governance issues, Mr Dallat.
378. **Mr Dallat:** Your Department was here to answer for its stewardship of NI Water. It was not you personally. Who was it?
379. **Mr Pengelly:** In July 2010? That would have been Mr Priestley.
380. **Mr Dallat:** Paul Priestley?
381. **Mr Pengelly:** Yes.
382. **Mr Dallat:** Your former chief executive was then exposed as a person who was at least economical with the truth. What happened between July 2010 and January 2011 when he resigned and headed off with a bag of money under his arm? What was your Department doing?
383. **Mr Pengelly:** I am not sure —
384. **Mr Dallat:** How did you try to control the man?
385. **Mr Pengelly:** I am sorry, Mr Dallat, but I cannot be particularly helpful with this, as I was not in the Department at the time. In preparation for today, I focused on the report that is before the Committee.
386. **Mr Dallat:** Perhaps we need those who came before the Committee. There is a serious overlap between that.
387. Paragraph 11 rightly raises concerns about the role of Mr MacKenzie and the audit committee and how it exercised its oversight. Was an audit committee in place at NIW at the time?
388. **Mr Pengelly:** Yes, there would have been.
389. **Ms Venning:** Yes.
390. **Mr Dallat:** Will you please tell us who its chair was?
391. **Mr Fair:** Don Price.
392. **Mr Dallat:** Does that name mean anything?
393. **Mr Fair:** He was a non-executive director at the time.
394. **Mr Dallat:** Was he the non-executive director who did not get sacked?
395. **Mr Fair:** Yes, that is correct. He was not removed by the Minister.
396. **Mr Dallat:** Enough said about that, I think. He signed some kind of document that the other four who were sacked refused to sign to give obedience to Mr Laurence MacKenzie, who got NIW into all the trouble. What was your Department doing about that? Was this a credible person to be the chairperson of an audit committee?
397. **The Chairperson:** Sorry, Deputy Chairperson; that relates to the 2010 inquiry and not this inquiry.
398. **Mr Dallat:** I am talking about paragraph 11 of this report. I may have been too clever by half by raising it. If it is uncomfortable for the Department, we will go back, but I assure you that there will be another opportunity.
399. Company E received £1.4 million in survey work over and above the original contract. Who in NIW was involved in that decision?
400. **Mr Pengelly:** Would the extension have been agreed at director level?



401. **Ms Venning:** Yes. At that time, the extension was signed off in the organisation by the procurement team.
402. **Mr Dallat:** I asked who was responsible for it. Is that a reasonable question?
403. **The Chairperson:** Yes.
404. **Mr Dallat:** Can we hear who was responsible for that? I will tell you why. Since day one, the Assembly has put a lot of emphasis on procurement and the opportunities for small and medium-sized businesses to get government contracts from the work of the Assembly. Company E got £1.4 million from contracts that it did not have to tender for, and we know why: it was slicing invoices. That has now been dressed up as fraud, and we know fine well that it was never fraud. It was practice because you could not be bothered drawing up new contracts. Who was responsible for that £1.4 million?
405. **Mr Pengelly:** Chair, I do not mean to be unhelpful, but our preparation work for today has focused on the report on the investigation of a potential fraud. I accept absolutely that the matters about the award and the erroneous extension of contracts are legitimate questions; unfortunately, however, that was the subject of a previous hearing and was examined. If the Committee wants to put further questions to us, I would need time to prepare.
406. **The Chairperson:** Yes, Mr Pengelly, perhaps put that in writing.
407. **Mr Pengelly:** Yes, certainly.
408. **Mr Dallat:** Chairperson, do I have to scrap that one as well? I have several more here.
409. Company E charged NIW £111,000 for 12,000 unsuccessful attempts to install meters at new properties. That was a 67% error. Who was the contractor exploiting the lack of controls in that instance?
410. **Ms Venning:** The information that was given to the contractor and how they were directed to do their work was flawed to the extent that when they got to sites that were not ready for metering, they had contractual arrangements in place that they could charge for an abortive visit. There were a number of procedural issues with how the work was being issued at that time that resulted in a high level of abortive visits. That was picked up, recognised and dealt with at the time. However, it is absolutely recognised that that is an horrendously high level of abortive visits.
411. **Mr Dallat:** I still have not heard who the contractors were.
412. **Ms Venning:** The name of company E is Enterprise.
413. **Mr Dallat:** Paragraph 49 lists what internal audit calls “significant control weaknesses” that, together, prevented proper monitoring of the contract with company E. Was the contract set up intentionally so that no one could check that the correct payments were being made?
414. **Ms Venning:** No, I do not believe that.
415. **Mr Dallat:** That is one answer that I can understand. In light of those weaknesses, why was the scope of the investigation not broadened and more time allocated to complete that?
416. **Ms Venning:** The weaknesses were highlighted, recognised and passed to management for resolution. In other words, the new contract that was put in place to regularise the expenditure took on board all the weaknesses that were inherent in the old contract and addressed them.
417. **Mr Pengelly:** There is a point of clarification about paragraph 49. It is talking about the difficulty of reconciling the totality of charges against the totality of work done in one reconciliation, which is a different issue from an invoice-by-invoice case and it being verified that the work that underpinned the raising of the invoice had been conducted satisfactorily.
418. **Mr Dallat:** Chairperson, without wanting to sound a wee bit flippant, you could put this report in the Linen Hall Library,

- it is so dated. If I have made some mistakes in confusing old with new, you will understand why. Why was there a hold-up in signing off the Audit Office's report, and why is the Public Accounts Committee only now discussing material that happened then?
419. **Mr Pengelly:** I am not aware of any delay in signing off on the report.
420. **The Chairperson:** This is a relatively recent report.
421. **Mr Dallat:** It certainly relates to stuff back in 2009.
422. **The Committee Clerk:** Some of these things happened at the same time as the events that the Committee inquired into in 2010, which you were here for, Deputy Chairperson.
423. **Mr Dallat:** I suggest that some effort is made to make sure that these reports are more up to date and more relevant to the present time, rather than conducting history lessons.
424. I have a question for Ms Hamill. Paragraph 45 states that DFP was considering setting up a centralised public sector investigation service; that was in March this year. Did the Department proceed with that?
425. **Ms Hamill:** DFP was considering, in relation to the core Departments, developing a centralised internal audit service, which would have brought the fraud services for central Departments together. We made some recommendations to the permanent secretaries group, but the permanent secretaries were of the view that they wished to continue with the governance structures around fraud and internal audit that they have currently. However, I re-emphasise that it was not in relation to a public sector fraud investigation service; it was in relation to internal audit services for central government Departments. It would not have created a fraud service that would, in any way, be intended to have —
426. **Mr Dallat:** So, whatever it was, it is not going to happen anyway.
427. **Ms Hamill:** No.
428. **Mr Dallat:** Wonderful. One of your recommendations is to establish a Northern Ireland public sector fraud investigation service. That seems a plausible plan which, apparently, has the eye of DFP. Would it not be highly desirable that you put your house in order, remove the opportunities for fraud and make people responsible for ensuring that there is zero tolerance towards fraud?
429. **Mr Pengelly:** As an organisation, we have a zero tolerance to fraud. That is prevalent in DFP's guidance, our guidance and the guidance at each organisational level. We believe that there is zero tolerance, and we actively promote that. We point our staff towards the relevant guidance, and we do everything in our power to encourage that culture.
430. **Mr Dallat:** Are you of the opinion that the current fraud legislation is adequate?
431. **Mr Pengelly:** I would not be an expert on the adequacies of legislation.
432. **Mr Dallat:** Maybe I will address this question to myself as well: is it not time that we were in the real world?
433. **Mr Pengelly:** I am not sure that I follow your question.
434. **Mr Dallat:** OK. I am just suggesting that the public sector should follow pace with what happens in the real world outside and not exist in a bubble.
435. **Mr Pengelly:** My understanding was that fraud legislation applied to fraud. It does not differentiate between fraud in the public sector and fraud in the private sector.
436. **Mr Dallat:** Chairperson, I have nothing else.
437. **The Chairperson:** There is no mention of legislation in the inquiry, and that is probably the difficulty.
438. **Mr Clarke:** I have not covered this part of the report, because I knew that

somebody else was supposed to be looking after it. However, to go back to your response, Sara, with regard to the sampling, the report states:

*“although eight of the sample of 140 meters could not be located ... no site visits were undertaken;”*

439. You were trying to build me up with some confidence that all that work would be done and that you could check that we were getting value for money. According to the report, some of that work was not carried out or could not be carried out.
440. **Mr Pengelly:** I am familiar with that, because I had a similar concern. The report is on the conduct of the investigation, as opposed to what underpins it. With regard to the investigation, that is a very valid criticism.
441. **Mr Clarke:** There is more than that, Richard. It is clear. The other thing that is clear in the report is the fact that it was not possible to reconcile invoices because centralised records were not maintained. We cannot blame the contractor; we can blame only Northern Ireland Water for that. We have here a case of suspected fraud where invoice-slicing has taken place, but the record-keeping in NI Water was, obviously, substandard as well. I am struggling to find out what has been working properly within guidance rules or anything else, Sara, with regard to NI Water. Can you answer as to what you have done with regard to invoicing since you came into position?
442. **Ms Venning:** In this kind of work, the controls in place now are such that we would be able to source the whole way back to the work instruction. Work instructions are issued to the contractor in small, manageable batches and further work is not issued to him until he has satisfied us that he has completed the batch that we have issued, so we have —
443. **Mr Clarke:** Why was it not done then?
444. **Ms Venning:** A process such as this was not in place then. This was at the start of widespread, wholesale meter installation across Northern Ireland, and I think that the people involved in it learned from the process.
445. **Mr Clarke:** Do you think that it is good accounting of public money that the centralising of invoices has not been kept?
446. **Ms Venning:** The checking that was done has verified that the question of value regarding public money was answered. The work was carried out under competitively tendered rates —
447. **Mr Clarke:** No, sorry; where you have paid a company or companies, there is no record of the invoice. The centralisation of the records were not maintained, so how can you verify that something is giving you value for money if you do not maintain invoices to prove that?
448. **Ms Venning:** The invoices are held. The references to central maintenance of records was in relation to how the work instruction was issued, so the work instruction —
449. **Mr Clarke:** Paragraph 49 of the report states:
- “it was not possible to reconcile invoices to instructions”.*
450. **Ms Venning:** Yes, to instructions. That is because centralised records of instructions were not maintained. Invoices are held and they are all maintained and available centrally.
451. **Mr Clarke:** In relation to company E, and I am sure that other contractors work with you, do they all enjoy the same privilege whereby, if they turn up, they get paid for not carrying out the work?
452. **Ms Venning:** In the contract, if we instruct —
453. **Mr Clarke:** The question about all the other companies that operate with NI Water is whether they enjoy the same privilege as NI Water, whereby, if they turn up to carry out work and the works

- are not ready, are they paid a fee? A yes or no will be OK.
454. **Ms Venning:** If I can clarify for you, if I instruct a contractor to go to a site to fit a meter, if I give him a direct instruction to go to a site and fit a meter and he organises a man and a van and goes to that site and the site is not ready, he is entitled to claim an aborted visit fee. If I have instructed him to go there —
455. **Mr Clarke:** I did not actually ask about that; I am sure that you have contractors who do more than install meters. I am asking a specific question about any kind of work for which your company allocates a job to a particular firm. If they turn up to do their job and the site is not ready, do they get a fee?
456. **Ms Venning:** All contracts will be different and I cannot speak for every single contractor we have, so —
457. **Mr Clarke:** So, this is a privilege for company E.
458. **Ms Venning:** In general, the contracts are set up in a way whereby the contractor is paid for the work that they do. We issue them with a work instruction and ask them to do a job of work. In general, that is what we track back to when we are going to authorise their invoice. In this specific instance, for a meter installation, there is an allowance in that contract whereby if we have instructed those contractors to go and fit a meter and the site is not ready, an aborted visit allowance is paid.
459. **Mr Clarke:** For this contract, then, who instructed company E to carry out the installation of meters?
460. **Ms Venning:** Company E at that time was instructed by what was our outsourced partner. The instructions to company E came from a variety of sources, which comes back to the difficulty around the reconciliation of work instructions. For new connections, that instruction could have come from what was then known as the Crystal Alliance, the company that handled customer contacts. It was instructing the company to go and fit meters. Also, our own NI Water internal team was issuing instructions to go and do work under this contract. Under the current process, the work instruction —
461. **Mr Clarke:** Sorry, we will stick with the previous process. Do you think it is reasonable that 12,000 instructions for the installation of meters were not carried out?
462. **Ms Venning:** No, I think it absolutely was not reasonable.
463. **Mr Clarke:** How did that happen?
464. **Ms Venning:** There were poor processes whereby contractors were being sent to sites that were not ready, or where address data was insufficient and they could not find where they were to go and fit the meter. There were also instances in which circumstances were beyond our control; where an installation had been requested, perhaps for a large housing development, but that by the time it had gone through our internal processes, and the guys went out to the site, it had been closed and the contractor had disappeared because of the economic climate. So, a combination of factors contributed to the number. However, the number is much too large.
465. **Mr Clarke:** Let me give you an example of the opposite side of this aspect. In my constituency, a community facility received no water bill for five years and then received a disconnection notice. That was because your organisation could not, or did not, follow-up when mail was returned to it. Here you have company E, with 12,000 applications to fit meters, for which it was paid; whereas, we have a hall for community use which received five years worth of bills all at once and then NI Water disconnects it. Is that parity in the conduct of business?
466. **Ms Venning:** No. There are certainly processes in place to deal with circumstances such as that, where a large bill is issued, and there are facilities to put in place a repayment plan for customers. I am happy to take away that individual example and look at it. However, we have processes for

- dealing with situations where a large bill is issued in order to help the customer through that.
467. **Mr Clarke:** I know that I digress slightly, but in this instance no such facility was offered. The water supply to the community facility was cut off in summer of this year. There was no postal address for the facility, but NI Water went to the organisation that governed the facility and told it that money was due, but no effort was made to go to the facility until five years had elapsed, and then NI Water decided just to send out engineers to turn the water off. Here we have an organisation suspected of fraud which is paid for 12,000 meters that it did not fit. I definitely think that there is a problem of parity in how you treat people.
468. **Ms Venning:** We have processes in place, and I apologise if they have fallen down. I am happy to contact you outside the Committee to discuss the details because I would like to feed the information back into our organisation. We do not want people to be hit with a large bill and then a disconnection. We can work with customers in order to put in place repayment arrangements and we have done so on a number of occasions.
469. I accept that the number of aborted visits is very high. I must also accept that we have a duty of care to the people we employ and engage. If we give a mis-instruction and they allocate a man, a van and time in going to a site, that has a cost and we should bear the cost. The number of those is far too high.
470. **The Chairperson:** Michael, you had a question. Do you want to ask it now before I bring in Mr McKay?
471. **Mr Copeland:** I have a number of questions to ask, but I can ask them at my allotted point in proceedings.
472. **Mr McKay:** Gary, when did you become aware of the suspected fraud?
473. **Mr Fair:** I became aware of the issue during the week of 18 January. As has already been mentioned, emails, written correspondence and a lot of telephone conversations were taking place, as you will understand, given the nature of the events of that week.
474. **Mr McKay:** When did you contact the C&AG in regard to it?
475. **Mr Fair:** The contact with the C&AG is normally handled by our finance division. We acknowledged that that process failed and held up our hands. We have apologised for that.
476. **Mr McKay:** So, you passed the information to the finance division, which was to pass it to the C&AG. Is that right?
477. **Mr Fair:** The communication comes from the company, usually directly to the finance division. However, the process was not followed accurately in that case.
478. **Mr McKay:** So it was nothing to do with you? It was just DRD and the finance division?
479. **Mr Fair:** At the time, I and a senior finance director were being kept informed of what was happening. The wider report and contract approvals had been referred to the Department that week as well. We were kept informed of events.
480. **Mr McKay:** Were you aware, or should you have been aware, that it should have been passed on to the C&AG? You were in contact with the finance director.
481. **Mr Fair:** I was aware that that was the process. I hold up my hands, for any involvement in my part, that it was missed. It was in the context of an awful lot that was going on at that particular period. However, that does not excuse failure to follow the process.
482. **Mr McKay:** What was going on during that time period?
483. **Mr Fair:** It was the start of that week — 18 January — that Laurence MacKenzie forwarded the draft internal audit contract's approval report to us. In that context, the invoice-slicing situation was drawn to the Department's attention.



484. **Mr McKay:** Richard helpfully pointed out that the shareholder unit was represented in agreeing flawed terms of reference, including the conflict of interest and the failure to communicate the suspected fraud to the C&AG. Will you tell us more about your role in agreeing those terms of reference?
485. **Mr Fair:** The terms of reference were shared with the Department and me. I took the view at the time that they seemed broadly reasonable for kicking off the process. It was up to the company and the chief executive of the company at the time to take that forward.
486. **Mr McKay:** And you had no concerns about the terms of reference as you saw them?
487. **Mr Fair:** I am not necessarily saying that they were perfect, but, at the time, they seemed reasonable to me in order to let an investigation take place as soon as possible.
488. **Mr McKay:** Did you have any training in fraud investigations?
489. **Mr Fair:** No.
490. **Mr McKay:** What was your role as one of the officials who agreed the terms of reference?
491. **Mr Fair:** My role at the time was to give a view. It was not necessarily an approval role. Given the nature of all that was going on at the time, the company took some security in getting agreement from other stakeholders.
492. **Mr McKay:** You had no concerns about agreeing the terms of reference at that time?
493. **Mr Fair:** Not at the time.
494. **Mr McKay:** Looking back now, what concerns would you have about the terms of reference, or what is your view of them?
495. **Mr Fair:** With the benefit of hindsight, if terms of reference were being shared with me again, I would share them with others in the Department who perhaps have more expertise in that area.
496. **Mr McKay:** Were you concerned that others with more expertise were not involved in the process at that time?
497. **Mr Fair:** I certainly had assurances from the accounting officer in Northern Ireland Water that the head of internal audit had the appropriate experience, albeit that she was not trained in the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) provisions. I would have taken assurance from that. It was ultimately the responsibility of the company to take forward the investigation. It was not a departmental-led investigation.
498. **Mr McKay:** Did you have any concerns at that time? A lot of this seems to come from the former chief executive, his actions, and his disregard of certain procedures. Were you alarmed at all during that period by any of his actions?
499. **Mr Fair:** Not alarmed. The primary concern from my and the Department's point of view was to be kept informed of what was happening. The chief executive brought things to light at an earlier stage about contract approvals. He initiated the head of internal audit's taking forward the investigations. I think that there was a sense in the Department that we wanted to be supportive of what the company's accounting officer was seeking to do.
500. **Mr McKay:** When the terms of reference were being drawn up, was there a series of meetings that led to that, or what was the process?
501. **Mr Fair:** There were not meetings; not that I was involved in. There would have been meetings internal to Northern Ireland Water because this was a Northern Ireland Water-led investigation. I was being kept informed and was asked for a view on the terms of reference.
502. **Mr McKay:** By e-mail?
503. **Mr Fair:** Yes.

504. **Mr McKay:** Were you aware of any other views through an e-mail loop or something to that effect?
505. **Mr Fair:** Concerns about the terms of reference?
506. **Mr McKay:** Yes.
507. **Mr Fair:** No.
508. **Mr McKay:** Were you aware of any independent advice being sought about that?
509. **Mr Fair:** Again, do you mean to the terms of reference?
510. **Mr McKay:** Yes.
511. **Mr Fair:** I think back to what Richard said earlier: the head of internal audit was a professionally qualified accountant. We took assurance from the accounting officer in Northern Ireland Water that she had sufficient expertise to take that forward.
512. **Mr McKay:** Sara, you were just new to the company at that stage.
513. **Ms Venning:** I was not in the company at that stage.
514. **Mr McKay:** When did you join?
515. **Ms Venning:** I joined the company in April 2010.
516. **Mr McKay:** On what date did you become involved in the process?
517. **Ms Venning:** July 2010.
518. **Mr McKay:** At that time, were you aware of any concerns about the process?
519. **Ms Venning:** No, not at that time.
520. **Mr McKay:** When did you first have concerns about the process? Or, did you have any after that point?
521. **Ms Venning:** I think that it was when the internal audit work was being done on how the investigation was conducted. It asked questions of us, and that brought this to light. When I was asked to carry out a disciplinary investigation, my concerns were such that I asked for the charges to be framed, and I took the disciplinary from that point forward. We took the disciplinary from that point and advised, in line with the disciplinary process, but I did not revisit what had gone before.
522. **Mr McKay:** Richard, why, in your view, did the senior management team and the head of internal audit not recognise the dangers and advise against the approach of the chief executive?
523. **Mr Pengelly:** Very little of this is documented, and we talked earlier about the difficulty in trying to subsequently interpret oral evidence. Subsequent to the chief executive's direction for the interview under the disciplinary process, my sense was that it was challenged sufficiently, because the formal disciplinary process did not reignite until July. The initial interviews were much more part of the fraud investigation process, as they should have been, but they should have been formally brought within that. Unfortunately, I can only speculate, but it suggests to me that there was sufficient push-back from the senior management team to try to take this forward in line with normal policy.
524. **Ms Venning:** I think that it was the senior management team that would have brought to the chief executive's attention the need to inform the head of corporate governance and bring this within a fraud response plan.
525. **Mr McKay:** Certainly, there is a significant corporate failing throughout all of this, but, in your view, Richard, who is the most culpable, in respect of the timeline that we have in front of us?
526. **Mr Pengelly:** I am not sure that I would point to any individual as being culpable. As I said earlier, I am not seeking to make excuses. It was a very difficult time for the company. As Gary mentioned, the other contract approval emerged in the week commencing 18 January. That was a much more substantial piece of work, so, clearly, the chief executive, the senior management team and the head of internal audit were very much focused on that. If anything, I would characterise this as a desire for

- speed rather than complete quality, and there was a compromise in quality.
527. **Mr McKay:** We keep hearing the excuse that things were quite busy at that time and that there were a lot of other pressures, etc, but, at the end of the day, the senior management team and the chief executive of the organisation had responsibility to ensure that things did not get too much for the senior team or the organisation. Somebody, somewhere, has to be culpable for this.
528. **Mr Pengelly:** Before I answer that, my question to myself is this: what exactly are we saying they are culpable for? A slightly flawed process? I do not think that this undermines —
529. **Mr McKay:** Do you think that this is only slightly flawed?
530. **Mr Pengelly:** I think that this is a flawed process; I do not think it is a flawed outcome.
531. **Mr McKay:** You said “slightly flawed”.
532. **Mr Pengelly:** It was a slightly flawed process, but it was headed by a professionally qualified accountant who unearthed no evidence of any fraud.
533. **Mr McKay:** Do you accept the seriousness of the process?
534. **Mr Pengelly:** I think that the process showed that it was treated seriously. It was not treated in perfect alignment with the guidance. So, I think it was a slightly flawed process; I do not think that it undermined the conclusions reached.
535. **Mr McKay:** On page 20 of the report, it is stated that:
- “The suspected fraud was reported by NI Water to the Department’s Shareholder Unit by mid-January. The Department failed to inform the C&AG of the suspected fraud in accordance with DFP guidance.”*
536. How seriously do you take that guidance?
537. **Mr Pengelly:** I think that it is serious. It is something that should happen without exception. I do not think that it is a disciplinary offence.
538. **Mr McKay:** It was a significant enough failure.
539. **Mr Pengelly:** It is a failure, but I think we need to be clear that the failure was a failure to notify the C&AG. It is not a failure that in any way goes to the quality of the fraud investigation, because the C&AG has no role in the fraud investigation.
540. **Mr McKay:** It is still a significant failure.
541. **Mr Pengelly:** It is absolutely a significant failure.
542. **Mr McQuillan:** I have very few questions at this stage, but a couple of things strike me. There have been two massive blunders in this whole thing. The first one was that the DRD failed to inform the C&AG of the fraud to start with. The second one was that they failed to enact the fraud response plan. Sara, you said that you saw a difference since March 2013, and you said that investigations have taken place since that. Can you tell us how many investigations have taken place since the report has been produced and who investigated them?
543. **Ms Venning:** I can, but I cannot tell you off the top of my head. I can find that information out for you.
544. **Mr McQuillan:** Can you forward that information to us?
545. **Ms Venning:** Yes.
546. **Mr McQuillan:** The shareholder unit is getting off very lightly. I think that you should have had a much more hands-on approach when this was alerted. Alarm bells should have been ringing throughout the whole process to ensure that everything was followed by the book. I do not think that you did that, and I think that you are getting off very lightly in this whole report. NI Water is taking the brunt of it, but I think that you are as much to blame because you did not take a hands-on approach on the whole thing.
547. **Mr Fair:** I will hold my hands up in terms of the process point, and I acknowledge that. My point is that I feel that it is a reflection of the close governance



- relationship between DRD and Northern Ireland Water that all the issues were brought to light because of the regular meetings that we had with the chief executive. They possibly would not have come to light if it had not been for that. I am not making excuses for the failure in the process — it was a significant point — but that particular week we were dealing with an awful lot, and a lot of telephone conversations took place as well. Sometimes, it is just difficult, and, again, I am not making excuses, but when there is a lot happening at the one time, some things can be missed, and I hold my hands up for that, but there was a close working relationship and governance relationship there, which has since been strengthened.
548. **Mr Pengelly:** It is worthwhile clarifying, because this goes on to your next question. We need to bear in mind that Northern Ireland Water was established as a Go-co in April 2007. When the issue arose, the relationship was defined in a governance letter between the Department and Northern Ireland Water. The position now is that we have a management statement and financial memorandum, which is a much more comprehensive document. That is as a consequence of the Office for National Statistics deciding that because water charges have not been introduced, Northern Ireland Water is much closer to Government, but at the time of the incident, the governance letter specifically says that things like Government Accounting Northern Ireland, which applies to each of us, specifically does not apply to Northern Ireland Water. It was a completely different relationship. There was no obligation whatsoever on Northern Ireland Water to seek departmental approval for the terms of reference. So, the relationship, as defined by the governance letter —
549. **Mr McQuillan:** There was no obligation, but it would have been good practice for them to do so.
550. **Mr Pengelly:** But, if there is no obligation —
551. **Mr McQuillan:** Still, if you want to cover your back, you cover all the bases.
552. **Mr Pengelly:** That is exactly right. That is why the relationship that Gary had fostered meant that the terms of reference were shared with the Department and the Department looked at them. I agree with Gary. Looking back at them, I will not stand over them and say that they were perfect, but were they fit for purpose in terms of the investigation that needed to happen in the coming days? I think that they were.
553. **I think that your next question is this:** where are we now? There is a much more substantial document in place, which more clearly defines the relationships and the times when the Department needs to be involved. In my tenure in the post, I have had three substantial governance stocktakes with the chief executive and non-executive members of the Northern Ireland Water board, looking through governance issues and issues such as the use of single-tender action in respect of contract awards and reporting of fraud. So, I have come into an organisation that I feel is well managed. It has its finger on the governance issues, and there is a very good and open relationship. There is no sense whatsoever that any issue that the Department needs to know about is not brought to our attention immediately. So, we have moved way beyond the position in 2010.
554. **Mr McQuillan:** That is reassuring. Funnily enough, I get that feeling myself. Since the beginning of this year, things have moved on a bit, and I know that it has been alluded to about going back into history, but we do not want to do that.
555. Just one more thing, Sara, in answer to Sean, you said that the fraud response plan was enacted, but in paragraph 43 of the report it states that the fraud response plan stated:
- “consultation with the PSNI at an early stage is beneficial in enabling them to examine the evidence available at the time.”*

556. That did not happen at the time. It did not happen at the start, so the plan was not enacted at all.
557. **Ms Venning:** You could say that the answer is yes and no. The plan was enacted but that piece of advice in the plan did not happen. I accept that it did not happen. The plan was enacted on 27 January when the head of corporate governance became aware of what has happened, and, in line with the plan, he initiated the initial confidential inquiry form and informed the Department. That is the part of the plan —
558. **Mr McQuillan:** It was a very important piece of the plan because it was to bring in the PSNI to investigate, and that did not happen.
559. **Ms Venning:** Yes; we accept that. Again, I point to what we have done since we received this report. You have asked for that evidence and you will see it.
560. **Mr Copeland:** I will begin with an observation related to something that John Dallat, the Deputy Chair, said earlier. In some respects, I share his view that we are, perhaps, talking to the wrong people. You are giving us, as you must, a historical interpretation of the facts, as opposed to those who were there at the time who could give us their recollections of the facts. That is neither here nor there.
561. Before I come to my two main questions, my understanding is that this was a generic contract. What does “generic” mean in this context? Was the contract specifically designed to purchase specific types of goods and services over a specific time frame? Were other types of contract available at the time when this generic contract was offered? Was it unusual? Should another type of contract have been offered, or was the generic contract the appropriate and normal way of doing things?
562. **Ms Venning:** The contract was put in place for the installation of water meters. The generic element of the contract also allowed for other associated activities. That is where the survey work came into play. Although the installation of the meters had a defined price for that specific work activity, the survey work happened after the contract was awarded. That was identified as needing to be carried out after the contract was awarded, but it was included within the scope of the contract.
563. We have learned from that when drawing up subsequent contracts. When you undertake a programme such as this, you think that, because you are going to install water meters, you need a price for that work. As you go through the process, you learn that the first thing you need to do is to carry out a survey to ensure that, where the meter is installed, it supplies only a single property. Subsequent contracts have reflected that learning. We do that with all contracts: we learn through the work activity whether we need to refine the prices for specific work items that we ask for. There were specifics in and around fitting meters, but the carrying out of surveys was additional work.
564. **Mr Copeland:** Was the same degree of oversight that was applied at the time when the contract was issued for the types of work covered in the contract applied to the work that was subsequently added to it? Were the mechanisms the same?
565. **Ms Venning:** A team was in place that oversaw the work that was instructed through that contract. They had — I have seen them — some very rigorous checklists so that, when the contractor came back detailing the work that he had done, they carried out a series of checks to ensure that the invoice could be paid. That is part of the reason why we go back to the limiting of the invoices. Because of those rigorous checks, in some instances, large invoices were being held up while work on points of verification was carried out. To answer your question, there were a number of points of verification through this contract.
566. **Mr Copeland:** That is not what I am driving at; it is how a contract was arrived at that said that X, Y and Z will

- be done and A, B and C will be paid for doing it. I am talking about the period when the bits that were not covered in the original contract were added to the work programme. Was there the same degree of scrutiny to ensure that the rates set for that work were commensurate with what one would expect? Were they subject to the same degree of oversight and control?
567. **Ms Venning:** In any contract that sets a given rate, and you then discover that additional work has to be done, the management practice is to relate any additional costs back to what was in the original contract. In other words, we ask whether the rate for the additional work is commensurate with the rates that were originally submitted in order to deliver value for money.
568. **Mr Copeland:** Even though the task might be different?
569. **Ms Venning:** You use the same basic principles on which the first set of costs were based to derive any additional costs so that you can demonstrate that you are achieving the same quantum of value.
570. **Mr Copeland:** Richard, I think that we accept that the control weaknesses that were identified during the internal audit and the investigation could be seen, with a fair degree of certainty, as indicators of fraud. If that is the case, why were they not treated as such and investigated more deeply?
571. **Mr Pengelly:** They were. The initial work, which started in early December 2009, highlighted invoice-slicing, which is an indicator of fraud. That is what led to the initial confidential inquiry and the fraud investigation. The fraud investigation concluded that there was no actual fraud and made a series of recommendations. The concern, from my perspective, is that it pointed to some significant shortcomings in contract management practice, as opposed to a fraud. The balance of the recommendations was heavily skewed towards contract management issues. That is my sense of where the real issue lay, but no evidence at all of fraud was uncovered. There is a separate debate about whether the sample size was sufficient to come to the conclusion that there was no evidence of fraud. My sense, this far out, is to lay that on the professional judgement of the qualified accountant who led the team, and her opinion was that it was a sufficient sample size. It is difficult to second-guess that from my perspective.
572. **Mr Copeland:** Paragraph 52 indicates that the audit committee did not follow up on the serious control weaknesses that we have discussed. Why?
573. **Mr Pengelly:** I do not know why. Perhaps Sara can speak about the detail. The audit committee did not robustly and systematically follow up on these recommendations. It did not give the suite of recommendations an owner and a target date for implementation. However, the recommendations have all been actioned and implemented, so I take comfort from that. There are new mechanisms in place so that, in future, the audit committee will take ownership of the recommendations from such investigations.
574. **Ms Venning:** At the time, the remit of the audit committee was such that it followed up on audit recommendations from investigatory audits where there was a category 1 or a category 2 finding. Those were systematically followed through, and that is what was reported to the audit committee. These ad hoc investigations were not routinely reported to the audit committee, but that has subsequently changed and fraud investigation recommendations are now raised and tracked at the audit committee.
575. **Mr Fair:** I started to attend the Northern Ireland Water audit committee meetings as a departmental representative. I think that May 2010 was my first audit committee meeting. An update was given at that meeting, and, at that stage, the committee was told that there was no evidence of wrongdoing. A lot of the discussions in the audit committee at that time ended up driving forward

- changes in the organisation to improve dissemination and understanding of delegations, and so on, throughout the organisation. Contract management issues were also discussed. Therefore, I do not think that the audit committee was passive during that time.
576. **Mr Copeland:** We have already established from previous comments that Richard and Sara consider that no fraud took place, which is very welcome. Can you indicate whether you have total faith that the processes that were in place at the time would have detected fraud if it had taken place?
577. **Mr Pengelly:** I cannot answer that question with 100% confidence. If fraud had been prevalent and had manifested itself in either invoices for work that was not done, or inflated charges, the question is whether the sample size would have uncovered that. It depends of the scale. If it were one or two very small invoices among 18,000 meter installations, it is possible that that could have escaped. I think that the sample size was sufficiently representative, and, as Sara mentioned, it was chosen randomly. There was no inherent bias in selecting the sample. If it had been on any material scale, I think that the sample size would have uncovered it.
578. **Mr Copeland:** So, in truth, it is an opinion that no fraud took place at this stage.
579. **Mr Pengelly:** Yes; absolutely.
580. **Mr Copeland:** I suppose that it has to be seen and judged in that context.
581. **Mr Rogers:** I want to go back to the issue of the meters. You talked about the rigorous checks. You could not discover eight meters out of that sample of 140. Why was nothing done about that?
582. **Ms Venning:** It is not that we could not discover them. For each of those eight meters, a photograph was in place that evidenced it in the ground. It was present on the billing system, but they had not been read at that point. That was not for any untoward reason; the meter reader had simply not got to them yet. The management action was that, once those meters were read, it would be fed back that that had happened. They were subsequently viewed and read by the meter reader.
583. **Mr Rogers:** But the report says that they could not be located.
584. **Mr Pengelly:** In viewing the report now, I think that, at that stage, a meter reader should have been sent out to look at the eight meters. Subsequent to the closing down of the investigation report, a meter reader, when the natural cycle came around, visited and physically inspected those eight meters. We can be confident now, looking back, that those eight meters existed and were installed. It would have been neater had the investigation taken that to a conclusion by the time the investigation was signed off.
585. **The Chairperson:** Mr Pengelly, I understand from paragraph 43 that the claim that DRD had access to DARD's central investigation service was an error because no such arrangements existed. What are DRD's current arrangements for investigating suspected fraud?
586. **Mr Pengelly:** There is no formal service-level agreement in place, but we work quite closely with that Department. Deborah is our expert on that.
587. **Ms Deborah McNeilly (Department for Regional Development):** We will telephone for informal advice on specific issues that we are dealing with. We also ring colleagues in DSD for informal advice on certain issues. As Richard said earlier, we also have access and are training our staff, and I think that six of them have now completed the training on PACE. Our guidance requires that case manager be appointed to determine who should be on the investigation team. That investigation team may well pool from internal audit and other sources, including HR, and seek technical advice. You mentioned earlier the proposal

- for a centralised investigation service, and the Department was previously supportive of that. We do not have a service-level agreement with DARD at the moment, but we go to it for informal advice as a second check. We also speak to colleagues in DFP about points of guidance.
588. **The Chairperson:** How many cases are currently being investigated by DRD, and by whom?
589. **Ms McNeilly:** I do not have that information to hand. I can get that for you.
590. **The Chairperson:** Deborah, you came from DFP's financial planning branch, and you are now the finance director in DRD. Since you joined, what concerns have you had about the investigation?
591. **Ms McNeilly:** The investigation predated my arrival in the Department. I arrived in, I think, October 2011. Since the report was published, the Department has reviewed its guidance in line with its guiding principles and recommendations. The guidance is now much clearer, and we have process maps for staff. Staff have also undertaken fraud awareness training over the past 12 to 18 months, and we do quite a lot of liaising with the head of internal audit. We have a departmental anti-fraud group that looks at issues of best practice and sharing lessons learned, and that group includes representatives from both the sponsor branches in the Department and from NIW and NITHCo. Therefore, there is high awareness. We might not get everything right. No system is perfect. However, we have taken the lessons and recommendations from the report and made sure that they are reflected in our guidance. That said, after today's session, we will review it again to make sure that we have picked up everything that needs to be picked up
592. **The Chairperson:** Following on from that, I have a question for you, Ms Hamill. The Committee's 2008 report on tackling public sector fraud recommended a stocktake across the public sector of trained staff for front line investigation work. What was the outcome of that? When will it be updated? How was that work quality-assured, and what was the position of the implementation of that in 2010?
593. **Ms Hamill:** We took away an action to do a stocktake on the levels of training. That was rolled into the work that we undertook in looking at the review of internal audit services and fraud. It became part of that work and part of the headcount for that. That work has been concluded, and the recommendations were shared with the Permanent Secretaries Group.
594. **The Chairperson:** Are you concerned that most of DFP's guiding principles were ignored in this case?
595. **Ms Hamill:** I do not know that most of them were ignored. They certainly were not followed particularly well. That is disappointing, because our aim is to get our guidance as widely circulated and used as possible. This hearing is another reminder that we need to raise that profile again, recirculate the guidance and bring its importance back to everybody's attention.
596. **Mr Clarke:** Richard said earlier — I am paraphrasing — that he would probably have taken guidance fairly lightly, given that it is only guidance. Are you going to reinforce that? I think that Richard said earlier that it was not mandatory. Can you see a possibility of DFP making it mandatory, as opposed to guidance?
597. **Ms Hamill:** We will consider what the Committee has to say, but we are always trying to strike a balance between mandatory action, and allowing organisations scope to decide what is appropriate in certain circumstances. At the moment, we are issuing guidance for a wide range of organisations — multiple bodies across different sectors on different scales and in different situations. Therefore, we want to put in place key principles and key actions that should be taken, such as the sequence for what needs to be put in place and the way in which you need to



- step through the process. However, we need to leave some flexibility for it to be workable on a case-by-case basis. I am happy to look at the Committee's views and consider whether there are certain aspects that might need to be —
598. **Mr Clarke:** I have not been in public for as long as John Dallat. However, in the short time that I have been in it, which is relatively short compared with John, I have learned that, whether it be the Planning Service or other agencies — Richard has been an example of this again today — when a Minister issues guidance, we, as elected Members, are reminded quite often that it is only guidance. There seems to be a policy among civil servants that guidance does not have to apply; they do not necessarily follow it. Given this report, today is an example that, where there is any ambiguity, that should be tightened up and made mandatory. There would then be no ambiguity about how that is interpreted by whatever agency.
599. **Mr Pengelly:** I point to the fact that, prior to sitting in this particular seat, some seven months ago I sat in a job in which I spent a greater part of my life berating people for not following my guidance.
600. **Mr Clarke:** I was thinking that just a few minutes ago.
601. **Mr Pengelly:** The guidance is mandatory in that you must apply the guiding principles. They state that you must initiate a fraud investigation plan and you must follow certain steps. It is an issue when it gets to the seven or eight bullet points about the specific things that must be in it. Some of them could be mandatory, but some will always be best practice. DFP guidance is mandatory; it is a question of how it is applied at a very granular level.
602. **Mr Clarke:** That needs to be looked at because of the ambiguity. I am using your example today. From my experience, in the short time in which I have been in public life, of working with planners, Ministers and guidance documents, planners are very quick to tell us that it is “only guidance”, when, clearly, the instruction from the Minister, whoever that may be at a particular time, is that the guidance is to direct them in a particular way. People are very quick to waive that and say that that is guidance as opposed to policy.
603. **Mr Pengelly:** The main flaw is that, when you go down a particular path, you should think about why you are not applying it and document those reasons. At least it would be on the record and others would be able to critique your decision. Just saying, “It is guidance, and I am deciding not to apply it”, is not enough.
604. **Mr Donnelly:** There is an important principle regarding guidance about “comply or explain”. Richard has touched on that. When guidance is not complied with, there needs to be a written explanation. The difficulty in this case is that there were no written explanations.
605. **The Chairperson:** How can the guidance, Ms Hamill, be reinforced in the public sector in the future?
606. **Ms Hamill:** It is about communication. The guidance follows good practice and approaches in the wider UK. We need to reinforce it. We also need to look at fraud investigation to see how we can strengthen services and what we, as DFP, can do to strengthen the quality assurance role that we have in the training that people receive. It is always about education.
607. **The Chairperson:** Do members have any other questions?
608. **Mr Dallat:** Did we mention whistle-blowers? Are policies in place to protect them? Hopefully, the issue will not arise in the new format, but does NIW have a policy on whistle-blowing?
609. **Ms Venning:** Yes; we have a whistle-blowing policy.
610. **The Chairperson:** I think that we will be dealing with that during our next session.

611. **Mr Copeland:** Does that whistle-blowing policy extend to non-contracted agency staff?
612. **Ms Venning:** Yes. They would be afforded the same protections if they wanted to raise a whistle-blower report.
613. **The Chairperson:** Thank you, Richard, and your team. You said at the outset that it was a slightly flawed investigation and that you believed that there was no fraud. It is important to the Committee that public assets are protected. I think that the Committee will take the view that, if that is not the case, there should be serious consequences. I reiterate that the Committee will now consider the evidence that has been put before us today by you and your staff. We may well want to write to you for further information. Thank you and your team for your time.





# 16 October 2013

## 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 | <i>Department</i>   |
| Dr Andrew Murray    | <i>for Regional</i> |
| Mr Richard Pengelly | <i>Development</i>  |
| Mr Geoff Allister   |                     |
| Dr Malcolm McKibbin |                     |
| Mr Paul Priestly    |                     |

## In attendance:

|                    |  |
|--------------------|--|
| Mr Mike Brennan    | <i>Acting Treasury<br/>Officer of Accounts</i> |
| Mr Kieran Donnelly | <i>Comptroller and<br/>Auditor General</i>     |

Geoff Allister are former chief executives of Roads Service.

617. **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.
618. 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?
619. **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.
620. 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.
621. 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
614. **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.
615. I welcome the witnesses to the meeting. Richard, without further ado, would you like to introduce your team?
616. **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

- 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.
622. **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.
623. Returning to my question, what would you say to the whistle-blower about how the Department has dealt with this case?
624. **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.
625. 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.
626. **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.
627. 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.
628. We move on to the circumstances that gave rise to the suspected fraud investigation.
629. **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?
630. **Mr Geoff Allister:** Yes.
631. **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?

632. **Mr Pengelly:** My memory has failed us already. “Official D” in the report is Dr Murray.
633. **Mr Girvan:** Official D?
634. **Mr Pengelly:** Yes. “Official B” is Mr Allister.
635. **Mr McKay:** There is a list, Paul.
636. **Mr Girvan:** Who was running the procurement in 2000?
637. **Mr Pengelly:** The named individual? Organisationally —
638. **Mr Girvan:** In the organisation.
639. **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.
640. **Mr Girvan:** Can you not put a name to it? Would one person have headed it up?
641. **Mr Pengelly:** Are you talking specifically about signs and equipment?
642. **Mr Girvan:** Yes.
643. **Mr Pengelly:** I do not know who that —
644. **Mr Girvan:** In relation to the signage.
645. **Mr Pengelly:** In 2000?
646. **Mr Girvan:** Yes.
647. **Mr Pengelly:** I do not know.
648. **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.
649. **Mr G Allister:** I am having some difficulty hearing. Could you repeat the question?
650. **Mr Girvan:** How did one contractor’s business, which it had won, end up being repeatedly given to another contractor during that period?
651. **Mr G Allister:** Is that during the 1999-2000 contract?
652. **Mr Girvan:** It is between 2000 and 2002.
653. **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?
654. **Mr Girvan:** Yes.
655. **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.
656. **Mr Girvan:** What exactly is meant by “rash expediency”?
657. **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.
658. 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.
659. 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.
660. 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.
661. **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?
662. **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.
663. **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.
664. 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?
665. **Mr G Allister:** I have not seen any evidence of the manipulation of a tender process. There is —
666. **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.
667. **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.
668. 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.
669. 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.
670. **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?
671. **Mr G Allister:** That is in the Audit Office report into —
672. **Mr Clarke:** No, it is your word; you used the word “expediency”.
673. **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.
674. **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?
675. **Dr McKibbin:** It was 2010.
676. **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.
677. **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.
678. **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?
679. **Mr G Allister:** No. Sorry, maybe I have not made myself clear.
680. **Mr Clarke:** You have not.
681. **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.
682. 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.
683. **Mr Clarke:** Do you have a copy of the report to hand?
684. **Mr G Allister:** The Audit Office report?
685. **Mr Clarke:** Yes.
686. **Mr G Allister:** I have.
687. **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]."*
688. Surely that does not tie in with what you just said, Mr Allister.
689. **Mr G Allister:** The comment under "In favour of the Whistleblower" is:
- "complied with the legal obligations of objectivity and transparency"*
690. 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.
691. **Mr Clarke:** Yes, that is the judge —
692. **Mr G Allister:** Yes, but at no stage —
693. **Mr Clarke:** — who said he was:
- "satisfied that the Defendants are in breach of the duty owed under the regulations [Public Contract Regulations 2006]".*
694. Will you accept the judge's ruling in that case or not?
695. **Mr G Allister:** I am accepting that what he says is that —
696. **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.
697. **Mr G Allister:** No, he did not say that.
698. **Mr Pengelly:** I am sorry, Mr Clarke, but I think this post-dates Mr Allister's time in the organisation.
699. 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.
700. **Mr Clarke:** That is not how a reading of the judgement comes across.
701. **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.
702. **Mr Clarke:** Did you appeal it?
703. **Dr McKibbin:** Pardon?
704. **Mr Clarke:** Did you appeal the decision?
705. **Dr McKibbin:** No.

706. **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.
707. **Dr McKibbin:** I am happy to —
708. **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.
709. **Dr McKibbin:** I disagree with the point regarding relevance because it obviously informed —
710. **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.
711. **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 —
712. **Mr Clarke:** I did not use those words.
713. **Dr McKibbin:** I thought that you were talking about the manipulation of —
714. **Mr Clarke:** I did not use that word either.
715. **Mr Girvan:** I did.
716. **Dr McKibbin:** I beg your pardon.
717. 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.
718. 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.
719. **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?
720. **Dr McKibbin:** I will pass over to Andy who is the accounting officer.
721. **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 —
722. **Mr Clarke:** Technical or otherwise, do you accept that the court's judgement on that?
723. **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.
724. **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.
725. **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.
726. I am happy to lead back to my colleague.
727. **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.
728. **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?
729. **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.
730. **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?
731. **Dr McKibbin:** I was made aware of it when I took over as chief executive.
732. **Mr Girvan:** That was in —
733. **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.
734. **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?
735. **Dr McKibbin:** A whole series of measures were put in place to try to ensure that the misordering did not occur again.
736. 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.
737. 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.

738. 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.
739. 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.
740. **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.
741. 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?
742. **Dr McKibbin:** With respect to disciplinary action, the 1999 investigation made no findings against Roads Service. Obviously, disciplinary action was not appropriate.
743. **Mr Girvan:** Was there an obvious improvement required within your own organisation that you could identify?
744. **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.
745. 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.
746. 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 off concerns an apparent failure of performance rather than conduct, different procedures may be appropriate.”*
747. That is, different procedures from disciplinary action. At that time, in discussions with Mr Allister, we came to the conclusion —
748. **Mr Girvan:** After that, training would have come in.
749. **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.
750. **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?
751. **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.
752. **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.”*
753. 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?
754. **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 —
755. **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?
756. **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.
757. 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.
758. **The Chairperson:** Mr Copeland wants to ask a supplementary question. Are you happy to let him come in?
759. **Mr Girvan:** Yes.
760. **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?
761. **Dr McKibbin:** Yes.
762. **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?

763. **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 —
764. **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.
765. **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.
766. 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.
767. **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.”*
768. 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?
769. **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.

770. 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?
771. In 2007 —
772. **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.

773. **Mr McKay:** I want to return to the context in which the phrase “rash expediency” was mentioned. Will you clarify that?
774. **Mr G Allister:** That was as a result of the 2001 internal audit report.
775. **Mr McKay:** What did it mean?
776. **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.
777. **Mr McKay:** Was it used in an internal audit report?
778. **Mr G Allister:** Yes.
779. **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.
780. **Mr McKay:** Could we get a copy of that report for information?
781. **Dr McKibbin:** I am sure that the DRD could get that to you.
782. **Mr Copeland:** I have a fair bit, Mr Allister. Thank you for attending.
783. 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?
784. **Mr G Allister:** Do you mean for the contract that was awarded in 2002?
785. **Mr Copeland:** I presume so.
786. **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 —
787. **Mr Copeland:** Who did?
788. **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.
789. 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.
790. **Mr Copeland:** To the best of your recollection, was the contract let primarily on the basis of cost?
791. **Mr G Allister:** As I understand it, it was 60% cost and 40% quality.
792. **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.



793. 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.
794. **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.
795. **Mr Copeland:** In other words, what you want, when you want it and what you hope it is made of.
796. **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.
797. **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.
798. **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.
799. **Mr Copeland:** Was there evidence of companies not matching the required delivery times?
800. **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.
801. **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?
802. **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.
803. **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?
804. **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.
805. **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?
806. **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.
807. **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.
808. **Mr Copeland:** Why only sometimes?
809. **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.
810. **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?
811. **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.
812. **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.
813. 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.
814. **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?
815. **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.
816. **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.
817. **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.
818. **Dr Murray:** For the contract that was awarded in 2002?
819. **Mr Copeland:** Yes.
820. **Dr Murray:** It is quite a bit outside our normal retention period. We normally keep things for seven years. We might have something.
821. **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 —
822. **The Chairperson:** Mr Copeland, I think that Mr Girvan wanted in with a supplementary question, if you do not mind.
823. **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”.
824. **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.
825. **Mr Girvan:** But they are required in the tender document.
826. **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.
827. **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?
828. **Mr Paul Priestly:** Are you asking me?
829. **Mr Girvan:** I am indeed, Paul.
830. **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.
831. 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.
832. **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?
833. **Mr Priestly:** Sorry, I did not pick up that point.
834. **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?
835. **Mr Priestly:** I certainly hope not, but —
836. **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?
837. **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.
838. **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?
839. **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.
840. **Mr Pengelly:** I think —

841. **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.
842. **Mr Priestly:** I do not disagree with that. The important point —
843. **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.
844. **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.
845. **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.
846. 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.
847. **Mr Clarke:** Does that system prevent supplying signs two years before they are due?
848. **Mr Pengelly:** That is a separate issue.
849. **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.
850. **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.
851. 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 —
852. **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.
853. **Mr Pengelly:** No, absolutely.
854. **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.
855. **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 —
856. **Mr Clarke:** Richard, you can, because that is now your role.
857. **Mr Pengelly:** Yes, absolutely.
858. **Mr Clarke:** We want to make sure that things like that do not happen again.
859. **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.
860. **Mr Clarke:** As an aside to that, the A5 scheme was stopped. Was the signage ordered for that?
861. **Mr Pengelly:** I would not have thought so at this stage.
862. **Mr Clarke:** That is still to be ordered, then.
863. **Dr Murray:** We moved on to that issue of signs on the M2 before we bottomed out on the procurement thing.
864. **Mr Clarke:** I was on the A5.
865. **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?
866. **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.
867. **Dr Murray:** This part of the public sector has been making it simpler over the years. There are hundreds of —
868. **Mr Clarke:** When did that start? In 2011 or 2012?
869. **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.
870. 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.
871. **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.
872. **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.
873. **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.
874. **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.
875. **Mr Clarke:** When did that system come into place, Dr Murray?
876. **Ms Deborah McNeilly (Department for Regional Development):** That Account NI system came in in 2009.
877. **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?
878. **Dr Murray:** Yes. I will give you information on the monitoring that we have carried out.
879. **Mr Clarke:** And the reasons why?
880. **Dr Murray:** Yes.
881. **Mr Clarke:** And the number of times overall?
882. **Dr Murray:** Yes.
883. **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.
884. 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?
885. **Mr Priestly:** Absolutely.
886. **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."*
887. 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.
888. Do you want to reflect on that, now that we have this report?
889. **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.
890. **Mr Dallat:** I did not think that you would.
891. **Mr Priestly:** The BBC also conceded, although I cannot remember on which point, that it had — I cannot remember the point.
892. **Mr Dallat:** Did the BBC agree that the report was one-sided and showed a lack of even-handedness?
893. **Mr Priestly:** I cannot remember the point.
894. **Mr Dallat:** I am quite sure that it did not.
895. **Mr Priestly:** It gave me a reply conceding on one point, and it broadcast a correction.
896. **Mr Dallat:** Generally, you would say that the whistle-blower's concerns were legitimate and worthy of airing.
897. **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.
898. **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?
899. **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.
900. **Mr Dallat:** What did you do to help the whistle-blower?
901. **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.
902. **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?
903. **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.
904. **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?
905. **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.
906. **Mr Dallat:** Sorry?
907. **Mr G Allister:** November 2005.
908. **Mr Dallat:** You had no role?
909. **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.
910. **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?
911. **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.
912. 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.
913. 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.
914. **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.
915. **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 —
916. **Mr Dallat:** But, that is the same thing, is it not, as giving him advice on how to win contracts?
917. **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.
918. 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.
919. 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.
920. **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 —
921. **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.
922. **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.
923. **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?
924. **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.

