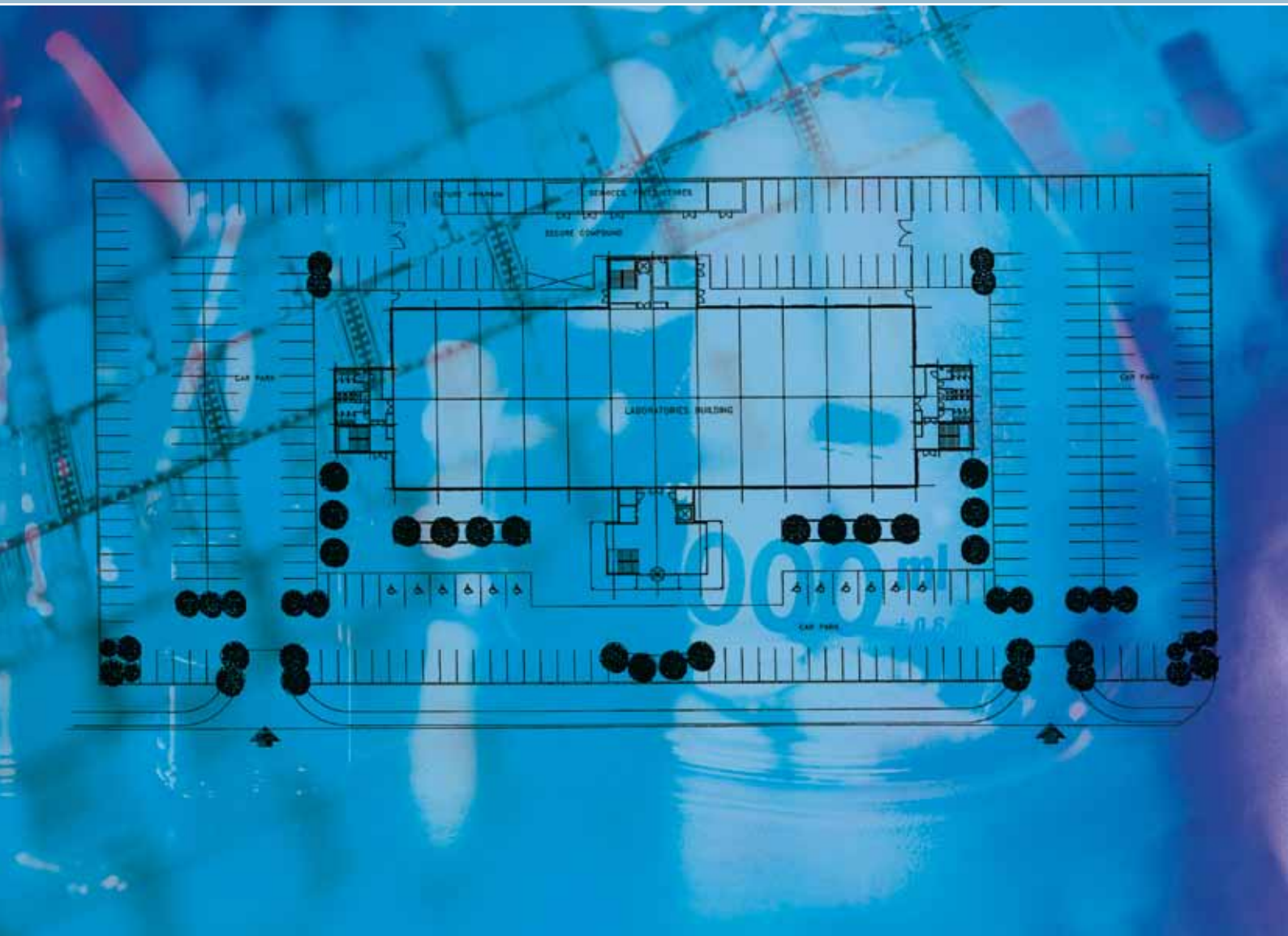




Northern Ireland Audit Office

# DETI: The Bioscience and Technology Institute



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
29 November 2011





Northern Ireland Audit Office

Report by the Comptroller and Auditor General for Northern Ireland

# DETI: The Bioscience and Technology Institute



This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 for presentation to the Northern Ireland Assembly in accordance with Article 11 of that Order.

K J Donnelly  
Comptroller and Auditor General

Northern Ireland Audit Office  
29 November 2011

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# Abbreviations

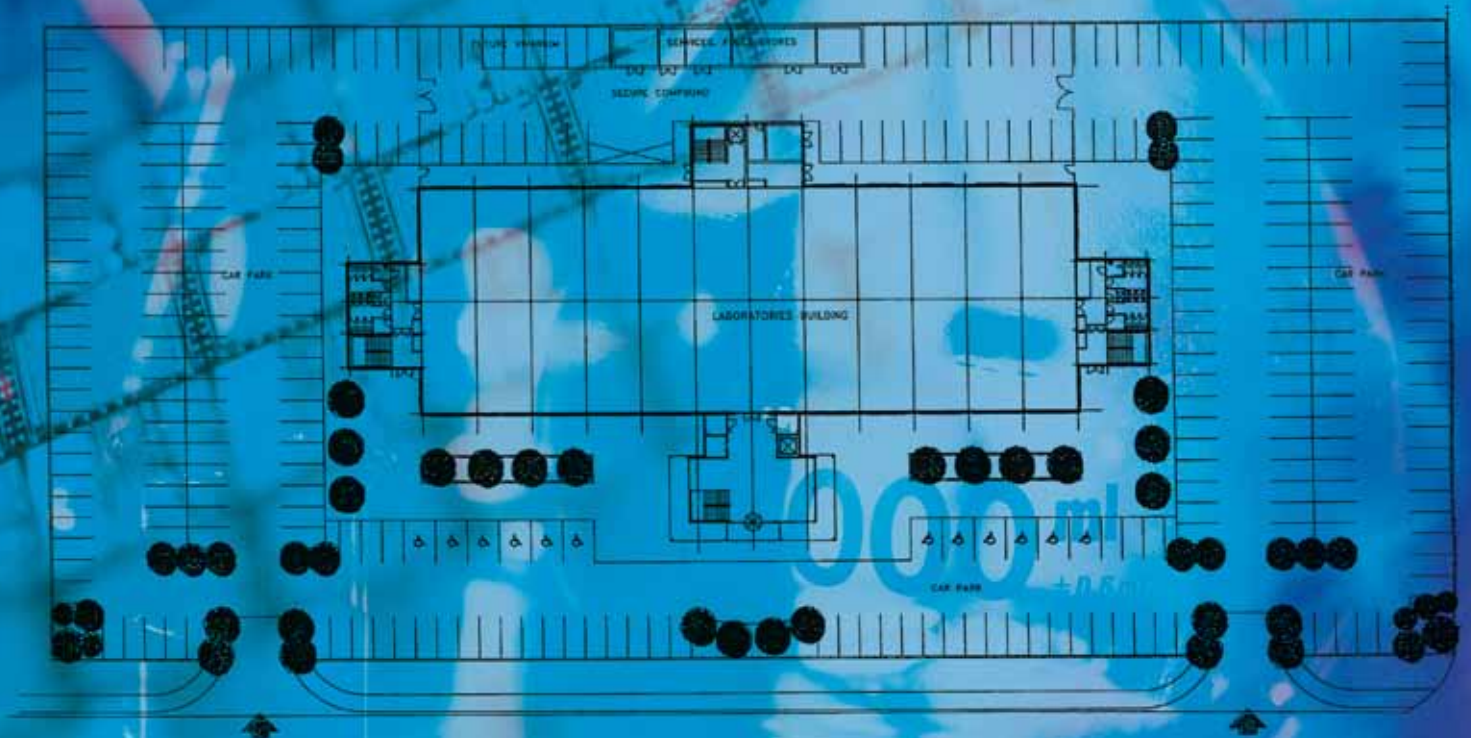
<b>BCH</b>	Belfast City Hospital
<b>BTI</b>	BioScience and Technology Institute Limited
<b>CARB</b>	Chartered Accountants Regulatory Board
<b>CEO</b>	Chief Executive Officer
<b>DETI</b>	Department of Enterprise, Trade and Investment
<b>DFP</b>	Department of Finance and Personnel
<b>EBT</b>	Emerging Business Trust
<b>FPM</b>	FPM Chartered Accountants
<b>GCE</b>	Genomic Centre of Excellence
<b>HSA</b>	Health and Safety Agency
<b>ICAI</b>	Institute of Chartered Accountants in Ireland
<b>IDB</b>	Industrial Development Board for Northern Ireland
<b>IFI</b>	International Fund for Ireland
<b>IRTU</b>	Industrial Research and Technology Unit
<b>LEDU</b>	Local Enterprise Development Unit
<b>MTF</b>	MTF Chartered Accountants
<b>P&amp;R</b>	Special Support Programme for Peace & Reconciliation
<b>PSNI</b>	Police Service of Northern Ireland
<b>QUB</b>	Queen's University Belfast
<b>RM</b>	Records Management

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# Glossary

<b>Biotechnology</b>	Biotechnology is the development of products, processes and methodologies based on biological systems such as cells, genes, antibodies and enzymes.
<b>Technical Insolvency</b>	A company is technically insolvent when the value of its liabilities exceeds the value of its assets.
<b>Company Inspectors</b>	Company Inspectors are appointed by DETI under the Companies (Northern Ireland) Order 1986 to investigate the affairs of a company and report on them.
<b>Company limited by guarantee</b>	A guarantee company has guarantors (rather than shareholders) who undertake to contribute a nominal amount (typically very small) in the event of the winding up of the company.
<b>Director Disqualification</b>	Director Disqualification is the process whereby a person is disqualified, for a specified period, from becoming a director of a company, or directly or indirectly being concerned or taking part in the promotion, formation or management of a company, without leave of the Court.

# Executive Summary and Recommendations



# Executive Summary

## Introduction and Background

1. This report examines the reasons for the failure of a major innovation project, the Bioscience and Technology Institute Limited (BTI). BTI was incorporated as a 'not for profit' company in November 1998. Its primary objective was to provide biotechnology<sup>1</sup> incubator facilities, through the development of a specialist building at Belfast City Hospital (BCH). The company was to be commercially sustained by the rent charged to tenant organisations, primarily early-stage biotechnology companies.
2. The project, which involved a 'new-build', secured grant of £2.2 million from four funding bodies - the Department of Enterprise Trade and Investment (the Department/DETI), the Industrial Development Board (IDB), the Industrial Research and Technology Unit<sup>2</sup> (IRTU) and the International Fund for Ireland (IFI). In addition, loan funding was provided by the bank (initially £1.5 million) and a private donor (£1.2 million).
3. The location of the building at BCH was seen by the funders as fundamental to the success of the project, because it would optimise the interaction between clinicians and scientists. As it transpired however, difficulties in progressing the project at BCH, within the required funding timeframe, led to BTI purchasing 'Harbourgate', a shell building some four miles away in the Belfast Harbour Estate. The revised project costs, incorporating both the purchase and fit out of Harbourgate, were estimated by BTI at

£7.5 million. This represented an increase of some £2.7 million above planned costs, almost all of which was unfunded.

4. In the event, BTI had inadequate funds to complete the fit out, the costs of which turned out to be substantially underestimated in any case. As a result, the building never became operational and did not generate any income for BTI. This led to the company becoming technically insolvent. BTI tried to sell the building but no purchaser was ever secured. In November 2005, with the company unable to service its loan funding, the bank took possession of Harbourgate and sold it the following month. The sale proceeds of £4.55 million were sufficient to repay BTI's debt to the bank in full, with the surplus used to make a part-payment on the secured debt to the private donor. No monies were available to pay the other (unsecured) creditors - HM Revenue and Customs and the funding bodies. BTI remains technically insolvent and steps are now being taken to begin winding up the company.

## Investigation into BTI's affairs

5. In 2002, BTI's auditors raised questions about the approval of certain invoices, in particular the payment of a £100,000 'finder's fee' in connection with the acquisition of the Harbourgate premises. In December 2005, following a formal complaint by Invest NI, the Department appointed Company Inspectors (the Inspectors) from PricewaterhouseCoopers,

1 The biotechnology activities to be targeted included clinical trials, drug discovery and drug development.

2 In December 1999, the Department of Economic Development was renamed the Department of Enterprise, Trade and Investment (DETI). In April 2002, IDB and IRTU amalgamated with the Local Enterprise Development Unit to form Invest Northern Ireland (Invest NI), a non-departmental public body funded by DETI.

under the Companies (Northern Ireland) Order 1986. This allowed the Inspectors to investigate the affairs of BTI. In November 2009, they reported the outcomes of their investigation to the Department, highlighting a wide range of issues. This included significant shortcomings in the handling of the project by the BTI Board, IDB and the Department.

6. In the wake of the inspection report, the Department's Insolvency Service is arranging to have the company wound up. It is also assessing whether to initiate disqualification proceedings against the directors of BTI. The current position is that it is considered unlikely that proceedings will be taken against every Director. The Department said that a final decision will be taken shortly. In addition, the Department commissioned a further, independent review of the conduct of officials involved in the case. This resulted in disciplinary action being taken by Invest NI against two officers, in February 2011.
7. The Department, in conjunction with the Department of Finance and Personnel (DFP), has also referred concerns about the conduct of four individuals to their professional bodies, in light of actions which may have breached professional codes of conduct. Three of the referrals were to the 'Chartered Accountants Regulatory Board' and one to the 'Law Society of Northern Ireland'. Details are set out in the main report.

## Key Findings

8. Like the Inspectors, we consider that there were significant shortcomings in the handling of the project, both by the BTI Board and by the Government funding bodies. These are detailed in the main report, with a summary of key concerns highlighted in each Part (2 to 6). Particular areas of concern include the following:

### On the handling of the project by the BTI Board

- There were widespread shortcomings in corporate governance throughout the course of the project, which undermined the Board's management and control. For example:
  - there were delays in appointing a Chair of the Board and a Chief Executive
  - a planned structure of three sub-boards to support the main executive Board was not implemented
  - formal procurement procedures appear to have been largely non-existent
  - there appears to have been no procedure within BTI for handling conflicts of interest. Conflicts which did arise were generally poorly handled, with lack of disclosure being a recurrent weakness

## Executive Summary

- Board minutes were not prepared for the first 21 months of BTI's operations; thereafter, the minutes produced often lacked detail on the Board's thinking and its justification for key decision-making.
- The decision to move the project to Harbourgate was neither based upon, nor supported by, a strategic assessment of whether the project objectives were still deliverable at the new site. This was despite locating the project at BCH being considered by all stakeholders as crucial to its success. When BTI committed to purchase, fit out and equip Harbourgate, over one third of the project (based on BTI's own revised cost estimates) was unfunded, with no tangible evidence of further grant funding or a future flow of income. This problem was compounded when it subsequently became apparent that even the revised costings were substantially underestimated.
- BTI failed to establish the true financial cost of the switch from BCH to Harbourgate and the consequent impact on financial viability. Moreover, Harbourgate, as a building, was wholly unsuitable for housing a biotechnology facility, having been constructed as a shell building for a call centre.
- We have particular concerns about the circumstances surrounding the payment by BTI of a £100,000 finder's fee in connection with the acquisition of Harbourgate. Our unease centres on the lack of transparency by BTI's legal adviser as to the actual recipients of the fee; an attempt by another external party to create evidence in support of the payment; a failure by one Board member to declare their interest in the fee; and the failure of the Board cheque signatories to clarify the nature of the expense.
- Contrary to the agreed funding procedures, BTI submitted claims totalling £1.1 million in advance of actually incurring the qualifying payments. BTI also sought to claim amounts totalling more than £540,000 from IFI on expenditure that had already been grant aided by DETI.

### **On the handling of the project by the Department and its agencies**

- The project was appraised by IDB on behalf of all of the funders. The appraisal highlighted uncertainties in the project, particularly in relation to sources of funding, and recommended that the promoters re-submit their proposals. However, as an alternative, aimed at keeping the project moving, it suggested that a heavily-conditioned offer could be made, but noted that this was not ideal. In the event, an offer was made. Given such fundamental uncertainties, it is questionable in our view whether the project should have been offered financial support, even where this was heavily conditional.
-

- Invest NI was unable to produce any records detailing IDB's consideration and approval of funding to BTI.
  - Three of the funding bodies later amended the conditions of their assistance offers to BTI. In doing so, they deviated from the recommendations included in the appraisal report, thereby weakening their control over the project. Important milestones were removed, which could otherwise have been used as triggers by both BTI and the funding bodies to re-assess the project's viability and future prospects.
  - Even though the funders were represented at BTI Board meetings by an IDB official, they failed to ensure that effective corporate governance structures were established within BTI. This led to many of the problems experienced by the project.
  - Project monitoring and control was weak. The letters of offer required quarterly management accounts and annual accounts to be submitted by BTI to the funders. We saw no evidence that these were provided, nor that the funding bodies took any action in response to their absence. Progress reports from BTI lacked sufficient detail to enable the funders to form a meaningful view of the project's progress, yet there is no evidence that further information was requested.
  - The decision to move the project from BCH to Harbourgate was pivotal, in that it radically altered key elements of the project. Despite this, we saw no evidence that the funding bodies reassessed whether the stated objectives of the project could be delivered at the new location. Moreover, they failed to ensure that BTI established the true financial cost of the switch to Harbourgate and the consequent impact on financial viability, before endorsing the change.
  - Not all of the conditions in DETI's and IDB's letters of offer were met by BTI before grant was paid. Most notable was the failure to confirm that the project was fully funded. As a result, Harbourgate was purchased, despite an estimated £2.7 million funding deficit. Also, in a number of instances, claims from BTI for payment were supported by copy cheques which were later found not to have been presented for payment. Contrary to the agreed procedures governing payments, DETI released funding to BTI before outstanding issues from its vouching visit – including cheques not having been cleared at the bank – had been resolved.
  - DETI's decision to revise its offer to include equipment within eligible costs, appears to have been done solely to facilitate payment of grant within the funding deadline. However, BTI had no premises in which to operate the equipment. As it transpired, none of the equipment
-



## Executive Summary

bought was ever used by BTI. The cost, at some £357,000, was effectively wasted.

9. The outcome of the poor handling of the project is that the bioscience incubation facility was not established. This was a significant loss to the local economy, in that this type of facility was likely to have underpinned a substantial level of development in new and emerging companies in a sector where considerable growth potential was forecast.

### The BTI Board of Directors

10. On its formation in November 1998, the BTI Board comprised four directors. Three of these were clinicians linked to BCH – Professor Patrick (Paddy) Johnston, Professor Roy Spence and Dr Peter Passmore – while the fourth was Mrs Teresa Townsley, a partner (along with her husband) in MTF Chartered Accountants. A fifth director, Mr Will McKee, joined the Board in December 2000, as Chairman. Like Mrs Townsley, he came to BTI from a business background. Board members were not paid for their work with BTI. However, MTF, which provided administrative support to the Board, received some £152,000.

11. A number of representations have been made by current and former officers of BTI in relation to the role of Teresa Townsley. They relate largely to the corporate governance of BTI and the trust that was placed in Teresa Townsley,

by the other directors, to oversee such matters. Two directors have commented that they had been commercially naïve and relied too heavily on those with greater commercial experience in the operation of the company. They referred specifically to the undue influence of Teresa Townsley, pointing out that BTI and its Chief Executive were actually based in MTF's offices in Belfast. Another director commented that Board members totally and implicitly trusted Teresa Townsley, assuming that her aims were in selfless alignment with BTI and the Board. This trust was based on her reputation within the business community and her trusted position in contributing to the financial affairs of many companies and institutions<sup>3</sup>.

12. We have not been able to interview Teresa Townsley<sup>4</sup> to obtain her evidence in relation to corporate governance generally at BTI and specifically in relation to her own role. We agree that, as BTI company secretary, she was responsible for corporate administration and for ensuring that BTI complied with regulatory requirements, both legal and financial. While other parties in the project may have taken a degree of assurance from her involvement, in light of her experience and standing within the Department at that time, the fact remains that the directors as a whole were ultimately responsible for corporate governance. We also consider that the funding bodies had a role to ensure that standards were met and note that, through IDB, they were represented at BTI Board meetings.

3 While on the BTI Board, Teresa Townsley was Deputy Chairperson of the Local Enterprise Development Unit (LEDU); a Board member of the Health and Safety Agency (HSA); and a member of the Senate and Honorary Treasurer of Queen's University Belfast. She was also on the Department's Audit Committee and chaired the LEDU and HSA Audit Committees. In 2002, she was appointed to the Board of the newly formed Invest Northern Ireland.

