



Northern Ireland
Assembly

Public Accounts Committee

OFFICIAL REPORT (Hansard)

NIAO Report - 'Cross-border broadband initiative: the Bytel project': DETI, DFP, SEUPB and NIAO

18 March 2015

NORTHERN IRELAND ASSEMBLY

Public Accounts Committee

NIAO Report - 'Cross-border broadband initiative: the Bytel project': DETI, DFP, SEUPB and NIAO

18 March 2015

Members present for all or part of the proceedings:

Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Roy Beggs
Mr Alex Easton
Mr Paul Girvan
Mr Seán Rogers

Witnesses:

Dr Andrew McCormick	Department of Enterprise, Trade and Investment
Mr Eugene Rooney	Department of Enterprise, Trade and Investment
Ms Alison Caldwell	Department of Finance and Personnel
Mr Jack Layberry	Department of Finance and Personnel
Mr David Sterling	Department of Finance and Personnel
Mr Kieran Donnelly	Northern Ireland Audit Office
Mr Pat Colgan	Special EU Programmes Body

The Chairperson (Ms Boyle): We have with us today Mr David Sterling, the accounting officer for the Department of Finance and Personnel; Dr Andrew McCormick, the accounting officer for the Department of Enterprise, Trade and Investment; Mr Eugene Rooney, the senior finance director in DETI; and Mr Pat Colgan, the chief executive of the Special EU Programmes Body (SEUPB). We also have with us Mr Jack Layberry, the Treasury Officer of Accounts (TOA); Mr Kieran Donnelly, the Comptroller and Auditor General (C&AG); and Ms Alison Caldwell from DFP. I thank you all for joining us. You are all very welcome.

I will open by asking you a couple of questions, Dr McCormick. The facts of the case speak for themselves. Do you accept that the project was mishandled from the outset by your Department?

Dr Andrew McCormick (Department of Enterprise, Trade and Investment): Fundamentally, yes. There were grave weaknesses in the processes, as the Northern Ireland Audit Office (NIAO) report draws out, at the initial appraisal stage and at further steps along the way. All of us here recognise and acknowledge that the project was not handled as it should have been, and that leaves a lot of questions unanswered, including whether value was obtained. There was some success from the project, in that improvement in broadband services was delivered, but, in the context of the fundamental processes not being as they should have been, it is not possible to be sure that we got value for money. Therefore, there is a lot to be concerned about, not to mention the points that you made earlier. I appreciate what you said and recognise that, in our answers, we will have to be careful

about what we say about the ongoing legal proceedings. Apologies if that limits some of the things that we can say this afternoon.

The Chairperson (Ms Boyle): Thank you.

Dr McCormick and Mr Colgan, this was a cross-border project that required effective cooperation between DFP, DETI and SEUPB. In my and the Committee's view, there was a catalogue of mismanagement, poor communication and inadequate responses to warnings. What steps have been taken to ensure that those failings never occur in similar projects?

Dr McCormick: We have taken a lot of corrective action to improve procedures and processes, including having a new casework-handling arrangement in DETI, with a clear separation of roles between those sponsoring and leading on projects and those responsible for approving and authorising finance. We have a committee process that allows that to be tested in a much more rigorous way. A fundamental aspect of what is at issue here was that too much weight and emphasis was being placed on the role of an individual unit in the Department. We have undertaken those steps. There have also been significant improvements made in dealing with post-project evaluation.

One of the root-cause issues with some of the investigative processes was that too much was being done by one unit. We are clear that, where allegations emerge that need to be investigated, the first course of action to take is to make sure that there is some independent check in place. That is a consistent theme with whistle-blowing issues, in this context and in others. There has to be a rigorous and firm initial investigation so that the primary facts are established before any conclusions are reached. There have been very significant improvements made in the process since the time of this case, in 2004.

The Chairperson (Ms Boyle): Mr Colgan, do you have anything to add?

Mr Pat Colgan (Special EU Programmes Body): Not a lot. I just wish to say that the regulatory environment for the current suite of problems from 2007 to 2014 and for the newer suite of problems from 2014 to 2020 is quite different from that which was in place from 2000 to 2006. All the controls and mechanisms are based on the regulations as they were then. Dr McCormick is absolutely right: the big thing that we have learnt is to separate the verification and control of expenditure, claims, and so on, which happened in the period from 2007 to 2013, very strongly from any institution or organisation involved in the implementation or monitoring of projects.

The Chairperson (Ms Boyle): Dr McCormick, in figure 8 of the C&AG's report, we can see that the shortcomings in the Bytel project bear an uncanny resemblance to the issue that the Committee identified in the past with DETI's management of the Bioscience and Technology Institute (BTI). I have that report with me today. There appear to have been endemic problems with project management and oversight in your Department around that time. What has been done to address those serious deficiencies?

Dr McCormick: As you said, Chair, this investigation and the BTI one relate to broadly the same period. Therefore, it was not possible to learn the lessons from BTI in time to apply them to the Bytel project. That is a matter of fact.

The actions taken involve a series of procedural steps that recognise the need to be wary of and alert to all the different aspects that can go wrong, including understanding the project. The first and major lesson for us to learn from the Bytel project is to have good and clear technical expertise. One of the failings is that it was not until quite late in the whole process that people had grasped exactly what was happening in technical terms. That is part of what goes on. We need to be sure of that.

We have issues with improving the oversight of the process of economic appraisal. We need to be sure that economic appraisals and post-project evaluations are fit for purpose. One way in which to do that is to test-drill and make sure that there is senior involvement in and consideration of a selection of those appraisals and evaluations. We have to rely on processes and procedures throughout Departments. People have to know what their jobs are and do them. We cannot look over everybody's shoulder 100% of the time. That is not a practical reality, so how do we, as accounting officers, have an assurance that things are proper and able to be defended? That sometimes involves a random sample being subject to additional scrutiny to check whether something is working; looking for assurance from the appropriate levels throughout Departments and sponsored bodies that

procedures are known, understood and continuously being applied; and making sure that we have processes in place that lead to reappraisal when there are significant changes to projects.

We are also looking at the kind of separation of roles that I talked about before for the casework committee, making sure that internal audit has the power and resources to highlight issues that arise. We have raised awareness through fraud awareness training. That is another essential element of how this moves forward. We are making sure that we have different delegated limits so that, where large sums of money are being approved for expenditure, they have to be referred to an appropriate level. That has to be kept under review and has to be sensitive to experience and circumstance so that we do not make presumptions. We have to avoid presuming that things are OK. Part of the role is the need to have proper oversight of risk and effective audit and risk committee work. All those things should bring challenge and questions. We have audit and risk committees led by independent board members in Departments who ask me, as accounting officer, and the team, as the overseers, independent questions. There is a range of lessons to be learned there. I am happy to say more on that if you wish.

The Chairperson (Ms Boyle): Before I let the Deputy Chairperson in, I will read out recommendation 9 that the Committee made to the Department out of the Bioscience and Technology Institute inquiry:

"The Committee is critical of the haphazard way in which DETI responded to the suspicions of fraud and impropriety in this case, particularly in its consultations with the PSNI. The Committee recommends, therefore, that DETI reviews the adequacy of its fraud response plan, considers whether additional training is required for staff charged with handling fraud cases".

Are you content that your Department has fully implemented that and that you have the resources and expertise to deal with it?

Dr McCormick: A revised fraud response plan was issued, and we have kept that under review in the light of all those recommendations.

Mr David Sterling (Department of Finance and Personnel): I will chip in. I was a witness before the Committee in 2012 on the BTI case, and I was accounting officer in DETI during that period. We put in place a new fraud response plan in 2012 that sought to address all the failings that had been identified in the BTI case. When I was there, I was certainly satisfied that procedures in DETI were much better. I am sure that that remains the case. Now that I am in DFP, I have a responsibility for ensuring that effective fraud response plans are in place across all Departments. We regularly issue guidance on that to them all, including guidance that people should constantly monitor the effectiveness of the plans.

The Chairperson (Ms Boyle): Deputy Chairperson, you wanted in.

Mr Dallat: I was provoked, yes. Perhaps I am far too long on this Committee, but I am really fed up with the fairy tales. This is a modern democracy, in which you would assume that all those procedures would be in place, including all the checks and balances. It reminds me of a trip that I made to Tbilisi in Georgia in eastern Europe a couple of years ago. That is the sort of evidence that was being given there. People were saying, "We are an emerging democracy. We are coming out of being a totalitarian state under Russia and so did not have the systems in place".

Where does the buck stop? Who takes responsibility?

Dr McCormick: We are answerable to the Committee for this case. We recognise that the failings were very grave. We have to apologise for that and do all that we can to ensure that lessons have been learnt and that better systems are in place. We believe that they are. I agree with you that there is not a lot in what went wrong that should not have been right at the time. It is not as if there were not cases in the period before. David and I are long enough in these jobs to have known of cases from decades before. There is no good explanation, but this happened, we have to explain what happened and we will do our best to draw out the facts of what happened. There is no good answer to your question.

Mr Dallat: Chairperson, I admire Dr McCormick's honesty and have the highest respect for him personally, so obviously that is not the reason that I asked the question.

Against the background of where we are at today, with 500 teachers and 1,000 classroom assistants facing the sack, and people not getting operations, can we really wear this by you saying, "Aw, well, we've learnt our lesson"?

Dr McCormick: The question is this: can we be confident that the main lessons of this are such that something like this could not happen again? I always hesitate to say that something can never happen, because everything depends on human behaviour. What we have to do is ensure that the processes and systems are in place to minimise the chance of it happening; that they are applied rigorously; and that we, as accounting officers, and senior staff throughout Departments pay faithful attention to the procedures and give priority in our time to risk management.

We need to also make sure that that is balanced and that we do not become obsessive and over-systematise the place. That leads to slow decision-making and criticism for it, and that is also bad. We have to find a balance that is effective and rigorous and that is genuine in its effectiveness. We are ultimately to be judged on those things by you. That is fundamental to the way in which the constitution works and is very important.

Mr Sterling: I agree with that. You can never guarantee that there will not be a problem, but what I will say now is that I am confident, and I think that Andrew is confident as well, that, in DETI and other Departments, systems are much better now, which means that there should be a much-reduced risk of a recurrence.

Equally, our systems for investigating and handling things when they go wrong are much better now as well. I am confident that the risk of the clear failings in this case happening again is much reduced now.

Mr Dallat: The Committee, as you know, has come under enormous pressure for stifling risk-taking, but surely this was not about risk. You had £20,000 in equipment invoiced at £2 million. Sorry, but is that the type of risk we are being asked to accept?

Dr McCormick: No. Sorry, I would never say that. There is a cultural consequence, where behaviour can be risk-averse, but, and I have said in many discussions within the Department that that is not a consequence of what this Committee does. I have never seen this Committee criticise someone who has said, "I took a risk, and it went wrong". In my experience, that has never happened.

The worse cases that you have dealt with have been those in which process went wrong. Our responsibility is to do process well. That is what we are here for.

Mr Sterling: I got clear advice from the Committee when I was here before about BTI and at least one other DETI case that I should not go away thinking that I needed to become more risk-averse. Rather, the issue is all about managing risk better than we have done in the past.

The Chairperson (Ms Boyle): I thank you for those comments.

Dr McCormick, given that Invest NI has well-established procedures and specialist resources for overseeing grant-assisted projects and assessing the eligibility of grant expenditure, why was the project managed by DETI?

Dr McCormick: The way in which things were organised at the time of the project meant that quite a lot of priority was given to the development of telecoms, especially the ambition to be a leading region for broadband. As a matter of fact, the way in which things were organised was that that responsibility was given to the telecoms policy unit. All those things have evolved since then, and I am very open to the thought that it may be sensible to concentrate expertise in the oversight of grants and transactions. That is something we have been thinking about already, in the context of the review of the Northern Ireland Tourist Board and whether tourism projects can be handled in a different way. A very real and present consideration is what the best way is to ensure that we have dedicated resources that are proportionate to the scale of activity.

In the context of the way in which this emerged, the origin of the project was an opportunity that arose through INTERREG funding to handle things in a certain way. It was not seen at that time as being part of Invest Northern Ireland's remit.

The Chairperson (Ms Boyle): Mr Sterling, you are, as you said, the permanent secretary in the Department of Finance and Personnel. To help us clarify your role in these events, can you tell the Committee when you were in post as the permanent secretary in DETI? That information will assist members in asking further questions.

Mr Sterling: I moved to DETI in March 2008 as a grade 3, where I was in charge of the policy group, which had overall responsibility for the telecoms unit. I was then promoted to assistant secretary in October 2009. I left the Department at the end of June 2014.

Mr Dallat: Dr McCormick, in part 3 of the report, we see that the Department was under considerable pressure to meet targets for payment of grants. Paragraph 3.14 of the report by the Irish C&AG also suggests that you needed to approve the project to meet expenditure targets. Which was more important? Getting the project over the line to meet the N+2 target or ensuring value for money?

Dr McCormick: Of course, value for money is a major consideration. Both of the points that you make are essential.

Mr Dallat: For the purpose of our inquiry, we really need to press you to prioritise them.

Dr McCormick: The point that I put back to you is this: if we had failed to meet the spending deadline, things would not have happened, which would have led to legitimate criticism from MLAs, Committees and the public about resources being lost. That is a grave responsibility, so we absolutely have to do both. We absolutely have to fulfil all the obligations on testing value for money and on meeting deadlines. If we fail to meet the deadlines, nothing happens, and we are all wasting our time. The deadlines matter.

Mr Dallat: Surely in this case, Dr McCormick, you did not achieve both. You got over the line, but what a price to pay.

Dr McCormick: I acknowledge that. In this case, that was completely wrong. I also have accepted, as the report states, that there was an imbalance in the behaviour and thinking at the time, owing to there being a lot of pressure to meet the N+2 deadline. I was very conscious of that in the job that I had at the time. Everyone was pressing for spend to be achieved, in order to avoid resources being lost. However, it is, as I said, equally essential, and arguably more important, to ensure propriety, regularity and value for money. Those are fundamental responsibilities of an accounting officer, and things should not be signed off at any level by any Department without there being satisfaction on those points.

Mr Dallat: You will recall, Dr McCormick, that the project only narrowly passed the threshold required to proceed to the economic appraisal stage. Was that not a warning sign that you needed to have additional checks and balances in place to avoid the inevitable, which was not getting value for money?

Dr McCormick: It is hard to put yourself entirely in the shoes of those who were undertaking those considerations. At the time, there was certainly a major ambition to ensure that broadband was extended and that we maintained a momentum and a success in that area as a region. The truth is that there were significant failings in processing the case, and that should not have happened. I have no defence to offer on those main criticisms.