925. **Mr Dallat:** Mr Pengelly, even if it was only one minute, he was on the stand. That is fact.
926. **Mr Pengelly:** It is fact, but I also think, Mr Dallat —
927. **Mr Dallat:** Do you think that it was all right that he just spends 15 minutes and does not spend three hours?
928. **Mr Pengelly:** I think that it is —
929. **Mr Dallat:** He should not have been there.
930. **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.
931. **Mr Dallat:** Chairperson, this will be my final question, as I know that other people have to ask questions.
932. 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?
933. **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.
934. **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.
935. **The Chairperson:** OK; thank you, Mr Pengelly. Before I let you in, Dr Murray, Mr Clarke wanted to ask a supplementary to that.
936. **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?
937. **Mr Priestly:** Maybe I should take some time to reflect on that and come back to you.
938. **Mr Clarke:** You have had a few years.
939. **Mr Priestly:** I am coming to these issues afresh having been away from that area of business.
940. **Mr Clarke:** Are you suggesting for one moment that you did not polish up your

- performance before you came here today?
941. **Mr Priestly:** I had one week.
942. **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?
943. **Mr Pengelly:** Could I —
944. **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.
945. **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?
946. **Mr Priestly:** I would prefer time to reflect on it.
947. **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.
948. **Mr Priestly:** Can I say one thing in response?
949. **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.
950. **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?
951. **Mr Priestly:** OK.
952. **The Chairperson:** Mr Pengelly, Mr McKay wants in very briefly and I will then let you in.
953. **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?
954. **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.
955. **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.
956. **Mr Priestly:** OK.
957. **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.
958. **The Chairperson:** Thank you, Mr Clarke. Before I bring in Mr Copeland, Mr Pengelly wants to make a comment.
959. **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.
960. **Mr Clarke:** I disagree.
961. **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.
962. **Mr Clarke:** And fairly.
963. **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—
964. **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.
965. 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.
966. **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 —
967. **Mr Clarke:** A number were but not all.
968. **Mr Pengelly:** Well, the key —
969. **Mr Clarke:** I think that it was a number, Richard.
970. **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.
971. **The Chairperson:** Thank you, Mr Pengelly. The Auditor General, Mr Kieran Donnelly, wants to come in.
972. **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.
973. **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.
974. **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.
975. **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?
976. **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.
977. **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?
978. **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.
979. **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?
980. **Mr Priestly:** All that would have been done before my time in post.
981. **Mr Girvan:** Were those all in place by the time that you were there?
982. **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.
983. 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.
984. **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.
985. **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?
986. **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.
987. **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?
988. **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.
989. **The Chairperson:** It does not negate your responsibilities either.
990. **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.
991. **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.
992. **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?
993. **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.
994. **Mr Girvan:** In totality, but you alluded to the fact the report states that the plan evolved during the investigation.
995. **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.
996. **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?
997. **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.
998. **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?
999. **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.
1000. **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?
1001. **Mr Priestly:** It long predates my time in DRD.
1002. **Mr Girvan:** When did you become aware of it? Having listened to what we heard previously, about how certain things had happened in procurement —
1003. **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?
1004. **Mr Girvan:** Yes.
1005. **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.
1006. **Mr Pengelly:** For context, can I just bring that right up to date? The movement along the price/quality continuum —
1007. **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?
1008. **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.
1009. **Mr Girvan:** Who set that?
1010. **Mr G Allister:** The evaluation team set that and it set that at the outset of the procurement process. It does not change.
1011. **Mr Girvan:** Who is on that team?
1012. **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.
1013. **The Chairperson:** Mr Girvan, are you content with that?
1014. **Mr Girvan:** Maybe, this is a softer question to answer. Did you feel that those changes to the evaluation process benefited the Department?
1015. **Mr Priestly:** I think actually the question —
1016. **Mr Girvan:** Well, you were there at the time.
1017. **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.
1018. **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.
1019. 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.
1020. **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.
1021. **Mr Girvan:** I am not talking about a discrepancy of 5%. It was indicated to be a lot higher.
1022. **Mr Pengelly:** It was alleged to be 30%.
1023. **Mr Girvan:** Correct. Well, alleged —
1024. **Mr Pengelly:** Two benchmarking exercises showed that not to be the case. No evidence was provided by Mr Connolly to indicate the 30% variation.
1025. **Dr McKibbin:** This is one of the difficulties sometimes when we do not have an evidential base in certain areas.
1026. **Mr Girvan:** I think it is good to tease it out, so that we know.
1027. **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.
1028. 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 —
1029. **Mr Clarke:** Can we get back to what we are here for?
1030. **Dr McKibbin:** An allegation was made that we were not getting value for money or were overpaying.
1031. **Mr Clarke:** Yes, we will get back to that.
1032. **Dr McKibbin:** I was responding to Mr Girvan's point.
1033. **The Chairperson:** I think that you want to come in, Mr Clarke.
1034. **Mr Clarke:** Yes. Malcolm, as you were in full flow, we will come back to you first.
1035. **Dr McKibbin:** I was in full flow until you stopped me. *[Laughter.]*
1036. **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?
1037. **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 —
1038. **Mr Clarke:** In terms of signs, which is more important: quality or price?
1039. **Dr McKibbin:** They are weighted.
1040. **Mr Clarke:** In your opinion.
1041. **Dr McKibbin:** It depends.
1042. **Mr Clarke:** I am asking you for an opinion.
1043. **Dr McKibbin:** That is not a realistic question.
1044. **Mr Clarke:** It is a realistic question.
1045. **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.
1046. **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?
1047. **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.
1048. **Mr Clarke:** How do you measure that?
1049. **Dr McKibbin:** We measure that against a five-day and 15-day ordering period.
1050. **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?
1051. **Dr McKibbin:** I will ask Dr Murray to answer that because he is bang up to date.
1052. **Dr Murray:** We have moved to a three-stage process for buying signs. This is the —
1053. **Mr Clarke:** When did that change?
1054. **Dr Murray:** Just before the last competition in 2012.
1055. **Mr Clarke:** So that is the fourth change since the one we are talking about?
1056. **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.
1057. **Mr Clarke:** Why did you change it four times since 2001?

1058. **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.
1059. **Mr Clarke:** Malcolm, were you in the Department in 2001?
1060. **Dr McKibbin:** No.
1061. **Mr Clarke:** In 2002?
1062. **Dr McKibbin:** Yes.
1063. **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?
1064. **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.
1065. **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.
1066. **Dr McKibbin:** If they do not deliver it, I do not have a sign.
1067. **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.
1068. **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.
1069. **Mr Clarke:** With regard to 2002-03?
1070. **Dr McKibbin:** Before that, there was a problem with delivery for the 2001-02 contract.
1071. **Mr Clarke:** In 2002-03, we have 60% price. In 1999-2001, we were talking 20% price.
1072. **Dr McKibbin:** Sorry, what year?
1073. **Mr Clarke:** In 1999-2001. I know that that was before you came.
1074. **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.
1075. **Mr Clarke:** Who decided that?
1076. **Dr Murray:** The evaluation panel.
1077. **Mr Clarke:** Is that not where the whistle-blower, in this case, believed that they were disadvantaged?
1078. **Dr Murray:** They could not have been disadvantaged, because those factors applied to all of the tenderers.
1079. **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?
1080. **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.
1081. **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.
1082. **Dr Murray:** I have not said that. We —
1083. **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.
1084. **Dr Murray:** No. I am saying that we have a three-stage process —
1085. **Mr Clarke:** Yes, you have a pass/fail.
1086. **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.
1087. **Mr Clarke:** What were those problems?
1088. **Dr Murray:** The problems were that one of the suppliers, in particular, was delivering 75% of the signs outside of the required period.
1089. **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.
1090. **Dr Murray:** No, because the quality —
1091. **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.
1092. **Dr Murray:** We do not take past performance into account. We were taking the offer that was made at that time into account.
1093. **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?
1094. **Dr Murray:** No.
1095. **Mr Clarke:** Yes.
1096. **Dr McKibbin:** It is a three-stage process. Maybe Dr Murray could explain the three-stage process, because it involves quality.
1097. **Mr Clarke:** Dr McKibbin, who fails? Who chose in terms of failure?
1098. **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.
1099. **Mr Clarke:** That would be useful.
1100. **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.
1101. **Mr Clarke:** I am happy for you to talk me through that, Dr Murray, when we are here today.
1102. **Dr Murray:** I am not sufficiently closely involved in it to take you through the three-stage process. It would be better if —
1103. **The Chairperson:** You will have to come back with that information.
1104. 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.
1105. Committee suspended.
1106. On resuming —
1107. **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.
1108. **Mr Pengelly:** Do you mind if some of the witnesses take their jacket off?
1109. **The Chairperson:** Absolutely not. That goes for members as well. Whatever you are comfortable in, as long as it is only the jackets. *[Laughter.]*

1110. **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?”.
1111. **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.
1112. **Mr Rogers:** The sceptic in me, like Trevor, hopes that we are not back here in two or three years' time.
1113. **Mr Clarke:** Absolutely.
1114. **Mr Rogers:** Can I take you to the informal investigation plan? Who drew that up in 2005?
1115. **Mr Pengelly:** That would have been drawn up by the then head of internal audit, Ronnie Balfour. He drew up the terms of reference.
1116. **Mr Rogers:** Would he have taken into consideration all of the recommendations in the internal audit report from three years prior?
1117. **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.
1118. **Mr Rogers:** Was this plan just a normal audit plan or was it a specific investigation plan?
1119. **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.
1120. **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?
1121. **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.



1122. **Mr Rogers:** Mr Priestly, why were the earlier inquiries not used as a background for this particular inquiry?
1123. **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.
1124. **Mr Rogers:** So all of the previous inquiries were taken into consideration when you were doing this particular investigation?
1125. **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.
1126. **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.
1127. **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.
1128. 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.
1129. **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?
1130. **Mr Pengelly:** There was a plan. There are terms of reference.
1131. **Mr Rogers:** Sorry, the wording was:  
*“a poor substitute for a formal plan drawn up prior to the commencement of investigative work”.*
1132. That is on page 15.
1133. **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”*
1134. but that is juxtaposed with:  
*“a poor substitute for a formal plan”.*
1135. 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.
1136. **Mr Rogers:** To go back to you, Mr Priestly, how do you think the plan took full account of the allegations of favouritism?
1137. **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.
1138. **Mr Rogers:** Refresh me again: when did you start in DRD?
1139. **Mr Priestly:** December 2007.
1140. **Mr Rogers:** When he gave you those assurances, did you check them out in any way?
1141. **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.
1142. **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?
1143. **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.
1144. **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?
1145. **Dr Murray:** No.
1146. **Mr Dallat:** No truth whatsoever?
1147. **Dr Murray:** No. The former Minister was written to. He wrote back to say that I was appointed to provide all the information necessary.
1148. **Mr Dallat:** So you gladly handed it over? You did not say that it was in a warehouse somewhere?
1149. **Dr Murray:** No reluctance whatsoever.
1150. **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?
1151. **Mr Priestly:** If you have taken that I was passing the ball to him, that is absolutely not what I intended you to take.
1152. **Mr McQuillan:** Well, that is what I am getting sitting here.
1153. **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 —
1154. **Mr McQuillan:** That did not happen. You failed.
1155. **Mr Priestly:** I believe that it did.
1156. **Mr McQuillan:** Well, I believe that it did not.
1157. You did not answer me; what grade was Mr Balfour?
1158. **Mr Priestly:** He was a grade 7, a principal.
1159. **Mr McQuillan:** That is below your grade.
1160. **Mr Priestly:** Yes.
1161. **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?
1162. **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.
1163. **Mr McQuillan:** So, was the Audit Office benchmarking it? Is that what you are saying?
1164. **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.
1165. **Mr McQuillan:** Where is Mr Balfour working now? Is he still working?
1166. **Mr Pengelly:** He is now working in Transport NI, under Andrew's command.
1167. **Mr McQuillan:** When did he move?
1168. **Mr Pengelly:** October 2009.
1169. **Mr McQuillan:** That was around the time of the investigation finishing.
1170. **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.
1171. **Mr McQuillan:** Is there any significance in his moving to Roads Service, or to Transport NI?
1172. **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.
1173. **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?
1174. **Mr Pengelly:** The work was substantively finished before he moved, and he had to move somewhere.
1175. **Mr McQuillan:** What message does that send to people outside?
1176. **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.
1177. **Mr Clarke:** Richard, you joined the organisation in 2013.
1178. **Mr Pengelly:** Yes.
1179. **Mr Clarke:** So how do you have such sound knowledge of Mr Balfour and his career move in 2009?
1180. **Mr Pengelly:** Because I have asked questions, reviewed files and talked to colleagues who were about at that time.
1181. **Mr Clarke:** What role has he now in the Department?
1182. **Mr Pengelly:** He is in what is called our roads secretariat.
1183. **Mr Clarke:** What was he then?
1184. **Mr Pengelly:** He was the head of internal audit.

1185. **Mr Clarke:** Is that current role a good use of the talent of someone with an audit background?
1186. **Mr Pengelly:** Yes.
1187. **Mr Clarke:** It works OK?
1188. **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.
1189. **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.
1190. **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?
1191. **Dr Murray:** The move was nothing to do with me.
1192. **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?
1193. **Mr Pengelly:** No, it was a sideways move.
1194. **Mr Clarke:** How long was he in internal audit?
1195. **Ms McNeilly:** Around 10 years.
1196. **Mr Clarke:** And, two months after he did the report, he got a sideways move?
1197. **Mr Pengelly:** But he had been asking for a move, and —
1198. **Mr Clarke:** Richard, you came in 2013.
1199. **Mr Pengelly:** That is right.
1200. **Mr Clarke:** Who was there in 2009?
1201. **Mr Priestly:** I was there, and Geoff was.
1202. **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?
1203. **Mr Priestly:** I had nothing to do with his move.
1204. **Mr Clarke:** Did you work for Roads Service in 2009?
1205. **Mr Priestly:** Sorry?
1206. **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.
1207. **Mr Priestly:** I was the permanent secretary of DRD. The permanent secretary does not get involved in internal moves.
1208. **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?
1209. **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.
1210. **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.
1211. **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".*
1212. What is your comment on that?
1213. **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.

1214. **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?
1215. **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.
1216. **Mr Rogers:** When you saw that appear in the report, what did you do about it?
1217. **Mr Priestly:** I am not in a position to do anything about it. I only saw the report a week ago.
1218. **Mr Rogers:** Who is taking responsibility for this?
1219. **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.
1220. **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?
1221. **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.
1222. **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.
1223. **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.
1224. **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".*
1225. 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."*
1226. Would you like to comment on that?
1227. **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.
1228. 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.
1229. **Mr Rogers:** Finally, Mr Priestly, Dr McKibbin talked earlier about this being a "misplaced orders" issue. Are you happy with that analysis?
1230. **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.
1231. **Mr Rogers:** Was it just an issue of misplaced orders: yes or no?
1232. **Mr Priestly:** I think it goes wider than that. There was a lot of human error and non-compliance with processes.
1233. **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.
1234. **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?
1235. **Mr Priestly:** I do not accept that I said that my role had nothing to do with the problems in Roads Service.
1236. **Mr Dallat:** I am sorry; that is what I picked up. Whatever it was, you are welcome to repeat it.
1237. **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.
1238. **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.
1239. **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)".*
1240. 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."*
1241. 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.
1242. **The Chairperson:** Can you just speak up a wee bit, Mr McKay?
1243. **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."*
1244. Do you agree with that point, Paul?
1245. **Mr Priestly:** I am afraid that I do not. I think —
1246. **Mr McKay:** So, you take issue with the report?
1247. **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.
1248. **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?
1249. **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.
1250. **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.
1251. **Mr McKay:** How do you rate the performance of the investigation team, Paul?
1252. **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.
1253. **Mr McKay:** During the investigation, there were two occasions on which two officials were interviewed together. Is that good practice? Yes or no?
1254. **Mr Priestly:** I am not a professional auditor. I do not know the reasons why Ronnie Balfour decided to interview those officials together.
1255. **Mr McKay:** You are standing four-square behind his conclusions, yet you are now distancing yourself from his methodology. Which one is it?
1256. **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.
1257. **Mr McKay:** It is obvious that it is not good practice.



1258. **Mr Priestly:** I do not know whether it is or not.
1259. **Mr McKay:** Do you not accept that the technique of interviewing two witnesses together was fundamentally wrong? Also, there is more.
1260. **Mr Dallat:** Much more.
1261. **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?
1262. **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.
1263. **Mr McKay:** How can you be so conclusive that it was just human error?
1264. **Mr Priestly:** On the basis of —
1265. **Mr McKay:** Can you be that conclusive?
1266. **Mr Priestly:** On the basis of the investigation, which I believe was carried out professionally and thoroughly, I accept the conclusion.
1267. **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?
1268. **Mr Priestly:** As the permanent secretary and accounting officer, you have to rely on the professionalism and capabilities of your head of internal audit.
1269. **Mr McKay:** You also have to take responsibility.
1270. **Mr Priestly:** Yes, absolutely.
1271. **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?
1272. **Mr Priestly:** I do not know why that did not happen.
1273. **The Chairperson:** Mr Pengelly?
1274. **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.
1275. **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?
1276. **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.
1277. **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?
1278. **Mr Priestly:** I said earlier, and all I can do is repeat the actions I took.
1279. **The Chairperson:** Which were?
1280. **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.
1281. **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?
1282. **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.
1283. 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.
1284. **The Chairperson:** Do we have the correspondence that Mr Priestly sent to Mr Connolly? Can we get that correspondence?
1285. **The Committee Clerk:** We can check.
1286. **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?
1287. **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.
1288. **Mr Clarke:** So, you believe it was thorough.
1289. **Mr Priestly:** I do believe it was thorough.
1290. **Mr Clarke:** Do you still believe it was thorough?
1291. **Mr Priestly:** I do.
1292. **Mr Clarke:** Do you believe it was thorough after Daithí McKay asked you about Mr Balfour not interviewing the whistle-blowers?
1293. **Mr Priestly:** I can only repeat —
1294. **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?
1295. **Mr Priestly:** I do not think that I can give you a yes-or-no reply.
1296. **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.
1297. **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.
1298. **Mr Copeland:** Thanks Paul. I apologise for coming back to you yet again.
1299. 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?
1300. 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?
1301. **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.
1302. **Mr Copeland:** So it was never considered because it did not exist, according to you.
1303. **Mr Priestly:** It was not provided, and we could not find it.
1304. **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?
1305. 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?
1306. 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.
1307. 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?
1308. **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.
1309. **Mr Copeland:** What were the reasons for that?
1310. **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.
1311. **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.
1312. 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.
1313. **Mr McQuillan:** Do you think that it was handled properly? Is that what you are saying?
1314. **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.
1315. **Mr McQuillan:** Do you have concerns over the Balfour investigation?
1316. **Dr McKibbin:** I was not involved in the detail of it.
1317. **Mr McQuillan:** Do you have any concerns over it?
1318. **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.
1319. 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 —
1320. **Mr Clarke:** Why did you not appeal it then?
1321. **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.
1322. **Mr Clarke:** Which can raise concerns of bias.

1323. **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.
1324. **Mr Clarke:** In all the public sector?
1325. **Dr McKibbin:** I am talking about —
1326. **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?
1327. **Dr McKibbin:** The only Department that I am responsible for directly is OFMDFM.
1328. **Mr Clarke:** Which is overarching, obviously.
1329. **Dr McKibbin:** No. Each permanent secretary is responsible to the Minister of that Department. That is the political settlement that we have here.
1330. **Mr Clarke:** Are you suggesting that you have no influence over any of the other Departments?
1331. **Dr McKibbin:** I certainly did not say that.
1332. **Mr Clarke:** Let us go back to the influence that you have.
1333. **Dr McKibbin:** Let us debate it —
1334. **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?
1335. **Dr McKibbin:** You will very rarely hear me use words such as “everything” or “all” because there are always exceptions.
1336. **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.
1337. Let us go back to the court decision. What is your general opinion on that case?
1338. **Dr McKibbin:** Can I go back to the point —
1339. **Mr Clarke:** Just summarise that for me.
1340. **Dr McKibbin:** You asked three or four questions, and I want to try to answer them.
1341. **Mr Clarke:** I am happy to just gloss over those. Just go back to the summarising point.
1342. **Dr McKibbin:** I do not want to gloss over them, because that implies that I accept some of the things that you said.
1343. **Mr Clarke:** I am sure you would not, but go ahead.
1344. **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
1345. **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?
1346. **Dr McKibbin:** It is very difficult for me to know what I do not know.
1347. **Mr Clarke:** Let us go to the court case then.
1348. **Dr McKibbin:** The court case found that there was no substantive evidence for bias, collusion or favouritism.
1349. **Mr Clarke:** I read that differently, based on the one that I read into the record earlier.
1350. **Dr McKibbin:** That was not about favouritism allegations; it was about the transparency of the quality/price process.
1351. **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.
1352. **Dr McKibbin:** You made an accusation and stated that the court said that the person was disadvantaged.
1353. **Dr Murray:** The judgement said that he either was disadvantaged or could have been disadvantaged as a result of the lack of transparency.
1354. **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]."*
1355. That is clear.
1356. **Dr McKibbin:** Yes, that is clear and specific.
1357. **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?
1358. **Dr Murray:** I believe that the Department had to pay its own costs and 80% of the plaintiff's costs.
1359. **Mr Clarke:** That suggests that the court is in favour of the case against the Department. Is it fair to say that, Dr Murray?
1360. **Dr Murray:** No. You need to look at the pattern of court judgements on individuals taking cases against Departments.
1361. **Mr Clarke:** You are not suggesting that the judge would find in favour of a malicious case taken against the Department?
1362. **Dr Murray:** I am saying that you need to look at the pattern.
1363. **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.
1364. **Dr Murray:** I would not make that suggestion.
1365. **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?
1366. **Dr Murray:** Sorry?
1367. **Mr Clarke:** Right.
1368. **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.
1369. **Mr Clarke:** You do not think that?
1370. **Dr Murray:** No.



1371. **Mr Clarke:** So, you think that the judge was unfair to award costs against the Department?
1372. **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.
1373. **Mr Clarke:** Perhaps, given that you have provided that as an example, you should furnish us with some other examples.
1374. **Dr Murray:** Sorry, I should have said in terms of awarding costs.
1375. **Mr Clarke:** Sorry?
1376. **Dr Murray:** I should have said in terms of the award of costs. I should have made that point.
1377. **Mr Clarke:** I am sorry; I cannot make you out.
1378. **Dr Murray:** I should have said in terms of the award of costs.
1379. **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?
1380. **Dr Murray:** Well, I do not have that information at my disposal.
1381. **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.
1382. **Dr Murray:** I am saying that you should study that before making a conclusion.
1383. **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?
1384. **Dr Murray:** Well, that would require a separate piece of research, and I am not sure what its value would be.
1385. **Mr Clarke:** The value would be to hold up your argument to see whether or not it holds water.
1386. **Dr Murray:** No, you —
1387. **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.
1388. **The Chairperson:** OK. He is making a fair point, Mr Murray. If you are able to furnish us with that, then —
1389. **Mr Clarke:** And if not, we have to disregard what Mr Murray has said.
1390. **Dr Murray:** I would be happy for you to disregard it, because what I am saying is that the court —
1391. **Mr Clarke:** So, you are disregarding your own point?
1392. **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.
1393. **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.



1394. **Dr Murray:** Chair, I think that we are entirely agreed on the court judgement.
1395. **Mr Clarke:** I think not.
1396. **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.
1397. **Mr Clarke:** We are agreed on that part. I am then drawing the parallel in terms of costs.
1398. **Dr Murray:** Are you suggesting that, because costs were awarded against the Department, the judge found against us on more than that point?
1399. **Mr Clarke:** No; I never used a number. You tried to cause disparity between that and other judgements.
1400. **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.
1401. **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.
1402. **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.
1403. **Mr Clarke:** I am content that he found against the Department.
1404. **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?
1405. **Mr Pengelly:** It was investigated as part of the Balfour report.
1406. **The Chairperson:** How did you conduct that investigation?
1407. **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 —
1408. **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?
1409. **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 —
1410. **The Chairperson:** Mr Balfour?
1411. **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.
1412. 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.
1413. 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.
1414. **The Chairperson:** Adrian, do you want in on that point?
1415. **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.
1416. **The Chairperson:** Mr Pengelly said at the outset that you have been preparing for this.
1417. **Mr McQuillan:** I understand that.
1418. **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.
1419. **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?
1420. **Mr Pengelly:** I am fairly certain that he did.
1421. **Mr McQuillan:** It does not sound as though he did.
1422. **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.
1423. **Mr McKay:** To follow on, Richard, do you accept that the Balfour investigation was flawed?
1424. **Mr Pengelly:** I accept that the process was flawed; I do not accept that the conclusions were flawed.
1425. **Mr McKay:** Yes or no? Do you accept that it was flawed?
1426. **Mr Pengelly:** I accept that the process was flawed; I do not accept that the conclusions were. There are two different strands to it.
1427. **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.
1428. **Mr Pengelly:** I did not say that it was flawed in a substantial way.
1429. **Mr McKay:** But you are saying that it is flawed.
1430. **Mr Pengelly:** No. If you want to define the report by its conclusions —
1431. **Mr McKay:** It is a simple question. Do you accept that the report was flawed?
1432. **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.
1433. **Mr McKay:** Yes, but if you are saying that the process is flawed, obviously, the conclusions are flawed.
1434. **Mr Pengelly:** There were some flaws through the process.
1435. **Mr McKay:** Then the report was flawed.
1436. **Mr Pengelly:** No. The conclusions are not flawed.
1437. **Mr McKay:** It is a contradiction. Following on from Paul's answers, you are contradicting yourselves on your position on this report —
1438. **Mr Pengelly:** I am genuinely not trying to be difficult, but I do not think that I am.
1439. **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?
1440. **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.
1441. **Mr McKay:** Were you in the Department at the time?

1442. **Dr McKibbin:** No, the investigation was complete before I took over as accounting officer. That was a year and a half before I arrived.
1443. **Mr McKay:** OK, but you would be across the detail of it, obviously, if you arrived —
1444. **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.
1445. **Mr McKay:** So, between then and coming to the Committee today, you have not had a chance to analyse the report?
1446. **Dr McKibbin:** I have read the report, but —
1447. **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.
1448. **Dr McKibbin:** First of all, I did not agree the Audit Office report, and I have difficulties with some aspects of it.
1449. **Mr McKay:** So, the Audit Office report is flawed.
1450. **Dr McKibbin:** Please do not put words in my mouth.
1451. **Mr McKay:** That is essentially what you are saying.
1452. **Dr McKibbin:** What I am trying to say is that I believe that there are flaws in both reports.
1453. **Mr McKay:** What are the flaws in the Audit Office report?
1454. **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.
1455. **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?
1456. **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.
1457. **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”.*
1458. That paragraph continues that:  
*“the Whistleblower had ... particular concern in relation to Northern and Western Divisions, the basis of sampling was inappropriately focused.”*
1459. There should have been a weighted sample.
1460. 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”.*
1461. Furthermore:  
*“the sample covered the period 2002 to 2008”.*
1462. 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”.*
1463. 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”.*
1464. in the report.
1465. 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.

1466. 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.

1467. **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.

1468. **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.

1469. 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.

1470. 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.

1471. 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.

1472. **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.
1473. 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?
1474. **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.
1475. **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?
1476. **Mr Priestly:** As I said in my earlier reply, I became aware of it only after it had happened.
1477. **Mr Hazzard:** What was his role in Roads Service?
1478. **Mr Priestly:** From earlier replies, I think that he was appointed as the head of secretariat.
1479. **Dr Murray:** That is right. He deals with ministerial correspondence.
1480. **Mr Hazzard:** What are your thoughts on the head of the investigation team joining you when he was still involved in the investigation?
1481. **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.
1482. **Mr Hazzard:** Is it a perception, or is it fair to say that the independence of the investigation was damaged?
1483. **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.



1484. **Mr Hazzard:** Why do you think internal audit failed to carry out a robust and proper investigation?
1485. **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.
1486. **Mr Hazzard:** I remain unconvinced, but I am happy to leave it there.
1487. **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?
1488. **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.
1489. **Mr McQuillan:** That was his normal job and why he took four years to investigate this.
1490. **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?
1491. **Mr Priestly:** I am very sorry, but I am not following the point.
1492. **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.
1493. **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.
1494. **Mr McQuillan:** They were still in the warehouse of the company that made them.
1495. **Dr Murray:** Yes, exactly. They were not in our depot. That was loose drafting, and I apologise for that.
1496. **Mr McQuillan:** Do you agree that you were a bit candid with your advice to Mrs Robinson, who was an MP at the time?
1497. **Dr Murray:** As I said, they were in our ownership at the stage. That is what I meant in the letter.
1498. **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?
1499. **Mr Priestly:** If we are dealing with 2004, I was not even in the Department. I did not join the Department until —
1500. **Mr McQuillan:** The letter was written in 2006.
1501. **Mr Priestly:** I did not join the Department until December 2007. So, I am afraid that I have no knowledge of those issues.
1502. **Mr McQuillan:** What do you think, Mr Murray? You were there.
1503. **Dr Murray:** What was the question?
1504. **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 —
1505. **Dr Murray:** Mr Balfour.
1506. **Mr McQuillan:** Yes. He chose to ignore them.
1507. **Dr Murray:** Was that one of the allegations that was investigated in the Balfour report?
1508. **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?
1509. **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.
1510. **Mr McQuillan:** Do you not understand how that looks from the outside looking in and how it looked from the whistleblower's point of view?
1511. **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.
1512. **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.
1513. **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.
1514. 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 whistleblower, 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.
1515. **Mr McQuillan:** Do you think that we have got to the truth in the investigations that have taken place?
1516. **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.
1517. **Mr McQuillan:** OK. I am not going to labour it any more at this time of the evening.
1518. **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.

1519. **The Chairperson:** That is a good idea. Thank you.
1520. **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.
1521. **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.
1522. **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?
1523. **Mr Priestly:** I did not delay anything.
1524. **Mr Clarke:** When was it signed off?
1525. **Mr Pengelly:** Much of the work took place in 2012.
1526. **Mr Clarke:** So, you had six drafts and a final version.
1527. **The Chairperson:** Sean, do you want to come in now?
1528. **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.
1529. **Mr McKay:** Even a timeline of the Balfour process would be useful.
1530. **The Chairperson:** Mr McQuillan, are you satisfied with your line of questioning?
1531. **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.
1532. **The Chairperson:** Mr Clarke, I will afford you the opportunity to come back in.
1533. **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?
1534. **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.
1535. **Mr Clarke:** The whole clearance process?
1536. **Mr Pengelly:** I think that that is the case. Kieran is nodding behind you.
1537. **Mr Clarke:** What is David doing now?
1538. **Mr Pengelly:** David retired at the end —
1539. **Mr Clarke:** He is retired?
1540. **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.
1541. **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?
1542. **Mr Pengelly:** Close to it. Kieran would know better than me — Kieran is smiling behind you.
1543. **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.
1544. 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.
1545. **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?
1546. **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.
1547. 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.
1548. 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.
1549. **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?
1550. **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.

1551. **Mr Clarke:** To go back to some time earlier, did you not still dispute some aspects of the report?
1552. **Dr Murray:** I would not have been in a position to dispute any aspects of the report.
1553. **Mr Clarke:** So, you were content with every aspect of the report's findings?
1554. **Dr Murray:** Do you mean on the facts of the report?
1555. **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?
1556. **Dr Murray:** Yes, the Department has signed off that it is content —
1557. **Mr Clarke:** No, I am asking you for your own opinion.
1558. **Dr Murray:** — and I am personally content with the facts that are stated. There are differences of opinion, which are highlighted in the report.
1559. **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.
1560. **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.
1561. **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.
1562. **Mr Clarke:** Kieran, can you direct us to that paragraph, so that we can read it?
1563. **Mr Donnelly:** It is paragraphs 14 and 15.
1564. **Mr Clarke:** Dr Murray, do you have a copy of the report there?
1565. **Dr Murray:** I remember that bit of it.
1566. **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?
1567. **Dr Murray:** Yes; the point that you are raising is at the end of paragraph 15.
1568. **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."*
1569. So, you are now content with that?
1570. **Dr Murray:** The Department's position, which I take, is that the Department notes the NIAO's comments about the credibility —
1571. **Mr Clarke:** No, the Department accepted the report.
1572. **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.
1573. **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.
1574. **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.
1575. **Dr Murray:** There were four investigations before this one. There was the Balfour investigation, which was an extensive investigation —

1576. **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?
1577. **Dr Murray:** I am referring to the one where the whistle-blower preferred to go to the NIAO.
1578. **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?
1579. **Dr Murray:** We have been through that.
1580. **Mr Clarke:** So that discredits the Balfour report.
1581. **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.
1582. **Mr Clarke:** I accept that.
1583. **Dr Murray:** When that small proportion of orders was investigated, it was found that there was an explanation other than favouritism or bias.
1584. **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.
1585. **Dr Murray:** Well, there is a learning process there —
1586. **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.
1587. **Dr Murray:** No, I would not accept that.
1588. **Mr Clarke:** That is disappointing.
1589. **Dr Murray:** I think that it was still robust. However, when you look at the points that you are making here —
1590. **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.
1591. **Dr Murray:** It was not taken directly, but it was taken. It is a fine point, but the evidence was taken.
1592. **Mr Clarke:** The whistle-blower should have had every opportunity afforded to them, given that they were the person who made the allegations.
1593. **Dr Murray:** You have probably seen the correspondence.
1594. **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 —
1595. **Dr Murray:** I am sorry —
1596. **Mr Clarke:** That is the consequence of your comments, Dr Murray.
1597. **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.
1598. **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.
1599. **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.
1600. **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.
1601. **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?
1602. **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.
1603. **The Chairperson:** What does that entail? What does that consist of?
1604. **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.
1605. **The Chairperson:** How will that be implemented from the top tier down in your Department?
1606. **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.
1607. **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?
1608. **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 —
1609. **The Chairperson:** It is incumbent on the Department. You have that responsibility to ensure that they do.
1610. **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.
1611. **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?
1612. **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.
1613. 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.
1614. **Mr Rogers:** They should not, but could it happen again?
1615. **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.
1616. **Mr Rogers:** If that does happen again, is there a disciplinary procedure built in?
1617. **Mr Pengelly:** For the person conducting the investigation?
1618. **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?
1619. **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.
1620. **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?
1621. **Dr McKibbin:** Did the Department pay the legal costs of the 2010 case?
1622. **Mr Clarke:** Yes.

1623. **Dr McKibbin:** I have no idea. I was not in the Department.
1624. **Mr Clarke:** Are you across that, Richard?
1625. **Mr Pengelly:** I do not know. I would need to come back to you.
1626. **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.
1627. **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.
1628. 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 —
1629. **Mr Clarke:** But you would accept that that is enough to make or break any small business.
1630. **Dr McKibbin:** Quite clearly, it depends on the circumstances overall. However, I accept what you say.
1631. **Mr Easton:** Hello. Mr Priestly, was Mr Balfour in charge of the investigation?
1632. **Mr Priestly:** Mr Balfour was the head of the investigating team.
1633. **Mr Easton:** Was there a whole team below him?
1634. **Mr Priestly:** I believe that he had a couple of people also working on aspects of the investigation.
1635. **Mr Easton:** Could I know who they were, please?
1636. **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.
1637. **Mr Easton:** Would you also be able to provide a breakdown of what they were involved with?
1638. **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.
1639. **Mr Easton:** So, you will provide clarification. That is great.
1640. 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”.*
1641. Why did your governance arrangements not uncover those significant weaknesses in the investigation?
1642. **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.
1643. **Mr Easton:** Do you accept that?
1644. **Mr Priestly:** I accept that, yes.
1645. **Mr Easton:** Does Mr Balfour accept that?
1646. **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.
1647. **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.
1648. **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.
1649. **Mr Easton:** You sought to keep Mr Balfour under —
1650. **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.
1651. **Mr Easton:** Was your predecessor not holding Mr Balfour to account as well?
1652. **Mr Priestly:** I am afraid that I cannot answer for my predecessor.
1653. **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.
1654. **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.
1655. 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.
1656. **Mr Easton:** Therefore, those 39 meetings were a mixture of stocktakes and audit committee meetings. Is that correct?
1657. **Mr Priestly:** That is correct.
1658. **Mr Easton:** How many of those 39 meetings were audit committee meetings?
1659. **Mr Priestly:** Twenty-four.
1660. **Mr Easton:** How many of the 24 audit committee meetings were minuted?
1661. **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.
1662. **Mr Easton:** All 24 had minutes?
1663. **Mr Priestly:** All 24 had minutes, but in eight of those meetings, there was discussion of this investigation.
1664. **Mr Easton:** There was not discussion of it in the other meetings?
1665. **Mr Priestly:** Apparently not.
1666. **Mr Easton:** OK. Apparently not, or are you not sure?
1667. **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.
1668. **Mr Easton:** None of your colleagues was at those meetings?
1669. **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.
1670. **Mr Easton:** Mr Allister, out of the 24 meetings, it was discussed only eight times.
1671. **Mr G Allister:** It was minuted eight times. That is the evidence.
1672. **Mr Easton:** Was it discussed more than eight times? Was it discussed during the rest of the meetings?
1673. **Mr G Allister:** I really cannot be sure.
1674. **Mr Easton:** You are not sure, or you do not want to say?
1675. **Mr G Allister:** I cannot be sure.
1676. **Mr Easton:** OK.
1677. **Mr Allister:** That goes back to 2007 when I was chief executive. I just cannot remember every meeting that I was at.
1678. **Mr Easton:** Were any of the stocktaking meetings minuted?
1679. **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.
1680. **Mr Easton:** So is our Committee here, but it still gets done.
1681. The whistle-blower was met only twice in five years. Is that correct?
1682. **Dr Murray:** On this business, yes, but he was doing work for us as well.
1683. **Mr Easton:** But as part of the investigation.
1684. **Dr Murray:** Yes.
1685. **Mr Easton:** And there was one phone call. There were no other phone calls?
1686. **Mr Pengelly:** None that I am aware of.
1687. **Mr Easton:** Andrew Murray, did you meet the whistle-blower in 2007?
1688. **Dr Murray:** Yes.

1689. **Mr Easton:** Was that one of the two meetings?
1690. **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.
1691. **Mr Easton:** Are those the only two meetings?
1692. **Dr Murray:** I think so, yes. I clearly recall those two meetings and —
1693. **Mr Easton:** You do not recall any other ones?
1694. **Dr Murray:** I do not think that I was involved in any others.
1695. **Mr Easton:** Mr Allister, did you meet the whistle-blower?
1696. **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.
1697. **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.
1698. **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.
1699. **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.
1700. **Mr Easton:** Mr Allister, did you feel during the meeting that he was trying to move in towards the investigation?
1701. **Mr G Allister:** The 2006 meeting?
1702. **Mr Easton:** Yes.
1703. **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.
1704. **Mr Easton:** You have a good memory, Mr Allister.
1705. **Mr Clarke:** Of that part.
1706. **Mr Easton:** Absolutely.
1707. There was one letter as part of the investigation.
1708. **Mr Pengelly:** Yes.
1709. **Mr Easton:** Is it not strange that, over a four-year investigation, only one letter was written and only two meetings held?
1710. **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.
1711. **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?
1712. **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.
1713. **Mr Easton:** Are all audit committee meetings minuted now?
1714. **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.
1715. **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.
1716. **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?
1717. **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.
1718. **Mr Easton:** Did you read the report before it went out?
1719. **Mr Priestly:** Absolutely.
1720. **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?
1721. **Mr Priestly:** With hindsight, it would have been preferable for her to be interviewed sooner.
1722. **Mr Easton:** Why was she not?
1723. **Mr Priestly:** She was on a career break. I do not even know where she was.
1724. **Mr Pengelly:** That is the only explanation. I am not saying that that validates it.
1725. **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?
1726. **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.
1727. **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?
1728. **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.
1729. **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?
1730. **Mr Priestly:** It is a principle of investigation that the evidence should be secured as far as possible at the outset.
1731. **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.
1732. **Mr Easton:** Yes, but it took you another two years after that to get it finished.
1733. **Mr Pengelly:** That is a fair point, but I am just responding to the earlier point.
1734. **Mr Easton:** OK. I do not want to leave you out, Dr McKibbin.
1735. **Dr McKibbin:** Feel free to.
1736. **Mr Easton:** You were the chief executive of Roads Service between 2002 and 2007? Sort of?
1737. **Dr McKibbin:** For most of that time.
1738. **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?
1739. **Dr McKibbin:** I am sorry, are you talking about the Ronnie Balfour report? I would not have been aware of that.
1740. **Mr Easton:** OK, but do you accept that?
1741. **Dr McKibbin:** That some work went to firm A?
1742. **Mr Easton:** Yes, that should have gone to the whistle-blower's firm.
1743. **Mr G Allister:** Is that as a result of the 2002 internal audit report?
1744. **Mr Easton:** Yes.
1745. **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.
1746. **Mr Easton:** OK, but there was still work given to firm A that should have gone to the whistle-blower's firm?
1747. **Dr McKibbin:** I am not aware of any complaints received after the 2002-05 contract. Certainly, there were none in my time.
1748. **Mr Easton:** Were there no more complaints about that afterwards?
1749. **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.
1750. **The Chairperson:** OK. It is now 6.40 pm. The day has been long.
1751. 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."*
1752. 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.
1753. 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?
1754. **Mr Donnelly:** No.
1755. **The Chairperson:** Thank you.
1756. 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.
1757. 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.





Northern Ireland  
Assembly

Appendix 3

# Correspondence



# Correspondence of March 2013 from NIAO

**NIAO**

Kieran Donnelly  
Comptroller & Auditor General

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**Mr John McAteer**  
**Managing Director**  
PWS Ireland Ltd  
Greenbank Ind Estate  
Newry  
BT34 2PB

March 2013

Dear Mr McAteer,

**DEPARTMENT OF REGIONAL DEVELOPMENT: REVIEW OF AN  
INVESTIGATION OF A WHISTLEBLOWER COMPLAINT**

Thank you for your letter of 21 February 2013 in relation to the above published report.

In this correspondence, you raise concerns about the accuracy of my report. However, as part of the third party consultation process, you will be aware that my Office provided you with the opportunity to comment on the paragraphs of the draft report relevant to your firm. As a result, I incorporated your comments, in full, in appendix 7 to the report and indeed, where relevant, in the body of the report. While the findings of the later court case were not relevant to the review of the adequacy of the Department's investigation, I have published relevant extracts of the judgment at paragraph 72. This refers to the Court's findings in relation to allegation 20.

As you correctly state, my review did not investigate the allegations; rather it reviewed the approach of the Department in investigating them. My conclusion was that there were serious weaknesses in the Department's investigation and that its credibility was seriously undermined. However, I was satisfied that, even with the limited forensic work undertaken by the Investigation Team, there were strong indicators of either favouritism towards a particular firm, or bias against the whistleblower (paragraph 15). Directly after this paragraph I have disclosed that both the Department and Firm A, your company, do not believe, or indeed in your firm's case refute, that there was any favouritism or bias.

*Office of the Comptroller and Auditor General for Northern Ireland  
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The letter from your auditors refers to allegation 7 and allegation 21. Your original response to my Office did not comment on allegation 7, possibly because it was not commented on in the body of the report. However, your response did comment on allegation 21 and this response is included.

Having considered each of the issues you have raised, including the typographical error, I am not minded to make any amendments to my Report. However, I will provide a copy of your papers, including the letter from your auditor, as additional evidence to the Public Accounts Committee if this report is examined in an evidence session.

Again, thank you for your assistance in this matter.

Yours sincerely

  
**KIERAN DONNELLY**  
COMPTROLLER AND AUDITOR GENERAL



## TRAFFIC APPLICATIONS

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K. J. Donnelly  
 Controller & Auditor General  
 Northern Ireland Audit Office  
 106 University Street  
 Belfast  
 BT7 1EU

21 February 2013

**Re: Department for Regional Development: Review of an investigation of  
 a Whistleblower Complaint**

Dear Mr. Donnelly,

I had asked our auditors to comment on allegations 7 & 21. Their letter is attached.

I had also emailed a correction to page 56 line 13 correcting that it should read none of these not nine of these.

I understand that your report was only making recommendations & not investigating the allegations. I am however concerned that the report may still imply that there was favouritism shown to this company despite the areas chosen by the whistleblower being fully investigated in court.

There are other items but I am also particularly concerned that allegation 20 remains uncorrected. This was totally untrue & I regret that our good name is still being used to defame another person. This story was changed by the whistleblower in court. I reconfirm that he was on our stand no more than 10 minutes

I would be very grateful therefore in fairness to all that these corrections should be circulated to all who received this report so that they can have a better perception of the truth.


Yours faithfully,

  
 John McAteer  
 Managing Director

Copy to: Mr. Andrew Murray, The Director of Network Services, DRD.



Certificate numbers: Environmental E761, Health & Safety H1094, Quality 966



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Mr. KJ Donnelly  
 Controller and Auditor General  
 NI Audit Office  
 106 University Street  
 Belfast  
 BT7 1EU

SjK/2398

19<sup>th</sup> February 2013

Dear Sir,

**Whistleblowing complaint regarding DRD  
 Firm A (PWS Ireland Limited)**

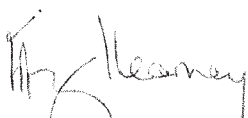
We act as accountants and tax agents for PWS Ireland Limited. We have been asked by our client to address certain allegations made in relation to their company that formed part of the whistleblowers report into DRD.

- Allegation number 7 in the January 2010 report (and a reworded allegation number 3) alleges that PWS Ireland was in financial difficulties (the reworded allegation states that a forensic audit will show that PWS was in financial difficulties) during the evaluation period of the tender [1999-2001]. We completed statutory audits for the years ended 31<sup>st</sup> December 1998-2001 inclusive and an unqualified audit opinion was given for each year.

Further in each of the years 1998-2001 the company made profits (both before and after tax) and the reserves of the company increased in each of these years as a result of the retained profits arising. The contention that the company was in financial difficulties is therefore refuted.

- The additional allegation that the company is based in County Louth and has never published accounts does not stand up to any scrutiny whatsoever. The company is based at Greenbank Industrial Estate, Newry and the company filed accounts for each of the aforementioned years within the filing timelines. These accounts are publicly available from the companies registrar [comp ref: NI03761].

Yours faithfully,



cc. John McAteer, PWS Ireland Limited

|   |   |  |
|---|---|--|
| Directors:<br>MARK REYNOLDS, FCA;<br>BRIAN DELAHUNT, B.Sc. (Econ) FCA;<br>STEPHEN KEARNEY, B.Sc. (Acc) FCA. | Consultants:<br>PAT McMANUS, B.Sc., FCA;<br>AUSTIN FITZPATRICK, FCA;<br>LEO KEARNEY, FCA. | Senior Manager:<br>BRENDA HUGHES, B.A. (Acc) FCA.<br>Diploma in Forensic Accounting. |
|---|---|--|

Fitzpatrick & Kearney Ltd. is registered in Northern Ireland: Registered number - NI 063411  
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 by the Institute of Chartered Accountants in Ireland (ICAI). Chartered Accountants Ireland in the operating name of ICAI.



## Correspondence of 12 September 2013 from Mr David Connolly

### ***Traffic Signs & Equipment Ltd***

Tel: 028 91 873344  
Fax: 028 91 871328  
Email: [trafficsignsni@btconnect.com](mailto:trafficsignsni@btconnect.com)

40A Ballystockart Road  
Comber  
Co Down  
BT23 5QY

Chairperson of the Public Accounts Committee  
Northern Ireland Assembly  
371 Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST BT4 3XX

12 September 2013

Dear Ms Boyle,

#### **NIAO REPORT ON AN INVESTIGATION OF A WHISTLEBLOWER'S COMPLAINT AGAINST DRD**

As you know we have forwarded documents related to this case for your information and I understand copies of these are being sent to you by the Committee Clerk. I would ask that the details hereunder would also be taken into consideration. I feel that justice can never be served in this matter without Messrs Allister and McKibben being properly questioned and called to account for their actions.

The series of Tender exercises for the supply of Traffic Signs etc from 1998 to 2005 (three number) were to the detailed design of their Head of Engineering, Mr G Allister, and as I have always contended it was he who adulterated, infected and ultimately corrupted beyond use every normal process with the sole purpose of ensuring that one Company, which throughout this entire process had as it principle shareholder LEDU/Invest NI would be the main recipient of all work. In 2002 DRD's Chief Executive (M McKibben) realising what was going on called Allister and others to account for what were clearly reprehensible acts as can be seen in the NIAO report and supporting documents. Despite this he then carried on and did nothing, he put no checks in place to ensure that it couldn't happen again, and, when some three years later (whilst he was still Chief Executive) the matter was put in front of Minister Ian Pearson it was patently clear that nothing had changed and they were carrying on as they always did. The whole business of how they

would treat any who would challenge their position and how they sought to personalise and vilify me for asking perfectly reasonable questions surely needs to be explained. Their attempts at retribution are clearly seen in the documentation.

It should also be remembered that after the Audit Office became involved, DRD Permanent Secretary Mr Paul Priestly clearly had a vested interest in spinning the whole matter out. Indeed one of his underlings, Doreen Brown, two years into their so called investigation would tell the Audit Office of how complex this matter was and how thoroughly they were dealing with it when we now know that it would be a further year before their investigator, Balfour, would even access the Department's own papers. Priestly also went to extraordinary lengths to bring scorn and censure on a BBC Journalist and his Editor for daring to expose the workings of his organisation. Why can he not also be brought to the Committee to explain his actions?

The fact that I have been let down at every level by all at DRD Road Service, (an entity which Mr Justice Weatherup noted lacked openness, transparency and were devoid of objectivity), I will be even more let down if Messrs Allister and McKibben, and if possible, Priestly, all of whom were responsible for what took place are not placed in front of your Committee to answer for what they were engaged in.

Can it ever be acceptable that an individual can be put through the likes of this over such an extended period of time - raised with the NIAO in 2005 and here we are in 2013 with still no resolution?

Yours sincerely,



DAVID CONNOLLY

Registered in Northern Ireland  
Company Registration No. NI 057706

## ***Signs & Equipment Ltd in Liquidation***

Tel: 028 9181 6060  
Fax: 028 9182 6460  
e-mail: [signsequipment@btconnect.com](mailto:signsequipment@btconnect.com)

100 Quarry Heights  
North Road  
Newtownards  
Co Down  
BT23 7SZ

Patrick O'Neill Esq  
Northern Ireland Audit Office  
106 University Street  
BELFAST BT7 1EU

3 August 2005

Dear Mr O'Neill,

### **THE OPERATION OF THE CONTRACT FOR THE SUPPLY AND DELIVERY OF TRAFFIC SIGNS 1997 TO PRESENT**

I refer to our meeting of last week and enclose herewith the documentation as promised.

The reason for approaching your office is due to the fact that over a period of 8-9 years we have had a struggle to get fair treatment in the administration of the above supply contract. This includes not just work that we had fairly won and was not awarded to us, but even more importantly, work, which we had been contracted to supply, was given to other Suppliers. It was quite clear to us that there was an element of "cherry picking". We pointed this out on many occasions and, despite promises that it would be addressed, no serious attempt was ever made to censure those involved. Due to the current methods of tender assessment we now find ourselves all but eliminated from the entire supply process, which we are convinced has been brought about for two reasons.

- to protect the interest of their long time supplier.
- because we were prepared to take them to task on the appalling ways in which their tender procedures have been manipulated and altered simply to get the desired end result



Page 2 - Patrick O'Neill, NI Audit Office - 3 August 2005

We are aware that there are other Companies who are in a similar position but they have either not realised this or are not prepared to pursue the matter.

On each of the four occasions that the Government Purchasing Agency/ Central Procurement Directorate has been involved, the model used to determine what is purely a supply contract for goods to a specification and a British Standard has changed for each successive contract. It started out using 100% cost, then 80% cost, 60% cost and currently 30% cost, with other issues being Nil, 20%, 40% and 70% respectively. At the time of tendering we were not made aware of these variations. It would appear that the varying methods of assessment have been arrived at to facilitate the ordering of the bulk of the contracts from the Department's preferred Supplier. As cost was not the major factor this has lead to a huge loss of revenue/value for money to the Public Purse.

Upon investigation we have become increasingly aware of another dimension of this whole affair namely, that the Company PWS Ireland Limited, whose very existence depends upon receiving the bulk of the contract, was for a period of six years commencing 1999 owned by LEDU/Invest NI. You will note from the information we have provided the amount of public money that was pumped into this entity throughout the period of LEDU's ownership and before. The whole business of how this Company is owned and how it in turn owns another Company domiciled outside the UK, with its Registered Office at the Home of one of its Members, needs serious investigation.

As a consequence of the most recent contract we sought more detailed information on the entire assessment process under the Freedom of Information Act 2000. The information received confirmed what we already believed about the entire method of selection or, in our case, de-selection. Copies of all the papers are enclosed. Additional details on certain aspects have been requested and on receipt will be forwarded to you.

Not only, as already indicated, has there been loss to the Public Purse due to paying over the odds for products, but it has resulted in loss to this Company estimated to be in the order of £2-3m in turnover. This has led to a detrimental effect on this Company in terms of viability and employment. A net result is the likely demise of the Company. Since the business was set up it had gradually expanded through its ability to provide quality product at best cost and a reliable service.

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Page 3 - Patrick O'Neill, NI Audit Office - 3 August 2005

This can be clearly evidenced from the many contracts we carried out in the Republic of Ireland for public bodies and for Contractors both North and South. Given the fact that DRD/CPD have taken the action they did, they have sent a clear message to the industry at large that we were neither capable nor competent in our field of operation. The effects of this have been very rapid.

We would now ask that this entire case be fully investigated.

Yours sincerely,

DAVID CONNOLLY

Director

**Contract - January 1997 - December 1998**

**10 November 1997 - Contract meeting held to review issues such as:**

- Price adjustments for the second year of the contract - no adjustment permitted.
- Assessment of the contract - no action required.
- A sample and specification for refurbished signs was offered to GPA - no response received.
- Ordering signs from the contract - signs being ordered from wrong supplier - GPA not pleased this is happening and will attempt to stop the practice.

The awarding of the Contract was based purely on cost (100%) given that all the Companies considered were deemed to be competent in quality and supply.

Even though we were the cheapest we were only awarded approximately a fraction of the contract.

5 January 1999 - Letter received from GPA advising that the Contract had been extended until 31 January 1999. (Verbally advised it was due to unavailability of [REDACTED] being off on study leave).

Following further information received we would question the authenticity of the reasons given for the extension - we refer you to the 1999-2001 contract.

Contract - 1 February 1999 - 31 December 2001

16 December 1998 - A verbal presentation on our ability to manufacture signs was made to the GPA Evaluation Panel the notes of which are on file.

29 January 1999 - Letter from GPA accepting our tender as per schedule. Note: New Contract delayed by one month.

As a consequence of searches at Company House and from further information received through Mrs Iris Robinson from the Minister responsible Ms Angela Smith, we are convinced all of this clearly demonstrates the true situation namely; that there had to be collusion between the three Government Departments - LEDU, DRD Road Service and DFP/GPA to protect what was clearly a large investment in PWS (Ireland) Limited. This worked to the detriment of Signs and Equipment Limited and other larger Suppliers.

At the time of this tender we were firmly convinced of our competitiveness in the local market place North and South since we were regularly competing against them in legitimate public tenders on each occasion.

The searches at Company House on PWS (Ireland) Limited revealed a very interesting situation - LEDU had invested in the month of January 1999 a substantial sum which amounted to them becoming the principal shareholder and majority owner of that Company! We would suggest that this was the only reason for delaying the award of the Contract and without this investment PWS (Ireland) Limited would not have been a viable company as required under the terms of the Contract - Instructions to Tenderers Items Number 11.

To window dress the awarding of the Tender to PWS the model used for the award was reduced from 100% cost to 80% cost and 20% other. This was only identified when we received the information under Freedom of Information in late 2005.