4 NIAO's requests to meet with Mrs Townsley were not taken up.



## The Emerging Business Trust

13. This is not the first occasion on which concerns surrounding the conduct of Teresa Townsley have been reported. In 2006, the Westminster Public Accounts Committee reported<sup>5</sup> on its examination of the Emerging Business Trust<sup>6</sup> (EBT). The concerns in EBT focused on an extensive range of conflicting relationships between Mrs Townsley (who was a director and company secretary of EBT), her husband and a number of companies supported by EBT. The Committee reported that every one of Lord Nolan's principles of public life<sup>7</sup> had been breached, describing it as one of the worst cases of conflict of interest and impropriety it had seen. In the wake of the Committee's hearing, the Department of Finance and Personnel (DFP) referred the Committee's concerns about Mrs Townsley's conduct to her professional body, the Institute of Chartered Accountants in Ireland.

## NIAO conclusions and recommendations

### Value for money conclusion

14. In view of the project failing to achieve any of its objectives, we have concluded that it provided no value for the public funds committed to it. Further, with no sums having been recovered, some £2.2 million of taxpayers' money has, in effect, been wasted.

### Recommendations/key lessons

15. We recommend that the Department and Invest NI carry out a detailed review of this case to ascertain the key lessons, both at a strategic and operational level, to be applied in future projects of this type. We suggest that those key lessons include the following:

### Recommendations/Key Lessons

1. **The Department and Invest NI must ensure that their guidelines on processes such as project appraisal and approval, project monitoring and payment of claims are rigorously applied** - comprehensive guidelines were in place throughout the BTI project for all of these processes, but were not always applied. Failure to do so adds unnecessary risk to managing a project.
2. **Selective financial assistance should not be offered to a project about which there are significant uncertainties** - IDB guidelines required projects to have a well developed and comprehensive business plan, including clearly stated sources of funding. In the case of BTI, however, the business plan fell far short of the standard required. We note that this type of issue has also been drawn out in previous examinations of IDB-funded projects.

5 'Governance issues in the Department of Enterprise, Trade and Investment's former Local Enterprise Development Unit', Forty-sixth Report of Session 2005-06, HC 918.

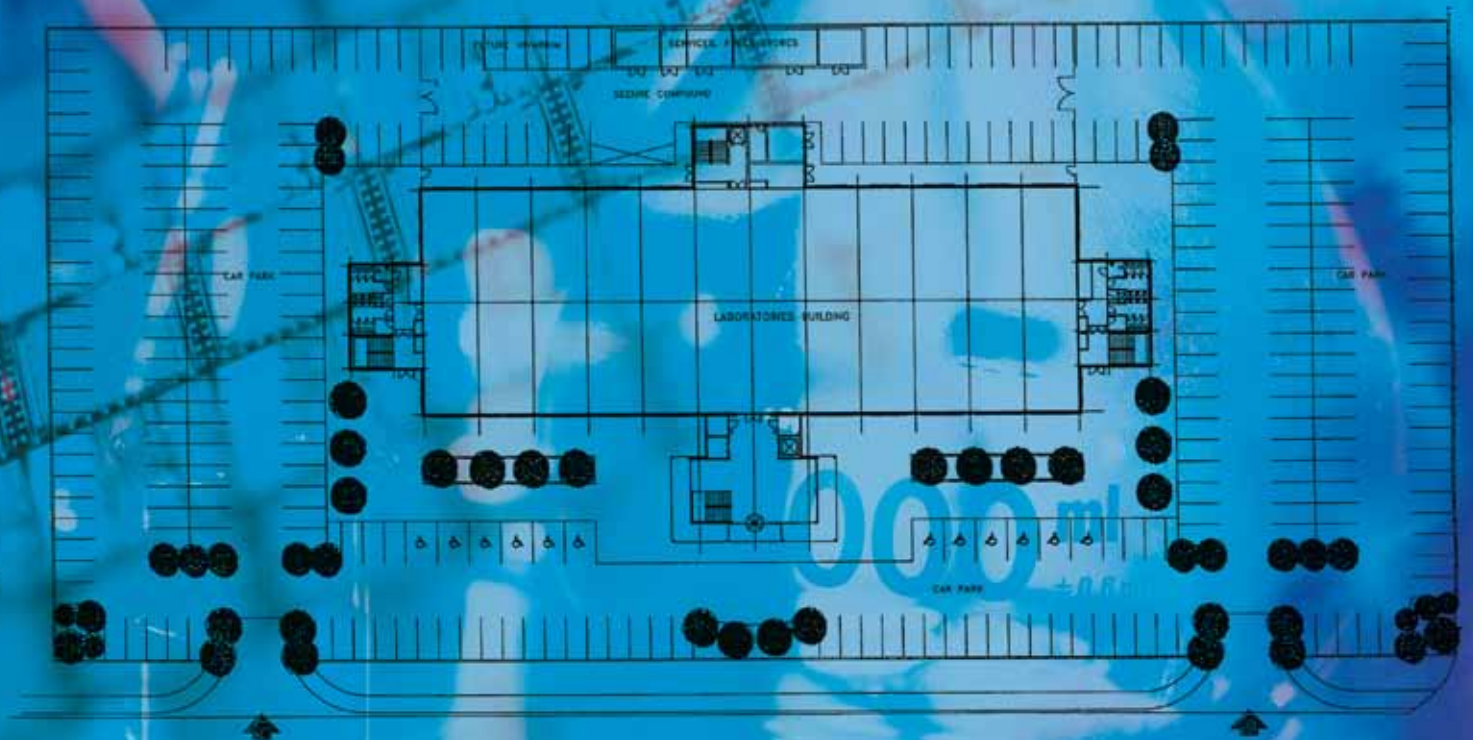
6 EBT was a publicly funded loan and venture capital initiative set up by the Department to assist in financing emerging businesses in disadvantaged areas.

7 Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

## Executive Summary

3. **When providing substantial sums of financial assistance to organisations like BTI, funding bodies must ensure that comprehensive corporate governance structures are in place and fully functional when the project starts** – this should include ensuring that the Board itself possesses the appropriate range and level of skills and experience.
  4. **Projects must be actively monitored** – failure by a grant-aided body to provide the required information should always be followed up by the funding body. Similarly, situations where the information provided is deficient, or indicates that the project is not proceeding to plan, should also be followed up promptly.
  5. **Avoid over-reliance on any individual** – it is clear that both the BTI Board and the funding bodies placed a disproportionate amount of trust in Teresa Townsley, to the extent that their exercise of the challenge function fell far short of what might reasonably have been expected.
  6. **The decision to provide and pay grant should not be driven solely by the need to meet funding deadlines** – we acknowledge that funding deadlines are important. However, if the provision of grant cannot otherwise be fully justified, no payment should be made.
  7. **Extreme care should be taken in any decision to revise, or set aside, conditions of offer where doing so weakens the protection afforded to the funding body** - the conditions and prior conditions included in letters of offer are a direct response to the risks assessed at appraisal. Any proposal to change those conditions, which significantly increases the risk to the funder, should be subject to a formal re-appraisal of the risks involved.
  8. **The Department should satisfy itself as to the adequacy of Invest NI's file retention and record-keeping protocols** - the loss of documents surrounding IDB's consideration and approval of funding to BTI, especially in a case which is subject to a statutory investigation, is wholly unacceptable.
-

## Part One: Introduction and Background



# Part One:

## Introduction and Background

### Introduction

- 1.1 This report examines the reasons for the failure of a major innovation project, the Bioscience and Technology Institute Limited (BTI). The project, which involved a 'new-build', was grant-aided by Government and the International Fund for Ireland.
- 1.2 In 2002, BTI's auditors raised questions about the approval of certain invoices, in particular the payment of a £100,000 'finder's fee' in connection with the acquisition of premises in the Belfast harbour estate. In December 2005, following a formal complaint by Invest NI, the Department of Enterprise Trade and Investment (the Department/DETI) appointed Company Inspectors (the Inspectors) from PricewaterhouseCoopers, under the Companies (Northern Ireland) Order 1986. This allowed the Inspectors to investigate the affairs of BTI.
- 1.3 The inspection process proved to be a major undertaking, involving a widespread review of books and records, a series of formal interviews, consultations with legal advisers and clearance of draft findings. In November 2009, the Inspectors reported the outcomes of their investigation to the Department, highlighting a wide range of issues. This included significant shortcomings in the handling of the project by the BTI Board and the Government funding bodies, including the Department and the former Industrial Development Board for Northern Ireland (IDB).

- 1.4 In the wake of the inspection report, the Department's Insolvency Service is arranging to have the company wound up. It is also assessing whether to initiate disqualification proceedings against the directors of BTI. The current position is that it is considered unlikely that proceedings will be taken against every Director. The Department said that a final decision will be taken shortly. The Department has also referred concerns about the conduct of four individuals to their professional bodies, in light of actions which may have breached professional codes of conduct. Three of the referrals were to the 'Chartered Accountants Regulatory Board' and one to the 'Law Society of Northern Ireland'. In addition, the Department commissioned a further, independent review of the conduct of officials involved in the case, with a view to determining whether disciplinary action was warranted. This resulted in disciplinary action being taken by Invest NI against two officers, in February 2011.

### Project overview

#### Background

- 1.5 BTI was incorporated in November 1998 as a company limited by guarantee<sup>8</sup>. Its primary objective, as stated in the Memorandum of Association, was the provision of biotechnology incubator facilities through the development of a specialist building at Belfast City Hospital (BCH). The company was to be commercially sustained by the rent charged to tenant organisations, primarily

8 A guarantee company has guarantors (rather than shareholders) who undertake to contribute a nominal amount (typically very small) in the event of the winding up of the company.

early stage biotechnology companies. The location of the building at BCH was seen by the funders as fundamental to the success of the project, because it would optimise the interaction between clinicians and scientists.

- 1.6 The first directors of the company were Professor Patrick (Paddy) Johnston, Professor Roy Spence, Dr Peter Passmore and Mrs Teresa Townsley. They were later joined by Mr Will McKee in December 2000 and Mr Richard Milliken in July 2002. Mr Barry Gibson was appointed as Chief Executive in February 2001. Details of the roles and background of each are set out at **Appendix 1**.

### Funding

- 1.7 BTI secured grant of £2.2 million from four funding bodies - DETI, the Industrial Development Board (IDB), the Industrial Research and Technology Unit (IRTU) and the International Fund for Ireland (IFI). In addition, an initial loan of £1.5 million was provided by the bank. Further funding of £1.2 million was provided by Allen McClay<sup>9</sup>, a private donor. This was initially treated by BTI as a gift, on which it received tax relief of approximately £330,000. Subsequently, however, Mr McClay's legal advisers told BTI that this money had in fact been loan funding, repayable on demand.
- 1.8 DETI's funding of £1.2 million was provided under the 'Special Support Programme for Peace and Reconciliation' (P&R) and was to be claimed against eligible expenditure incurred up to 30

September 2001. However, due to delays in progressing the project at BCH, BTI was not in a position to incur the expenditure within the timeframe and so, instead, in the summer of 2001, an alternative site was sought.

### Acquisition of premises

- 1.9 In October 2001, BTI committed to purchase a newly completed building, called 'Harbourgate', at Sydenham Business Park, some four miles from BCH. The cost was £5 million (plus VAT), with payment for the ground and first floors (for £3.5 million) to be made by 31 October 2001 and payment for the top floor (of £1.5 million) by 14 June 2002.
- 1.10 Although the building proposed for the BCH site was approximately 40,000 square feet, Harbourgate was around 63,000 square feet. And while the original project costs - primarily the costs of construction at BCH - had been estimated by BTI at some £4.8 million, the revised project costs, incorporating the purchase and fit out of Harbourgate, were estimated by BTI at £7.5 million. This represented an increase of some £2.7 million (56%), almost all of which was unfunded. Notwithstanding the increase in the scale of the project, the change in location and the funding deficit, the funding bodies (with the exception of IRTU) amended their respective letters of offer and all released their funds in October 2001, without reassessing the project.

<sup>9</sup> Sir Allen McClay (now deceased), was a businessman and philanthropist. In 1997, he founded the McClay Trust, a charitable organisation supporting medical research and development.

## Part One: Introduction and Background

- 1.11 No further funding was sourced by BTI. As a result, it experienced increasingly serious financial difficulties in the period leading up to June 2002, when payment for the top floor was due. In May 2002, the McClay Trust offered to buy Harbourgate from BTI for £6 million. This necessitated BTI to complete the purchase of the top floor of the building. To finance this, BTI drew down further loan funding of £1.7 million from the bank. In order to secure the loan facility, Invest NI contracted with BTI to purchase the top floor of Harbourgate for £1.5 million, after a 90 day period (that is, by 29 September 2002). In turn, the BTI Board agreed that the contract with Invest NI would be rescinded prior to the proposed sale of Harbourgate to the McClay Trust.

### Financial difficulties

- 1.12 Although, under this arrangement, BTI owned the entire building, it had inadequate funds to complete the fit out, which had commenced in or around February 2002. The company was, in fact, technically insolvent. In its updated costings (paragraph 1.10), BTI had estimated fit out costs at £500,000 per floor, a total of £1.5 million. However, a report prepared subsequently by consultants for the McClay Trust, in October 2002, estimated fit out costs to be around £6.9 million, a figure well in excess of the BTI estimate and far beyond its means. As a result, the building never became operational and did not generate any income for BTI. Around December 2002, the McClay Trust withdrew its offer to purchase Harbourgate.

- 1.13 A Strategic Plan was commissioned by BTI and finalised in January 2003. This estimated a *further* funding requirement of £10.2 million to deliver the objectives of BTI. However, this was substantially higher than both of the *total* costings provided by BTI to its funding bodies - of £4.8 million based on construction at the BCH site and of £7.5 million based on the purchase of Harbourgate.

### Sale of premises

- 1.14 In August 2003, BTI released Invest NI from its commitment to purchase the top floor of Harbourgate so that the entire building could be offered for sale. However, no purchaser was secured. BTI was unable to service its bank loan funding and, being in default of the loan agreements, the bank took possession of Harbourgate in November 2005 and sold it the following month. The sale proceeds of £4.55 million were sufficient to repay BTI's debt to the bank in full, with the surplus used to make a part-payment on the secured debt to Allen McClay. No monies were available to pay the other (unsecured) creditors - HM Revenue and Customs and the funding bodies. BTI remains technically insolvent and steps are now being taken to begin the winding up of the company.

### Source and Application of BTI Funds

- 1.15 Over the period of its operation, BTI spent £8.29 million, including £6.26 million on the Harbourgate premises and equipment. Against this, the company sourced funds

of only £6.78 million (including the sale of Harbourgate for £4.55 million). The deficit of £1.51 million comprises debts of £1.09 million owing to the estate of Sir Allen McClay and £0.42 million to HM Revenue and Customs. A detailed schedule of the source and application of funds by BTI, over the period 2001 to 2007, is attached at **Appendix 2**.

## Chronology of main events

- 1.16 A detailed timeline of the main events surrounding the BTI project is set out at **Appendix 3**.

## Scope of NIAO review

- 1.17 Our report draws on the investigation carried out by the company inspectors and focuses on the following main areas:
- The decision to move from BCH (Part 2 of the report)
  - The purchase of Harbourgate (Part 3)
  - Purchase of the top floor and sale of Harbourgate (Part 4)
  - Departmental oversight (Part 5)
  - Corporate governance and conflicts of interest (Part 6).

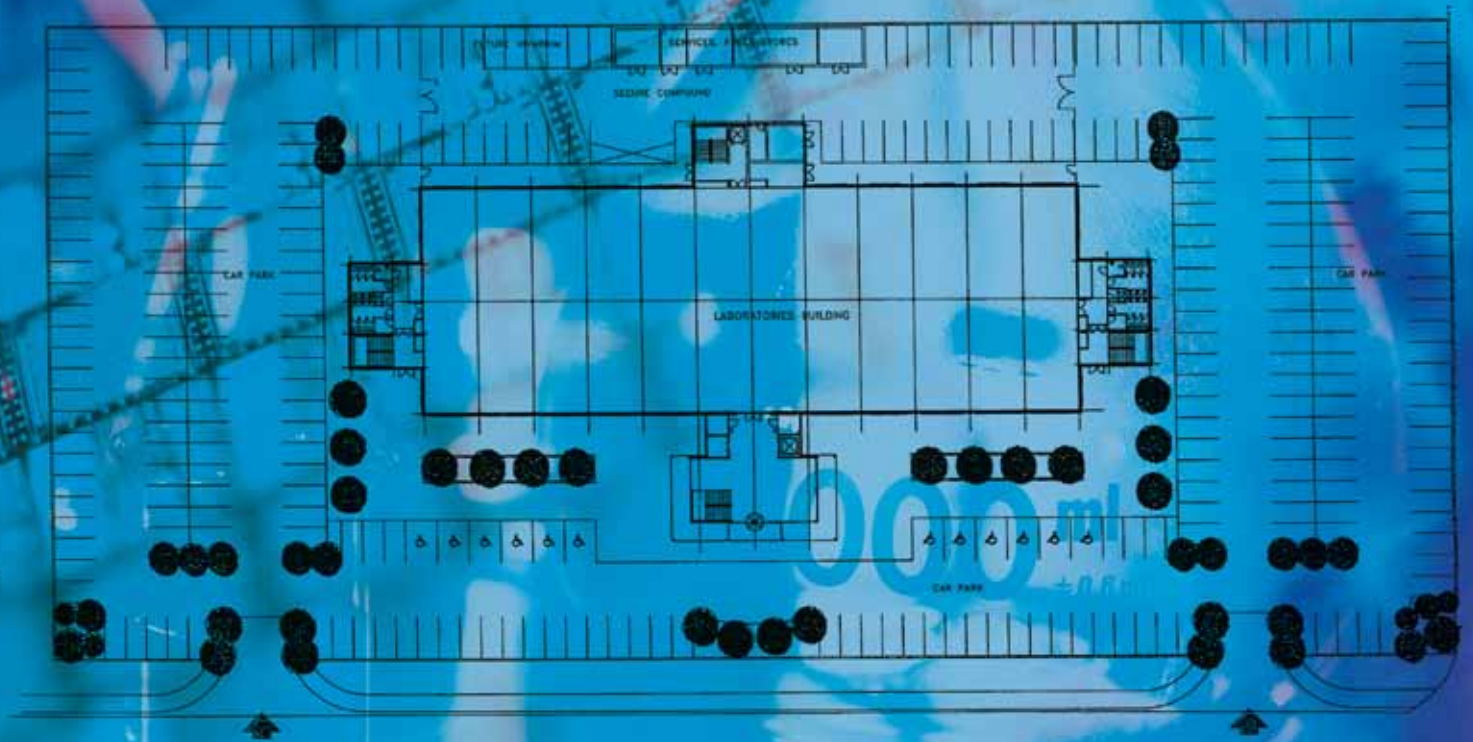
## Contacts with Third Parties and NIAO Methodology

- 1.18 During the course of our review we contacted each of the principal parties directly involved in the project, including the former directors and Chief Executive of BTI and key personnel within DETI and the former IDB. An outline of our overall methodology is set out at **Appendix 8**.





## Part Two: The Decision to move from BCH



## Part Two: The Decision to move from BCH

2.1 In this part of the report, we examine:

- the offer of grant to BTI
- why BTI did not proceed with the project at the BCH site.

### The offer of grant to BTI

2.2 An application for assistance under P&R was submitted to DETI, by BTI, in March 1999. Because the project was seen as a key sectoral initiative<sup>10</sup>, DETI copied the application to IDB, IRTU and IFI. Following approval in principle from each of the four bodies to provide support, BTI submitted a business plan in September 1999. This was appraised by IDB's Corporate Finance and Appraisal Division, on behalf of all four bodies, and an 'Advice Report' completed in October 1999. IDB's guidelines required a well developed and comprehensive business plan. We noted, however, that BTI's plan fell far short of the standard required.

2.3 The Advice Report concluded that, while the BTI project would help to develop the biotechnology sector in Northern Ireland, there were uncertainties, particularly in relation to sources of funding. It recommended that the promoters re-submit their proposals. However, as an alternative, aimed at keeping the project moving, it suggested that a heavily-conditioned offer "*effectively incorporating a re-submission*" could be made, but noted that this was "*not ideal*". As regards an offer of assistance, the Advice Report recommended that IDB include 13 prior

conditions (an unusually high number) and four general conditions.