Mr Dallat: You relied on a single letter as evidence that this was a good project. There was no formal agreement between Aurora and Bytel. Surely the thing was completely out of control by that stage.

Dr McCormick: There was a letter from someone whom we regarded as a reasonable representative of the organisation.

Mr Dallat: Can I ask who it was?

Dr McCormick: The name is available. He was a manager in the organisation, and there was no obvious reason not to believe that he was writing on behalf of the organisation. After all, Aurora is a subsidiary of Bord Gáis. It is a semi-state body and would have been known to our colleagues in the South in the Department of Communications, Marine and Natural Resources (DCMNR), which was the sponsor of Bord Gáis. Therefore, there was some reason to believe that the person was writing with authority.

It is also worth pointing out that the economic appraisal by Deloitte highlighted the importance of that as a major risk to the project and recommended that we took action to tie that down. With hindsight, that should have happened. Clearly, there were steps that we could have taken, based on our knowledge that that was an important risk, but those steps were not taken. We recognise and accept that major mistakes were made on that aspect of the project.

That does not mean that it was so dangerous that the decision should have been taken to not proceed. It is like an amber light on a railway track, which means that you should proceed with caution, as opposed to a red light, which means that you should stop. That is the way in which I would characterise it. The problem that I am acknowledging is that we did not proceed with caution. We proceeded with determination to make it happen, and when the Aurora relationship then broke down, appropriate action was not taken.

Mr Dallat: I am still trying to get this clear in my head, and it is not easy to do so. Given that you had only this single letter of evidence, and you are not even too clear on from whom it came or on what it was about — surely the assessment should have been a lot more rigorous than normal, particularly as the project was only just slipping through in the first place.

Dr McCormick: With hindsight, it is very clear that there should have been a more rigorous appraisal at that stage. There were other weaknesses in the economic appraisal. All that I can say is that the view was taken that there was reason to rely on the Aurora partnership and that it looked as though the project could work. It was attractive, in the sense of providing an opportunity to fulfil the purpose and intention behind the idea, which was to extend access to broadband and increase competition in the market.

We are acknowledging that there should have been fuller and more careful appraisal and scrutiny and more conditions built in and applied through the letter of offer and the checking of the process after the letter of offer was received. Therefore, it was not just the one point in time: all the way through the months and the year after the initial decisions had been taken, there were opportunities to re-examine.

Mr Dallat: I accept what Dr McCormick is saying about the absolute need to deliver. I think in particular of all those small and medium-sized businesses in the border region who desperately needed broadband. If this had happened in the private sector, there would be heads rolling, would there not?

Dr McCormick: I guess so.

Mr Dallat: I will not pursue that.

At paragraph 2.14 of the NIAO report, we read that the appraisal team did not have sufficient expertise to assess properly the technical aspects and costs of the project. It is superfluous for me to say that that is unbelievable — well, almost. If you cannot adequately test what you are being told by a project promoter, surely you will have the wool pulled over your eyes. My really hackneyed question is this: what are you doing to make sure that it does not happen again?

Dr McCormick: I have said already that one of the most important lessons from this case is that, in dealing with any project, it is important to have on your side someone who understands the technicalities in great detail. If that requires us either to have internal staff with that expertise or to retain consultancy advice, that is what we should do. We should make sure that we have got the right expertise explicitly and totally on our side, without any conflict of interest. That is part of how we have to manage these processes. The fact is that it was only when we had the input of Consultants B, as the report refers to them, at quite a late stage of the process that full and proper technical understanding emerged. That is one of the biggest points in the story.

Mr Dallat: I am listening carefully to Dr McCormick, and he mentioned a few times the dreaded term "consultants". Do we know who the consultants were? Can you name them?

Dr McCormick: Yes. All the companies are known. Which ones —

Mr Dallat: I am always intrigued when somebody is referred to as "Consultants A" or "Consultants B". Do they have names?

Dr McCormick: Yes.

Mr Dallat: Who are they?

Dr McCormick: "Consultants A" is ASM Horwath, and "Consultants B" is Prisa Consulting.

Mr Dallat: Thank you. Now —

The Chairperson (Ms Boyle): Sorry, Deputy Chairperson. Paul and Roy wanted a wee supplementary in there.

Mr Beggs: You said that it was vital that consultants should not have any conflict of interest. Did you come across evidence that the advising consultants specifically had a conflict of interest in this case?

Dr McCormick: There is no obvious and straightforward conflict of interest. There are questions about some of the connections, but there is nothing directly problematic in that sense. Most of the investigative work was done following the 2008 whistle-blowing, so that is where most of the input comes from. The other relevant inputs were the initial economic appraisal by Deloitte. The oversight of the measure and the technical input to the appraisal process and the oversight of the payments was done through Western Connect, which is mentioned quite a lot throughout the report. There is an issue to consider in relation to them. The post-project evaluation was done by Parsons Brinckerhoff, and there were then two investigative consultants, whom I have mentioned already.

The Chairperson (Ms Boyle): Paul, are you content?

Mr Girvan: I would like to tease out a wee bit of detail about the consultants' brief. That is vital. Was their brief, "Can this project deliver?"? Was the brief concise enough to identify whether there was a necessity for the spend being made? You can ask somebody, "Will this engine run?", and they can look at it and say, "Yes, I can make that engine run", and the consultant could tell you that it can run, but that does not tell you whether it will fit into the job that it was built for. Did the brief that the consultant was given marry up with the outputs of the project, or was there a necessity for the project to be done even on the basis of what was already happening?

Dr McCormick: That is relevant to two aspects of the input. First, it is relevant to the economic appraisal, which, by definition, asks, "What's the objective? What are the means by which that objective can be fulfilled? How do you rank and rate the options?". That very question was exactly why Deloitte was commissioned. It provided an appraisal that, at the time, was regarded as satisfactory, and it recommended proceeding with the option as happened: the Bytel project. The role of the second group that I mentioned — Western Connect — was, with that as a given and with the decision having been taken to proceed with the measure, to undertake a technical oversight of the project. I am looking to colleagues as to whether there is more detail on the brief given to Western Connect. That is probably where —

Mr Girvan: That is exactly where I am going. Western Connect seems to have a very close affiliation with the company that was supposedly delivering the project.

Dr McCormick: It is worth making the point that, the first time the project was appraised and scored as to whether it was satisfactory, Western Connect failed it. That was the initial assessment of the project. Western Connect was appointed by the two Departments as an overseeing agent to fulfil technical assessment and oversight of the project. That was the beginning, at that stage, of consideration of whether the project should go forward. The first time it was put to the test and scored by Western Connect alone it was failed. There was then some revision, reassessment and a scaling down of costs, and a number of things changed that allowed it, as the Deputy Chair said earlier, to pass. It was a bare pass, but it was a pass. That decision was taken by Western Connect alongside the two Departments, North and South.

There is a range of different issues in and around the relationship with Western Connect. Its responsibility at that time was to work for two Departments in assessing and overseeing the project. There is —

Mr Girvan: I am more intrigued about how the Damascus-road experience took place in Western Connect. The lights suddenly turned on, and it was thought that it was a good project and that we should go ahead with it. The argument and how it stacked up in the figures might be one way, but were there other aspects of their turnaround of opinion?

People are very sceptical. Not everything will be in the report, because, obviously, many meetings were held in hotel foyers to discuss important issues, some of which might have included the necessity for money to change hands. I do not know. We are looking at it and what we see indicates that. We are looking at a smoking gun and something definitely had to be fired to turn somebody around from turning a project down to becoming the lead in making sure that it was delivered. Other members will maybe delve into the relationships between Western Connect and Bytel later.

Mr Dallat: I want to move on to Mr Colgan. You were in a unique position; you were carrying a huge responsibility to deliver the project. The other point — I am sure that I will not offend anybody by mentioning it — is that you are aware that cross-border bodies, more than anything else, are heavily scrutinised by the Assembly for value for money. We even hear big arguments against their very existence. Can you tell me why a proper assessment of the project was not carried out?

Mr Colgan: At the time, the way in which the programme was designed meant that it was based on systems of control that involved a delegation of authority for particular parts of the programme to what we call the implementing agents. In this case, it was two Departments — one in Belfast and one in Dublin — DETI and DCENR.

We had a service-level agreement with both Departments, setting out, quite clearly, their roles, responsibilities and duties in case difficulties arose. That was delegated to them, and we took assurances from them about their implementation; we also took assurances from them about their assessment of the project and its later monitoring. With the benefit of hindsight, it is fair to say that those assurances should have been questioned more. In the design of new programmes they are; however, there was not the provision to do that back then.

Mr Dallat: Why do you think that two Departments, North and South, gave you all those assurances that turned out to be empty sepulchres?

Mr Colgan: That is a good question. We took those assurances from the Departments on the assumption that rigorous verification was being carried out, and we received assurances that that was happening. In accordance with the terms of the service-level agreement that we had with them, it was their duty and responsibility to implement that part of the programme in that way.

Mr Dallat: That is most helpful and frank. Hopefully, it will help the Committee to form its opinions in its report. What you are saying is that a cross-body body, in all innocence, accepted wise counsel from two Departments that was subsequently found to be without foundation.

Mr Colgan: If I may put it into context. During that time, SEUPB was responsible for 420 projects in INTERREG, and there were 7,500 projects in the Peace II programme. It was not physically possible for us to be involved with the detail of every one of nearly 8,000 projects, so there was a system of delegating them to implementing agents back then.

Mr Dallat: I want to ask a very blunt question: were you subject to political pressure?

Mr Colgan: I do my job the best I see fit in compliance with EU regulations, national rules and where I see my role in dealing in an honest way with integrity with the system as it is presented to me. It would be naive to think that there is no political pressure in the system — it happens all the time — but I am certainly not aware of, and was not subjected to, any political pressure.

Mr Dallat: I ask the question only because there is a fine line between lobbying and pressure. I do not personally question you in any way.

Mr Colgan: I know that you do not.

Mr Dallat: I have the highest regard for you.

Dr McCormick, you have heard what has just been said, and no doubt you will reflect on it. In paragraph 2.17, we are told that an offer of assistance was issued to Bytel in October 2004 and, by December 2004, Aurora had withdrawn from the project, yet the project was not reappraised. The withdrawal of such a key partner was clearly a fundamental change. Why did you not take the necessary steps to reappraise the project?

Dr McCormick: That is clearly part of what was wholly unacceptable about the way the project was handled. It should have been reappraised; there is no question in my mind about that.

I have tried to put myself in the shoes of those who were dealing with it at the time, and I guess that there is a way of thinking about it that they were trying to achieve a certain outcome. How that outcome was achieved was not as important as achieving the outcome. In the change from the Aurora-based proposal, which was approved and drawn out in the letter of offer and all the documentation up to that point, all that had really changed was that, instead of Aurora providing that relationship, it would now be Eircom.

There is clear evidence in the file that, between the breaking off of the relationship with Aurora and the establishment of the final contract with Eircom, the Department was holding back and saying, "We can't do anything, we can't pay you anything, nothing can go forward, because we need this to be secured." However, my understating is that they saw it as a like-for-like change and Aurora was replaced by Eircom and went on much as before.

That misses some very important points. It misses a significant change in the nature of what Eircom was providing compared to what Aurora had proposed to provide and, importantly, it missed a change in cost. For those two reasons, it should have been reappraised, and we should not have accepted the valuation placed on the project as sent to us by Western Connect and Bytel, which led to the final payment of grant. It absolutely should have been reappraised; that is plain and straightforward to me. However, I can just about see a possible way of thinking about it that might explain why it was not.

Mr Dallat: Somebody more eloquent than I might describe this as a comedy of errors or a cacophony of excuses. All I am witnessing from Dr McCormick, whom I respect, is a damage-limitation exercise. I do not hear anything particular useful or any acknowledgement of who the buck stopped with and who was responsible.

Mr Colgan, following on from the previous question to Dr McCormick, why did the Special EU Programmes Body not ensure that the necessary reappraisal was undertaken? I am sure that, in giving me an answer, you will reflect on what you have just heard.

Mr Colgan: The service-level agreement that we have with the implementing agents in this case is very specific about responsibility for project assessment: responsibility for assessment lies with the implementing agent. We provide them with guidelines, and, in 2003, we provided them with training in project assessment; in 2006, we provided them with training in financial verification and controls. Ultimately, however, we accept the assurances from the implementing agents, in this case DETI and DCENR, that what had to be done was being done. We raised questions specifically about the economic appraisal and were given assurances that what was necessary had been done.

Mr Dallat: What I am hearing from Mr Colgan is that, within your constraints and limitations, you did what was asked of you.

Mr Colgan: I believe that there was nothing more we could have done at the time. We first heard that there was a serious problem in 2011.

Mr Rogers: I will just carry on with you, Dr McCormick. Go back and talk about the project. There was joint responsibility between DETI and DCENR, but was DETI not the lead partner?

Dr McCormick: In effect, yes.

Mr Rogers: So, ultimately, the buck stops with you.

Dr McCormick: That is right, yes.

Mr Rogers: I will look at the checking and authorisation of grant claims and go to paragraph 3.7, which tells us that the two largest Bytel grant claims were submitted very close to EU payment deadlines. Why, if this obviously increased the risk of riders being submitted in those claims, was greater emphasis not given to ensuring that claims were for valid and eligible expenditure? That is on page 21.

Dr McCormick: I am afraid that I am going to be as unsatisfactory for you as I have been for the Deputy Chair. There is not a good answer to that question. It should have been checked more thoroughly and should have been examined and tested. At the time of the first grant claim, which gives rise to a whole range of questions, part of what was going on was uncertainty over the Aurora relationship. It was therefore accepted that the original plan to make payments of grant aid based on that relationship — that is what the letter of offer says — was not possible. It was not possible to make a legitimate payment, so there is a reason of conscience and diligence that says that we could not make that payment. Maybe there was an element of good in that.

Where it all goes wrong is in making a payment for explicitly ineligible expenditure, which is why I find that both unacceptable and indefensible, but it happened. What I have been told is that there was a need to have a receipt for something — an invoice — and therefore "Let's ensure that there is one". It is something that is referred to in the letter of offer. The equipment, which was the basis of grant claim 1, was referred to in the letter of offer. It was, at that time, regarded as an essential element in how the project would be delivered, and so the decision was taken to grant aid on that basis. As was drawn out earlier, it was taken under time pressure to meet the N+2 deadline, but, straightforwardly, it should not have happened. There is no acceptable reason for it to have been done in that way.