We are aware, that in addition to all the other abnormalities, this Company was supplied with a Government Payment Card thus allowing them instant payment on invoices whilst we and all other Suppliers had to wait from anything up to 90 days for payment.

When on an earlier occasion we challenged GPA and Road Service (attended by the Head of Engineering), in the presence of our Solicitor, on the fact that one Company should be selected for such treatment the reply was that they didn't find it at all strange and they were at liberty to do this. They did not find it at all strange that they were providing this Company with working capital!

18 November 1999 - Letter sent to V Crawford, DRD, Re supply of signs awarded to us in tender but supplied by others.

1 December 1999 - Letter sent to V Crawford, DRD, again regarding appearance of further signs that should have been supplied by us.

14 December 1999 - Letter from V Crawford, DRD, advising that Ballymena Office would be dealing with our letters,

29 December 1999 - Letter received from D Moore, DRD Ballymena, re letters to V Crawford.

The terms of the letter received from D Moore gave no answers but we refute absolutely his assertions given the facts.

22 August 2001 - Letter sent to [REDACTED], GPA, supplying sample of refurbished sign for appraisal. No action taken by DRD on this occasion and many others when we raised this issue.

We find this strange that

21 November 2001 - Contract extended to 28 February 2002.

27 February 2002 - Contract extended to 31 March 2002.

27 March 2002 - Contract extended to 30 April 2002.

**Contract - 1 January 2002 - 31 December 2004**

22 October 2001 - Letter from G Anderson, GPA, informing us we had not been included in list of tenderers to be considered for shortlist and advising us that should be require a debrief we should contact Brian Steen.

25 October 2001 - We wrote to [REDACTED] requesting a debrief and this was immediately accommodated.

2 November 2001 - Meeting held with Peter Robinson, Minister, Regional Development, facilitated by our local MP, MLA, Iris Robinson, regarding our exclusion from the forthcoming tender.

5 November 2001 - Letter from R M Turner, GPA, agreed to review shortlist. (This was subsequent to the meeting with the Minister on 2 November 2001).

8 November 2001 - Letter from Tom Gilgunn, GPA, advising that we would be included on shortlist.

13 May 2002 - Letter from T Gilgunn, CPD, (formerly GPA) awarding new contract for period 1 May 2002 - 30 April 2003. The contract period, as contained in the tender documents, was to be from 1 January 2002 until 31 December 2002, with the option to extend for two 1 year periods ie 31/12/03 and 31/12/04. This is an obvious departure from the tender as advertised. The second period was never implemented ie 31/12/03 and 31/12/04 - instead it was extended on a monthly basis from 30/4/03 until the current contract was awarded.

Under Freedom of Information we found out that the cost ratio had again been reduced, or should we say manipulated, this time to 60% cost and 40% other! In our view the most devious of methods were used to discredit and score us down at every opportunity whilst using an assessment model that we had absolutely no knowledge of. We would question the logic of using such a model for what is purely a supply contract resulting in a loss to the public purse! By this we mean that the end product, namely road traffic signs, must conform to a British Standard specification and Government regulation.



15 May 02 - Letter to T Gilgunn, CPD, requesting a debrief which was subsequently held on 6 June when we raised many issues. Geoff Allister, DRD, Tom Gilgunn, GPA, Philip Smith, S&E Solicitor and David Connolly, S&E attended the meeting.

The outcome of this meeting was that assurances were given that all of the many contentious issues of the past would be addressed and that a level playing field would be achieved.

6 September 2002 - We 'again' had to advise Geoff Allister, DRD, that our work was being given to others.

Following this meeting regarding the continuing problem of our work being given to others, a seriously sub standard sign made by another supplier, was couriered to the office of Geoff Allister together with a sign from our current stock which was to proper specification. We never heard from them on this matter.

30 October 2002 - In an effort to overcome the ordering of signs from wrong suppliers we offered to put together a booklet showing exactly what signs we had been awarded - this we did and sent copies to Road Service Headquarters for comment. No reply ever received despite their claims to the contrary.

We spoke to a number of the store men at various Depots about this booklet and they said that it would make their life a lot easier if they were in possession of a picture of each sign, specification, reference number and contracted price thereby simplifying the ordering process. Unfortunately, despite us spending a lot of time and effort, not to mention purchasing new equipment to produce the said booklet, as already stated nothing happened.

24 June 2003 - Letter from [REDACTED], CPD, advising that the contract would be extended on a monthly basis.

Whilst we had little alternative but to accept this it made guaranteed delivery difficult since we were not in a position to carry stock, because in theory, the plug could have been pulled and we would have been left with stock, which could not have been sold.

**Contract - 1 November 2004 - 31 October 2006 with possible extensions for two further periods of one year each, up to 31 October 2008.**

What was previously one contract was split into two, namely 1) Traffic Signs and 2) Associated Equipment. All previous contracts had been based on a calendar year.

23 November 2004 - Letter from [REDACTED], CPD, advising that due to operational difficulties the tender had not been opened and we were asked to confirm that we were willing to keep our bid valid until anticipated award date of early March 2005. This was probably due to us entering into discussions with the Minister and Head of CPD.

30 November 2004 - We confirmed to [REDACTED], CPD, our acceptance of the terms as set above.

21 January 2005 - Letter from [REDACTED], CPD, informing us that an evaluation of our 'manufacturing process' would be carried out during a site visit in week commencing 7 February 2005. We were asked to prepare a sample sign which, on checking, we identified as not being in accordance with the Traffic Signs Regulations (NI) 1997. As per the contract we have always been obliged to provide signs which are in compliance with regulations and as such, are obliged to point this out to those ordering signs. We found it strange that, in the circumstances, they would be ordering a sample sign that was totally wrong. We felt that our knowledge was being tested but, when the panel arrived on site, and we made them aware of this aspect of the regulation, they were clearly ignorant of the regulations. We later made a point of viewing the samples provided by others and both were wrong.

9 February 2005 - Site visit by evaluation panel - [REDACTED], CPD, Jackson Minford, DRD, Michael McKendry, DRD and [REDACTED], DRD. It was pointed out to the panel that the requested sign as detailed in their letter of 21 January was not in accordance with Regulations. They were given the opportunity to have the sign as per drawing or as per regulation - they choose the one in accordance with regulation. Since we were being scored on

various aspects of our processes, it would have been useful for these processes to be identified in advance to ensure a fair comparison between all potential contractors.

Under Freedom of Information we requested copies of the assessment sheets. We were astounded to read some of the observations and also surprised that the CPD representative who, in our opinion, was the only one to ask many of the questions and was the only one seen to write anything down whilst on our premises, did not complete an assessment form. The contract is being administered by CPD!

15 March 2005 - Letter received from [REDACTED], CPD, advising that the contract will commence on 1 April 2005 until 31 March 2007 with the option to extend by two further periods of one year each ie until 31 March 2009. This is contrary to what is specified within the contract.

16 March 2005 - E-mail to [REDACTED] requesting a debrief.

21 March 2005 - E-mail from [REDACTED] advising that due to unavailability of evaluation panel members the meeting could not be held until 24 March.

21 March 2005 - E-mail to [REDACTED] asking why all the arrangements had been changed as we had proceeded to arrange with legal council based on the dates she had already agreed.

PLEASE READ THIS SERIES OF E-MAILS.

24 March 2005 - Debrief Meeting held. Attended by:

|                 |                                 |
|-----------------|---------------------------------|
| [REDACTED]      | - CPD - Evaluation Panel Member |
| Jackson Minford | - DRD - Evaluation Panel Member |
| Brian Maxwell   | - DRD - Not on Evaluation Pane  |
| [REDACTED]      | - CPD - Not on Evaluation Panel |
| Phillip Henry   | - Barrister for S & E           |
| David Connolly  | - S & E                         |

Mr Henry's handwritten notes (18 pages) are herewith.

How could Brian Maxwell and [REDACTED], who did not attend our premises nor see the making of the sign from order to invoicing, be able to advise at a debrief meeting? Why did only two members out of the four person evaluation panel not attend the debrief,

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especially since the e-mail from [REDACTED] on 24 March advised that members would not be available until 24 March?

4 April 2005 - Letter from Philip Smith, Solicitor, to [REDACTED], CPD, J Minford, DRD, [REDACTED], CPD, [REDACTED], CPD, and Brian Maxwell, DRD, requesting information not made available at debrief. See letter for content.

5 April 2005 - Response from [REDACTED], CPD, to Philip Smith replying to the issues raised. We subsequently on 6 April wrote to John McMillen, Director of Central Procurement Directorate, requesting similar information in relation to the previous three contracts. This request was passed to [REDACTED], CPD, to respond to in his role within Freedom of Information Act 2000. See his responses within the Freedom of Information Section in the documentation.

8 April 2005 - See Comments on CPD reply from [REDACTED].

12 April 2005 - See Comments on Site Visit Scoring Matrix - Annex 5. From this response it became obvious that the rather complicated model used in the award process was made up of 30% cost and 70% other issues. This balance seems ludicrous for what is purely a supply contract of a BS product, which we can never under spec. All contracts up to 1998 had been awarded purely on cost (subject to normal quality checks on the supplier) but from 1999 the Department then switched to a cost plus subjective element, which went from 80/20 to the ridiculous situation that exists to day. Never once during the operation of the contracts were we ever advised of the methods being used by them to establish a final result. All of this only became apparent when we eventually under Freedom of Information received details of the facts.

Please note that the cost ratio has now been reduced to 30% with 70% others.

As can be seen from the attached matrix this will result in a substantial increase to the public purse.

31 April 2005 - Note to Solicitor re additional points to be raised in further letter to [REDACTED], CPD.

10 May 2005 - Letter from Philip Smith to [REDACTED], CPD requesting a further debriefing meeting to clarify additional matters and requesting that all of the individuals who conducted the site inspection attend.

12 May 2005 - Letter from [REDACTED], CPD, to Philip Smith advised that they had nothing further to offer in respect of debrief and requested that any additional matters to be clarified should be addressed to CPD in writing.

DAVID DO YOU WANT TO PUT ANYTHING IN UNDER THESE HEADINGS ???????

LETTERS RECEIVED FROM THIS DATE NEED TO GO ON - IE DEBRIEF FROM [REDACTED] AND PHONE CALL FROM [REDACTED] EVEN THOUGH HE DIDN'T KNOW THE TELEPHONE NUMBER.

COMMENTS RE LIQUIDATION - DUE TO LACK OF ORDERS LED TO THIS  
PRODUCTS SEEN ON ROAD NOT CONFORMING TO SPECIFICATION  
ZOO SIGNS - DID NOT COMPLY WITH ENGLISH LEGISLATION  
LOSS OF BUSINESS - UNDERMINING OF OUR GOOD REPUTATION

**Freedom of Information Act 2000**

6 April 2005 - Letter to John McMillen, Director, CPD, requesting information on traffic supply contracts for the periods Jan 1997 - Dec 1998, Jan 1999 - Dec 2001 & Jan 2002 to Date in the same format as that provided by [REDACTED], CPD, in relation to the recently evaluated 2005 contract, together with all other recorded documentation.

7 April 2005 - E-mail from [REDACTED], PA to John McMillen, CPD, advised that Mr McMillen would advise as soon as possible when the requested information could be expected.

8 April 2005 - E-Mail to [REDACTED], CPD, confirming receipt of her e-mail and requesting her to ask Mr McMillen to include in his reply, full details of the Minister's instruction to the Department of those items in the current tender document, which were not to be used in the evaluation process.

11 April 2005 - Letter from [REDACTED], CPD, acknowledging our recent correspondence to John McMillen on 7 April and advising that he would be processing the request under the Freedom of Information Act 2000.

12 April 2005 - Letter from [REDACTED], CPD, acknowledging our e-mail to [REDACTED], CPD, and advising that he would be processing the request under the Freedom of Information Act 2000.



25 April 2005 - Letter from [REDACTED], CPD, advising that our requested information concerning details of the Minister's instructions to the Department of those items in the current tender document for Road Traffic Signs which were not to be used in the evaluation process. He advised that following a search of paper and electronic records he had established that the information is not held by his Department. He contacted the Department for Regional Development and they have indicated they do not hold the information.

26 April 2005 - Letter from [REDACTED], CPD, advising the two options regarding the provision of the requested information and advising it would be available by 26 July 2005.

3 May 2005 - E-mail to [REDACTED] asking him to compile all necessary data in accordance with Option 2.

5 May 2005 - Letter from [REDACTED], CPD, advising that as the Department has not yet reached a decision on the requested information and will not therefore be able to respond to the request in full within 20 working days, he considers that it will take approximately 10 additional working days in order to respond. He advised that he hoped to have a response by 25 May 2005.

20 May 2005 - Letter to Darragh Boyle, Philip Smith & Co re information required.

25 May 2005 - Letter from [REDACTED] enclosing documentation from [REDACTED], CPD.

28 July 2005 - Letter to [REDACTED] requesting additional information to help up properly understand what has already been provided.

**General Information Sought on the Operation of the Contracts**

14 November 2001 - Letter from Iris Robinson, MP, enclosing information requested from Dept of Enterprise, Trade & Investment for NI on PWS Ltd.

11 August 2004 - Letter from [REDACTED], Private Secretary to Rt Hon John Spellar, MP, advising us to write to John McMillen to investigate our complaint re allegations in relation to the tender process.

11 August 2004 - Letter to John McMillen, Director of Central Procurement Directorate re Tender for the Supply and Delivery of Traffic Signs.

16 August 2004 - Letter from John McMillen, CPD, advising that one of his Deputy Directors would undertake an independent investigation and reply within 10 working days.

17 August 2004 - Letter to Rt. Hon John Spellar, MP.

20 August 2004 - Letter from Iris Robinson, MP, enclosing copy reply from DRD with regard to query concerning tenders.

23 August 2004 - Letter from [REDACTED], DRD, re letter we sent to John Spellar, MP, advising that the issues raised related to Dept of Finance and Personnel and advising that the

correspondence had been sent to them and they would reply directly in due course.

25 August 2004 - Letter from Fergus McDevitt, Deputy Director, Policy and Support Division, CPD.

26 August 2004 - Letter from Private Secretary to Ian Pearson, MP, - same letter sent to Iris Robinson.

31 August 2004 - Letter from John McMillen, CPD, enclosing notes of meeting held with him on 27 August 2004.

1 September 2004 - Letter from Iris Robinson, MP.

17 September 2004 - Letter from John McMillen, CPD, outlining Action on Complaint to Date.

22 September 2004 - Letter to John McMillen, CPD, re his letter of 17 September 2004.

4 October 2004 - E-mail to John McMillen, CPD, asking when information requested would be made available and when.

4 October 2004 - E-mail from [REDACTED], Personal Assistant to John McMillen, CPD, advising that Mr McMillen was on annual leave but in his absence the letter was being pursued and they hoped to get a response out shortly.

8 October 2004 - Letter from Dr M McKibbin, Chief Executive, Road Service Direct, to Iris Robinson regarding monies paid to PWS Ireland Ltd.

12 October 2004 - Letter from Fergus McDevitt, CPD, re our letter of John McMillen, CPD, on 22 September 2004.

14 October 2004 - Response to letter from Fergus McDevitt, CPD.

21 October 2004 - Letter from Aileen Edmund on behalf of Fergus McDevitt, CPD, advising that they were unable to provide requested information.

22 October 2004 - Letters to Dr Malcolm McKibbin, Geoff Allister, Dr Andrew Murray, Joe Drew, John White, Pat Doherty & Ken Hutton, all DRD.

24 October 2004 - Letter from Ian Pearson, MP, to Iris Robinson, MP, to arrange a date for requested meeting.

26 October 2004 - Letter from Dr Malcolm McKibbin, DRD, regarding our letter of 22 October and advising that he hoped to be in a position to respond shortly.

27 October 2004 - Letter from Geoff Allister, DRD, on behalf of all other DRD staff who received the letter, and advising that it is currently receiving attention.

13 October 2004 - Response from Barry Gardiner, MP, re question raised by Iris Robinson, MP, on how much grant aid has been awarded to PWS Ltd in each year for the past 10 years.

October 2004 - Notes on aspects of the Contract.

1 November 2004 - Letter from Iris Robinson, MP, MLA, advising date of 8 November 2004 for date of meeting in London with Ian Pearson, MP, Minister for Finance and Personnel.

2 November 2004 - Letter from Dr Malcolm McKibbin, DRD, advising that Geoff Allister, DRD, will be attending the meeting with the Minister in London and will be in a position to deal with the comments made in the letter of 22 October.

7 March 2005 - Minutes of meeting with [REDACTED], CPD, Dave Glover, CPD, Brian Maxwell, DRD and David Connolly, S & E.

21 March 2005 - Letter from Ian Pearson, MP, to Iris Robinson, MP, MLA, in response to questions raised on Invest NI's involvement in PWS Ireland and Procurement Process for Road Traffic Signs in 1999.

14 June 2005 - Letter to Iris Robinson's office re transcript of meeting in London with Ian Pearson, MP, and information on Invest NI.

7 July 2005 - Letter from Jeff Rooker from Angela Smith's (MP) Office (replaced Ian Pearson) to Iris Robinson, MP, and MLA, enclosing requested information.

28 July 2005 - Letter to Dr M McKibbin requesting information on how much money had been paid to PWS Ireland for the years

1997-2000 similar to that already provided for the years 2001-4.

1 August 2005 - Letter from [REDACTED], Secretariat, DRD, on behalf of Dr M McKibben, advising that our letter of 28 July was receiving attention and that they would hope to issue a reply by 19 August.

17 August 2005 - Letter from [REDACTED], Secretariat, DRD, advising that issues raised were taking longer than anticipated to investigate. A response should be issued within two weeks. WE NEVER RECEIVED A REPLY.

22 August 2005 - Letter from Iris Robinson enclosing the reply from the NI Ombudsman advising that they are unable to assist with our case.

11 October 2005 - Letter to John McMillen Esq, Director of Central Procurement Directorate, asking that he does whatever is necessary to arrange that a new meeting with all four panel members present and a senior member of his staff there to observe a final debrief meeting.

9 November 2005 - Letter to John McMillen Esq, Director of Central Procurement Directorate, asking for a response to our letter of 11 October.

16 November 2005 - Response from John McMillen Esq., Director of Central Procurement Directorate, in which he advised that there was nothing to be gained from a further meeting. He did not agree that we have the right to question all those involved in the evaluation process on all relevant matters. Told us that if we were dissatisfied with this response to ask our MP (MLA) to refer the matter to the NI Ombudsman's Office.

5 December 2005 - Letter to Iris Robinson's office regarding tourist signs not complying to standard.

**Information on PWS Ireland Limited, PWS Celbridge Limited, T M McAteer Investments (LTD?), McCartan & McAteer Limited, and other related documentation**

On 16 January 2006 Angela Smith, MP, DETI sent the following Letters of Offer to Iris Robinson MP MLA.

**27 August 1992 - Letter of Offer from LEDU**

The Offer - a quality development grant not exceeding £606.

**25 May 1993 - Letter of Offer from LEDU**

The Offer - A development grant (marketing) not exceeding £8,500.

**20 December 1994 - Letter of Offer from LEDU**

The Offer - assistance towards the marketing costs in promoting their product range by exploiting identified markets and diversifying into unexplored markets - £11,650.

A silly fabrication - 5 years after this date Signs and Equipment carried out the largest project using this product (according to 3M - the makers) at a fraction of these figures. Within Northern Ireland it was unlikely



that they could achieve this additional £100,000 within the actual traffic sign spend.

30 May 1995 - Letter of Offer from LEDU

The Offer - superseded offer of 20 December 1994 - conditions would appear to have been reduced as they are blanked out on this letter of offer - £20,650.

How do the figures on this offer increase from £11,650 to £20,650 in 3 months? Where exactly did they sell £200K (blanked out from this Offer but this was the figure quoted in the offer of December 1994) of Diamond Grade Signs to?????

2 May 1996 - Letter of Offer from LEDU

The Offer - assistance to Client towards the costs incurred in travel to USA to visit a number of Companies with potential in order to negotiate an Agency Agreement with the option to part manufacture the product in Northern Ireland - £3,000.

What precisely is an agency agreement??? This product is fully manufactured and simply resold!

24 January 1997 - Letter of Offer from LEDU

The Offer - assistance will be applied towards the costs incurred by the Client in employing a consultant to carry out a market research study focusing on the market potential in the United Kingdom and Europe of mobile solar traffic sign products - £2350.

30 January 1998 - Letter of Offer from LEDU

The Offer - costs incurred in the preparation of financial projections - £700.

What precisely does "financial projections" mean????? Is it simply projections to ascertain if they were grant eligible for what was to follow??

23 February 1998 - Letter of Offer from LEDU

The Offer - marketing grant, quality grant, management salary, working capital and Investment of 20,000 shares at £1 each - £80,750.

Under Paragraph 8.2 - was Form 98(2) stamped by way of acknowledgement by the Companies Registry within two months from the date of payment of the Investment?

Paragraph 9.1 - were all the milestones met and as of 1 December 1999 were 24 number workers employed and maintained at that number??

If offer was not taken up by 23 March 1998 it was withdrawn therefore void.

Under Environmental/EMC Testing of Portable Variable Message Sign Programme and Budget - why was it back out and what was it about??

Pages 18 and 19 - all of this shows clearly why this entity had to be kept in work at all costs.

#### 14 January 1999 - Letter of Offer from LEDU

Re - Amendment to Letter of Offer issued 23 February 1998.

Sub Para 4.1 - If they no longer needed possible up to £200K of Bank finance - how could offer have remained the same. Indeed why did they need help at all? What exactly was in the business plan of August 1997?

On 14 January 1999 no offer was in force or valid yet, 16 days earlier, the Company agreed share transfer. This was before any new offer was in place and during which time the DRD Contract was mysteriously halted.

This whole document was based on business plan of August 1999 (nearly 18 months old) - how could it have any current relevance?

Signed on the day it was issued, 14 January yet not received until 19 January 1999?

#### 15 January 1999 - Letter of Offer from LEDU

The Offer - Exhibition Management Grant - £100.

Is this for real - how much did it cost LEDU to prepare the Offer.

#### 8 February 1999 - Letter of Offer from LEDU

The Offer - undertaking a marketing/technical appraisal visit - £1500.

#### 20 August 1999 - Letter of Offer from LEDU

**The Offer - implementing management information systems - £4791.**

**31 May 2000 - Letter of Offer from LEDU**

**The Offer - Marketing Technical Appraisal Visit Scheme - £1250.**

**29 March 2002 - Letter of Offer from LEDU**

**The Offer - development grant (marketing & quality) - £16,175.**

**24 March 2003 - Letter of Offer from Invest NI**

**The Offer - amendment to letter of offer 29 March 2002 - no cost change.**

**17 February 2004 - Letter of Offer from Invest NI**

**The Offer - amendment to letter of offer dated 29 March 2002.**

**23 February 2004 - Letter of Offer from Invest NI**

**The Offer - marketing grant - £3950.**

**4 March 2004 - Letter of Offer from Invest NI**

**The Offer - marketing grant and management information grant - £24,622.**

**LETTERS RECEIVED FROM DETI AND DRD RE PWS IRELAND LTD.**

**9 November 2001 - Letter from Sir Reg Empey MLA to Iris Robinson MP MLA explaining LEDU relationship within PWS.**

**24 August 2005 - Letter from G Allister, Director of Engineering, Roads Service, re spend to PWS Ireland April 1997 - December 2000.**

**THE FOLLOWING INFORMATION WAS AS A RESULT OF SEARCHES CARRIED OUT ON OUR BEHALF BY THE COMPANY SHOP.**

**5 November 1969 - Memorandum of Association of T M McAteer Investments.**

**30 December 1998 - Minutes of extraordinary meeting of the shareholders of PWS Ireland Limited.**

**15 December 2000 - Annual Return 371s - P W S Ireland Ltd - NI03761.**

**25 October 2001 - Company Search Report on PWS Ireland Ltd.**

**29 May 2002 - Company Search Report on PWS Ireland Ltd.**

**31 December 2002 - Abbreviated accounts on PWS Ireland Ltd.**

**31 December 2002 - Abbreviated accounts on PWS Celbridge Ltd.**

**Jan 1999 - Jan 2003 - PWS/LEDU NI3761 Shareholders and number of shares held.**

**25 October 2003 - Companies Registration - Republic of Ireland - PWS Celbridge Ltd Annual Return.**

**31 December 2003 - Abbreviated accounts for PWS Ireland Ltd.**

**15 January 2004 - Annual Return 371s - on PWS Ireland Ltd.**

**19 March 2004 - Companies Registration - Republic of Ireland - T M McAleer Investments Annual Return.**

**23 April 2004 - Directors/Shareholders Search on PWS Ireland Ltd, PWS Celbridge Ltd & T M McAteer Investments.**

**6 August 2004 - Letter from the Company Shop on PWS Ireland Ltd.**

## ***Signs & Equipment Ltd***

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**IN LIQUIDATION**

22 August 2007

### **THE OPERATION OF THE CONTRACT FOR THE SUPPLY AND DELIVERY OF TRAFFIC SIGNS 1997 TO PRESENT**

Whilst we were involved with Road Service prior to 1997 we became increasingly aware around that time that work which had been awarded to us under the tender was being given to others and we made this known to GPA on many occasions (see APPENDIX 1). Despite the assurances given that this practice would cease it never did; nor did we ever detect any serious attempt on the part of any involved to bring this about.

#### **Tender Commencing 1 January 1999 - 31 December 2001**

In late 1998 we went through the selection procedure for this contract and in due course presented our fully priced bid. All of this was done in accordance with the documents provided and with full knowledge of the entire operational process that had been used over a long period of time. We had never any reason to assume that the procedures and principles that had evolved over time, whereby all potential suppliers would be thoroughly vetted in respect of their ability to supply would be changed, and there was no instruction to the contrary of in the tender documents. Given that contracts up until this time had been awarded on 100% cost following all proper vetting, we later learned (very much later under Freedom of Information) that they had introduced a subjective element. This they choose to call a qualitative element, of 80% cost and 20% other for this contract, thus giving to a group of individuals with no knowledge whatsoever of the process involved in the manufacture of traffic signs, the ability to judge, and in our case discredit and call into

1

question our general competence. To have something of this kind taking place effectively behind backs with only one objective is outrageous. See APPENDIX 2 - four scoring frames signed by Messes [REDACTED] [REDACTED] that demonstrates our reasoning. The alteration made by them on our scoring sheet where they changed the figure from 40 to 30 in the delivery column effectively overturned the entire award that was, quite clearly, their motive/intention.

Upon completion of the tender process for a contract due to commence in January 1999, this process threw up a clear winner, but in the view of Road Service/GPA, not the right winner, so methods had to be devised to accommodate the requirements of the three Departments involved, namely, DRD, GPA and LEDU. This to pervert the proper course of events and to concoct a means of depriving the winning bidder thus making the bulk of the work available to PWS (Ireland) Limited. If you study the effects of the subjective element and how they needed to change it to achieve the required result and it surely highlights the truly appalling nature of all that was taking place.

Since the award date of the new tender was looming a ruse was devised by those involved, whereby a charade requiring the short listed bidders being called to Rosepark (GPA) during December 1998 to provide answers to supposed technical questions. These were nothing more than a regurgitation of questions asked two months earlier during the supplier "evaluation" process. The purpose of all of this was to buy time into January 1999 beyond the point where all PWS (Ireland) Ltd/LEDU arrangements were completed, thus allowing the new government funding to provide their working capital (with Road Service providing the ongoing monthly revenue sales).

The purpose of all this is very clear when one analyses the precise chronology of the events unfolding at LEDU in respect of PWS (Ireland) Limited. Study of all the Freedom of Information documentation covering this issue will surely confirm what was afoot. As can be seen from the change the assessment panel made to the S & E scoring sheet, that one change in effect took us from a situation where we would have been in possession of some 85% of the entire spend to where we actually received 15% (1999), 15% (2000) and 22% (2001), that is if we accept Road Service total spend figures. At this juncture we scored less than a Company who had been removed from the previous tender for non delivery with us being requested and agreeing to take over the balance of their contract commitment. Quite clearly anything written on these sheets was engineered to achieve whatever result they choose.



Tender Commencing 1 January 2002 - 31 December 2004

We expressed an interest to tender and a 'Firm Questionnaire' followed this on 8 August 2001; this had to be returned by 10 September 2001. On 22 October 2001 we received a letter from GPA informing us that we had been unsuccessful and would not be invited to tender. We immediately sought a de-brief and this was held on 26 October 2001. It was patently clear at this time that they had as their only way of protecting the interests of a now LEDU controlled entity namely PWS (I) Ltd referred to by the Department's Engineers as their "sign contractor", was to do whatever was necessary to remove S & E Ltd who they knew would again be probably unbeatable opposition. This they would have been very much aware of since virtually every major road works project carried out in the province over the previous 3 or 4 years had been signed by us working in conjunction with provinces major contractors and proving on an ongoing basis our capabilities in terms of cost and performance. This they could easily have evidenced had proper objective methods been employed.

At our request, Iris Robinson our MLA, arranged a meeting with the then Stormont Minister to give us the opportunity to express the wrong that was being done to us by the Department. Following this meeting we received a letter on 5 November 2001 from Malcolm Turner, Head of GPA, who advised that he had asked one of his Senior Managers namely Mr Tom Gilgunn to undertake a review of the shortlist.

On 8 November 2001 we received a letter from Mr Gilgunn stating that GPA had reviewed its decision and decided that Signs and Equipment Limited would be included in the list of Companies to Tender - no reason given! At the same time we received Tender Documents to be returned by 17 December 2001; (these were duly completed and returned). We then received a letter on 21 November 2001 stating that the current contract would be extended by two months ie until the end of February 2002. A further letter was received from [REDACTED], GPA, dated 27 February extending the contract for a further period of one month until the 31 March 2002. When pressed as to why this was necessary he could give no reason. Once again a letter dated 27 March 2002 was received, again stating that it was being extended for a further period of one month until 30 April 2002. Many phone calls were made to [REDACTED] but he could give no explanation as to the reason for the lengthy delay. It seems strange that these letters were only received one day before the extension was due to expire.

THE TENDER DOCUMENT STATES IN THE INSTRUCTION TO TENDERERS CLAUSE 4 THAT "TENDERERS ARE REQUIRED TO KEEP TENDERS VALID FOR ACCEPTANCE FOR A PERIOD OF 90 DAYS FROM THE CLOSING DATE FOR THE RECEIPT OF TENDERS", THUS REQUIRING ACCEPTANCE BY 16 MARCH 2002 OR A COMPLETE NEW TENDER PROCESS SHOULD HAVE BEEN INITIATED.

The DRD's Auditor would do well to study all the purchase figures over this four month period in the light of who, in actual fact, had won the tender which should have included this period. Throughout this entire period, when all proper processes were either ignored or manipulated, we then received on the 14 May 2002 a letter with attachments informing us of our award under the tender. The letter also informed us that the start date was the 1 May 2002; some two weeks earlier. In any situation of this kind it would be right and proper for a Government Department to give a Supplier approximately one month to prepare for work of this kind thus allowing them to bring to hand all necessary supplies given the contractual obligations that would ensue.

How could it possibly have taken five months to assess a simple supply tender the analysis of which should not have taken more than a day's work? Quite clearly the reason for this lengthy period was, as with the 1999 tender, to give the time necessary to carry out whatever contrivances were required to provide for their preferred supplier. To achieve this they would further increase the subjective element to 40%. Surely 60% cost is a very low percentage for a simple supply contract. Again, we knew nothing of this until Freedom of Information exposed it. FOI also exposed that LEDU were providing further new funds to PWS (I) Ltd at this same period.

On 15 May 2002 a request was made to Mr Gilgunn (CPD) for a debrief. He arranged for a meeting to be held at DRD Headquarters, Clarence Court on 6 June 2002; this being the first time that anything had ever taken place at Road Service Headquarters. We also found it particularly odd that the Department's Director of Engineering, Mr G Allister, had chosen to be personally involved in such a minor contract.

At this time I choose to take to this meeting Mr Phillip Smith, the Company's Solicitor. This was done for two reasons; firstly, we had already been in discussion with Mr Smith and Council with a view to seeking a Judicial Review of the whole process adopted by Road Service/GPA and their contemptuous disregard for normal contract processes and, secondly, to have present someone of his stature to listen to and be in a position, if later required, to comment on all aspects of the discussions. This meeting duly took place, much of it quite heated as

a result of me confronting Messes Gilgunn and Allister with all the hard facts that I was then in possession of (I have certainly learned a lot more since) and asking why all of this information which was demanded under contract requirements, just as it was for the 1999 contract, why was it not properly taken account of and how could they have been doing their job properly if they weren't aware of it? Much of this related to LEDU's majority ownership of PWS (I) Ltd and Road Service's position as virtually the sole supplier of work to this entity and their clear need to retain the status quo. [It should be borne in mind that Mr Allister has stated on three separate occasions, the last one being at the Stormont meeting of the 11 June 2007, that he know nothing of the PWS (I) LTD/LEDU arrangements until the time of the Pearson/London meeting of 8 November 2004]. We were once again given assurances that what had happened in the past would not be repeated and that we would get all the work that we were entitled to. However, we were aware that we had again been excluded from all major route signing; the most potentially profitable portion of the contract. At this meeting we were told that we had been awarded 54% of the tender and as can be seen from our financial spreadsheet figures (Appendix 3) what we actually received was about the half this amount. When Mr Gilgunn informed us at that meeting that we were to get 54% I asked him if what we were being awarded was a political slice rather than a reflection of what we had actually won. I confronted him with this scenario for the simple reason that his 54/46% split aped the census figures for the province which the press was full of at this time and, since S & E Ltd operated from a predominately protestant town and PWS (I) Ltd from a predominately catholic one, was there any dimension to this? He stated that this was not the case. When asked on that occasion if we were unhappy with the award given we answered yes. We knew that in large areas of the work we were the most competitive in the province, which would have been demonstrated to them by the references we provided in the tender process; we later learned that these references were never taken up. We asked what action would be taken if we felt aggrieved, to which Mr Gilgunn replied, "you will take what we are giving you or you will take nothing". A long time after on receipt of information received under FOI these percentages were reversed.

On the strength of assurances given by Mr Allister at the meeting that the events of the past would cease and that "a line would be put in the sand and that we would try to start afresh" (his words) I was instructed that in the event of any grievance I was to go to him directly. Following discussion with our Solicitor, Phillip Smith, we decided that on the word of a Senior Civil Servant that no further action would be taken re the judicial review. Probably, with hindsight, this was our greatest mistake

in this whole grotesque affair as we later realised that his word and assurances proved to be worthless.

On 6 September 2002 I wrote to G Allister advising that the practice of giving our work to others had not ceased and I met with him afterwards at his office. He was at pains to point out that this was pure human error (the same story we had heard since 1997). The main purpose of that meeting was to provide further evidence of what was afoot and make known that it was our intention to determine the contract and re-instruct Phillip Smith and Company to seek legal rectification. Mr Allister asked us to desist from this and make one final attempt to find a way forward. It was agreed at this meeting that S & E Ltd would prepare a document setting out clearly the signs to be supplied by them under the contract; the main purpose of the document to alleviate misunderstandings by the Department's Purchasing Officers. (Appendix3). On 30 October 2002 copies of the requested document were passed, on Mr Allister's instruction, to Mr Mark Proctor for checking prior to distribution to such persons, as he considered appropriate. Despite numerous phone calls and e-mails the document had simply been made to disappear. Eventually when pressed some time afterwards, knowing that legal questions were beginning to be asked, Mark Proctor informed us on 3 August 2004 that the document required a few amendments and had been returned to us. We never received any letter and we asked for a copy of it showing the described changes but he did not have it and stated that they had been scribbled on a compliment slip. Does this seem normal or indeed believable practice in a major Government Department? Where is the file and audit trail? He could provide no evidence of when this took place and stated that he was no longer involved. The reasons given were an utter fabrication and demonstrated that they were not going to permit their affairs to be influenced or controlled by documents produced by us even though it was produced at the request of G Allister, the Head of Engineering. This demonstrates the contemptuous way in which we had to spend time, effort and cost to produce a document which they had clearly no intention of using.

In a letter dated 24 June 2003 [REDACTED], GPA, informed us that the contract would be extended on a monthly basis. This in itself is contrary to the terms of the contract whereby the contract could be extended for two periods of one year. He went on to state that "given radical changes in the Traffic Sign specification, GPA acting on behalf of its client Roads Service may be re-tendering this contract before the end of 2003". The "radical" changes were a red herring, since the BS 873 for permanent signs which was due to become BS EN 12899-1, only made paper changes and not physical changes. In an event the change in standard was only to

become operative from 1 January 2006, well beyond this contract date. With regard to temporary signs BS 873 remains the standard. It was on the back of this wholly bogus reasoning that the tender was put onto a monthly supplier arrangement and it carried on in this way through what should in any event have been the tender period. If it had been conducted in accordance with the terms of the contract we would at least throughout this period have had the security of a normal legal agreement.

This was all a contrivance to ensure we could enjoy no security under the contract but instead we were given what GPA/RS choose to dole out on a monthly basis. Given the position we were now left in, we were longer able to produce stock that only they would ever buy, and would be of no value to us if the contract ceased at the end of any month. Indeed they did attempt to damn us on this very point in the subsequent tender.

It was around this period that S&E Ltd staff had to be made aware of the real likelihood of redundancies since we could no longer be sure of our entitlement under the contract.

#### Tender Commencing 1 October 2004 - 30 September 2006 with two One Year Extensions

After receipt of documents for the above tender due in on 2 September 2004, we had to request clarification on many irregularities in terms of specification and description eg referring to a standard that was not coming into practice for more than two years. We decided to carry on with preparing a bid in accordance with all contract requirements but simultaneously to use all efforts to try to put an end to the practices of the past. We had also been informed around this time that we would have to use a Formal Complaints Procedure, the existence of which we had never been aware of despite our many attempts over the years to have clearly evidenced wrong doing stopped.

Around this period we decided to attempt to expose what we now knew to be a resentment/bias toward our Company on almost every level within CPD/RD. Given the fact that all work of the previous six years had been dictated and decided on the back of the subjective opinions of many who were involved in the current process, it was quite clear where this was likely to lead in terms of this new tender. At this stage we asked our MP Iris Robinson, to make a formal request to the then Minister of State, Mr Ian Pearson, MP, making known the facts and our concerns, and he duly set up a meeting at his offices in London on 8 November 2004. He instructed the relevant personnel to attend. At this meeting we were assured that our position in the new tender process would not be

prejudiced by anything from the past and that that new process would be conducted properly and in accordance with the conditions set down.

The specific areas addressed at the Pearson meeting included the following:

1. Past events.
2. Bogus figures presented by Road Service on various occasions and whilst we had the proper figures at that meeting they were dismissed and were to be addressed in G Allister's office in the "near future". He later denied us the right to discuss the figures.
3. The relationship between PWS (I) Ltd (now majority owned by LEDU) and how the three civil servants present representing Road Service, CPD and LEDU could not NOT have known of each others involvement.
4. Mr Pearson's assurances to Iris Robinson's request that he would do what was necessary to ensure that proper methods were used in the new bid process.
5. Mr Pearson took on board our view that given the prejudices of the past that all the references that we had provided (from some of the Country's top consultants/contractors) would be given full credence in the current evaluation process.

Following this meeting a letter was received from [REDACTED], CPD, on 23 November 2004 stating that "due to operational difficulties the tenders have not to be opened and as a result I would request that if you submitted a bid can you confirm that you are willing to keep your bid valid until the anticipated contract award date of early March 2005". We wrote back and expressed our willingness to agree to the terms as set out.

On 21 January 2005 [REDACTED] of CPD wrote to advise that the Company's manufacturing process would be evaluated in the week commencing 7 February 2005 and enclosed a drawing of a sign to be manufactured. This sign did not comply with the current Traffic Signs Regulations.

Letter received from [REDACTED], CPD, on 15 March 2005 advising that the contract will commence on 1 April 2005 until 31 March 2007 with the option to extend by two further periods of one year each ie until 31 March 2009. This is contrary to what is specified within the contract. By using the proper methods of contract assessment for the supply of a manufactured product we had won probably the entire contract but yet again deprived by the intervention of the RS/CPD panel of experts. Despite their attempts we did nonetheless win the Chapter 8 section in



its entirety so the cabal would employ a new a fictional argument that there had been omissions in the pricing schedule and they had therefore decided to sub divide that schedule. This they had no authority to do under the clearly defined conditions of contract. There were no omissions in our bid and the only items we did not provide costs for were items that do not nor ever will exist. Even if there had been a failure to provide full price on one element then if their prognosis had been valid surely the winners of the correctly priced elements would have been awarded that portion. Using their contrived method to award S & E Ltd only plastic Chapter 8 signs they did so knowing that this product had not been purchased in the past nor did they place a single order for it to the point when S & E Ltd closed. The Auditor should be encouraged to check the total value of purchase of steel framed Chapter 8 bought within this same period. This product S & E Ltd had virtually been the sole supplier/manufacturer of for some ten years and certainly had been the winner of it again this time. By their thoroughly corrupt actions CPD/RS committed the public purse to a spend that was probably about double what it should have been in this entire area of work. Added to this we know that much of the product being accepted by Road Service is seriously below specification and of a standard that would never have been accepted from us. We are in possession of samples.

A debrief followed all of this but they admitted to nothing and at every level we were subjected to the same contemptuous arrogance. Clearly this whole affair was, and continues to be, directed and managed by individuals with a very confused view of the requirements of public service and clearly lacking integrity at just about level.

If further explanation of any aspect of the above is required it can be explained at our next meeting, which can be arranged at your earliest convenience, with yourself and Mr Balfour.

I hope within the next few days to forward on some additional information which gives a more detailed view on the scoring methods used on each of the three bid processes you are already in possession of.

Yours sincerely,

DAVID CONNOLLY

## ***Signs & Equipment Ltd*** *(in Liquidation)*

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To be opened by Addressee Only  
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Minister, Department for Regional Development  
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9 March 2008

WITHOUT PREJUDICE

Dear Mr Murphy,

### **TENDER FOR THE SUPPLY AND DELIVERY OF PERMANENT AND TEMPORARY ROAD TRAFFIC SIGNS**

From as far back as 1997 we have been raising questions as to the methods employed by Roads Service in the procurement of Road Traffic Signs and Associated Products. Our major concerns which have been well documented within Road Service and GPA related to work that we had been awarded following the tender processes was being purchased from others and the methods employed by Road Service to subvert all normal procurement/purchasing practices in order that a Company of their choosing would benefit from the work available.

At a point in 2002 following a failed attempt to have us removed from the tender process we decided to seek a Judicial Review of their methods, but on the back of emphatic assurances given by Mr G Allister, Road Service, and Mr T Gilgunn from GPA that matters would be carried out properly from that point on and Mr Allister's request that "a line be drawn in the sand" we desisted from the Judicial Review on the strength of his word - how wrong we were! These serious malpractices and many others, we feel we can now demonstrate were a progressive attempt to rig all situations and by so doing favour a supplier of the Department's choosing. This practice eventually led to the situation where the above named Company was forced out of existence despite now knowing that had proper practices been employed we had won virtually all work under these contracts for probably the past ten years.

Conor Murphy MP, MLA - Tender for Supply and Delivery of Permanent and Temporary Road Traffic Signs - 9 March 2008

By 2004 it was clear that we needed to have the matter exposed and through our MP, Mrs Iris Robinson, a meeting was set up with the Minister, Mr Ian Pearson.

He summoned various parties to his office as Westminster and we now know through extensive Freedom of Information documentation that probably all of their presentations to him were spurious in the extreme. Given no other means to properly and fully expose we took the matter and all supporting documentation to the NI Audit Office in July 2005. After studying our submissions they considered there was a bone fide case to be answered. They in turn instructed your Department on the 11 November 2005 to put in place a full investigation and report back to them. We feel that such a passage of time for a matter of this nature is totally unacceptable, not least, because of the opportunities given to all concerned to sanitise documentation and generally protect the interests of all who are culpable - particularly given that all and sundry know that this investigation is afoot.

Given all of the above, and since we have no way of knowing when your Auditors may come up with a report (they informed the Press a year ago that their decision was imminent), notwithstanding their findings and in no way to prejudice any work being carried out by them, we now wish to put in place an extensive Freedom of Information investigation into the records held for the Tender Processes 1999, 2002 and 2004 to allow them to be forensically examined.

The other Departments with involvement in this matter are CPD/DFP who acted as your Agents through the letting of these Tenders and Invest NI who were the largest shareholder in the Company that benefited from the rigged tenders. It might interest you to know that the taxpayer is currently paying approximately double UK rates for most of the product bought under current arrangements.

You may wish to discuss the issues raised.

Yours sincerely,

DAVID CONNOLLY

Cc Rt Hon Peter Robinson, MP, MLA

Cc Nigel Dodds, MP, MLA

Cc Mrs Iris Robinson, MP, MLA

Cc Patrick O'Neill, NIAO

## ***Signs & Equipment Ltd (in Liquidation)***

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Paul Priestly Esq  
Permanent Secretary  
Department for Regional Development  
Clarence Court  
10/18 Adelaide Street  
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15 January 2009

Dear Sir,

I am in possession of a copy of a letter of complaint from you to Mr Peter Johnston, Controller, BBC Northern Ireland and I am shocked that someone in your position should engage in such a process given your clearly limited grasp of the facts surrounding this entire matter.

I shall deal with the points of your letter as they were written.

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

Everything that Julian O'Neill broadcast was truthful, accurate and fully evidenced to him, virtually all of it by Government papers properly and legally acquired by way of Freedom of Information and other methods. Given the breadth of information to which he had access, the short report he presented was both fair and impartial and he never attempted to do other than expose our grievance with your Department and to highlight the time and effort needed to have the actions of Civil Servants examined and exposed.

**"For example, the report wrongly stated that Mr Connolly's company had received no Government financial aid was not awarded any parts of the contracts and that LEDU was a major shareholder in its rival in the process, PWS (Ireland) Ltd. DRD was not given the opportunity to correct these serious factual inaccuracies".**

Mr Julian O'Neill stated that Signs and Equipment Ltd had received no government aid to support the building of their factory or the building up of their business.

That was accurate in every respect. By the year 2000 when we moved into new purpose built factory premises, fully equipped, we had never received one penny from any Government Department and the Company had been fully funded from its profits. During the mid to late 1990's our Accountant, who felt that because of the nature of our business and the fact that about half of what we produced was sold outside Northern Ireland, we should have had access to some support but this was consistently denied on the grounds that Companies in our industry were ineligible. What a lie Freedom of Information proved this to be!

In the year 2002 in response to a request to LEDU to back a specific project they eventually agreed and over the next two years provided funding of approximately £60,000 to fund design and development in respect of this project.

When this is set against the situation relating to PWS (Ireland) Ltd; which from the late 1980's had just about every area of its business funded by the public purse, this included plant, machinery, IT, labour and much else. By February 2004 they had received 19 offers of support made up of 58 payments totalling some £150,000. Although it was never notified to the Ministers and others when they requested information on PWS (Ireland) Ltd funding from Invest NI, we now know that additional large sums were also being paid to them by a LEDU sister organisation, IRTU. Grant aid to this entity has continued from 2004 to the present day.

In relation to the DRD dimension the most important piece of LEDU involvement was in late 1998. When, after pleading with LEDU throughout that year for what would in effect be a bailout, PWS were repeatedly refused because of their inability to meet LEDU's normal basic pre-conditions in respect of financial viability and to provide satisfactory trading accounts (bearing in mind the Company had made very serious losses not just in the previous year but in the previous three years). By the end of that year LEDU agreed to provide the bailout cash but with virtually all of these pre-conditions removed. One condition that LEDU did not remove was their need to take a preference share holding in the Company amounting to 66% of all issued shares with the Company's legal status restructured to take account of this. LEDU became the principal (major) shareholder and remained so for approximately five years. Subsequent to this effective control, indeed within days, a Road Service Contract for Traffic Signs (which had been delayed with spurious reasons given when we asked questions) was awarded to them and in due course through FOI it was clear that this process had been manipulated;

a fact very well documented within your Department and others. Whilst all of this was made known to Mr Julian O'Neill together with all the supporting papers, he stated in our office that he was unlikely to report the detail of the PWS dimension as it would show bias against them and, since the nature of his report was in respect of our general complaints towards DRD, he felt that although PWS were the clear beneficiaries of virtually all that had taken place there was no need to expound on that level of detail and this is the line he subsequently took in his report.

Regarding your statement that Signs and Equipment Limited "was not awarded any parts of the Contract" Mr Julian O'Neill made no such statement.

How can you on the basis of this imply that he in any way showed bias or imbalance?

**"Even more seriously Mr Connolly was permitted to make serious allegations concerning the integrity of DRD officials".**

What an outrageous assertion that I, or any individual, should be denied the opportunity to question the methods, motives and malpractices of public servants. I have been trying for some ten years using all legal means possible to have this investigated by MPs, Government Ministers, Auditors and other officials, but the many methods used by those who should be forced to answer for their actions our have used very form of prevarication to bring us to where we are today.

**"The report commented unfavourably about the time the investigation of the procurement process was taking but failed entirely to record that a major reason for this is Mr Connolly's unwillingness to confirm he has submitted all his evidence. It is difficult to see how an investigation carried out at the behest of a member of the public can proceed to a conclusion when that person has not finalised the grounds of his complaint. DRD had made this clear to those researching the report on behalf of the BBC through a formal response and informal comments".**

You state that the report commented unfavourably about the time your Department's investigation was taking and it certainly had reason to do so. You state also that it was my unwillingness to submit evidence that has brought about this delay. This is, as I am sure you very well know, the opposite of the truth.

This investigation, which DRD were instructed to carry out, came from the NIAO as a result of compelling evidence to them. From the outset I have put them in possession of any and all further information as we received it. When, some three years after you had been given that instruction, no report was



forthcoming and we had no way of knowing when, or indeed if it ever would, we sought and were granted an FOI request from your Minister, Mr Conor Murphy, in order that we could access the necessary documents to attempt to reach some conclusions of our own. Your Auditor had had access to this information from the outset and we now know from the papers we viewed that he had inspected them in 2007. When the DRD Auditor, a few months ago, telephoned me to ask for my views on these papers (many of which we at that stage had not yet received), I found this odd (it was the first time he had ever contacted me) and even more so when I got the last of those papers in December 2008 and found that he himself had inspected them in 2007. Why did he need my views when he himself had read them? The grounds of my complaint have never altered from the first day I presented them to the Northern Ireland Audit Office and your attempt to use the foregoing as an excuse for your Department's delay in bringing this to a head must be seen for what it is.

**"There is an expectation that the BBC as a public service broadcaster will act responsibly and competently and exercise an appropriate measure of judgement and discretion when dealing with sensitive matters of fact, especially when the reputation and character of individuals are being drawn into question and the issues being discussed are still the subject of an ongoing investigation".**

When you research all of the information as set out above and it is found to be correct just as the BBC did before they broadcast it, I hope you will see fit to proffer the necessary apologies to those concerned. With regard to the reputation and character of particular individuals within DRD; this can only be decided when all investigations are complete. Since those very individuals are the ones who have been most responsible for delaying this, it remains to be seen.

**"In short, the report was inaccurate, one sided and did not show even-handedness. The Department expects BBC Newsline to acknowledge the report contained numerous factual inaccuracies and provided a totally unbalanced report, which misrepresented the facts of the situation".**

I refute this comment absolutely and see nothing in the report for which the Reporter or his Organisation should feel the need to be reproach themselves. The notion that this report in any way misrepresents the facts is absurd and it is such a pity that the whole of what the BBC recorded had not been shown regardless of the feelings or sensibilities of any party. If it is found necessary to address or acknowledge any of your claimed inaccuracies, that could only be achieved, by putting out the whole story and thus allow the public to make up their own minds.

In conclusion Mr Priestly, I see this entire exercise as an attempt to suppress proper reporting of events worthy of exposure and reinforce the smoke screen surrounding those of your number who for so long have been engaged in seriously reprehensible practices.

Yours faithfully,

DAVID CONNOLLY

CC Conor Murphy, MP, MLA, Minister, DRD  
CC Patrick O'Neill, NIAO  
CC Peter Johnston, Controller, BBC  
CC Julian O'Neill, Reporter, BBC  
CC Mrs Iris Robinson, MP, MLA  
CC Peter Bowles, Solicitor

## ***Traffic Signs & Equipment Ltd***

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Danny Kennedy MLA  
Minister, Department for Regional Development  
Clarence Court  
10/18 Adelaide Street  
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23 September 2011

Dear Mr Kennedy,

### Traffic Signs & Equipment Limited and Associated Matters

Further to my recent request through my MP Mr Jim Shannon, to be given the opportunity to put in front of you matters related to the above case, I found it surprising that this was declined.

As you are aware your Department was taken to Court on a range of matters and although you refer to the question of bias you make no reference to the range of other very serious malpractices on which the Court found your Department guilty.

These included:

- 1) **lack of openness and transparency** (acting behind backs and in secrecy)
- 2) **lack of objectivity** (objectivity - the ability to take decisions unaffected by personal prejudice or bias)
- 3) **conducting tender processes which failed to take into account proper legal tender practices**
- 4) **letting contracts despite them being tinged with the illegality as referred to above**

Since the entire culture at Road Service has for so long been under the control of your current Chief Executive and Permanent Secretary (albeit from time to time in different roles) along with the now departed Mr Priestly, it had been my wish to discuss with you how a resolution of all matters relating to our company could be achieved without these individuals simply being allowed to carry on as they always have.

Continued - Danny Kennedy - 23 September 2011

I would refer you specifically to a widely circulated email dated 10 November 2004 (read to the Court) from your current RS Chief Executive, Mr G Allister, who in a little "Tim Collins" address to his troops told them very clearly that "Connolly and his followers were a problem for all of us and had to be dealt with.

At about that same period in time your current acting Permanent Secretary, Mr M McKibben, in answer to a question by Mrs Iris Robinson, wrote that in essence I was a time waster with a vested interest in spinning this matter out.

As you are no doubt by this time aware the NIAO have issued to your Department their assessment of the Balfour Report (Balfour). When in 2005 on the basis of compelling evidence presented to them, the NIAO instructed your Department to put in place an investigation, and they commissioned Balfour. It should be noted that the same contempt that we had always experienced was then extended to the NIAO, with your Department taking 5 years to cobble together a piece of work which could have been completed in a few months with time to spare. The whole Balfour exercise was not an investigation but simply a defend and protect mechanism. Clearly the intention was that the "mists of time" strategy that often serves them so well would work yet again - it is my hope that the NIAO will have seen through all of this and properly expose it for what was.

As a result of the recent Court Case where your Department was found guilty of all of the many things referred to, yet again a NI Government Department has its name splashed across the pages of legal journals not just in the UK but also in the EU as a result of their refusal to acknowledge proper legal practices.

It is my hope that in your new position you will provide the objectivity that the Court Judge has clearly stated that many around you so clearly lack. To look at this case alone, which is likely to have cost the tax payer in the order of one million pounds, it is surely incumbent on you to ensure that the likes of this can never happen again.