2.4 On 17 December 1999, approval to support BTI was sought from IDB's 'Resource Group'. This was highly unusual – we would have expected the case to be examined by a Casework Committee. Other than the letter of offer itself, we saw no documentation surrounding the consideration and approval of the BTI offer by IDB. (These matters are further examined in **Part 5**).

2.5 The Advice Report, including the recommended conditions, was copied to the other funding bodies for consideration. On 17 December 1999, DETI's proposed offer was approved by the Department of Finance and Personnel (DFP), as required for a P&R project over £1 million. Subsequently, both IFI and IRTU also approved the project. Over the period 21 December 1999 to 12 October 2000, each funding body issued a letter of offer to BTI – see **Figure 2.1**. In the case of DETI's funding, project expenditure was to be incurred by 30 September 2001. As regards project monitoring, it was agreed that IDB would take the lead on behalf of the other funding bodies.

2.6 Eleven of the 13 prior conditions recommended in the Advice Report were included in IDB's letter of offer – i.e. they were to be met *prior to payment* of any grant. The other funding bodies also attached a number of conditions to their offers. Generally, however, they were less stringent than recommended in the Advice Report. Three of the offers (DETI,

<sup>10</sup> A key sectoral initiative would act as a 'flagship' around which a number of developments would take place in the clinical trials and drug discovery and development areas.

**Figure 2.1: Financial assistance offers to BTI by the funding bodies**

Funding body	Letter of offer date	Amount of funding £
DETI	21 December 1999	1,200,000
IFI	5 June 2000*	250,000
IDB	28 June 2000	500,000
IRTU	12 October 2000	250,000
<b>Total</b>		<b>£2,200,000</b>

Source: DETI

Note: \* The IFI letter of offer was issued by DETI, acting as agent for IFI.

IDB and IFI) were later amended, on two occasions each, largely in response to BTI's inability to meet the conditions of funding. The effect of these amendments was to dilute the funding bodies' control over the project, thereby increasing the risk of loss of taxpayers' funds. (This issue is further examined in **Part 5**).

## Why BTI did not proceed with the project at the Belfast City Hospital site

### BCH as a site location

- 2.7 The location of the BTI project at the BCH site was seen as fundamental to the success of the project. Its proximity to Queen's University Belfast (QUB) offered the maximum interaction between clinicians and scientists, a key determinant in the success of such a facility. Moreover, the likely focus of BTI's initial work, cancer research, would benefit from the close proximity to the Northern Ireland Cancer

Centre that was being developed at BCH.

2.8

In May 1998, the Board of the BCH Trust agreed to make a site available for the proposed bio-technology facility. It made clear that this was dependent upon satisfactory legal and planning consents and that the Trust could not make any financial commitment to the project. It was also a requirement, under the Trust's governing rules, that it had to achieve market value in the transfer of the site.

### Reasons for BTI's decision to establish at an alternative location

2.9

Despite the BCH site being seen as fundamental to the project's success, BTI made the decision, some three and a half years later (around September/October 2001), to establish the project at a different location. There appear to be a number of reasons that contributed to this decision:

## Part Two:

# The Decision to move from BCH

- site preparation costs
- the failure to agree lease terms with BCH
- funding deadline.

### Site preparation costs

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

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

2.11 It appears that, even though architects and quantity surveyors had been involved with the project since 1998, no site investigation or survey had been undertaken by BTI. In interview with the Inspectors, Paddy Johnston said that an exercise, initiated by Teresa Townsley, was then undertaken to assess the cost of clearing the site for building purposes. His recollection was that a cost figure of £0.5 million may have been presented to the Board. The recollection of Barry Gibson (BTI former Chief Executive) was of a figure “*in excess of £300,000*”. However, there was no evidence of a costing exercise having been undertaken

for BTI after the Board meeting of 11 April 2001, or of any figures presented to the Board. We note that the original DETI letter of offer, of £1.2 million grant for the set up and building costs, included only £95,000 for site works (although a further £200,000 was included for overall contingencies).

2.12 The site issues and the associated remediation costs appear to have contributed to delays in lease negotiations between BCH and BTI (see paragraph 2.16). There were protracted discussions, both within BTI and with BCH, as to who was responsible for the resolution and funding of the issues. The outcome was a ‘Memorandum of Understanding’ between the two parties, dated 15 May 2001. This outlined an agreed two-phased approach. The first would involve creation of an off-site incubation facility; the second would involve a similar modular establishment to that originally planned, erected on the BCH site. ‘Site clearance contingency adjustments’ were provided for at £100,000, with a provision that if costs exceeded this amount, the space in the building allocated to BCH would be reduced proportionately.

2.13 In early August 2001, BTI provided a ‘Project Programme’ to BCH which included deadlines for the diversion of services, and an anticipated start date on the BCH site of 15 January 2002. On 6 November 2001 BCH requested a meeting with BTI to obtain an update on its proposals. Although scheduled for 20 December 2001, there is no evidence that it took place. As it transpired, BTI had

already (in October 2001) contracted to purchase a building in the Belfast harbour estate.

### **Liaison with funding bodies in relation to site costs**

- 2.14 Site clearance costs were later presented by BTI to the funding bodies as a justification for its decision to change location. Before the decision was made, the site clearance issue was discussed in two key meetings with funders in April and May 2001.

#### *Update meeting 24 April 2001*

- Will McKee (the then BTI Chair) and Paddy Johnston met with the IDB Chief Executive to brief him on project implementation. The main issue discussed appears to have been that clearing the site for building would be "extremely difficult ... both in terms of cost and time". However, there is no indication that projected costs were discussed.

#### *Update meeting 22 May 2001*

- Teresa Townsley and Barry Gibson met with all of the funding bodies. Mrs Townsley said she believed that it would still be possible to complete construction works before the end of the year. We note that, although there were still significant issues regarding site clearance and lease arrangements, these do not appear to have been mentioned. We also

note that this was the first occasion that progress was discussed formally by BTI with all of its funding bodies. Given the range of difficulties and the substantial period over which they had endured, we would have expected BTI to have raised them at an earlier stage. We also would have expected the funding bodies to have requested more frequent updates, particularly in view of the funding deadline of 30 September 2001.

- The minutes also record that Teresa Townsley stated that outline planning permission had been granted and that it was her belief that full permission would be obtained within 3 months. This was, in fact, incorrect – outline permission, although applied for, was never granted and full permission was never applied for.

- 2.15 Following the meeting of 22 May 2001, BTI provided the funding bodies with a 'Peace and Reconciliation Update Report' on 21 June 2001. This stated that the "building schedule is progressing well" and indicated a gross potential spend of £1.11 million by 31 December 2001. The spend figure included a sum of £125,000 for 'Enablement works' (i.e. site clearance works). We note that this was markedly lower than the cost estimates of £0.3 million to £0.5 million indicated by Barry Gibson and Paddy Johnston respectively, in interview with the Inspectors (paragraph 2.11). It also appears misleading on the part of BTI to have stated that the building schedule

## Part Two:

# The Decision to move from BCH

was progressing well given that, at this late stage, not even outline planning permission had been granted.

### **The failure to agree lease terms with BCH**

2.16 Another issue not resolved between BCH and BTI was the failure to agree the terms of a lease for the BCH site. The disagreement related to the allocation of two floors of the building to BCH and whether BCH was to be charged for the use of this space.

2.17 From the outset in 1998, a key condition of BCH providing the land to BTI was that it should have a neutral financial effect on BCH. However, what this would mean in practice was not formally agreed. In January 2001, discussions surrounding the lease issues intensified, with BTI pointing out that these needed to be resolved urgently, otherwise the funding from IDB would be withdrawn - a prior condition of the IDB letter of offer was to provide a copy of the lease agreement between BCH and BTI to IDB's satisfaction.

2.18 While periodic discussions and correspondence continued over subsequent months, the fundamental issues do not appear to have been resolved. In September 2001, the BTI Board decided that an alternative site should be progressed. This led to the Harbournate building being identified and agreed upon, although this does not appear to have been communicated to BCH until January 2002 (i.e. over two months after Harbournate was purchased).

### **Liaison with funding bodies on lease issues**

2.19 Teresa Townsley and Barry Gibson met the funding bodies on 4 September 2001. The minutes contain the first mention by BTI of ongoing legal difficulties regarding the lease. Given that discussions between BTI and BCH had been ongoing for some time by this point, it appears a very late stage to have first raised the issue. The minutes also record that "*it is expected to have these [difficulties] resolved shortly*".

2.20 A BTI Update Report was provided to IDB by Teresa Townsley on 21 September 2001 (and later to DETI on 3 October 2001). This stated that legal issues with the BCH site lease had prevented progress, but that an alternative site in East Belfast had been identified and was at the completion stages. We note that this was a fundamental change from the update provided 17 days earlier (on 4 September 2001), where BTI expected to have the lease issues "*resolved shortly*".

2.21 In interview with the Inspectors, Paddy Johnston said that the pressure to spend grant funding before the expiry of the 30 September 2001 funding deadline (paragraph 2.5) was the major factor in the decision to move to an alternative site.

## Main Findings

### Key Concerns

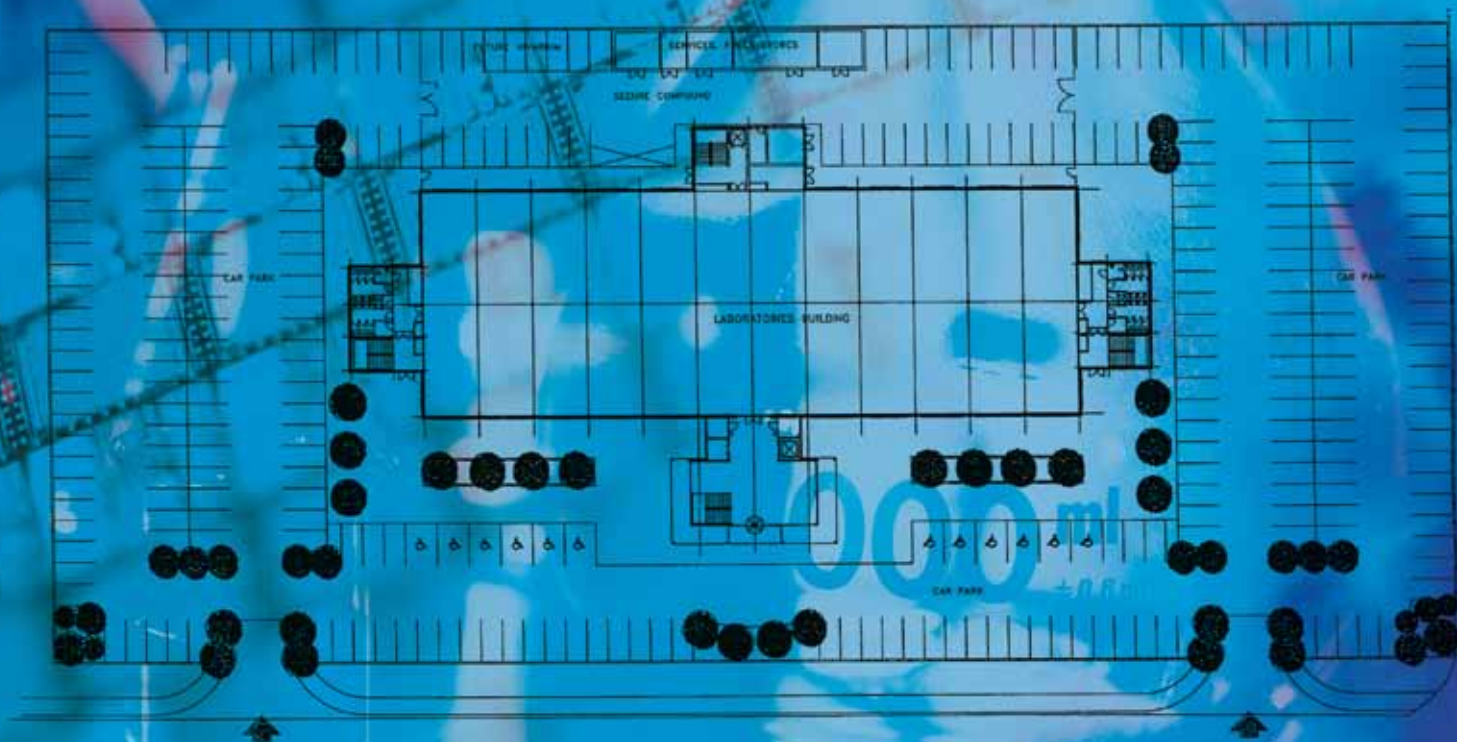
2.22 We have a number of concerns about the offer of grant and why the project did not proceed at the BCH site:

- Given the uncertainties surrounding the project and the lack of a fully developed business plan, it is questionable in our view whether the project should have been offered financial support at that stage, even where this was heavily conditional.
- Although, from the inception of BTI, the siting of the project at BCH was considered to be fundamental to its success, the project was moved to another location.
- From May 1998 when BCH identified a specific site on which a building could be constructed, progress by BTI appears to have been slow, especially in relation to site clearance, lease issues and planning consents. Given the funding deadline of 30 September 2001, this was a significant failing.
- It would appear that the decision of the BTI Board to move from BCH to Harbourgate in October 2001 was largely based on the prospect of the P&R funds (£1.2 million) being withdrawn should the 30 September 2001 deadline not be met. However, the decision to change location was neither based upon, nor supported by, a strategic assessment of whether the project objectives were still deliverable at the new site.
- BTI did not communicate with the funding bodies in a timely and informative manner on the difficulties surrounding site clearance and the lease, nor on its decision to seek alternative site options and the progress in doing so.
- The funding bodies did not adequately challenge and confirm the position, despite the 30 September 2001 funding deadline and the fundamental significance of the project location to the BTI proposal.





## Part Three: Purchase of the Harbournate building



## Part Three:

# Purchase of the Harbourgate building

### Background

3.1 At a Special Directors' Meeting on 3 May 2001, the BTI Board resolved to "*pursue as the first of two agreed phases an off-site incubation facility*", away from BCH. Four months later, on 2 October 2001, BTI approved the purchase of Harbourgate, at a price of £5 million. The premises selected were a new-build shell construction, erected by a developer. Legal completion and payment of £3.5 million for the ground and first floor of the building was to be effected by 31 October 2001; the balance of £1.5 million for the top (second) floor was to be made by 14 June 2002. The meeting noted that there was likely to be a funding shortfall in the region of £3 million (excluding commercial funds) before fit out of the building. It was minuted, however, that each funding body had been contacted and was supportive of the move from BCH to Harbourgate.

3.2 The letters of offer from DETI, IFI and IDB were amended to facilitate the change of location and the purchase of the Harbourgate building was completed on 31 October 2001.

3.3 Our review of the purchase of Harbourgate noted five areas of concern:

- financial viability of the project at Harbourgate
- cost of Harbourgate
- breach of the agreed procedures on claiming grant

- the use of an independent property dealer in the acquisition of Harbourgate
- payment of a 'finder's fee'.

### Financial viability of the project at Harbourgate

3.4 The BTI business plan appraised by the funders in 1999 had estimated total project costs at around £4.8 million. By the end of October 2001, funding totalling £4.9 million had been made available to BTI - £2.2 million from four funding bodies, a loan of £1.5 million from the bank and a £1.2 million loan from Allen McClay.

3.5 In an Update Report to funders in September 2001, BTI included details of revised project costs of £7.5 million, an increase of some £2.7 million. The largest part of the increase was a sum of £2.5 million, being the additional cost of purchase and fit out of Harbourgate, compared with the BCH project. However, no additional funding had been secured to finance the increased costs. In effect, over one-third of the project cost (based on BTI's own estimates) was unfunded. This led to a breach of the condition, in both the DETI and IDB letters of offer, that adequate funding be in place *prior* to the release of financial assistance.

3.6 The Inspectors' interviews with BTI revealed that the company had been optimistic there would be sufficient funds

to complete the fit out of the first floor and that, once functional, rentals would provide the further funds required. BTI had also hoped that both Allen McClay and the funding bodies would provide additional funds, although there is no evidence that this was a realistic prospect. Notwithstanding the significant funding deficit, IDB released its funds to BTI. It appears that IDB did so on the understanding that BTI was reported as having “serious” discussions with various parties in the United States to source the additional funds required. Also, IDB considered that its own commitment would give confidence to potential funders, thereby improving BTI’s chances of securing those funds.

not being actively marketed and never had been. Within the following year, however, two independent assessments were completed, to estimate the costs involved in finally delivering the BTI concept. One was commissioned by the McClay Trust around August 2002 to report on the anticipated final cost of the building works, including a complete fit out. The other was a Strategic Plan for BTI prepared by consultants, which included an estimate of the cost of delivering its strategy. These independent assessments produced estimates of *further* costs of £6.9 million and £10.2 million respectively, both well in excess of the additional £2.7 million estimated in the BTI Update Report (paragraph 3.5).

- 3.7 No further funds were ever obtained by BTI. As a result, it was unable to complete the fit out of the ground and first floor of Harbourgate and could not, therefore, attract any tenants to the building. In due course, it required additional bank funding to complete the purchase of the top floor of Harbourgate in June 2002. Not surprisingly, the project failed. We saw no evidence that BTI and the funding bodies had reassessed whether the objectives of the project could be achieved at the Harbourgate location.

- 3.9 The evidence strongly suggests that both BTI and the funding bodies failed to establish the true cost, both financial and strategic, of the switch to Harbourgate. Indeed, given the independent cost estimates subsequently provided, it is questionable whether the project was ever adequately scoped or costed by BTI.

- 3.10 In BTI’s Update Report, it estimated the cost to fit out each floor of Harbourgate at £500,000. However, in December 2001, it entered into an arrangement (see paragraph 6.14) to fit out the ground and first floor of Harbourgate for a sum of £2.3 million, an average cost per floor of £1.15 million. Even this sum appears understated, given the later estimate obtained by the McClay Trust, which averaged £2.3 million per floor. We note the Inspectors’ findings that no external professional expertise had been used in

## Cost of Harbourgate

- 3.8 BTI acquired the Harbourgate building without obtaining an independent valuation. Moreover, at that time, there was no indication of the market value of the building, as the property was

## Part Three:

# Purchase of the Harbourgate building

compiling BTI's estimate of the required fit out costs. Indeed, their interviews with BTI had revealed that the figure of £500,000 had been arrived at on an informal basis – effectively through 'guess work'.

- 3.11 BTI's failure to accurately estimate the cost to fit out Harbourgate had serious repercussions for the project as a whole. Despite having spent some £737,000 on the contract to fit out the ground and first floors of Harbourgate, BTI did not have the funds to complete the work. This precluded it from letting the building and, therefore, the potential to generate rental income. Moreover, the £737,000 that was spent was, in effect, wasted.

### Breach of agreed procedures on claiming grant to purchase Harbourgate

- 3.12 Under P&R funding rules, a vouching visit by DETI is required for all final claims for grant. In the case of the Harbourgate purchase, the funding released by DETI (£959,919) represented the final claim for grant from BTI. The vouching visit took place on 26 October 2001 at the offices of MTF, the accountancy practice run by Teresa Townsley and her husband (MTF provided accounting and administrative support to BTI). The aim of the visit was to ensure that the expenditure claimed could be substantiated by original invoices and that the cheques issued had cleared their bank account. The vouching officer's report identified several outstanding issues, including the absence of some original invoices and a number of uncleared cheques. Although DETI

procedures state that funds should not be released until all outstanding issues are resolved, payment of £959,919 to BTI was made the following day by DETI.

### BTI claiming for items that had not been paid

- 3.13 The agreed funding procedures required grant to be paid after expenditure was 'defrayed'. The P&R Guidelines make clear that a payment is not discharged until it has been transferred from the account of the applicant to the creditor involved. BTI's Chief Executive, Barry Gibson, signed a letter dated 25 October 2001 to the company's solicitor, Thomas Armstrong, enclosing a cheque payable to Thomas Armstrong for £1,734,050. The cheque was signed by Barry Gibson and Teresa Townsley. The letter stated that the cheque was issued "*in part payment of the invoice issued to [BTI]*" by the Harbourgate vendor, for purchase of the building. In reality, the amount of £1,734,050 claimed for building costs and associated fees was a balancing figure, in order to claim the maximum P&R funding from DETI. No invoice existed for this value. Thomas Armstrong's reply noted that the sum would be paid to the vendor on completion of the sale, scheduled for 31 October 2001.
- 3.14 The signing and delivery of this cheque to Thomas Armstrong was presented by BTI, within its grant claim, as evidence that this cost had been incurred; the claim form was signed by Teresa Townsley. DETI released its funding, based on this representation, but the

cheque involved did not clear the bank account of BTI. Rather, the purchase of Harbourgate by BTI was effected by two money desk transfers, on 31 October, from the bank account of BTI into the bank account of the vendor. The first transfer was for £1,734,050 (the same amount as the cheque made payable to Thomas Armstrong Solicitor on 25 October 2001), the second transfer being for £2,203,450 (funds from IRTU, IDB, DETI and IFI had been credited to the bank account of BTI on or prior to 31 October 2001).