Mr Rogers: You talk about pressures, specifically time pressures. In the case of the payment of the Bytel grant claims, could it not have been due to the pressure put on staff by senior the Civil Service to ensure that EU funding was utilised and that spending targets were not missed?

Dr McCormick: That pressure was there; there was pressure on us all at that time. There was also a recognition that, if we failed to spend, there would be serious criticism for losing resources for services. That is a valid and legitimate criticism, and is why it is important to meet deadlines, but that is no excuse whatsoever for not undertaking proper process or sticking to the things that had been approved, and this action moved away from that. There were some discussions; it was not just one individual taking a decision to pay on that basis. It was in conjunction with the Department in the South, and there were other checks made at that time. It should not have happened, and certainly the time pressure is no good reason for doing the wrong thing.

Mr Rogers: In response to what you said to the Deputy Chair about value for money, we come to the conclusion that perhaps value for money was not high on your list of priorities. In your opening comments, you said that you were not sure whether you got value for money, but anybody looking at this report will say that you are very sure that there is no value for money. However, you also said, in answer to the Deputy Chair, that value for money is a major consideration.

Dr McCormick: I think that I said that it was essential. We always have to get value for money, and we also always have to spend in time; otherwise we do not spend anything. All I am saying is that it is essential to secure value for money and essential to meet deadlines. We do not have the option of stepping away from either of those, but, in this case, there was a clear failure to achieve value. There was some value, but not satisfactory value for money.

Mr Rogers: It just jumped out at me, but Hansard will tell. I thought that you said that it was a major consideration, not an essential.

Dr McCormick: I believe that I said that it was "essential". I may have used the word "major" as well, and, if I did, let me clarify and be absolutely sure that what I am saying is that it is essential for us to secure value for money.

Mr Rogers: That takes me to page 22, figure 3. In the first row of figure 3 it notes that, while the Nortel equipment was ineligible for INTERREG grant support, the joint implementing agents agreed that it should be included in the first claim. Who signed that off?

Dr McCormick: It was signed off by the telecoms policy unit, which was leading the measure. We were in the lead, so, as has been established, we were in effect the lead responsible organisation, but the Southern Department was also aware of this being done and was satisfied that it was the right thing to do in the circumstances. That was the view that was taken and, as I said, that was incorrect. It was signed off by the Department.

Mr Rogers: You were the responsible organisation, but this was not responsible.

Dr McCormick: I accept that. It was wrong and should not have happened.

Mr Rogers: This grant was to be deducted from subsequent claims, but that never happened.

Dr McCormick: It was not specifically deducted. The way it worked out, in relation to the subsequent payments, was that the consideration held to was that the letter of offer should be fulfilled. Therefore the final payments added up to the total grant envisaged in the letter of offer. I do not accept this line of argument, but what I have heard as a line of argument is that, in the end, the outcome matched as closely as possible to the letter of offer and, therefore, that grant aid was paid for the things envisaged. In fact, of course, they were not, because we had to switch from Aurora to Eircom and it all went wrong on that basis.

If you accept, for a moment, the concept that Eircom was just a substitute for Aurora, then maybe you can see a scenario where the argument has a certain logic. I do not accept it, but I can just about understand that people would have said "Oh, this is much the same thing; therefore we will grant-aid this and make the final payment as a balancing payment". The final payment, the fourth claim, took them up to the €4.3 million in total. That was all the expenditure that had been envisaged, and now, at the end of the process, it matched. So you would say, "Well, yes, we gave €1.3 million for this ineligible thing, but we gave €1.3 million less than we would have done for the actual eligible expenditure", had it been actually eligible, but of course it was not, for the other reason.

There is a series of problems. All I am saying is that, if you step into a particular way of thinking about it, there is at least an element of consistency in the mistakes that were made.

The Chairperson (Ms Boyle): Paul wants in with a supplementary.

Mr Girvan: It is on that point; it is to do with the €1.3 million drawdown for a piece of equipment that was purchased from Nortel. Was that equipment used?

Dr McCormick: No.

Mr Girvan: That equipment was not used. It cost £30,000. Is that correct?

Dr McCormick: Allegedly, yes, that is right.

Mr Beggs: Euro.

Mr Girvan: It was €30,000. I know that it was billed out, because I know where it was bought. I thought that it was purchased in sterling, but that is beside the point. I appreciate that the invoice was for €1.3 million. That invoice was for 1.9 million —

Dr McCormick: There were a number of other elements, yes.

Mr Girvan: On the basis of that, we paid out €1.3 million for something that was not needed and not used. Is that not endemic of the whole project? We paid out money for infrastructure and equipment that was not needed. You say that the outcomes of the project, overall, attained the objectives. Would those objectives have been delivered, irrespective of the spend that was made?

Dr McCormick: Possibly; we do not know. Part of the reason why this is difficult is that, in the absence of reappraisal and proper process, it is not possible to be sure whether all, most or only some of the expenditure was justifiable. There are some very serious issues there. When the decision was taken to grant-aid on the basis of the Nortel equipment, the understanding was that it was an essential

element of the project, as envisaged. However, even at that stage, the Aurora partnership was beginning to erode and fall apart, so there was a warning signal there. Of course, the two Departments had signed a letter of offer; both were involved in the decision. DETI had the primary lead responsibility and was the Department engaged in the most active handling of it. The decision was taken. We can make a payment only when something is demonstrably purchased, and there is pressure to secure an invoice showing that.

Mr Girvan: My understanding is that all it was interested in doing was getting some hardware to back up an invoice that was being presented to the Department for equipment that was already out of date when it was purchased and, as a consequence, a valuation was put on that by someone. That is what I would like to find out: the individual who put a valuation of €1.3 million on out-of-date equipment. I come from that industry, so I have a little knowledge of it. Technology moves very quickly. What is perfectly up to date today is out of date in six months' time. As a consequence, I would like to know who put the valuation on a piece of equipment that was purchased for £30,000. It was a rack to, possibly, light up fibre cable.

I understand that, to connect fibre cable and to put information down it, connectors were being made along the route. That would have had to be put in place in several areas to deliver the information. On the basis of that, there was already an understanding that the equipment was out of date. We have a telecoms policy unit that, supposedly, has the expertise to identify what is going on. It has started to sound very much as if somebody knew that there was an opportunity to deliver a project and said that they would manufacture a project to deliver it and that it would get paid out of the public purse, one way or the other. It does not look good, and it does not sound good to me.

Dr McCormick: I accept that.

Mr Girvan: It is starting to sound as if people were in there not just to manipulate the system but to milk it. That is what it looks like. We have to prove otherwise. I cannot. I am reading a report that draws me to think that.

Mr Rogers: Was any valuation done of the asset?

Dr McCormick: There are several points to be made. One is that the economic appraisal had identified this as a reasonable number. I would not say a precise valuation, but it was of the right order. It is only with hindsight that we know that the racks were obsolete at the time. I do not think that that is demonstrated. I do not think that there is clear evidence that that was known at the time by the people who were taking the decision to support it.

Mr Girvan: The boys who bought it obviously knew that it was worth that.

Dr McCormick: That is exactly your point; that is very clear. Even our technical experts who reported in 2013 acknowledged that the specific item would have been an industry standard at that time. I accept your point about it moving on, and I accept the uncertainty about the sourcing and so on. I am sure that your colleagues will have further questions on that. However, there was at least something available to the Department, and it was relying heavily on Western Connect as its technical adviser. There was not a depth of technical expertise in the team in the telecoms policy unit, which is why Western Connect was retained as the managing agent by the two Departments to oversee the project.

Mr Girvan: That is like ordering a Bugatti Veyron and getting a Ford Fiesta delivered; that is what it is like. It is the very same thing. Unfortunately, nobody in the Department thought to identify the value of the item.

Mr Rogers: Basically, there was a piece of paper, an invoice or whatever that said that it was worth €1.3 million when it was worth €30,000. The only check that was actually carried out was that there was an invoice or a bit of paper. No basic check was carried out on the value of the item.

Dr McCormick: We were assured that Western Connect had inspected and had gone in and seen that it was there. I do not think that that amounts to a full and effective valuation. Hindsight shows that that was not the case. Again, try to put yourself in the shoes of the people who were doing these things daily at the time. Something allowed them to say, "We have Deloitte saying that this is the kind of price that it will be worth, and, in any case, once we do this thing properly, we'll only pay up to the

letter of offer". That was part of the false thinking that said that all that mattered was: "Will we get the outcome?"

Mr Rogers: The figure on page 24 states that the Nortel equipment was procured from a company that was controlled by the Bytel chairman. I am sure that such an arrangement gives you the possibility of significant risk. When you checked this claim, reliable evidence was not obtained as to where the equipment had been sourced from and its proper cost.

Dr McCormick: Again, they are questions for which I do not have good answers. I understand that the staff dealing with the issue at the time knew of the connection between Bytel and XMCC. There is no good answer or explanation to the questions you are asking on that point.

Mr Rogers: The Chair asked a similar question. Invest NI has quite tight controls over the management of transactions between related companies. Why is DETI lagging behind in this very important area?

Dr McCormick: Invest is doing those things with DETI's oversight and knowledge. We have also improved our own processes, especially to ensure that there are very clear checks and balances for grant claims involving related parties. A series of tests is required of business units in the Department that are dealing with grant claims to ask additional questions, to probe additional facts and to ensure that there is a clear understanding of relationships in order to avoid such a situation happening again, whereby you end up with something that you are not sure of and that, on the face of it, is doubtful or unsatisfactory. We have paid significant attention to that, and I believe that DETI and our arm's-length bodies are in a much better place on that issue today.

Mr Rogers: You talked about the assurances from Western Connect. When did you become aware of the shortcomings of those assurances, particularly in the checking of the claim? What steps did you take to address Western Connect's underperformance on the issue?

Dr McCormick: A lot of these things came to light and properly into the open only through the 2008 whistle-blowers. I am sure that we will come to the opportunity that was missed, because some things were raised by the director who talked to the Department in 2006. We ultimately became aware through the work done by the consultants who advised us and by internal audit on the investigation of the 2008 whistle-blower information, which drew attention to the doubts about what had gone on between Bytel and XMCC in that context. I will again say what I am sure that we will say later in the hearing: processes took longer than they should have taken. There is a series of different issues. Given that it had taken a long time to establish those facts, it was difficult to take timely corrective action. That is part of the story and part of what went so badly wrong.

Mr Rogers: Are you aware of any connections between individuals who work for Western Connect and the Bytel group of companies?

Dr McCormick: There is an issue with that. One individual, who had been a key adviser under the contract between the two Departments and Western Connect, left Western Connect, as I understand it, during the summer of 2005 and set up a different consultancy organisation. We are aware that he then provided consultancy work. We do not think that he was employed by Bytel, but we have indications that he was working as a consultant to Bytel, certainly by January 2006, and providing information on its behalf to the Department. In a market context, it is not unusual for an individual to change jobs or for someone to obtain work from companies that he has had dealings with in one context or another, but staff in the Department were aware that this had happened because they had been dealing with this individual on a substantive basis through the work that was done on the project in 2004 and 2005. The same person then reappeared in a different guise in 2006. That was all known at the time.

The contract with Western Connect concluded in October 2005. The technical assistance budget was available under the European programme. That came to a conclusion in 2005, but our understanding is that the individual had left the company before that contract ended.

Mr Rogers: When did you become aware of those connections?

Dr McCormick: The team dealing with Bytel was aware of it at the time. I do not know how much of that was known more widely to senior management.

Mr Rogers: Thanks for your honesty, Dr McCormick.

Mr Girvan: Dr McCormick, appendix 4 gives a breakdown relating to a €17.8 million donation for supposed benefit in kind delivered by Bytel, for which there was a claim and a payment of €2.1 million. Can you explain why that grant was paid when, according to figure 4, there was virtually no supporting evidence for it? There is also the issue of the 120 kilometres of ducting and cabling that was claimed for as a benefit-in-kind delivery. Maybe you could refer to that.

Dr McCormick: As the report states, there are grave concerns about the nature of that payment. On the face of it, it is totally unsatisfactory that, for probably one of the largest payments made by the Department in that period, payment was made on what appears to be such limited evidence. There are also grave doubts about the factual accuracy of the material in the claim, which appears to overstate the value.

We did not properly understand what had been obtained and what had been done until we had the Prisa report in 2013, which was the first and best proper technical appreciation of the whole project. It drew out the fact that there was no need for the scale of cost and that you do not take the cost of creating one fibre pair and multiply by four to get a legitimate figure. That is just not the way to do it. We did not know that at the time. Western Connect provided a document prior to that claim coming in that did much the same kind of calculation of the potential value of the benefit in kind to be achieved through the project. There are very grave concerns about that, and it is totally unsatisfactory and not the way we would expect it to be done.

I spoke to the individual who approved the payment, and there is a different point of view, which is broadly this: he says that this was, by definition, a balancing payment. It was the remainder of the payment due under the letter of offer. This was a final formality, which was the culmination of a substantial process whereby they knew what was going on in the project and were satisfied with it. There is good reason not to be satisfied, but, at the time, they were satisfied and went along with it. In that context, this was exactly what they were expecting.

The individual also told me that the staff officer in the branch visited Bytel, inspected documentation and saw supporting documentation. There is a reference in the report to "supporting documentation". It appears that there was only one page, which is on the record, as the basis for the payment. That is true, and it is totally unacceptable to me. However, what I am being told is that there was a visit to the Bytel premises and a review of other evidence.

I do not accept that that was enough. The criticisms in the report on that stand. I am offering that purely as a contextual explanation of what may have happened. I do not regard that as satisfactory because, as the report draws out, this includes an over-inflated over-specification of the benefits of the project. This area is not fully and satisfactorily explained.

Mr Girvan: I accept that aspect. Does this not highlight a Department taking on a fairly technical project without having any technical expertise? The Department should have been able to pick up the fact that, if somebody dug up a road and installed fibre optic cable along that section of road, it was being done by a company that was being paid by the same company.

It transpires that Eircom had already installed 90% of the cable, yet this invoice was claiming for 120 kilometres of fibre cable valued at €16 million. I am bewildered as to how someone can claim to have put cable in the ground that was never put in or paid for by them in any shape or fashion and to claim for an in-kind contribution.

I am wondering about the lack of evidence to support the final claim. Why did the checking of the claim not challenge its legitimacy? As far as I am concerned, it should have.