Yours sincerely,

DAVID CONNOLLY

Director

CC Jim Shannon, MP MLA

CC Owen Patterson, NI Secretary, NIO

CC Kiernan Donnelly, NIAO

CC Allen McCartney, Non Exec Director, DRD

CC Brian Carlin, Non Exec Director, DRD

CC Peter Bowles, Company Solicitor

Registered in Northern Ireland  
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Dr M McKibben  
Head of Civil Service  
Office of the 1st & Deputy 1st Minister  
Parliament Buildings  
Stormont House, Stormont Estate  
BELFAST BT4 3SH

17 January 2012

Dear Sir,

Re Contract(s) for supply and delivery of Temporary and Permanent Road Traffic Signs

I refer to the above tender and subsequent litigation cumulating in a judgement from the Honourable Mr Justice Weatherup on the 16<sup>th</sup> March 2011 following proceedings issued by our company Traffic Signs and Equipment Limited.

No doubt you are by now very familiar with the judgement which set aside the award of several contracts following a critique by the Judge of the several processes and decisions undertaken by the Department, principally in setting the criteria upon which the split between cost and quality was reached by a single Civil Servant without any documentation detailing the rationale or justification for the split. Notwithstanding the serious reservations about the Department's methodology, ultimately 15 contracts were awarded to PWS and 3 to our company. You will further recollect that there were also several examples of illegal tendering uncovered in the context of the case e.g. the "extraordinary extensions" to add to the many similar cases evidenced in the "BALFOUR REPORT".

Given my longstanding interest in proper governance with the Department and my previous concerns with regards to the running of this tender I should be obliged if you would confirm the following:

1. At what point did you by virtue of your position notify the board of DRD as to the outcome and the serious shortcomings of the Department as highlighted by the Judge in his findings?

2. Given your controlling role in Road Service, through most of the period examined by the Court, did you consider it appropriate to excuse yourself from discussions given that previous involvement?
3. What recommendations did you as Permanent Secretary make to the Board of the DRD?
4. On what subsequent dates were your recommendations or indeed the Judgement discussed by the Board?
5. What investigations or steps were subsequently taken by the Board and did they make any recommendations?
6. How and when were these recommendations implemented and what memorandums/instructions were issued by Senior Management?
7. How and when was Minister Danny Kennedy, MLA, notified?
8. Was there any Ministerial direction issued, and if so was it acted upon?
9. Was the Minister for DFP, Sammy Wilson MP MLA, appraised of the outcome of the Court Case given the very serious financial ramifications and the fact that his staff were fully involved in the matter?
10. Was any direction given by Minister Wilson and acted upon?
11. Was there any communication between yourself and your successor Mr David Orr prior to your leaving office, regarding these matters?
12. To your knowledge where there any other discussions of the judgement at Executive level?

Please evidence the above with any documentation that exists, be it memorandum, emails, minutes of meetings etc.

Yours faithfully,

#### DAVID CONNOLLY

Director

CC Office of the First and Deputy First Minister  
 CC Rt Hon Owen Patterson, MP, Secretary of State for Northern Ireland  
 CC Jim Shannon, MP, MLA,  
 CC David Orr, CBE, Permanent Secretary, DRD  
 CC Sammy Wilson, MP, MLA, Minister, DFP  
 CC Kieran Donnelly, Comptroller & Auditor General, NI Audit Office  
 CC Peter Bowles, Company Solicitor  
 CC P Maskey, MLA, Chairman, Public Accounts Committee  
 CC S Anderson, MLA, Public Accounts Committee  
 CC J Byrne, MLA, Public Accounts Committee  
 CC M Copeland, MLA, Public Accounts Committee  
 CC J Dallat, MLA, Public Accounts Committee  
 CC A Easton, MLA, Public Accounts Committee  
 CC P Girvan, MLA, Public Accounts Committee  
 CC R Hussey, MLA, Public Accounts Committee  
 CC Mrs J McCann, MLA, Public Accounts Committee  
 CC M McLaughlin, MLA, Public Accounts Committee  
 CC A McQuillan, MLA, Public Accounts Committee

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Dr Andrew Murray, Divisional Manager, RSD, Coleraine  
Joe Drew, Divisional Manager, RSD, Hydebank  
John White, Divisional Manager, Craigavon  
Pat Doherty, Divisional Manager, Omagh  
Ken Hutton, Divisional Manager, Ballymena

22 October 2004

Dear

### Traffic Signs Contracts

In your role as a Senior Manager in Road Service I feel it necessary to make you aware of the following facts:

For some ten years we have been a supplier of road signs etc to the Department; throughout most of this period we were aware of being unfairly treated in many respects. We constantly made known our concerns but on each occasion were told we were wrong in this assumption. However, by 1997 when it was patently clear that work we had won and been awarded was being given to another Company, we formally contacted the Department. An investigation of sorts followed which temporarily corrected the situation at that time but nothing was admitted to. However, within a short time thereafter it became clear that nothing had changed and the practice continued.

Over that general span of time we were becoming more and more aware that much was being done at every level to favour the supplier who, we later learned, was being given the lion's share of the tender, regardless of cost or it seemed, any other consideration. By around 2000 we realised that the whole tender process was a sham and we began to investigate more thoroughly why this situation should be.

The most startling aspect of this investigation was that the Department's clearly favoured supplier, (constantly referred to by one of your Senior Engineer's as the Department's Sign Contractor), PWS Limited, has as its principle shareholder another Government Department. A brief outline of our overall investigation is set out in a letter to GPA, copy attached herewith.

In late 2001 we commenced legal action but after a meeting at which the Department and GPA were represented, an assurance was given by Mr Geoff Allister, who had chosen to be present, that whilst much of what had happened in the previous years was far from satisfactory, he asked that a line be put in the sand (Mr Allister's words) and we start again with the new tender process which was to commence in January 2002 and run for three years.

## Page 2 - Traffic Signs Contract

On the back of that assurance given by Mr Allister, and given his level of involvement, we halted the legal action and entered into the new process. Bearing in mind the Department's Core Values as set out in your Aims, Visions and Values of integrity, impartiality and honesty and being open and honest with your customers, we had no reason to doubt this assurance.

It should be stated at this point that we would not have done this on the back of any promises from GPA given the facile and spurious arguments they presented us with on each occasion when we sought fair and proper treatment.

This view was reinforced, since after tendering for the new contract which was due to commence in January 2002 they did not Let it. After three months when we received virtually nothing by way of orders, we again instructed our solicitors to seek a judgement on the whole matter. In the month that followed, since they were aware of this, we then received details of our new award and attended a contract meeting. At that meeting it transpired that we had won the whole tender on price but were to be awarded only 54% of it. We asked if this percentage had any political connotations since it was identical to census figures published at that time; but they stated that this was not the case.

I want to place it on record that the cabal within GPA, who have administered the running of this contract for as long as we have been involved in it, are, in our opinion unfit and unworthy of being given any such task.

We have a business that has been brought to its knees by the way in which this and previous contracts were operated. We had to tool up and equip to provide for our contractual responsibilities only to find that those involved ensured the work never came our way.

See the attached sheet showing what we actually got of the 54% promised, and this does not take into account the many other parcels of work given to PWS, apparently without tender requirement (the full details of this we are currently awaiting). It should also be noted that, given your knowledge of these things, that the work we did receive was the labour intensive elements which in the main was going to make for low value parcels of work, which could never be viable when separated from other elements to which we are permanently denied access.

Given that the new tender under consideration is to be let under conditions even less binding than before, and with conditions in it which allow for much of what we have described above to take place with impunity, we feel this requires your attention.

We have embarked on taking all actions necessary to ensure we achieve a just and equitable resolution.

Yours sincerely,

DAVID CONNOLLY

Director



Registered in Northern Ireland  
Company Registration No. NI30563

## ***Signs & Equipment Ltd***

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Geoff Allister Esq  
Director of Engineering  
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Road Service Headquarters  
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10-18 Adelaide Street  
BELFAST BT2 8GB

22 October 2004

Dear Mr Allister,

We have sent the enclosed letter, with attachments, to five of your colleagues within Road Service, namely:

Dr Andrew Murray  
Joe Drew  
John White  
Pat Doherty  
Ken Hutton

As stated we feel the need now to do all that we have to to protect our position.

Yours sincerely,

DAVID CONNOLLY  
Director



Registered in Northern Ireland  
Company Registration No. NI30563

## Draft Report – 28<sup>th</sup> June 2012

### Department for Regional Development: Review of an Investigation of a Whistle-blowing Complaint

#### Notes and comments on accuracy as well as relevant facts on behalf of the Whistleblower following consideration of the draft report of the 28<sup>th</sup> June 2012.

1. At paragraph 11 it refers to the then Chief Executive of the Road Service, Mr McKibben (now Head of the Northern Ireland Civil Service) advising Senior Officials that he viewed findings previously made as a very serious offence and a breach of the Civil Service Code with a request to officials to avoid any repetition. Given the seriousness of this assertion in 2002 it is the whistle blower's historical and ongoing concern that no steps were ever taken after that time to put in place procedures, methods and essentially the principals of good corporate governance to ensure that the matters complained of were not repeated. It will be recalled at that time in 2002 the Department wanted to remove the whistleblower's company from providing product to the Department until the then Minister, Peter Robinson MLA intervened, it was also at this time the whistle blower became aware of the substantial involvement of LEDU with his main competitor. This is evident from the judgement of the Honourable Mr Justice Weatherup in 2010 where it also became evident that the Roads Service had illegally procured signs from Morelocks, AA, PWS as well as the extraordinary extensions given to Hirst and PWS following the 2005 competition, when no approach was ever made to the whistleblower's company to enquire whether it would be prepared to supply. It is clear that over a long period of time and clearly highlighted over the years by the whistleblower to senior Civil Servants, such as Mr McKibben and Mr Allister that they failed to ensure mistakes made in 2002 were not repeated to the detriment of the whistleblower.
2. At paragraph 14 the report refers to a lack of consideration to recurring themes, such as **favouritism**, it is the whistle blower's belief that there was favouritism towards its competing firm and moreover, that there was an inbuilt prejudice towards him personally and by implication to his firm Signs and Equipment Limited, this is readily seen by the then Director of Engineering and latterly Chief Executive referring to him as "Connolly" and correspondence from David Orr, the then Director of Network Services and now the Permanent Secretary of the Department, see attached Memorandum, which shows that the now Permanent Secretary did not take complaints made by the whistle blower seriously and illustrates the contempt in which the whistle blower was held at the very top of the Department.

Of greater concern and which the whistle blower feels needs to be highlighted, is that in no way was the investigator, Ronnie Balfour, impartial and in this regard we attach an email sent by him as long ago 9<sup>th</sup> October 2002 wherein he refers to taking the wind out of the whistle blower's sails, this was at a time when it was felt Civil Servants within the Department had breached the Civil Service Code. A further memo which is worthwhile pointing as to the department's attitude to the whistle blower is a memo from Mr Beattie, Divisional Roads Manager of the Northern Division to David Orr, now Permanent Secretary of 19<sup>th</sup> December 2005 where he states that the whistle blower was "prepared to adopt any tactics to support his claim". Mr Beattie despite making these allegations, to the best of our knowledge, was never interviewed by Mr Balfour or challenged in respect of his claims. These outrageous accusations were being made at a time when there was further Ministerial intervention from Ian Pearson MP, with the issues prevalent in 2002 repeating themselves, the seriousness of the concerns are highlighted by the fact that the Minister summonsed the senior Civil Servants involved to Whitehall for explanation to him, this was despite the assurances given by Malcolm McKibben three years previously which in the whistle blower's eyes proved to be utterly worthless.

Mr Balfour's close relationship with those whom he was investigating continued right through the period of his investigation and the whistleblower readily recalls the rapport between him and Geoff Allister at a meeting held with the whistleblower's MP, Iris Robinson. It is rightly pointed out that he was brought back within a line management role within the Department working directly too Mr Allister whilst the investigation continued, which completely undermined any confidence that the complaint would be dealt with impartially, proper governance of any Department would surely have led to the undoubted conclusion that this was inappropriate given the nature of the whistle blower's complaints. It is of note that Mr Balfour **never** interviewed Mr Allister nor Mr McKibben despite the whistleblower's complaints in respect of both, which is remarkable given their central role in the entire episode.

3. In respect of the timeline from paragraphs 24 through to 32 the whistle blower is content with the Audit Office's view. The whistle blower would state that he finds it regrettable that the Department continued to try and pedal the line that allegations were being made over an extended period of time and that is what caused the delay, when in reality from the date of the first allegations it took Mr Balfour until February and March 2009 to interview key players involved, for example, Brian Maxwell, and it wasn't until 15<sup>th</sup> February 2008 when Invest Northern Ireland were asked questions about shareholding in the main competitor of the whistle blower, again ~~the sum of~~ <sup>some</sup> 3 years later. The whistle blower believes the inordinate time delay should be highlighted and it clearly prejudiced a proper investigation of the issues to the whistle blower's detriment and we are pleased that the Audit Office accepts there was inordinate delay and this clearly falls to Mr

Balfour and the Senior Management in DOE Roads Service, most likely due to the attitude displayed towards the whistle blower by the hierarchy within that organisation. Any issue of delay was only ever caused by the failure of the Department to provide information in a proper and timely way. Indeed it is worth highlighting the requests made by NIAO to the Department in September 2006, December 2007 and June 2008, during which a response was received from Doreen Brown saying matters were in hand when we now know that Mr Balfour had not examined the Department's own papers.

4. At paragraph 35 of the report the Audit Office refers to Freedom of Information requests, these were exceptionally challenging and the Department in the whistle blower's view deliberately made matters as difficult as possible sending him to Rosepark, Ballymena and Airport Road West to view documentation, the primary focus was Roads Service, however, given the refusal to comply with ministerial intervention the whistle blower had to go to the Department of Finance and Personnel to essentially retrieve what were their own records and pay a considerable fee for the request. The ministerial intervention was from Conor Murphy MP MLA, who was then Minister, to progress matters and I attach correspondence sent to Mr Murphy of 9<sup>th</sup> March 2008, 8<sup>th</sup> August 2008 and 21<sup>st</sup> August 2008 in this regard, it is also worth pointing out in that letter that the whistle blower detailed his concerns that having seen some of the documentation it was quite clear that Mr Balfour had not looked at it until 3 years after the initial complaint.

The treatment and obstruction of the whistle blower was extended to the whistle blower's solicitor when following the publication of Mr Balfour's report an FOI request was made on behalf of the whistle blower seeking access to all documentation which Mr Balfour accessed in compiling his report, a further request was made for all earlier drafts of the report which the whistle blower's solicitor was told had been destroyed. Following investigation by the Northern Ireland Audit Office it was ascertained that they retained earlier versions sent to them by the Department and made a referral to the Information Commissioner which is still being dealt with. The attitude taken to the later request are detailed in an email from David Crabbe to Malcolm McKibbin of 24<sup>th</sup> August 2010 which basically show the Department again at Permanent Secretary level, stating that they were not going to release information and in any event it will take many months before the Information Commissioner would get round to the case, clearly, trying to obstruct access to information, a copy of the whistle blower's solicitor's letter to Mr Crabbe is also attached. How the Department behaved was clearly not in accordance with the principles of open government. Ultimately following the issue of proceedings the whistle blower's solicitor got access to all files held by the department through the discovery process which were extremely voluminous and took 1 week to go through at the Departmental Solicitors' Office.



5. At paragraph 70 detailing the relevant extracts of the Court Judgment, this should be expounded upon to include the following paragraphs: -

The plaintiff did not object to the adoption of the three quality aspects, namely delivery methods, environmental and complaints system, but contended that they should only represent 10% to 20% of the evaluation as any greater weighting for quality would have a disproportionate impact on the outcome of the tenders.

In relation to a quality/price ratio in general, Procurement Guidance No 3 applies to construction contracts and there is no guidance in relation to service contracts, such as the present contracts. In construction contracts the quality/price ratios vary for different project types. For innovative projects the range is 20/80 to 40/60, for complex projects the range is 15/85 to 35/65, for straightforward projects the range is 10/90 to 25/75 and for repeat projects the range is 5/95 to 10/90. The present service contracts were said by the plaintiff to be the equivalent of a "straightforward project" so that, by analogy with the construction contracts, the quality/price ratio should be in the range of 10/90 to 25/75. The defendants did not accept that an analogy can be drawn with construction contracts.

In the present case the defendant's carried out no analysis of the quality/price split, either before or after it was agreed. Mr Maxwell described it as a matter of assessment and judgment. The 2009 contract had adopted 70% quality and the adjustment was made for the introduction of the Sector 9A accreditation to produce 40% quality. This was the same split as the 2002 process when there was no requirement for Sector 9A accreditation.

The plaintiff pointed to the impact of the quality assessment being set at 40%. PWS were awarded the highest marks for quality, 185 out of 200, Hirsts were awarded 120 out of 200 and the plaintiff awarded 80 out of 200. These marks were then added to the weighted score for price on each contract. PWS was the lowest price on one tender, Hirsts was the lowest price on 11 tenders and the plaintiff was the lowest price on 9 tenders. After applying the quality scores PWS won 18 contracts, the plaintiff won 2 contracts and Hirsts won 1 contract. Thus the quality evaluation had a virtually determinative effect on the outcome.

In the two contracts won by the plaintiff it is claimed that in one case their prices were 67% cheaper than PWS and in the other case 54% cheaper. In other instances where the plaintiff's prices were 30% to 40% cheaper than PWS, the plaintiff did not win the contracts because of the quality evaluation. Had the price quality split been 80/20 the plaintiff contends that it would have won 5 contracts, Hirsts 4 contracts and PWS the remaining 12 contracts. Thus what the

plaintiff describes as the subjective evaluation of the quality criteria is largely determinative of the outcome of the tender process.

Recital 46 of the Public Sector Directive states that contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non discrimination and equal treatment. The overall task in the present exercise was to determine the most economically advantageous tender for the contracting authority. There must be such transparency as will ensure that the tenderers are reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. In the present case there has been a history of concern about the objectivity of the criteria when they include a quality assessment. The price aspect of the assessment is objective and transparent. The stated quality criteria are objective matters although their assessment includes a subjective element, which is inevitable when any qualitative assessment has to be undertaken. However the price and quality criteria must also be considered in combination because it is the overall assessment that determines the most economically advantageous tender. Objective criteria must be capable of justification as relevant to the determination of the most economically advantageous tender. The balance between relevant criteria must be capable of justification as appropriate to the determination of the most economically advantageous tender. The prospect of significant impact of one criterion or a number of criteria on the overall assessment may require explanation if there is to be compliance with the obligations of objectivity and transparency. It is necessary to ensure that the tenderers are reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It may not be sufficient merely to state the criteria and their weightings. The potential impact of a qualitative criterion may require particular attention as it includes a subjective element in the assessment. **In the circumstances of the present case the allocation of 40% of the marks to the quality assessment requires justification if the criteria are to be seen to be objective and transparent. No justification was offered for the conclusion that 40% of the marks be allocated to quality, other than it was left to Mr Maxwell to make the assessment and exercise his judgment. Ultimately this is indeed a matter of judgment but not one that is bereft of explanation.**

Given the history of the traffic signs contracts and of concerns about quality assessment and subjectivity and the introduction of sector 9A accreditation as a measure of quality and the assurance by CPD that sector 9A accreditation had effectively removed quality assessment and the potential impact of the marking arrangements when 40% of marks are accorded to quality, the final adoption of a 40% measure of quality requires explanation and justification. The failure to do so is compounded when it is demonstrated that the arrangements for quality assessment effectively determined the allocation of

**the contracts and secured the award of those contracts to the tenderer who in broad terms was submitting higher prices. The adoption of the 40% quality measure does not accord with the obligations of objectivity and transparency.**

It is also worthwhile pointing out that the whistle blower was awarded 80% of his legal costs of the entire case, which given that it ran for 16 days, was considerable and reflects the fact that the Court viewed the whistle blower had made out his case to its satisfaction.

6. At paragraph 92 the whistle blower finds it astounding that only 8 out of an alleged 39 meetings was there any minutes taken, one would have thought this is extraordinary and could be excused in a small company but not in a government department with probably the second highest spend of any department. The whistle blower also finds it astonishing that there was **no evidence** of challenge from those charged with governance, in particular, non executive members whose sole purpose on being on the board is to ensure that these principles are met. It is of note that when the whistleblower corresponded with two of the non-Executive directors and not even an acknowledgement, let alone a substantive response, was sent. There is no evidence that these non Executive Directors ever challenged the upper echelons of Roads Service in respect of what were very serious allegations.
7. At paragraphs 105 through to 113, we have previously indicated concerns with regards to Mr Balfour and his relationship with Mr Allister and those others in the upper echelons of the Department who he was in charge of investigating, it is also clear that Mr Balfour was involved from 2002 right through to the publication of his report in 2010, the investigation was far from an arm's length probative and objective investigation.
8. The most recent competition for the purchase of traffic signs justifies the whilstle blower's longstanding belief that the cost/quality split was always inappropriate for this type of competition given the product being purchased and the necessity for accreditations in respect of manufacturing and capabilities as a pre-requisite. This competition was run on a 100% cost basis.

# Correspondence of 9 October 2013 from Department for Regional Development

**From the Permanent Secretary  
Richard Pengelly**



Aoibhinn Treanor  
Committee Clerk  
Public Accounts Committee  
Northern Ireland Assembly  
R.371 Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST BT4 3XX

Room 701  
Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 8GB  
Telephone: (028) 9054 1175  
Facsimile: (028) 90 54 1120  
Email: [richard.pengelly@drdni.gov.uk](mailto:richard.pengelly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 144/13  
9 October 2013

Dear Aoibhinn

## **NIAO REPORT: NORTHERN IRELAND WATER'S RESPONSE TO A SUSPECTED FRAUD**

Our review of the Hansard transcript of the hearing on 25 September 2013 into the NIAO Report: 'Northern Ireland Water's Response to a Suspected Fraud' has identified three issues where I consider it would be useful to clarify the evidence given to the Committee.

Firstly, Hansard records at page 11, during an exchange with John Dallat MLA, that Sara Venning stated the following:

*"We are looking at 2010. In 2010, the internal audit function was entirely provided by its own internal audit team. Ernst and Young had no input into the internal audit function in NI Water in 2010, when these events took place."*

In fact, in early 2010 the internal audit function in NI Water was undergoing transition from an outsourced service to an in-house service. NI Water had appointed a Head of Internal Audit (designate) who worked in partnership with the external providers, Ernst and Young, while the new in-house unit was established. The contract with Ernst and Young finished on 31 March 2010.

Secondly, the transcript at page 14, records my response to the question from Alex Easton MLA regarding the notification of the suspected fraud to C&AG. I advised that the Department's failure to notify was *"not as a result of a conscious decision not to notify C&AG"*.

For the purpose of absolute clarity on the issue, I wish to advise the Committee that in January 2010 a draft letter had been prepared for issue to the C&AG. However, as a result of a combination of uncertainties as to whether there was a suspicion of fraud and an administrative oversight, this did not issue. By the time that this oversight had been identified, this case had progressed to the stage where it had been confirmed that there was no evidence of fraud and the letter was not sent to the C&AG, as it should initially have been.



Finally, on page 10, during an exchange with Trevor Clarke MLA, Sara Venning stated that NI Water:

*"have engaged with PSNI on every case of fraud, no matter how small, since this report was issued."*

NI Water has now clarified that they do not routinely report cases of water theft to PSNI, for example cases where a connection is made to the water supply without the necessary approvals. Such cases are dealt with by issuing a warning letter requiring the connection to be paid for. The Department is content that the approach adopted by NI Water in respect of the theft of water is proportionate and effective, however we have asked NIW to raise the generic issue of water theft with PSNI, to ensure they are content with the approach.

I would be most grateful if you would bring these clarifications to the attention of the Committee.

I apologise for any inconvenience caused.

Yours sincerely



**RICHARD PENGELLY**

cc    Sara Venning (NI Water)  
      Kieran Donnelly (NIAO)  
      Fiona Hamill (DFP)

# Correspondence of 11 October 2013 to Department for Regional Development

**Public Accounts Committee**

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[aoibhinn.treanor@niassembly.gov.uk](mailto:aoibhinn.treanor@niassembly.gov.uk)

Richard Pengelly  
Accounting Officer  
Department of Regional Development

11 October 2013

Cc Sara Venning  
Fiona Hamill

Dear Richard,

**PAC inquiry into the NIAO Inquiry into Northern Ireland Water's Response to a  
Suspected Fraud**

Thank you for your attendance at the Public Accounts Committee meeting on Wednesday 25 September 2013. As you will recall from the meeting, members had a number of questions which officials could not answer at the time but agreed to respond to the Committee in writing.

- How many suspected fraud investigations are currently being carried out in the Department, and who has been tasked with carrying them out?
- According to the stocktake of trained staff for frontline investigation work across the public sector recommended by the Committee's 2008 report on Tackling Public Sector Fraud report, how many trained investigators were there at the time of this investigation and how many are there now?
- Fraud legislation and PSNI referrals made no part of this investigation. What reassurance can you give that fraud in the public sector is being dealt with in a realistic and meaningful sense with appropriate legal consequences?
- Please advise the Committee of the name of the authoriser of the extension of Company E's contract to include £1.4 million of survey work.
- Please also provide documentary evidence of the NI Water negotiations with Enterprise around the pricing and estimated number of surveys included in this contract variation.
- Please also provide the Committee, confidentially if necessary, with the circumstances, basis and terms of the compromise agreement under which the Director of Customer Services left NI Water in 2009.



I should be grateful if you would liaise with the Treasury Officer of Accounts and Ms Venning to provide a composite reply by 25 October 2013.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michaela Boyle'.

**Michaela Boyle**

Chairperson  
Public Accounts Committee

# Correspondence of 25 October 2013 from Department for Regional Development

From the Permanent Secretary  
Richard Pengelly



Michaela Boyle MLA  
Chairperson  
Public Accounts Committee  
Room 371  
Parliament Buildings  
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Email: [richard.pengelly@drdni.gov.uk](mailto:richard.pengelly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 152/13

25 October 2013

Dear Michaela

## **PAC Inquiry into the NIAO Inquiry into Northern Ireland Water's Response to a Suspected Fraud**

I refer to your letter dated 11 October 2013 raising a number of questions supplementary to the evidence session at the Public Accounts Committee meeting on 25 September 2013 into the above NIAO Report. The position on each of the queries you have raised, following the order set out in your letter, is as follows:

1. *How many suspected fraud investigations are currently being carried out in the Department, and who has been tasked with carrying them out?*

The Department is currently carrying out 6 investigations. These investigations are being led by Transport NI with wider input for 4 of the investigations being provided from Human Resources and Corporate Services Division. Internal Audit is also involved in 2 of these investigations. In addition, the Department has referred 4 cases to the PSNI for further consideration, and 2 investigations are on hold pending court proceedings or potential court proceedings.

NIW is currently carrying out 13 investigations. The lead investigator role in each case is being undertaken by a NIW member of staff. In 10 of the cases support is also being provided by the Head of Corporate Governance. In addition, NIW has referred one case to the PSNI for further consideration.

2. *According to the stocktake of trained staff for frontline investigation work across the public sector recommended by the Committee's 2008 report on Tackling Public Sector Fraud report, how many trained investigators were there at the time of this investigation and how many are there now?*



The Department currently has 7 internal auditors who have completed the CIPFA Certificate in Investigative Practice or equivalent investigation qualification. At the time of the "Invoice Slicing" investigation (January 2010), there were 5 of the Department's internal audit staff who had this training (2 of whom have since left the branch). Within Human Resources and Corporate Services Division the Department has a further member of staff who completed an equivalent investigation qualification in January 2011.

NIW currently has 4 investigators qualified under the CIPFA Certificate in Investigative Practice qualification and a further 4 staff who are due to complete this qualification by June 2014. There were 2 trained investigators in NIW at the time of the investigation.

DFP has advised that they do not hold information on the number of trained investigators that were in post at the time of this investigation, or at the present time. This information can be obtained from departments if required by the Committee.

3. *Fraud legislation and PSNI referrals made no part of this investigation. What reassurance can you give that fraud in the public sector is being dealt with in a realistic and meaningful sense with appropriate legal consequences?*

DFP have advised that they are responsible for the issuing of anti fraud guidance to departments. It is for individual Accounting Officers to ensure that investigations are carried out in an effective manner.

In terms of the position in DRD:

- The Department and its ALBs do not tolerate fraud or corruption. The Department's key messages on fraud are periodically reinforced through a range of methods, including the delivery of e-learning fraud awareness training. In addition, the Departmental Anti-Fraud Group seeks to share information and experience across the Department and its Arm's Length bodies (ALBs). This group provides a strategic overview of counter fraud activities within the Department and its ALBs. The Department is also represented on the NICS Fraud Forum.
- The Department and its ALBs contribute to the National Fraud Initiative (NFI), which compares information held by different organisations and within different parts of an organisation to identify potentially fraudulent claims and overpayments.
- The Department's updated Anti-Fraud Policy and Fraud Response Plan provides guidance for staff, line managers and Directors on the respective responsibilities through the lifespan of a case of suspected, attempted or actual fraud.
- The updated Anti-Fraud Policy and Fraud Response Plan confirms that dependent on the nature of the fraud cases they should be discussed with the police at the earliest appropriate juncture. However, in some cases, such as abuse of flexible working hours, police involvement may not be deemed necessary.
- The three main actions that Department pursues through its fraud investigation are to:

4. Please advise the Committee of the name of the authoriser of the extension of Company E's contract to include £1.4 million of survey work.

5. Please also provide documentary evidence of the NI Water negotiations with Enterprise around the pricing and estimated number of surveys included in this contract variation.

I hope that this information is helpful to the Committee and I am happy to provide additional information as necessary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Pengelly'.

**RICHARD PENGELLY**

cc    Sara Venning  
      Fiona Hamill (TOA)  
      Gary Fair  
      Peter Barbour

# Correspondence of 8 November 2013 to Department for Regional Development

**Public Accounts Committee**

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Richard Pengelly  
Accounting Officer DRD

08 November 2013

Cc Fiona Hamill TOA

Dear Richard,

**Public Accounts Committee Inquiry into Review of an investigation of a  
Whistleblower Complaint**

Thank you and all your team for your attendance at the Public Accounts Committee evidence session in relation to the above inquiry.

To assist the Committee with its inquiry, as agreed at the meeting, please forward the following information:

- a copy of the 2001 Internal Audit report;
- the basis of the delivery statistics referred to in respect of the performance of the whistleblower's firm;
- a copy of the 2010 Internal Audit report;
- a note setting out which officials were members of the team which compiled the 2010 Internal Audit report and their seniority/grades;
- a note demonstrating how often CPD met Roads Service officials to advise on the 2002 procurement competition;
- the product specification, required quality indicators, and associated scoring matrices used to judge the 2002 road signs procurement competition;
- a note detailing the number of uses, and frequency and circumstances of use of the override function in the electronic procurement system used by DRD to select suppliers since its implementation; the rationale for the override function; and the mechanisms for monitoring and review of this function;
- a copy of the correspondence between Mr Priestly and the BBC about its coverage of the whistleblower's concerns;
- Mr Priestly's considered view, with the benefit of time for reflection, as to whether he had been right to denounce the BBC's report;
- a breakdown of the protocol for the three-stage procurement process which the Department now uses;



- a chronology of the points at which previous reports and recommendations relating to the whistleblower's allegations were factored into the 2010 Internal Audit report, with supporting documentation if possible;
- a copy of all correspondence between Mr Paul Priestly, in the capacity of DRD Accounting Officer, and the whistleblower;
- how much the Department spent in defending court action by the whistleblower and paying 80% of his costs, and the relevance to this of Dr Murray's comments about judgments against Government departments in respect of the award of costs;
- A timeline of progress achieved in the Department's implementation of the recommendations of the 2010 Internal Audit report and the NIAO report.

I should be grateful if you would co-ordinate and provide a response by Friday 22 November 2013 using the email addresses above.

If you have any datamarking concerns about the content of your reply please state and explain these clearly for the Committee's consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michaela Boyle'.

**Michaela Boyle**

Chairperson  
Public Accounts Committee

# Correspondence of 22 November 2013 from Department for Regional Development

**From the Permanent Secretary  
Richard Pengelly**



Ms Michaela Boyle  
Chairperson  
Public Accounts Committee  
Northern Ireland Assembly  
R371 Parliament Buildings  
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BELFAST BT4 3XX

Room 701  
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Telephone: (028) 9054 1175  
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Email: [richard.pengelly@drdni.gov.uk](mailto:richard.pengelly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 163/13  
22 November 2013

Dear Michaela

## **PUBLIC ACCOUNTS COMMITTEE INQUIRY INTO REVIEW OF AN INVESTIGATION OF A WHISTLEBLOWER COMPLAINT**

I refer to your letter dated 8 November 2013 requesting supplementary information in follow up to the evidence session held on 16 October 2013 in relation to the above inquiry. I have addressed the information sought in the order raised in your letter.

1. Copy of the 2001 Internal Audit Report.

In responding to this request I would clarify that the Report referred to was produced by Roads Service with assistance from a member of the Department's Internal Audit. This document is attached for the Committee's consideration at **Annex A**.

2. The basis of the delivery statistics referred to in respect of the performance of the Whistleblower's firm.

An important function of the procurement of traffic signs is to ensure prompt delivery in accordance with contractual requirements. For the 2002 and 2005 competitions, the contract delivery times were 5 working days (urgent deliveries) and 15 working days (normal deliveries). In the recent 2011 and 2012 competitions, as part of overall contract improvements, the delivery times were relaxed to 10 working days (urgent) and 15 working days (normal).

The delivery timescale is measured from when the supplier received the order until Roads Service accepted delivery of the sign(s). These dates are compared against the contract requirements and a supplier performance report produced:



| Period 15 May 2002 – 29 November 2002 |              |                |                           |         |                    |
|---------------------------------------|--------------|----------------|---------------------------|---------|--------------------|
|                                       | Total Orders | Orders Pending | Total Orders Less Pending | On Time | Percentage On-Time |
| <b>PWS</b>                            | 375          | 32             | 343                       | 239     | 70%                |
| <b>SIGNS &amp; EQUIPMENT</b>          | 305          | 31             | 274                       | 68      | 25%                |

3. Copy of the 2010 Internal Audit Report.

This document is attached for the Committee's consideration at **Annex B**.

4. Details of the team which compiled the 2010 Internal Audit Report.

The Report was developed and signed off by Mr Ronnie Balfour, Grade 7, Head of the Department's Internal Audit Branch. He was assisted throughout by a Staff Officer Auditor. Other members of Internal Audit in the Staff Officer and Executive Officer 1 grades provided assistance on specific tasks such as testing or information collection.

5. You enquired as to how often CPD met Roads Service Officials to advise on the 2002 procurement competition.

A schedule setting out the dates of meetings between the Government Purchasing Agency (as it was then known) and Roads Service is set out in **Annex C**.

6. You enquired as to the product specification, required quality indicators and associated scoring matrices used to judge the 2002 road signs procurement competition.

The documentation requested is included in **Annex D**. Roads Service received guidance on tendering procedures for the 2002 competition from the Government Purchasing Agency.

7. You enquired as to the number, frequency and circumstances of use of the override function in the electronic procurement system; rationale for the function; and the mechanism for monitoring and review.

Once awarded, a traffic signs contract can be in place for 4 or 5 years, depending on the contract period stated in the contract documentation. When preparing the tender documentation, all anticipated traffic sign requirements are included in schedules to

be tendered. Once the contract is awarded, these tendered schedules are uploaded as catalogues onto the IT system. Roads Service officials can then purchase signs from the catalogues through Account NI i-procurement which allocates the correct supplier to the order.

In terms of rationale of the override function, Account NI have a general non catalogue function within i-procurement to assist in ordering goods and services that may not be included in a catalogue. For example, with regard to traffic signs, if a particular sign was not included in the tendered schedules, it could be ordered by this method provided the Procurement Guidance (ie obtaining of quotes) was followed. Any orders to current sign suppliers made through a non catalogue route is monitored and an explanation sought from the official requesting the goods.

8. Copy correspondence between Mr Paul Priestly and BBC about its coverage of the Whistleblower's concerns is attached at **Annex E**.
9. You invited Paul Priestly to comment further on his view of the BBC report. Paul's response is set out in the attached letter (**Annex F**) issued to you through this correspondence.
10. You requested a breakdown of the protocol for the three stage procurement process.

Prior to each contract being tendered, the evaluation criteria are considered and agreed between Roads Service (the Client) and the Centre of Procurement Exercise (CoPE) facilitating the contract. Each contract, therefore, is treated individually regarding the selection of evaluation criteria. Importantly, the 2006 Public Procurement Regulations require that suppliers are informed as to how a tender is to be evaluated. This is generally achieved by including the evaluation method in the Invitation to Tender document or, alternatively, having a separate Evaluation document as part of the overall tender documentation.

In the most recent competition for traffic signs, consideration of the evaluation strategy concluded that as many of the signs to be procured would be for the replenishment of stockpiles of temporary traffic management signs, the quality award criteria used in previous competitions may not have the same degree of importance. It was therefore agreed between CPD and Roads Service that a 3-stage process would be implemented. The Instructions for Tendering, which included information for all tenderers on the evaluation method to be used, are set out in **Annex G**.

11. You enquired as to the chronology of the factoring of previous reports and recommendations relating to the Whistleblower's allegations into the 2010 Internal Audit Report.

I can advise that, in accordance with good practice, the head of the Investigation Team reviewed the previous reports relevant to this subject as part of the preliminary work. The nature of this approach means that no precise chronology is available.

12. You requested a copy of all correspondence between Mr Paul Priestly, in his capacity of DRD Accounting Officer, and the Whistleblower. This is attached at **Annex H**.
13. You enquired as to the cost to the Department in defending Court action by the Whistleblower and associated comments by Dr Murray.

To date, the Department has paid £122,018 in respect of its legal costs. It has also paid £122,404, on account, in respect of plaintiff's legal costs. No agreement has yet been reached on additional costs also claimed by the plaintiff. These are currently being assessed by the Taxing Master in the Court of Judicature.

With regard to the payment of costs, the comments made by Dr Murray were simply to address any implication that a cost award against the Department should be interpreted in a way that is inconsistent with the specifics of the Judge's ruling. Dr Murray pointed out that "the judge found against the Department on one point of compliance with the regulations" but had found in favour of the Department on all other issues.

14. You enquired as to the Department's progress in implementing the recommendations of the 2010 Internal Audit Report and the NIAO Report.

I, attach, at **Annex I**, tables summarising progress against the recommendations in the 2010 Internal Audit report as at 31 October 2013. In terms of the NIAO Report, we continue to consider the issues raised here, and this will be concluded in the development of our Memorandum of Reply to the PAC Report, in due course.

I hope that the Committee finds this information of assistance.

Yours sincerely



**RICHARD PENGELLY**



## Internal Memo

cc. Mr James (O/R)  
Mr J McNeill  
Mr G Allister  
Mr R Balfour

**From:** G P Fraser  
Chief Executive (Acting)  
**Tel. No:** (5) 40462  
**Date:** 5 December 2001  
**To:** PS/Secretary

**SIGNS & EQUIPMENT LTD**

21

**Background**

A number of issues were raised by the above company at a meeting with the Minister on 2 November and you advised me of these by your minute of 6 November. The issues were that:-

- (i) Competitors were being advised of their firm's prices;
- (ii) They had been excluded from the shortlist for the new tender; and
- (iii) Orders within Southern Division went habitually to their competitor.

These issues have been investigated with the assistance from a member of Internal Audit staff and a copy of the report is attached.

**Highlights**

1. Investigations into the first of these issues was dropped following a discussion with Mr McDowell of Signs & Equipment Limited, as he had no evidence to support this allegation.
2. The second issue related to the tendering arrangements which were managed by Government Purchasing Agency (GPA) on behalf of Roads Service. We understand that this issue has now been resolved by GPA resulting in Signs & Equipment Ltd being included on the new tender list.
3. A detailed investigation was carried out of the three specific sites identified by Mr Dowell where signs had been supplied by a competitor. The findings from this investigation would suggest that the company would have some justification for concern, i.e. that orders, which they might have expected to be placed with them, were placed with other companies. However there appears to be a general perception in Road Service Direct - Southern Division (supported by their line management) that the service provided by Signs & Equipment is not up to standard with allegations of very slow delivery and inadequate invoicing.







Internal Mem

#### Recommendations

4. The report recommends that staff should be reminded of the correct procurement procedures to be followed and management should take steps to ensure that these procedures are adhered to. All decisions should be clearly documented and approved by the appropriate grade. If it is considered necessary to deviate from approved contracts any such decision should be approved at an appropriate level and the reasons for such deviations should be clearly documented.
5. In addition staff should be encouraged to monitor performance and if there is evidence that any company is operating below the required performance this should be documented and passed to senior line managers and GPA who can take appropriate action.
6. It is proposed that the use of plastic signs should be formally presented to the Roads Service Policy and Standards Branch for consideration and, if accepted, included in future signs contracts.

#### Action

7. I am satisfied that the main issues have now been investigated and accept the recommendations put forward. If you are content I propose that I now write to Mr McDowell regarding the issues raised and highlighting the action being taken (draft letter attached).

A handwritten signature in black ink, appearing to read "G P Fraser".

G P FRASER

Mr John McDowell  
Signs & Equipment Ltd  
64 South Street  
NEWTOWNARDS  
BT23 4JU

December 2001

Dear

**SIGNS & EQUIPMENT LTD**

I refer to your meeting with Peter Robinson, Minister for Regional Development, on 2 November 2001 when you raised a number of concerns about contracts for the supply of temporary road works signs to Roads Service. You indicated that you were concerned that: -

- (i) competitors were being advised of your firm's prices;
- (ii) your firm had been excluded from the shortlist for the new tender; and
- (iii) orders within Southern Division went habitually to your competitors.

I can assure you that we take this issue very seriously and have carried out an investigation which involved a member of staff from Internal Audit.

To start the process, I arranged that Mr Roddy Crilly contact you to confirm details of your concerns and obtain any other relevant information. I understand that following discussions with him you agreed that investigations into the first of the above issues should be dropped, as you had no substantive evidence to support the allegation.

I also understand that the second issue which related to your company being excluded from the select list for the new tender has been revived by Government Purchasing Agency (GPA), resulting in Signs & Equipment Ltd being included on the new tender list.

The third issue related to your concern that orders for Chapter 8 temporary road signs, which you could reasonably have expected to be placed with Signs & Equipment Ltd, were instead placed with other companies. A detailed investigation of the three sites identified by you where signs supplied by other companies were being used found that some signs, which could have been sourced from your company under the contract, had indeed been purchased from other companies. However there was no evidence of bias against your company and in each case the reason offered was that of expediency.

In this respect I should advise you that some staff raised concerns that the service provided by Signs & Equipment was not up to standard with allegations of slow delivery and inadequate invoicing. However, this was not documented and therefore does not justify departing from standard procurement procedures. Nevertheless, I will be asking staff to monitor future performance and, if there is evidence that any company is operating below the required performance level, this will be documented and passed to senior line managers and GPA for appropriate action.

The practice you identified is completely contrary to Road Service procurement procedures and measures are being taken to ensure that, as far as practical, there is no recurrence. Staff have been reminded of the correct procurement procedures to be followed when purchasing signs, and management instructed to take appropriate steps to ensure that these procedures are strictly adhered to.

I apologise for this further incident and can again assure you that steps have been taken to ensure that contractual protocols are adhered to in future. If you have any remaining concerns, I would be happy to meet with you.

Yours sincerely

**G P FRASER**

**From:** Roddy Crilly  
Principal Engineer – Network Maintenance  
Roads Service Headquarters

**Tel:** (5)40529

**cc:** Miss Cathy Pringle  
Mr J McNeill  
Mr G Allister

**Date:** 27 November, 2001

**To:** Mr G Fraser  
Acting Chief Executive

## **PROCUREMENT OF “CHAPTER 8 TEMPORARY ROAD SIGNS” BY ROADS SERVICE DIRECT WITHIN SOUTHERN DIVISION**

### **Background**

- 1.1 In November 2001 ‘Signs & Equipment’ alleged that, despite their company having a three year contract with the Department and an established service record in the provision of Chapter 8 temporary road signs:
  - ◆ Competitors were being advised of their firm’s prices.
  - ◆ They had been excluded from the shortlist for the new tender.
  - ◆ Orders within Southern Division went habitually to their competitors.
- 1.2 This is the second time that this firm has voiced concern about procurement procedures in this area (previous allegations were made November 1999) and correspondence relating to the previous complaint is appended to this report.
- 1.3 Assisted by Cathy Pringle from Internal Audit, I carried out a preliminary investigation to establish the facts and determine whether departmental purchasing procedures had been adhered to.

### **Findings**

- 2.1 Given the timescales involved I made initial contact with Mr John McDowell from Signs and Equipment in a bid to focus the investigation on specific areas of concern.

I was advised of the following: -

- ◆ Competitors were being advised of their firm’s prices.

Mr McDowell said that he had no substantive evidence to support this perception and he saw little benefit in pursuing the matter. Consequently, this allegation was not investigated further.

- ◆ They had been excluded from the shortlist for the new tender.

The new contract for 'Road Traffic Signs and Associated Products' is for 1 year with an option to extend to a maximum of 3 years. The reason for this approach is that EU legislation, which is expected imminently, will change the specification to a performance-based specification. The contract is for all road traffic signs and associated equipment throughout Road Service.

Major roadwork contracts normally include provision of signs within the contract so other sign suppliers would have the opportunity to bid for this work. This would be a small percentage of our overall need.

Estimated annual value of the overall current contract is £430k.

Roads Service used GPA to produce this contract. GPA placed an advertisement in the European Journal seeking expressions of interest. Ten firms applied and completed the questionnaire.

GPA met with Roads Service to agree a marking framework following which the firms were marked and reduced to a restricted list of 6 who were issued with the tender documents that week.

GPA was aware of concerns from two firms (including Signs & Equipment) who failed to make the restricted lists and indicated it was prepared to review the selection process. (Signs & Equipment had the contract to provide the Chapter 8 temporary road signs element of the existing tender from January 1999 to December 2001.)

Signs & Equipment were advised to appeal the decision to exclude them from the shortlist and were subsequently reinstated on the tender list by GPA. The reason given by GPA for their original exclusion was that they had not properly completed their tender application forms. They were just below the pass mark and when the position was clarified GPA were able to increase their mark.

As Signs & Equipment are now on the new tender list this issue was not investigated further.

- ◆ Orders within Southern Division went habitually to their competitors.

Mr. McDowell advised me that he was aware of three sites where there was evidence that Chapter 8 temporary road signs, which his company had the contract to provide, had been purchased from other companies.



These sites were: -

- Bridge strengthening work on the M1 motorway.
- Crash Barrier replacement from West of Tamnamore to the end of the M1 motorway.
- A1 at Dromore.

2.2 This review was, therefore, restricted to investigating this last allegation. Cathy Pringle and I visited Southern Division on 13 November 2001 and spoke to Mr. Roy McAteer (PTO – Roads Service RSD who was in charge of the signing on the M1) and Mr. Enda Tucker (PTO – Roads Service RSD who was in charge of the signing on the A1). Documentation (order forms & invoices) in relation to the sites was also reviewed. Findings are as follows:

**Works on the M1 Motorway**

2.3 The signing for this work involved signing for traffic contra flow on two schemes:-

- ◆ Strengthening work on the Bridge over the River Bann. This work started on 1 September 2001 and is ongoing.
- ◆ Erecting crash barriers on the M1 motorway West of Tamnamore to the end of the motorway. This work started on 11 August 2001 and lasted approximately 6 weeks.

2.4 Both schemes were on the Roads Service's works programme and adequate time had been available to arrange the necessary signing.

2.5 Roads Service Direct in Southern Division, took an operational decision to use plastic signs on both these motorway sites rather than the conventional (aluminium) signs available on the Roads Service contract. The main argument given for this decision is that plastic signs are lighter and easier to erect than conventional signs.

2.6 The procedures used for purchasing the plastic signs 'off-contract' were as follows: -

- ◆ Mr. McAteer informed us that he phoned 3 firms for quotes in the last week in June 2001. The firms contacted were Signs & Equipment, PWS and Douglas Streetscape. [Note: DRD Accounting Procedures (Page 64) requires 4 written quotations for orders where the estimated value is up to £15,000. Where it is not possible to obtain the required number of quotations a detailed reason must be noted on the relevant documentation. Goods and services with an estimated cost exceeding £15,000 must be procured by means of a formal contract. ]

- ◆ Mr. McAteer informed us that Signs & Equipment were phoned about 4 times and messages left for the firm's representatives to contact Roads Service RSD in Southern Division. Mr McAteer said there was no response to these calls. In the absence of any documentary evidence it is not possible to confirm or refute this.
  - ◆ Both PWS and Douglas Streetscape did respond and visited the depot at Carn to see what signing was required. However only PWS provided a quotation for the supply of signs. Immediately prior to the start of the first contract it was discovered that 7 No of the plastic signs were the wrong size and did not meet the required specification necessary for motorway work.
  - ◆ Because of the short timescale involved these 7 signs plus an additional 8 signs were ordered as conventional signs; again from PWS. Mr McAteer admitted that he should have gone to Signs & Equipment for these conventional signs but did not as the original order had been with PWS.
  - ◆ The cost of these 15 conventional signs from PWS was £4512 + VAT. It is estimated that had these been ordered from Signs and Equipment the cost would have been approximately £4225 + VAT.
- 2.7 The order to PWS was counter-signed by his HPTO and the Payment Slip was certified by the SPTO.
- 2.8 The total cost of these signs (plastic & conventional) was over £14,000 + VAT.
- 2.9 Signs & Equipment could have provided these in the conventional form
- 2.10 There is no written documentation to support the procurement procedures used.

#### **Works on the A1 at Dromore**

- 2.11 The signing for this work involved signing for traffic contra flow where a slip had occurred at Dromore on the A1. The officer in charge of the signing was Mr Enda Tucker.
- 2.12 This work was programmed to start on 8 October 2001 and RSD were given approximately 3 weeks notice to carry out the signing for the contra flow. RSD were subsequently told that the work was cancelled and then, 1 week before the start of the contract, (1 October 2001) RSD were again asked to carry out the signing.
- 2.13 As the signs were then required urgently (the signing had to be carried out on the weekend of 6 and 7 October 2001 to allow the work to commence on 8 October 2001) Mr. Tucker said he rang PWS and ordered the necessary signs over the phone. Subsequently, a confirmation order was sent to PWS.

- 2.14 On a second occasion after the start of the contract, signs, which Mr Tucker had borrowed for the scheme, had to be returned and these too were replaced by a verbal order to PWS.
- 2.15 The signs ordered were conventional signs although Mr Tucker said that he had intended to order plastic signs but that PWS had made a mistake.
- 2.16 Mr Tucker admitted that he was aware that Signs & Equipment could have supplied the signs but made a considered judgement (based on his perception that Signs & Equipment would not be able to deliver on time) not to approach that firm with regard to the purchase of signs for the A1 scheme.
- 2.17 The total cost of these signs from PWS was approximately £3950 + VAT.
- 2.18 Signs & Equipment could have provided all of these signs and it is estimated that had these been ordered from Signs and Equipment the cost would have been approximately £2610 + VAT.
- 2.19 Both Mr. McAteer and Mr. Tucker complained that Signs & Equipment was very slow with delivery and poor at invoicing. This view was supported by Mr John Hall (SPTO) who said that this history of poor service could be confirmed with the Divisional Buyer.

### **Conclusions**

- 3.1 This is the second time that an allegation of this type has been made by Signs & Equipment against RSD in Southern Division and the findings from this preliminary investigation would suggest that the company might have some justification for concern, i.e. that orders which they might have expected to be placed with them were placed with other companies.
- 3.2 There appears to be a general perception in Southern Division's RSD (supported by senior line management) that the service provided by Signs & Equipment is not up to standard with allegations of very slow delivery and inadequate invoicing.
- 3.3 Over £18,500 (excluding VAT) was spent purchasing signs from PWS for the three sites under investigation. Whilst some of this was for plastic signs which are not covered by the contract, £8462 was spent on conventional signs which could have been sourced from Signs & Equipment under the contract.
- 3.4 Staff in Southern Division made unilateral decisions about using plastic signs and going off-contract, although this inevitably raises issues about policy and potential loss of value for money by operating off-contract.
- 3.5 Procurement procedures for the purchasing of these signs had not been adhered to and there is no documentation to support the line that was taken although, in the instances under investigation, the officers concerned provided explanations as to why they took this

'off-contract' procurement route. They also indicated why they had chosen to exclude Signs & Equipment but again there is a lack of documentation to support their actions.

- 3.6 From the investigation there is no evidence of fraudulent activities.

### **Recommendations**

- 4.1 Staff should be formally reminded of the correct procurement procedures to be followed and management should take steps to ensure that these procedures are adhered to. All decisions should be clearly documented and approved by the appropriate grade. If it is considered necessary to deviate from approved contracts any such decision should be approved at an appropriate level and the reasons for such deviations should be clearly documented.
- 4.2 Staff must not act unilaterally in 'black listing' providers from properly constituted contracts based on perceived ideas of performance. If there is evidence that any company is operating below the required performance this should be documented and passed to senior line managers and GPA who can take appropriate action.
- 4.3 The use of plastic signs should be formally presented to the Roads Service Policy and Standards Branch for consideration and, if accepted, included in future signs contracts.
- 4.4 Issues arising from the above, in relation to forward planning of road works, should be considered in order to ensure that Roads Service staff have sufficient time to obtain the necessary signs.

Roddy Crilly

28/10/2001 17:15

02891826460

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## Signs & Equipment Ltd

Irish Tapestry Buildings, 84 South Street, Newtownards, BT23 4JU.  
Tel: 01247 816060 Fax: 01247 826460

18 November 1999

COPY

Mr V Crawford  
Director of Engineering  
Roads Service Headquarters  
Clarence Court  
10-18 Adelaide Street  
Belfast  
BT2 8GB

Dear Mr Crawford

### Supply of Road Signs to Roads Service.

Signs & Equipment Ltd successfully tendered for and subsequently received a substantial part of the contract for the Supply and Delivery of Road Traffic Signs for the period 1 January 1999 to 31 December 2001. Operation of the contract seemed to be operating to the satisfaction of both parties, however recently when delivering signs our driver noticed a substantial number of Chapter 8 signs on the M1 which had obviously not been supplied by this company.

Roads Service would normally provide and control signs on motorways therefore we assume supply of the signs would fall to ourselves. Since noticing the signs on the M1 we have seen similar signing on other main routes throughout the province.

The question of signs being purchased from the wrong source was raised with Government Purchasing Agency during the life of the previous contract\* and was to be investigated by them and the practice stopped. Unfortunately the problem would appear to be back with us. We accept that if the signs have been erected and supplied by a contractor for his own work we have no complaint, however if they are the property of Roads Service then we have a problem which requires investigation.

If we are correct in our assumptions it would be our contention that we have already lost a substantial amount of revenue and would not wish this to continue. I would be obliged if you would have the matter investigated and let me know your findings.