- 3.15 Thomas Armstrong told us that, at the time the cheque for £1,734,050 was forwarded to him by BTI, the presumption was that all payments towards the purchase of the building would be paid to him as solicitor for the purchaser and transacted by cheque. However, he said that shortly before completion, the vendor insisted that payment be made directly from BTI, rather than through his client account, and that this is the reason why the relevant cheque was never encashed. In response, we asked the vendor to confirm whether he had requested a specific method of payment and whether he had requested that payment be made direct from BTI, rather than through its solicitor's account. The vendor's response to each question was "no".

- 3.16 Based on the evidence, it would appear that the cheque dated 25 October 2001 made payable to BTI's solicitor was not intended to be the means by which payment to the vendor was made; rather, the cheque was written for the purpose

of drawing down funds from DETI *in advance* of the transaction to purchase Harbourgate. It is clear that, without receipt of the grant monies, BTI would not have been in the position to complete the purchase, because it had insufficient funds; nevertheless, claiming in advance of payment constituted a breach of the agreed funding procedures<sup>11</sup>. While it seems likely that someone within DETI would have been aware of what was happening, nothing was done to develop an alternative process for the transaction - for example, setting up a completion meeting whereby authority for funds to transfer could be transacted co-terminously to the title of Harbourgate passing to BTI.

### The use of an independent property dealer in the acquisition of Harbourgate

- 3.17 The Memorandum of Sale for Harbourgate contained a schedule of actions to be carried out by the vendor, prior to completion (essentially, to make good any defects to the building). This schedule, dated 9 October 2001, was signed by the vendor and by a (named) property dealer (the property dealer). There is no notation on the face of the schedule to indicate any capacity on the part of the property dealer, but it appears that he signed the document on behalf of BTI. In forwarding a copy of the contract to Teresa Townsley on 10 October 2001, Thomas Armstrong noted that "*the schedule has been signed by [the property dealer]. I trust this is acceptable to you.*"

<sup>11</sup> Under guidance issued by DFP in support of the P&R guidelines, advance funding could be provided, but only on a case by case basis and only where there was specific justification and prior approval. No such arrangements were set up in the case of BTI.

## Part Three:

# Purchase of the Harbourgate building

3.18 In interview with the Inspectors, the property dealer stated that his business interests included property dealing and development. He said that he assisted in identifying the Harbourgate building for BTI and led the negotiations with the vendor for its purchase. It was his belief that he was asked to sign the document because no-one from BTI's professional advisers was available to do so and the contract had to be expedited. He believed he was signing the schedule in the capacity of a witness who had knowledge in this area. However, the document does not

make reference to witnesses. The property dealer said that he could not recall who asked him to sign the document. Thomas Armstrong stated in interview with the Inspectors that it was BTI.

3.19 It is not clear who, if anyone, provided authority to the property dealer to act on behalf of BTI in this capacity and, as a result, whether that authority was appropriately delegated; nor is it clear if the property dealer was suitably qualified to act in this capacity.

## Main findings

### Key Concerns

3.20 We have a number of concerns about the purchase of Harbourgate:

#### Financial viability of the project

- At the date that BTI effectively committed to purchase, fit out and equip Harbourgate over one third of the project, based on BTI's own cost estimates, was unfunded, with no tangible evidence of further grant funding or a future flow of income. This was acknowledged at the time by the funding bodies. It also breached the conditions of the DETI and IDB letters of offer.
- There is no evidence that the funding bodies reassessed whether the objectives of the project could be delivered at Harbourgate.

#### Cost of Harbourgate

- BTI failed to obtain an independent valuation of Harbourgate before purchase.
- The evidence strongly suggests that both BTI and the funding bodies failed to establish the true financial cost of the switch from BCH to Harbourgate and the consequent impact on financial viability. Indeed, it is questionable whether BTI ever adequately scoped or costed the project.



- BTI's estimate of fit out costs, prepared on a 'guess work' basis and without any external professional expertise, undermined its ability, and that of the funding bodies, to make properly informed decisions. This led to waste of at least £737,000.

#### **Breach of rules on claiming grant to purchase Harbourgate**

- Contrary to the agreed funding procedures, DETI released funding to BTI before the outstanding issues from its vouching visit – the use of pro forma invoices and cheques not having been cleared at the bank – had been resolved.
- The BTI cheque for £1,734,050, made out to Thomas Armstrong, Solicitor, for the purchase of Harbourgate, was never presented for payment. It appears that it was written for the sole purpose of providing evidence to DETI that payment had been made, thereby allowing the drawdown of grant.

#### **The use of an independent property dealer in the acquisition of Harbourgate**

- There is no documentary evidence to support the delegation of authority by the Board of BTI for the property dealer to sign property documents on its behalf; nor is it clear whether the property dealer was suitably qualified to act in this capacity.

### **The payment of a £100,000 finder's fee**

#### **Background**

- 3.21 On 31 October 2001, the day that BTI completed the purchase of the ground and first floors of Harbourgate, Thomas Armstrong raised two invoices to BTI, one for the conveyancing work and the second, for £100,000 (plus VAT), relating to a finder's fee for Harbourgate. The finder's fee invoice stated that the fee was at 2% of purchase price, for services rendered on a success fee basis. This invoice was sent with a covering letter to Teresa Townsley at the offices of MTF. However, there is no evidence of this letter and invoice having been discussed by the Board of BTI.

- 3.22 Payment of the £100,000 was subsequently made by BTI to Thomas Armstrong by cheque dated 30 November 2001 and signed by the BTI Chair and another director. It later transpired that the £100,000 was subsequently disbursed as follows:

Thomas Armstrong Solicitor	£37,500
The property dealer (see paragraphs 3.17 to 3.19)	£37,500
MTF Chartered Accountants	£25,000

The settlement in respect of MTF's 25% share was paid directly into an overseas bank account held in the names of Teresa and Michael Townsley, rather than an MTF business bank account.

## Part Three:

# Purchase of the Harbourgate building

- 3.23 A number of issues arise in relation to the payment of the finder's fee:
- the lack of Instructions in relation to the identification of Harbourgate
  - the property negotiations
  - knowledge of the finder's fee within BTI.

### **The lack of instructions in relation to the identification of Harbourgate:**

- 3.24 In interview with the Inspectors, Thomas Armstrong stated that he was initially advised of BTI's need for a building by Michael Townsley. He said he had asked Mr Townsley to obtain appropriate approval from BTI for the identification of a building on a 'no find no fee' basis; he said that Mr Townsley later informed him orally that this had been done. Thomas Armstrong also said that he subsequently contacted one of his clients, the property dealer, to get involved in the property search.
- 3.25 However, no written record is available within BTI Board papers detailing an instruction to Thomas Armstrong, Michael Townsley, MTF or any other party to identify a building for BTI and subsequently assist with negotiating its purchase. Similarly, there does not appear to be any letter of engagement between Thomas Armstrong and BTI, setting out the scope of the services to be provided or the basis of remuneration, in support of the finder's fee invoice. Indeed,

both Thomas Armstrong and Michael Townsley state that their instructions were received orally. Their evidence as to who provided the initial instruction, however, is contradictory. Thomas Armstrong claims his instruction from BTI was communicated to him by Michael Townsley; this is not accepted by Mr Townsley. Mr Townsley claims he was instructed by Paddy Johnston, but this is denied by Paddy Johnston.

- 3.26 The minutes of the meeting of the BTI Board on 12 September 2001 record that during the Chief Executive's Report the Board was told "*a third party is negotiating for us*" in relation to a shell building at Sydenham. However, there is no reference to either the identity of this third party or the basis on which this assistance was being provided. We now know that this third party was the property dealer; he confirmed to the Inspectors that he was approached by Thomas Armstrong to identify a building for BTI and that he had no dealings with any other person in respect of this transaction.

### **Property negotiations**

- 3.27 The finder's fee invoice included a reference to services rendered in negotiations with the vendor. It is unclear, however, how much negotiation was required to persuade the vendor to sell the building to BTI. There is evidence that the vendor had been in negotiation with a company for the lease of the ground floor, around the end of August 2001, but the vendor's stated aim was to rent, or sell, the entire building.



- 3.28 It is also difficult to assess how much negotiation there was in relation to the price paid by BTI and how it ensured it was getting value for money, since negotiations were delegated to a third party. Moreover, with the directors and Chief Executive of BTI not being aware of the property dealer's involvement, they had no assurance as to his suitability to negotiate on their behalf.

#### **Knowledge of the finder's fee within BTI**

- 3.29 Thomas Armstrong told the Inspectors that he had negotiated the finder's fee with Teresa Townsley and that she had subsequently confirmed to him that the Board had approved the payment. However, there is no documentary evidence that payment of a finder's fee was discussed and agreed by the BTI Board. Moreover, there are fundamental differences in the recollections of the principal parties involved. Michael Townsley stated in interview that, although he did not "*spell it out specifically*", he had made clear in conversation with both Paddy Johnston and Barry Gibson that he would be receiving a performance related fee for assisting Thomas Armstrong in finding a building for BTI. Thomas Armstrong was also of the opinion that Barry Gibson and Paddy Johnston both knew that he was to be paid a fee, but does not recollect detailed discussions about it. By contrast, BTI Board members Will McKee (the Chair), Paddy Johnston and Peter Passmore told us that, at the time, they were unaware of the £100,000 finder's fee and that it had not been discussed by the Board or authorised by it.
- 3.30 A matter of particular concern is an unsigned letter dated 7 September 2001, from Michael Townsley to Barry Gibson, which was included within the files provided to the Inspectors by MTF, during the investigation. This letter states:
- "I understand from our discussions that the BTI Board members are aware that there will be a finder's fee for the individuals who are involved in the property search and negotiations, if successful. You are aware that I am assisting these individuals and am likely to receive a fee in the range of 20-30% of the final fee agreed depending on the level of my input."*
- 3.31 However, the Inspectors were unable to obtain any record of this letter having been sent by Michael Townsley, or being received by Barry Gibson. In a later interview, Mr Townsley confirmed to the Inspectors that, in fact, this letter was not written at the time, but drafted by him during the course of their investigation, because "*there seemed to be a gap in documentation regarding ... this fee*". Based upon Mr Townsley's own admission, this was an attempt to create evidence as regards his involvement and the lack of knowledge of the BTI Board in respect of the MTF payment.
- 3.32 Barry Gibson told the Inspectors that the finder's fee was never declared to the Board and, in particular, there was no declaration that MTF or Thomas Armstrong

## Part Three:

### Purchase of the Harbournate building

would take any of the £100,000. Further, he stated that he was only made aware of the finder's fee and the amount, by Teresa Townsley, on 22 September 2001, on his return from overseas. He said that, although he queried the amount of the fee and told Mrs Townsley that he wished to raise the issue at the next Board meeting (2 October 2001), she was emphatic that it should not be raised as it had already been cleared by the Board members. Mrs Townsley's stance is not supported by the records - although reference was made in Board minutes to a third party negotiator, there was no mention of their identity, a fee being payable, or the amount involved.

- 3.33 For her part, Teresa Townsley's recollection, in correspondence with Paddy Johnston on this issue in 2003, was that it had been recognised in informal discussions between the BTI directors and Chief Executive on many

occasions that, if a suitable property was located by a third party, then a commission or finder's fee would be payable, in keeping with the normal commercial course of events.

- 3.34 We have seen no evidence that Teresa Townsley disclosed to the Board at any time the fact that she and her husband benefited from payment of the finder's fee, despite there being a number of occasions when disclosure could have been made. From the evidence available, it appears that, with the exception of Teresa Townsley, BTI Board members were not aware of the final recipients of the £100,000 finder's fee. Even so, the two Board signatories of the cheque to Thomas Armstrong Solicitor, in payment of the finder's fee, should have provided much greater challenge as to the nature and purpose of the payment, before signing the cheque.

### Main findings

#### Key Concerns

- 3.35 We have a number of concerns about the circumstances surrounding the payment of a £100,000 finder's fee:

#### Identification of Harbournate

- We have seen no written record of any instruction to Thomas Armstrong Solicitor, MTF or the property dealer to act on behalf of BTI to identify a building – each party claims, however, that it was orally instructed to this effect.
- The claims by Thomas Armstrong and Michael Townsley in respect of the basis of their instruction are contradictory and cannot be corroborated.

### **Property negotiations**

- There is little evidence of the BTI directors having taken appropriate steps to ensure value for money in the negotiation of the purchase price for Harbourgate.
- There is a worrying lack of transparency surrounding the negotiation of the price of Harbourgate.

### **Knowledge of the finder's fee within BTI**

- While the Board was aware of the involvement, at various stages, of both Thomas Armstrong and Michael Townsley and also that an unnamed third party was negotiating on its behalf, it does not appear to have sought to clarify the basis on which they were providing their services and whether there was any expectation, or basis, of payment.
- Thomas Armstrong stated that Teresa Townsley told him the 2% finder's fee had been approved by the BTI Board. However, we have seen no written record of this approval. We have been unable to clarify the position with Teresa Townsley.
- Barry Gibson was made aware of the finder's fee in September 2001, some 5 weeks before the fee was invoiced to BTI. Although stating that he queried the amount of the fee with Teresa Townsley, he failed to raise the issue at Board level or confirm whether the fee had been disclosed to, and approved by, the Board.
- None of the other BTI Board members claim to have known of the payment of a finder's fee, nor of the ultimate beneficiaries of the payment.
- Based upon his own admission, Michael Townsley attempted to create evidence surrounding his involvement in the property search and the Board's lack of knowledge in respect of his payment.
- There is no evidence that the BTI directors sought to review the finder's fee invoice, prior to payment being made; in particular, the two Board signatories of the cheque payment for the finder's fee signed the cheque without seeking to clarify or challenge the nature of the expense.

3.36 There are also concerns that the actions of certain of the parties involved may have breached professional standards and codes of conduct:

- Contrary to the requirements of the companies legislation, Teresa Townsley did not disclose to the Board of BTI her interest in the disbursement of the finder's fee.

## Part Three:

# Purchase of the Harbourgate building

- Michael Townsley and Teresa Townsley, as accountants and partners in MTF, of which BTI was a client, did not disclose to BTI their interest in the disbursement of the finder's fee. Failing to provide this disclosure may constitute a breach of the Code of Ethics of the Institute of Chartered Accountants in Ireland (ICAI). Under its Code of Ethics, ICAI, of which both Michael Townsley and Teresa Townsley are members, requires an accountant to disclose to his client, as a minimum, the receipt of a fee in connection with services provided to his client by a third party.

### Referrals to professional bodies

3.37 In May 2010, concerns about the conduct of Teresa Townsley and Michael Townsley were referred to their professional body, the Chartered Accountants Regulatory Board. The referrals are currently under consideration by that body.

3.38 In June 2010, the Department referred the conduct of Thomas Armstrong Solicitor to his professional body, the Law Society of Northern Ireland. The referral was based on two concerns:

- the finder's fee invoice to BTI, which was raised by Thomas Armstrong Solicitor on his practice's headed notepaper, did not detail the disbursements to be made from the amount charged (i.e. the sums later passed on to the property dealer and MTF Chartered Accountants – see paragraph 3.22). Where work is done by a solicitor for a client under the auspices of his practice, Solicitors Practice Regulations apply. Provisions within these Regulations require that a bill of costs include a detailed statement of any disbursements to be

discharged. Failing to disclose such detail would constitute a breach of the Regulations

- the Regulations also preclude the sharing of a solicitor's fee with non-qualified persons (in this case, both the property dealer and MTF would be regarded as non-qualified).

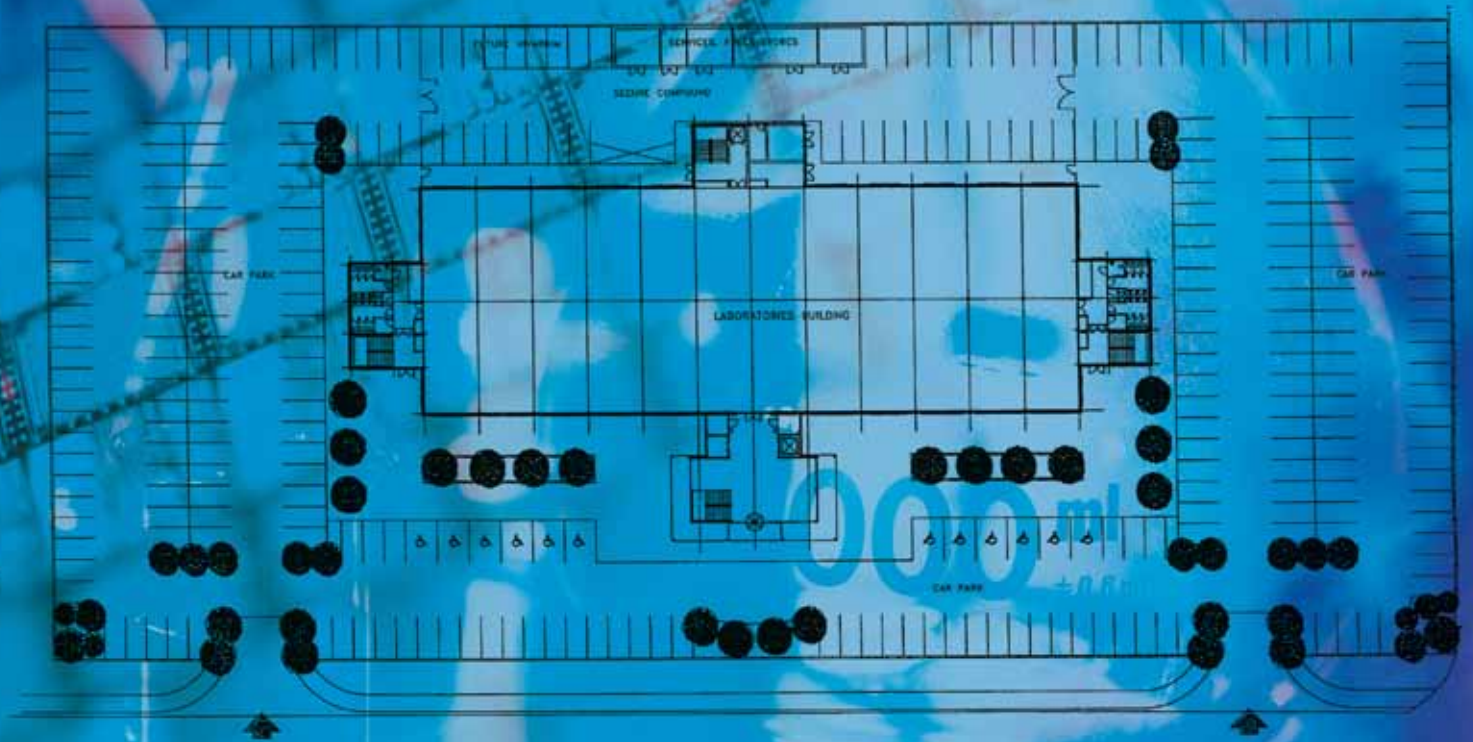
3.39 On the first point, Mr Armstrong responded that, at the date he submitted the invoice to BTI (on 31 October 2001), he did not have all the necessary information to properly identify the disbursements. He said that, at that time, payments were still variable as to the division of the finder's fee between the participants and identification of the entity by which each participant would be paid their respective share. Mr Armstrong stated that he had only received an invoice from MTF in December 2001, after some negotiation as to the amount of fee payable to Michael Townsley and final identification of to whom it should be paid (MTF rather than to Mr Townsley personally). Mr Armstrong also said that he only received the property dealer's invoice in May 2002, over six months after the submission of his own bill to

BTI. As the property dealer operated a number of businesses, it was not clear prior to this point to which business the fee would be paid.