Dr McCormick: Again, my understanding is that the team involved accepted that that was the way that it was going to be and accepted the concept that a grant could be paid on the basis of benefit in kind. It saw that as a legitimate way of calculating benefit in kind. I do not accept that; I agree with what you are saying.

Mr Girvan: Who owns the cable in the ground?

Dr McCormick: The majority of it was Eircom, and, as you say, the majority of it was pre-existing. It bought a contract whereby it leased bandwidth from Eircom. That was a totally different contract. What had been envisaged with Aurora was a different nature of arrangement.

Mr Girvan: It was no longer involved in the project at that stage. That was in the final stages, so Aurora had no involvement whatsoever. It was piggybacking on a previous contract that had no legitimate connection to Bytel. Is that correct?

Dr McCormick: Yes. It presented the claim as a line to a letter of offer that had been overtaken substantially by the change in the nature of the contract. That is what happened. It should not have happened. There is no substantive defence to that.

Mr Sterling: It believed that what it was getting was still in accordance with the letter of offer, and it had moved to a state of mind whereby it believed that it was obtaining a service.

Mr Girvan: People get hung up on what a letter of offer actually is. As far as I am concerned, a letter of offer is a letter of offer. If you find that you did not need to make that spend, there is an opportunity to pull it back, and it is no longer a letter of offer. That is the way I see it. That is probably a legal issue that needs to be looked at as such.

I will be very precise in what I say: are you aware of an internal Bytel email that may refer to potential improper activity by the company and the connections between Bytel and members of staff in DETI? If so, did your Department deal with the issue raised in that email?

Dr McCormick: Yes. My understanding is that you are referring to an email of February 2006 —

Mr Girvan: Yes.

Dr McCormick: — in Bytel. The Department received that email attached to a letter from the solicitors to one of the Bytel directors on 18 July 2006 as part of the first whistle-blower issue that arose in the summer of 2006. The email was attached to an affidavit that is part of the court proceedings that were, at that stage, happening between two Bytel directors. The email was received. It is still in its place on the file. I looked at the file this morning, and it is there.

Mr Girvan: Was any action taken?

Dr McCormick: No action was taken on the basis of that email. I have no good explanation as to why no action was taken. We are not able to establish exactly who saw it or what process happened with that. We have spoken to all the individuals who were in place at the time. There is limited memory of it. There are —

Mr Girvan: I appreciate that the name is in it. I do not want to go through that.

Dr McCormick: I want to be careful in relation to fair process. The point is that no action was taken. It is clear to me that the email should have given rise to a specific and direct investigation of the points alleged.

Mr Girvan: What mechanism is in place now? I appreciate that a lot of people put very little weight on what a whistle-blower says. On many occasions, they have been very important in highlighting major areas of fraud or mismanagement and have been very helpful. I am not saying that that is the case here. There should be a mechanism to investigate a complaint of such a serious nature. It makes reference to a number of things that would make me very suspicious of what was actually happening. In fact, I would be cautious. I wondered why something such as that did not trigger a major investigation in the Department at that time.

Dr McCormick: It should have.

Mr Girvan: That said, it makes me very suspicious not just of a small group that was involved but of a wider group, potentially, because somebody had to suppress things or ensure that no investigation was carried out. We cannot always say that somebody had a chip on their shoulder, it was sour grapes or they were feeling bad about it, so we just bury it. There has to be a process to ensure that

items such as those that were being highlighted by somebody who was not just closely involved but had been right in the middle of the deals as they were being done was willing to put their name to it and send it in. The person had concerns. The reasons for bringing it to a head might be a totally different matter — I am not going to go into that — but the fact was that they highlighted a number of areas that should have caused concern. Why did the Department not conduct its own internal investigation with a full audited report system? That should have been there.

Dr McCormick: I agree; we should have done that. There has been a major change in the procedure since this arose. The fraud response plan that applied in 2006 allowed the business unit concerned to undertake an initial review of what came in, and that was within procedure. So procedure was followed, but the procedure was incorrect. From 2012 onwards, as David said, the new response plan requires that, when anything of that nature comes in, it goes straight to internal audit for investigation. In June 2006, the initial allegations raised by the director at the start of that month were discussed at senior level and with internal audit, and a number of quite proper questions were asked: look at this; follow that; make sure that this is looked at. Some things were done correctly at the early stage, but the trail goes cold, and we cannot establish the exact facts as to how it played out after that.

We have no evidence that the further documentation that was received — both the letter of 18 July, including the email, and some further material — was seen other than on a very limited basis, and it clearly should have been seen by more senior officers in the Department. Any of us reading the documentation today would say, "Whatever else we do, we investigate this". Even at the time, not just with the benefit of hindsight, there was no doubt that anybody looking at this would say that it needed to be investigated. There are question marks as to why it was not known and shared more widely. One point is that it was July, so maybe some people were on leave, but that does not take away from the fact that it should have been highlighted and dealt with, and, as you said, it should have triggered a proper and full investigation. The short summary stands, as in the Audit Office report, in that assurances were given that what mattered most to the Department at the time was the legitimacy of the expenditure and the fact that the expenditure had been paid in arrears. On the face of it, those were satisfactory, and the project was progressing; it was not complete but was on track. The way in which it was written up was that it was an internal dispute between two directors; it was not our concern. The things that we were concerned about were secure. That is what the outgoing correspondence and the report to senior management said: as far as we are concerned, the things that matter to us about protecting public funds are OK. To me, that is not satisfactory in the great scheme of things.

Mr Girvan: On the face of it, Andrew, I would have accepted that if it had not been for the original business case and the economic appraisal being set on a company that was linked to Aurora, which basically had government backing. As soon as it came out of it, the company's capability to deliver the project is in question. What I can see is the Department backing a project that could have resulted in money going down the tube. Rather than doing something about it or pulling the plug, the Department continued to feed it to finish the project, because it was going to be delivered one way or another. Maybe somebody knew that; I do not know and cannot say that.

I come to the final grant application. According to paragraphs 3.17 to 3.22 and figure 4, €2 million was paid out, but there is no breakdown of what that was paid out for. Do you have a detailed breakdown of what the €2 million payment was for? I know what Pat's organisation is like when you go looking for money. It will say that it is audited to the nth degree and has to send figures to Europe. It will say that, if it buys 10 cups of tea, there has to be an invoice or a receipt. What was delivered for that €2 million in the final contract?

Dr McCormick: By the time of the final payment —

Mr Girvan: It was just to make up the final letter of offer agreement, and I understand that that is the argument that will be put forward. There has to be a breakdown invoice of what that was for.

Dr McCormick: In the letter of offer, there is a breakdown of what the project was required to deliver. The argument from those approving the payment was that what happened in the real world, including, by that stage, the contract with Eircom, was seen as being very positive; there had been difficulties with Aurora but now there was something really good in its place. I am trying to imagine the mindset.

Mr Girvan: Did you have something really good in its place? That is the point, and that is exactly where we need to get to. What did you have in its place?

Dr McCormick: My view is that it was good and worthwhile. The Prisa report told us that, in some respects, the project over-delivered on the original objectives.

Mr Girvan: No, not because of it.

Dr McCormick: The point stands that that was despite what happened rather than because of what happened. It is not acceptable, but something good was obtained. The absolute point is that it might have been obtained at a much lower price.

Mr Girvan: I am not saying that Bytel did not incur expenditure with some aspects of the final connections and issues with the infrastructure that was already in place. Where I am coming from is the value that should have been put on those final connections, and that is what I would have been evaluating.

Dr McCormick: I agree.

Mr Girvan: As far as I am concerned, we got something: a Ford Fiesta for the price of a Bugatti Veyron. That is the point. How on earth were those in the Department who had expertise in this area so hoodwinked? I am using the word "hoodwinked", or I could say that they were complicit.

Dr McCormick: The facts as we understand them clearly beg those questions. Those questions stand, and there is no satisfactory answer to them. There appears to have been a mindset that Eircom came in, and that was good. The project was going OK, the two directors were fighting the piece out between themselves, and, in the end, there was a court settlement between the two of them. In the end, it looked OK. That is totally unsatisfactory when you have the kind of allegations that are drawn out in the email and the uncertainties over the money being spent.

Mr Girvan: There was a change to the contract in its material form from what was originally presented, and there was a relationship breakdown between Bytel and Aurora. At that time, there was no request for this to be looked at again. I will ask Pat about this. On the letter of offer, was SEUPB concerned that there was such a material change in the contract from what was originally presented? Should it not have insisted that a new letter of offer was issued or a new process entered into?

Mr Colgan: That came to light in the article 10 review that was carried out by FPM consultants. An article 10 review is a standard part of programme management that, on a sample basis, checks projects in terms of systems in place and so on. The article 10 review raised concerns in relation to the points that you have made, such as changes in the letter of offer and issues around procurement and so on. As I mentioned earlier, we engaged with the implementing agents on the concerns that were raised by the article 10 review and were given assurances at the time that the changes were not substantive enough to require a reappraisal of the project or changes to the letter of offer.

Mr Girvan: At the time, a new letter of offer for the project was not required. I think that it was the Department that told SEUPB that — it took the lead on it — because there had been no change to the funding package. That is the point. Who made that determination? Who within the Department made the decision that there was no change to the funding package? My understating is that the cable that was to be used was in place 18 months before any of that happened. Who made the decision that the funding package was not changed?

On the basis of what was put forward as a major contribution by certain people in kind, some £17.8 million, or something along those lines, was paid to Bytel. That would have been a material part of the consideration of the overall project. I would have thought that it should be vital. If you have included £16 million for 120 kilometres of cable that you did not require — you might have required 8 kilometres or 9 kilometres, but not 120 kilometres — that would have been a material change to the project. Who in the Department made that decision?

Dr McCormick: The telecoms policy unit led on that measure and looked after the whole thing. It was its recommendation. As there was no depth of technical understanding until we had Prisa in 2013, the penny had not dropped as to what exactly was going on. There is no satisfactory explanation. We had the responsibility of advising SEUPB on that basis. That advice was given, but it was wrong.

Mr Eugene Rooney (Department of Enterprise, Trade and Investment): I will just add that, at that time, the two Departments were also getting input from Western Connect as their technical advisers.

Mr Girvan: There is already a little bit of conflict over the information that was coming from Western Connect. Maybe others will go into that. There are individuals involved in Western Connect who seem to have a vested interest in ensuring that Bytel delivered that project. That is all that I will say. It is normally he who pays the piper calls the tune, and I am wondering just how far along that went.

Pat, I understand that your organisation is extremely diligent in ensuring that the i's are dotted and the t's are crossed and that you do not breach any of the funding rules that are set out by Europe. As a consequence of that, why did your department accept that there was no requirement for the project to be looked at again after a major player had withdrawn from its delivery?

Mr Colgan: We were living in a different regulatory environment back then. I explained earlier that the responsibility for the physical management of the project and for assessing the project, and the responsibility and accountability for the financial management of the project, was delegated to the implementing bodies, which are also sometimes known as intermediate bodies. It was our duty to put systems in place. Our service level agreement is such a system, and we have to rely on the robustness of those systems and assurances that they will be implemented. Ultimately, a cascade of assurances is given from one level to another, and they have been found to be wanting.

I say again that, in context, it is important to remember that there were 420 INTERREG projects and 7,500 in Peace. Both those programmes have been closed off very successfully, and this is the only project that has emerged as having significant and serious issues. It is important to remember that in context.

We have completely redesigned — things are completely different now. For example, that project would never have been implemented in the way that it was with the systems that we have in place now. First, it would have been subject to full public procurement, and we would not have done it now the way that it was done. Secondly, whistle-blowers are treated completely differently from how they were in those days. We have a very rigid protocol in place for how we deal with them.

Mr Girvan: Were you and your department aware of some of the issues that were brought up in relation to the likes of the whistle-blower?

Mr Colgan: We were informed in 2006 that there was a whistle-blower allegation, and a member of my staff had a meeting with a member of the telecommunications branch staff on 19 July 2006 to discuss those allegations. The assurances that we were given were, as you said earlier, that those were disputes between the directors of the company, that they were issues that were outside the remit of what was going on and that it really had no direct bearing on the substance of the project or on the implementation and management of the letter of offer.

Mr Girvan: Were you aware of the content of the email that was referred to?

Mr Colgan: No. That is the first time that that has come to our attention. We have just heard of that today.

Mr Girvan: When read, it indicates that there is some serious potential —

Mr Colgan: Nowadays, that would trigger all kinds of bells. I would immediately go through a process that we have defined to inform a certain number of people. In our organisation, we also have an independent fraud investigation officer who has been trained in that area. He would take ownership of that file, take it away from anyone else who was involved in it, and go through a rigorous investigation procedure. Those things are in place now; they were not in place then.

Mr Girvan: Are you quite satisfied that this could not happen again under another INTERREG project?

Mr Colgan: If a whistle-blowing — I am thinking specifically about the whistle-blowing incident that came up —

Mr Girvan: May I ask one question — it may be more to Andrew? I understand that you are in a very difficult position because you were not in the position you are in now when this all happened. Had it not been for the whistle-blower, would we be here today?

Dr McCormick: I think that the truth is that if we had not had the further whistle-blower in 2008, we may well have been looking back at the project and saying that it was all right without knowing all that was wrong.

Mr Girvan: Do you appreciate —

Dr McCormick: That is a very serious concern.

Mr Girvan: That causes me major concern. I reckon that there should be more checks and balances in place so that we are not dependent on individuals who are disgruntled enough to put something on paper. As a consequence of that, we end up with a major investigation identifying what potentially could be a major loss to the public purse of millions of pounds. That makes me very worried about projects that have been delivered but, because everybody got their penny's worth, nobody was disgruntled and no flags were raised on these matters.

Mr Dallat: Do not mention flags.

Mr Girvan: OK, we will not mention flags. No lights were turned on to identify that there was a problem. I am worried that the checks and balances were not there at that time. I am not saying that I am 100% happy, but I am glad that the Department has learned some lessons and has put certain things in place. David, I appreciate that you were involved in the last —

Mr Sterling: It may give you reassurance to know that internal audit in DETI has looked at other projects involving Bytel and has not come up with any concerns.

Mr Girvan: I am very concerned that the Department relies more on what it receives in black and white on paper, as opposed to what happens on the ground. On that basis, as long as the paperwork is right and because the letter of offer says that you are owed £2 million, you will get £2 million. Even if what you did was worth only £100,000, you will still get your £2 million, because the paperwork must add up, must close and must be right. That is a bit —

Mr Sterling: I understand that concern.