Yours sincerely

David Connolly

Registered in Northern Ireland No. NI 90663 Vet Registration No. 67488872

\* ON 10/11/1997.

08/11/2001 12:10 02891826460

**ROADS Service**

PAGE 04

Mr David Connolly  
Signs & Equipment Ltd  
64 South Street  
NEWTOWNARDS  
BT23 4JU

**Director of Engineering**  
Roads Service Headquarters  
Clarence Court  
10-18 Adelaide Street  
Belfast BT2 8GB

14 December 1999

Telephone: 01232 540471  
Fax: 01232 540531

Dear Sir

**SUPPLY OF ROAD SIGNS TO ROADS SERVICE**

Thank you for your letter of 18 November 1999. The above matter has been passed to our Ballymena Office and the matter will be dealt with as soon as possible.

Yours faithfully

*PP* *S McCannell*  
**V CRAWFORD**  
**Director of Engineering**



09/11/2001 12:10 02891826460

PAGE 02



Your ref:  
Our ref: DM/TH  
Being Dealt With By: Mr D Moore  
Date: 29 December 1999

**Northern Division**  
County Hall  
182 Galgorm Road  
Ballymena BT42 1QG

Mr David Connolly  
Signs & Equipment  
64 South Street  
Newtownards  
BT23 4JV

Telephone: 01266 653333  
Fax: 01266 662510

Dear Sir

### Supply of Roads Signs to Roads Service

With reference to your letter of 18 November 1999 which has been passed to me by Mr V Crawford to reply to.

Substantial parts of the contract were also awarded to other companies, whilst some other signs fell outside the remit of this tender. The Department is also experimenting with some lightweight, sectional, temporary motorway signs from Scotland.

You will appreciate that the average life expectancy of signs is 5-10 years and that therefore the majority of signs currently being used on the motorway would have been bought under previous tenders. Some signs may also have been ordered under the previous tender but may not have been delivered until after the present tender was awarded. ??

You will be aware of the anomalies which exist between Chapter 8 motorway signage requirements and the Traffic Signs Regulations (as per your previous conversations with Dermot McElmeel re: WBM351 (P7015)). An internal review of motorway signing has been requested and would help solve the problem.

Having checked the signs ordered this year we are happy that any signs your driver may have seen on the motorway were not ordered by Roads Service Direct.

Without detailed information of what other main routes in the Province are involved it is difficult to comment. Different routes are signed by different Divisions/Sections and it would not be possible to generalise.

08/11/2001 12:10 02891826450

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We have endeavoured to use the above tender where possible and will continue to do so. However, it should be noted that in the past, several orders for signs placed with your company (via R Fullerton) experienced problems with delivery. This is not an inconsequential consideration when ordering signs required to meet tight legal deadlines.

Yours faithfully



**D MOORE**  
Operations Manager  
Roads Service Direct  
BALLYMENA

WED105  
TH

**Investigation into the Procurement and  
Administration of Contracts for the Supply  
and Delivery of Permanent and Temporary  
Road Traffic Signs and Associated Products  
by Roads Service**

**JANUARY 2010**

***RESTRICTED*****Investigation into the Procurement of Signs and Associated Products by Roads Service**

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**List of Abbreviations**

|                       |  |
|-----------------------|--|
| DRD                   | Department for Regional Development  |
| DFP                   | Department of Finance and Personnel  |
| CPD                   | Central Procurement Directorate  |
| GPA                   | Government Purchasing Agency (now CPD)   |
| LEDU                  | Local Enterprise Development Unit  |
| Invest NI             | Invest Northern Ireland  |
| EU                    | European Union   |
| NIAO                  | Northern Ireland Audit Office  |
| OJEC                  | Official Journal of the European Community   |
| PWS                   | PWS (Ireland) Ltd  |
| S & E                 | Signs and Equipment Ltd  |
| RSD                   | Roads Service Direct   |
| RSC                   | Roads Service Consultancy  |
| Network Traffic North | Traffic Management North - part of Network Services Directorate within Roads Service |

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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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**INTRODUCTION**

- 1.1 In order for Roads Service to safely maintain the roads infrastructure within Northern Ireland, they must display adequate traffic signs giving information to members of the public. These are the signs seen on all roads throughout Northern Ireland and give information such as directions, warnings etc. For over ten (10) years now Roads Service has been commissioning Central Procurement Division (CPD), formerly Government Purchasing Agency (GPA), to manage competitive tender competitions for the ‘Supply and Delivery of Permanent and Temporary Road Traffic Signs and Associated Products’.
- 1.2 Mr. David Connolly of Signs and Equipment Ltd (in Liquidation), who set up business around 1995 was highly dependent on the public sector as he specialised in making road signs. In 1997 Mr. Connolly said that he “was awarded a ‘decent slice’ of the contract however to his dismay this did not result in as much business as he expected. He alleged that Roads Service purchased the products that he had been awarded from other suppliers, principally PWS Ireland”, therefore he started to raise his concerns.
- 1.3 In the four (4) contract awards (1998/99 through to 2005) Mr. Connolly continued to raise concerns and made a number of allegations about the tender processes. Mr Connolly has, for many years, been pursuing information which he believes will support his claim that he was forced out of business by the actions of a number of Government Departments, because they favoured one of his competitors, namely PWS Ireland.
- 1.4 In response to these allegations and further complaints, NIAO contacted the Department in October 2005 requesting that it undertake an investigation. With the agreement of the Permanent Secretary and following the receipt of documentation from NIAO, DRD Internal Audit commenced the investigation in November 2005. Mr Connolly has been in fairly regular contact with the NIAO since 2005 and made further allegations and submitted additional information in support of his claims.
- 1.5 This report sets out the findings of the investigation team.



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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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**BACKGROUND**

2.1 The following sets out the chronology of events leading up to the commencement, and during the course of the investigation:

- 19-Jul-05 Mr. Connolly telephones Mrs Louise Mason (NIAO) to discuss what he considers to be fraud to the public purse, regarding contracts let by DRD (Roads Service)/GPA.
- 21-Jul-05 Mr. Connolly meets with Mr Patrick O'Neill (NIAO) to discuss his concerns about contracting within Roads Service. At this meeting several allegations were noted.
- 28-Sep-05 Mr. Connolly telephones Mr Patrick O'Neill (NIAO) making further allegations regarding contract evaluation panels.
- 26-Oct-05 Mr J Dowdall (Comptroller and Auditor General, NIAO) telephones Mrs Doreen Brown (Deputy Secretary - Regional Planning and Transportation) regarding the allegations made by Mr Connolly and to discuss how these might be investigated.
- 11-Nov-05 Mr Patrick O'Neill (NIAO) writes to Mrs Doreen Brown (Deputy Secretary - Regional Planning and Transportation) detailing her agreement to examine Mr Connolly's allegations the details of which are noted within this letter.
- 15-Nov-05 DRD Internal Audit, with the agreement of Mr Stephen Quinn (DRD Permanent Secretary), commences an investigation into Mr Connolly's allegations the details of which are set out in the 11 November 05 correspondence from Mr Patrick O'Neill (NIAO).
- 4-Dec-06 Mr Connolly meets with Mr Patrick O'Neill (NIAO) and makes further allegations as a result of material he had obtained under the Freedom of Information Act.
- 13-Dec-06 Mr Patrick O'Neill (NIAO) writes to DRD Internal Audit stating that Mr Connolly had provided further information in relation to the investigation.
- 27-Jun-07 Mr Connolly meets with Mr Patrick O'Neill (NIAO) and Mr Ronnie Balfour (DRD Internal Audit) to restate his allegations and present additional information in support of these.
- 31-Jul-07 Mr Connolly meets with Mr Patrick O'Neill (NIAO) to provide further clarification on issues raised at 27 Jun 07 meeting and present additional information in support of his allegations.

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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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- 4-Sep-07 Mr Patrick O'Neill (NIAO) writes to DRD Internal Audit with a record of the 27 June 2007 meeting (agreed with Mr Connolly) including additional clarification on some of the points raised and further information in support of his allegations.
- 18-Sep-08 Mr Paul Priestly (DRD Permanent Secretary) writes to Mr David Connolly requesting confirmation that he has submitted all of the evidence he intends to submit to the DRD investigation team.
- 15-Jan-09 Mr Connolly writes to Mr Paul Priestly (DRD Permanent Secretary) regarding his letter of complaint to the BBC and intimates that he has submitted all of the evidence he intends to submit.

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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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**REVIEW PROCESS**

3.1 The following approach was adopted by the investigation team:

- consideration of papers supplied to the Department by NIAO following meetings with Mr David Connolly (Signs & Equipment Ltd);
- ongoing liaison with NIAO including a joint meeting with Mr David Connolly;
- examination of documents and records held by CPD, Roads Service and Invest NI;
- allegations made were put to the relevant DRD and CPD staff directly involved in the various contracts and evidence and explanations sought;
- interviews with representatives of Invest NI regarding information relating to LEDU's provision of financial assistance to Signs & Equipment Ltd and PWS (Ireland) Ltd;
- attendance at a meeting between Mr Geoff Allister and Dr Andrew Murray (Roads Service) and Mrs Iris Robinson MP MLA and Mr David Connolly regarding Roads Service's response to questions relating to the replacement of M2 motorway signs.

3.2 **Allegations/Complaints**

3.2.1 Details of the key allegations (22 in total) are provided in Annex 1 of this report.

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## Investigation into the Procurement of Signs and Associated Products by Roads Service

**FINDINGS****TENDERING & LETTING PROCESS**

***Allegation 1:** The evaluation criteria was changed from 100% cost over a number of contract cycles to 20% cost and 80% other. The changes to the evaluation criteria were just a mechanism used by Roads Service to ensure that their “preferred supplier (PWS) obtained the lion’s share of the work”.*

4.1.1 The evaluation criteria used over the various contract cycles were as follows:

| <b>Contract Period</b> | <b>Evaluation Criteria Used</b>   |
|------------------------|---|
| 1997/1998:             | As per OJEC notice the evaluation was to be based on:<br><br>Price<br><br>Delivery date<br><br>Quality<br><br>Technical merit   |
| 1999/2001:             | <u>High volume / High Spend Items (Permanent Signs):</u><br><br>Based on:<br><br>80% Cost<br><br>20% Quality / delivery / aesthetic & functional characteristics<br><br><u>Non Strategic Items:</u> |

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|                          |   |
|--------------------------|---|
|                          | Based on:<br><br>60% Cost<br><br>40% Quality / delivery / aesthetic & functional characteristics  |
| 2002/2003:               | Based on:<br><br>60% Cost<br><br>20% How the product range is delivered<br><br>20% Systems employed for order receipt and payment                                   |
| 2005/2007:               | Based on:<br><br>30% Cost<br><br>25% Manufacturing Processes<br><br>25% Company Experience and Service Delivery<br><br>15% Quality<br><br>5% Environmental Benefits |
| 2009 (now discontinued): | To be based on:<br><br>30% Cost<br><br>45% Process & delivery<br><br>15% Accreditation<br><br>10% Environmental benefits  |

- 4.1.2 The Public Supply Contracts Regulations 1995 permitted a contracting authority to award a contract on the basis of the offer which is the most economically advantageous to the contracting authority, or offered the lowest price. The regulations also permit contracting

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authorities such as Roads Service to choose the evaluation criteria it considers to be appropriate (notwithstanding developments regarding the use of award and selection criteria which impacted on the 2009 competition - paragraph 4.2.7 refers). We note that there have been ongoing changes to the evaluation criteria with an increasing emphasis on qualitative aspects and, for the 2005/07 contract, the evaluation criteria was based on 30% cost and 70% other (the same criteria was to be used for the 2009 competition that was subsequently discontinued). Since 2002 N.I Procurement policy has been that all procurement should be on the basis of Best Value for Money (VFM) and not lowest price alone. Best Value for Money is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements. CPD has advised us that changes to the regulations arising from the implementation of EU Procurement Directives and implementation of the changes in procurement policy has resulted in a shift from cost being the highest weighted criteria to a situation where, in most cases, qualitative aspects are given greater emphasis as was the case for the signage contracts.

- 4.1.3 Roads Service/CPD stated that in light of the long standing performance issues relating to the late delivery of orders (e.g. minutes of performance review meetings held with Signs & Equipment Ltd in October 2002 refer to approximately 75% of all orders being delivered outside the 15 day requirement specified in the contract and with PWS in June 2003 refer to approximately 30% of all orders being delivered outside the 15 day requirement specified in the contract), they have sought to place greater emphasis on qualitative criteria such as the ordering process and delivery when awarding contracts. For each of the competitions, the evidence indicates that tenderers were given the same information regarding the evaluation criteria and were given the same opportunity to prepare bids, make presentations and host site visits that addressed both the price and qualitative dimensions.
- 4.1.4 Throughout each competition, Roads Service had concerns about the capacity of a single company to deliver the contract and they indicated that they were seeking to secure best value whilst also minimising the risks associated with placing undue reliance on a single contractor. For example and as indicated at paragraph 4.5.1, the Tender Evaluation Report for the 2002/03 competition indicated that the evaluation scores supported the award of all signage elements of the contract to PWS, however as there was a relatively small difference between the scores of the top 2 companies – PWS and Signs & Equipment, they

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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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opted for a broadly equal split in the contract award. We found no evidence to suggest that the changes to the evaluation criteria were just a mechanism used by Roads Service/CPD to ensure that PWS obtained “the lion’s share of the work”.

Conclusion

- 4.1.5 As shown in the tables (paragraph 4.1.1 refers), the evaluation criteria have changed over the various competitions and there has been an increasing emphasis on qualitative aspects. We found that during the most recent competitions (2005/07 and 2009) the split has been cost 30% other 70% not the 20%/80% split that Mr Connolly has stated. The changes made were permissible under the EU Public Supply Contract Regulations 1995, were consistent with N.I Procurement policy and demonstrate the evolving nature of the procurement process in which contracts are awarded on the basis of best value for money (VFM) and not lowest price alone.
- 4.1.6 The changes also reflected Road Service’s ongoing concerns about the performance issues relating to the late delivery of orders. Throughout each competition Roads Service had concerns about the capacity of a single company to deliver the contract and in each instance they chose to use more than one contractor to help mitigate this risk. We found no evidence to suggest that the changes to the evaluation criteria were just a mechanism used by Roads Service/CPD to ensure that PWS obtained “the lion’s share of the work”.

***Allegation 2: He (Mr Connolly) was never informed of the changes to the evaluation criteria.***

- 4.2.1 Details of the information provided to tenderers relating to the evaluation criteria during the various tender competitions are as follows:

1999/2001 Contract



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- 4.2.2 As stated at paragraph 4.1.2, the Public Supply Contracts Regulations 1995 (part V, paragraph 21 (3) stated that where a contracting authority intended to award a public supply contract on the basis of the offer which is most economically advantageous, it shall state the criteria on which it intends to base its decision, where possible in descending order of importance, in the contract notice (*OJEC notice*) or the contract documents (*instructions to tenderers*). The advertised OJEC notice for the 1999/2001 contract stated that the Award Criteria would be based on 'Economically most advantageous tender in terms of price, delivery date, quality and aesthetic and functional characteristics' and this was also stipulated in advertisements placed in the local press and within the Government Opportunities (2<sup>nd</sup> October 1998 supplement). At that time, prior to the introduction of the Public Contracts Regulations 2006, there was no legal requirement for Roads Service/GPA to include in the advertisements or tender documents specific details of the weightings for each evaluation criterion.
- 4.2.3 We noted, however, that the instructions issued to tenderers did not include details of the evaluation criteria, and the tender schedules issued only made provision for information on cost not the qualitative elements. The tender documents therefore did not make it clear to companies that the assessment was going to include qualitative elements along with price. It is evident that the tender schedules issued were not appropriate given the evaluation criteria that had been adopted. This was an error and basic quality assurance checks on the tender documents by GPA should have prevented this. The regulations required Roads Service, as contracting authority, to specify the criteria on which it intended to base its decision in either the contract notice (*OJEC notice*), or the contract documents (*instructions to tenderers*) – in this instance the relevant information was only included in the OJEC notice. We consider that their inclusion in the instructions to tenderers (as was the case in the later competitions) would have made it clearer to companies what evaluation criteria was being used. When GPA, upon receipt of the tender submissions, realised that information on the quality elements had not been obtained, they notified Signs & Equipment and the other tenderers in a letter dated 10<sup>th</sup> December 1998 and invited them to give presentations on these elements on 16<sup>th</sup> December 1998. At that point Mr Connolly was informed, albeit belatedly, of the evaluation criteria that was being used for the tender assessment.

2002/2003 Contract

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**Investigation into the Procurement of Signs and Associated Products by Roads Service**

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- 4.2.4 The OJEC notice and the instructions to tenderers both included details of the evaluation criteria. Section 12 of the instructions to tenderers headed *Evaluation Criteria* stated 'This contract will be awarded on the basis of the most economically advantageous tender. The evaluation criteria will include price, quality, delivery and aesthetic and functional characteristics.' The instructions to tenderers were issued to each of the companies bidding for the contract, including Signs & Equipment, in order to inform them of the criteria that was being used to assess the tenders. Signs & Equipment submitted a tender which indicates that they received the tender documentation issued by GPA that included details of the evaluation criteria being used. As was the case with the 1999/2001 contract, at that time prior to the introduction of the Public Contract Regulations 2006, there was no legal requirement for Roads Service/GPA to include in the advertisements or tender documents specific details of the weightings for each evaluation criterion.

2005/2007 Contract

- 4.2.5 The OJEC notice and the instructions to tenderers included details of the evaluation criteria. Section 10 of the instructions to tenderers headed *Evaluation Methodology* stated 'Phase 2 will be a detailed evaluation to ascertain the most economically advantageous offer using the following criteria: - cost, manufacturing processes, company experience and service delivery, quality and environmental benefits.' The instructions to tenderers were issued to each of the companies informing them of the criteria that were being used to assess the tenders. Signs & Equipment submitted a tender which indicates that they received the tender documentation issued by CPD that included details of the evaluation criteria being used. As was the case with the 1999/2001 and 2002/03 contracts, at that time prior to the introduction of the Public Contract Regulations 2006, there was no legal requirement for Roads Service/CPD to include in the advertisements or tender documents specific details of the weightings for each evaluation criterion.

2009 Competition (now discontinued)

- 4.2.6 The OJEC notice and instructions to tenderers included details of the evaluation criteria and included specific information on the weightings in accordance with the requirements of the Public Contract Regulations 2006. Section 13 of the instructions to tenderers headed *Evaluation Methodology* stated 'Phase 2 will be a detailed evaluation to ascertain the most economically advantageous offer using the following criteria: -

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|                          |  |              |
|--------------------------|--|--------------|
| 1. Quality (comprising): |  | <b>70%</b>   |
| A.                       | Manufacturing Process and Service Delivery | <b>(45%)</b> |
| B.                       | Accreditations                             | <b>(15%)</b> |
| C.                       | Environmental benefits                     | <b>(10%)</b> |
| 2. Cost                  |  | <b>30%</b>   |

- 4.2.7 CPD informed us that due to recent European Court infractions and case law, further clarification was required on the distinction between selection and award criteria. The Office of Government Commerce issued guidance on this issue in December 2008 and April 2009. As a consequence CPD reviewed the criteria for the 2009 competition and acknowledged that three of the award criteria were, in fact, selection criteria and therefore inappropriate, hence the decision was taken to discontinue the competition.

Conclusion

- 4.2.8 The evidence indicates that Mr Connolly was informed, in general terms, of the changes to the evaluation criteria for the 1999/2001, 2002/03 and 2005/07 competitions, albeit belatedly so in the case of 1999/2001. As these competitions took place prior to the introduction of the Public Contract Regulations 2006, CPD/Roads Service were legally obliged to specify the evaluation criteria but did not have to specify the weightings for each criterion. Therefore, in accordance with established practice at that time, Signs & Equipment and the other companies were provided with details of the evaluation criteria to be used but not details of the specific weightings for each criterion. For the 2009 competition which began after the Public Contract Regulations 2006 took effect, CPD/Roads Service were legally obliged to provide specific details of the weightings for each criterion and they did so.
- 4.2.9 For the 1999/2001 competition, we noted that the instructions to tenderers issued did not contain details of the evaluation criteria therefore if Mr Connolly had not seen the OJEC notice or the advertisements (which included details of the criteria), he may not have been aware of the criteria being used until he received the 10 December 1998 correspondence from GPA. Notwithstanding the shortcomings in the manner in which the 1999/2001 competition was administered, the evidence indicates that a consistent approach was

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adopted with all 4 companies provided with information on the evaluation criteria at the same time and each giving their presentations on the same day.

***Allegation 3: At a debriefing interview for the 1999 contract, he (Mr Connolly) was told that the tender had been assessed on an 80:20 cost : quality basis. He alleges that there was no reference in any of the tendering documentation to a quality dimension and he had not completed any paperwork relating to quality.***

- 4.3.1 Debriefing meetings are provided to unsuccessful tenders after the award of a contract. As Signs & Equipment Ltd were successful and were awarded parts of the contract in the 1999/2001 competition, CPD have advised us that a debriefing interview didn't take place. However, there is a note on GPA's award letter stating 'Copy of results given at meeting 1/2/99 to emphasise the importance of performance.' indicating that a meeting took place between representatives of GPA and Mr Connolly, most probably to discuss the outworking of the 1999/2001 contract. We found no other record of this meeting or evidence indicating that the 80:20 cost : quality split was discussed.
- 4.3.2 As shown in the table at paragraph 4.1.1, we confirmed that the 1999/2001 contract was assessed on an 80:20 cost : quality basis. As stated in paragraph 4.2.2, the Public Supply Contracts Regulations 1995 (part V, paragraph 21 (3) required a contracting authority to state the criteria on which it intended to base its decision in the contract notice (*OJEC notice*) or the contract documents (*instructions to tenderers*). In addition, as indicated in paragraph 4.2.2, the advertised OJEC notice stated that the Award Criteria would be based on 'Economically most advantageous tender in terms of price, delivery date, quality and aesthetic and functional characteristics' and this was also stipulated in advertisements placed in the local press and within the Government Opportunities (2<sup>nd</sup> October 1998 supplement). We noted that these documents included only general detail about the evaluation criteria rather than details of the precise weightings / cost : quality split – as detailed in paragraphs 4.2.2 and 4.2.3 prior to the introduction of the Public Contract Regulations 2006, Roads Service/GPA were not legally obliged to disclose specific details and chose not to do so.

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4.3.3 As stated in paragraph 4.2.3, the instructions issued to tenderers did not include details of the evaluation criteria and the tender schedules issued only made provision for information on cost, not the qualitative elements. Thus the tender documents did not make it clear to companies that the assessment included qualitative elements along with price. It is evident that the tender schedules issued were not appropriate given the evaluation criteria that had been adopted. This was an error and basic quality assurance checks on the tender documents by GPA should have prevented this. The regulations required Roads Service, as contracting authority, to specify the criteria on which it intended to base its decision in either the contract notice (*OJEC notice*), or the contract documents (*instructions to tenderers*) – in this instance details were only included in the OJEC notice. We consider that their inclusion in the instructions to tenderers (as was the case in the later competitions) would have made it clearer to companies what evaluation criteria was being used. GPA acknowledged that if the procurement was to proceed, then information on the qualitative criteria would have to be obtained and decided that this would be best achieved by way of presentations by the top 4 companies supplemented by a written submission.

4.3.4 Invitation letters issued on 10 December 1999 stating the following:

‘Further to your tender submission you will be aware from the Official Journal advertisement that we are assessing the tenders against the following:

- Price
- Delivery
- Quality
- Aesthetic and functional characteristics

Unfortunately the tender submissions failed to fully address some of the areas above and therefore in order to proceed with the evaluation we require additional information. We are proposing that you present this information to the evaluation panel at the date and time shown below [*\*\*\*\* on Wednesday 16<sup>th</sup> December 1998*]. You will be expected to provide relevant information that you feel demonstrates your company’s abilities in these areas. The specific areas which we require you to address are:

Delivery

Quality

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Aesthetic and functional characteristics.'

- 4.3.5 Signs & Equipment along with the other companies gave a presentation on the quality elements to the tender evaluation panel on 16<sup>th</sup> December 1998 and provided a paper submission in support of the presentation and both were used as part of the overall assessment.

Conclusion

- 4.3.6 We can confirm that there was no reference to a quality dimension in any of the tender documentation used for the 1999/2001 competition. Although other documentation used in the overall procurement process i.e. the OJEC notice and advertisements contained this information, it is possible that Signs & Equipment Ltd and the other companies involved in the 1999/2001 competition may not have seen these documents and consequently would not have been aware that there was a quality dimension to the tender evaluation until they received the 10<sup>th</sup> December 1998 letter from GPA inviting them to give presentations on these aspects on 16<sup>th</sup> December 1998.
- 4.3.7 Regarding the completion of paperwork, we found that Mr Connolly had not completed any paperwork relating to quality as part of his original tender submission, however in response to the 10<sup>th</sup> December 1998 letter from GPA, Signs & Equipment did provide a written submission as part of the presentation made on 16<sup>th</sup> December 1998 which was used by the tender evaluation panel to assess the quality dimension. Therefore upon receipt of the 10<sup>th</sup> December 1998 correspondence from GPA, Mr Connolly would have become aware, albeit belatedly due to the absence of details in the instructions to tenderers, that there was a quality dimension to the tender assessment. In addition, only general detail about the evaluation criteria was provided to Mr Connolly and the other tenderers rather than details of the precise weightings / cost : quality split as prior to the introduction of the Public Contract Regulations 2006, CPD/Roads Service were not legally obliged to disclose specific details and chose not to do so. Notwithstanding the shortcomings in the manner in which the 1999/2001 competition was administered, the evidence indicates that a consistent approach was adopted with all 4 companies provided with information on the evaluation criteria at the same time and each giving their presentations on the same day.

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***Allegation 4: The markings on the Signs & Equipment scoring frame for the 1999-2001 tender were altered by CPD/Roads Service and consequently Signs & Equipment lost out on major parts of the contract which were given to PWS.***

- 4.4.1 The scoring frame (Annex 2 refers) shows a tick beside the 6 box in the delivery criteria column indicating that the evaluation panel awarded a score of 6 to Signs & Equipment in this category. When multiplied by the allocated weighting of 5 this should have given a weighted score of 30. However, according to the evaluation panel members a weighted score of 40 was incorrectly entered on the scoring frame which in turn impacted on the overall quality score awarded - 80. When the error was identified, the weighted score for delivery was subsequently amended to 30 and the overall quality score was also adjusted accordingly - reduced by 10 from 80 to 70. More detailed examination of the scoring frame indicates that the only tick in the Delivery criterion was entered adjacent to the 6 box - there was no tick/marketing beside any other box to indicate that panel members may have initially awarded a different marking and then decided to change it. We noted that the incorrect scores were amended on the scoring frame sheet but had not been struck through and rewritten, nor had the changes been initialled in accordance with recommended best practice.
- 4.4.2 On the basis of the corrected scores, Signs & Equipment with a score of 70 were ranked 4<sup>th</sup> out of 4 in the quality assessment – the quality assessment had been carried out on the top 4 companies who had submitted the best bids in terms of price. PWS with a score of 78 were ranked 3<sup>rd</sup> out of 4 with Simms & Young and Hirsts with scores of 86 and 81 respectively, ranked 1<sup>st</sup> and 2<sup>nd</sup>. On the basis of the combined price/quality scores, Signs & Equipment were awarded Schedules 2 – 9 of the contract – Schedules A and B were awarded to PWS and Schedule 1 to Simms & Young.
- 4.4.3 We also noted the comments ‘past delivery difficulties’ that had been annotated on Signs & Equipment’s scoring frame against the Delivery criterion – there were no written comments on the scoring frame documents for the other 3 companies. We queried this with the CPD officials as there was no further information recorded on the files but they were unable to offer a definitive explanation. However, they subsequently advised and



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provided evidence confirming that Road Service officials had raised concerns about Signs & Equipment's performance (mainly in relation to late delivery of orders) during the 1997/98 contract and suggested that the comments may have been made to indicate that the issue had been raised during Signs & Equipment's presentation which included its proposals for delivery. We have been unable to clearly establish why the comments were annotated on the scoring frame and if, or to what extent (if any), they impacted upon the score of 6 that Signs & Equipment received for the Delivery criterion, their overall score and the awarding of the contract.

Conclusion

- 4.4.4 The evaluation panel members have stated that a computational error was made when calculating the weighted score for the Delivery criterion which prompted them to make the corrections to the individual criterion score and overall quality score. The evidence tends to support this explanation as we found no evidence to indicate that the panel may have initially awarded a different marking and then decided to alter it.
- 4.4.5 We have been unable to establish why the comments 'past delivery difficulties' were annotated on Signs & Equipment's scoring frame and if, or to what extent (if any), this impacted upon the score of 6 attributed to Signs & Equipment for the Delivery criterion, their overall score and the awarding of the contract.

***Allegation 5: Roads Service removed Signs & Equipment from the restricted list for the 2002-03 tender competition on wholly spurious grounds but after the Stormont meeting they were reinstated.***

- 4.5.1 The tender evaluation report stated that due to the presence of a significant number of suppliers and because of the value of the contract, Roads Service agreed with GPA's proposal that a restricted regulated contract should be used for the 2002-03 competition. This approach was permissible under the Public Contracts Supplies Contracts Regulations 1995 and involved seeking expressions of interest, shortlisting against agreed criteria and inviting a restricted number of firms to submit tenders.

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- 4.5.2 The ten (10) firms which expressed interest completed a firm questionnaire which was assessed by an evaluation panel consisting of Roads Service and GPA officials against pre-determined criteria. The short-listing exercise identified six (6) firms achieving an overall score of 60 or more who were considered 'to have clearly demonstrated the appropriate experience in the field and could call upon the financial and technical capacity required to deliver the contract'. We found no evidence to indicate that an overall pass mark of 60 or a decision regarding the number of firms to be invited to tender had been determined and agreed prior to the receipt of the questionnaires. Signs & Equipment scored 59 and were placed 7<sup>th</sup> out of 10 firms. The marking frame indicated that Signs & Equipment scored lower marks than their main competitors (PWS & Hirsts) in the following categories: Delivery Experience, Management Information and Contract Management.
- 4.5.3 The minutes of the debrief meeting held on 26<sup>th</sup> October 2001 indicate that GPA officials informed Mr. Connolly of the weaknesses in his proposal in the technical capacity element of the firm questionnaire. We noted that in a document supplied to NIAO, Mr Connolly acknowledged that more detail could have been provided in the Management Information and Contract Management criteria in which he scored 45 marks out of a possible 150 – compared with the highest marks of 135 and 120 respectively awarded to Hirsts (who scored highest in these categories and in overall terms).
- 4.5.4 Following the representations made by Mr Connolly to the then DRD Minister, GPA reviewed its decision not to invite him to tender and decided to allow all ten (10) firms to submit tenders. The reasons and basis for this decision were not documented on file and when we raised the issue with CPD officials they offered no further comment. We noted that the four (4) firms who were originally excluded and subsequently reinstated scored 59, 57.5, 50 and 24.5 respectively.

Conclusion

- 4.5.5 We found no evidence to indicate that Signs & Equipment were excluded from the restricted list for the 2002/03 competition for spurious reasons and the evidence indicates that they were excluded due to weaknesses in their submission, mainly in the technical capacity element of the firm questionnaire, a fact Mr Connolly himself acknowledged. We confirmed that following the representations made by Mr Connolly to the then DRD

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Minister, GPA reviewed its decision not to invite him to tender and decided to allow all ten (10) firms to submit tenders.

***Allegation 6: For the 2002-03 tender competition CPD advised Mr Connolly that the value of the contract schedules awarded to Signs & Equipment would amount to 46% of the total contract value, but in reality the value of the work given to them was somewhere between 18% and 25% as Roads Service gave most of the work to PWS.***

- 4.6.1 The Tender Evaluation Report for the 2002-03 competition indicated that the evaluation scores supported the award of all signage elements of the contract to PWS but Roads Service/CPD indicated that 'any individual company would have capacity difficulties if tasked with supplying all permanent signs to Roads Service'. In the evaluation report concerns were also expressed about potential supply bottlenecks and as there was a relatively small difference in the scoring, Roads Service indicated its intention to share the 2002-03 contract between the 2 most economically advantageous bids i.e. from PWS and Signs & Equipment Ltd.
- 4.6.2 The 2002/03 Tender Evaluation Report stated that 'the proposed contract split would result in PWS being awarded 54% of the signs in monetary terms and Signs & Equipment 46%. This recommendation is based on historical ordering profiles'. We sought further clarification from CPD and Roads Service staff who advised that the percentages stated were based on historical ordering profiles (in Southern and Eastern Divisions during the period August 2001 – January 2002). They did not take account of existing stock levels, and the figure of 46% was indicative and not intended to reflect anticipated future order levels.
- 4.6.3 We also noted that the conditions of contract for the 2002-03 competition stated in paragraphs 6.10 and 6.11 – "Where estimated quantities are given in the tender documentation, they shall be regarded only as a guide and the Department shall not be

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bound to order such quantities. In cases where more than one contractor is appointed, the Department is not obliged to place orders with each and every contractor, nor to guarantee particular levels of business to contractors". On the basis of these clauses Roads Service was not guaranteeing Signs & Equipment 46% of the total value of the contract.

- 4.6.4 On 1<sup>st</sup> November 2004 information provided by Roads Service to Mr John Spellar (MP) for part input to a briefing for Mr Ian Pearson's meeting with Mrs Iris Robinson (MP MLA) stated that in 2002 Signs & Equipment Ltd received 27% (£224,375) of total spend (£834,628), in 2003 they received 49% (£417,636) of total spend (£857,765) and in 2004 they received 32% (£228,483) of the total spend (£727,522). These figures indicate that Signs & Equipment Ltd received more than the 18% - 25% figure quoted by Mr Connolly in each year and approximately 36% of the overall total spend over this period. During our interviews with the evaluation panel members, they reaffirmed that the intention had been to ensure a fairly equal split of the contract between Signs & Equipment and PWS as this offered Roads Service best value and least risk. However, they confirmed that the pattern of ordering during the post contract award period differed from that when the earlier analysis had been carried out and consequently Signs & Equipment received a smaller percentage of contract spend over the duration of the contract than Roads Service/CPD had initially indicated and Mr Connolly had been anticipating.

**Conclusion**

- 4.6.5 The evidence indicates that although the evaluation scores supported the award of all signage elements of the contract to PWS, Roads Service had concerns about the capacity of a single company to deliver the contract. As there was a relatively small difference between the scores of the top 2 companies – PWS and Signs & Equipment – they opted for a broadly equal split in the contract award based on indicative percentages of 54% to PWS and 46% to S & E. However due to changes in the pattern of ordering during the post contract award period, S & E received less than the 46% they had been anticipating over the duration of the contract. We consider that references to 46% may have given Mr Connolly an expectation that he would receive this proportion of orders however the conditions of contract made it clear that Roads Service was not obliged to guarantee particular levels of business. The expenditure figures indicate that Signs & Equipment Ltd received more than 46% of the spend in 2003 but less than 46% in 2002 and 2004,

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however, the 27% of spend they received in 2002 and 32% in 2004 was greater than the 18% - 25% figure quoted by Mr Connolly.

***Allegation 7: His (Mr Connolly's) main competitor [PWS] was in financial difficulties at the evaluation period of the tender [1999-2001] and therefore should have been excluded from the process.***

4.7.1 CPD have informed us that for the 1999-01 competition, although tender documents included a provision within the Instructions to Tenderers that applicants may be required to furnish financial accounts – copies of accounts were not requested from any of the tenderers and consequently no assessment of financial well-being was undertaken. CPD advised that this was common practice at that time for supplies contracts. We noted that a similar provision had been included in the 1997/98 tender documents and, as was the case for 1999/2001, accounts had not been requested from the tenderers.

4.7.2 We obtained the accounts for PWS (year ended 31<sup>st</sup> December 1997) that would have been submitted for analysis if CPD had applied the provision in the tender documents and asked Departmental accountants to examine them to indicate if the company was in financial difficulties. Their view was that although PWS had incurred losses of £88k, the audit report did not indicate that there were any 'going concern' issues. CPD have indicated that there would not have been any grounds for excluding PWS from the 1999/2001 competition.

Conclusion

4.7.3 Based on the information derived from the analysis of the accounts, there is evidence that although PWS had incurred losses of £88k the audit report did not identify any going concern issues with the company. CPD confirmed that based on these findings PWS would not have been excluded from the 1999/2001 competition.

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***Allegation 8: The qualitative panel for the 2005-2007 competition (consisting of three Roads Service HPTO's and a CPD staff officer) who visited his premises fabricated a site visit record that was not factual and accurate. For example, the only person who took detailed notes during the visit was the CPD Staff Officer. Some HPTO Officers have made written qualitative assessments on parts of the factory that they had not visited.***

4.8.1 CPD advised that the main purpose of the site visits was to assess the whole process i.e. receipt and processing of the order, manufacture of the sign, quality assurance, packaging, raising of invoices etc. The site visits took place on the following dates: Dee Organ (7/2/05), Hirst Signs (8/2/05), Signs & Equipment (9/2/05) and PWS (10/2/05). We conducted interviews with each of the three (3) Roads Service assessment panel members who advised that each company was asked to demonstrate each part of the process and they visited those parts of the premises where each phase was carried out. They indicated that they made 'rough notes' as they went along. Staff advised that after all site visits were carried out, the information they had recorded on the rough notes was then transferred onto the assessment scoring sheets that are held on file - none of the officers retained their rough notes.

4.8.2 CPD confirmed that their officer was also in attendance and her role was to supervise and ensure that all tenderers were treated equally during site visits. They advised that she would not have been taking notes on the manufacturing process being assessed but recording more general information on the conduct of the site visit; however we could find no evidence of any notes taken by the CPD officer who was in attendance. It is generally regarded as good practice for staff to keep a record of site visits e.g. details of individuals involved, processes inspected etc and to retain these records on file.

Conclusion

4.8.3 In conclusion, we have not found any evidence to substantiate the allegation that the site visit record was fabricated and was not factual or accurate, or that Roads Service officials made written qualitative assessments on parts of the factory that they had not visited.

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***Allegation 9: The sign he (Mr Connolly) was asked to make during an assessment [for the 2005-2007 contract] was wrongly drawn as it was in accordance with the English handbook and not the Northern Ireland Road Sign handbook. He assumed that this was a deliberate mistake and part of the assessment and pointed out the error to the Roads Service/CPD officials. He alleges that the drawing was corrected by a member of his staff at the request of Roads Service officials after which he instructed his staff to make the revised sign. He alleges that the other companies who were also assessed would have been asked to make the same sign as he was asked to make and would have made the 'English' sign. He alleges that they [the other companies] all received higher marks than he did.***

4.9.1 We noted that as part of the evaluation process for the 2005-07 competition, all companies were advised in advance that they would be asked to manufacture a sign for which a detailed drawing would be provided. It was a drawing taken from a previous Roads Service order. The sign also appears in the Traffic Signs Regulations (Northern Ireland) 1997 (pages 137 & 138) although there were changes to the times where the drawing states '8 – 9.30' and '4.30 – 6.00' but the handbook states '8.00 - 9.30' and '4.30 – 6.30'. However, we also found that there are 'permitted variants' within the Regulations which are detailed at the back of the book and variant '21' relates to the sign in question and states 'Reference to a time limit, the time of day, the day of the week, the month of the year, or the year may be varied or omitted'. Therefore we have confirmed that the sign each company was asked to manufacture was in accordance with the Traffic Signs Regulations (Northern Ireland) 1997 and it was not a deliberate mistake and part of the assessment as Mr Connolly has alleged.

4.9.2 During our interviews with each of the three (3) Roads Service assessment panel members, they confirmed that Mr Connolly had queried the legality of the sign shown on the drawing. They stated that Mr Connolly was told to manufacture the sign as shown in the drawing and advised that at no time had they requested changes to be made to the drawing as Mr Connolly has alleged. The signs were manufactured during the site visits which took place on the following dates: Dee Organ (7/2/05), Hirst Signs (8/2/05), Signs



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& Equipment (9/2/05) and PWS (10/2/05). Three (3) of the four (4) companies (Signs & Equipment, PWS and Dee-Organ) manufactured the sign with the incorrect 'pm time' - 6.30 instead of 6 - and two (2) companies (Signs & Equipment and Dee-Organ) used 8.00 instead of 8 for the 'am time'. Comments on the scoring sheets refer to "errors in the time" indicating that panel members only penalised and awarded lower marks to the companies who used the incorrect pm time (this was confirmed in interviews with evaluation panel members).

- 4.9.3 The assessment panel members advised us that Signs & Equipment Ltd received fewer marks (4 out of 10) than the other companies (PWS and Dee-Organ who were awarded scores of 7 out of 10) which had also manufactured the sign with the incorrect time due to poorer quality control processes. Comments on the Assessment report sheets refer to 'poor traceability of material batches and poor supervisory controls' and comments on the Site Visit Scoring sheet relating to quality control procedures refer to 'Little evidence of such for materials, a variety of sign face materials used. Time on sign wrong'.

Conclusion

- 4.9.4 We have confirmed that the sign each company was asked to manufacture was in accordance with the Traffic Signs Regulations (Northern Ireland) 1997 and it was not a deliberate mistake or part of the assessment as Mr Connolly has alleged. Roads Service officials dispute Mr Connolly's assertion that changes were made to the drawing at their request and indicated that Mr Connolly was instructed to manufacture the sign in accordance with the original drawing.
- 4.9.5 The comments on the assessment report scoring sheets and information obtained during the interviews with the evaluation panel members indicate that Signs & Equipment received lower marks than the other companies (who had also not included the correct time on the sign) due to other issues i.e. poor materials traceability and poor quality assurance processes.

***Allegation 10: Roads Service and CPD were in collusion with LEDU. The award of the [1999-2001] contract was deferred so that his (Mr Connolly) main competitor [PWS] could gain a major financial injection from***

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*LEDU. His competitor [PWS] gave LEDU a 66% equity stake in the company for £20,000 and offered a £60,000 grant. The £20,000 was paid on 25<sup>th</sup> February 1999 and £49,000 of the grant was paid over. The tendering delay was to facilitate PWS in sorting out its problems and in doing so, GPA, Roads Service and LEDU were complicit in keeping PWS afloat. Signs & Equipment Ltd was therefore competing against a company where the majority shareholder was the government.*

**Delay in Contract Award**

- 4.10.1 The 1999-2001 contract was due to be awarded on the 1st January 1999 however, we confirmed that companies were actually notified of the award of this contract on 29th January 1999. Due to the omissions in the tender schedules (paragraph 4.2.3 refers), GPA/Roads Service decided to arrange presentations - which took place on 16th December 1998 - to enable the companies to address the qualitative aspects for which information had not been obtained. During our interviews with the two GPA officers who supported and provided advice to the evaluation panel members, they stated that the need to convene presentations in mid-December 1998 meant that there was not enough time to finalise the evaluation and make an award before the due date (1st January 1999), so it was decided to extend the contract by a month. We noted that on 6th January 1999 the existing contractors were informed that the contract would be extended for a one month period ending 31 January 1999. It would be regarded as good practice to advise contractors of an extension to a contract prior to the expiry date and confirm their acceptance of same which was the case for the 2002/03 and 2005/07 contracts.
- 4.10.2 We were advised and the tender evaluation report states that hi-usage non strategic items e.g. Overlay Film, Tape, Plastic Cones, Traffic Cylinders, Bollards etc also had to be assessed and this took place in Armagh on 22nd January 1999, so this was another reason why the contract award was delayed until 29th January 1999.

**LEDU Investment Decision**

- 4.10.3 We interviewed representatives of Invest Northern Ireland (INI) who advised us that following PWS's submission in August 1997 of a business case supporting its application

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for financial assistance, LEDU conducted a marketing and financial assessment. As part of the appraisal process, a company's financial position and its ability to source funds from the private sector was assessed and if a funding gap existed and the project was deemed viable, a negotiated support package would be agreed.

4.10.4 INI also advised us that viability was one of the criteria used by LEDU when assessing an application for financial assistance; viability is defined as *'To ensure that the business can sustain itself on an ongoing basis at the proposed level of activity without the need for further LEDU assistance'*. LEDU deemed the application viable and a letter of offer containing certain pre-conditions was issued to PWS on 23rd February 1998 and accepted by them on 4th March 1998 indicating that PWS was offered the package of financial assistance well in advance of the commencement of the 1999 - 2001 tender competition – August/September 1998. We noted that an amendment to the letter of offer containing revisions to two (2) of the original pre-conditions was issued on 14 January 1999. It was evident that the principal thrust of PWS's proposal focused on the company's desire to implement a shift away from DOE contract business to contract sales in ROI and to introduce sales of a variable message sign (VMS) product in UK, ROI and Europe. During our review of LEDU's files, we found no evidence of any correspondence or contact with GPA/Roads Service.

4.10.5 INI advised us that preference shares are generally used 'when, in recognition of the degree of risk sharing, it is deemed appropriate that the public purse derive benefits from a successful project in line with the benefits enjoyed by other shareholders'. In addition, unlike grant support, preference share investments are returned to the public purse on achievement of a successful exit. They further advised that the use of shares alongside or in place of grant and/or loan was not an uncommon practice for LEDU and at March 2002, the date at which LEDU ceased to exist, some 70 investments were held by LEDU, the vast majority being preference share investments. The frequency of share investments varied from year to year however in 1998, the year in which shares were taken in PWS, LEDU entered into a total of 6 share transactions totalling £525,000. The value of individual transactions ranged from £20,000 (the PWS investment) to £125,000.

4.10.6 We noted that the value of the preference shares purchased and the accrued dividend (7%) - £25,331.51 - was paid back in full to INI in December 2004. The purchase of preference

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Investigation into the Procurement of Signs and Associated Products by Roads Service

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shares did not provide LEDU with any controlling interest in PWS or confer any voting powers.

- 4.10.7 In addition to the preference share investment, an offer of grant assistance amounting to £60,750 was made on 23 February 1998, £49,001 of which was paid out over the period 16 February 1999 and 25 June 2003.

Conclusion

- 4.10.8 We found no evidence to suggest there was collusion between Roads Service, GPA and LEDU. The evidence indicates that the main reason for the delay in the award of the contract was the need to convene presentations to obtain the information on the non-cost criteria so that the assessment panel could undertake the evaluation using all of the criteria that had been specified in the OJEC notice. We consider that the procurement process could have been handled more efficiently and effectively but we have found no evidence to suggest that the delays in awarding of the contract were linked to LEDU's offer and subsequent provision of financial support to PWS. The documentation indicates this funding was being sought to enable them to diversify into new markets and was not connected to the Roads Service sign contracts.
- 4.10.9 Although there was some overlap between the timelines for the 1999/2001 procurement process and LEDU's provision of financial support to PWS, this appears to have been purely coincidental and we found no evidence of any correspondence or contact between LEDU and GPA/Roads Service.

***Allegation 11: PWS had the contract for Motorway signs in 3 successive tenders and that Hirst signs, who currently have the contract, will not receive any orders for Motorway Signs.***

- 4.11.1 Motorway signs are included in the supply & delivery of permanent and temporary signs contract and PWS were awarded this element of the contract in 3 successive tender competitions 1997-1998, 1999-2001 and 2002-2004. Hirst signs were successful in the 2005-2007 competition and hold the current contract.

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- 4.11.2 Roads Service Finance Division does not hold order information by sign type therefore we are unable to confirm if Hirst Signs received any orders for motorway signs however figures supplied which include all types of signs show they have been paid the following amounts since the commencement of the 2005-07 contract:

| Year                     | Expenditure Amount   |
|--------------------------|----------------------|
| 2005                     | £107,790.39          |
| 2006                     | £308,515.73          |
| 2007                     | £252,454.32          |
| 2008                     | £243,101.74          |
| 2009 (up until 31/12/09) | £194,983.35          |
| <b>TOTAL</b>             | <b>£1,106,845.53</b> |

- 4.11.3 Since February 2006 (for DBFO 1) and December 2007 (for DBFO 2), the Private Finance Initiative (PFI) consortia have been responsible for motorway maintenance including signage. Therefore it is up to the consortia to decide how and by whom the signage work should be undertaken. Consequently since 2006 there will have been a significant reduction in the number of motorway signs ordered by Roads Service.

- 4.11.4 We spoke to a Director from Hirst Signs who stated that they are “happy” with the amount of work they have received during the current contract.

**Conclusion**

- 4.11.5 As Roads Service Finance Division does not hold order information by sign type, we are unable to confirm if Hirst Signs have received any orders for motorway signs under the 2005-07 contract. However, we note that Hirst Signs have received orders for all sign types with invoice values in excess of £1.1 million during the period 2005 – 2009 and they have also advised that they are content with the amount of business they have received under the 2005-07 contract. It is acknowledged by Hirsts that with the PFI consortia now responsible for motorway maintenance, Roads Service will not be placing any more orders with Hirsts for motorway signs.

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***Allegation 12: There are no tender procedures for the rental of large variable signs and this work has been allocated to PWS.***

- 4.12.1 We found that there is a contract in place for vehicle and plant hire including large variable messaging signs and PWS along with Trio Signs were successful in this competition. It was let from Dec 2004 – Nov 2008 with a 9 month extension to 30 June 2009. A new contract was awarded on 14 June 2009 and 4 companies were successful for the variable messaging element of the contract – (PWS, KDM Hire, MacRental and JB Plant).
- 4.12.2 This contract is solely for Roads Service use and if a contractor is carrying out work under a measured term contract and they need to hire large variable messaging signs, they can sub-contract the work to any company of their choice.

Conclusion

- 4.12.3 The evidence indicates that a contract for the hire of large variable messaging signs was initially put in place in 2004 following a competitive tendering exercise and awarded to PWS and Trio Signs. A new contract was awarded in June 2009 and 4 companies have been successful.

***Allegation 13: Roads Service receives very poor value for money. He (Mr Connolly) estimates that Roads Service is paying about 30% above the current market rates. This equates to waste of around £2 million over the eight years that he has been in business.***

- 4.13.1 Mr Connolly did not submit any evidence in support of this allegation. We found that the letting of the traffic sign contracts has been subject to a competitive tendering process in accordance with procurement best practice thus ensuring that value for money is achieved. In addition, we note that in November 2006 Roads Service carried out a benchmarking exercise to compare the cost of signs manufactured by PWS, Hirsts and Amey, and also signs purchased by Perth and Kinross Council and Cheshire County Council. We reviewed the price comparisons for the schedules in the 2005 contract and noted that for Primary

2.6.3 Wire brushing and the application of an undercoat of a High Build phosphate primer to a thickness of not less than 75 microns and one coat of a metal aluminium finish, to a thickness of not less than 25 microns, applied by either spray or brush. The painting shall be in accordance with the Manufacturer's instructions.

2.6.4 Prepared and painted in strict adherence to the paint Manufacturer's instructions using a chlorinated rubber paint.

2.6.5 Plastic coating to the Manufacturer's instructions.

2.7 All painted and coated frames shall be coloured grey to BS 3810 No 693 or EN equivalent.

### **3. SIGN PACKS**

3.1 The sign legend shall be on heavy duty flexible plastic material edge, sealed to prevent ingress of moisture.

3.2 The sign face shall be of either reflective plastic sheeting placed as instructed by the Manufacturer or a combination of colouring medium and glass beads of the closed lens type.

3.3 The sign face and the frame shall be so designed and constructed that its function will not be impaired by being stored or transported in a tightly wound roll. It shall not buckle, cockle nor ripple when in use or when stored or transported.

3.4 The design of the sign shall accommodate an interchangeable, snap on, supplementary sign panel where appropriate, designed to be fixed to the extended backcloth.

### **4. SUPPLEMENTARY PANELS**

The size of the supplementary panel may be standardised for interchangeability but must adhere to the design rules. Each side may depict a different legend in order to increase adaptability and reduce bulk storage.

### **5. ATTACHMENT OF SIGN AND SUPPLEMENTARY PANELS**

5.1 The heavy duty flexible plastic material shall be fixed to the frame by one of the following methods:-

5.1.1 Moulded sleeves forming part of the sign face background retained to prevent creeping or movement of the sign face when in use or stored.

5.1.2 Metal stiffeners moulded into the flexible plastic either vertically or horizontally with fixing points for attachment to the frame.

5.1.3 Spring loaded stainless steel locking studs and eyelets, the studs being fixed to the frame and the eyelets crimped into the flexible sign sheet.



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Route Signs, Motorway signs, Triangle signs, Circle signs and Stop Signs, prices were broadly comparable to those being paid by Perth and Kinross Council and Cheshire County Council.

**Conclusion**

- 4.13.2 Mr Connolly did not submit any evidence in support of this claim. On the basis that each of the contracts has been awarded following a competitive tendering process and taking into account the information obtained by Roads Service in its benchmarking exercise, we have no evidence to indicate that Roads Service receives poor value for money, nor have we found any evidence to suggest that Roads Service has been paying approximately 30% above market rates as Mr Connolly has suggested.

**ADMINISTRATION OF CONTRACTS (ALLEGED FAVOURITISM TO PWS)**

***Allegation 14: Orders which he (Mr Connolly) should have received were given to his competitors (PWS).***

- 4.14.1 During the administration of the 1999 – 2001 contract for the provision of temporary road signs, problems occurred which culminated in a complaint to the Minister, specifically that signs had been ordered from PWS which, under the terms of the contract, should have been ordered from Signs & Equipment Ltd. In response, Roads Service agreed to establish an order monitoring system for future contracts to record details of all orders placed and the time taken for delivery. An 'Order Monitoring Spreadsheet' was established in May 2002, primarily to monitor delivery performance, which is still currently operating. Using the information contained in this spreadsheet, we selected a random sample of 168 orders (approximate value £134,000) placed between 2002 and 2008 across all four (4) Roads Service Divisions (Eastern, Southern, Western and Northern) and examined each order to determine if the signs/posts had been purchased from the correct supplier.
- 4.14.2 We identified seven (7) orders (Eastern Division 1, Southern Division 1 and Western Division 5) where it appears that the signs / marker posts were not sourced from the correct supplier. Six (6) of these (3.57% of the number of orders in the sample) with a total

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value of £2,831.57 excluding VAT (approx. 2.1% of the invoice value of the sample) should have been ordered from Signs & Equipment Ltd but the orders were placed with PWS. In addition, one (1) order with a value of £850 excluding VAT was given to Signs & Equipment Ltd whereas it should have been placed with PWS. Further enquiries revealed that one (1) order was placed early in May 2002 just after the new contract had been let and the buyers advised that the up-to-date tender schedule had not been used which resulted in the wrong supplier being used. In another instance it was a confirmation order which had been raised after the order had initially been placed with the wrong supplier by Divisional staff. In the other five (5) cases the items that had not been sourced from the correct supplier represented single elements of much larger orders where all the other items had been ordered from the correct supplier. The explanation offered by staff was that the other items had most probably been wrongly added to the orders for expediency purposes i.e. so that another order to a different supplier did not have to be raised.