- 3.40 As regards the second concern, that he shared his solicitor's fee with non-qualified persons, Mr Armstrong said that the work undertaken in relation to the project could not be considered the legal work of a solicitor. Rather, it was entirely related to a search for property to meet BTI's requirements – the three participants came together for a one-off non-legal enterprise. The reason that he had issued the bill on his practice's headed notepaper was to ensure that the matter was dealt with properly for VAT and tax reasons.
- 3.41 Mr Armstrong's explanation was accepted by the Law Society. However, the Society reminded him that it is inappropriate for a solicitor's practice notepaper to be used for matters in which a solicitor is not acting as such.
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## Part Four: Purchase of the top floor and sale of Harbourgate



## Part Four:

# Purchase of the top floor and sale of Harbourgate

### Introduction

4.1 In this part of the report, we examine:

- the purchase of the top floor of Harbourgate
- the subsequent sale of the whole building.

### Purchase of the top floor

#### The terms of the purchase

4.2 On completion of the sale of the ground and first floors of Harbourgate, some £2.7 million of total project costs remained unfunded, relating primarily to the purchase of the top floor (£1.5 million) and its estimated fit out costs (£500,000). Payment for the top floor was to be made by 14 June 2002.

4.3 The BTI Board minutes provide little detail on fund-raising activity to the end of February 2002. Discussions with Invest NI and the McClay Trust, on financing the top floor, appear to have begun around March 2002. The bank was also approached by BTI about further funding and, on 24 May 2002, confirmed an offer of a loan facility of £1.7 million, subject to tenant leases being in place and a satisfactory valuation. However, the bank withdrew this offer some three weeks later, when it became aware that BTI was already indebted to Allen McClay.

4.4 By this stage, and with the June deadline approaching, BTI's financial difficulties

had become acute. The pressure was further increased on 28 May 2002, when BTI received a letter from Allen McClay's legal advisers stating that the £1.2 million funding already provided by him (paragraph 3.4) was a loan, not a gift. This also meant that the £337,000 gift aid tax relief claimed by BTI from HM Revenue and Customs had to be repaid. A further letter, dated 11 June 2002, demanded immediate repayment of the loan. This prompted BTI to engage an insolvency practitioner to advise the Board.

4.5 On 29 May 2002, the McClay Trust wrote to BTI offering to purchase Harbourgate for £6 million. The offer contained a number of conditions, including the provision of a rental guarantee, by Invest NI, of £500,000 per annum for ten years. Invest NI made clear to both BTI and the McClay Trust that it could not provide such a guarantee, but may consider providing grants for rent to future tenant companies at Harbourgate.

4.6 With increasing pressure from the vendor to complete the sale of the top floor, the BTI Board agreed on 20 June 2002 to accept the offer and conditions from the McClay Trust. The Board also agreed to accept the resignation<sup>12</sup> of Teresa Townsley as a director – this had been tabled as an added condition of the Trust's offer. A few days later, following a meeting between BTI, the McClay Trust, Invest NI and the bank, the top floor purchase arrangements were finally agreed as follows:

<sup>12</sup> Mrs Townsley sought an indemnity for herself and MTF against all proceedings, claims, expenses, costs, demands and liabilities whatsoever which may be taken or made against her or MTF by reason of the discharge of her duties and responsibilities to BTI as a Director of BTI and as a partner in MTF. This indemnity was refused by the BTI Board.



- a revised loan facility of £1.7 million from the bank would be accepted by BTI
- BTI would purchase the top floor of Harbourgate
- Invest NI would contract to acquire the top floor of Harbourgate, from BTI, at the end of a 90-day period (i.e. on 29 September 2002) for £1.5 million
- the Invest NI purchase contract would be rescinded, prior to the proposed sale of Harbourgate to the McClay Trust.

4.7 Although BTI accepted the bank loan to gain complete ownership of Harbourgate, it was clearly not in a position to service that loan and its other liabilities – at this stage, it was technically insolvent<sup>13</sup>. The essence of the deal was that Invest NI, through its contract to buy the top floor after 90 days, had ‘bought time’ for BTI to finalise the sale of the whole building to the McClay Trust. This also provided the bank with the security that it required, should the Trust’s purchase not proceed.

#### **Invest NI’s consideration of support to BTI**

- 4.8 We noted several concerns about Invest NI’s handling of its decision to enter into the contract to purchase the top floor.
- 4.9 Under Invest NI’s established procedures, the decision to enter into a contract to purchase the top floor for £1.5 million should have been based on a formal

Business Case justifying the purchase. However, no Business Case was prepared. Instead, the decision appears to have been made on the basis of a discussion among senior Invest NI staff.

#### **Invest NI’s decision-making process**

4.10 A meeting of senior staff in Invest NI took place around 24 June 2002 to discuss the proposed purchase of the top floor. However, there are no contemporaneous minutes of this meeting, although two documents which appear to relate to the discussions were prepared retrospectively. The first is entitled ‘*Note for the Record*’; those listed as present include the then Chief Executive. The note is neither dated nor signed, but indicates that it was prepared by the Executive Director dealing with the case. The earliest record of this document is as an attachment to an e-mail dated 4 February 2003. In interview with the Inspectors, the Executive Director said that the note was prepared quite some time after the meeting. He accepted that it would be normal protocol in Invest NI to have such a document in place but said that, given the crisis nature of the situation, the note was not prepared contemporaneously.

4.11 The second document is a ‘*Note of Intent*’ to purchase the top floor of Harbourgate and refers to the need to approve the purchase at a cost of £1.5 million. However, this document, which was drafted by the Client Executive, was not prepared until September 2002 (i.e. over two months after Invest NI signed the contract), when it was circulated by

<sup>13</sup> With liabilities greater than its assets, BTI had a negative net asset value. This was significant because the company was not generating an income flow.

## Part Four:

# Purchase of the top floor and sale of Harbourgate

e-mail with the notation, *"this is an attempt to get something on paper that we can revise/ amend/ finesse."* Attached to the e-mail is a one-page document which ends by requesting approval to proceed with the intention to purchase the top floor at a cost of £1.5 million. A later two-page version of the document was prepared around 11 October 2002 incorporating the Executive Director's amendments, but it too was undated and unsigned. There is no record of any response to this note - consequently, there is no documentary evidence of the approval required from the Invest NI Chief Executive or Deputy Chief Executive for the purchase of the top floor of Harbourgate.

- 4.12 It is also a matter of concern that the 'Note for the Record' and the 'Note of Intent' were not contained within the files provided to the Inspectors by Invest NI. Rather, copies of the documents were provided from personal records maintained by a member of staff from within Invest NI's property Unit, who was on secondment from DFP.

### DFP and Ministerial approval

- 4.13 The 'Note for the Record' stated Invest NI's view that it was not necessary to seek DFP approval for the purchase of the top floor of Harbourgate because it was a 'bespoke facility' costing less than £2 million (a bespoke facility would be one already developed or heavily customised for a particular client). We would question Invest NI's judgement on this matter. DFP guidance on delegated limits to Northern

Ireland departments indicates that DFP approval is required, inter alia, for:

- property development agreements over £1 million
- bespoke factories over £2 million.

In addition, any proposals which are novel or contentious are always subject to the general requirement for DFP approval.

- 4.14 The 'Note for the Record' (prepared around February 2003), stated that Invest NI is aware that the purchase of the top floor is only justified as a bespoke facility and not for incubator units. On the other hand, the 'Note of Intent', prepared some five months earlier, does not mention the top floor as a bespoke facility. Rather, it refers to the purchase being for the development of incubator space for future clients in the biotechnology sector. We question whether it was appropriate to classify the purchase of the top floor of Harbourgate as the purchase of a bespoke facility, since:

- no tenant had been specifically identified to lease the top floor at the date the Invest NI purchase contract was signed
- the top floor was, and remained, a shell - it was not fitted out for any purpose.

- 4.15 Even if the purchase of the top floor was justifiable as a bespoke facility, there is no consideration within the 'Note for the Record' of the additional cost required

for fitting out. It may well have been that the total cost of the facility would have equalled or exceeded the delegated limit of £2 million. We also note that Invest NI's then Deputy Chief Executive conceded in interview with the Inspectors that the top floor purchase arrangement was 'out of the ordinary' – again, this would suggest that it would have been appropriate to seek DFP approval.

4.16 It appears that Ministerial approval should also have been sought by Invest NI for the purchase of the top floor, as there was a general requirement for Ministerial approval to be obtained for commitments of over £1 million.

## Main findings

### Key Concerns

4.17 We have a number of concerns surrounding the purchase of the top floor:

#### **Invest NI's consideration of support to BTI**

- Contrary to Invest NI's established procedures, the decision to enter into a contract to purchase the top floor for £1.5 million was not based on consideration of a formal Business Case to justify the purchase. No Business Case was ever prepared.
- There is no documentary record of the approval, from the Chief and Deputy Chief Executive of Invest NI, for the purchase of the top floor of Harbourgate.
- Two sets of documentation, seeking to explain Invest NI's decision-making process for the purchase, were prepared between 3 and 8 months after the event. Neither is signed and dated and there is some inconsistency between the documents.
- This documentation was not contained within Invest NI's registered files; rather, it was provided to the Inspectors from within personal files held by a seconded member of staff.
- In our view, approval for the purchase of the top floor should have been sought from both DFP and the Minister, prior to Invest NI entering into the contract to purchase the top floor.

## Part Four:

# Purchase of the top floor and sale of Harbourgate

### The sale of Harbourgate

- 4.18 The McClay Trust's offer to purchase Harbourgate was conditional upon it being satisfied with the results of a survey of the building and the outcome of a strategic review of the funding and future role of BTI.

#### The survey of the Harbourgate building

- 4.19 The Trust's consultants presented their report on the building survey on 19 August 2002. They estimated the fit out cost for Harbourgate at £6.9 million, substantially more than the BTI estimate of £1.5 million. The consultants also noted that the planning permission for the building had been granted for a 'telecommunications operations centre'; they concluded, following a site visit, that the building was designed as a call centre. This raised problems for conversion to laboratory space. For example:
- the layout was very deficient in plantroom space
  - floor heights were *"less than ideal ... and on the limits of acceptability"*
  - the appropriateness of the raised floor was questionable in terms of *"stability, robustness and perceived quality"*.
- 4.20 Overall, the building could only be made fit for purpose at disproportionate cost. On 9 December 2002, the McClay Trust formally withdrew its offer to buy Harbourgate, due to the

fit out costs involved. Subsequently, in interview with the Inspectors, the Trust also cited the lack of engagement of Invest NI as another factor in its decision to withdraw; in particular, the inability of Invest NI to provide the rental guarantee (paragraph 4.5).

### The Strategic Review of BTI

- 4.21 BTI engaged consultants in September 2002 to carry out the strategic review. Their report on 27 January 2003 (by which time the McClay Trust had already withdrawn its offer) concluded that the fulfilment of BTI's strategy was solely dependent on government funding. They estimated the cost to Invest NI as an additional £10.2 million, on top of the £2.2 million already provided by the funding bodies. Their costing was based on BTI's proposal that Invest NI would buy Harbourgate at market value and fit out part of the building for BTI. Other laboratory space would be fitted out by Invest NI, as required, in negotiations with tenant start-up companies. (We note that, on a number of occasions over the period October 2001 to March 2002, BTI had represented both to the bank and the funders that it had secured a number of tenancy/lease agreements. The evidence, however, shows that this was not the case. Details are set out in **Appendix 4.**)
- 4.22 Invest NI appraised the findings of the strategic review but decided that it could not afford the level of additional support required, especially in view of the risks involved with the project. We understand that Invest NI's decision was only

communicated orally to BTI, around June/July 2003.

### **The decision to sell Harbourgate**

- 4.23 BTI considered that the sale of Harbourgate was the best means of enabling it to meet its liabilities. In July 2003, it appointed estate agents to market the building. The following month, BTI told Invest NI that it was being released from its contract to purchase the top floor, so that BTI could dispose of the entire building. (This was extremely fortuitous for Invest NI, as it removed the £1.5 million contingent liability into which it had so hastily entered in June 2002 (paragraph 4.9). Had BTI activated the agreement, a further £1.5 million of taxpayers' funds would have been paid to the project, with little prospect of a return.) By April 2004, no purchaser had been identified, which prompted the bank to have its own agent appointed. Within Invest NI, a team was set up to find a solution for Harbourgate. It was recognised that the building would be much more attractive to investors if it had a tenant on a long-term lease. Eventually, in October 2005, a tenant for the whole building was secured - DFP's 'Central Procurement Division'. Two months later, in December 2005, the bank, as 'mortgagee in possession', sold the building to an investment company for £4.55 million.

### **The financial outcomes of the BTI project**

- 4.24 Over the period of its operation, BTI spent £8.29 million, including £6.26 million on the Harbourgate premises and equipment. Against this, the company sourced funds of only £6.78 million (including the sale of Harbourgate for £4.55 million). The deficit of £1.51 million comprises debts of £1.09 million owing to the estate of Sir Allen McClay and £0.42 million to HM Revenue and Customs. The bank, through its first charge on BTI's assets, recovered its loan and overdraft monies in full. In addition, bank charges and interest incurred by BTI over the period totalled £0.9 million, including a £100,000 'exit fee' paid on clearance of the bank debt. A detailed schedule of the source and application of funds by BTI, from 2001 to 2007, is attached at **Appendix 2**.
- 4.25 The figures in paragraph 4.24 exclude the sums owing to the funding bodies. Under the DETI and IRTU letters of offer, each was entitled to seek clawback of the funding provided to BTI (IDB's letter of offer did not actually include a clawback clause). However, after settlement of the bank debt and part-payment of the amount owing to Allen McClay (who had a second charge on BTI's assets) no other monies were available for distribution.

## Part Four: Purchase of the top floor and sale of Harbourgate

### Main findings

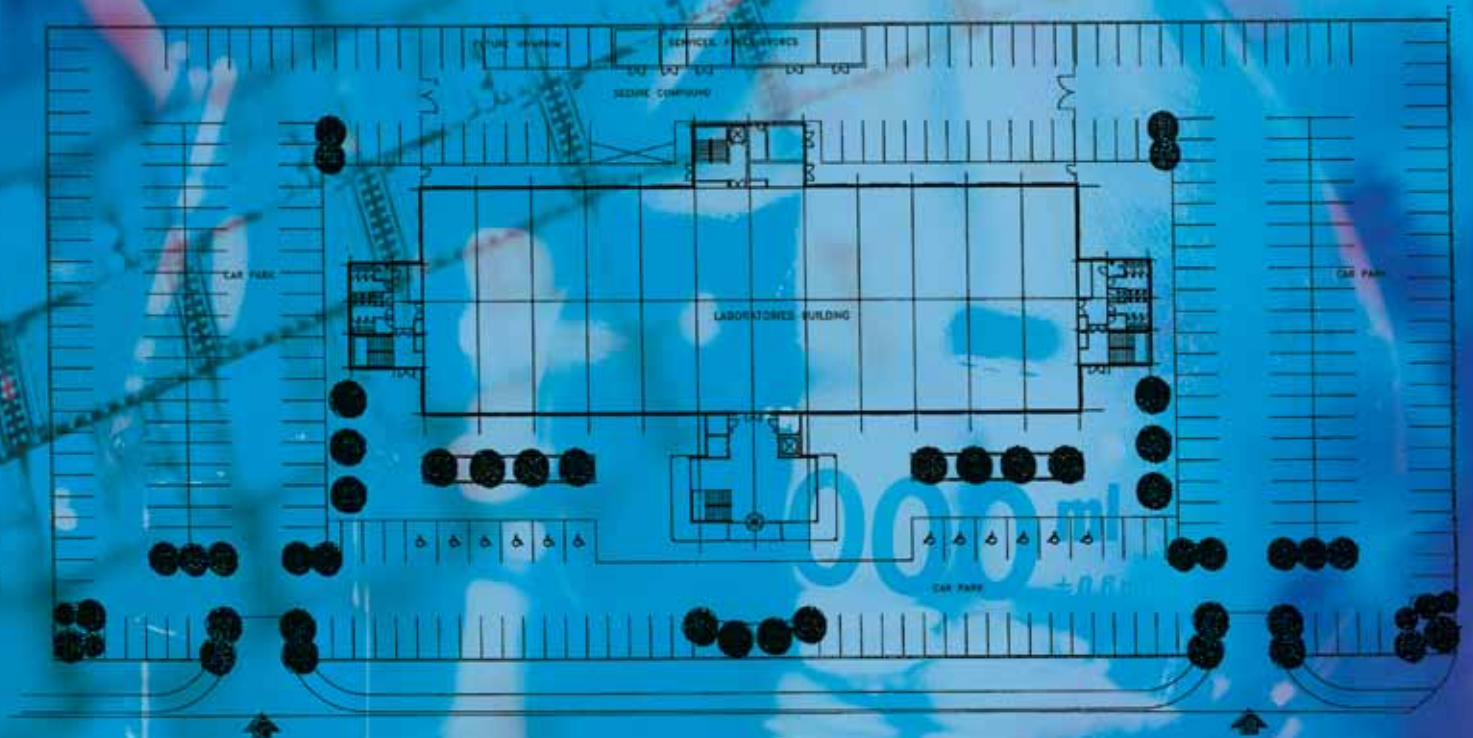
#### Key Concerns

4.26 We have a number of concerns about the sale of Harbourgate:

##### **On the sale of Harbourgate**

- The BTI project finally collapsed in 2003, due to the high cost (estimated at between £6.9 million and £10.2 million) required to complete the preparation of Harbourgate. This highlights the poor planning that went into scoping and costing the project.
- It is clear that Harbourgate, as a building, was wholly unsuitable for housing a biotechnology facility. This highlights the lack of proper appraisal, and the poor decision-making processes, of both the BTI Board and the funding bodies, in selecting the building as an alternative to a purpose-built facility at the BCH site.
- Very substantial sums of money were wasted on the project. No lasting benefit was secured by the funding bodies, despite their £2.2 million investment. In addition, HM Revenue and Customs is owed £420,000 and the estate of Sir Allen McClay £1.09 million.

## Part Five: Departmental Oversight





## Part Five: Departmental Oversight

### Introduction

- 5.1 In this part of the report, we examine:
- IDB's project approval
  - amendments to funders' letters of offer
  - compliance with offer conditions
  - project monitoring
  - the processing of grant claims.

### IDB's project approval

- 5.2 IDB's offer of £500,000 assistance was made on 28 June 2000 (paragraph 2.5). However, it is not clear how this offer was approved or by whom. The 'IDB Book', which laid down the process to be followed when approving funding, required projects to be considered by a 'Casework Committee'. This comprised the IDB Chief Executive and two Deputy Chief Executives. Both the Client Executive and the Appraisal Executive would attend the Casework Committee to formally present the case. Minutes of the meeting and a form recording the assistance to be offered would be signed by the Chairman and filed with case papers.
- 5.3 However, in the case of BTI, this protocol was not followed. It appears that, instead, the project was considered by the IDB 'Resource Group'. We note that the Inspectors requested details of the purpose and function of the Resource Group and of the basis on which it could approve an

award to a body like BTI. However, Invest NI could not provide these details. Our understanding is that the Resource Group's purpose was to review and manage IDB's human and capital resources, including monitoring of expenditure and grants; also, that its membership comprised the Chief Executive, the two Deputy Chief Executives and a representative each from the Accounts and Personnel departments.

### Missing documentation

- 5.4 We note that the Inspectors also requested Resource Group files, including any minutes of meetings held. In the files provided, there were no minutes that referred either to discussion of the Client Executive's project submission (dated 17 December 1999) or approval of the award of financial assistance to the project.
- 5.5 It is of particular concern that the Inspectors were unable to access several of the Resource Group files. Of the files requested by them but not obtained, one appears to have been destroyed after the file request was made. There were also four other files, to which references had been made within those files that were supplied, but which could not be identified within Invest NI's Records Management system. These four missing files were subsequently located during our own review; however, none contained any substantive information about the Resource Group's consideration and approval of the funding provided to BTI. Further details are at **Appendix 5**.