Mr Girvan: I run a private business. If somebody tried to say to me, "What we have done for you is valued at £20,000. We have managed to get a really good deal, and it has worked out that it has only cost us £2,000, but we are still invoicing you for the £20,000", do you think that I would pay them? Not a bit.

Mr Sterling: I agree. One of the lessons that I have learnt and that we all share here is that this is not the best way to deliver telecoms infrastructure by government. It is far better to identify a need and go to the market and procure. That way, you know that there is competition and a much better chance that you will get value for money.

Mr Girvan: We are fishing out of a very small pool here. Unfortunately, only a small group of people would have had any knowledge about how this whole business was being delivered. I find that, if you go out to tender, you can end up with a cartel approach. That is what happens and can happen. I am not 100% sure. I think that the Department should have been more able to engage and should have had more expertise to put a value on the issue as opposed to allowing somebody else to come up with the figures.

The Chairperson (Ms Boyle): For clarification, I own and drive a Ford Fiesta, and there is absolutely nothing —

Mr Girvan: It is nothing like a Bugatti Veyron, sure it's not?

Mr Beggs: My first question is to Dr McCormick. Earlier, you referred to Western Connect and how it provided a technical assessment that, to a degree, was the providence that allowed other civil servants to process the claims. Is that a reasonable assessment of what happened?

Dr McCormick: They provided advice on various aspects of the project at various stages. They were providing technical assistance and informing decisions that remained the responsibility of the Department to take.

Mr Beggs: Yes, but the civil servants may not have had that technical knowledge themselves. Of course, that was not the only information that was coming forward to the senior civil servants at the time. I will concentrate on the two whistle-blowers and the two sets of information that were provided. In paragraph 4.2 of the Audit Office report, we learn of the first whistle-blower, who was one of the directors — so, someone of knowledge — and the concerns raised were that there were anomalies in Bytel's accounts and those of its related company, XMCC; that XMCC had ordered supplies on Bytel's behalf, and, of course, it was a sister company with commonality between directors; that Bytel directors had withdrawn funds from both companies that should have been ring-fenced for the INTERREG project; and that, in claiming the grant, the project promoters had stated that value was delivered from assets that were not owned by Bytel. What we are talking about today was highlighted in 2006 to the senior officials. To what level of officials in the Department were the whistle-blower's allegations made known at that time?

Dr McCormick: The initial allegations were discussed by a group at up to grade 3 level in the Department at the start of June 2006. When the initial approach was made by the director, there was a discussion at senior level and a number of questions were asked. There was then a subsequent discussion with internal audit, and it advised on various checks that could and should be applied in relation to those issues. That is what happened in the early part of the process. I think that there was less senior involvement at the later stages of the 2006 episode.

Mr Beggs: We are told in paragraph 4.3 that there were no issues of concern and that the claims had been supported by correct invoices and bank statements. If anybody had looked at the accounts of both companies or their bank statements, the issues surely would have been flagged up in 2006.

Dr McCormick: At that stage, the way in which this was being thought about was this: had we, DETI, obtained what we thought we wanted, which was fulfilment of a letter of offer? It is a bit like the discussion a short time ago. From the point of view of those dealing with this in the greatest detail, the view taken was that all payments had been made in retrospect. In other words, the costs and value had been obtained before the payments were made. Therefore, from that way of thinking about it, it was satisfactory and the eligibility test had been met. That is what they thought that they had achieved, and they thought that they were getting what they wanted. They did not, at that stage, go into looking at bank statements. They had previously been satisfied, before the grants were paid, that this was satisfactory. That is the view that they took. I accept that the view they took was wrong.

Mr Beggs: Paragraph 4.3 states:

"DETI Telecommunications Branch carried out an investigation of the allegations in July 2006. The investigation concluded that all claims submitted by Bytel were in respect of expenditure incurred and that the claims had been supported by the correct invoices and bank statements."

Do you not accept that, if XMCC had not been involved, they could not have produced an invoice to justify the €1.3 million claim for equipment that they bought for €30,000?

Dr McCormick: That is correct.

Mr Beggs: So how could someone have come to that conclusion?

Dr McCormick: They had reached that conclusion at the point at which they approved the initial payment of €1.3 million for the equipment. That is when they had been satisfied that they had seen it. It is not saying that they investigated in the summer of 2006 and looked at bank statements at that time. They are saying that, because they had undertaken that process to their satisfaction — I say incorrectly so — at the time the grant claims were made, they then said, "As far as we are concerned, everything is in order." There are a lot of flaws in that. They should not have been doing it; internal audit should have been doing it. They should have gone back to looking at the significance of the change in the project from the Aurora to the Eircom-based deal. They should have known that the Nortel racks were not being used. All those things stand as unanswered and unresolved questions. However, what they were saying was that, in their way of thinking about it — in the light of having adopted that blinkered view of things — it was OK.

Mr Beggs: I go back to what I said earlier. Surely, using a sister company to inflate an invoice is inappropriate.

Dr McCormick: Yes, it is, but they did not know that then. They did not know at that point.

Mr Sterling: It was only with the 2008 whistle-blower that the allegation was made that the equipment was purchased for much less than the €1.3 million.

Mr Beggs: It is said that, in 2006, you had looked at the correct invoices and bank statements. That would have shown that the correct invoice was from a sister company. DETI controls the companies register in Northern Ireland and would have known that it was the same director.

Dr McCormick: They did know that it was a sister company; that was known at the time. However, the difference between the €1.3 million and the €30,000 was not known at that point. They had looked at the claim in checking it in November 2004. In fact, the team had insisted on receiving what it regarded as an proper invoice. The issue about the non-value of the equipment did not emerge until, as David said, the further whistle-blower spoke out in 2008, so that not was not known at the time. Had it been investigated in 2006, maybe it would have come to light. Our regret — what we need to apologise for and what we recognise as totally wrong — is that there should have been a full investigation in 2006. That is absolutely indefensible, as far as I am concerned.

Mr Dallat: I am sorry to cut across you, Mr Beggs. Had these people worn a mask, like Dick Turpin, would they have been more easily recognised? I am serious.

Mr Beggs: Yes, and it is big sums of money.

Dr McCormick: There is a serious point in there that, I accept, stands against us.

Mr Beggs: Paragraph 4.4 tells us that the investigation was completed by DETI's telecommunications branch, which was responsible for the oversight of the Bytel project in the first place and for the vouching of the grant claims. Why was such a thoroughly unsuitable approach to the investigation followed?

Dr McCormick: It was in line with the fraud response plan, as at the time, which said that there should be an initial check of the issues by management. That was undertaken, and it reported back with the message that there was nothing further for us to be concerned about, that this was two directors fighting among themselves, and that it was satisfied that the expenditure was vouched and the project proceeding. Those were totally unsatisfactory in the great scheme of things, but that was the view that was taken at the time. It was an incorrect view.

Mr Beggs: One of the things that strikes me about this is that you have somebody at a lower level making a call. Can you tell us how many desks that decision would subsequently have gone through — whether we are talking about the Western Connect assessment or this investigation — before the decision would ultimately have been acted upon?

Dr McCormick: I do not think that it is possible to be precise about that. I think that the main decisions about the oversight of the project would have been made by a very small number of people, and the initial report in relation to this incident — the first whistle-blower — was definitely drawing attention to the grade 3 PEFO at the time, who accepts responsibility for the initial decision not to investigate.

What I am clear on is that subsequent information appears to have emerged that was not fully escalated and not taken to a more senior level. That takes us to paragraph 4.7 of the report, which says that senior management relied on assurances from the TPU that things were, on the face of it, in order. I have grave concerns about that and do not find it at all satisfactory.

Mr Beggs: Were any of the individuals who were involved in the initial assessment of the grant, from telecommunications branch, involved in the whistle-blowing investigation?

Dr McCormick: Sorry?

Mr Beggs: Were any of those, who would have been involved in the assessment of the Bytel grant approval, involved in the subsequent whistle-blowing investigation? Did they carry out a significant role in that whistle-blowing investigation?

Dr McCormick: There had been some changes of personnel at grade 5 and grade 7 level, but there was a continuity of a number of staff at a more junior level. Some people who were involved in the processing of the project — through the appraisal and grant payment stages — were still involved in the —

Mr Beggs: You would still have to go and ask those people for information, I fully understand that —

Dr McCormick: We have talked to a number of those individuals.

Mr Beggs: — but were they managing the whistle-blowing allegations?

Dr McCormick: That was a big flaw when the first investigation was undertaken. They were, quote unquote, "marking their own homework", and they knew they were. That was known at the time.

Mr Dallat: Chairperson, may I cut across and ask the C&AG a question? When did the Audit Office give out advice on how to handle whistle-blowing?

Mr Kieran Donnelly (Northern Ireland Audit Office): We produced a good practice guide, but that was very recently. I do not have chapter and verse here, but the guidance on whistle-blowing goes back as far as 10 years. A fundamental principle is that the investigation should be independent of the management involved. That is straightforward.

Mr Dallat: Sorry, Roy. Thanks.

Just to get this absolutely clear: as long ago as 10 years, there was sound advice from the Audit Office on how whistle-blowing should be handled?

Mr Donnelly: I will clarify that. It is not our job to advise on that. Recently, we have issued good practice guidance, but there has been guidance from DFP, I think — maybe the Treasury Officer of Accounts (TOA) can clarify this — going back at least 10 years.

Mr Jack Layberry (Department of Finance and Personnel): I would say that it is at least 10 years. The first clear guidance we issued was in 2008, and, as you say, we have followed that up fairly recently, but there was guidance prior to that.

Mr Dallat: The critical question is this — I apologise to Roy for this. That advice was available for the last decade. What plausible explanation has your Department for not recognising it and acting on it?

Dr McCormick: There is no good answer to that. The fraud response plan envisaged a preliminary fact-finding exercise being undertaken by the management unit concerned. What happened was portrayed as a fulfilment of that piece of procedure. That has been corrected because it leaves a vulnerability, and we do not do it that way any more. Even at the time, taking account of what both the C&AG and TOA have said, it was not beyond our wit to have realised that preliminary fact-finding should have reported back to senior management and said that there was more to look at, especially considering the email that Mr Girvan drew attention to, and a range of other things, such as correspondence from PwC. There was stuff coming in through July and August that should have led to this being a balloon going up and people saying, "We really need to get into this". That should have happened, and there is no good explanation as to why it did not.

Mr Beggs: This is a whistle-blowing allegation. I am still thinking of 2006 and those early days. We have those who had been involved investigating themselves, as you have acknowledged. How many people, within the Department, would have known that staff were marking their own homework? How many lines of management were there above that who would have known about it?

Dr McCormick: There would have been at least four or five people at different levels. Four different levels, at least.

Mr Beggs: Who would have known that people were investigating themselves?

Dr McCormick: Yes. It was part of the Department's approved procedures to have the unit itself undertaking a preliminary fact-finding exercise. That was known. The detail of what was found was of limited knowledge, and that is where I do not have a full answer. I do not know the full facts because this was a long time ago and it is difficult to pin down, but I do have grave concerns about that issue.

Mr Beggs: How many in senior management, who would have been aware of the whistle-blowing allegations, would have been aware that the individuals were investigating themselves?

Dr McCormick: They would all have known. That would have been well known. It was part of the procedure that applied at the time.

Mr Beggs: Would there not have been alarm bells that you would need to be very careful here and put somebody completely independent in to lead the team?

Dr McCormick: That did not happen and was not part of procedure at the time. There were some people who asked some important questions at the time, but were given assurances that, "No, the key things that matter to us here are that we have only paid out when we were sure that it was right to pay out", they said. That is what they thought. We know that was wrong, but if people say that to you when you ask if everything is in order and the project is working, and you get that assurance then, speaking from the point of view of a grade 5 or grade 3 in that context, it is understandable. We now know that it was not at all satisfactory. We have spoken to individuals, and there was a recognition that, especially, the payment in relation to the Nortel equipment was very wrong. All these things only came to light fully and properly through the process that began in 2008. It should have happened in 2006; that is absolutely clear.

Mr Sterling: The senior people who were involved at the time recognise and accept that now.

Mr Beggs: In recognising that, has anyone been disciplined in any fashion because of failings that have occurred here?

Dr McCormick: No, as a matter of fact. We have had reviews of that, internally and by a retired senior colleague who was an expert in personnel and looked at all the papers and advised us. In light of the information that they had, partly because people knew what was going on as a process — it was not that it was never exposed to senior management — there was an awareness of this happening. We need to consider that further and look at it in the present day to make sure that we take a proper view of it. However, as a matter of fact, up to this point no clear basis has emerged for disciplinary action.

Mr Beggs: The next question is for Mr Sterling. We heard that senior management in DETI was alerted to the 2006 allegations but relied on the assurances that the telecommunications branch provided. Given the shortcomings in that, which we are all aware of today, how would you handle things differently if such a situation was to arise again?

Mr Sterling: As I mentioned, fraud response plans are in place in all Departments now. The guidance, which was issued in, I think, 2012, expressly forbids Departments that take receipt of an allegation from conducting a preliminary investigation. A very clear requirement in the guidance says that, on receipt of any allegation of fraud or wrongdoing or anything like that, you must inform the finance director, establishment officer and internal audit service in the Department.

The finance director will effectively become the senior responsible owner. Having conducted an initial preliminary survey, the finance director will assume responsibility for conducting an appropriate investigation. The guidance makes clear that, as soon as there is any indication of fraud, DFP would obviously have to be advised, as would the Comptroller and Auditor General. If there is prima facie evidence of criminal wrongdoing, the PSNI has to be involved.

That guidance has been circulated to all Departments, and they are required to have a fraud response plan that is compliant with that guidance. I would expect that audit and risk committees in all Departments would want to see that the guidance was being properly applied and to provide the challenge that things were operating properly.

As I say, there is a comprehensive range of guidance behind this that sets out what people are supposed to do from initial reporting through to initial inquiries and fact finding, the management action stage, investigation and then to advice on how to liaise with the Police Service. There is guidance on applying sanctions and redress, post-event action, communication and all the rest. The guidance is thorough and is much more thorough than anything in the past, and there are arrangements within Departments to make sure that it is being complied with.

Mr Beggs: Moving on to the second serious whistle-blowing allegations on the same area, Dr McCormick, we see that paragraph 4.11 states that in January 2009, DETI's internal audit:

"identified the main issues of concern associated with the management of the project."

Let us look at what has happened since. Paragraphs 4.13 and 4.14 tell us that further consultancy work, which was completed in September 2009, confirmed that there were "significant issues" about the eligibility of programme expenditure. Paragraph 4.15 states that in 2010, DETI was considering a further detailed PACE investigation into the project, involving the police, obviously, but that did not proceed.