- 4.14.3 During the test drilling exercise it became evident that for certain sign types there can be some ambiguity regarding the contract schedule to be used. In certain instances this may result in orders being inadvertently placed with the wrong contractor if there are different suppliers for these particular schedules. For example, in the 2005-07 contract Warning signs are Schedule 'D' and Triangular signs are Schedule 'B', however a Warning sign is also triangular, for this reason there is an increased risk of orders being placed with the wrong supplier due to human error.
- 4.14.4 We also found that some orders had not been recorded on the 'Order Monitoring Spreadsheet' e.g. signs ordered directly by Traffic Management and not through Area buyers and in some cases Area Buyers had not been recording details of all orders. During the period May 2004 – March 2005, Northern Division had not entered any details on the Spreadsheet and in Western Division the new buyer had not completed the spreadsheet from the time she took up post (late 2007), although in April 2009 a retrospective exercise was carried out in Western Division and the spreadsheet has now been updated.
- 4.14.5 Whilst examining order books as part of our test exercise, we also identified some orders for signs (invoices amounting to the value of £110,749.51 from January 2007 onwards) that had been placed with another company – Morelock Signs - who are not an approved

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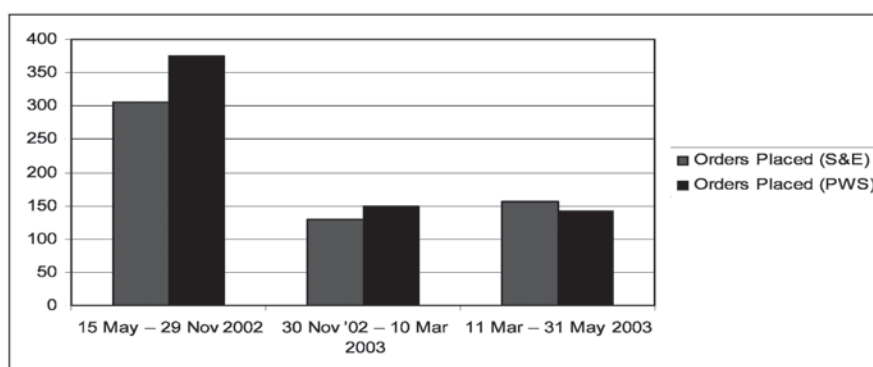
supplier under the current 'Supply and Delivery of Permanent & Temporary Road Traffic Signs' contract. Further enquiries revealed that quotations had not been sought and in each instance the signs had been ordered initially by Divisional Roads Service Direct (RSD) staff who subsequently asked the Area Buyers to raise confirmation orders – these had not been recorded on the Order Monitoring Spreadsheet.

Conclusion

- 4.14.6 In conclusion, there is evidence that some orders which should have been placed with Signs & Equipment Ltd were given to PWS. From our test sample of 168 orders, we identified 6 which included items with a total invoice value of £2,813.57 that had been placed with PWS but should have been given to Signs & Equipment Ltd. The evidence suggests that the orders were not placed with the correct suppliers due to a combination of procedural shortcomings, human error and expediency. Signs & Equipment Ltd did not suffer any loss from the orders placed with Morelock Signs as they had already gone into liquidation (November 2005).

***Allegation 15: The revenue stream afforded to Signs & Equipment by Roads Service was very erratic compared to that provided to PWS.***

- 4.15.1 We collated information recorded on the 'Order Monitoring Spreadsheet' for the period May 2002 – February 2005 to identify the pattern of ordering for and amounts paid to Signs & Equipment and PWS respectively. This information is set out in the following series of graphs/tables for the periods: May 2002 – May 2003, June 2003 – April 2004 and May 2004 – February 2005. We also asked Departmental statisticians to examine the data and to comment on the variability in revenue for both Signs & Equipment and PWS. We acknowledge that the analysis of variability provided is purely statistical in nature and does not take account of any non-statistical issues that may be relevant.
- 4.15.2 During the period May 2002 to May 2003 (Figure A refers), 592 orders were placed with Signs & Equipment (which equates to a monthly average of 47) and 667 orders were placed with PWS (which equates to a monthly average of 53) - the number of orders placed per month was not available for this period.

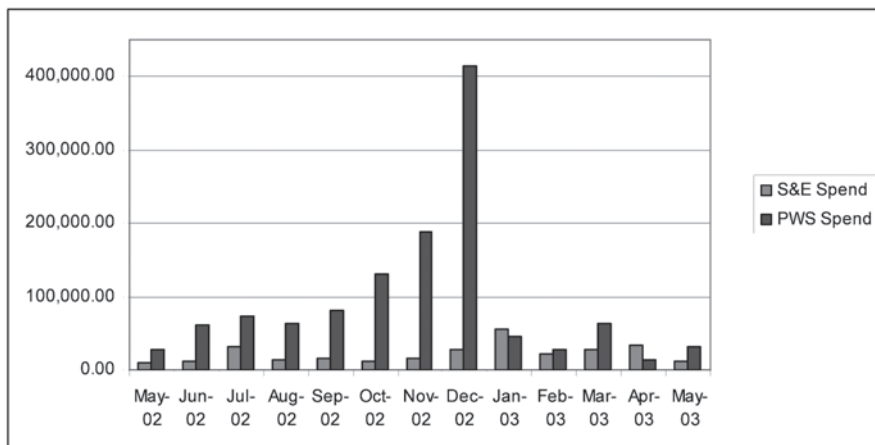
**RESTRICTED****Investigation into the Procurement of Signs and Associated Products by Roads Service****FIGURE A: ORDERS PLACED WITH S & E / PWS  
(MAY 2002 – MAY 2003)**

- 4.15.3 During the period May 2002 to May 2003 (Figure B refers), the total amount paid to Signs & Equipment was £291,990.96 with monthly amounts ranging from £10,535.22 (in May 2002) to £55,447.30 (in January 2003). The total amount paid to PWS over the same period was £1,221,752.78 with monthly amounts ranging from £13,741.66 (in April 2003) to £413,910.92 (in December 2002).

**FIGURE B: AMOUNTS PAID TO S & E / PWS  
(MAY 2002 – MAY 2003)**

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- 4.15.4 The conventional measure of variability in a series of data is the standard deviation and the method of calculating this is dependent on the data distribution which, for the purposes of this analysis, has been assumed to be random and normal. The standard deviation, mean and median figures for each firm during this period are detailed in Table 1:

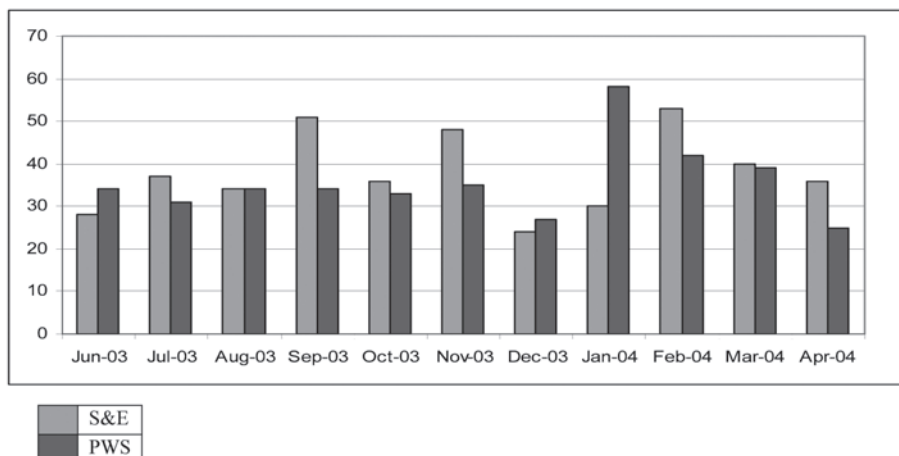
**Table 1: S & E v PWS Revenue – Summary Statistics May 2002 – May 2003**

|                    | S&E      | PWS       |
|--------------------|----------|-----------|
| Mean               | £ 22,461 | £ 93,981  |
| Median             | £ 16,378 | £ 62,687  |
| Standard Deviation | £ 12,274 | £ 102,898 |

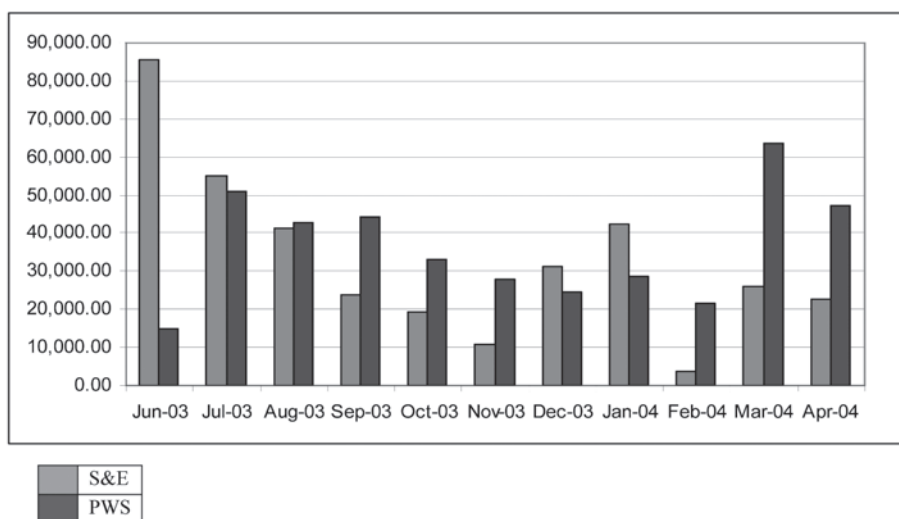
- 4.15.5 As the figures in Table 1 illustrate, the standard deviation was significantly higher for PWS showing a much greater degree of variability in PWS's revenue in comparison to that of S & E during the period May 2002 – May 2003.
- 4.15.6 During the period June 2003 to April 2004 (Figure C refers), 417 orders were placed with Signs & Equipment with monthly totals ranging from 24 (December 2003) to 53 (February 2004). The total number of orders placed with PWS over the same period was 392 with monthly totals ranging from 25 (April 2004) to 58 (January 2004).

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**FIGURE C: ORDERS PLACED WITH S & E / PWS (JUNE 2003 –APRIL 2004)**

- 4.15.7 During the period June 2003 to April 2004 (Figure D refers), the total amount paid to Signs & Equipment was £361,912.89 with monthly amounts ranging from £3,576.11 (February 2004) to £85,418.40 (June 2003). The total amount paid to PWS over the same period was £399,481.74 with monthly amounts ranging from £14,708.06 (June 2003) to £63,689.94 (March 2004).

**FIGURE D: AMOUNTS PAID TO S & E / PWS  
(JUNE 2003 –APRIL 2004)**

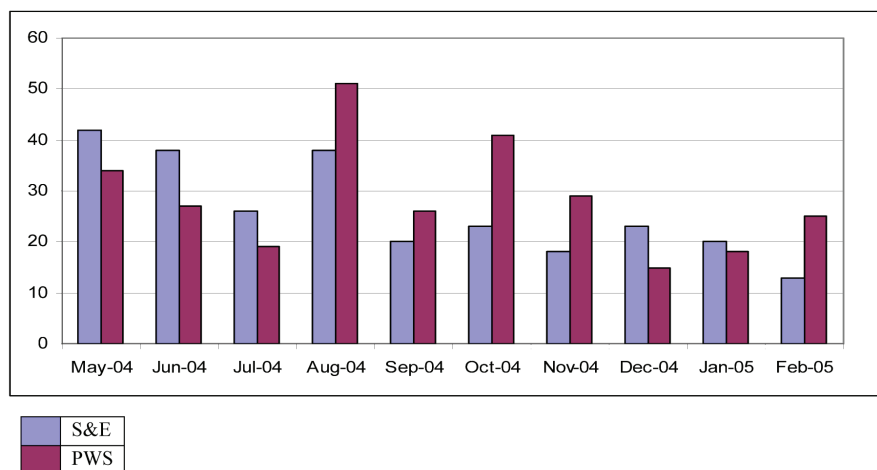
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4.15.8 As the figures in Table 2 illustrate, the standard deviation was higher for S & E showing a greater degree of variability in their revenue during the period June 2003 – April 2004, although closer analysis of the data indicates that the difference was largely due to quite a high (for that particular year) monthly value for June 2003.

**Table 2: S & E v PWS Revenue – Summary Statistics June 2003 – April 2004**

|                    | S&E      | PWS      |
|--------------------|----------|----------|
| Mean               | £ 32,901 | £ 36,317 |
| Median             | £ 25,933 | £ 33,125 |
| Standard Deviation | £ 21,719 | £ 13,987 |

4.15.9 During the period May 2004 to February 2005 (Figure E refers), 261 orders were placed with Signs & Equipment with monthly totals ranging from 13 (February 2005) to 42 (May 2004). The total number of orders placed with PWS over the same period was 285 with monthly totals ranging from 15 (December 2004) to 51 (August 2004).

**FIGURE E: ORDERS PLACED WITH S & E / PWS  
(MAY 2004 – FEB 2005)**

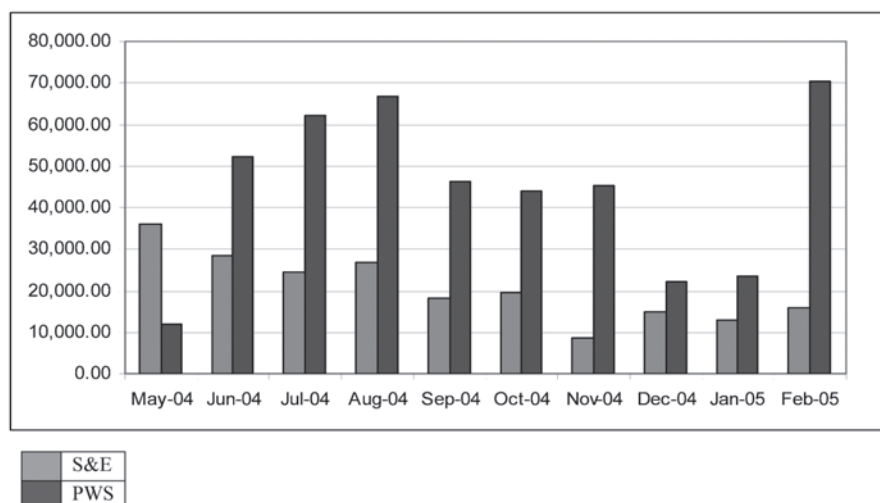
4.15.10 During the period May 2004 to February 2005 (Figure F refers), the total amount paid to Signs & Equipment was £205,816.63 with monthly amounts ranging from £8,540 (November 2004) to £35,993.74 (May 2004). The total amount paid to PWS over the same



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period was £444,285.33 with monthly amounts ranging from £11,888.81 (May 2004) to £70,322.00 (February 2005).

**FIGURE F: AMOUNTS PAID TO S & E / PWS  
(MAY 2004 – FEB 2005)**



4.15.11 As the figures in Table 3 illustrate, the standard deviation was a lot higher for PWS showing a greater degree of variability in their revenue during the period May 2004 – February 2005.

**Table 3: S & E v PWS Revenue – Summary Statistics May 2004 – February 2005**

|                    | S&E      | PWS      |
|--------------------|----------|----------|
| Mean               | £ 20,582 | £ 44,429 |
| Median             | £ 18,854 | £ 45,657 |
| Standard Deviation | £ 7,871  | £ 18,845 |

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- 4.15.12 Table 4 below shows that when analysing the entire period (May 2002 – February 2005), whilst PWS had a markedly higher average monthly revenue (irrespective of which measure of average is used), its distribution was much less uniform than that of S & E (as measured by the standard deviation).

**Table 4: S & E v PWS Revenue – Summary Statistics May 2002 – February 2005**

|                    | S&E      | PWS      |
|--------------------|----------|----------|
| Mean               | £ 25,286 | £ 60,751 |
| Median             | £ 21,978 | £ 45,335 |
| Standard Deviation | £ 16,023 | £ 70,070 |

**Conclusion**

- 4.15.13 As shown by the information contained in the graphs/tables and subsequent analysis carried out by Departmental statisticians, the evidence does not support Mr Connolly's assertion that the revenue stream afforded to his company, S & E, was more erratic than that provided to PWS. It was noted that there was greater variability in S&E's revenue stream during the period June 2003 – April 2004, although closer analysis of the data indicates that the difference was largely due to quite a high (for that particular year) monthly value for June 2003.

***Allegation 16: Roads Service employees show favouritism to PWS by instructing third parties to allocate work to PWS and not Signs & Equipment. This was in relation to the erection of signs at Moira when he alleged that HBS / Rodgers told him that they were phoned by Roads Service and told to appoint PWS to erect signs.***

- 4.16.1 We interviewed representatives of HBS / Rodgers who confirmed that they continue to do business with Mr Connolly but denied making any comments of this nature to Mr Connolly.

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- 4.16.2 In addition, HBS / Rodgers stated that they have never received any instructions from Roads Service regarding the use of sub-contractors, nor would they have taken account of such instructions had they been received. They also advised they would deal directly with the sub-contractors if there were any issues about the standard of work that had been carried out. They confirmed that they have allocated signage work to both PWS and Traffic Signs and Equipment N.I (the name of the company Mr Connolly is currently associated with) but usually opt for PWS for the more major work.
- 4.16.3 In relation to the erection of signs at Moira, HBS/Rodgers confirmed that they had been contacted by Roads Service on 10 October 2006 to undertake the signage erection work and had sub-contracted the work to PWS. They also confirmed that that they had not been directed by Roads Service to use PWS to erect the signs at the Moira Gantries or any other occasion.

Conclusion

- 4.16.4 On the basis of the evidence examined and information provided by the representatives of HBS/Rodgers, we have not found any evidence to support this allegation. HBS/Rodgers stated that they had not been directed by Roads Service to use PWS to erect the signs at the Moira Gantries or any other occasion.

***Allegation 17: New signage for the M2 Motorway was ordered in 2004 but not erected until 2006 by PWS as PWS had the contract for these signs in 2004 and a new contract was being let in 2005.***

Purchase of the M2 Signs

- 4.17.1 We can confirm that 24 signs (with a total cost of £61,157.29 including VAT) were ordered from PWS on 20th February 2004 by Network Traffic North (part of Network Services Directorate within Roads Service) - £50k was declared as consumed in the 2003/04 budget for the purchase of replacement signs. Roads Service staff visited the PWS premises on two (2) occasions (12 March & 5 August 2004) to inspect the signs during manufacturing and prior to final payment (26 August 2004). Our examination of the original invoice indicated that PWS were not paid delivery charges as alleged by Mr

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Connolly. Although the order was placed with the correct supplier (PWS) per the terms of the 2002-2003 contract, in our view the purchase of these signs was made in advance of need. The terms of the contract provided for a 15 day delivery therefore we consider ordering could have been delayed until RSC had provided a more definitive indication of when the works were going to be undertaken.

4.17.2 It is also apparent that the signs were not manufactured and delivered to Roads Service within the 15 day target specified in the contract. We were advised that the signs were stored at PWS premises and were not delivered to Airport Road as would normally be the case. We queried the reasons for this and management advised that due to their size and an increased risk of damage to the signs whilst in storage at Airport Road, PWS were asked to hold the signs until they were erected. We noted that the contract included a clause (6.6) allowing supplies to be collected from a contractor's depot or works.

4.17.3 Mr Connolly's comments also appear to be implying that staff in Network Traffic North purchased the signs in 2004 to ensure that PWS received the order rather than one of their competitors. The Invitation to Tender notice for the 2005 – 2007 competition was issued to the Official Journal of the European Communities on 9 July 2004 and tenders were received on 2 September 2004. The Tender Evaluation Report was finalised in March 2005 and Hirst Signs were subsequently awarded the motorway signs for this contract which came into effect on 1 April 2005. Staff in Network Traffic North indicated that at the time they were ordering the signs (February 2004), they had not envisaged there being such a delay in progressing the work, and certainly not to such an extent that the new contract would have come into effect or there would have been a change in nominated contractor by the time the work had commenced (PWS had also been the nominated contractor for motorway signs in the 1999-2001 contract). Staff in Network Traffic North advised us that the signs were ordered in March 2004 in order to utilise the funds that were available in its 2003/04 budget.

Erection of the M2 Signs

4.17.4 The works brief to design new bases and posts was sent to Roads Service Consultancy (RSC Hydebank) on 7<sup>th</sup> September 2004. We were advised that RSC would have been considering this works brief along with a number of other competing work requests. Five (5) works orders (STE1/4, STE1/7, STE1/8, STE1/9 & STE1/14) relating to the

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replacement of the signs issued to the contractor, Rodgers/HBS, during the period April – November 2005, however none of these works orders provided the contractor with any specific instructions relating to the erection of the signs contrary to established Roads Service procedures. In an e-mail dated 7<sup>th</sup> June 2006, an engineer from Network Traffic North requested RSC to arrange for the erection of the new signs and in a separate e-mail on 26<sup>th</sup> June 2006 an engineer from RSC issued a variation to works order STE1/14 requesting the contractor to erect the signs. However, we noted that in correspondence from the Director of Network Services, Mrs. Iris Robinson (MP/MLA) was informed that the signs had been erected in Spring 2006.

- 4.17.5 We spoke to the engineer from Network Traffic North regarding the content of the 7<sup>th</sup> June 2006 e-mail, who stated that he had issued the e-mail as he had become aware during his conversations with the engineer in RSC that no formal instruction had ever been issued to the contractor regarding erection of the signs. We queried why the instruction had not been issued in the form of a confirmation order as the signs had already been erected. The engineer from Network Traffic North acknowledged that it was a badly worded e-mail but stated that there was no malicious intent and he hadn't wanted to highlight his colleague's inaction. We were unable to discuss this issue with the RSC engineer as he is no longer employed by Roads Service or the NICS.
- 4.17.6 We have been unable to obtain documentary evidence to confirm exactly when the M2 signs were erected. Roads Service provided us with road closure notices for 31st March & 1st April 2006 which include references to the erection of signs / signposts for various sections of the M2 and have suggested that these road closures related to the replacement of the direction signs on the M2 motorway. Mrs Iris Robinson's letter to Roads Service (dated 27/4/04) states 'Please confirm Road signage between Belfast and Antrim area hospital has been replaced in recent months' which is another indicator that the signs had already been erected at that point. We also noted that a completion certificate for works order 14 did not issue until 18 Dec 2007. We reviewed the file which indicated that Rodgers, the contractors, requested the substantial completion certificate on 7 July 2006 and it is normal practice for the final completion certificate to be issued a year later. However there appears to have been a delay on this occasion but we have been unable to ascertain the reasons why due to the absence of information on file and the unavailability of the member of staff involved who is no longer employed by Roads Service.

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M2 Widening Scheme

- 4.17.7 During site visits in 2009, we found that a number of the M2 replacement signs that had been erected in Spring 2006 had already been replaced again as a result of the M2 widening scheme. We queried with Traffic Management in Roads Service if the widening scheme had been known about at the time the decision was made to replace the signs. We were advised that a scheme to widen the M2 was included in a PWC / WSP report (dated March 2003), which proposed the DBFO Road Packages for Roads Service. This formed the basis of the decision of the Roads Service Board to advance a DBFO Programme consisting of two of the packages. The M2 widening scheme was at a very early stage of development when the initial decision to include it within Roads Service DBFO Package 1 was made. The Outline Business Case for DBFO Package 1 was submitted to DFP in December 2003 and was subsequently approved. The scheme formally entered the Preparation Pool in January 2004. Management in Traffic Management confirmed that they were aware that the M2 widening scheme was planned for the near future, however, they stated that the condition of the old signs had been giving them cause for concern. They knew that if new signs were erected some would need to be relocated in the future although detailed plans of the M2 widening works were not available at the time. They advised that rather than delay replacement of all of the signs, they decided to proceed and deal with the problem that existed at the time hence the decision to proceed with the ordering of the 24 replacement signs in February 2004.

Conclusion

- 4.17.8 We can confirm that the signs were ordered and paid for in 2004 but were not erected until 2006 and in our view the purchase was made in advance of need. The terms of the contract provided for a 15 day delivery therefore we consider ordering could have been delayed until RSC had provided a more definitive indication of when the works were going to proceed i.e. late 2005/early 2006. At that point the signs could have been ordered from Hirsts, who became the nominated supplier for motorway signs in the 2005/2007 contract. The evidence indicates that staff in Network Traffic North ordered the signs in March 2004 in order to utilise the funds that were available in its 2003/04 budget. Our examination of the original invoice indicated that PWS were not paid delivery charges as

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alleged by Mr Connolly. It is also apparent that the signs were not manufactured and delivered to Roads Service within the 15 day target specified in the contract.

- 4.17.9 In addition, Roads Service staff did not adhere to established procedures in certain instances. Instructions to the contractor relating to the erection of the signs were not documented in a works order and issued prior to the commencement of the works. We are also concerned about the absence of evidence relating to the erection of the signs as none of the parties involved - Roads Service, Rodgers / HBS or PWS - were able to provide documentation to definitively confirm when the signs had been erected.
- 4.17.10 Roads Service officials confirmed that they were aware that the M2 widening scheme was planned for the near future, however, they stated that the condition of the old signs had been giving them cause for concern therefore health and safety considerations were a major consideration when the decision to proceed with the ordering of the 24 replacement signs was made in February 2004. During site visits in 2009 we found that a number of the M2 replacement signs that had been erected in Spring 2006 had already been replaced again as a result of the M2 widening scheme.

***Allegation 18: In the Republic of Ireland signage work is turnkey, i.e. the contractor makes the sign and erects it. Mr Connolly has asked Roads Service for similar work. The work is not tendered. Signs & Equipment has never been given it and PWS do all this work.***

- 4.18.1 Signage work is not undertaken by Roads Service on a turnkey basis. We were advised that historically suppliers have been asked to supply the signs but Roads Service Direct (RSD), the in-house direct labour organisation, would have erected them. For the larger schemes, Divisions employ contractors from existing term contracts e.g. Eastern Division uses Maintenance and Improvements of Structures STE 1 and 2 term contracts who in turn sub-contract the work to other companies such as PWS and Signs & Equipment Ltd. We confirmed that term contractors are appointed following a competitive tendering process and they are permitted to sub-contract work under the terms of the contract. Roads Service stated that it has taken the view that there is no need for a separate contract for the supply and erection of signs. On routes covered by the PPP contracts, the consortia are now



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responsible for the erection of signs and it determines how and by whom this work is carried out. We were advised that Roads Service would only intervene if it was deemed that the standard of signage provided was not up to the required standard, and should such a situation arise, it would be brought to the attention of the main contractor via established contract management mechanisms.

- 4.18.2 We identified one (1) instance (Sprucefield/Blaris Gantries) where it was evident that Roads Service had engaged directly with PWS in relation to the erection of motorway signs, and had not utilised an existing term contract to undertake the work. In that instance PWS erected six (6) signs on 4 July 2004 and a further six (6) signs on 25 July 2004 and the work was invoiced on 28 July 2004 at a total cost of £27,201.26 (inc. VAT), which included £5,600 for erection. We noted that Roads Service had not identified the signage erection element of the work as Construction Industry Scheme (CIS) related and therefore the relevant deductions had not been made for the labour element of the total costs when the payment was authorised (£1,008 - 18% - of the labour element of the costs £5,600 - should have been deducted from the total amount paid to PWS on the basis of PWS's "CIS4" classification). We interviewed the Roads Service engineer who commissioned the work who stated that, at the time, he had not been aware of the existence of a contract (i.e. Maintenance and Improvements of Structures STE 2) that covered this type of infrequent and specialised work. He acknowledged that he had made errors, firstly in not utilising the existing contract, and secondly in only obtaining one (1) quotation (from PWS) instead of three (3) as required by the Departmental Accounting procedures applicable at that time.

Conclusion

- 4.18.3 Roads Service has stated that, for business reasons, it has decided not to have signage work undertaken on a turnkey basis. Signs are erected either by RSD, or by term contractors (in most instances by their nominated sub-contractors) who are appointed following a competitive tendering process. For work undertaken under the term and PPP contracts, the appointed contractors have overall responsibility for and discretion regarding the way the work is undertaken, including the choice of sub-contractor, and may decide to allocate the work to PWS or other firms such as Traffic Signs and Equipment N.I (the company Mr Connolly is currently associated with). During our discussions with representatives of one of the term contractors, HBS/Rodgers, they stated that they have

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used both PWS and Traffic Signs and Equipment N.I to erect signs on their behalf however for larger schemes they normally opt for PWS.

- 4.18.4 We identified one (1) instance – Sprucefield/Blaris Gantries – where Roads Service had not utilised an existing term contract for motorway sign erection work (valued at £5,600) when it had engaged PWS to undertake the work without going through a proper competitive tendering process.

**LEDU'S PROVISION OF FINANCIAL ASSISTANCE TO PWS**

***Allegation 19: PWS received £80,100 in addition to the equity loan and the £49,000 grant. He (Mr Connolly) applied for similar type grants but was never awarded any until very recently [allegation made in July 2005].***

- 4.19.1 Invest Northern Ireland (INI) advised us that LEDU considered requests for financial assistance from companies across various business sectors and these were assessed against specified criteria. In the approximate ten year period, 1996 to August 2005, PWS sought support through 17 applications to LEDU and was offered a total of £123,126 of grant support. During the same ten year period, Signs and Equipment Ltd made one application to LEDU as a result of which the company was offered, in May 2002, £73,797 of grant support of which £63,768 was paid out.

Conclusion

- 4.19.2 The evidence indicates that Signs & Equipment Ltd only made one (1) application for funding and this application was successful and resulted in the company receiving £63,768 of grant assistance.

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***ACCUSATIONS ABOUT AN OFFICER'S ATTENDANCE AT THE 2004 AMSTERDAM TRADE FAIR***

***Allegation 20: An officer from Roads Service (named by Mr Connolly) is friendly with PWS, the main Roads Service contractor. He spent a full day with PWS at a trade fair in Amsterdam last year (31<sup>st</sup> March & 1<sup>st</sup> April 2004).***

- 4.20.1 We interviewed the officer concerned and he confirmed that he had attended a trade fair in Amsterdam (31<sup>st</sup> March & 1<sup>st</sup> April 2004) but that this was in his role as Secretary of his professional body and not as a Roads Service employee and he took annual leave for these purposes (we have verified these facts). The officer advised that the organisation raises funds for local events by gaining sponsorship from various companies / organisations; he said that this particular trip was funded / sponsored by a company with no connections to the signage contracts.
- 4.20.2 The officer confirmed that he had visited a number of stands including the PWS stand and may have spoken with their representatives but did not spend a full day with them. He also advised that his contact with PWS is now fairly minimal as the majority of day to day contact with suppliers is via the Area Buyers. In this context, we consider it is important that staff, when attending exhibitions, feel able to visit the stands of existing and prospective contractors in order to see the latest technology on display without this being implied to be showing favouritism to the companies they visit.
- 4.20.3 During a telephone conversation with a representative of PWS regarding other aspects of the investigation, we asked about his relationship with the named officer. He advised that his relationship was purely a working one and he had very little contact with him in recent years as the orders now come through the area buyers with whom he is now in fairly regular contact. The PWS representative did however confirm that the officer had contacted him on occasions in his role as Secretary of his professional body when he was seeking sponsorship for their annual golf tournament. We raised this issue with the officer who confirmed that he had taken over responsibility for the organisation's annual golf tournament in 2005 and each year he contacts a number of companies, one of which is PWS, inviting them to donate prizes. The officer provided us with details of the firms he

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contacted and the prizes they had donated. This indicated that PWS were the only firm involved in the sign contracts that had been approached – PWS made donations of £50, £75 and £100 over a 3 year period from 2005 - 2007. We acknowledge that the officer's first contact with PWS was after the evaluation/award of the 2005-07 contract (March 2005) had been finalised therefore we do not consider there was a conflict of interest issue for that contract.

- 4.20.4 We did however note that the officer was a member of the evaluation panel established for the 2009-10 competition (which has now been discontinued). We consider that the nature of the officer's contact with existing or potential Roads Service suppliers, albeit in his capacity as secretary of his professional body, represents a potential conflict of interest that needs to be taken into account when Roads Service are establishing tender evaluation panels for any future competitions. We are aware that there have been some high profile cases, including a recent one involving Roads Service, when unsuccessful contractors have mounted successful legal challenges to contract awards due to perceived conflicts of interest issues that led to the abandonment of the procurement process and payment of legal costs. For this reason we consider it would be prudent not to involve the officer in tender competitions for signs for the foreseeable future should those competitions involve any companies he is in contact with in his capacity as a member of a professional body.
- 4.20.5 In addition, we note that the officer as a Tender Panel member completed a Conflicts of Interest declaration however the wording of the declaration 'I hereby declare that having read the list of tenders to be evaluated **I do not have** an external personal or monetary interest in the tender referred to above' is, in our opinion, not sufficiently broad to prompt individuals to consider other types of engagement with contractors as was the case in this instance. In this instance, the 'tender referred to above' is stated as the 'Supply and Delivery of Permanent and Temporary Road Traffic Signs'. We consider that the officer quite legitimately signed the declaration as he did not have any external personal or monetary interest in any of the tenders to be evaluated. So whilst we accept that the officer complied fully with CPD's procurement procedures, a perceived conflict of interest issue still existed that had not been adequately addressed. We acknowledge there are a range of scenarios that could arise which could be viewed as actual/perceived conflicts of interest and accept that it would be neither realistic, nor practical to attempt to detail all of these on the declaration form. However, we do consider that some further revisions to the

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declaration form should be considered and this should be supplemented by more detailed explanatory guidance. Potentially this could include some examples of scenarios where perceived/actual conflict of interest situations might exist and how these should be declared. However reflecting the obligations set out in the Northern Ireland Civil Service (NICS) Code of Ethics, it should include a requirement for all staff involved in the procurement process to formally divulge details of any relationships/contact with potential suppliers to management thus enabling senior officers to determine if their participation in the procurement process is appropriate.

**Conclusion**

- 4.20.6 In conclusion, there is no evidence to support the allegation that the officer named by Mr Connolly spent a full day with PWS at a trade fair in Amsterdam. However, due to the nature of his contact with PWS when seeking sponsorship for his professional organisation's annual golf tournament, we consider the officer should not be involved in the procurement process for signs in the foreseeable future should those competitions involve any companies he is in contact with in his capacity as a member of a professional body. We do not consider it is appropriate for a tender evaluation panel member to be making contact with an existing or prospective supplier such as PWS in anything other than a business capacity, as it could be perceived to represent a conflict of interest and may leave the Department vulnerable in the event of a legal challenge by an unsuccessful firm. We do however consider it is entirely legitimate for officials to visit the stands of existing and prospective contractors in order to see the latest technology on display without this being implied to be showing favouritism to the companies they visit.

***PWS – ORGANISATIONAL AND COMPANY STATUS***

***Allegation 21: PWS is based in County Louth and has never published accounts.***

- 4.21.1 Copies of PWS's accounts were held on GPA and LEDU files for the years ending 31 December 1996 - 31 December 2003. Companies House also verified that audited accounts for PWS have been submitted from 1983 to 2008 inclusive. In addition, the accounts provide PWS's NI registration number and we note that their registered address is Newry, County Down, Northern Ireland.

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## Investigation into the Procurement of Signs and Associated Products by Roads Service

Conclusion

- 4.21.2 We have concluded that there is no evidence to substantiate this allegation.

**AA SIGNS LIMITED**

***Allegation 22: Why is 'AA Signs Limited' permitted to provide Road Work Signs without any tender being in place and how much have they earned over the years for this work?***

- 4.22.1 Roads Service officials confirmed that there are no contractual arrangements in place with AA Signs Limited for the provision of information and diversion signs. We note that this work is undertaken on the basis of supply, erection and removal which is different from the supply only nature of the current permanent and temporary road signs contract.
- 4.22.2 Figures supplied from the Roads Service accounting system show the following expenditure for each financial year from 1997/98 – 2009/10 (up to 31<sup>st</sup> December 2009):

| Financial Year           | Expenditure (£) |
|--------------------------|-----------------|
| 1997/98                  | 1,750.75        |
| 1998/99                  | 8,865.39        |
| 1999/2000                | NIL             |
| 2000/01                  | 2,373.50        |
| 2001/02                  | 46,126.98       |
| 2002/03                  | 58,535.66       |
| 2003/04                  | 82,647.22       |
| 2004/05                  | 51,143.06       |
| 2005/06                  | 63,262.02       |
| 2006/07                  | 71,263.78       |
| 2007/08                  | 64,489.92       |
| 2008/09                  | 40,469.88       |
| 2009/10 (up to 31/12/09) | 8,809.25        |

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|              |            |
|--------------|------------|
| TOTAL AMOUNT | 499,737.40 |
|--------------|------------|

- 4.22.3 We found that AA Signs Limited have been paid £499,737.40 during the period July 1997 – December 2009. Since 2001/02 the aggregated level of expenditure has exceeded the competitive tendering threshold (currently £30k - £20k from 2001 until 2004) as defined in the Departmental Accounting procedures therefore Roads Service has not complied with these procedures and consequently may not have been obtaining value for money.

Conclusion

- 4.22.4 We found that AA Signs Limited has been paid £499,737.40 during the period July 1997 – December 2009 for the supply, erection and removal of information and diversion signs. In addition, no formal contractual arrangements have been in place even though the aggregated level of expenditure from 2001/02 onwards has exceeded the competitive tendering threshold as defined in the Departmental Accounting procedures.

**5. OVERALL CONCLUSION**

- 5.1.1 A number of the allegations made relate to the procurement process, specifically regarding changes to the evaluation criteria and that these changes were intended to favour a specific supplier (PWS Ireland) at the expense of Mr Connolly's company, Signs & Equipment Ltd. It is evident that the evaluation criteria have changed over various contract cycles and there has been an increasing emphasis on qualitative aspects - during the most recent competitions (2005/07 and 2009) the split has been cost 30% other 70%. The changes made were permissible under the UK Public Contracts Regulations and were consistent with N.I Procurement policy and demonstrate the evolving nature of the procurement process in which contracts are awarded on the basis of best value for money (VFM) and not lowest price alone. The changes also reflected Roads Service's ongoing concerns about the performance issues relating to the late delivery of orders. Throughout each competition Roads Service had concerns about the capacity of a single company to deliver the contract and in each instance they have chosen to use more than one contractor to help mitigate this risk. We found no evidence to suggest that the changes to the evaluation criteria were just a mechanism used by Roads Service/CPD to ensure that PWS obtained "the lion's share of the work".



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- 5.1.2 The evidence indicates that Mr Connolly was informed, in general terms, of the changes to the evaluation criteria for the 1999/2001, 2002/03 and 2005/07 competitions, albeit belatedly in the case of 1999/2001. As these competitions took place prior to the introduction of the Public Contracts Regulations 2006, CPD/Roads Service were legally obliged to specify the evaluation criteria but did not have to specify the weightings for each criterion. Therefore, in accordance with established practice at that time, Signs & Equipment and the other companies were provided with general details of the evaluation criteria to be used but not details of the weightings for each criterion. For the 2009 competition which began after the Public Contract Regulations 2006 took effect, CPD/Roads Service were legally obliged to provide specific details of the weightings for each criterion and they did so. For the 1999/2001 competition, we noted that the instructions to tenderers issued did not contain details of the evaluation criteria therefore if Mr Connolly had not seen the OJEC notice or the advertisements (which included details of the criteria), he may not have been aware of the criteria being used until he received the 10 December 1998 correspondence from GPA. Notwithstanding the shortcomings in the manner in which the 1999/2001 competition was administered, the evidence indicates that a consistent approach was adopted with all 4 companies provided with information on the evaluation criteria at the same time and each giving their presentations on the same day.
- 5.1.3 We consider that the approaches adopted for each procurement exercise complied with the relevant legislation and regulations although we found that some errors were made in the administration of the 1999/2001 tender competition which led to a 1 month delay in the award of the contract. The evidence indicates that the main reason for the delay was that presentations needed to be convened to obtain the information on the non-cost criteria so that the assessment panel could undertake the evaluation using all of the criteria that had been specified in the OJEC notice. Although it is evident that the procurement process for that competition could have been handled more efficiently and effectively, we found no evidence that the delays were linked to LEDU's offer and subsequent provision of financial support to PWS. Our enquiries also revealed that LEDU did provide financial support to PWS through the purchase of preference shares and other grant assistance but the offer of assistance had been made well in advance of the commencement of the procurement process and was paid out after the 1999/2001 contract had been awarded. Although the timelines indicate that there was some overlap between the 2 processes, we found no evidence of any correspondence or contact between LEDU and GPA/Roads

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Service and no evidence to substantiate Mr Connolly's allegation that there had been collusion between these parties.

- 5.1.4 Mr Connolly has also alleged that Roads Service/CPD have consistently shown favouritism to PWS when awarding contracts. The evidence indicates that Roads Service had concerns that a single company would not have been capable of delivering the contracts in full and therefore, for each competition, the main elements of the contract were awarded to more than 1 supplier. For example for the 2002/03 contract, although the evaluation scores supported the award of all signage elements of the contract to PWS, CPD/Roads Service attempted to arrive at a broadly equitable split between the 2 most economically advantageous offers (PWS and S&E). Reference was made to an indicative 54% / 46% split with PWS receiving the majority share; however it is evident that the pattern of ordering during the post contract award period differed from that when the pre-competition analysis had been carried out and although Signs & Equipment Ltd received more than 46% of the spend in 2003 they received less than 46% in 2002 and 2004. We consider that the references to 46% may have given Mr Connolly an expectation of the volume and value of orders he would be likely to receive even though the conditions of contract made it clear that Roads Service was not obliged to guarantee particular levels of business. We have not found any evidence to indicate that PWS were shown favouritism when the contracts were being awarded but that CPD/Roads Service were seeking to achieve an outcome that offered the best value and least risk.
- 5.1.5 Regarding the changes to Signs & Equipment's scoring frame for the 1999/2001 competition (Annex 2 refers), the evaluation panel members stated that a computational error was made when calculating the weighted score for the Delivery criteria which prompted them to make the corrections to the individual criteria score and overall quality score. The evidence tends to support this explanation and we found no evidence to indicate that the panel may have initially awarded a different marking and then decided to alter it. In addition, we have been unable to clearly establish why the comments 'past delivery difficulties' were annotated on Signs & Equipment's scoring frame and if, or to what extent, this impacted upon the score of 6 that Signs & Equipment received for the Delivery criterion, their overall score and the awarding of the contract.

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- 5.1.6 We found no evidence to indicate that Signs & Equipment were excluded from the restricted list for the 2002/03 competition for spurious reasons. The evidence indicates that they were excluded due to weaknesses in their submission, mainly in the technical capacity element of the firm questionnaire, a fact Mr Connolly himself appears to have acknowledged. We confirmed that following the representations made by Mr Connolly to the then DRD Minister, GPA reviewed its decision not to invite him to tender and decided to allow all ten (10) firms, including S & E, to submit tenders.
- 5.1.7 Mr Connolly has alleged that orders which he should have received were given to his competitors (PWS). Based on our sample test, we found evidence that some orders (7 out of 168) had not been placed with the correct supplier. Six (6) orders valued at £2,831.57 had been given to PWS that should have been placed with S&E. In addition, one (1) order with a value of £850 was placed with S&E whereas it should have been given to PWS. The evidence obtained during the investigation suggests that the orders were not placed with the correct suppliers due to a combination of procedural shortcomings, human error and expediency rather than through deliberate intent. We also identified other orders (to the value of £110,749.51) that had been placed with Morelock Signs even though they were not an approved supplier. Signs & Equipment had already gone into liquidation at this point so they did not incur any loss even though other approved suppliers would have. We also found that AA Signs Limited has been paid £499,737.40 during the period July 1997 – December 2009 for the supply, erection and removal of information and diversion signs. In addition, no formal contractual arrangements have been in place even though the aggregated level of expenditure from 2001/02 onwards has exceeded the competitive tendering threshold as defined in the Departmental Accounting procedures.
- 5.1.8 The evidence does not support Mr Connolly's assertion that the revenue stream afforded to his company, S & E, was more erratic compared to that provided to PWS. It was noted that there was greater variability in S & E's revenue stream during the period June 2003 – April 2004, although closer analysis of the data indicates that the difference was largely due to quite a high (for that particular year) monthly value for June 2003.
- 5.1.9 Mr Connolly made further allegations concerning the site visit undertaken as part of the 2005/07 tender competition. We found no evidence to substantiate the allegation that the site visit record was fabricated and was not factual or accurate. We can also confirm that

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the sign each company was asked to manufacture during the site visit was a valid and legal sign and in accordance with the N.I Traffic Signs Regulations. It is also evident from the comments on the assessment report scoring sheets and subsequent discussions with the evaluation panel members that Signs & Equipment were given lower marks than the other companies (who had also not included the correct time on the sign) due to other issues relating to their quality assurance processes.

- 5.1.10 Roads Service has advised that for business reasons it has decided not to have signage work undertaken on a turnkey basis. For signage related work undertaken under the term and PPP contracts, contractors have overall responsibility for and discretion regarding the choice of sub-contractor. We also found that a contract for the hire of large variable messaging signs has been in place since 2004 and both contracts were awarded following competitive tendering exercises.
- 5.1.11 We found no evidence to substantiate the allegation that Roads Service employees show favouritism to PWS by instructing third parties to allocate work to PWS rather than Signs & Equipment. We spoke to representatives of HBS / Rodgers about the erection of gantry signs at Moira (the case specifically highlighted by Mr Connolly) who stated that they had not been directed by Roads Service to use PWS on that occasion, or on any other occasion.
- 5.1.12 The majority of signs are erected by Roads Service Direct (the in-house direct labour organisation), however, for the larger motorway schemes, we were able to confirm that with one exception i.e. Sprucefield/Blaris Gantries, contractors from existing term contracts were used who in turn sub-contracted the work to other companies e.g. PWS. For Sprucefield/Blaris, we found that the Roads Service engineer did not utilise any of the existing contracts and commissioned PWS to do the work (to the value of £27,201.26 (inc. VAT), which included £5,600 for erection) without obtaining any quotations from other firms that potentially could have undertaken the work.
- 5.1.13 We have not found or been provided with any evidence to indicate that Roads Service has been paying approximately 30% above market rates for its signs as alleged by Mr Connolly. All of the contracts have been let following a competitive tendering process and benchmarking information obtained by Roads Service indicated that rates were broadly comparable to those within Perth and Kinross Council and Cheshire County Council.

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- 5.1.14 In relation to the allegation that PWS were experiencing financial difficulties and should have been excluded from the 1999/2001 procurement process, analysis of PWS's accounts for the year ended 31<sup>st</sup> December 1997 by Departmental accountants indicated that although PWS had incurred losses of £88k, the audit report did not highlight any going concern issues. On that basis CPD indicated that PWS would not have been excluded from the competition.
- 5.1.15 Mr Connolly alleges that he applied for similar type grants to those awarded to PWS but was never awarded any until very recently (allegation made in 2005). The evidence indicates that his company made only one application to LEDU as a result of which they were offered, in May 2002, £73,797 of grant support of which £63,768 was paid out.
- 5.1.16 Mr Connolly alleged that an officer from Roads Service spent a full day with PWS at a trade fair in Amsterdam. Our enquiries revealed that the officer did attend a trade fair in Amsterdam and visited a number of stands including the PWS stand but did so in his capacity as Secretary of his professional body and not as a Roads Service employee and he took annual leave for these purposes. We consider that Roads Service should give further consideration as to how contact between staff and existing or potential suppliers, within or outside the working environment could potentially create conflicts of interest that need to be taken into account when tender evaluation panels are being established for any future competitions. We do however consider it is entirely legitimate for officials to visit the stands of existing and prospective contractors in order to see the latest technology on display without this being implied to be showing favouritism to the companies they visit.
- 5.1.17 We can also confirm that the M2 replacement signs were ordered from PWS in February 2004 but were not erected until 2006 which we regard as a purchase made in advance of need. The evidence indicates that staff in Network Traffic North ordered the signs in March 2004 in order to utilise the funds that were available in its 2003/04 budget. We consider that ordering could have been delayed until RSC had provided a more definitive indication of when the works were going to proceed i.e. late 2005/early 2006 when they could have been ordered from Hirst, who became the nominated supplier for motorway signs in the 2005/2007 contract. We also note that instructions to the contractor regarding the erection of the signs were not formally documented in a works order and issued prior to the commencement of the work in accordance with Roads Service procedures. In

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addition, we are concerned that none of the parties - Roads Service, Rodgers / HBS or PWS - were able to provide documentation to definitively confirm when the signs had been erected. Our site visits in 2009 indicated that a large number of the signs erected in 2006 had already been replaced during the M2 Widening scheme although we acknowledge that Roads Service had to take into account health and safety considerations when it took the decision to proceed with the replacement of the old signs.

- 5.1.18 As Roads Service Finance Division does not hold order information by sign type, we are unable to confirm if Hirst Signs have received any orders for motorway signs under the 2005-07 contract. However, we note that Hirst Signs have received orders for all sign types with invoice values in excess of £1.1 million during the period 2005 – 2009 and they have also advised that they are content with the amount of business they have received under the 2005-07 contract. It is acknowledged by Hirsts that with the PFI consortia now responsible for motorway maintenance, Roads Service will not be placing any more orders with Hirsts for motorway signs.
- 5.1.19 Finally, we found that PWS Ireland's registered address is in Newry, County Down and they have published accounts since 1983.

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**6.1 Recommendations**

- 6.1.1 In the course of our investigation we have identified some areas where it is evident that established procedures were not adhered to, good practice was not followed and further action is required to ensure that in the future staff are clear about their responsibilities so that the interests of contractors are safeguarded and neither Department is exposed to criticism and potential loss. We have therefore made a number of recommendations which are detailed below:

Recommendation

- 6.1.2 CPD should ensure its revised procedures for key stages of the tendering process detail all documentation requirements and ensure that the process is operating effectively. The process should include a requirement for formal sign-off by line management at each of the key stages e.g. when evaluation criteria/sub criteria are agreed and should be subject to line management review to confirm that the process has been carried out in accordance with CPD's Quality Assurance Procedures.

Recommendation

- 6.1.3 Whilst we acknowledge that the transition from purely cost based evaluation to quality/price evaluation is now embedded, where further changes to the evaluation criteria or evaluation methods are being introduced, CPD in conjunction with Roads Service should consider the merits of providing a pre-briefing session for all of the contractors invited to tender. The pre-briefing could be given to all of the contractors simultaneously and would give staff the opportunity to explain the new processes and for contractors to raise any queries with the objective of maximising the number of compliant tenders.

Recommendation

- 6.1.4 Management in Roads Service, in conjunction with staff in Account N.I, should ensure that reports showing expenditure on specific contracts and for specific suppliers can be generated for management / monitoring purposes.

Recommendation



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- 6.1.5 Management in all Roads Service Divisions should ensure that the order monitoring system for signs is operating effectively and on a consistent basis and that all signs purchased are being captured for monitoring purposes. The spreadsheet should be updated at the time orders are placed.

Recommendation

- 6.1.6 In light of the introduction of Account N.I, Roads Service should review its procedures for ordering signs. Procedural guidance should be updated and circulated to relevant staff and be reviewed periodically thereafter.

Recommendation

- 6.1.7 Management should consider providing staff involved in ordering signs (Divisional staff and Area Buyers) with additional information and reference guides on the signs specified in the contract schedules. For example, the contract could specify diagram numbers as well as including the more general reference to 'warning signs' or 'triangular signs'. This should reduce the scope for ambiguity and errors when placing orders and make it clearer to staff under which schedule a sign should be ordered. In addition and following the award of new contracts, updated contract schedules should be circulated to and utilised by Area Buyers on a timely basis thus ensuring that orders are placed with the correct suppliers.

Recommendation

- 6.1.8 All orders should be checked to ensure that they have been placed with the correct supplier in accordance with the schedules awarded in the contract. Details of this check should be retained for management / audit trail purposes. In addition, all documentation relating to orders placed should be held securely and in line with disposal schedules for management / audit trail purposes.

Recommendation

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- 6.1.9 Signs should only be purchased from approved suppliers as listed in the appropriate contract schedule. In the event that the nominated supplier is unable to fulfil an order, the order should be placed with the next best supplier.

Recommendation

- 6.1.10 Roads Service staff should be reminded that Procurement Control Limits (PCL) are to be adhered to at all times, so that the required number of quotations are sought or a formal tendering process is initiated where there is a requirement to purchase goods/supplies for which a contract has not been established.

Recommendation

- 6.1.11 CPD guidance should be issued to all assessment panel members instructing them to retain any notes taken during the course of site visits. These notes should then be held on the eSourcingNI tender management system to maintain a complete audit trail.

Recommendation

- 6.1.12 When companies are required to conduct practical demonstrations as part of the assessment process, evaluation panel members should confirm that signs are manufactured to the correct dimensions as well as ensuring that the content is correct. All sample signs manufactured for the evaluation purposes should also be retained for management / audit trail purposes for the life of the contract.

Recommendation

- 6.1.13 Assessment panel members should ensure that there is sufficient information recorded on evaluation sheets to support the markings provided. For example, where a supplier is being awarded higher/lower marks than his competitors, the basis/rationale for the higher/lower marking should be clearly documented.

Recommendation

- 6.1.14 Whilst acknowledging that the use of competitive tendering should ensure that value for money is achieved, Roads Service/CPD should continue to carry out periodic

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benchmarking exercises with other comparable organisations involved in the procurement of road signs to obtain additional assurance that value for money is being achieved.

Recommendation

- 6.1.15 In the event that contracts have to be extended beyond the original term, approval should be obtained by DRD Permanent Secretary (to check with CPD). Formal notification of the extension should take place prior to the expiry date of the current contract. In addition, the consent of suppliers should be sought and recorded on the eSourcingNI management system to maintain a complete audit trail.

Recommendation

- 6.1.16 Roads Service should consider the arrangements for conducting sign erection work to determine if the current approach e.g. use of Term Contracts for the Maintenance and Improvements of Structures is the most appropriate and economic method for completing such work. In addition, Roads Service, in conjunction with CPD, should continue to research the market place to determine if there would be enough companies with the capability of undertaking signage work on a turnkey basis, to warrant the establishment of a contract for these purposes.

Recommendation

- 6.1.17 Roads Service should review the current arrangements for the provision of information and diversion signs and, where it is anticipated that aggregated spend will exceed the competitive tendering threshold (currently £30k), initiate a formal procurement exercise with a view to establishing a contract for these purposes.

Recommendation

- 6.1.18 Programming of signage work across Roads Service Directorates should be planned and co-ordinated in a more effective manner so that, as far as possible, signs are not purchased in advance of need but only when a suitable timeslot for completing the work has been identified.

Recommendation

- 6.1.19 Roads Service management should ensure that all works orders are provided in writing and issued to contractors prior to the commencement of work. In the event that emergency

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work is required and an order cannot be issued in advance, the order should be completed as soon as possible after and recorded as a confirmation order.

Recommendation

- 6.1.20 Roads Service should ensure that completion certificates are issued on a timelier basis following confirmation that work has been completed satisfactorily in accordance with the works order.