## Amendments to Letters of Offer

5.6 DETI, IDB and IFI amended the conditions of their offers on two occasions each, between July 2000 and October 2001. The effect was to weaken the funding bodies' control over the project. The majority of amendments were made either as a result of BTI's inability to meet the conditions of funding or to retrospectively allow ineligible expenditure that had already been incurred and claimed by BTI. This included:

### DETI

The original letter of offer of 21 December 1999 included detailed cost estimates of some £4.8 million which, with a DETI contribution of 25%, equated to £1.2 million grant:

- The offer was amended on 28 July 2000 in response to BTI's concerns about its ability to draw down its full grant entitlement within the agreed timescales. DETI lowered the amount of eligible expenditure to some £2.4 million, but increased its contribution rate to 49.16%. While the total value of funding was unchanged at £1.2 million, the change facilitated the earlier receipt of funds.
- The offer was again amended on 16 October 2001 at BTI's request – the purchase of equipment was made eligible and the claims deadline was extended to 30 November 2001.

### IDB

IDB's original offer of 28 June 2000 was for £500,000:

- It was first amended on 16 July 2001, when four prior conditions detailed in the Advice Report (paragraph 2.2) were changed to general conditions. This allowed £250,000 grant to be drawn down by BTI, without having satisfied these conditions, including:
  - the requirement for BTI to have a fixed price building contract in place. This was highlighted as a fundamental prior condition in the Advice Report, to manage the risks of cost overruns and ensure adequate funding was in place.
  - the requirement for BTI to submit updated financial projections. This was justified by IDB on the basis that its representative attended BTI Board meetings. We note, however, that BTI Board minutes indicate little evidence of financial projections being made available at Board meetings.
  - the requirement for BTI to have planning permission in place. This was done on the basis that outline planning permission had been granted and that building work was expected to commence in September 2001. In actual fact, planning permission was never

## Part Five: Departmental Oversight

granted for construction at the BCH site.

- The second amendment, on 26 October 2001, resulted from the change in location to Harbourgate.

### Non-compliance with offer conditions

- 5.7 Both DETI and IDB paid grant when conditions of offer, even as revised, had not been met by BTI. This was most notable in relation to BTI's inability to meet the full capital costs of the project. DETI's offer contained a number of conditions stated as "*essential*" to the release of grant. One was that matching funding contributions (i.e. equivalent in value to the public funds contribution), were in place, with confirmation provided to the Department in writing. BTI provided two letters of support as evidence of confirmation of matching funding. Neither of the organisations named (one based in Dublin, the other in the United States) ever provided funds for BTI (although funding of £1.2 million was later received from Allen McClay). Following the change of location to Harbourgate, BTI faced a £2.7 million funding deficit, but never provided any information to DETI as to how this deficit would be funded. Consequently, when the final payment was made by DETI to BTI, the latter was in breach of this essential condition.
- 5.8 A number of prior conditions in IDB's letter of offer were also not met when grants were released to BTI. Similar to DETI,

these included a requirement to confirm sufficient funding was in place to cover the capital cost of the project. However, when the project moved to Harbourgate, BTI again did not provide any information on how the £2.7 million funding gap would be closed. There was also a requirement to confirm that an oversight board, comprising senior staff from key stakeholders (medical and academic institutions) was in place. The evidence shows that such a Board met only once, on 18 May 2000.

### Project monitoring

- 5.9 Arrangements for financial monitoring by the funding bodies were contained in the letters of offer. These required BTI to submit quarterly management accounts and annual accounts to the funders. However, there is no evidence that this was ever done. Moreover, we have seen no evidence that the funding bodies enquired as to progress in the preparation of these accounts, or took any action in response to their absence.
- 5.10 BTI did submit four 'quarterly' progress reports to DETI during its period of operation. However, the level of detail provided was very limited and insufficient for any funding body to form a meaningful view on BTI's progress. There is no evidence that DETI requested any further updates or more detailed information from BTI.

### Approval of project amendments

- 5.11 As regards amending offers of assistance, the IDB Book advised that, where there is no increase in the total assistance offered, but there is a significant change in any of the parameters of the project, the relevant Casework Committee should be consulted. It also advised that, where the project has developed beyond the original concept or has so changed that the costs involved significantly exceed the original estimate, the Client Executive is recommended to re-negotiate the whole package of assistance.
- 5.12 Given the material changes in project cost and location, triggered by the move from BCH to Harbourgate, we would have expected the guidance in the IDB Book to have been followed. However, because the BTI project was dealt with, in the first instance, by the Resource Group rather than a Casework Committee, the ongoing assessment requirements of a Casework Committee process were not applied.
- 5.13 In the case of DETI, the Structural Funds Manual advised that, where viability of the project is in doubt, officers will need to investigate the position and satisfy themselves that the project is unlikely to fail, before paying the grant. Given the £2.7 million funding deficit and the implications that this had for the project's viability, we would have expected DETI to reassess the project. However, this was not done. Given also the material changes in project costs and location, DETI should have alerted DFP and sought to update its approval (paragraph 2.5),

but we saw no evidence that it had done so.

### The processing of grant claims

- 5.14 The Advice Report (paragraph 2.2) stressed the need for the funding bodies to undertake careful financial scrutiny. However, the evidence suggests that adequate steps were not taken to manage the risks identified.

#### Claims to DETI

- 5.15 BTI submitted four claims to DETI, totalling some £1.2 million - **Figure 5.1**. All four claims were signed by Teresa Townsley.

#### Progress reports

- 5.16 DETI required a project progress report to be submitted with each claim. The progress report submitted with the first claim was very limited and failed to mention, for example, the difficulties being experienced with the BCH site and lease agreement. The progress reports submitted with the second and third claims also provided little detail and again omitted any update on progress in securing a site for the project. Despite this lack of information, claims were processed and paid by DETI.

#### Eligibility of costs

- 5.17 BTI's third claim was dated 16 August 2001 and included £151,681 for equipment costs, out of a total claim for £182,300. An internal DETI memo

## Part Five: Departmental Oversight

**Figure 5.1: BTI claims paid by DETI**

Claim	Date of Claim	Date of Payment	Claim Amount £	Nature of Spend £
1st	6 March 2001	26 March 2001	40,169	Fees
2nd	22 May 2001	27 June 2001	17,612	Fees & overseas travel
3rd	16 August 2001	19 October 2001	182,300	Equipment (mostly)
4th	26 October 2001	26 October 2001	961,078*	Building & associated costs
<b>Total</b>			<b>£1,201,159</b>	

Source: *Company Inspectors*

Note: \* Only £959,919 was paid on the 4th claim.

highlighted that its letter of offer did not include equipment and that some of the costs included within the claim relating to equipment could turn out to be ineligible. However, DETI revised its offer on 16 October 2001 to specifically include equipment within eligible costs. This appears to have been done solely to facilitate payment of the claim within the funding deadline of 31 October 2001 (having been extended from 30 September 2001). Payment was released on 19 October. We note that DETI altered its offer to facilitate the purchase of equipment at a time when BTI had no premises in which to operate the equipment. As it transpired, none of the equipment was used by BTI. The amount paid by BTI – some £357,000 – was effectively wasted.

### *Claims of grant in advance of payment*

5.18 DETI's Structural Funds Manual states that grant should be paid after expenditure is defrayed – that is, when money is actually

spent. At paragraphs 3.12 to 3.16, we outlined how BTI had been paid a sum of £959,919 (BTI's fourth claim against DETI) in connection with its purchase of Harbourgate, despite not having actually made the purchase payment at that time. Its claim had been supported by a copy of a cheque for some £1.7 million which was later found not to have been presented for payment. However, this was not the only instance of claims being made in advance of payment.

5.19 In total, eleven other cheques totalling some £350,000 were written to suppliers of equipment where, once again, the evidence suggests that they were written for the sole purpose of providing evidence to DETI that payment had been made, thereby facilitating the drawing down of funds. Nine of these cheques were dated either 31 July 2001 or 1 August 2001; the other two were dated 14 August 2001 and 18 October 2001. BTI claimed that the first ten cheques were issued on 31 July and included them in

its third claim, dated 16 August 2001. The final cheque was included in its fourth claim on 26 October. None of the cheques, however, cleared the bank prior to 20 November 2001. Despite this, in the client declaration section of the claims, Teresa Townsley stated that BTI *"has paid the sums stated"* and certified that *"to the best of [her] knowledge [the claim information] is complete and accurate"*.

- 5.20 In the event, DETI failed to withhold payment, even though not all of the cheques had yet cleared the bank.

### ***Double claiming***

- 5.21 In all four claims submitted to DETI, BTI claimed for expenditure that was also subsequently claimed from IFI. This amounted to a total of some £542,000 covering equipment, travel and other costs.
- 5.22 The original letter of offer from IFI required BTI to obtain matching funding from an outside non-EU body. This was amended on 3 January 2001 to allow for the matching funding to be obtained from bank borrowings, rather than external funding. However, BTI does not appear to have informed IFI that 49% of the 57% matched funding required was actually being obtained from DETI. Indeed, in the claim submitted to IFI, signed by Teresa Townsley, BTI recorded the source of matching funding as 'private sector'.
- 5.23 When IFI carried out its vouching visit on 26 October 2001, it noticed that several invoices submitted by BTI had

already been stamped by DETI. IFI wrote to DETI, highlighting the incidents of double claiming. Despite this, DETI took no action. Its European Programmes Branch later told the Inspectors that it had assumed that IFI had taken whatever action was necessary to ensure double funding had not taken place. In examining how the problem had arisen, we found that DETI had changed its letter of offer to BTI on 16 October 2001, to include equipment as an eligible cost for grant support, but had not informed IFI. Until its vouching visit, therefore, IFI believed that it was funding a discreet part of the BTI project.

- 5.24 Subsequently, but only after payment had been made, IFI amended its own letter of offer to retrospectively 'regularise' the position. It is clear, however, that it had not been the intention of either DETI or IFI to double fund this part of BTI's expenditure - the result was that the £542,000 involved was grant-aided to the tune of 92% (49% by DETI and 43% by IFI).

### **Claims to IDB**

- 5.25 The Inspectors requested documentation from Invest NI relating to IDB's release of funds to BTI, but no information was provided. We note, however, that IDB released funds to BTI on 26 October 2001 - the same day on which it wrote to BTI advising that approval had been given to amend its letter of offer. By the time that BTI signalled its acceptance on 31 October, it was already five days after the payment had been made.

## Part Five: Departmental Oversight

### Claims to IRTU

- 5.26 On 17 October 2001, BTI requested drawdown of the £250,000 grant from IRTU. An internal IRTU memo confirmed that IRTU would release payment once DETI had carried out its vouching visit and made its payment. In the event, payment was released on 25 October, the day before DETI's vouching visit and payment.

### BTI claims for overseas travel costs

- 5.27 The original complaint to DETI about BTI (paragraph 1.2) included concerns about travel claims submitted to LEDU for costs incurred by a number of individuals attending a bio-conference in San Diego in June 2001. In the course of their review, the Inspectors uncovered a number of serious shortcomings. Details are set out at **Appendix 6**.

## Main findings

### Key concerns

- 5.28 We have a number of concerns surrounding the Department's oversight of the project:

#### On IDB's project approval

- Contrary to established protocols, assistance to the BTI project appears to have been approved by the IDB Resource Group, rather than being examined by a Casework Committee. This also meant that when, subsequently, there were material changes in the cost and location of the project, the project was not reassessed by the Casework Committee.
- Invest NI was unable to produce any documentation detailing IDB's consideration and approval of funding to BTI. Of particular concern, there is evidence of one file having been destroyed subsequent to it having been requested for inspection.

#### On amendments to the funders' letters of offer

- Three of the funding bodies amended the conditions of their assistance offers to BTI. In doing so, they deviated from the recommendations included in the Advice Report, thereby weakening their control over the project. Important milestones were removed, which could otherwise have been used as triggers by both BTI and the funding bodies to re-assess the project's viability and future prospects.

### **On compliance with offer conditions**

- Not all of the conditions in DETI's and IDB's letters of offer were met by BTI before grant totalling £1.7 million was paid. Most notable was the failure to confirm that the project was fully funded. As a result, Harbourgate was purchased, despite a £2.7 million funding deficit.

### **On project monitoring**

- While the letters of offer required quarterly management accounts and annual accounts to be submitted by BTI to the funders, these were not provided. Moreover, there is no evidence that the funding bodies took any action in response to their absence.
- DETI should have sought DFP approval to the material changes in project costs and location but failed to do so.

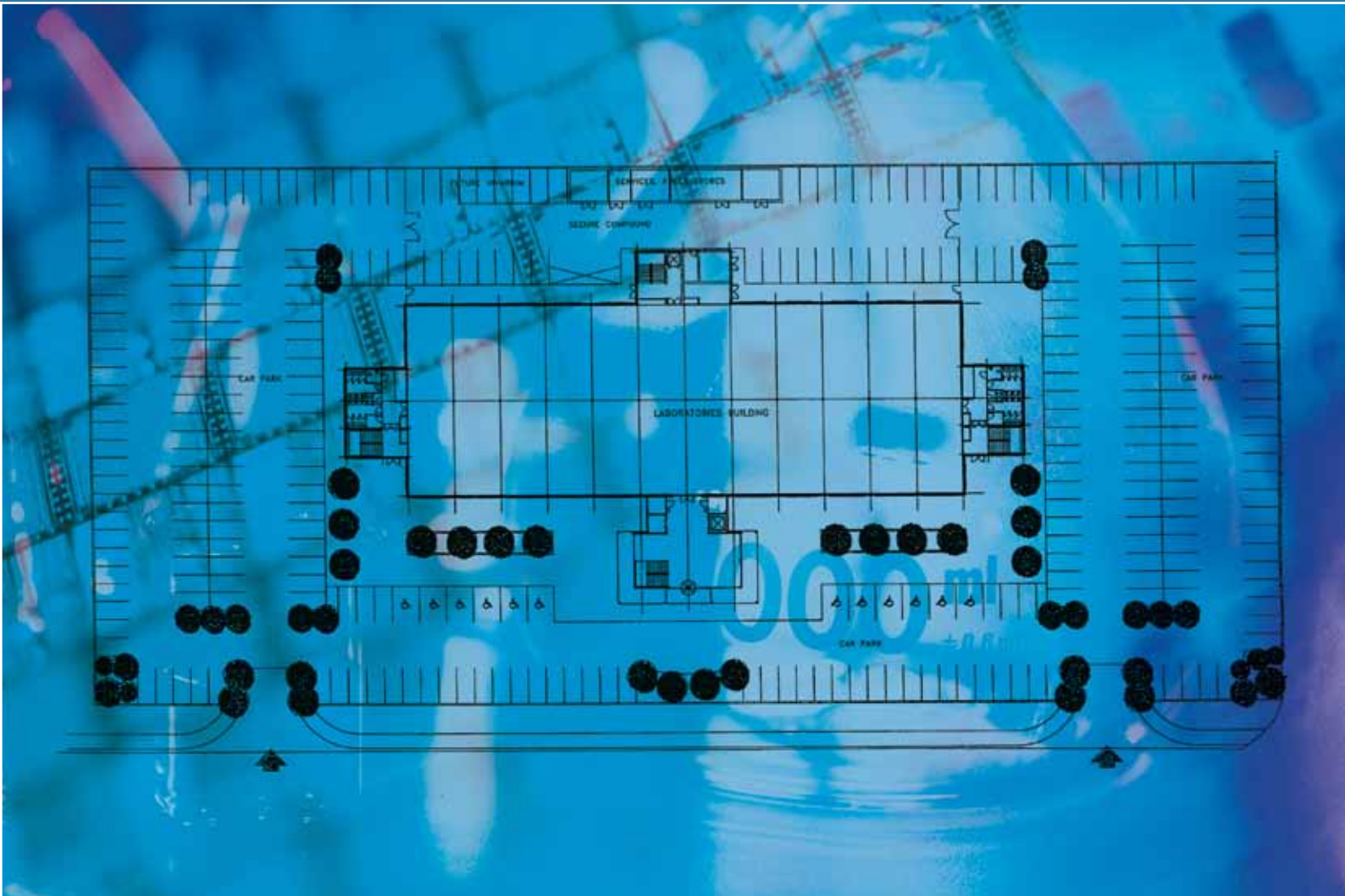
### **On the processing of grant claims**

- Despite the lack of information provided by BTI in progress reports accompanying claims for grant, DETI continued to make grant payments.
- DETI's revision of its offer, to include equipment within eligible costs, appears to have been done solely to facilitate payment of grant within the funding deadline. At this stage, BTI had no premises in which to operate the equipment.
- Contrary to the agreed funding procedures, BTI claimed and received grant totalling £152,000 for equipment that had not yet been purchased. Although DETI was aware that the cheques in support of the claim had not yet cleared the bank, it failed to withhold payment.
- None of the equipment bought was ever used by BTI. The cost, totalling some £357,000, was effectively wasted.
- BTI double claimed amounts totalling some £542,000 from DETI and IFI. Although alerted by IFI, DETI took no follow-up action.
- Invest NI has failed to provide details of its processing of BTI claims.
- There were serious shortcomings in the handling of payments and recoveries in connection with overseas travel (see Appendix 6).





## Part Six: Corporate Governance and Conflicts of Interest



## Part Six:

# Corporate Governance and Conflicts of Interest

6.1 In this part of the report we examine:

- BTI's corporate governance arrangements
- conflicts of interest.

### Corporate governance

#### Background

6.2 Where substantial amounts of public funds have been provided to a project, compliance with the highest standards of corporate governance is expected. The evidence shows, however, that there were serious failings in the corporate governance arrangements applied within BTI. The Board appeared to lack a clear vision and direction and was weak in its exercise of the oversight and challenge functions. Prime examples of this include the Board's decision to move from the BCH site and purchase Harbourgate, the circumstances surrounding payment of the finder's fee and the purchase of equipment despite having no premises.

6.3 We note that IDB (and later Invest NI) had observer status at BTI Board meetings, from the inception of the project.

#### Role and structure of the BTI Board

6.4 A Board should be of sufficient size to ensure an appropriate balance of skills and experience to meet operational needs. At the BTI Board meeting held on 12 May 2000 (almost two years after it was formed), the Board agreed that a

specification of the required skills set of potential directors should be prepared. However, there is no evidence that this was ever done.

6.5 Also, the intended wider corporate structure was not implemented. BTI's business plan outlined a series of sub-Boards in support of the main executive Board – a Supervisory Board comprising representatives of the principal funders; a Board of Visitors, to include industry representatives with a global perspective; and a Scientific Board, aimed at widening contacts and gaining an international standing. In practice, only the Supervisory Board was formed and it met only once, in May 2000.

#### The post of Chairman

6.6 A Chairman is responsible for the leadership and effectiveness of the board, setting its agenda and ensuring that directors receive accurate, timely and clear information. However, the Board minutes show that it took BTI two years to appoint a Chairman. From November 1998 until December 2000, when Will McKee was appointed, the Chairmanship was rotated, with a director being appointed to act as chair at the start of each meeting.

6.7 Following Will McKee's resignation in November 2001, there was a period of seven months during which no permanent appointment was made. Again, a Chairman was appointed on a rotational basis, solely for the purpose of chairing Board meetings. It was not until July 2002

that a permanent Chairman was again appointed.

### **The post of Chief Executive Officer**

- 6.8 There was also a significant delay in the appointment of the Chief Executive Officer (CEO). One of the prior conditions in IDB's June 2000 letter of offer was for confirmation, "to IDB's satisfaction", of the appointment of a suitably qualified and/or experienced CEO. However, the appointment (of Barry Gibson), was not made until February 2001 and even then only on a temporary basis. He was not permanently appointed until 12 September 2001.
- 6.9 We note that, following a Board meeting on 28 March 2002, the Board wrote to the CEO proposing changes to his role, due to concerns about his level of performance. Despite this, the CEO continued to be employed by BTI, albeit on a part-time basis (two days per week), at £250 per day.
- 6.10 In light of these concerns, we sought details of the process by which the CEO had been recruited. In particular, we were interested in the skills and experience sought in the job specification, the nature and level of competition for the post and details of the shortlisting and interview processes. However, we were unable to access the relevant papers. We have been told that a recruitment firm had been used for the bulk of the process, although the final interview, involving three candidates, was carried out by a panel of BTI Board members. It is not clear to us,

therefore, on what basis IDB satisfied itself as to the CEO's appointment.

### **Board minutes**

- 6.11 We have not seen any Board minutes for the period between July 1998 and April 2000, some 21 months. Our understanding is that none were produced. For the period thereafter, the Board minutes tend to offer relatively little detail on the thinking and justification for key decisions made by the Board. We understand that preparation of Board minutes was the responsibility of Teresa Townsley, in her capacity as BTI's Company Secretary. Even so, it is also the duty of every Board member, and the Chairperson in particular, to ensure that the minutes fully, clearly and accurately record the business and decision-making of the Board. We would also expect the funding bodies' representative attending Board meetings to ensure that standards were met.