Given what I consider to be overwhelming evidence of serious concerns — I referred to the financial transaction — why did it take so long to start a full and proper investigation?

Dr McCormick: It is true to say that it should have moved more rapidly. I think that everyone concerned would accept and acknowledge that. It is fair to say that what emerged was quite complex and needed to be considered carefully. Also, at a couple of stages, there was a need to procure expert input of one sort or another, whether that was consultancy or whatever, and that took time. There were also ongoing discussions in that period with legal advisers. Quite a lot was happening in this case and in the wider context. We definitely have to acknowledge that it should have moved much more rapidly and that there should have been much more rapid communication to DCENR and SEUPB and more widely about the nature of the allegations and the way in which they were being followed through.

As you highlighted, the consultant who undertook the first stage of follow-up was appointed in March 2009 and provided a draft report to us in September 2009. Because that individual had not been trained to investigate under police and criminal evidence procedures, that led to another decision about what we should do next and what the right next step to take was. That individual was not trained in such a way to allow them to undertake the kind of evidence gathering that was then required. We did not know that it was going to be needed until we had his emerging findings, which threw light in and said, "Actually, we've got some very serious issues to address here". There were difficult things to address, and we accept that they should have been addressed much more quickly. It should definitely not have taken as long to deal with those things. There should have been more escalation and elevation of the issues at earlier stages.

I am not offering any excuses; I am trying to give a little bit of background explanation contextually about what was going on. There is acceptance from all of us here that it should have been escalated and acted on much more quickly. If we had it to do over again, we would move more quickly to make sure that we had commissioned the right people in a timely fashion with no let or hindrance on the scope of the questions that they could ask or the processes that they could undertake to get to the truth and the interventions that would protect public funds.

Mr Sterling: Obviously, I echo all that. Given that I was the accounting officer from October 2009, I would say that, during that period, we did many of the right things, but we were certainly not quick enough in doing them. As accounting officer at the time, I take full responsibility for that. I have offered Pat an apology for not informing SEUPB earlier than we did, which was in late 2010 or early 2011.

There were some mitigating circumstances, which I am happy to explain. We had quite a significant turnover of key staff during that period. We lost the deputy head of audit in February 2009. The finance director was absent on sick leave from June 2009 until April 2010. We had the retirement of the head of internal audit in August 2009. We had to wait for nearly —

Mr Beggs: Did you have anybody acting up during all that time?

Mr Sterling: There were people acting up, but, you know —

Mr Beggs: Work has to go on.

Mr Sterling: Indeed. It was a very challenging time, particularly in late 2010 and early 2011, with the Budget that followed the spending review, which followed the general election. The senior people in the finance division who had a role in all this were heavily engaged in the rescue of the Presbyterian Mutual Society as well. There was a lot going on, but I accept that we should have moved much more quickly than we did.

Mr Dallat: If I could cut across you, Roy. Mr Sterling, you are painting a picture of a Department that was unstable, volatile, subject to absenteeism and had all sorts of problems. That helps to explain to me why we got into this mess.

Mr Sterling: I do not think that I would accept that. If you look at each one of those moves, such as somebody deciding to retire —

Mr Dallat: You would have known that it was coming, would you not?

Mr Sterling: Indeed, and acting-up arrangements were put in place. I could go through each of those issues and explain that there were circumstances at the time. I am saying that we managed those difficult circumstances as best we could, but some things suffered. I have accepted responsibility for the fact that one of the things that suffered was that we were not sufficiently quick in dealing with these processes.

Mr Dallat: I am just thinking that we are constantly alien compared with the private sector. That scenario that you just painted would not be accepted in the private sector for two days.

Mr Sterling: You may be making a valid point, but I do not want to take the Committee's time —

Mr Dallat: I am not talking about the private sector. I am just disappointed; that is all.

Mr Sterling: I understand that, and, again, I have accepted full responsibility for that during the time. However, in mitigation, the rescue of the Presbyterian Mutual Society and other things were the top, top priorities coming from ministerial level. Those were not things that you would have to do every day.

Mr Dallat: So, your eye was off the ball.

Mr Sterling: No, I am not saying that my eye was off the ball; I am saying that we had a range of competing priorities at the time. I have accepted full responsibility for the fact that we should have found some way to advance these investigations more quickly.

Mr Beggs: Mr Colgan, I see that paragraph 4.18 says that the SEUPB had been informed of the DETI investigation in 2006. That was the very first investigation, and its conclusion was that no matters of concern were arising. Do you accept that you should have perhaps pursued the issue a little bit further? Were you aware of the causes of the investigation? Were you aware of the whistle-blowing allegations in 2006?

Mr Colgan: We were made aware of the whistle-blowing allegation in 2006. We were not made aware of the whistle-blowing allegation in 2008. I mentioned that a member of my staff met one of the officers from the telecommunications branch, which was responsible for the project, and went through the allegations. They were given strong assurances, as was said, that the issues were between the company directors and had no direct bearing on the integrity of the project. We had to accept those assurances in good faith as they were given to us. We also accepted the assurances that, as far as the implementing agency was concerned, the project was proceeding as it should and that expenditure was being incurred in accordance with proper procedures.

Mr Beggs: I am looking at some of the allegations from 2006 and wondering whether you should have been satisfied with that meeting and verbal assurance. I see that one of the allegations was that Bytel directors had withdrawn funds from both companies that should have been ring-fenced for the

INTERREG project, that, in claiming grant, the project promoters stated that value was delivered from assets that Bytel did not own, and that the sister company had ordered supplies on behalf of Bytel, which allowed the inflated price to appear to be claimed with yourselves. If you were aware of those being the whistle-blower's complaints, what detailed explanation was given to you to satisfy you that they were spurious and not relevant?

Mr Colgan: In fairness, with the benefit of hindsight, it is clear that the whistle-blower's allegations have been substantiated. They were substantiated later in the internal audit report and in the draft consultant's report in 2009. We were not aware of the internal audit report or the consultant's report from 2009; we were aware of these allegations only in 2006. In accordance with our protocol, we met with the implementing agency to take its views on how the whistle-blowing allegations were being dealt with. As Andrew explained, it gave us assurances that they were being dealt with in accordance with its procedures of the time and that there were no concerns for the programme or the project. We accepted those assurances.

Mr Beggs: Was that just box ticking? Somebody says it is OK, but if you trace it down the line, you find that the people who were involved in the grant process were the ones who said it was OK, therefore, it is OK.

Mr Colgan: In fairness, and I said this earlier, it is to do with the design of the programme at the time. If you look at the content of the service level agreement that we put in place between ourselves and the implementing agents, you see that very specific responsibilities were given in the ongoing monitoring of the project implementation and the ongoing monitoring and verification of expenditure in accordance with pre-agreed standards and levels of training and standards that have been defined and given.

Those duties and responsibilities were clear, and the implementing agency accepted that it was responsible for ensuring that they were carried out. I know now that we should not have accepted that the assurances that we were given were based on solid verification of expenditure. I know that now, but I did not know it back then.

Dr McCormick: In fairness to SEUPB, it asked DETI staff some key questions. It asked for confirmation that payments had been made in advance. On their understanding that was not the case, it is clear that DETI told the SEUPB that, when it met the director, who was the whistle-blower, nothing directly concerning INTERREG had been revealed at that meeting. So, I think that it is reasonable for the SEUPB to —

Mr Beggs: The thing that I do not understand is that one of the allegations was that the purchase had been made through a sister company with the same directors and the same address, which had only ever really traded with Bytel and had been set up, it would appear, for convenient transactions. That allowed this inflated claim to be made. What satisfaction did you receive about that specific claim?

Mr Colgan: We received absolute assurances from DETI that there were no significant issues to be concerned about on the finances of the project.

Dr McCormick: At that point, the evidence that the claim was inflated had not emerged. That was not part of the 2006 whistle-blower's allegations.

Mr Beggs: But, if someone had investigated the invoices and the bank statements, it would have been apparent.

Dr McCormick: That is right, but that did not come to light at that point. It was not part of what the director said.

Mr Colgan: It is clear that that simply would not happen today.

Mr Beggs: Why would it not happen today?

Mr Colgan: Because there is an independent financial control unit within SEUPB that is completely separate from the managing authority's functions, from the functions of the joint technical secretariat and from anyone to do with any project implementation. Mr Girvan mentioned the attention that the SEUPB gives to the verification of individual items of expenditure. That has changed.

We also have an external independent audit, which is outside programme arrangements. That has replaced the old article 10. There is a different environment altogether. We have whistle-blowing policies that would not allow a whistle-blowing allegation to sit. It would go on a register and then it would be reported to our audit and risk committee. There are procedures and protocols that have to kick in, and, as I mentioned, an independent fraud investigation officer takes ownership of that file and looks at it separately from anybody else who has anything to do with it.

Mr Beggs: Dr McCormick, Pat Colgan indicated that he was not notified of the 2008 whistle-blower allegations. The report indicates that and that the allegations and the findings of the 2009 consultant's report were not passed over until February 2011. So, the SEUPB was unsighted of the second set of allegations. Why did your Department fail to share such relevant and significant findings with a key stakeholder?

Dr McCormick: There is no good answer to that. There was no good reason for that. We have apologised, as David said, that that did not take place. The earliest point for that was the relatively low key potential irregularity report, which went to SEUPB in May 2010. I can say that there was at least some investigative work to assess the allegations from 2008 onwards, but it absolutely should have been shared with SEUPB. There is no reason for it.

Mr Sterling: There was a focus during that period, through the summer and into the autumn of 2010 on constructing the writ that was issued against the company in November 2010.

Mr Beggs: Can I remind you that the allegations were made in 2008 and that the report came back in 2009? We are not talking about six months when you were looking at producing a writ. Can you explain those three years?

Mr Sterling: The allegations were received in 2008. There was an internal audit and an initial investigation. It was concluded in early 2009 that there something of significance that required a more detailed investigation. It was at that point that Consultants A — ASM Horwath — were engaged to conduct that review. I think I recall that it reported in September 2009. It was clear that that was a draft report. It flagged up significant issues. We were slow in addressing those issues, and, indeed, it was clear that additional work would need to be done as a result of that initial work. As I said, it took too long to progress that from there.

Mr Beggs: The Department of Finance and Personnel has a responsibility for SEUPB, as I understand it.

Mr Sterling: Yes.

Mr Beggs: The Department of Finance and Personnel would have been aware of all this going on. Would the concern about financial transactions, the irregularities and the potential £2 million claim have been reported to you?

Mr Sterling: I am not sure when that was notified to —

Mr Beggs: When would DETI have made DFP aware of risks?

Mr Colgan: If I could explain —

Mr Beggs: No, I would like to get this out of the Department.

Dr McCormick: Sorry, I do not think we have that as a matter of —

Mr Beggs: Surely DFP would automatically be made aware of a risk factor of £2 million that could be claimed.

Mr Sterling: I do not know when —

Mr Beggs: Can you come back to us?

Mr Sterling: I will.

Mr Beggs: My reason for asking that is that I assumed that you, from the Department of Finance and Personnel, would have been aware. Would you not have made sure that SEUPB was aware of the issue if somebody had happened to fail to pass on the information from a different Department?

Mr Sterling: That should have happened. Obviously, —

Mr Beggs: So, there was another failing within another Department.

Dr McCormick: There may not have been if DFP was not informed. We need to check when DFP was informed. If it was informed, your question stands.

Mr Beggs: Can you also confirm whether a potential £2 million liability would appear on your risk list? A list of risk factors is worked out in every Department. Surely that is a risk factor.

Dr McCormick: Again, given that the whistle-blowing in 2008 came to us from NIAO, there was a recognition of that risk. It was registered as a risk from that point onwards, because it would have been notified and would have been an issue from then.

Mr Sterling: The DETI audit committee was notified in December 2008, so it remained an item on the audit committee's agenda throughout that period.

Mr Beggs: I am conscious that DFP also has a role to ensure that information is shared with appropriate bodies. There would appear to be failings here.

Mr Sterling: We will come back to you.

Dr McCormick: It certainly would have been. The statement of internal control for the 2008-09 accounts states that:

"During 2008-09, the Department initiated an investigation following receipt of anonymous allegations concerning grant funding to a company. The investigation is ongoing."

That is not specific. It does not mention Bytel, but that would have been a matter of record between ourselves, DFP and NIAO as a matter of further statement of internal control from 2009-09 onwards. To be specific, it was June/July 2009.

Mr Sterling: Yes.

Mr Beggs: Given that the £2 million was eventually paid from DETI's funds, when the project was withdrawn from INTERREG in 2012, was that additional funding requirement reported to the ETI Committee?

Dr McCormick: In terms of the budgetary consequences of —

Mr Beggs: That £2 million is going to come from DETI; it is a major pull on resources to that Department.

Dr McCormick: I am thinking that through. The need to cover that would have been clear only when the withdrawal from the EU programme was confirmed. That required us to complete the process to test and to go from knowing about a potential irregularity to having a confirmed irregularity and withdrawal from the programme. Given that those things were confirmed only through the various investigative processes, that would have taken us into the 2012-13 financial year. My understanding of what happened at that point is that, late in the financial year, it was necessary to substitute mainstream public funds for the European grant and to deal with that properly. I do not think that there was any highlighting of that in the record of the engagement that we would have routinely with the ETI Committee on the monitoring process. My understanding is that it was recorded in the accounts for the 2012-13 financial year. Again, that was not explicitly with a reference to Bytel but with a reference to the need to have covered the cost of a grant that was withdrawn. I think that, in the monitoring papers, it was treated as writing off a bad debt.

Mr Beggs: Can you understand why someone like me or a member of the public might think that it had been hidden away in the accounts by the way that it was dealt with?

Dr McCormick: I understand what you are saying, but I think that we were processing it as something that we knew would be dealt with. At that stage, the whole process was quite overt. Given that the whistle-blower in 2008 had come through NIAO, it had entrusted the follow-up work to us, as it routinely does. It was being kept informed, at that point, there was no reason to hide anything. Given that source, I suppose that it was ultimately bound to take us to this very place this afternoon.

Mr Sterling: We had an understanding for a long period that this was going to be the subject of an audit investigation and that it would probably come to this Committee. There was no intention by us to do anything to hide this away, because it was not something that could ever have been hidden away.

Mr Beggs: The point that I am getting at is that, due to the ETI Committee being unsuspected of it, it was not allowed to perhaps intervene and look for reassurances earlier.

Mr Sterling: I accept that that may have been overlooked. It would not have been intentional. The focus then, as I say, was on preparing the writ so that we could actually seek to recover the money.