Recommendation

- 6.1.21 We consider that management should review the content of the conflicts of interest declaration and issue additional explanatory guidance to staff involved in the procurement process. Potentially this could include some examples of scenarios where perceived / actual Conflict of Interest might exist and how this should be declared. CPD and Roads Service should agree (if appropriate with Departmental Solicitors Office) a suitable form of words to be included in both the 1<sup>st</sup> and 2<sup>nd</sup> declarations which, reflecting the obligations set out in the NICS Code of Ethics, clearly asks panel members to declare any perceived / actual conflict of interest that relate to the tender project (1<sup>st</sup> declaration) and the tenderers (2<sup>nd</sup> declaration). This declaration should be signed by all panel members. Roads Service guidance (RSPPG\_P004) should be updated to reflect any revised wording. In addition, organisations such as CPD and Roads Service should give careful consideration to the application of the rules relating to the acceptance of outside appointments by civil servants to safeguard both organisations and individual officers against criticism. In certain situations, the application of waiting periods or behavioural conditions may be appropriate.

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Investigation into the Procurement of Signs and Associated Products by Roads Service

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ANNEX 1

**Summary of Key Allegations**

1. The evaluation criteria was changed from 100% cost over a number of contract cycles to 20% cost and 80% other. The changes to the evaluation criteria were just a mechanism used by Roads Service to ensure that their “preferred supplier (PWS) obtained the lion’s share of the work”.
2. He (Mr Connolly) was never informed of the changes to the evaluation criteria.
3. At a debriefing interview for the 1999 contract he (Mr Connolly) was told that the tender had been assessed on an 80:20 cost : quality basis. There was no reference in any of the tendering documentation to a quality dimension and he had not completed any paperwork relating to quality.
4. The markings on the Signs & Equipment scoring frame for the 1999-2001 tender were altered by CPD/Roads Service and consequently Signs & Equipment lost out on major parts of the contract which were given to PWS.
5. Roads Service removed Signs & Equipment from the restricted list for the 2002-03 tender competition on wholly spurious grounds but after the Stormont meeting they were reinstated.
6. For the 2002-03 tender competition CPD advised him (Mr Connolly) that the value of the contract schedules awarded to Signs & Equipment would amount to 46% of the total contract value, but in reality the value of the work given to them was somewhere between 18% and 25% as Roads Service gave most of the work to PWS.
7. His (Mr Connolly) main competitor [PWS] was in financial difficulties at the evaluation period of the tender [1999-2001] and therefore should have been excluded from the process.
8. The qualitative panel (consisting of three Roads Service HPTOs and a CPD staff officer) who visited his premises fabricated a site visit record that was not factual and accurate. For example, the only person who took detailed notes during the visit was the CPD staff officer. Some HPTO officers have made written qualitative assessments on parts of the factory that they had not visited.
9. The sign he (Mr Connolly) was asked to make during an assessment [in relation to the 2005-2007 contract] was wrongly drawn as it was in accordance with the English handbook and not the Northern Ireland Road Sign handbook. He assumed that this was a

**RESTRICTED****Investigation into the Procurement of Signs and Associated Products by Roads Service**

- deliberate mistake and part of the assessment. He alleges that the other companies who were also assessed would have been asked to make the same sign as he was asked to make and would have made the 'English' sign. He alleges that they [the other companies] all received higher marks than he did.
10. The award of the [1999-2001] contract was deferred so that his main competitor [PWS] could gain a major financial injection from LEDU. He (Mr Connolly) alleges that his competitor gave LEDU a 66% equity stake in the company for £20,000 and offered a £60,000 grant. The £20,000 was paid on 25th February 1999 and £49,000 of the grant was paid over. He alleges that the tendering delay was to facilitate PWS in sorting out its problems and in doing so, GPA, Roads Service and LEDU were complicit in keeping PWS afloat. He also alleges that Signs & Equipment Ltd were now competing against a company where the majority shareholder was the government.
  11. PWS had the contract for Motorway signs in 3 successive tenders and that Hirst signs, who currently have the contract, will not receive any orders for Motorway Signs.
  12. There are no tender procedures for the rental of large variable signs and this work has been allocated to PWS.
  13. Roads Service receives very poor value for money. He (Mr Connolly) estimates that Roads Service is paying about 30% above the current market rates. This equates to a waste of around £2 million over the eight years that he has been in business.
  14. Orders which he should have received were given to his (Mr Connolly's) competitors (PWS).
  15. The revenue stream afforded to Signs & Equipment by Roads Service was very erratic compared to that provided to PWS.
  16. Roads Service employees show favouritism to PWS by instructing third parties to allocate work to PWS and not Signs & Equipment. This was in relation to the erection of signs at Moira when he (Mr Connolly) alleges that HBS / Rodgers told him that they were phoned by Roads Service and told to appoint PWS to erect signs.
  17. New signage for the M2 Motorway was ordered in 2004 but not erected until 2006 by PWS as PWS had the contract for these signs in 2004 and a new contract was being let in 2005.
  18. In the Republic of Ireland signage work is turnkey, i.e. the contractor makes the sign and erects it. Mr Connolly has asked Roads Service for similar work. The work is not tendered and his company has never been given it and PWS do all this work.

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19. PWS received £80,100 in addition to the equity loan and the £49,000 grant. He (Mr Connolly) alleges that he applied for similar type grants but was never awarded any until very recently [allegation made in July 2005].
20. An officer from Roads Service (named by Mr Connolly) is friendly with PWS, the main Roads Service contractor. He spent a full day with PWS at a trade fair in Amsterdam last year.
21. PWS is based in County Louth and has never published accounts.
22. Why is 'AA Signs Limited' permitted to provide Road Work Signs without any Tender being in place?



**RESTRICTED****Investigation into the Procurement of Signs and Associated Products by Roads Service****ANNEX 2****Evaluation Scoring Frame 1999 - 2001**

**SCORING FRAME**  
**CONTRACT FOR THE SUPPLY AND**  
**DELIVERY OF ROAD TRAFFIC SIGNS**

|   |                      |   |   |   |   |   |   |   |   |             |           |
|---|----------------------|---|---|---|---|---|---|---|---|-------------|-----------|
| <b>Company Name</b>   |                      |   |   |   |   |   |   |   |   |             |           |
| <i>SIGNS &amp; EQUIPMENT.</i>   |                      |   |   |   |   |   |   |   |   |             |           |
| <b>Criteria</b>   | 10                   | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1           |           |
|   |                      |   |   |   |   |   |   |   |   |             |           |
| How long will your company take to deliver any order? This should address all areas i.e. stocks held, number of employees involved, order processing etc.<br>Annual sales in Traffic Signs in total volume and Road Service specific.   |                      |   |   |   |   |   |   |   |   |             | <i>30</i> |
|   |                      |   |   |   |   |   |   |   |   |             |           |
| What procedures does your company have for ensuring Quality? This will include accreditation's like ISO 9000. You should also detail specific internal procedures in connection with Traffic Signs.<br>You should also address areas like company methodology for ensuring both the quality of the product and the service. |                      |   |   |   |   |   |   |   |   |             | <i>24</i> |
|   |                      |   |   |   |   |   |   |   |   |             |           |
| Your understanding and application of the specification and the Traffic Sign Regulations 1997.  |                      |   |   |   |   |   |   |   |   |             | <i>16</i> |
|   |                      |   |   |   |   |   |   |   |   |             |           |
| <b>Rating: High</b> 8, 9, 10<br><b>Medium</b> 4, 5, 6, 7<br><b>Low</b> 1, 2, 3  | <b>Quality Score</b> |   |   |   |   |   |   |   |   | <b>100%</b> | <i>70</i> |

*7 Cuber 16/12/98 David L. Reason 16/12/98 D. L. 1/1 1/1*

Annex C

**File Record of Meetings between GPA and DRD Roads Service for 2002  
Signs Competition**

| <b>Date</b> | <b>Attendees</b> | <b>Meeting Type</b>       |
|-------------|------------------|---------------------------|
| 25 Sep 2001 | GPA / DRD        | PQQ evaluation meeting    |
| 17 Jan 2002 | GPA / DRD        | Tender evaluation meeting |
| 20 Jan 2002 | GPA / DRD        | Tender evaluation meeting |
| 11 Feb 2002 | GPA / DRD        | Site Visits               |
| 18 Feb 2002 | GPA / DRD        | Site Visit                |
| 20 Feb 2002 | GPA / DRD        | Site Visit                |
| 30 Apr 2002 | GPA / DRD        | Meeting on award split    |

*2002 Spec.*

GPA 107/99/02

**ROAD TRAFFIC SIGNS****PERMANENT TRAFFIC SIGNS SPECIFICATION****GENERAL**

1. (1) The signs, posts and accessories shall conform in all respects with the Traffic Signs Regulations (Northern Ireland) 1997, Traffic Signs Manual and subsequent amendments, and extensions thereof and other Regulations and Directions current at the time of manufacture read in conjunction with the current edition of BS 873 or EN equivalent.
- (2) The dimensions of the direction sign plates shall be indicated on the sign details provided, and the prices quoted in the Schedule shall apply.
- (3) The sizes quoted shall in no way relieve the tenderer of his responsibility to supply signs in strict conformity with the current Regulations and Directions and current Rules for design and current Department of Transport working drawings. In the event of a modification to sign design or size such modification shall be agreed before fabrication commences and shall be treated as a Variation Order in accordance with the Contract.
- (4) The successful tenderer shall submit 2 sets of working drawings, if requested by the Engineer, prior to the commencement of manufacture of the signs together with details of the vinyl sheeting to be used, including manufacturer's name, grade, type, serial number and colour. Details of the sign framing fixing and mounting shall be shown.
- (5) **DETAILS OF MATERIALS AND CONSTRUCTION METHODS PROPOSED BY THE MANUFACTURER SHALL BE SUBMITTED WITH THE TENDER AND ANY SUBSEQUENT CHANGES PROPOSED BY THE MANUFACTURER DURING THE CONTRACT SHALL BE SUBMITTED TO THE ENGINEER FOR APPROVAL PRIOR TO THEIR USE.**  
**SEE QUESTIONNAIRE TO BE COMPLETED ON PAGE 41.**

**INSPECTION**

2. (1) Signs may be inspected by the Engineer at the manufacturer's workshop and on site and the Engineer may reject any sign or part thereof found to be defective.

### **Defects and Damage**

- (2) At all stages of production and delivery signs shall be protected to avoid damage.
- (3) The Contractor shall give reasonable notice to the purchaser of his intention to deliver the signs and the signs shall be inspected on behalf of the purchaser within 14 days of delivery. Failure of the purchaser to inspect and notify the Contractor within this period will relieve the Contractor of responsibility.
- (4) Any damage to sign faces occurring before or in transit shall be made good by the Contractor to its original condition.

### **SIGN PLATES**

- 3. (1) Sign plates shall be manufactured from 3 mm (11 swg) thick sheet aluminium to BS 1470 or EN equivalent, extruded aluminium sections or glass reinforced plastics, joints to be kept to a minimum.
- (2) Non-reflective signs using aluminium sign plates shall be covered with non-reflective plastic sheeting conforming to BS 873 or EN equivalent. All such signs to have a manufacturer's guarantee of not less than 5 years.
- (3) Reflective signs using aluminium sign plates shall be covered with reflective plastic sheeting. Class 1 (Table 1) or Class 2 (Table 2) standards as per BS 873:Part 6 or EN equivalent. All signs shall have a guaranteed life of not less than 10 years in respect of Class I material and 7 years in respect of Class II material.
- (4) Backs of the aluminium sign plates shall be treated with stove enamel, (aircraft grey) or other approved treatment.
- (5) Glass reinforced plastic traffic sign plates shall be manufactured from glass-fibre reinforced polyester resin. The glass-fibre reinforcement shall be of the chopped strand and/or woven type, shall be between 30% and 35t reinforcement per laminate. The resin used in reinforced laminates shall be a type suitable for continuous outdoor exposure. The face of the sign shall be formed by using a gel coat of a high viscosity thixotropic polyester resin (not self extinguishing) capable of withstanding a surface temperature of 71°C (160°F) and being in all respects suitable for continuous outdoor exposure. The face shall be self coloured and have a plain surface, free from deformity, abrasions, mould, wax, etc and shall be thoroughly degreased after curing. The back surface of the sign shall be formed using a finishing tissue and a stranded grade resin pigmented to specified colours.

- (6) All plastic sheeting letters, symbols, etc shall be affixed to the sign plate either with heat activated adhesive using a vacuum applicator with a temperature controller in accordance with the sheeting manufacturer's specification and instructions or other methods of fixing to be approved by the Engineer and no air bubbles, creases or blemishes shall be permitted. All joints on the sheeting shall be overlapped and in the case of horizontal joints the top sheet shall overlap the one below except when contrary to manufacturers recommendations. Overlaps shall be not less than 6 mm. Sheeting applied to extruded sections shall extend over top and bottom edges and down side edges for at least 3 mm. Sign plates shall be covered with a single sheet of film where possible and vertical joints shall be kept to a minimum.
- (7) Legends, symbols and borders may be screen printed in a manner specified by the sheeting manufacturer. Processing may be accomplished either before or after application of the sheeting.
- (8) The sheeting manufacturer's recommendation on colour matching methods shall be observed, non-uniform sheeting or undesirable contrast between areas of the same colour of reflective plastic sheeting on any one sign will not be permitted.
- (9) Where temporary panels are required, they shall be manufactured from sheet aluminium of not less than 16 swg or 1.63 mm thickness and fixed to the face of the permanent sign by means of 3 mm diameter 18:8 stainless steel nuts and bolts and shall be separated from the sign face by at least 5 mm thick nylon washers.
- (10) Finished sign plates shall be clearly and durably marked on the back (bottom left-hand side) in non-reflective sheeting, affixed with heat activated adhesive, or other approved method indicating the sign manufacturer's and suppliers name or trade-mark and the month and year of assembly. These markings shall be in characters with overall height of 20 mm.

#### **STIFFENING AND FRAMING**

4. (1) Triangular, circular or octagonal signs shall be framed or stiffened in accordance with Annex 2. For other signs, horizontal stiffening shall be in accordance with Annex 1.
- (2) To prevent gaps at joints between section of signs, horizontal stiffeners shall be arranged to allow the lower section of sign plate to overlap the stiffener on the upper section. Sections of signs to be joined vertically shall be connected using suitable butting plates affixed to the sign plate in such a manner that the sign face material is not punctured or otherwise damaged
- (3) Horizontal stiffening should be continuous unless otherwise approved in writing by the Engineer before manufacture.
- (4) Sign frames after fabrication shall be treated with grey stove enamel, or other approved treatment.

- (5) Where framing members are incorporated as an integral part of structural GRP sign plates, care shall be taken to avoid differential shrinkage of the sign face. The framing members may be of mild steel or other similar approved material. The encapsulating layer GRP shall follow the profile of the framing member as closely as possible.

#### **FLASHING "NO ENTRY"/ "SCHOOL CROSSING PATROL" SIGNS**

5. (1) The body, lens-visor and lens shall be of self coloured GRP, the lens being 150 mm dia translucent and pigmented red. Lamps shall be mains voltage, 60 watt BC General Lighting Service. The flasher unit shall be transistorised or solid state type, mains voltage, fully suppressed. The control switch shall be mounted internally and inaccessible from the outside. The overall body size approximately 650 mm x 200 mm x 250 mm deep. The rate of flash shall not be less than 60 nor more than 90 flashes per minute.
- (2) All external mild steel components shall be hot-dipped galvanized and painted grey.

#### **FIXING**

6. (1) Brackets and clips shall be manufactured from strip or extruded aluminium alloy sections, cast-aluminium alloy, 18:8 stainless steel or other approved material.
- (2) 18:8 stainless steel "U" bolts may be used for fixing side slung boxes to house electrical equipment. They shall pass completely round the post and shall be secured within the box by stainless steel nuts to a slotted angle welded to the frame.
- (3) On plank signs all planks shall be fixed to each post strictly in accordance with the manufacturer's specification.
- (4) All screws, bolts, nuts and washers shall be of 18:8 stainless steel but washers in contact with surfaces which may be permanently damaged by over-tightening of nuts and bolts shall be of Neoprene or other weather resisting material. Where nuts or bolts are used for fastening, washers must be provided.
- (5) Horizontal stiffeners shall be fixed to each post by approved clip assemblies. The minimum number of clips required for each supporting post shall be as follows:-

| <b>Depth of Sign (metres)</b> | <b>Minimum number of clips</b> |
|-------------------------------|--------------------------------|
| 0.0 - 0.90                    | 2                              |
| 0.9 - 1.50                    | 3                              |
| 1.5 - 3.00                    | 3                              |
| 3.0 - 4.50                    | 4                              |
| 4.5 - 6.00                    | 5                              |
| Over 6.00                     | 6                              |

The Table above does not apply to plank signs or to signs using purlins.

## RIVETS

7. (1) Where sign plates need to be stiffened this shall be achieved in a manner such that the sign face material is not punctured or otherwise damaged to accommodate the stiffening.
- (2) Rivets if used for fixing signs to their framework shall be aluminium of sufficient size to prevent failure due to expansion or wind pressure on either side of the sign and should be spaced in accordance with the sign stiffening manufacturers recommendations.

## SIGN POSTS

8. (1) All standard sign posts, dummy posts and enlarged base sign posts shall be hot finished circular hollow sections to BS 4848 Part 2 or EN equivalent made from steel to BS 4360 Grade 43C or EN equivalent. Standard posts shall have base plates fixed to one end in accordance with the current edition of BS 873 or EN equivalent, finished in accordance with Clause 8(2) below.

### (2) Finish

External surfaces shall be degreased and thoroughly cleaned by grit blasting prior to either:-

- i. hot-dip galvanizing in accordance with BS 729 or EN equivalent, MEBO PRO DM 2136 applied by heated airless spray to external surface. Typical dft 100 um or similar approved with a written 10 year guarantee.
  - ii. the thermal application of sprayed aluminium in accordance with BS 2569 Part 1 or EN equivalent, to a nominal thickness of 100 microns. This coat is finally sealed by the application of Aircraft Grey Sealant. (BS 381C: 693 or EN equivalent).
  - iii. hot dip galvanized in accordance with BS729 or EN equivalent.
- (3) The lower end of the post shall be treated internally and externally with bitumen paint to a depth of 600 mm which corresponds with the planting depth or as specified by the Engineer. The finish line to have a neat appearance. A weather resisting plastic cap shall be supplied with each post.

### (4) Requirements for Enlarged Base Sign Posts

- a. Enlarged base sign posts for new installations shall be in accordance with the requirements of BS 873 or EN equivalent and Clauses 8(i), (2) and (3) of this specification; or -
- b. where required by the Engineer, to facilitate the replacement of damaged enlarged base sign posts the following requirements, in addition to Clauses 8(i), (2) and (3) shall be met:-



- i. Posts shall be manufactured from steel not less than 5 mm ( $\frac{3}{16}$ "") in thickness. The base shall have an inside diameter of not less than 150 mm (6"). If rectangular the base shall be at least 130 mm (5") in width.
- ii. The base housing shall be 1.675 m in length with an aperture of not less than 90mm x 400mm fitted with a rigid weatherproof door and suitable lock. The bottom of the aperture shall be not less than 900 mm from the bottom of the post.
- iii. A corrosion resistant earthing terminal of diameter M8 in accordance with CP 1013 shall be provided inside the compartment. It shall be constructed from, or include in its construction, suitable conducting material and shall be identified by the Symbol 1.

A varnished hardwood or marine plywood panel of a size not less than the access door 13mm thick shall be securely fixed to the back of the box for mounting the electrical equipment.

- iv. The base shall be provided with a 225mm x 50mm (9" x 2") cable entry hole, the top of which shall be 450 mm (18") from the bottom of the post.
- (5) Where any divergence occurs between the British Standard or EN equivalent and this specification, this specification shall take precedence.
  - (6) A test certificate shall accompany each batch of posts certifying that materials and finishes comply with the relevant British Standards or EN equivalent and specifications.

#### HOUSING FOR ELECTRICAL EQUIPMENT

- 9. (1) Unless a strap-on type fuse box is specified all illuminated sign assemblies shall be provided with an enlarged base pole to accommodate the necessary electrical equipment, as specified in Clause 8.
- (2a) Strap on fuse boxes shall be constructed of mild steel of adequate strength to withstand all normal conditions and usage. Each box shall be provided with an aperture not less than 125 mm x 300 mm fitted with a weatherproof access door and key.
- b. A varnished hardwood or marine plywood panel of a size not less than the access door 13 mm thick shall be securely fixed to the back of the box for mounting the electrical equipment. The overall width of the box shall vary according to the diameter of the post to which it is to be bracketed, ie, for 90 mm diameter posts the box width shall be 150 mm, for 112 mm and 139 mm diameter posts the box widths shall be 250 mm.
- c. The box and all bolt holes shall be weatherproof and a hole shall be provided in the base of the box.

- d. A corrosion resistant earthing terminal of diameter M8 in accordance with CP 1013 shall be provided inside the compartment. It shall be constructed from, or include in its construction, suitable conducting material and shall be identified by the Symbol 1.
- (3) The exterior and interior of the strap-on fuse box and all holes for cables, bolts, access, etc shall have a smooth finish without any sharp edges.
- (4) Strap-on fuse boxes shall be rustproofed by one of the methods detailed in paragraph 8(2) and be unpainted.

**ANNEX I****FRAMING REQUIREMENTS****HORIZONTAL STIFFENING**

sizes and spacing of horizontal stiffening members shall be in accordance with the following Table

| Sign Size (m <sup>2</sup> ) | No of Posts | Extruded Aluminium Section |                          |                |
|-----------------------------|-------------|----------------------------|--------------------------|----------------|
|                             |             | Section                    | Spacing                  |                |
| 0 - 0.7                     | 1 or 2      | small                      | Top & Bottom             |                |
| 0.7 - 1.5                   | 1           | Medium                     | 0.5m Centres             |                |
|                             | 2           | Medium                     | Top, bottom & mid-height |                |
|                             |             |                            | Up to 3.0m wide          | Over 3.0m wide |
| 1.5 - 5.5                   | 2           | Medium                     | 0.5m c/c                 | Do not use     |
|                             |             | Large                      | 0.75m c/c                | 0.6m c/c       |
|                             |             |                            | Up to 4.5m wide          | Over 4.5m wide |
| 5.5 - 11.0                  | 2           | Large                      | 0.5m c/c                 | 0.4m c/c       |
|                             | 3           | Large                      | 0.7m c/c                 | 0.6m c/c       |
|                             |             |                            | Up to 5.0m wide          | Over 6.0m wide |
| 11.0 +                      | 2           | Large                      | 0.4m c/c                 | 0.3m c/c       |
|                             | 3           | Large                      | 0.5m c/c                 | 0.5m c/c       |

**ALTERNATIVE STIFFENING SHALL BE APPROVED BY THE ENGINEER**

The above Table applies to signs up to 6.0m wide

**ANNEX 2****STIFFENING FOR TRIANGULAR, CIRCULAR AND OCTAGONAL SIGNS**

| Size of Sign Depth (mm) | Position of Stiffening   |
|-------------------------|--|
| Up to 750               | Top and bottom horizontal rail   |
| 900                     | Top and bottom horizontal rail and upright side rails ("Fully Framed") |
| 1200 - 1500             | Fully Framed and horizontal rail at mid-height                         |

**ALTERNATIVE STIFFENING SHALL BE APPROVED BY THE ENGINEER**

## **ROAD WORKS SIGNS SPECIFICATION**

### **1. ROADWORKS SIGNS**

- 1.1 This specification may be used only for signs as mentioned in the current version of Chapter 8 of the Traffic Signs Manual.
- 1.2 The signs, posts and accessories shall conform in all respects with the Traffic Signs Regulations (Northern Ireland) 1997, Traffic Signs Manual and subsequent amendments, and extensions thereof and other Regulations and Directions current at the time of manufacture read in conjunction with the current edition of BS 873 or EN equivalent.

### **2. REFLECTIVITY**

All signs shall be fully reflective (see 5.2).

### **3. FRAMES**

- 3.1 Frames shall be constructed as depicted in Drawing on Page 20 of this document, or as required by the Engineer at time of ordering.
- 3.2 Frames for signs of 600 mm and 750 mm shall be formed of Mild Steel Equal Angle 30 mm x 30 mm x 3 mm.
- 3.3 Frames for signs of 900 mm and 1,200 mm shall be constructed of Mild Steel Equal Angle 40 mm x 40 mm x 3 mm.
- 3.4 Frames which are hot dipped galvanized to the current BS 729 or EN equivalent after degreasing and will not require to be painted. As an alternative frames may be treated as follows
  - (1) Shall be degreased and primed with an approved etching Primer followed by one coat of Zinc Chromate Primer. The prepared surfaces shall then be painted with an approved flat undercoat and finished with 2 applications of gloss paint. Both under and top coats to be of distinguishable but matching colours and supplied by the same manufacturer; or
  - (2) Shall be wire brushed and (using a two coat system applied by either airless spray or brush); one coat of an approved High Build phosphate primer (to a thickness of not less than 75 microns) and finished with one coat of an approved metal aluminium finish (to a thickness of not less than 25 microns. The total thickness shall not be less than 100 microns) in accordance with the manufacturer's specification; or
  - (3) Shall be prepared and produced in strict adherence to paint manufacturer's specification using a chlorinated rubber paint.
- 3.5 All painted sign frames shall be coloured grey to BS 381C No 693 or EN equivalent.

- 3.6 Corners of frames shall be mitred or cold formed, but where the longest side of any triangle, rectangle or square or the diameter of any circle exceeds 1,200 mm cold formed corners must be strengthened by welding. Cold formed mitred corners shall have a gap not greater than 3 mm at the extremity of the fold before welding. All welds shall cover the full cut of the mitre. Frames for signs exceeding 900 mm in height shall have four legs, unless designed for post mounting.
- 3.7 The design of the frame shall be such that when erected on a flat horizontal surface the sign plate shall be at an angle of 15° from the vertical, except for post mounted signs which shall be vertical.
- 3.8 All pivoted joints of the sign frame shall be bolted. Bolts used on any part of the sign shall be Cadmium plated or treated by another approved process, and nuts shall be aluminium alloy or similar material of the self-locking type.
- 3.9 Handles shall be fitted in accordance with Drawings.

#### **4. POSTS**

Where posts are used for fixing signs they shall meet the requirements of Clause 8 of the permanent Traffic Signs Specification. Brackets and clips shall comply with Part A Clause 6.

#### **5. SIGN PLATES**

- 5.1 The sign plate shall be of rigid construction and shall consist of 16 gauge aluminium plate, with the exception of the 'Stop-Go' Board which shall be 11 gauge aluminium plate.
- 5.2 The sign face shall be covered with reflective plastic sheeting applied in accordance with the sheeting manufacturer's instructions and which meets the reflective standards of either Table 1 or Table 2 of BS 873:Part 6, 1983 or EN equivalent, as required by the Engineer.
- 5.3 The back of the sign plate shall be treated with aircraft grey or other approved treatment in accordance with the manufacturer's instructions.
- 5.4 Plates carrying supplementary signs shall be to the size shown in the Drawing on Page 20 and shall be treated in their entirety with aircraft grey or other approved treatment in accordance with the manufacturer's instructions.

#### **6. ATTACHMENT OF SIGNS TO FRAMES**

Sign plates shall be either clipped or riveted to the frame using rivets or clips of sufficient size to prevent failure due to expansion or wind pressure. Their spacing shall be uniform on the outside of any sign plate and shall not exceed 225 mm.

**7. STIFFENING**

Where larger sign plates need to be stiffened this shall be achieved in a manner such that the sign face material is not punctured or otherwise damaged to accommodate the stiffening.

## **COLLAPSIBLE SIGNS SPECIFICATION**

### **1. GENERAL**

The signs, posts and accessories shall conform in all respects with the Traffic Signs Regulations (Northern Ireland) 1997, Traffic Signs Manual and subsequent amendments, and extensions thereof and other Regulations and Directions current at the time of manufacture read in conjunction with the current edition of BS 873 or EN equivalent.

### **2. FRAMES**

#### **2.1 The materials shall have the following sizes:-**

Where the main sign face exceeds 900 mm in height, the frame shall be constructed of mild steel equal angle 40 mm x 40 mm x 3 mm or other materials approved by the Engineer.

For signs not exceeding 900 mm in height framing shall be 16 mm ID tubing or other approved by the Engineer. Framing tubes shall be end sealed using an approved insert and rubber or plastic feet.

#### **2.2 The frames may have 4 support legs or tripod or other approved by the Engineer. The frames shall have a locking device to secure the legs in the open position when in use.**

#### **2.3 The frame shall be designed and constructed in such a way as to be stable in high winds or shall have incorporated in the design a device to support a stabilising unit.**

#### **2.4 The design of the frame shall allow the sign face to be at an angle of 15° from the vertical when the sign is erected on a flat horizontal surface.**

#### **2.5 All pivoted joints of the frame shall be riveted or bolted. Bolts used on any part of the sign shall be cadmium plated or treated by other approved process. The nuts shall be aluminium alloy self locking type or other approved by the Engineer.**

#### **2.6 If pre-treated or rust repellent materials are not used one of the following processes shall be used:-**

##### **2.6.1 Hot dipped galvanized to BS 729 or EN equivalent after degreasing.**

##### **2.6.2 Degreasing and priming with an etching primer approved by the Engineer followed by one coat of zinc chromate primer. The surfaces thus prepared shall be painted with a flat undercoat and finished with 2 applications of gloss paint. Both undercoat and finishing coats shall be supplied by the same manufacturer. All paint coatings shall be of distinguishable but matching colours.**



2.6.3 Wire brushing and the application of an undercoat of a High Build phosphate primer to a thickness of not less than 75 microns and one coat of a metal aluminium finish, to a thickness of not less than 25 microns, applied by either spray or brush. The painting shall be in accordance with the Manufacturer's instructions.

2.6.4 Prepared and painted in strict adherence to the paint Manufacturer's instructions using a chlorinated rubber paint.

2.6.5 Plastic coating to the Manufacturer's instructions.

2.7 All painted and coated frames shall be coloured grey to BS 3810 No 693 or EN equivalent.

### **3. SIGN PACKS**

3.1 The sign legend shall be on heavy duty flexible plastic material edge, sealed to prevent ingress of moisture.

3.2 The sign face shall be of either reflective plastic sheeting placed as instructed by the Manufacturer or a combination of colouring medium and glass beads of the closed lens type.

3.3 The sign face and the frame shall be so designed and constructed that its function will not be impaired by being stored or transported in a tightly wound roll. It shall not buckle, cockle nor ripple when in use or when stored or transported.

3.4 The design of the sign shall accommodate an interchangeable, snap on, supplementary sign panel where appropriate, designed to be fixed to the extended backcloth.

### **4. SUPPLEMENTARY PANELS**

The size of the supplementary panel may be standardised for interchangeability but must adhere to the design rules. Each side may depict a different legend in order to increase adaptability and reduce bulk storage.

### **5. ATTACHMENT OF SIGN AND SUPPLEMENTARY PANELS**

5.1 The heavy duty flexible plastic material shall be fixed to the frame by one of the following methods:-

5.1.1 Moulded sleeves forming part of the sign face background retained to prevent creeping or movement of the sign face when in use or stored.

5.1.2 Metal stiffeners moulded into the flexible plastic either vertically or horizontally with fixing points for attachment to the frame.

5.1.3 Spring loaded stainless steel locking studs and eyelets, the studs being fixed to the frame and the eyelets crimped into the flexible sign sheet.

5.1.4 Or other method approved by the Engineer.

5.2 The sign face may be detachable.

5.3 The supplementary panel may have snap on studs or other method of attachment approved by the Engineer consistent with the design.

## **TRAFFIC CONES AND CYLINDERS SPECIFICATION**

### **TRAFFIC CONES**

1. Traffic cones shall comply with the current BS 873 - Part 8 or EN equivalent: except as herein amended.
2. Cones shall be ballasted either with a solid rubber base or internally with extruded rubber.
3. The base shall be ribbed or otherwise to help prevent creep under normal traffic conditions.

### **TRAFFIC CYLINDERS**

Traffic cylinders shall comply with the current BS 873 or EN equivalent.

### **BARRIER BOARDS AND CONE CONVERTER HEADS**

1. Barrier boards shall be of plastic PVC or other approved material with red and white reflective panels as per Diag 7105 of the Traffic Signs Regulations (NI 1997).
2. Cone converter heads (with 3 slots) shall be capable of fitting securely on top of 790 mm or 1,000 mm cones and holding the barrier boards securely in place.

## **OTHER ITEMS SPECIFICATION**

### **ROAD DANGER LAMPS**

1. Road danger lamps shall conform in all respects with the current edition of BS3143 or EN equivalent.
2. Shall consist of a body and a head.
  - a The body to consist of a hollow plastic shell to contain 1 or 2 batteries. The base of the body to be lockable to body by means of an anti-theft bolt which also acts as an attachment to the tripod.
  - b The head should consist of an amber lens with, where required by BS3143 or EN equivalent, an in-built reflector around the edge (both sides) to reflect light from vehicle headlights.

The head shall also contain one special high intensity bulb which when connected to the battery shall flash at approximately 120-150 flashes per minute, or more than 900 flashes per minute.
3. All lamps shall be clearly and indelibly marked as required by BS3143 or EN equivalent.

### **TYPE OF ROAD DANGER LAMPS**

4. Type A - For use at night-time hazards.  
Tripod for Type A 685mm when erected.  
  
Type B - For use at daytime or night-time fog hazards.  
Tripod for Type B 794mm when erected.

### **OPTIONAL EXTRA**

Type A & B  
Photo-cell activated lamps

**BOLLARDS**

- (1) Bollards shall comply with the current edition of BS 873, Part 3 or EN equivalent.
- (2) Bollard bodies and heads shall be constructed from materials detailed in Section 4 of BS 873 nor EN equivalent. Metal surfaces shall be hotmetal sprayed, undercoated with suitable primer and finished in stove enameled white paint. Alternatively the bollard can be galvanized, etch finished and stove enameled.
- (3) The bollard head shall contain a 270 mm diameter sign to Diag 606, 609, 610 or 611 or a 270 mm diameter plain white circle.
- (4) Electrical connections shall be such that in the event of damage the mains supply is left safe, and to facilitate replacement of a bollard or lamp and gear assembly a means of isolating the mains supply shall be provided.
- (5) All internal timber shall be varnished hardwood or marine plywood.
- (6) All bollards should be designed to ensure that they are electrically safe when hit by a vehicle.

### **SIGN LANTERNS**

1. All lanterns and fittings etc are to comply with BS 873 Part V or EN equivalent.
2. Lanterns shall be suitable for the overhead illumination of traffic signs.
3. They shall be supplied complete with body, glazing panel, lamps, extension arms and all necessary fittings.

## STAINLESS STEEL BANDING AND FITTINGS

### SPECIFICATION

The banding and fittings are for attaching highway signs to tubular steel posts.

#### Brackets

Channel brackets shall be as Fig 1.

#### Clips

To suit 3"- 4 $\frac{1}{2}$ " diameter posts. They shall be complete with twist in toggle, 38mm (1 $\frac{1}{2}$ ") x 8 mm ( $\frac{5}{16}$ ") square head bolts, hexagonal nut and washer. Fig2 .

To suit 5 $\frac{1}{2}$ " diameter posts. They shall be complete with 2 No 38 mm x M8 square head bolts, nuts and washers and insert plate. Fig 3.

#### Band

Banding shall be 0.03" (0.76 mm) gauge stainless steel, supplied in rolls.

#### Buckles

Buckles shall be stainless steel designed to receive the steel banding supplied.



### DELIVERY POINTS AT 1 JANUARY 1999

However these may change during the Contract Period, Suppliers will be advised

|                      |   |
|----------------------|---|
| BALLYMENA DIVISION   | Ballykeel Depot, 190 Larne Road,<br>Ballymena   |
| BELFAST DIVISION     | Airport Road, Belfast<br>Sandyknowes Depot, Antrim Road,<br>Newtownabbey  |
| COLERAINE DIVISION   | Northbrook Depot - 17 Newmills Road<br>Coleraine<br>Woodburn Depot - 96 Irish Street<br>Londonderry   |
| CRAIGAVON DIVISION   | Ballynahonemore Road, Armagh<br>Corbet, Castlewellan Road, Banbridge<br>Carn Depot, Carn Industrial Estate,<br>Portadown<br>Motorway Depot, Birches, Portadown<br>Cecil Street, Newry |
| DOWNPATRICK DIVISION | Castlenavan, 131 Newcastle Road,<br>Seaforde<br>Sprucefield, Lisburn<br>Balloo Depot, Balloo Industrial Estate,<br>Bangor   |
| OMAGH DIVISION       | Arvalee Depot, 32 Deverney Road,<br>Omagh<br>Silverhil.1 Depot, Enniskillen   |

### GOVERNMENT PURCHASING AGENCY TENDER FOR ROAD TRAFFIC SIGNS

**INFORMATION REQUIRED ON PERMANENT TRAFFIC SIGNS****PLEASE COMPLETE AS PART OF TENDER DOCUMENTATION**

1 What type of sign face material is to be used ?

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2 What type of construction methods are to be adopted ?

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3 What type of treatment is to be used to back of sign ?

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---

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4 (a) If screen printing is used please confirm that the ink used is compatible with the sign face material and will fulfill the appropriate guarantee

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---

---

(b) Also confirm that the retroreflectivity will not be reduced below that required by the Specification

---

---

5 Is your company Quality Assured or likely to become so within one year ?

---

6 What Quality Assurance system do you use ?

---

Signed \_\_\_\_\_

For and on behalf of \_\_\_\_\_

---

---

---

Date \_\_\_\_\_

**TENDER FOR THE SUPPLY AND DELIVERY OF  
ROAD TRAFFIC SIGNS AND ASSOCIATED  
PRODUCTS**

**THIS COPY TO BE RETURNED NO LATER  
THAN  
15.00 Hrs ON MONDAY 3<sup>rd</sup> DECEMBER 2001**

## INSTRUCTIONS TO TENDERERS

### 1. Completion and Submission of Tender Documentation

- i. The Form of Tender and accompanying documents completed as directed, must be returned either in the enclosed envelope or using the enclosed label. Where documentation is bulky, or otherwise unsuitable for transmission in the Tender envelope, Tenderers must ensure that the packaging is strong enough to secure the documentation. Tenders may not be returned by e-mail. Envelopes or packages containing tender documents should bear no marks indicating the identity of the Tenderer and should be returned to :-

**Government Purchasing Agency  
Room 204  
Rosepark House  
Upper Newtownards Road  
Belfast  
BT4 3NR**

So as to be received no later than **15.00 hrs Monday 3<sup>rd</sup> December 2001.**

- ii. Tenders sent by post should be registered or sent by Recorded Delivery or Datapost. If Tenders are delivered by hand an official receipt should be obtained.
- iii. The Government Purchasing Agency cannot accept responsibility for postal or delivery delays.
- iv. Late Tenders will not be considered.
- v. The Form of Tender must be completed in black ink or typed and signed. All prices entered on the Form of Tender, Schedule of Prices or other Tender documentation must be exclusive of VAT and in pounds sterling.
- vi. All submissions must be in the English language and any alternations or erasures must be initialled by the signatories to the Form of Tender.
- vii. Tenders must be fully compliant with the requirements detailed in the tender documentation. No amendments to the documents should be made by Tenderers. If after taking action in accordance with Section 10 of these Instructions, Tenderers still consider modifications to be necessary, these should be detailed separately in the Tenderer's response.
- viii. The Government Purchasing Agency is not obliged to consider or accept alternative offers. Similarly offers made subject to additional or alternative Conditions of Contract may be rejected.

## **2. Economic and Financial Standing**

Tenderers may be required to furnish information as to economic and financial standing for assessment by the Government Purchasing Agency prior to the acceptance of any Tender.

## **3. Costs and Expenses**

Tenderers will not be entitled to claim from either the Government Purchasing Agency or Department any costs or expenses which may be incurred in preparing their Tender whether or not it is successful.

## **4. Period of Validity**

Tenderers are required to keep Tenders valid for acceptance for a period of ninety days from the closing date for receipt of Tenders.

## **5. Confidentiality**

The Tenderer should treat the Tender documents as private and confidential between himself and the Government Purchasing Agency.

## **6. Official Amendments**

If it is necessary for the Government Purchasing Agency to amend the Tender documentation in any way, prior to receipt of Tenders, all Tenderers will be notified in writing simultaneously. If appropriate, the deadline for receipt of Tenders will be extended.

## **7. Environmental Benefits**

The Government is committed to Environmental Protection and would wish to see Tenderers adopt a positive environmental policy in support of the Secretary of State's statement on Selling to Government, (copies of which can be issued on request).

## **8. Canvassing**

Any Tenderer who directly or indirectly canvasses any official of the Government Purchasing Agency or Department concerning the award of contract or who directly or indirectly obtains or attempts to obtain information from such official concerning the proposed or any other tender will be disqualified.

## **9. Compliance**

Tenders must be submitted in accordance with these and the supplementary instructions. Failure to comply may result in a Tender being rejected by the Government Purchasing Agency.

## **10. Mandatory Requirements**

All mandatory requirements must be met. Failure to meet all mandatory requirements will result in elimination from the evaluation process. Tenderers must state clearly in their response, where applicable, how all mandatory requirements will be met. A statement that they will be met is not sufficient.

The mandatory requirements of this contract are:

Meeting Specification as outlined in Section 2.  
Every item of equipment shall comply with the relevant requirements of the applicable British Standard, or harmonized European Standard appropriate to the intended use of the equipment.  
Tenders must be submitted in accordance with the format outlined in paragraph 14 of these instructions.

## **11. Format of Response**

Pricing schedules must be completed in full. Only those prices relevant to the proposal (exclusive of V.A.T) should be provided and should be those ruling at the time of tender.

The additional information requested on pages 55 – 56 should be completed and included in your proposal.

If an alternative item to that specified is offered, this should be clearly indicated as such.

## **12. Evaluation Criteria**

This contract will be awarded on the basis of the most economically advantageous tender. The evaluation criteria will include price, quality, delivery and aesthetic and functional characteristics.

13. Tenderers should provide 3 sets of their tender submission for evaluation.

## **14. Formal Contact and Communications**

Tenderers should seek to clarify any points of doubt or difficulty relating to the Tender documentation before submitting their Tender. For the purposes of this contract the contact point for clarification of technical issues is: Mark Proctor, DRD Roads, Network

Maintenance, Clarence Court, 10-18 Adelaide Street, Belfast, BT2 8BG, telephone 028 90540819.

For clarification of procurement issues contact Brian Steen, Buyer, Government Purchasing Agency, telephone 028 90526655.



APPENDIX 4

**Contract for the Supply and Delivery of Road Traffic Signs  
evaluation summary sheet (SIGNAGE)**

|                               | 1               | 2                 | 3           |
|-------------------------------|-----------------|-------------------|-------------|
|                               | PWS Ireland Ltd | Signs & Equipment | Hirst Signs |
| <i>Evaluation Criteria</i>    |                 |                   |             |
|                               | Weight          |                   |             |
| Cost                          | 60              | 600               | 520         |
| <i>Additional Information</i> | Weight          |                   |             |
| Delivery                      | 20              | 120               | 60          |
| Systems                       | 20              | 80                | 160         |
| <b>TOTAL</b>                  | <b>840</b>      | <b>800</b>        | <b>740</b>  |

From the Permanent Secretary  
**Paul Priestly**



Department for  
**Regional  
Development**  
[www.drdni.gov.uk](http://www.drdni.gov.uk)

Peter Johnston Esq  
BBC Controller  
Broadcasting House  
Ormeau Avenue  
Belfast  
BT2 8HQ

Room 701  
Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 8GB  
Telephone: (028) 9054 1175  
Facsimile: (028) 90 54 1120  
Email: [paul.priestly@drdni.gov.uk](mailto:paul.priestly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 449/08  
12 November 2008

*Dear Mr Johnston,*

**BBC NEWSLINE FEATURE ON DAVID CONNOLLY (SIGNS & EQUIPMENT)**

I am writing to express my deep concern over a feature broadcast last Wednesday (29 October 2008) on BBC Newsline on an investigation that the Department for Regional Development (DRD) is undertaking in relation to the award of road sign contracts. It included an interview with the aggrieved contractor, Mr David Connolly. The reporter was Julian O'Neill.

The report was inaccurate and unbalanced and failed to follow BBC Guidelines on several counts - truth and accuracy, fairness and impartiality and diversity of opinion.

For example, the report wrongly stated that Mr Connolly's company received no Government financial aid, was not awarded any parts of the contracts and that LEDU was a major shareholder in its rival in the process, PWS (Ireland) Ltd. DRD was not given the opportunity to correct these serious factual inaccuracies.

Even more seriously Mr Connolly was permitted to make serious allegations concerning the integrity of officials.

The report commented unfavourably about the time the investigation of the procurement process was taking but failed entirely to record that a major reason for this is Mr Connolly's unwillingness to confirm he has submitted all his evidence. It is difficult to see how an investigation carried out at the behest of a member of the public can proceed to a conclusion when that person has not finalised the grounds of his complaint. DRD had made this clear to those researching the report on behalf of the BBC through a formal response and informal comments.

There is an expectation that the BBC as a public service broadcaster will act responsibly and competently and exercise an appropriate measure of judgement and discretion when dealing with sensitive matters of fact, especially when the reputation and character of individuals are being drawn into question and the issues being discussed are still the subject of an ongoing investigation.



AN ROINN  
**Forbartha Réigiúnaí**  
MÁNNYSTRIE FUR  
**Kintra Pairts Fordèrin**

In short, the report was inaccurate, one sided and did not show even-handedness. The Department expects BBC Newsline to acknowledge the report contained numerous factual inaccuracies and provided a totally unbalanced report, which misrepresented the facts of the situation.

I look forward to hearing from you.

Yours sincerely,

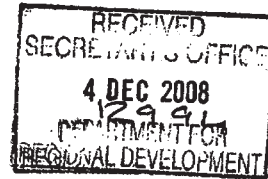
Paul Priestly

**PAUL PRIESTLY**

British Broadcasting Corporation Broadcasting House Ormeau Avenue Belfast BT2 8HQ  
Telephone 028 90338200 Fax 028 90338800

**BBC Northern Ireland**

Controller, BBC Northern Ireland  
bbc.co.uk



1<sup>st</sup> December 2008

Paul Priestly  
Permanent Secretary  
Department for Regional Development  
Room 701  
Clarence Court  
10-18 Adelaide Street  
Belfast  
BT2 8GB

Dear Mr Priestly

Thank you for your letter regarding a BBC Newsline feature on David Connolly broadcast on October 29<sup>th</sup> and apologies for the delay in our response.

We are currently investigating the issues you raise in detail and we will be in touch with a full response shortly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Johnston'.

**Peter Johnston**  
**Controller**  
**BBC Northern Ireland**

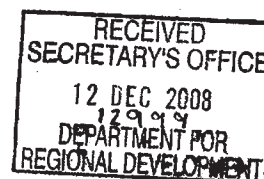


INVESTOR IN PEOPLE

British Broadcasting Corporation Broadcasting House Ormeau Avenue Belfast BT2 8HQ  
Telephone 02890 338000 Fax 02890 338806 Email [ni\\_news@bbc.co.uk](mailto:ni_news@bbc.co.uk)

**BBC Northern Ireland**

News and Current Affairs



10<sup>th</sup> November 2008

Your Ref: PSDRD 449/08

Dear Mr Priestly

Thank you for your letter of 12 November concerning a BBC Newsline report on David Connolly (Signs and Equipment). The Controller, Peter Johnston has asked me to reply. I apologise for the delay. We wished to speak again to Mr Connolly and were not able to do so until his return from abroad.

I have considered your complaint carefully and I will try to address each of your points in turn.

You say the programme wrongly stated that Mr Connolly's company received no Government financial aid. The reporter said that Mr Connolly "built up" his factory without government aid. That is what Mr Connolly told us. We were referring to his former plant in Newtownards, where the report was filmed. We were aware Mr Connolly had received help from Government agencies but were told that this was not for building the factory. Nevertheless I accept that the wording of the report might have appeared to refer to the business rather than simply the factory.

You say we reported that Mr Connolly's company had not been awarded any parts of the contracts. That was not what we said. The words used were that the company had 'struggled to land the big road service contracts'. It is our understanding that a number of major contracts, worth several million pounds, were put out to tender in Northern Ireland over the last 10 years, and that Mr Connolly's company won only a small share of these.

You challenge our statement that LEDU was a major shareholder in a rival company, PWS Ireland. In 1999, according to correspondence in our possession between Mrs Iris Robinson MP and the then minister, Mr Ian Pearson, LEDU had acquired £20,000 worth of preference shares in PWS Ireland. This investment was repaid in December 2004.

In your letter you say that a major reason for the length of the investigation process has been Mr Connolly's unwillingness to confirm that he has submitted all his evidence. Your staff did tell us the Department was aware that Mr Connolly was still examining documentation; that he had been asked if he had submitted all of his evidence and that to date the Department had not received a formal response. But your press office's email to us on 29 October did not suggest that there had been any unwillingness by Mr Connolly to assist your investigation. Therefore I cannot accept your assertion that we had failed to record a 'major reason' for the delay.



INVESTOR IN PEOPLE

We reported that in 2005 the Audit Office asked your Department to conduct an 'urgent inquiry.' We also have a copy of a letter from the Director of the NIAO, Mr Eddie Bradley, to your Department sent in June of this year, in which Mr Bradley said he was mindful of the time that had elapsed since the papers were first submitted and 'I can understand Mr Connolly's concern at the continuing delay.' These seem to me to have been legitimate points to include in our report.

At the conclusion of the filmed report the programme presenter, in studio, said the following:

*"The DRD has told BBC Newsline Mr Connolly's allegations are being investigated thoroughly in what is proving to be a very lengthy process. It says the issues are very complex and it hopes to conclude the inquiry as soon as it's seen all the evidence Mr Connolly has been gathering."*

I believe this fairly summarized the DRD's position as outlined to us.

Finally, I acknowledge that on the issue of financial assistance the wording of our report was ambiguous and we would be prepared to carry a statement of clarification. However, I do not accept the wider criticisms in your letter and that we had failed to follow BBC Editorial Guidelines. Nevertheless we would be willing to offer the opportunity for a representative of the DRD to be interviewed on the matters under investigation.

Yours sincerely



Angelina Fusco  
Editor Television News

Mr Paul Priestly  
Permanent Secretary  
Department for Regional Development  
Room 701, Clarence Court  
10 – 18 Adelaide Street  
Belfast BT2 8GB

From the Permanent Secretary  
Paul Priestly

Angelina Fusco  
Editor Television News  
British Broadcasting Corporation  
Broadcasting House  
Ormeau Avenue  
Belfast  
BT2 8HQ



Department for  
**Regional  
Development**  
[www.drdni.gov.uk](http://www.drdni.gov.uk)

Room 701  
Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 6GB  
Telephone: (028) 9054 1175  
Facsimile: (028) 90 54 1120  
Email: [paul.priestly@drdni.gov.uk](mailto:paul.priestly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 533/08  
18 December 2008

Dear Angelina,

#### **BBC NEWSLINE FEATURE ON DAVID CONNOLLY (SIGNS AND EQUIPMENT)**

Thank you for your letter of 10 December responding to my complaint about the BBC Newsline report on an interview with an aggrieved contractor, Mr David Connolly (Signs and Equipment).

Whilst I acknowledge and am grateful for the BBC's willingness to carry a statement of clarification on the matter of the issue of financial assistance, I remain disappointed with the BBC's overall response to the Department's complaint. I note the arguments that you have presented to explain the views expressed by the broadcaster, Julian O'Neill. However, I believe there is still a lack of understanding of the overall context of this issue, and a failure to address certain points which I made, such as the manner in which conclusions were drawn whilst the facts are still effectively part of an ongoing investigation, and concerns about comments where the reputation and integrity of individuals were drawn into question. Given the status of the BBC as a public service broadcaster, I remain disappointed with this outcome and my staff continue to feel aggrieved and unfairly treated.

However, having fully considered the matter, I do not believe that expending further energy within the Department pursuing the BBC's formal complaints process would be the best use of my staffing resources, which are often under pressure. Therefore, subject to the BBC issuing the aforementioned statement of clarification on the matter of financial assistance, I will not be pursuing the matter further. It would be helpful to know in advance the date when this clarification will be broadcast.

I hope that we can anticipate a more positive relationship, and more balanced and fairer reporting from the BBC in the future.

A copy of this letter goes to Peter Johnston.

Yours sincerely,

*Paul*

PAUL PRIESTLY



AN ROINN  
**Forbartha Réigiúnaí**  
MÁNNYSTRIE FUR  
**Kintra Pairts Fordèrin**



Broadcasting House Ormeau Avenue Belfast BT2 8HQ

Telephone 028 90338200 Fax 028 90338800

## **BBC** Northern Ireland

Controller, BBC Northern Ireland  
bbc.co.uk

SECRET

B

DEPARTMENT FOR

24<sup>th</sup> February 2009

Paul P  
Perma ry  
Department for Regional Development  
Room 701  
Clarence Court  
10-18 Adelaide Street  
Belfast BT2 8GB

Dear Paul

### **BBC NEWSLINE FEATURE ON DAVID CONNOLLY (SIGNS AND EQUIPMENT)**

It was good to meet you on Thursday of last week. I have followed up on your complaint and can confirm that the following agreed statement of clarification will be broadcast:

*Last October BBC Newsline reported on the length of time it has taken to investigate a complaint about the handling of road signs contracts. The investigation, being conducted by the Department of Regional Development, was ordered more than three years ago following complaints by a contractor, David Connolly, who queried the way several tenders were awarded. In our report we said his business had been built-up without government help. We've been asked by the DRD to clarify that his company, Signs and Equipment Limited, did receive some assistance for a specific project after it had been established.*

Apologies for the delay but as you know we had to take on board some legal advice. If you have any further comments or questions please do not hesitate to get in touch.

**Controller**  
**BBC Northern Ireland**

12



INVESTOR IN PEOPLE

Michaela Boyle MLA  
Chair  
Public Accounts Committee  
Northern Ireland Assembly  
Stormont

19<sup>th</sup> November 2013

Dear Ms Boyle,

**PAC HEARING ON 16 OCTOBER 2013**

During the PAC hearing on 16 October, I was asked a number of questions about a letter of complaint which I sent to the BBC on 12 November 2008. The letter concerned a feature broadcast on BBC Newsline covering the allegations made by an aggrieved contractor, Mr Connolly of Signs and Equipment Ltd, about the award of road sign contracts by DRD.

I did not have sight of this letter before the PAC hearing and I am grateful to you for agreeing that I should be given time to reflect on the questions asked by Committee Members. I hope you and your colleagues will understand that I could not at the time recall the detail of a letter written some 5 years ago.

By way of context, I should like to reiterate that the letter was a complaint to the BBC about the fairness and accuracy of the report which they broadcast. It was not a complaint about Mr Connolly and nor did the letter in any sense 'denounce the whistleblower.'

In relation to the suggestion that I had said in the letter to the BBC that the whistleblower's allegations were 'unfounded', having had the chance to re-read the letter I can assure the Committee that it contains no such claim. Indeed, the word 'unfounded' does not appear in the letter at all. The complaint I made to the BBC was that the report which they broadcast was 'inaccurate and unbalanced'. I must emphasise that my letter concerned the BBC's report and did not contain any criticism of Mr Connolly.