### **Tendering**

- 6.12 Both the IFI and DETI letters of offer required that BTI award its contracts on the basis of selective tendering, in line with EU requirements. However, we are aware of only two cases where a form of tendering had been used to award contracts<sup>14</sup>. There was no other evidence that selective tendering was used by BTI to appoint professional advisers and other suppliers.
- 6.13 The Inspectors identified 12 engagement letters issued to professional advisers by

14 In one of the two cases, however, we have significant concerns about the tendering process – see Case 5 at Appendix 7.

## Part Six:

# Corporate Governance and Conflicts of Interest

BTI. However, in general, Board minutes provided insufficient detail to determine the basis of selection. There were a further 19 advisers who provided services to BTI, but without any apparent engagement letter or contract. Again, Board minutes provided little evidence of the merits of those appointed.

- 6.14 It was also apparent that, without tender, BTI had engaged certain companies associated with Teresa and/or Michael Townsley to carry out professional and

other services. One case of particular concern related to the fit out of Harbournate, which cost BTI £737,000 (paragraph 3.11). We have not seen any tendering or contract documents for this job so it is not clear whether the appointment of the company which did the work was subject to an appropriate tender process. Consequently, we are unable to confirm whether the best price was secured and that there was a fair and open competition. Details are as follows:

### Figure 6.1: Tendering for the fit out of Harbournate

The minutes of the BTI Board meeting of 5 December 2001 record that the CEO was “*asking for quotations*” for fit out costs of Harbournate, indicating a figure of £2-2.3 million. In interview, the CEO said that quotations were sought from at least three companies and the one which was awarded the contract (Company A), was approximately £0.5 million cheaper than another company which he named (Company B).

We have seen a letter from the CEO, dated 19 November 2001 addressed to ‘Company A’, requesting a “*price relating to the design, build and project management*” of the fit out of Harbournate, following their visit the previous week. However, we have not seen similar correspondence with any other companies.

The quotation from ‘Company A’ was received on 5 December 2001, the date of the Board meeting. We have not seen any other quotations, from ‘Company B’ or anyone else. Indeed, ‘Company B’ said that it held no information to suggest that BTI had asked it to provide a quote to fit out Harbournate (rather, it explained that it had constructed the Harbournate building).

The minutes of the BTI Board meeting on 28 March 2002 record that ‘Company A’ had been appointed as contractors. They also state that the “*Board may recall that on a comparative quote basis* [‘Company A’] *were over £0.5 million more competitively priced*”. However, the Inspectors reported that, from their review of available Board material, it was clear that there was no minute of any discussion of alternative quotes.

As regards the suitability of ‘Company A’ to undertake the fit out, BTI stated in an update report to the bank in April 2002 that ‘Company A’ had recently completed complex laboratory-based projects for (amongst others) Galen Limited. However, Galen at that time was owned by Allen McClay who later stated in interview that no laboratory fit out was ever undertaken for Galen by ‘Company A’; it had only carried out some contract work. (We understand that this was a sub-contract to install ventilation facilities in ‘clean rooms’.)

As to how ‘Company A’ came to be involved, BTI’s CEO said in interview that it had been recommended by Michael Townsley. Mr Townsley told the Inspectors that he knew the company’s principal, but not through business dealings. He also said he was surprised that ‘Company A’ had been appointed.

## Conflicts of Interest

- 6.15 There are strict rules governing the handling of conflicts of interest. Guidance may be found in a range of sources, including the companies legislation, accounting practices regulations and various professional codes of conduct. The public sector also has long-established and comprehensive procedures for dealing with conflicts of interest. We would expect all Board members of limited companies to be familiar with these requirements, especially those who came to BTI from a business background and who also held important public appointments. Similarly, we would expect any representative of the funding bodies attending Board meetings to be fully conversant with the requirements.
- 6.16 Procedures used to manage potential conflicts include the removal of the individual concerned from the relevant decision-making process and the clear recording of details of the related discussions and decisions made by the

board. The essence of good practice is to ensure openness and transparency when such situations arise.

## Procedures

- 6.17 There does not appear to have been any formal procedure within BTI for handling conflicts of interest. It was noted at a Board meeting in December 2000 that a procedure was needed to handle any conflicts that may arise. The minutes also record that the company secretary, Teresa Townsley, agreed to draft a form of words for approval. However, there is no evidence in subsequent Board minutes that a procedure was agreed.
- 6.18 There were a substantial number of conflicts of interest that arose in the course of BTI's dealings, all of which required careful handling. However, the evidence indicates that conflicts of interest within BTI were poorly handled. We noted five cases of particular concern – one, involving MTF, is set out in **Figure 6.2**, the other four are detailed at **Appendix 7**:

### Figure 6.2: Example of a conflict of interest that was poorly handled in BTI

#### Case 1: MTF Chartered Accountants

Teresa Townsley was a Partner, with her husband Michael Townsley, in MTF Chartered Accountants. During its period of operation, BTI was invoiced £127,399 (excluding the £25,000 Harbourgate finder's fee) for services provided by MTF. These services related to day-to-day administration for BTI such as record keeping, accounts preparation and the collation of grant claims. Later, it also included services relating to the acquisition of Harbourgate. Points to note are:

- At a Board meeting in January 2001, Teresa Townsley undertook to make a proposal for an MTF member of staff to provide administration services, as well as support to the Board, on a fixed cost per month to be agreed. There is no record, however, of this proposal having been made or any subsequent discussion or

## Part Six:

# Corporate Governance and Conflicts of Interest

agreement by the Board. Moreover, there is no record of any consideration by the BTI Board of the value for money implications of employing MTF as against any other provider.

- Among the payments made by BTI to MTF was an invoice for £68,907, dated February 2001, relating to start-up costs. We understand that there was an agreement between IDB and MTF that a sum of around £70,000 would be paid to MTF for getting BTI 'off the ground'. However, the procedures followed by IDB in procuring the services of MTF and establishing the cost are unclear. In particular, we are not aware of any competition for this appointment. Given that, at this time, Teresa Townsley was also a member of two Departmental Boards, the lack of transparency in IDB's agreement with MTF could lead to a perception of favouritism.
- The Companies legislation states that, *"if a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors"*. We have seen no record in Board minutes of this having been done. We recognise that the other BTI Board members were aware of Teresa Townsley's 'interest' in MTF's business with BTI (excluding the finder's fee). Nevertheless, the accepted protocols should have been observed. Further, there should have been a disclosure in BTI's annual accounts of Mrs Townsley's interest in the fees paid to MTF; however, none was made.
- In addition, from 31 October 2001, when BTI was accepted as a charity for tax purposes, it also became subject to obligations under charity law. There is a general principle in charity law that trustees cannot receive any benefit from their charity in return for any service provided, unless they have specific legal authority to do so. We have seen no evidence that Teresa Townsley had such authority. MTF received some £46,000 after the change in status. (The Department said that this issue will be included in its wider consideration of director disqualification proceedings – see paragraph 1.4.)

### Representations made by current and former directors of BTI

- 6.19 A number of representations have been made by both current and former directors of BTI in relation to the role of Teresa Townsley. They relate largely to the corporate governance of BTI and the trust that was placed in Teresa Townsley by the other directors to oversee such matters.
- 6.20 Two directors have commented that they had been commercially naïve and relied too heavily on those with greater commercial experience in the operation of the company. They referred specifically

to the undue influence of Teresa Townsley, pointing out that BTI and its Chief Executive were actually based in MTF's offices in Belfast. One further commented that, in his opinion, the Chief Executive was little more than MTF's employee and was, in effect, being controlled. Another director commented that Board members totally and implicitly trusted Teresa Townsley, assuming that her aims were in selfless alignment with BTI and the Board. This trust was based on her reputation within the business community and her trusted position in contributing to the financial affairs of many companies and institutions.



6.21 We note that, as company secretary, Teresa Townsley was responsible for corporate administration and for ensuring that BTI complied with regulatory requirements, both legal and financial. Nevertheless, the directors as a whole were ultimately responsible for corporate governance. We also consider the

funding bodies had an important role to ensure that standards were met.

6.22 We have not been able to interview Teresa Townsley to obtain her evidence in relation to corporate governance generally at BTI and specifically in relation to her own role.

## Main findings

### Key concerns

6.23 We have a number of concerns regarding corporate governance and the handling of conflicts of interest, including:

#### On corporate governance

- The planned corporate structure was not implemented.
- A skills set for the Board was never defined.
- There were significant delays in appointing both a Chairman and a Chief Executive.
- Board minutes were not prepared for the first 21 months of BTI's operations. Thereafter, the minutes produced often lacked detail on the Board's thinking and justification for key decision-making.
- Critical representations have been made, both by current and former officers of BTI, regarding the role and actions of Teresa Townsley in the operations of BTI.
- With only two exceptions (one of which is questionable), there is no evidence that suppliers and advisers were appointed by BTI on the basis of tendering, despite the requirement to do so under DETI's and IFI's letters of offer. We have particular concerns surrounding the appointment of the company to fit out Harbourgate, including the method by which the company was secured, BTI's failure to assess the suitability of that company to undertake such specialist work and the lack of contract documents.

## Part Six:

# Corporate Governance and Conflicts of Interest

### On handling conflicts of interest

- There does not appear to have been any formal procedure within BTI for handling conflicts of interest. The evidence indicates that conflicts which did arise were generally poorly handled, with lack of disclosure a recurrent weakness.
- The arrangements surrounding an agreement between IDB and MTF for setting-up BTI at a cost of over £68,000 are unclear. The lack of transparency could lead to a perception of favouritism.
- Equipment purchased by BTI was used by other companies in which certain BTI directors and family members had an interest, thereby gaining financial benefit at the expense of BTI (see Appendix 7).

### Consideration of fraud and consultations with the police

- 6.24 We asked the Department whether it considered that any of the matters covered in this report constituted fraudulent behaviour, in particular those issues where the evidence suggests that there may have been an intention to mislead – the finder's fee; the claims against the project funders (involving instances of double claiming, false declarations and non-presentation of cheques for payment); the representations that tenants for Harbournate had been secured; the handling of payments and recoveries in connection with overseas travel to the Bio 2001 San Diego conference; and the procurement of FPM Chartered Accountants to carry out the economic appraisal of BTI's P&R application.
- 6.25 The Department said that, together with Invest NI and the Inspectors, it had held meetings with the PSNI to discuss the

finder's fee and concerns over grant claims made to the funding bodies (involving instances of double claiming, false declarations and non-presentation of cheques for payment). As regards the finder's fee, the Department was told by PSNI in 2006 that there was insufficient evidence to take matters further (i.e. in terms of criminal proceedings). However, at that stage, the Company Inspection of BTI was still in progress. We saw no record of any further consultation with the police on the finder's fee after the inspection had been completed.

- 6.26 On grant claims to funders, DETI told us that PSNI's view was that, from the material viewed and briefing received, there was insufficient evidence to suggest that any criminal offence had been committed. PSNI commented, however, that DETI, by its actions, had effectively consented to BTI engaging with the claims process in the manner in which it did. For example:



- DETI amended its Letter of Offer to reflect expenditure that had already been incurred and claimed by BTI
- no action was taken by DETI on becoming aware of double-claiming
- DETI's monitoring visit on 26 October 2001 highlighted outstanding issues, including the use of pro forma invoices and cheques that had not cleared the bank. Although DETI procedures state that funds should not be released until all outstanding issues are resolved, this requirement was not satisfied when payment was made the same day
- clawback provisions within DETI's Letter of Offer were not enforced at any time.

6.27 The other areas of concern noted in paragraph 6.24 - on tenants, overseas travel and procurement of the economic appraisal - were not raised with the police.

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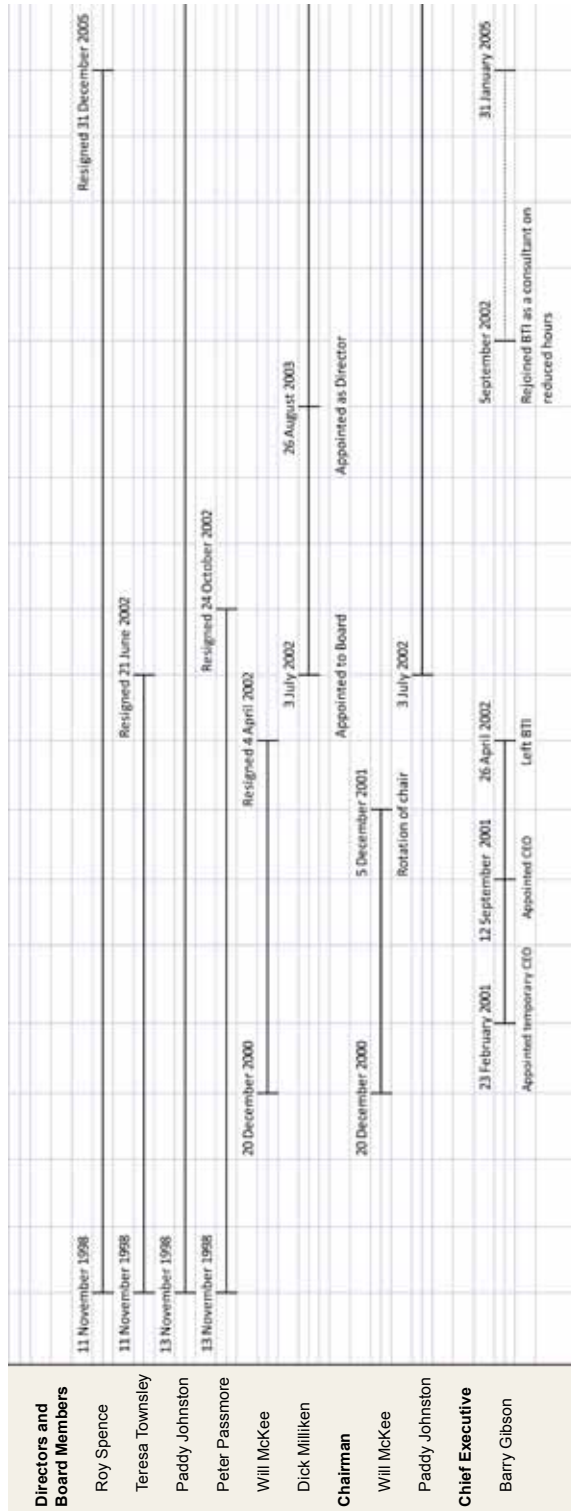
# Appendices



# Appendix 1 (paragraph 1.6)

## Details of BTI Directors and Board Members

## BTL – Governance Timeline



Source: NIAO, BTI, Company Inspectors

## Notes:

1. At the date of incorporation:
  - Professor Johnston was Professor of Oncology with BCH and QUB.
  - Professor Spence was a consultant surgeon at BCH.
  - Dr Passmore was Director of Medical Education and Research at BCH and a senior lecturer in Geriatric Medicine at QUB.
  - Mrs Townsley was a Chartered Accountant, Deputy Chairperson of the Local Enterprise Development Unit (LEDU), a Board Member of the then Health and Safety Agency (HSA), a member of the Senate and Honorary Treasurer of QUB, and a partner in MTF Chartered Accountants with her husband, Mr Michael Townsley. She was also on the DETI Audit Committee and chaired the LEDU and HSA Audit Committees. In 2002, she was appointed to the Board of the newly formed Invest NI.
2. Mr McKee's background was in business. He also served as a non-Executive Director on the LEDU Board from July 1993 to December 1999.
3. Mr Gibson was not an employee of BTI but a self-employed consultant who invoiced the company at a daily rate.
4. Mr Milliken was initially invited to join the Board as an observer in December 2001, on behalf of Allen McClay. BTI Board Minutes record that, on 3 July 2002, he was proposed for, and accepted, Board membership. Companies Registry records the date of his appointment as a Director of BTI as 26 August 2003.

## Appendix 2

### (paragraphs 1.15 and 4.24)

**Table 1: BTI – Source and Application of Funds, 2001 to 2007**

Year ended 28 February	2002 * £	2003 £	2004 £	2005 £	2006 £	2007 ** £	Totals £
<b>Opening balance</b>	-	(2,216,585)	(4,722,818)	(5,162,095)	(5,555,164)	(1,466,991)	-
<b>Source</b>							
Grants received (specific purposes)	14,933	2,300	-	-	-	-	17,233
Grants received by BTI ****	2,175,000	-	-	-	-	-	2,175,000
Bank interest	7,354	6,341	-	-	-	-	13,695
Rental income	-	-	1,950	7,725	-	-	9,675
Fixed asset disposals	-	-	-	15,000	4,550,000	-	4,565,000
<b>Total sources</b>	<b>2,197,287</b>	<b>8,641</b>	<b>1,950</b>	<b>22,725</b>	<b>4,550,000</b>	<b>-</b>	<b>6,780,603</b>
<b>Application</b>							
Conference expenditure	33,994	6,154	-	-	-	-	40,148
Marketing	18,206	993	680	-	-	-	19,879
Rent and rates	25,625	57,670	69,750	81,375	49,702	-	284,122
Motor expenses	329	166	-	-	-	-	495
Travel	4,164	554	-	-	-	-	4,718
Printing, stationery and telephone	709	980	20	-	-	-	1,709
Professional fees	73,251	123,711	32,214	16,970	51,113	-	297,259
Maintenance	35	300	-	2,345	-	-	2,680
Sectoral development cost	14,661	-	-	-	-	-	14,661
Miscellaneous	127	646	173	436	-	-	1,382
Insurance	-	11,294	20,583	19,276	16,275	-	67,428
Set up costs – MTF	68,907	-	-	-	-	-	68,907
BCH site costs	62,784	-	-	-	-	-	62,784
Interest and similar charges	28,500	138,688	317,807	295,392	344,737	47,500	1,172,624
Fixed asset additions – property	3,724,346	2,173,718	-	-	-	-	5,898,064
Fixed asset additions – equipment	358,234	-	-	-	-	-	358,234
<b>Total applications ****</b>	<b>4,418,872</b>	<b>2,514,874</b>	<b>441,227</b>	<b>415,794</b>	<b>461,827</b>	<b>47,500</b>	<b>8,295,094</b>
<b>Fund balance</b>	<b>(2,216,585)</b>	<b>(4,722,818)</b>	<b>(5,162,095)</b>	<b>(5,555,164)</b>	<b>(1,466,991)</b>	<b>(1,514,491)</b>	<b>(1,514,491)</b>
<b>Made up of:</b>							
Cash at bank/(overdraft)	515,055	(1,525,179)	(1,749,013)	(1,997,219)	-	-	-
Bank loan	(1,526,035)	(1,611,033)	(1,697,904)	(1,810,424)	-	-	-
Allen McClay loan	(1,200,000)	(1,200,000)	(1,305,000)	(1,328,750)	(1,047,790)	(1,095,290)	(1,095,290)
Creditor – amount owed to HMRC	-	(338,647)	(383,647)	(419,201)	(419,201)	(419,201)	(419,021)
Other debtors	11,046	20,336	19,888	430	-	-	-
Other creditors ***	(16,651)	(68,295)	(46,419)	-	-	-	-
	<b>(2,216,585)</b>	<b>(4,722,818)</b>	<b>(5,162,095)</b>	<b>(5,555,164)</b>	<b>(1,466,991)</b>	<b>(1,514,491)</b>	<b>(1,514,491)</b>

Source: Company Inspectors

Notes: \* 15-month period ended 28 February 2002.

\*\* 9-month period ended 30 November 2007.

\*\*\* No allowance has been made for possible claw back liabilities by the funding bodies.

\*\*\*\* 'Grants received by BTI' and 'Total applications' are further analysed in Tables 2 and 3 overleaf.