Mr Rogers: I am glad to hear you say at the end, Mr Sterling, that it was not intentional, because that failure by DFP and DETI to share the information with SEUPB prevented it from carrying out a timely investigation of the whole thing. Maybe it goes back to my earlier point. I still wonder where value for money is on the list. I feel that that failure to share with SEUPB was a major failing. Timely intervention and investigation could have saved lots of money.

Mr Sterling: Yes. I accept that.

Dr McCormick: I accept that.

The Chairperson (Ms Boyle): Mr Sterling, I appreciate that you are here as the accounting officer for DFP. However, in 2010, you held a senior position in DETI. DETI submitted an irregularity report on the project in May 2010. Back then, it did not provide any substantive information or conclusions on the irregularity. Why did it take so long to issue the irregularity report, which basically said nothing? Further to that, SEUPB requested more details on that report. Throughout the second half of 2010, which is when you requested that information, Mr Colgan, no further details from DETI were given to SEUPB. Why was SEUPB's request for further information not responded to, Mr Sterling?

Mr Sterling: I do not have a good explanation for that. I have explained that SEUPB should have been advised earlier. I have offered an apology for that. I mentioned some of the other issues that we were dealing with at the time. I also mentioned that we were focused on ensuring that the writ was issued so that we could begin the process of reclaiming the grant. That is not a sufficient excuse for not having informed SEUPB earlier.

The Chairperson (Ms Boyle): Mr Colgan, you certainly did not get a satisfactory response to your request. Were you frustrated by that?

Mr Colgan: I suppose it is fair to say that we were. I first became really aware of the seriousness of the situation on 8 February 2011. I wrote to the accounting officers in DFP, DETI, DPER and DCENR on 10 February. On foot of that letter, we put a project board in place to review all the matters surrounding this. The board met for the first time on 24 February 2011. On 22 April 2011, we appointed ASM to do a detailed review; the same authors of the draft report that had been presented in 2009. We felt that that process needed to be finalised. They were contracted through a procurement system with the involvement of CPD.

On 5 November 2011, all the findings of that report were made available to everybody who was on that project board. Further consultation with third parties needed to be carried out for clarification of facts. It was not until 15 March 2012 that I was in a position to be able to make a final determination on it having received the final report.

On 16 March, I wrote again to the accounting officers informing them, based on the findings of that ASM report, that we were deeming the project to be completely ineligible in the programme; we were

withdrawing it from the programme and we would not be in a position to be able to reclaim this money from the European Commission. It was at that stage that it ceased to be an INTERREG project as such. It ceased to have any sort of EU identification, but the programme, for the first time ever, had to carry a loss at the end of the final reconciliation. It was a very small percentage of the total amount, but a significant amount with regard to public expenditure, €4.3 million. As I say, this was the first time that that had ever happened to us. It was a matter of concern to us.

The Chairperson (Ms Boyle): At the time when you requested that information, and, as I said, you were obviously frustrated, did you lose confidence in DETI and indeed the whole project?

Mr Colgan: My staff were engaged with DETI over that period from May 2010 onwards in meetings and over the phone to try to get some clarification on the whole thing. I think we became aware that there were more things happening, but we had no sense of what they were and we really could not make any judgement. I have to say that I do not actually think in terms of frustration. I deal with facts, procedures and processes and the way in which they are presented to me. Our confidence is based on our experience with them. You would have to say that this particular project was not handled well. I think that everybody knows that. I think that the investigation has shown that.

Mr Dallat: Mr Sterling, the Department knew as far back as 2006 that €2 million had been approved on the back of an envelope — sorry, one page. Since 2006, has anyone fallen on their sword? Has anybody been demoted, reprimanded, sacked or anything as a result of this scandal?

Mr Sterling: No. As Andrew pointed out earlier, we have looked at the possibility of discipline on two occasions. The conclusion so far has been that there is not sufficient evidence to warrant disciplinary proceedings.

Mr Dallat: There is something terribly wrong with society when some young person is in court because they went into Tesco and stole a Mars bar, but €2 million can go missing and there are conflicts of interest all over the place, quite obviously, and nobody, but nobody, even gets a warning letter.

The Chairperson (Ms Boyle): Absolutely.

Mr Easton: Mr Colgan, when the SEUPB withdrew from the project, were you put under any pressure from anyone to stay on board, or was it accepted?

Mr Colgan: No: this would have been a direct result of the investigation carried out by ASM in 2011-12. It would have been submitted to the project board, which contained representatives of all the key stakeholders. I chaired the board and I know that there was unanimous agreement that there was no choice, given the facts as they were presented. There was no way in which we could, in all honesty, have claimed that money back from the European Commission knowing that, if the European Court of Auditors looked at it, it would be deemed ineligible immediately.

Mr Easton: Did any interested parties outside —

Mr Colgan: No.

Dr McCormick: Chair, can I come back on a couple of things including, first, the Deputy Chair's point just now? One of the underlying reasons why there is no evidence or case available, up to this point, to have introduced an area of challenge to an individual's performance or conduct is because it appears that most of the decisions, if not all, were taken collectively. In other words, there was knowledge of what was being done, for example, in the decision to approve the first grant payment for the Nortel equipment, the decision to pay the final grant payment and the decision on the nature of the investigation in 2006. Individuals may have influenced those decisions, but several officers were involved in taking those decisions. That takes you to the place of it being more about collective misjudgement than individual conduct. That is not satisfactory. It begs other questions and there are further questions for us to ask about the nature, because a key point will be the degree to which individuals exercise those judgements in full or partial possession of the relevant facts. There are some further questions for us to ask, but the primary reason is that there is no sound basis in HR practice or in law to pursue these things because there was a collectivity about those decisions.

Mr Dallat: That is a very plausible explanation. It is real classy. Given that a group of people were involved in decision-making, I take it that meetings were held and that minutes of those meetings have been kept and are available to the Committee. Having said that, how can you excuse the responsibility of accounting officers at different levels who are paid good salaries for looking after the public purse and the purse strings? Whatever about the collective decisions that were taken, somebody surely had to be looking after the chest, so to speak.

Dr McCormick: The main way that is achieved is by testing that there are effective procedures and checks and balances in place. No accounting officer can look personally at all the payments that are made or at all the transactions. The important thing is to have ongoing continuous assurance that the right procedures are in place and that the staff undertaking the work have a good match between their responsibilities and abilities. We need to watch that continuously. It seems to me that there were failings in aspects of that, including insufficient expertise and understanding of telecoms issues, so that it was possible to misunderstand the nature of what was going on, and other issues in relation to investigative procedure.

As accounting officers, we have that responsibility, and the buck stops with us. We cannot exercise it by detailed specific oversight of each transaction, but we have to accept responsibility that the system has to work. In this case, the system failed, and we still need some degree of additional understanding. If there is further material that would be helpful for the Committee to have and consider, we are more than willing to provide it, because it is in our interests, as well as yours, to see the light shining fully on this. We are content to pursue that further if you wish.

Mr Dallat: The moral of that story is that, if you do not want to take responsibility, call a meeting.

Mr Beggs: My question is along a similar line of thought. Earlier, there was mention of a private sector company. If a private sector company lost €2 million, I do not think that the shareholders would be very happy to learn that the buck stops with nobody and that nobody is accountable. That is the perception that is being given. You said that the buck will not be held by anybody.

Dr McCormick: The buck stops with the accounting officer absolutely; the buck stops with me in relation to DETI as of now. We have to be sure that the systems are in place and are working. We have internal audit to provide a primary check; we have audit and risk committees to oversee that work, and we are subject to external audits. Those are the checks and balances that arise. At times, they can go wrong, and, in this case, they clearly did go wrong. However, the buck — the responsibility — rests with us in that regard.

(The Deputy Chairperson [Mr Dallat] in the Chair)

Mr Beggs: But you are saying that nobody can be held responsible.

Dr McCormick: We were asked if there had been any disciplinary procedure. The answer is no, because the actual responsibility for the decisions had been collective, and that implies that they had been approved. I think that there are further questions for us to ask in relation to the degree to which those decisions were informed by relevant evidence and documentation. I still have an unresolved issue in my mind about that, but we have to make sure that we do this thing properly and fulfil —

Mr Beggs: Can we have clarity? If there is collective decision-making again today in some Department, does that admonish all those involved in inappropriate decisions?

Dr McCormick: It does not admonish anybody. It just means that you cannot single out an individual and say that it was all that person's fault. That is very hard to achieve. I have given very similar answers to the handling of health issues. The same point applies. What I said in my consideration of one particular very difficult case in the health service was that a systems failure is more serious than an individual's failure, because a systems failure creates greater risk and requires further and detailed scrutiny, which includes looking at the question of how to hold senior staff — accounting officers, chief executives — to account. That is part of the evidence I gave to the hyponatraemia inquiry; I gave my opinion and my view as to how to deal with the kind of issue where you have collective involvement, complex decision-making processes and maybe the sum of a range of individual mistakes turning into a collective failure. That is quite difficult to handle, and it is important to ensure that there is a fair and proper process, but with no shrinking back that there is individual responsibility. I will take one particular aspect of that. In talking to the individuals concerned, we know that there is an acceptance

of responsibility for the decision in relation to the 2006 investigation at the point of June 2006. That is accepted and acknowledged. I do not think that that is the complete story, but we have to be firm in our view of those things and fair to each individual concerned.

May I correct one point? We have been checking papers while we have been talking. In relation to the 2008 whistle-blower allegations, there was a primary notification from internal audit to DFP about that emerging in 2008.

Mr Rooney: July 2008. Shortly after the whistle-blower had approached the Audit Office, the head of internal audit in DETI contacted the NIAO and DFP about the whistle-blower and the allegations and advised DFP that we would keep the Department informed as the investigation continued in light of further details that may emerge from it.

The Deputy Chairperson (Mr Dallat): You may have noticed that we have changed the top table. I do not know whether that is a good thing or not.

Were there any relationships between members of staff in your Department or your consultants and the people in Bytel?

Dr McCormick: We have already explained our understanding of the individual who was working for Western Connect who later provided a service. We do not think that he was employed by Bytel, but he may have been. He certainly provided consultancy support to Bytel from 2006 onwards. We are not aware of any other —

The Deputy Chairperson (Mr Dallat): Surely that was a serious conflict of interest.

Dr McCormick: There was no blatant conflict of interest at the time, because our contract with Western Connect ended —

The Deputy Chairperson (Mr Dallat): Did you declare it?

Dr McCormick: I am not sure that at any stage there was anything to declare. As we understand it, he left Western Connect in the summer of 2005, which we think was before he had any direct service provision to Bytel.

That is the information we have, which means that, where there would have been an obligation to declare that, I think you could possibly say that had we been particularly sensitive to concerns, maybe something would have triggered. The fact of the matter is that, in the period in question, that is, the autumn of 2005 and the first part of 2006, nobody in the Department had any reason to believe there was a problem. It looked as though it was going OK. The project was delivering in the way they were thinking about it, and they were satisfied with the approval of the payments. We are saying that we now know that was wrong, but putting yourselves back into their view of life, it looked OK.

The Deputy Chairperson (Mr Dallat): The next question leads on from that.

Mr Rogers: You talk about the benefits of the system. Given that the technical aspects of it are quite complex for the layman to understand, can you tell us in practical terms what the benefits of the project have been for broadband users on a day-to-day basis?

Dr McCormick: This goes back to the very beginning. It is quite clear in the economic appraisal that the intention behind the project and the reason it was needed was that we had a duopoly of broadband provision North and South, with BT dominant in the North and Eircom in the South. We had reasonable progress with the penetration of broadband in the major urban areas but limited competition, poor access and higher prices, especially in the border counties. So, we had a problem that the market was not solving. The objective of the project was to introduce competition, drive down prices and provide access to high-speed broadband that was much better than was available through ADSL through the commissioning of this project. That is what we set out to achieve.

As Prisa shows in its report in 2013, the main objectives were achieved, if not more than achieved, in relation to improving the market, driving down prices and securing competition. In fact, some all-Ireland pricing was achieved for part of the pricing structure in relation to the way it worked. How that was achieved in practical terms was by Bytel buying access to Eircom bandwidth and making that

available, so that the question was, looking at them as a supplier, whether they would get major customers? They got some major customers in the area in question over the first period of the contract. So, in that sense, it provided new access to broadband services in areas that had not benefited through the mainstream behaviour of the market.

Mr Sterling: Prisa identified seven things that were reasonably significant and went beyond the project objectives. Those are set out in the report. The revival of the Saturn network was very important and allowed connectivity to the north-west. There was more resilience in the system because the Saturn network could then be used. Loops are more resilient than straight lines for broadband. It secured Eircom's re-entry into the Northern Ireland market and, indeed, the Civil Service has benefited from a contract it has subsequently awarded to Eircom to provide network services, and that is working well.

That is an example of improved competition in the local market, and it has been a catalyst for developments, for example, in the Science Park. It was one of Bytel's first customers. It also led to Kelvin, which provided fast, international connectivity. In the South, and allowed the metropolitan area networks in Castleblayney and Monaghan to be connected to the wider networks. In highlighting those, I do not decry all the points that have been made before, and I would not seek to justify that this was a good project, but it was not a hopeless case. There was some value for it, but we accept fully that we paid too much for the value that we got.

Mr Girvan: That leads me to the point about value. Paragraph 5.12 indicates that the letter of offer was based on total project costs of €12.4 million. Then the report goes on to state, in paragraph 5.13, that the value placed on the network delivered by Bytel was €3.93 million. That is a pretty good return, if you can get away with. I am saying that that is what was actually delivered. Can you tell us how, in approving the project, you failed to identify that you could have delivered it for a fraction of the cost you ended up paying?

Dr McCormick: There is no good reason for that. To me, the root cause of this was lack of technical expertise and over-reliance on Western Connect's technical expertise. It was not until we had the Prisa report that some of the misconceptions about the need for four fibre pairs were cleared up. Prisa said that we did not need that. That information was not available to the Department until we had the Prisa report. What that says is that we did not commission or procure the right expert advice and technical assistance. We went badly wrong in that respect and, therefore, did not fully understand what was going on. There is even a wee reference in the Prisa report that Bytel was not all that sure what it was doing.

Mr Rooney: Just to add to that, a point was made earlier on the need for a reappraisal. Had there been a reappraisal, it would have given a much better sense of what the new project was and what the costs of it should be.