I was asked by the Committee to consider whether I had been right to send a letter of complaint to the BBC while an investigation was on-going. Having had the opportunity to reflect on the matter, I stand by the decision to issue the letter. I felt at the time that I had a duty to defend the staff of the Department, who were having their integrity impugned by the BBC, while an investigation into Mr Connolly's allegations was in train. I believe it was

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both reasonable and legitimate for a Permanent Secretary to complain to the BBC in these circumstances.

I have also consulted media advisers in considering this response who advised me that such a complaint needs to be made as soon as possible after the broadcast or article which is the subject of the complaint. Their view is that there would have been no point in complaining to the BBC long after the event. I should also like to reiterate that the BBC did concede on one point in my complaint and subsequently broadcast a statement of clarification.

*Yours sincerely,*

*Paul Priestly*  


PAUL PRIESTLY

Finance and  
PersonnelCentral Procurement Directorate  
helping business to buy the best value for money

## Instructions to Tenderers

**Project Title:** DRD - The Supply and Delivery of Permanent and Temporary Road Traffic Signs 2012

**Project Ref:** P8108

### 1. Background

The Public Contracts Regulations 2006 (as amended) apply to this competition.

A Tender shall only be accepted if;

- It is received before **3pm on Tuesday 7 August 2012;**
- the submission is in the English language and prices in pounds sterling; and
- it is complete and fully compliant with the requirements detailed in the tender documentation.

Your Tender should be uploaded within eSourcing NI following the step by step instructions at Annex A.

### 2. Right to Reject and/or Disqualify

The Public Contracts Regulations 2006 (as amended) state the grounds where a Tenderer must be excluded from tendering for government contracts (regulation 23). Questions relating to the mandatory exclusions are included within the Qualification Response.

Tenderers are required to complete these questions in full in order for their Tender to be considered.

The Client and CPD reserve the right to reject or disqualify a Tenderer and/or its consortium partners where:

1. the Tender is completed incorrectly, is incomplete, inadequate or fails to meet the Client's requirements which have been notified to tenderers; and/or
2. the Tenderer and/or its consortium partner(s) is (are) guilty of serious misrepresentation; and/or
3. there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer

and/or its consortium partners; and/or

4. there is an actual or potential conflict of interest arising between the Client and the tenderer and/or its consortium partners. Tenderers are therefore advised to review carefully the prior or current involvement of the Tenderer and its consortium partners with the Client and to notify CPD using the eSourcing NI messaging system prior to submission of their Tender identifying actual or potential conflicts of interest. Tenderers will be required to complete the online 'Conflict of Interest Statement' at the time of tendering.
5. the tenderer directly or indirectly canvasses any official of CPD or the Client, or its officers, members, or agents or seeks to use external influences to distort competition concerning the award of this contract, or who directly or indirectly obtains or attempts to obtain information from such official, officer, member or agent concerning the proposed tender will be disqualified. (This should not however discourage any tenderer from clarifying any part of the documentation included in this competition in accordance with instructions at paragraph 4.
- 6.

### **3. False Information**

Tenderers must ensure that all information included within their tender submission is accurate. The inclusion of information that is found to be false or misleading, may result in the tenderers exclusion from this tender competition.

Furthermore, in the event that false or misleading information comes to light after a tenderer has been awarded a contract, this may be considered as grounds for termination of the contract.

### **4. Tenderer Information Session**

A briefing session will be held **on Friday 6th July 2012** from 10.30am at Clare House, 303 Airport Road West, Belfast. The purpose of this briefing session will be to provide potential suppliers with an overview of the Traffic Signs contract and the proposed procurement process for this competition. The briefing session will be limited to potential suppliers only. Any briefing session will take place on such conditions as the DRD, at its absolute discretion, considers appropriate. In order to attend this briefing session, tenderers must register their intent to attend via the messaging function on eSourcingNI and it is only these tenderers that will be permitted to attend. While attendance at the briefing session is not mandatory, only candidates who have registered their interest in this way will be entitled to attend. The DRD reserves the right, at its sole discretion, to refuse admittance to the briefing session to those parties who have not registered their proposed attendance or otherwise. Candidates should note that the DRD will discuss at the briefing session only that information which is set out in the ITT. Information set out in the ITT shall prevail over any information, which may be given at the briefing session unless a contrary position is confirmed in writing by the DRD. The Authority will discuss the following matters:

1. The Department's provision of composite material
2. Developments in award criteria and weightings
3. Inclusion of product compliance sheet and batch traceability
4. Proposals for contract monitoring

## **5. Tenderer Clarification Requests**

Tenderers may seek clarification in relation to this Tender competition where they consider any part of the documentation or any other aspect of this procurement process is unclear.

Any clarification relating to this procurement must be communicated using the secure messaging function on the eSourcing NI portal. This will provide an audit trail of all clarifications received and responses issued. It is the Tenderers responsibility to monitor clarifications issued and responses received through this portal.

The deadline for receipt of clarifications is **3pm on Friday 27 July 2012.**

Responses to requests for clarification will be communicated by the Central Procurement Directorate to all tenderers through the eSourcing NI messaging system. The identity of the tenderer seeking clarifications will not be disclosed.

Where a tenderer believes that a clarification is confidential in nature, the request for clarification should clearly identify that the tenderer wishes the response to be kept confidential and not communicated to all tenderers.

In all circumstances, the Central Procurement Directorate reserves the right to communicate clarification responses to all tenderers at any stage, at its sole discretion, the clarification should be issued to all tenderers.

Clarification responses shall become part of the tender and must be treated as such by the tenderer.

Should it be necessary for Central Procurement Directorate to amend the tender documentation in any way, prior to receipt of tenders, all tenderers who have downloaded documents will be notified simultaneously via the eSourcing NI portal.

All such amendments will be made 6 calendar days before the closing date of this competition.

**Note:** If changes are made to the to the settings and questions area of a live/running tender within the eSourcing NI portal, suppliers MUST re-submit their response.

## **7. Right to seek information/clarification from Tenderers**

Tenderers may be required to furnish information as to economic and financial standing prior to the award of any tender.

Tenderers may be required to provide clarification of their tenders.

## 8. How your Tender will be assessed

This contract will be awarded on the basis of the Most Economically Advantageous Tender (MEAT).

The assessment process will comprise of three stages; i.e. Selection, Mandatory Award and Award.

Tenderers must not make assumptions that either Central Procurement Directorate or the Client have prior knowledge of their organisation or their service provision. Tenderers will only be evaluated on the information provided in their response.

### Stage 1 - Selection

In order to pass the Selection stage, Tenderers must demonstrate they meet the following minimum standards of technical or professional ability.

|                                    |   |
|------------------------------------|---|
| Experience within the last 3 years | Tenders must clearly demonstrate, using examples (minimum of one) and dates of projects carried out within the last 3 years that the company has the necessary experience of successfully delivering similar signs to those specified in the tender documents. This can be either in the public or private sector. Examples quoted by bidders should be proportionate to the number and value of schedules being bid for. |
| Quality Standards                  | Tenderers <b>must</b> demonstrate that all signs are provided by a Highway Sector Scheme 9A accredited manufacturer. A copy of a current HSS 9A certificate from an accredited manufacturer <b>must</b> be provided.  |

All Tenderers who have demonstrated they meet the above standards will proceed to Stage 2 of the evaluation.

Failure to meet all of the minimum standards of technical or professional ability as detailed below will result in the tender being eliminated from the competition

**Tenderers should note that 'within the last 3 years' refers to within 3 years from the closing date of this tender competition.**

**Pass / Fail: –**

Tenderer's will be assessed on their ability to meet all of the minimum standards of technical or professional ability detailed in this section using the following definitions.



- 
- Pass – Where the Tenderer has fully demonstrated their ability to meet all of the minimum standards of technical or professional ability; and
  - Fail – Where the Tenderer has failed to fully demonstrate their ability to meet all of the minimum standards of technical or professional ability.

### Stage 2 – Mandatory Award

In order to pass the Mandatory Award stage, Tenderers must demonstrate they meet the following criteria.

Tenderers **must** provide confirmation that all items supplied will comply with the relevant requirements of the applicable British Standard, or harmonized European Standard appropriate to the intended use.

Tenderers may bid for one or more or all schedules. Tenderers **must** offer prices for every item on the schedule(s) they are bidding for. **Tenderers will fail this mandatory requirement if all items are not priced for the schedules they are bidding for.**

#### Pass / Fail: –

Tenderers will be assessed on their ability to meet the mandatory award criteria detailed in this section using the following definitions.

- Pass – Where the Tenderer has fully demonstrated their ability to meet the mandatory award criteria; and
- Fail – Where the Tenderer has failed to fully demonstrate their ability to meet the mandatory award criteria.

### Stage 3 – Award Criteria

All tenderers who pass Stage 2 will have their tenders assessed against the quantitative criteria listed within this section.

Whilst every endeavour has been made to provide tenderers with an accurate description of the requirements, tenderers should form their own conclusions about the methods and resources needed to meet those requirements. Neither the Client, nor the Central Procurement Directorate, can accept responsibility for tenderers' assessment of the requirement.

| Quantitative Criteria (Price) | Weight     | Max Score  |
|-------------------------------|------------|------------|
| Price                         | 100        | 500        |
| <b>Total</b>                  | <b>100</b> | <b>500</b> |

#### **Quantitative Assessment (Price)**

There are nine (9) named schedules. Tenderers may bid for one or more or all schedules but each schedule tendered for must be complete. I.e all line items must be priced.

Tenders will be evaluated against the basket items highlighted in yellow in Column A of the pricing schedules. Schedules will be evaluated on the total cost of these items i.e number highlighted multiplied by the unit cost of each associated line. Where schedules do not have basket items identified, then these schedules will be evaluated on the total cost for one (1) number of each item excluding the costs tendered for the extra over (E/O) item.

Only prices for 15 day delivery will be used in the evaluation.

The following formula will be used to evaluate Price.

1. Lowest price tender for each schedule will be awarded the maximum score available [500].
2. On a per schedule basis, to calculate the score for the remaining tenderers' prices, the following formula will be applied. The lowest tendered price divided by the tenderers price multiplied by 500.
3. Where a zero cost offer is made this offer will be assigned a nominal 1 pence value for assessment purposes only.

Tenderers should note that the quantities in the baskets are indicative only and should not be assumed to be a measure of the materials to be ordered under the contract.

Tenderers should note that neither Central Procurement Directorate nor the Client are obliged to accept the lowest or any tender.

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## **9. Format of Response**

Your response must be uploaded within eSourcing NI. Detail on uploading your response is provided at Annex A.

### **Selection Criteria**

Tenderers must respond to each selection criterion by providing the information outlined in section 6 to demonstrate compliance. Questions relating to the selection criteria are contained within the qualification envelope within the eSourcing NI ITT.

### **Mandatory Award Criteria**

Tenderers must respond to the mandatory award criteria by responding to the information outlined in section 6 to demonstrate compliance. Questions relating to the mandatory award criteria are contained within the technical envelope within the eSourcing NI ITT.

### **Award Criteria**

Tenderers are required to upload the Pricing Schedule to the commercial envelope within the eSourcing NI ITT. Prices must only be provided using the supplied Pricing Schedule and should not be included within any other Tender documentation or response envelope.

Tenderers should follow the instructions for submitting your tender within the eSourcing NI portal. Some helpful technical notes are also attached at Annex A.

### **Contract Award**

The award of contract will be made on a per schedule basis using evaluation methodology described in section 6.

## **10. Notes to Tenderers**

### **Help for Suppliers - eSourcing NI**

Tenderers are advised to use the online 'HELP FOR SUPPLIERS' function in the eSourcing NI portal. The content is designed to explain the eSourcing platform in business terms, allowing you to quickly understand the features and benefits of the software.

### **Tendering Costs**

Tenderers will not be entitled to claim, from either Central Procurement Directorate or the Client, any costs or expenses which may be incurred in preparing their tender whether or not it is successful.

### **Period of Validity of Tenders**

Tenderers are required to keep their tenders valid for acceptance for a period of ninety days from the closing date.

### **Confidentiality**

Tenderers should treat the tender documents as private and confidential between the tenderer, the Central Procurement Directorate, the Client and the Client's advisors. Tenderers should note that the Central Procurement Directorate and the Client shall use the tender documents for the purposes of evaluation and that the tender documents held by Central Procurement Directorate will be destroyed in line with the Central Procurement Directorate's disposal schedule.

### **Period of Contract**

The Initial Contract Period will end on the 20 March 2013. There is a provision for 2 further annual extensions. Prices must be fixed for the Initial Contract Period.

### **Contact Details**

Any questions or clarifications relating to this procurement should be communicated using the secure messaging function on the eSourcing NI portal. This will provide a clear audit trail of all communications in relation of this competition.

BravoSolution is the eSourcing managed service provider for the eSourcing NI portal; should tenderers have any queries, or if tenderers are having any problems registering on the portal, please contact BravoSolution's dedicated supplier helpdesk by calling 0800 368 4850 or emailing [help@bravosolution.co.uk](mailto:help@bravosolution.co.uk)

Tenderers will be notified via eSourcing NI as to the outcome of this competition. Please note notification will be sent to the email address tenderers have registered with eSourcing NI. Tenderers should ensure that all contact details relevant to the competition are accurate and updated as required.

### **Complaints Procedure**

Tenderers are advised that details of the Central Procurement Directorate "Complaints Procedure" can be found on the Central Procurement Directorate website at <http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-customers/cpd-complaints-procedure.htm> under the Central Procurement Directorate/Publications section. Tenderers should consult this document if they have concerns regarding any aspect of the procurement process.

### **Security Vetting**

Security Vetting is not required for this contract.

**Transfer of Undertaking and Protection of Employment (TUPE)**

Tenderers are advised to seek their own legal advice with regard to the application of TUPE.

**11. Contract Management**

The successful Contractor's performance on the contract will be regularly monitored using the Supplier Performance Assessment Form at Schedule 3 of the Conditions of Contract. Contractors not delivering on contract requirements is a serious matter. It means the public purse is not getting what it is paying for. If a Contractor fails to reach satisfactory levels of contract performance they will be given a specified time to improve. If, after the specified time, they still fail to reach satisfactory levels of contract performance, the matter will be escalated to senior management in Central Procurement Directorate for further action. If this occurs and their performance still does not improve to satisfactory levels within the specified period, it may be regarded as an act of grave professional misconduct and they may be issued with a Certificate of Unsatisfactory Performance and the contract may be terminated. The issue of a Certificate of Unsatisfactory Performance will result in the contractor being excluded from all procurement competitions being undertaken by Centres of Procurement Expertise on behalf of bodies covered by the Northern Ireland Procurement Policy for a period of twelve months from the date of issue of the certificate. Further details on Contract Management can be found at [http://www.dfpni.gov.uk/pgn\\_0112.pdf](http://www.dfpni.gov.uk/pgn_0112.pdf)

**12. Freedom of Information**

Tenderers should note the provisions of Clause E4 in the Conditions of Contract.

Tenderers are asked to consider if any of the information supplied in the course of this tender competition should not be disclosed because of its sensitivity. Tenderers must complete the online Freedom of Information Statement within the Qualification Response area on eSourcing NI as directed. Tenderers must identify which information is considered commercially sensitive; specify the reasons for its sensitivity, and state the period for which the information will remain sensitive. Central Procurement Directorate will consult with you about sensitive information before making a decision on any Freedom of Information requests received.

Tenderers should be aware that after award of contract, information in relation to the Contract will be published on the Central Procurement Directorate website, this will include the contract title, name and address of the winning Tenderer and the award value. This will be published without further consultation.

## Annex A

### TECHNICAL GUIDE FOR SUBMITTING YOUR TENDER USING eSOURCING NI

#### How to submit your tender using eSourcing NI

1. There are three envelopes which Tenderers must complete;

- a) Qualification
- b) Technical; and
- c) Commercial

##### a. Qualification Envelope

The Qualification Envelope consists of a number of questions relating to the selection criteria in addition to the following standard questions;

- I. List of Sub-Contractors;
- II. Criteria for the Rejection of Economic Operators (Regulation 23);
- III. Form of Tender;
- IV. Organisation Status
- V. Certificate relating to Bona Fide Tender;
- VI. VAT Registration;
- VII. Fair Employment and Treatment (Northern Ireland) Order 1998; and
- VIII. Conflict of Interest Statement.

Tenderers are required to upload responses to each of the selection criterion and any additional attachments specified within the tender documentation.

##### b. Technical Envelope

Tenderers are required to upload responses to each of the mandatory award criterion and any additional attachments specified within the tender documentation.

##### c. Commercial Envelope

Tenderers are required to upload the Pricing Schedule in the Commercial Response Area as directed on eSourcing NI.

Prices must only be provided using within the Pricing Schedule and should not be included within any other Tender documentation. Including pricing information within responses on the qualification or technical envelope will invalidate your tender.

Where the price for an aspect of the service is nil (no cost to client), then Tenderers must state this within the pricing schedule. Costs that are not included within the pricing schedule will be considered to be absorbed by the tenderer. Therefore **all areas of the pricing schedule must be completed in full.**

2. Tenderers may create or edit responses to Envelopes offline, and then import the response into the platform. More information on how to use the system is provided in the Supplier Help Function within eSourcing NI.
3. Ensure you allow sufficient time to follow the instructions and successfully submit your response. Central Procurement Directorate cannot accept responsibility for transmissions delays. Documentation which has been uploaded onto eSourcing NI but not submitted will not be considered.
4. In order to submit your response via eSourcing NI you are required to click 'My Response' in the menu on the left hand side of the screen and then click 'Create Response' to answer the on-line questions and upload attachments where appropriate within the Qualification, Technical and Commercial Response areas.
5. Submitted responses may continue to be modified even until the Closing Date and Time. In this case, each act of saving a modification to the response will create a new version of the response. The Buyer will evaluate the Supplier using the latest response submitted.
6. Once you have entered your response and attached all the requested documents, you must click '**Submit Response**'. Please note that documents must be formally submitted prior to the closing date, in order to be considered for evaluation.
7. Your tender will only become visible to the Buyer after the closing date and time.
8. When uploading your response, please be aware of the speed of your Internet connection, your system configuration and general web traffic may impact on the time taken to complete the transaction. **Loading of submissions must be completed by the closing date and time.** Please do **NOT** wait until near the closing time on the Tender return date.
9. If you experience difficulties with the system, please contact BravoSolution's dedicated supplier helpdesk by calling 0800 368 4850 or emailing [help@bravosolution.co.uk](mailto:help@bravosolution.co.uk)



From the Permanent Secretary  
**Paul Priestly**



Department for  
**Regional  
Development**  
[www.drdrni.gov.uk](http://www.drdrni.gov.uk)

Mr David Connolly  
Signs & Equipment Ltd (In Liquidation)  
Unit 20a  
149 Glen Road  
COMBER  
Co Down  
BT23 5QU

Room 701  
Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 8GB  
Telephone: (028) 9054 1175  
Facsimile: (028) 90 54 1120  
Email: [paul.priestly@drdrni.gov.uk](mailto:paul.priestly@drdrni.gov.uk)

Your reference:  
Our reference: PSDRD 372/08  
18 September 2008

Dear Mr Connolly,

Your letter of 21 August 2008 to Conor Murphy MP, MLA, refers. The Minister's office has asked me to reply.

In relation to your Freedom of Information request that is being handled by Dr Murray, I would confirm that my Department can only provide access to documentation which it holds. In this respect, I understand that you have already made contact with at least one of the two officials referred to in Dr Murray's letter and that you have inspected the information that he had available.

In relation to the second paragraph of your letter, you have made very serious and disparaging comments about Mr Allister, the Chief Executive of Roads Service, which question his integrity and impartiality. I refute your assertion that Mr Allister has in some way impeded the investigative process. He and his staff have, to my knowledge, readily responded to numerous requests from you and your representatives for meetings and information. I have also been assured by Mr Balfour, that Mr Allister and Roads Service staff have given him their full co-operation, and that he has been given full and unfettered access to all Roads Service staff and files, throughout the course of his enquiries. Mr Allister has continually stated his desire to have your concerns fully investigated, as he would wish to know if Roads Service staff had acted inappropriately, or if there had been any procedural shortcomings.

Notwithstanding the above, I would take this opportunity to reaffirm that the conduct of the ongoing investigation of your allegations is entirely independent of, and free from, the influence of any Roads Service officials.

Regarding the conduct of the investigation, I again have to take issue with your comments about Mr Balfour's competence, as he is a professionally qualified internal auditor. I am satisfied that the investigation is being conducted properly, albeit that it has, for a variety of reasons, taken much longer to bring it to a conclusion than all parties would have wished. Regrettably, I am unable to provide a more detailed response on the issue you have raised, as you have not provided sufficient detail about the information which you consider Mr Balfour may not have considered as part of his investigation. However, as has been stated on many previous occasions, you are invited to supply Mr Balfour with any information you consider may assist him in his enquiries.



AN ROINN  
**Forbartha Réigiúnaí**  
MÁNNYSTRIE FUR  
**Kintra Pairts Fordèrin**

As I am keen to draw the investigation to a close as soon as possible, I would ask you to send any additional evidence that you would like to be considered, to Mr Balfour, by 26 September 2008. Alternatively, if you would like more time to allow you to gather any additional information, please advise me by return. I will ensure that the investigation does not conclude until you have confirmed that you have provided all of the evidence that you intend to submit.

I look forward to hearing from you.

*Yours sincerely,*

*Paul Priestly*  


**PAUL PRIESTLY**

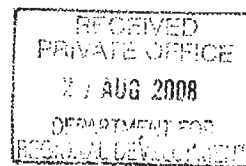
TOF/329/2008

## ***Signs & Equipment Ltd*** (in Liquidation)

Tel: 028 90 449955  
Fax: 028 90 449966

Unit 20A  
149 Glen Road  
Comber  
Co Down  
BT23 5QU

Conor Murphy MP MLA  
Minister, Department for Regional Development  
Clarence Court  
10/18 Adelaide Street  
BELFAST BT2 8GB



21 August 2008

Dear Mr Murphy,

### **TENDER FOR THE SUPPLY AND DELIVERY OF PERMANENT AND TEMPORARY ROAD TRAFFIC SIGNS**

We received, yesterday, from your Dr Andrew Murray his response to our initial questions put to him on 12 June (10 weeks ago) in his office. This response amounts to little more than a written account of the answers given in his office that day, but with some detail as to where we can view the papers concerned as held by Road Service; this I am told was a considerable exercise. The broad tone of his letter indicates that we have got to source most of the relevant information directly from your agents/advisors GPA/CPD. One would have thought that since they were acting purely on your behalf that you could have taken it upon yourself to bring to hand all documents related to what were your contracts. Notwithstanding this we will now endeavour to put this process in motion via GPA/CPD. You would perhaps use your influence to ensure that this will be expedited promptly.

I feel it must be said that given the many years that have been spent trying to have this entire matter properly examined, and the fact that this has never been allowed because of the actions and influence of one individual; he being the one responsible for virtually all of the methods and practices which have created the situation that we like so many others know needs to be explained. Since everyone from Dr Murray down who may be involved in providing us with information required fall under the sphere of influence and control of that individual, Mr G Allister, as mentioned above and who is now Road Service Chief Executive. What action will be taken to ensure that he cannot be allowed to influence this ongoing investigation?

Conor Murphy MP MLA - 21 August 2008

In respect of the internal investigation initiated by N.I.A.O. almost three years ago and being carried out by your Mr Ronnie Balfour we are now in possession of information that would indicate that documents which would lie central to any proper exploration of the facts have, after all this time, not even been accessed by him. This must be seen as a measure of the ineptitude and incompetence of the individual involved and clearly displays that there is no desire or will to see this matter concluded. Is now not the time for you to ask the Audit Office to appoint someone of competence to properly see this process through?

Yours sincerely,

A handwritten signature in black ink, appearing to be 'David Connolly', with a long horizontal line extending to the right.

DAVID CONNOLLY

Cc Nigel Dodds, MP, MLA

Cc Mrs Iris Robinson, MP, MLA

Cc Patrick O'Neill, NIAO

From the Permanent Secretary  
**Paul Priestly**



Department for  
**Regional  
Development**  
[www.drdni.gov.uk](http://www.drdni.gov.uk)

Mr David Connolly  
Signs & Equipment Ltd (in liquidation)  
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Room 701  
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10-18 Adelaide Street  
BELFAST  
BT2 8GB  
Telephone: (028) 9054 1175  
Facsimile: (028) 90 54 1120  
Email: [paul.priestly@drdni.gov.uk](mailto:paul.priestly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 16/09  
20 January 2009

*Dear Mr Connolly,*

**LETTER OF COMPLAINT TO THE BBC**

Thank you for your letter of 15 January in which you expressed your views concerning the letter of complaint I sent to Mr Peter Johnson, Controller of the BBC.

As you will appreciate we regard this as a matter between the Department and the BBC. However you should note that they have already acknowledged that some of the reporting was ambiguous and offered to issue a statement of clarification on certain matters.

In your letter you appear to be indicating that you have now provided to the NIAO and the investigation team all of the evidence that you wish to have considered as part of the review. I share your desire to have this matter brought to a conclusion therefore I will now be asking Mr Balfour to bring the investigation to a conclusion as soon as possible. I suggest that we await the publication of the report by the investigation team who will no doubt offer comment on all of the substantive matters raised by you.

*Yours sincerely,*

*P. C. Priestly*

**PAUL PRIESTLY**

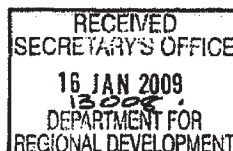


AN ROINN  
**Forbartha Réigiúnaí**  
MÄNNYSTRIE FÜR  
**Kintra Pairts Fordèrin**

## ***Signs & Equipment Ltd (in Liquidation)***

Tel: 028 90 449955  
 Fax: 028 90 449966  
 Email: [trafficsignsni@btconnect.com](mailto:trafficsignsni@btconnect.com)

Unit 20A  
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 Comber  
 Co Down  
 BT23 5QU



Paul Priestly Esq  
 Permanent Secretary  
 Department for Regional Development  
 Clarence Court  
 10/18 Adelaide Street  
 BELFAST BT2 8GB

15 January 2009

Dear Sir,

I am in possession of a copy of a letter of complaint from you to Mr Peter Johnston, Controller, BBC Northern Ireland and I am shocked that someone in your position should engage in such a process given your clearly limited grasp of the facts surrounding this entire matter.

I shall deal with the points of your letter as they were written.

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

Everything that Julian O'Neill broadcast was truthful, accurate and fully evidenced to him, virtually all of it by Government papers properly and legally acquired by way of Freedom of Information and other methods. Given the breadth of information to which he had access, the short report he presented was both fair and impartial and he never attempted to do other than expose our grievance with your Department and to highlight the time and effort needed to have the actions of Civil Servants examined and exposed.

**"For example, the report wrongly stated that Mr Connolly's company had received no Government financial aid was not awarded any parts of the contracts and that LEDU was a major shareholder in its rival in the process, PWS (Ireland) Ltd. DRD was not given the opportunity to correct these serious factual inaccuracies".**

forthcoming and we had no way of knowing when, or indeed if it ever would, we sought and were granted an FOI request from your Minister, Mr Conor Murphy, in order that we could access the necessary documents to attempt to reach some conclusions of our own. Your Auditor had had access to this information from the outset and we now know from the papers we viewed that he had inspected them in 2007. When the DRD Auditor, a few months ago, telephoned me to ask for my views on these papers (many of which we at that stage had not yet received), I found this odd (it was the first time he had ever contacted me) and even more so when I got the last of those papers in December 2008 and found that he himself had inspected them in 2007. Why did he need my views when he himself had read them? The grounds of my complaint have never altered from the first day I presented them to the Northern Ireland Audit Office and your attempt to use the foregoing as an excuse for your Department's delay in bringing this to a head must be seen for what it is.

**"There is an expectation that the BBC as a public service broadcaster will act responsibly and competently and exercise an appropriate measure of judgement and discretion when dealing with sensitive matters of fact, especially when the reputation and character of individuals are being drawn into question and the issues being discussed are still the subject of an ongoing investigation".**

When you research all of the information as set out above and it is found to be correct just as the BBC did before they broadcast it, I hope you will see fit to proffer the necessary apologies to those concerned. With regard to the reputation and character of particular individuals within DRD; this can only be decided when all investigations are complete. Since those very individuals are the ones who have been most responsible for delaying this, it remains to be seen.

**"In short, the report was inaccurate, one sided and did not show even-handedness. The Department expects BBC Newsline to acknowledge the report contained numerous factual inaccuracies and provided a totally unbalanced report, which misrepresented the facts of the situation".**

I refute this comment absolutely and see nothing in the report for which the Reporter or his Organisation should feel the need to be reproach themselves. The notion that this report in any way misrepresents the facts is absurd and it is such a pity that the whole of what the BBC recorded had not been shown regardless of the feelings or sensibilities of any party. If it is found necessary to address or acknowledge any of your claimed inaccuracies, that could only be achieved, by putting out the whole story and thus allow the public to make up their own minds.



In conclusion Mr Priestly, I see this entire exercise as an attempt to suppress proper reporting of events worthy of exposure and reinforce the smoke screen surrounding those of your number who for so long have been engaged in seriously reprehensible practices.

Yours faithfully,



DAVID CONNOLLY

CC Conor Murphy, MP, MLA, Minister, DRD  
CC Patrick O'Neill, NIAO  
CC Peter Johnston, Controller, BBC  
CC Julian O'Neill, Reporter, BBC  
CC Mrs Iris Robinson, MP, MLA  
CC Peter Bowles, Solicitor

From the Permanent Secretary  
**Paul Priestly**



David Connolly Esq  
Traffic Signs & Equipment Limited  
Unit 149  
Glen Road  
Comber  
Co Down  
BT23 5QU

Room 701  
Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 8GB  
Telephone: (028) 9054 1175  
Facsimile: (028) 90 54 1120  
Email: [paul.priestly@drdni.gov.uk](mailto:paul.priestly@drdni.gov.uk)

Your reference:  
Our reference: PSDRD 36/10  
2 February 2010

*Dear Mr Connolly,*

**INVESTIGATION INTO THE PROCUREMENT OF SIGNS AND ASSOCIATED PRODUCTS BY ROADS SERVICE**

In July 2005 you contacted the Northern Ireland Audit Office (NIAO) and during the following months raised a number of allegations about the tendering and administration of signage contracts by Roads Service.

As you know, the Department acceded to a request from the NIAO to undertake an investigation into your allegations. The investigation started in November 2005 and over the next couple of years, you made several more allegations, which were included within the scope of the investigation.

The investigation is now complete. I am therefore enclosing a copy of the final report, together with a copy of my letter to Mr Kieran Donnelly, Comptroller & Auditor General, for your information.

The allegations have been thoroughly investigated and each is dealt with in the report. I take much comfort from the outcome which shows that in most cases there is no evidence to support the allegations you made. Nevertheless, the report does identify a number of procedural and process failings. I want to assure you that lessons have been learnt from this and the recommendations in the report will be addressed.

I acknowledge that this has been a difficult situation for you and that the investigation has taken longer than any of us had hoped. But we wanted to ensure that the investigation was thorough and got to the bottom of your allegations. It has also been difficult for staff in the Department, who have had these allegations hanging over them for several years. I hope that you will feel able to agree that the allegations you raised have now been fully addressed and that all concerned can now move on.

*Yours sincerely,*

*Paul Priestly*

**PAUL PRIESTLY**



## AUDIT RECOMMENDATIONS

**AUDIT REPORT:**      **Investigation into the Procurement and Administration of Contract for the Supply and Delivery of Permanent and Temporary Road Traffic Signs and Associated Products by Roads Service**

| <u>Recommendations</u> |   |                           |
|------------------------|---|---------------------------|
| <u>Para Ref</u>        |   | <u>Status</u>             |
| 6.1.2                  | CPD should ensure its revised procedures for key stages of the tendering process detail all documentation requirements and ensure that the process is operating effectively. The process should include a requirement for formal sign-off by line management at each of the key stages e.g. when evaluation criteria/sub criteria are agreed and should be subject to line management review to confirm that the process has been carried out in accordance with CPD's Quality Assurance Procedures.  | <b><u>Implemented</u></b> |
| 6.1.3                  | Whilst we acknowledge that the transition from purely cost based evaluation to quality/price evaluation is now embedded, where further changes to the evaluation criteria or evaluation methods are being introduced, CPD in conjunction with Roads Service should consider the merits of providing a pre-briefing session for all of the contractors invited to tender. The pre-briefing could be given to all of the contractors simultaneously and would give staff the opportunity to explain the new processes and for contractors to raise any queries with the objective of maximising the number of compliant tenders.  | <b><u>Implemented</u></b> |
| 6.1.4                  | Management in Roads Service, in conjunction with staff in Account N.I, should ensure that reports showing expenditure on specific contracts and for specific suppliers can be generated for management / monitoring purposes.   | <b><u>Implemented</u></b> |
| 6.1.5                  | Management in all Roads Service Divisions should ensure that the order monitoring system for signs is operating effectively and on a consistent basis and that all signs purchased are being captured for monitoring purposes. The spreadsheet should be updated at the time orders are placed.   | <b><u>Implemented</u></b> |
| 6.1.6                  | In light of the introduction of Account N.I, Roads Service should review its procedures for ordering signs. Procedural guidance should be updated and circulated to relevant staff and be reviewed periodically thereafter.   | <b><u>Implemented</u></b> |
| 6.1.7                  | Management should consider providing staff involved in ordering signs (Divisional staff and Area Buyers) with additional information and reference guides on the signs specified in the contract schedules. For example, the contract could specify diagram numbers as well as including the more general reference to 'warning signs' or 'triangular signs'. This should reduce the scope for ambiguity and errors when placing orders and make it clearer to staff under which schedule a sign should be ordered. In addition and following the award of new contracts, updated contract schedules should be circulated to and utilised by Area Buyers on a timely basis thus ensuring that orders are placed with the correct suppliers. | <b><u>Implemented</u></b> |
| 6.1.8                  | All orders should be checked to ensure that they have been placed with the correct supplier in accordance with the schedules awarded in the contract. Details of this check should be retained for management / audit trail purposes. In addition, all documentation relating to orders placed should be held securely and in line with disposal schedules for management / audit trail purposes.   | <b><u>Implemented</u></b> |
| 6.1.9                  | Signs should only be purchased from approved suppliers as listed in the appropriate contract schedule. In the event that the nominated supplier is unable to fulfil an order, the order should be placed with the next best supplier.   | <b><u>Implemented</u></b> |

| <u>Recommendations</u>   |  | <u>Para Ref</u> | <u>Status</u>                    |
|--|--|-----------------|----------------------------------|
| Roads Service staff should be reminded that Procurement Control Limits (PCL) are to be adhered to at all times, so that the required number of quotations are sought or a formal tendering process is initiated where there is a requirement to purchase goods/supplies for which a contract has not been established.   |  | <b>6.1.10</b>   | <b><u>Implemented</u></b>        |
| CPD guidance should be issued to all assessment panel members instructing them to retain any notes taken during the course of site visits. These notes should then be held on the eSourcingNI tender management system to maintain a complete audit trail.   |  | <b>6.1.11</b>   | <b><u>No longer relevant</u></b> |
| When companies are required to conduct practical demonstrations as part of the assessment process, evaluation panel members should confirm that signs are manufactured to the correct dimensions as well as ensuring that the content is correct. All sample signs manufactured for the evaluation purposes should also be retained for management / audit trail purposes for the life of the contract.  |  | <b>6.1.12</b>   | <b><u>Implemented</u></b>        |
| Assessment panel members should ensure that there is sufficient information recorded on evaluation sheets to support the markings provided. For example, where a supplier is being awarded higher/lower marks than his competitors, the basis/rationale for the higher/lower marking should be clearly documented.   |  | <b>6.1.13</b>   | <b><u>Implemented</u></b>        |
| Whilst acknowledging that the use of competitive tendering should ensure that value for money is achieved, Roads Service/CPD should continue to carry out periodic benchmarking exercises with other comparable organisations involved in the procurement of road signs to obtain additional assurance that value for money is being achieved.   |  | <b>6.1.14</b>   | <b><u>Implemented</u></b>        |
| In the event that contracts have to be extended beyond the original term, approval should be obtained by DRD Permanent Secretary (to check with CPD). Formal notification of the extension should take place prior to the expiry date of the current contract. In addition, the consent of suppliers should be sought and recorded on the eSourcingNI management system to maintain a complete audit trail.  |  | <b>6.1.15</b>   | <b><u>Implemented</u></b>        |
| Roads Service should consider the arrangements for conducting sign erection work to determine if the current approach e.g. use of Term Contracts for the Maintenance and Improvements of Structures is the most appropriate and economic method for completing such work. In addition, Roads Service, in conjunction with CPD, should continue to research the market place to determine if there would be enough companies with the capability of undertaking signage work on a turnkey basis, to warrant the establishment of a contract for these purposes. |  | <b>6.1.16</b>   | <b><u>Implemented</u></b>        |
| Roads Service should review the current arrangements for the provision of information and diversion signs and, where it is anticipated that aggregated spend will exceed the competitive tendering threshold (currently £30k), initiate a formal procurement exercise with a view to establishing a contract for these purposes.   |  | <b>6.1.17</b>   | <b><u>Implemented</u></b>        |
| Programming of signage work across Roads Service Directorates should be planned and co-ordinated in a more effective manner so that, as far as possible, signs are not purchased in advance of need but only when a suitable timeslot for completing the work has been identified.   |  | <b>6.1.18</b>   | <b><u>Implemented</u></b>        |
| Roads Service management should ensure that all works orders are provided in writing and issued to contractors prior to the commencement of work. In the event that emergency work is required and an order cannot be issued in advance, the order should be completed as soon as possible after and recorded as a confirmation order.   |  | <b>6.1.19</b>   | <b><u>Implemented</u></b>        |
| Roads Service should ensure that completion certificates are issued on a timelier basis following confirmation that work has been completed satisfactorily in accordance with the works order.   |  | <b>6.1.20</b>   | <b><u>Implemented</u></b>        |

| <u>Recommendations</u>  | <u>Para Ref</u> | <u>Status</u>      |
|---|-----------------|--------------------|
| <p>We consider that management should review the content of the conflicts of interest declaration and issue additional explanatory guidance to staff involved in the procurement process. Potentially this could include some examples of scenarios where perceived / actual Conflict of Interest might exist and how this should be declared. CPD and Roads Service should agree (if appropriate with Departmental Solicitors Office) a suitable form of words to be included in both the 1<sup>st</sup> and 2<sup>nd</sup> declarations which, reflecting the obligations set out in the NICS Code of Ethics, clearly asks panel members to declare any perceived / actual conflict of interest that relate to the tender project (1<sup>st</sup> declaration) and the tenderers (2<sup>nd</sup> declaration). This declaration should be signed by all panel members. Roads Service guidance (RSPPG_P004) should be updated to reflect any revised wording. In addition, organisations such as CPD and Roads Service should give careful consideration to the application of the rules relating to the acceptance of outside appointments by civil servants to safeguard both organisations and individual officers against criticism. In certain situations, the application of waiting periods or behavioural conditions may be appropriate.</p> | 6.1.21          | <u>Implemented</u> |

## Correspondence of 29 January 2014 from David Connolly

**Saunders, Danielle**

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**Subject:** FW: Documents 3 and 5

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**From:** Traffic Signs & Equipment Limited [<mailto:trafficsignsni@btconnect.com>]  
**Sent:** 29 January 2014 11:10  
**To:** Treanor, Aoibhinn  
**Subject:** RE: Documents 3 and 5

Aoibhinn,

Further to the details you received in recent days I answer 3 & 5 below.

3. The evidence on item 3 lies in the large volume of Court papers which I am not currently in possession of. I will continue to source it but in any event since they made such a statement should it not be demanded that they fully evidence it?
5. In 2004 signs for the M2 motorway were ordered and paid for in the sum of £61,000-00 and were supposedly delivered to Airport Road. Invoicing even included a delivery charge (which is never allowed). RS would later state that this was erroneous and that the signs never left PWS premises. During the period 2004/06 Messrs HBS under a legitimate contract were instructed to provide posts and structures on which to mount these signs. In 2006 RS engaged with PWS to erect these signs getting from them a quotation and giving all instructions directly to them throughout the erection period. When around the time of their erection they realised that this illegible procurement had been rumbled they then attempted to make believe that Messrs HBS had in fact done the erection and in fact many months after the entire project was complete they would put out an order to HBS instructing them to do the erection. This was clearly a rouse which would allow them to pay for the erection element through a legitimate contractor. The total spend for signs supply, HBS sign post erection and the erection of the sign plates amounted to upwards of £200,000. This is detailed in Audit Office records of letters to Iris Robinson. The total cost of this project would have been very much greater than this figure since traffic management design and overall management was by RS – we will never know the full figure. What we do know is that the majority of these signs were demolished and removed to make way for the new M2 widening. All plans for the M2 project were already in place with contractors before this PWS project even commenced.

I would request as previously discussed the opportunity to speak with the Committee or some members of it to fully expand on many aspects of this whole affair given the personal impact this has had on so many people.

Regards,

David

①

From: Balfour, Ronnie  
 Sent: 10 October 2002 11:53  
 To: [REDACTED]  
 Subject: FW: Signs & Equipment

For information.

Please continue to liaise with [REDACTED] so that we can expedite decisions about the need for further work.

Ronnie

-----Original Message-----

From: [REDACTED]  
 Sent: 10 October 2002 10:36  
 To: Balfour, Ronnie  
 Subject: RE: Signs & Equipment

'onnie

Geoff says he is content.

Regards

-----Original Message-----

From: Balfour, Ronnie  
 Sent: 09 October 2002 16:41  
 To: [REDACTED]  
 Subject: RE: Signs & Equipment

Please relay the following to Geoff.

In my absence [REDACTED] tried to contact [REDACTED], who is on annual leave, and in his absence she spoke to [REDACTED]. He indicated that he is pursuing lines of enquiry per your note and states that he should be in a position to provide at least some initial findings shortly. I think that we should await his findings and then determine if, or to what extent, further work may be required by us, either independently or on a collaborative basis. Although of little consolation, the recommendations made during the monitoring validation exercise seem to have touched on the right areas based on Mr C's note.

Happy to discuss at your convenience.

PS: perhaps the impending changes to the political situation may take some of the wind out of S & E's sails.

Ronnie

-----Original Message-----

From: [REDACTED]  
 Sent: 03 October 2002 14:53  
 To: McKibbin, Malcolm; Orr, David (Roads); Balfour, Ronnie; Private Office, DRD; 'gerry.anderson@dfpni.gov.uk'  
 Subject: Signs & Equipment

<< File: Mtg re Signs & Equipment.doc >>

Gentlemen

Please see attached from Geoff.

Private Office : This is for the attention of [REDACTED]

Regards



(2)

## ***Signs & Equipment Ltd (in Liquidation)***

Tel: 028 90 449955  
Fax: 028 90 449966  
Email: trafficsignsni@btconnect.com

Unit 20A  
149 Glen Road  
Comber  
Co Down  
BT23 5QU

Dr Andrew Murray  
Director of Network Services  
Roads Service Headquarters  
Clarence Court  
10-18 Adelaide Street  
Belfast  
BT2 8GB

21 July 2008

Dear Dr Murray,

Further to our meeting in your office on 12 June you promised to supply all the information as stated in the brief outline I handed to you at that meeting, copy attached herewith. As yet no response has been received; please advice when we will receive this information?

You will remember a meeting at Stormont last year convened by Mrs Iris Robinson with yourself, Mr G Allister and Mr R Balfour present. Prior to that meeting you provided Mrs Robinson with details of the spend in respect of resigning the M2 motorway. That breakdown included the value of work related to purely to the erection of the signs that was carried out by PWS Ireland Limited. You stated that this element had been the subject of a quotation sought prior to commencement, which was in your possession and that a copy would be made available. Please provide this copy together with the Department's instruction to PWS Ireland Limited defining precisely the scope of the work covered by it.

Yours sincerely,

DAVID CONNOLLY

Cc Conor Murphy MP, MLA  
Cc Iris Robinson MP, MLA  
Cc Patrick O'Neill, NIAO

To be confirmed but  
we feel the inspection  
of papers took place  
in late Nov. 2008.  
All Balfour's stickers  
were attached dated in  
the months just prior  
to our visit.  
David Connolly & Peter Bowles  
Solicitor carried out inspection

**SIGNS & EQUIPMENT LIMITED (in Liquidation)****BRIEF OUTLINE OF THE ITEMS REQUIRED FOR EXAMINATION TO BE  
DISCUSSED WITH DR A. MURRAY ROADS SERVICE ON 12 JUNE 2008**

- All documentations held by Roads Service (RS) and GPA/CPD (acting as your agents) on the entire procurement process in respect of Traffic Signs and associated products Tenders for the periods 99/02, 02/04 and 04/09. This should include all the original information each applicant would have been required to supply in accordance with the Terms and Conditions of each of the various contracts.
- All information showing how the above was judged and examined together with the names of all members of RS/GPA/CPD involved in each of the separate processes. We will also require the structure and accountability of all persons within each Department.
- Copies of all RS instructions to GPA/CPD defining their role within the Tender processes.
- The copies of all communications between RS and other Government Departments in respect of the above by way of email, memo or telephone.

Of the above what elements have been requested or accessed by DRD Internal Auditors during the past two years as part of ongoing investigations?

As stated the above is a brief outline of the documentation required at this initial stage and after accessing this we can more accurately decide the full nature of all further material required.

**DAVID CONNOLLY**

## ***Signs & Equipment Ltd (in Liquidation)***

Tel: 028 90 449955  
Fax: 028 90 449966  
Email: [trafficsignsni@btconnect.com](mailto:trafficsignsni@btconnect.com)

Unit 20A  
149 Glen Road  
Comber  
Co Down  
BT23 5QU

Dr Andrew Murray  
Director of Network Services  
Roads Service Headquarters  
Clarence Court  
10-18 Adelaide Street  
Belfast  
BT2 8GB

18 December 2008

Dear Dr Murray,

### **Tender for the Supply and Delivery of Permanent and Temporary Road Traffic Signs**

I refer to your letter of 16 December and as requested enclose herewith a copy of our letter to you of 3 November which you state had been received but cannot be found.

As you are probably aware we have made an inspection of documents at CPD under Freedom of Information and I would wish to have it recorded that much information, which you stated we would find there since it was absent from your own files held at Ballymena and Airport Road, is now clearly missing. We shall detail this more accurately in due course. Could you please confirm that the Airport Road and Ballymena documents we were given access to contain all of the information held by your Department?

Yours sincerely,

**DAVID CONNOLLY**

CC Iris Robinson, MP, MLA  
CC Patrick O'Neill, NI Audit Office  
CC Conor Murphy, MP, MLA  
CC Nigel Dodds, OBE, MP, MLA

(4)

Geoff.

...hanks. I thought Brian Maxwell (or one of his deputies) was the lead contact - but I'm very happy for Ken to convene the meeting and I will ask Brian to attend personally in view of the sensitivities. I do realise you have played a very helpful role recently, but that was because Mr Connolly's complaints seemed to relate more to the previous contract with which you had an involvement.

David

-----Original Message-----

**From:** Allister, Geoff

**Sent:** 09 November 2004 11:22

**To:** Orr, David (Roads)

**Cc:** Hutton, Ken; [REDACTED]; Harvey Hamilton

**Subject:** Signs Contract

David

To progress the award of the new contract it is important that RS "has its act together". To do this I have asked Ken to convene a meeting of the users including Brian Maxwell to discuss evaluation criteria and weighting, contract period, possible numbers of accepted suppliers etc. CPD are currently awaiting some of this information from RS. I am concerned that we do not appear to have a contract "owner" and I have asked Ken to address this. I am prepared to be the conduit to CPD but need all our users to be aware of the sensitivities.

This is to make you aware that Ken will be requesting Brian, or a suitable deputy, to attend an imminent meeting.

Geoff

he did not have all the evaluation criteria from RS. In particular he referred to on site verification. Roy was also of the opinion that the contracts were for 1 year with options to extend. He subsequently came back and advised me the contracts were for two years with an option to extend. This may raise a problem as Minister Pearson is extremely nervous about contract award to either of the current suppliers for greater than a one year period because of poor past performance. Further, the issue of taking past performance into account in tender evaluation has not been agreed by CPD despite strong views expressed by myself.

The main point here is that none of Connolly's allegations have merit and I believe he is putting down markers for the forthcoming contracts if he gets one or part of one. We, being RS and CPD, must speak with one voice. As you know I am very happy to step back and let others deal with this but I want to be assured that Govt is watertight. I have already had three discussions with Ministers about Connolly. Enough is enough!

Geoff

-----Original Message-----

**From:** Orr, David (Roads)  
**Sent:** 09 November 2004 17:27  
**To:** Maxwell, Brian  
**Subject:** RE: Signs Contract

Brian

Yes indeed - you had explained the difference to me but it had slipped my mind. Thank you.

David

-----Original Message-----

**From:** Maxwell, Brian  
**Sent:** 09 November 2004 17:24  
**To:** Orr, David (Roads)  
**Subject:** RE: Signs Contract

David,

I have explained to Ken, and also to Geoff when we had a meeting which included yourself and Colin Brown back on 9 Sept. that I am engineer to the contract for the signs and that Colin Brown should assume that role for the cones and ancillary equipment contract. There are now 2 contracts whereas in the past both were combined into single contract.

The evaluation criteria, weightings and contract period for the signs contract have all been agreed with CPD and the members of the evaluation panel listed and agreed with CPD on 6 July past.

I don't know why there is now a degree of confusion about this. I shall, however, be meeting with Ken in Ballyme tomorrow morning.

Brian

-----Original Message-----

**From:** Orr, David (Roads)  
**Sent:** 09 November 2004 17:15  
**To:** Allister, Geoff  
**Cc:** Maxwell, Brian  
**Subject:** RE: Signs Contract

(6)

**Traffic Signs & Equipment Limited**

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**From:** Traffic Signs NI  
**Sent:** 28 June 2010 14:29  
**To:** Peter Bowles  
**Subject:** Re Letter to CPD re Contract

Peter,

Comments below re letter you are sending to CPD.

Road Service have confirmed that they are content that the requirement that all traffic signs are provided by a Highway Sector Scheme 9A Accredited Manufacturer.

With regards to their statement that the contract delivery requirements provide adequate assurance on contract performance; surely past history of a supplier, as provided from references, including Road Service if available, must be considered. At least such checks with references is more satisfactory than accepting a bland written statement.

Since Road Service have now given HSS 9A the level of importance and relevance that they have, and since this can only be achieved with very high level professional scrutiny by independent and impartial assessors with a intimate knowledge of the processes involved in traffic sign manufacture and all the necessary quality management systems needed to achieve this, what precisely is the function, if any, of the assessment panel. How might they be better qualified to have a greater knowledge than the assessors mentioned above? This entire aspect becomes all the more relevant given the huge level of influence (40%) they can bring to bear in awarding the contract.

As you know Peter at the meeting the C and AG asked the question as to why any subjective/qualitative view should be considered or required if HSS 9A was to be the standard requirement; all present concurred with this view.

When later we met with CPD (Bell/Glover) this was again addressed and they held the view that HSS 9A should negate the need for any qualitative aspect in the contract.

Days later Mr Glover was to meet with Road Service to finalise all matters relating to this contract.

Days later Road Service overruled this and went back to the situation where their people (the assessment panel) would have the deciding influence, which would mean that we could be the subject of old prejudices.

David Connolly

Traffic Signs & Equipment Limited,  
40A Ballystockart Road, Comber, Co Down, BT23 5QY

Tel: 02891 873344 Fax: 02891 871328







Northern Ireland  
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#### Appendix 4

# List of Witnesses who Gave Oral Evidence to the Committee



## List of Witnesses who Gave Oral Evidence to the Committee

1. Mr Richard Pengelly, Accounting Officer, Department for Regional Development (the Department);
2. Ms Deborah McNeilly, Acting Deputy Secretary, Department for Regional Development;
3. Mr Gary Fair, Director, Shareholder Unit, Department for Regional Development
4. Ms Sara Venning, Interim Chief Executive, Northern Ireland Water;
5. Dr Andrew Murray, Chief Executive, Transport NI;
6. Dr Malcolm McKibben, Head of the Northern Ireland Civil Service and former Chief Executive of Roads Service;
7. Mr Paul Priestly, Strategic Investment Board and former Accounting Officer, Department for Regional Development;
8. Mr Geoff Allister, retired and former Chief Executive of Roads Service;
9. Mr Kieran Donnelly, Comptroller and Auditor General (C&AG); and
10. Ms Fiona Hamill, Treasury Officer of Accounts.
11. Mr Mike Brennan, Acting Treasury Officer of Accounts.





Northern Ireland  
Assembly

Appendix 5

# Other Correspondence



# Copy of letter from Roads Service to Iris Robinson MP MLA



IRIS ROBINSON MP MLA

PAGE 01

Mrs Iris Robinson MP MLA  
2b James Street  
NEWTOWNARDS  
Co Down  
BT23 4DY

**Eastern Division**  
Hydebank  
4 Hospital Road  
Belfast  
BT8 8JL

Telephone: (028) 9025 3000  
Fax: (028) 9025 3220  
Textphone number: 028 9054 0022  
Email:  
www.roadsni.gov.uk

Being Dealt With By: D Grills  
Direct Line: 9025 3239

Your ref: IR/CK/3434  
Our ref: MT 31797

Date: 22 May 2006

Dear Mrs Robinson

## REPLACEMENT DIRECTION SIGNS ON M2 MOTORWAY

Thank you for your letter to Mr Joe Drew dated 27 April 2006, regarding the replacement of direction signage on the M2 motorway. Mr Drew has now retired and I have been appointed as Divisional Roads Manager for Eastern Division.

I am pleased to confirm that Roads Service has recently completed a programme to upgrade a number of direction signs on the M2 motorway, between Belfast and Junction 5 at Templepatrick. The existing signs had been in place for many years. While these were not sub-standard, they did show signs of age and had reached the end of their useful life. In 2004, Roads Service designed 24 replacement signs and purchased these from PWS Ireland Limited, under our Term Contract for the Supply of Traffic Signs.

When the new signs had been received, our internal Consultant began design work for the new sign posts, bases and safety fences. Construction work began in Summer 2005 and final erection of the signs took place during Spring 2006. This work was carried out under our Term Contract for Maintenance and Improvement of Structures, which is held by Rodgers Contracts Limited.

In total, the replacement signage cost approximately £52,000, while work to upgrade sign posts, erect replacement signs and provide safety fencing cost approximately £135,000.

I trust this fully answers all of your questions and explains our position on this matter.

Yours sincerely

*A. McC Murray*

A McC MURRAY (JRF)  
Divisional Roads Manager



As Issued under the Document to  
Regional  
Transportation  
www.doeni.gov.uk



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Printed in Northern Ireland by The Stationery Office Limited  
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ISBN 978-0-339-60523-7



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