Mr Girvan: I am aware that certain parts of this project were claimed to have been delivered but were already in the network. You talked about the loop that was present; it had been there for quite some time, even prior to this project being put in place. As a consequence, there is evidence — and I am aware of it — that a number of people and companies were working around the edges, at that time, and were trying to link into the loop that was already there, because they knew that the cable was there, its capability, the link with Project Kelvin and the wider opportunities that were going to be there. Some well-meaning individuals, some whom may even be in this House, were well aware of that at that time and were maybe trying to take advantage of it.

The Deputy Chairperson (Mr Dallat): Roy, I think you are asking question 27.

Mr Beggs: I will just collect my train of thought. I had not realised that you were coming to me just as fast as that. EU grants payable for this project should have been capped at 35% of capital costs. Is that correct?

Mr Rooney: Yes.

Mr Beggs: At paragraph 5.15, we see that Bytel incurred a total cost of €3.9 million but that €3 million of it would have been ineligible because it was for the lease of the line, according to the conditions that were set. Effectively, they incurred eligible costs of €0.9 million. Is that correct?

Dr McCormick: Yes. In terms of precise eligibility, it is perhaps the case that, had there been a reappraisal and review of the letter of offer, some of the new expenditure might have been eligible, but that is no great point to make because it did not happen, so your point stands.

Mr Beggs: So, they were eligible for €0.9 million according to the terms that were set and agreed, and they were paid how much?

Dr McCormick: €4.3 million.

Mr Beggs: That is good business if you can get it.

Dr McCormick: The only point I can make is that that was not understood at the point when the grants were paid. It should have been understood, for the reasons I explained earlier, through better technical appreciation of what was going on and better review and inspection reappraisal. We have covered all those things already. However, that does not take away from the point you have made.

Mr Beggs: I do not know how to follow that.

Dr McCormick: I am sorry.

The Deputy Chairperson (Mr Dallat): Alex, you have an interesting follow-up, question 28.

Mr Easton: Mr Colgan, paragraph 5.21 states that the withdrawal of the Bytel project from the INTERREG programme after June 2009 ultimately resulted in significant amounts of available EU funding being lost to Northern Ireland. Had the SEUPB been advised earlier of the project irregularity, would that have enabled the funding to be reallocated?

Mr Colgan: As you approach programme closure, you are, inevitably, with so many projects around, going to uncover irregularities, problems and difficulties. The trick is being informed in time so that you can do something about it. We would have replaced projects in the run-up to the closure of the INTERREG programme with others; we would have sorted irregularities, dealt with them, taken them out of the programme and replaced them with others.

In fairness, looking at the dates, the programme started in 2000 and was due to finish in 2006, with a further two years for completion in 2008, and then a period of time to run down, so final expenditure should have taken place in 2008. Six months' extension was granted to all European programmes at that time to extend until June 2009. Because of the prevailing economic circumstances and so on, it was felt that programmes throughout Europe in general were under pressure, so we were given a little bit of extra time to deal with some of the issues. Had we known before June 2009, it is quite conceivable that we would have been in a position to ensure that there was no loss to the programme.

Mr Easton: There were projects elsewhere that could have got the money.

Mr Colgan: In fact, I am aware of about €3 million in expenditure that we would have replaced with other projects during that period. It is not something that is unusual in managing programmes down to closure.

Mr Easton: Andrew, paragraph 5.24 tells us that, when Bytel sold the funded assets to Hibernia Atlantic in 2009, the grant paid should have been subject to clawback. However, you did not become aware of the sale — I do not mean you, by the way — of the ownership status of those funded assets so that you could have recouped the grant in 2009.

Dr McCormick: It is a further issue that could and should have been handled better. It was only brought out into the light properly through the Prisa report in 2013, by which stage it was too late to invoke that precise means of pursuing it. Again, there is a concern there. The facts probably should have been brought to light at an earlier stage.

Mr Easton: OK. Paragraph 5.30 states that DETI examined other projects in which Bytel had received funding from your Department. It has identified no concerns. How can the Committee have any confidence in that statement given that your Department repeatedly provided incorrect assurances that there were no concerns with the Bytel project?

Dr McCormick: The key point in relation to ongoing credibility is that there is a clear distinction: the previous unreliable assurances were based on a procedure, which we no longer follow, that places too much reliance on an individual unit in a Department. As David explained earlier, we have new procedures in place with a new separation of roles. The review referred to at paragraph 5.30 was undertaken by internal audit, not by the telecoms people. In that sense, it was a more orthodox and independent way of providing that kind of investigative assurance. Therefore, it is much more credible. Wherever I have been, I have always maintained the view that there is nothing that can stand in the way of the right of the internal auditor to come to me, as accounting officer, and say, "Here's something you need to pay attention to". That is a fundamental defence in the system. It is vital that we protect, resource and esteem internal audit. The difference is that this report comes from internal audit, not from the same source as the assurances, which, as you said, do not have the same credibility.

Mr Easton: From paragraphs 5.28 and 5.29, I see that DETI issued a writ in 2011 to recover all of the €4.3 million grant paid to Bytel and issued a statement of claim against the company in March 2003. Can you advise us of any latest developments in the legal process and what legal advice you have received on the prospects of recovering the grant?

Dr McCormick: We have had continuous legal advice essentially since the 2008 whistle-blower came to us. I cannot say very much about that for reasons that I am sure you will understand. Indeed, the Chair referred to that at the outset. It is being pursued actively and thoughtfully, and we are in ongoing dialogue with our legal advisers to ensure that it is dealt with in a way that does all that we can to protect the public interest.

Mr Easton: Why has it taken so long?

Dr McCormick: It should not have taken so long. There is no acceptable explanation for that. David has given some very reasonable descriptions of the context that applied, but all of us acknowledge that it should have happened quicker. Indeed, some of the actions taken by our lawyers were to stay in time in relation to some of the deadlines that apply in that legal context. We now need to be very clear on our next steps, and that is part of our responsibility following this hearing.

Mr Easton: Will I keep going?

The Deputy Chairperson (Mr Dallat): Go ahead, Alex, yes.

Mr Easton: Andrew, as the session has gone on, we have become more convinced that something went wrong and that something terrible has gone on. It started with a partnership that seems to have been a sham — paying €1.3 million for equipment that was not worth a fraction of that cost. There was the farcical fourth grant claim and question marks over the relationships of some individuals in Bytel. Is this not simply a very large fraud?

Dr McCormick: It is important to make the point that we are in an active legal process. That itself is an answer to your question. That is a way of saying that we are pursuing a concern that we have. We have to pursue it in a way that is evidence-based and in a careful legal process. In the course of that process, as well as internal audit advice, we have had discussions with the PSNI and with counter-fraud investigators. That is part of the approach that we have taken. There are important points of evidence in relation to all this highlighted in the ASM Horwath report and in the Prisa report. As has come out very clearly this afternoon, there are no straightforward conventional explanations and, therefore, it is essential to look beneath that. We are wary that there are claims and counterclaims going on. There are different representations of what happened coming from other parties, so that all needs to be handled with great care.

It is important to be clear about what we are looking at. I am concerned to distinguish between the relationship with Bytel on the one hand and the internal issues that have been hinted at a couple of times this afternoon. The simple matter of fact is that the process was subject to scrutiny. One thing that we rely on in fraud prevention is that we have an internal process. It does not always work very well, and, in this case, it did not work very quickly, but it is there and it is quite a major deterrent in the handling of these issues. For example, the very fact that the email referred to earlier was still on the file and was found suggests that there was a degree of openness and transparency about the process. That affects our view of the issues. If we have internal or external concerns, we have to

think about and be very concerned about both. I hope that there is at least some comfort in that there are strong inhibitions in relation to the behaviour of staff.

Mr Easton: It has been referred to the PSNI.

Dr McCormick: There were discussions with the PSNI, yes.

Mr Easton: Have they taken it any further?

Dr McCormick: Again, I do not want to comment. I really would prefer not to go into detail on that, if that is OK, vice-Chair.

Mr Easton: Why was that email sent to DETI in the first place?

Dr McCormick: It came as part of the information from the first whistle-blower. The director of the company was trying to get our attention, trying to say, "Something's going on here". Part of what he did was to allow his solicitors to send us the detailed papers relating to the legal proceedings that he was undertaking against one of the other directors in the company. The email is exhibit 4 to an affidavit by another director in the company.

I find it very interesting that the initial whistle-blower shared those legal documents. It came in a letter from the solicitor of the whistle-blowing director to the Department. It was attached as a fourth exhibit to an affidavit, which was, in turn, an attachment to the letter. It was quite a large bundle of papers that came in. I was looking at them this very morning.

The Deputy Chairperson (Mr Dallat): Mr Colgan, I might well give you the last throw of the dice. It must be heartbreaking sitting there listening to how those millions of pounds were spent. Would the Committee be right in assuming that a lot of other projects could have benefited from that money?

Mr Colgan: In fairness, as I said earlier, probably the biggest fault in the way this was handled was around the lack of communication to us. When it was found that there was an issue or a problem, we should have been involved a lot earlier and informed of the seriousness of it. Everybody here has recognised that.

Could we have replaced it? Hindsight is a wonderful thing, but all I can say is that there are other projects that benefited from situations similar to this.

The Deputy Chairperson (Mr Dallat): That is really what I wanted to ask. I want to go back to Dr McCormick, and then I will bring you in, Seán.

If you had the opportunity, what would you do differently should you be responsible for managing the funding of a project such as this in the future? I am sure you would not wish it.

Dr McCormick: In pursuing this kind of issue, the central point that emerges for me is the need to have at your disposal technical expertise that you can rely on, that you know is not conflicted and that is giving understanding of the nature of a project and how the market works: what costs what and how things are moving. As Mr Girvan drew out, things change.

We need to make sure that we deal through competitive procurement processes. One of David's strongest points this afternoon was to emphasise that that is how we do things now. We have already learned a lot of those lessons. It is a case of expertise and ensuring competitive processes that then allow the transparency of the market force to help.

We need to make sure that we have rigorous, independent investigations when allegations emerge of the kind that emerged in this case. That is my long and short of it.

Mr Rogers: Mr Colgan, you are a man who is held in high esteem in terms of INTERREG funding etc. You know it inside out. Based on your knowledge of INTERREG, grant ceilings and eligibility criteria, how much of a grant should that project have received?

Mr Colgan: I think that the figures have been brought out. The actual costs of the project are in the public domain. I think we know how much it cost, which was a fraction of what they actually got.

Mr Girvan: Dr McCormick, I have severe reservations about competitive tendering. It is a good process but there needs to be expertise within a Department to ensure that they are getting value for money even before putting it out to tender. I will use an example from your area of previous expertise. If you are going out to tender for a road, you should know roughly how much every 100 metres of that road is going to cost. If somebody asks you what the budget is, you would have a rough idea. That, however, is a target as opposed to value for money. The cartel can kick in, and they will aim to come in just below to ensure that they win the contract. Do you have a benchmarking process to ensure value for money before you do it? I work out estimates for everything I do, before I ask somebody else to give me a price, so I know whether I am getting value for money. It should be the same in the public sector: they should not just rely on somebody coming back to them with figures, which they then swallow hook, line and sinker.

Mr Sterling: Absolutely, that is a fair point. I will make two points. First, with big telecoms projects — certainly in later years, say from 2011 — the Department would always have procured specialist assistance to help with those procurements. More generally, and speaking with my DFP hat on, CPD is alive to the fact that, where procurement is through a centre of procurement excellence, before going to the market, it is necessary to have an idea of what is good value for money and to seek independent expert advice if in doubt.

Mr Girvan: Do they not seek that as a matter of course? I know that, for councils, as soon as people realise that it is Government money, and Andrew will tell you the same thing about the Health Department, the price is probably not even twice but three times what it would be for a private-sector developer delivering the same thing. Because they know that it is coming out of the public purse, all the prices are inflated. They say that it is because they have to tick this box and that one and the other. It is a lot of nonsense. We are not getting value for money for the general public, simply because we do not have quantity surveyors or people who are adequately qualified to give real assessments of what something should cost. We know the cost of everything and the value of nothing.

Mr Sterling: If it is helpful, I can drop a note to the Committee setting out how CPD —

Mr Girvan: I am aware of how CPD supposedly works, but I am not so sure that there is always a link to ensure that each Department gets value before it goes out to tender.

Mr Beggs: I have a question for Mr Sterling. What is there in the system to stop a situation like this arising again? I am referring to the specific issue of an invoice from a sister company being relied on and paid when it bears no relation to the actual costs. What protection can be built into public procurement to reduce the likelihood of such financial abuse being repeated?

Mr Sterling: There should be proper vouching verification any time the public sector buys or procures something. I will check and see whether there is specific guidance on that particular point. I am not aware of any.

Mr Beggs: It is particularly relevant where there is a single supplier and no alternative. Obviously, there need to be particular protections built in for such situations.

Dr McCormick: We can send you the advice that we have given internally on a related party or associated companies. Advice to all parts of DETI, and I am sure it is replicated in other Departments, highlights specific things to think about when you are in the scenario we describe — that illustrated by the XMCC and Bytel examples.

Mr Colgan: We have very strict guidance for EU programmes on related party transactions, and they are now a very important part of our financial controls.

Mr Beggs: What is the very strict —

Dr McCormick: We will send you the details.

Mr Sterling: We will do that as well.

The Deputy Chairperson (Mr Dallat): Is HMRC investigating the whole debacle?

Dr McCormick: Not to my knowledge.

The Deputy Chairperson (Mr Dallat): Is it something that should be happening?

Dr McCormick: I think that there was some previous involvement of HMRC, but let me check that and come back to you.

The Deputy Chairperson (Mr Dallat): All right. Mr Rooney, do you want to —

Mr Rooney: There is a reference in Consultant A's report to HMRC involvement with the director of Bytel. That is as much information as we have in the consultant's comments on that.

The Deputy Chairperson (Mr Dallat): All right. If everyone has had an opportunity to ask their questions, I will bring this to a close. All happy? Mr Layberry and C&AG, is there anything that you wish to add to the evidence that we have just received?

Mr Donnelly: There is nothing — *[Inaudible.]*

The Deputy Chairperson (Mr Dallat): OK.

Mr Layberry: No thank you, Chair.

The Deputy Chairperson (Mr Dallat): Members, would you like clarification on anything? If not, I thank you all for your attendance before the Committee today. It has been extremely useful and very open. The information received will, I trust and pray, be taken on board so that never again will anything of this nature appear before the Public Accounts Committee. We may, of course, need to write to you seeking clarification on issues raised today and on other issues as they arise during our deliberations. Are you happy with that?

Dr McCormick: Of course.