**Table 2: Payments of grant to BTI by funding bodies**

Date	DETI (£)	IFI (£)	IDB (£)	IRTU (£)	Totals	Application
5 January 2001		100,000			100,000	Equipment, fees and sundry expenses
26 March 2001	40,169				40,169	Professional fees and costs
27 June 2001	17,612				17,612	Conference Expenses
6 August 2001			250,000		250,000	Purchase of Harbourgate
19 October 2001	182,300				182,300	Equipment
25 October 2001				250,000	250,000	Purchase of Harbourgate
26 October 2001	959,919	125,000	250,000		1,334,919	Purchase and partial fit-out of Harbourgate, equipment and sundry expenses
<b>Totals</b>	<b>1,200,000</b>	<b>225,000</b>	<b>500,000</b>	<b>250,000</b>	<b>2,175,000</b>	

Source: Company Inspectors, BTI, DETI, Invest NI, IFI

**Table 3: Application of Funds by BTI**

Payee	Description	(£)
Harbourgate Developer	Purchase of Harbourgate	5,000,000
Bank	Bank interest and charges	891,884
Company 'A' (see Figure 6.1)	Fit out work – Harbourgate	737,220
Equipment suppliers	Equipment	358,234
Thomas Armstrong Solicitors	Legal advice and finder's fee	138,546
MTF	Administrative /accountancy services	127,399**
Marketing Implementation Services	Time of Barry Gibson (Chief Executive)	81,375
Various	Miscellaneous	960,436*
<b>Total</b>		<b>8,295,094</b>

Source: Company Inspectors, BTI, DETI, Invest NI, IFI

Notes: \* This figure includes £284,122 in respect of ground rent and rates for Harbourgate and £200,000 interest paid on the Allen McClay loan.  
 \*\* The sums paid to MTF Chartered Accountants exclude the £25,000 later transferred to it from Thomas Armstrong Solicitors.

## Appendix 3 (paragraph 1.16)

### BTI : Chronology of main events

Date	Event
<b>1998</b>	
11 November	BTI incorporated as a company limited by guarantee
<b>1999</b>	
2 March	BTI submits application for financial assistance under P&R
10 September	BTI submits Business Plan to IDB. Estimated project costs of £4.8 million
22 October	IDB Advice Report prepared on BTI Business Plan for DETI, IDB, IRTU and IFI
21 December	DETI letter of offer for £1.2 million
<b>2000</b>	
5 June	IFI letter of offer for £250,000
28 June	IDB letter of offer for £500,000
28 July	DETI amends its letter of offer (1st DETI amendment)
12 October	IRTU letter of offer for £250,000
<b>2001</b>	
3 January	IFI amends its letter of offer (1st IFI amendment)
5 January	IFI releases £100,000 to BTI
26 March	DETI pays £40,169.32 to BTI
22 May	Update meeting between BTI and funding bodies. Difficulties experienced at BCH site were discussed
22 June	BTI orders equipment costing £357,194
27 June	DETI pays £17,611.83 to BTI
4 July	BTI receives £200,000 from Allen McClay
16 July	IDB letter of offer amended (1st IDB amendment)
6 August	IDB pays £250,000 to BTI
30 August	BTI brief DETI Permanent Secretary - BTI cannot complete the lease with BCH and has been looking at alternative locations
19 September	BTI update report to IDB, IFI and DETI - revised project costs of £7.5 million (based on purchase and fit out of Harbourgate building)
5 October	Memorandum of Sale for Harbourgate: - purchase price £5 million, payment of £3.5 million for ground and first floor by 31 October 2001, balance of £1.5 million for the second floor by 14 June 2002
16 October	DETI amends letter of offer (2nd DETI amendment)



19 October	DETI pays £182,300.24 to BTI
23 October	Bank letter of offer for a loan of £1.6 million
25 October	IRTU issues £250,000
26 October	IDB and IFI amend their letters of offer (2nd IDB and IFI amendments)
26 October	IFI, IDB and DETI release funds totalling £1,334,919
30 October	BTI receives £1 million from Allen McClay
21 December	BTI enters into a contract for the fit out of the ground and first floors of Harbournate
<b>2002</b>	
29 May	Offer made to BTI by McClay Trust to purchase Harbournate for £6 million (subject to certain conditions and reviews)
24 June	BTI agrees to accept facility from Bank for additional £1.7 million
24 June	BTI agrees to sell Harbournate building to McClay Trust
19 August	Specialist report for the McClay Trust estimates the cost to complete the fit out of the ground, first and second floors of Harbournate to be £6.9 million
<b>2003</b>	
27 January	BTI consultants produce Strategic Plan concluding that fulfilment of BTI strategy is solely dependant on Government funding; it estimates an additional cost to INI of £10.2 million
29 July	BTI appoints agents to dispose of Harbournate
30 October	Bank seeks refinancing of its BTI loan facilities (it is not prepared to allow interest of some £14,000 per month to continue to accrue). BTI writes to Invest NI seeking assistance to refinance the Bank facilities
24 November	Allen McClay demands repayment of all sums owed by BTI
9 December	Auditors express concern at the ability of BTI to continue as a going concern
<b>2004</b>	
7 April	Bank appoints joint agent to identify tenants /purchasers for Harbournate
July	Discussions take place in relation to letting of Harbournate building to DFP
<b>2005</b>	
July	Harbournate agreed for sale to an investment company for £4.55 million, subject to a lease being put in place with Government tenant (DFP)
16-18 November	Bank demands payment of monies owed by BTI. When no payment is made, it requests immediate possession of Harbournate, as mortgagee
16 December	Harbournate sale completed

## Appendix 4 (paragraph 4.21)

### Concerns about BTI's claims that it had secured tenants for Harbourgate

1. No tenant leases were ever secured by BTI and no property rental income was ever generated. However, representations were made by BTI to the funding bodies, the bank and Allen McClay at different times that seven companies had been secured as tenants or had made a commitment to lease space at Harbourgate. Five of these companies had links to BTI, through their directors and shareholders, as shown in **Figure 1**. Details of the representations made are set out at **Figure 2**.

**Figure 1: Links between BTI and companies which it represented as secured tenants**

Company	Name	Position	% Shares
<b>Genomic Centre of Excellence</b>	Teresa Townsley	Director	18.5
	Paddy Johnston	Director	18.5
	Jim Johnston (brother of Paddy Johnston)	Director	18.5
	Michael Townsley (husband of Teresa Townsley)	-	18.5
	Roy Spence	-	3.7
	Barry Gibson	Director/Secretary	-
<b>Fusion Antibodies Limited</b>	Jim Johnston (brother of Paddy Johnston)	Director	45.7
	Michael Townsley (husband of Teresa Townsley)	Director	16.0
	Paddy Johnston	-	12.3
	Roy Spence	-	2.5
<b>Genomic Mining Limited</b>	Paddy Johnston	Director	25.0
	Roy Spence	Director	25.0
	Michael Townsley (husband of Teresa Townsley)	-	25.0
	Teresa Townsley	Secretary	-
<b>Amtec Medical Limited</b>	Will McKee	Director	51.8
<b>Pathcom Limited</b>	Will McKee	Director	52.8

**Figure 2: BTI's representations of secured tenancies****(1) Genomic Centre of Excellence (GCE)**

GCE was incorporated in August 2001 with its registered address at the offices of MTF Chartered Accountants, the practice owned by Teresa and Michael Townsley. A 'Rentals Secured Summary', prepared by Teresa Townsley and included in a BTI Update Report, lists GCE as requiring 4,000 square feet in Harbourgate at a cost of £40,000. The Summary notes that GCE's use is expected from "day one". However, GCE never traded and was a dormant company.

Subsequently, in October 2001, Teresa Townsley provided four letters of intent from "*potential tenants*" to the bank in support of BTI's loan application (a condition of the bank loan was the satisfactory review of pro forma tenant leases). One of the letters was from GCE, signed by Barry Gibson in his capacity as a director. Despite GCE's status as a dormant company, the letter stated that it was currently operating from premises at the Royal Victoria Hospital site and required laboratory space. We note that later, in interview, Barry Gibson told the Inspectors that GCE never traded. The evidence suggests, therefore, that the letter of intent provided to the bank was misleading.

Further representations in relation to GCE were made in a 'BTI Building Proposal' forwarded to IDB in March 2002. While it is not clear who forwarded this to IDB, the proposal itself was presented to the Board of BTI on 28 March 2002 by Teresa Townsley. GCE is named as one of three companies to have made a "*commitment*" to rent space in Harbourgate. Given the common directors and shareholders between GCE and BTI, it should have been clear to BTI that GCE was not able to make a financial commitment to rent space in Harbourgate.

**(2) Fusion Antibodies Ltd**

Fusion is a trading company and was incorporated in November 2000. In a document prepared by Teresa Townsley for Belfast Harbour Commissioners in October 2001, Fusion was listed in the 'Rentals Secured Summary' as requiring 4,000 square feet at a cost of £44,000 a year. It appears that this document may have been prepared for a meeting between the Harbour Commissioners and BTI on 5 October 2001 for the purpose of assisting the Commissioners determine whether to consent to the proposed assignment of the Harbourgate building to BTI.

On 17 October 2001 Jim Johnston, director of Fusion and brother of Paddy Johnston, had written to the directors of BTI, indicating Fusion's intention to enter into negotiations for the rental of space in Harbourgate. This letter was subsequently forwarded to the bank by Teresa Townsley on 18 October 2001, in support of BTI's loan application. However, this letter did not confirm or commit Fusion to renting space and so did not support the representation made by BTI to the Harbour Commissioners that a rental with Fusion of 4,000 square feet had been secured.

In the BTI Building Proposal forwarded to IDB in March 2002, Fusion is one of three companies stated to have made a commitment to rent space in Harbourgate. However, in interview with the Inspectors, Jim Johnston said that at no time was Fusion ever in a position to commit to a lease agreement, due to the rental proposed being considered too high.

**(3) Genomic Mining Ltd**

Genomic was incorporated in January 2001. Annual returns for the period to January 2004 list the principal business activities of the company as dormant. Genomic was listed by BTI in the October 2001 document for the Harbour Commissioners as being a secured rental. Similarly, in the March 2002 BTI Building Proposal for IDB, Genomic was noted as having made a commitment to rent space in Harbourgate.

A letter from Genomic dated 17 October 2001 advised BTI of Genomic's desire to locate in Harbourgate and stated that *"it is estimated that the requirement for space will grow over a 12 month period up to approximately 4,000 – 5,000 square feet"*. The letter was forwarded to the bank by Teresa Townsley, on 18 October 2001, in support of BTI's loan application. However, with Genomic being, essentially, a dormant company at that time, there would appear to have been little substance to its claim to require accommodation. Given that a number of BTI Board members were directors and shareholders of Genomic, BTI should have been well aware of this.

**(4) & (5) Amtec Medical Ltd & Pathcom Limited**

Amtec was incorporated in July 1986. Pathcom was incorporated in April 2000 but wound up in July 2004. In a letter dated 15 October 2001 Will McKee, in his capacity as Chief Executive of Amtec, confirmed his intention to locate Amtec and/or Pathcom in Harbourgate. The letter states that both companies are expanding and around 8,000 square feet will be required initially. There was no indication of rental income given in the letter. This was one of the four letters forwarded to the bank by Teresa Townsley on 18 October 2001.

The companies are also listed in the 'Rentals Secured Summary' within the BTI Update Report and in the Harbour Commissioners document of October 2001, both prepared by Teresa Townsley. We note that Will McKee stated in interview with the Inspectors that, in the right circumstances, Amtec and/or Pathcom would have tried to take some space in the BTI building but that no discussion took place with regard to the space required or the rental charges.

**Entities not linked to BTI or its directors**

2. The remaining two companies represented by BTI as secured tenants had no links to BTI or its directors. The first, a US-based company was noted by BTI in its bank loan application of September 2001 as a committed tenant. The second company, a Northern Ireland-based entity, was referred to by BTI in the March 2002 Building Proposal to IDB as having made a commitment to locate in the Harbourgate building. In each case, however, we have seen no evidence to support BTI's contention that these tenancies had been *secured*.

## Appendix 5 (paragraph 5.5)

### Missing files of the IDB Resource Group

1. The Inspectors' request to Invest NI for the files of the IDB Resource Group, including any minutes of meetings, was made on 3 April 2007. A response from Invest NI was received on 23 April 2007 indicating that all of the files relating to the IDB Resource Group had been requested from long-term storage and that the Inspectors would be notified when the relevant files were available for collection.
  2. Having received no such notification from Invest NI, the Inspectors issued a second request on 26 June 2007. Further to this request, a response was received from Invest NI on 5 July 2007, indicating that it had not yet proved possible to locate any of the Resource Group files from within its Records Management (RM) System. A third request was made on 17 July 2007.
  3. Around 5 September 2007, nine Resource Group files were provided to the Inspectors. Invest NI stated that these files were identified from a manual list held by the Human Resources department. Invest NI also stated that another search of the RM System had been carried out and a further six Resource Group files had been identified. Five of these files were subsequently provided but it was confirmed that one had been destroyed around 2 August 2007 (based on a Destruction Listing of that date). This destruction occurred four months after the Inspectors' original request for access to any Resource Group files. Invest NI commented that the decision to destroy this file may have been made several months prior to April 2007. However, it appears that the form evidencing both the review of the file for "*ongoing business value*" and the subsequent decision to destroy the file was also destroyed along with the file.
  4. Subsequently, in correspondence with the Inspectors, Invest NI confirmed that the six files identified from within the RM System in September 2007 would have been identifiable when searches were first carried out in April and May 2007. The explanation it provided was that these first two searches were "*cursory*", the RM team being unaware that the files were required for a statutory investigation. The Inspectors noted, from inventory histories maintained by INI's long term storage facility provider, that there had been movement in certain of the Resource Group files identified, including requests facilitated by the RM team, as late as March 2007.
  5. Of the 14 files provided to the Inspectors, four files related to minutes of Resource Group meetings, namely Volumes 1, 6, 7 and 8 of eight chronological files. Although file references were identified for Volumes 2, 3, 4 and 5, Invest NI was unable to locate these files within its RM system.
  6. Subsequently, during NIAO's review, the four missing files were located. However, none contained any substantive information about the Resource Group's consideration and approval of the funding provided to BTI. It may be that these details were contained within the file that was destroyed.
-

## Appendix 6 (paragraph 5.27)

### Concerns relating to claims for overseas travel costs

#### **Bio 2001 Conference, San Diego**

1. At a BTI Board meeting in February 2001, it was suggested that eight individuals attend the conference. Five of these - Will McKee, Teresa Townsley, Roy Spence, Paddy Johnston and Barry Gibson were from BTI. The remaining three were from two other biotechnology companies, Fusion Antibodies Limited and Genomic Mining Limited. It was agreed that non-BTI attendees should arrange their costs individually.
2. As it transpired, the actual number of attendees linked to BTI was 11. In addition to the eight noted above, there were two representatives from another biotechnology company and a university academic. Grants of £1,145 per person (some 50% of approved expenditure) had been offered by LEDU (for company representatives) and IRTU (for the three academics) against travel and other costs. In the case of LEDU, the grant was for two named individuals in each of four companies, including Fusion and Genomic. We note that both Fusion and Genomic had close ties to BTI – see Figure 1 at Appendix 4, which shows the links between directors and shareholders.
3. Contrary to the arrangements agreed at the February 2001 BTI Board meeting, BTI initially paid for the cost of all eleven attendees. In total, this amounted to £22,529. Given the approach agreed at the February 2001 Board meeting, BTI should only have incurred the expense of its five representatives (£12,682), less the grants available for those five individuals (£5,725), a total of £6,957.

#### **BTI Claims**

4. MTF, which was responsible for maintaining the books and records of BTI, issued six invoices for sums totalling £21,825, aimed at recovering conference costs. It also handled the LEDU grant claims for the four companies attending the conference. However, MTF's handling of this process gives rise to a number of concerns, including:
  - (1) While four of the six BTI invoices were paid, no monies were received from Fusion and Genomic. BTI therefore incurred the full cost relating to the attendance of those four company representatives, even though both companies had received letters of offer from LEDU to fund 50% of the cost. (Surprisingly, one of the Genomic representatives was Teresa Townsley, the Genomic Company Secretary. We would have expected her attendance at the conference to have been on behalf of BTI, especially in view of the discussion at the BTI Board meeting of February 2001 (paragraph 1 above.)

- (2) BTI included Bio 2001 San Diego costs in its claims to both DETI and IFI - £16,619 in a claim to IFI in October 2001 and £16,016 in claims to DETI in May and August 2001. This represented a 'double claim' (see also paragraphs 5.21 to 5.24 of the main report). A declaration was signed by Teresa Townsley in both DETI and IFI claims confirming that all sums had been paid by BTI and that the claim information was complete and accurate. A total of £15,020 was received from IFI and DETI in respect of this expenditure. However, BTI's claims to DETI and IFI included costs of non-BTI persons and also failed to disclose the LEDU and IRTU grant funding made available.
- (3) In total, BTI received £26,970 against costs incurred of only £22,529, in respect of the conference. This comprised the £15,020 from DETI and IFI and a further £11,950 from the four invoices that were paid. Overall, this represented a 'gain' to BTI of £4,441. As we would have expected BTI to have incurred net costs of £6,957 (paragraph 3), the total 'gain' to the company was £11,398.

### Claims for LEDU grant

5. There are also concerns about the handling of claims for LEDU grant, by both Genomic and Fusion.

#### Genomic Mining Limited

6. MTF prepared and submitted a grant claim to LEDU, on behalf of Genomic, on 14 September 2001, for travel costs totalling £4,854 incurred in relation to Bio 2001 San Diego. Two copy unpaid cheques dated 15 August 2001 were included with the claim, as evidence in support of Genomic's payment of £4,854. The first cheque for £4,360 was payable to BTI (in response to its invoice for travel and registration costs); the second, for £494, was payable to MTF for accommodation costs of Teresa Townsley in San Diego. In interview with the Inspectors, Michael Townsley stated that he was involved in the preparation of the grant claim and that MTF was involved in the preparation of the books and records of Genomic. The Inspectors concluded that MTF prepared the two cheques for signature and was responsible for remitting payment.
7. In May 2003, when the accounting records of Genomic were passed from MTF to a firm of accountants, a number of queries arose. The first related to the grant claim to LEDU and, in particular, the two amounts certified as being paid - the books of the company indicated that these two cheques were cancelled and not presented through the bank. Subsequently, in a February 2004 letter to BTI, the accountants stated that Genomic did not actually pay the relevant costs but noted that LEDU had paid grants totalling £2,290 on the basis of the claim made.

## Appendix 6

### (paragraph 5.27)

8. We note that this is similar to other instances involving BTI and MTF, where cheques appear to have been written, but not presented for payment, with the sole intention of supporting claims for grant – see main report paragraphs 3.12 to 3.16 and 5.18 to 5.20.
9. One of the primary safeguards to prevent this happening failed to operate in this case. Under funding rules, a report is required to be signed by an independent auditor stating that tests have been carried out for evidence of payment by the claimant and certifying that, to the best of the auditor's knowledge and belief, each item of expenditure claimed has been paid for. In the case of Genomic's claim, the auditor's report was signed by 'FPM Chartered Accountants' in September 2001. Subsequently, in discussions with the Inspectors, FPM accepted that there was no evidence on its file to support FPM having sought or obtained confirmation and/or representation from MTF that the two cheques had been paid.
10. Another concern relates to a payment of £2,392 by BTI to Genomic, in August 2001. The Inspectors could not trace this to any invoice or other supporting documentation. However, they noted that in the books of MTF, Genomic and BTI, the relevant entries related to conference expenditure. They also noted that the amount paid was equivalent to the Bio 2001 San Diego conference costs of Teresa Townsley that were borne by BTI and re-billed to Genomic. It is not clear, however, why this payment was made by BTI to Genomic, given that payment was expected to be made by Genomic to BTI.
11. Overall, the Inspectors calculated that Genomic made a 'gain' of around £6,000 from the transactions surrounding the Bio 2001 San Diego conference. This arose through a combination of Genomic's non-payment of the BTI invoice, the retention of the LEDU grant (despite Genomic's costs being borne by BTI) and receipt of the unsubstantiated payment from BTI.

#### **Fusion Antibodies Limited**

12. A grant claim was also submitted by MTF Chartered Accountants to LEDU, on behalf of Fusion, for costs associated with Bio 2001 San Diego, even though Fusion did not make any payment to BTI for costs incurred. This claim totalled £4,448. LEDU subsequently authorised payment of £2,061 to Fusion.
13. On 31 August 2001, MTF wrote to FPM Chartered Accountants in relation to the LEDU claim, stating that all costs had been paid and copies of the relevant cheques were enclosed. Included was a copy unpaid cheque for £4,273.32 made payable to BTI dated 29 August 2001. It appears that the cheque was prepared by MTF on behalf of Fusion as evidence of payment to BTI and included with the claim to LEDU. The independent auditor's report was signed by FPM on 6 September 2001 stating that such tests as considered necessary had been carried out for evidence of payment. However, FPM did not match the cheque payment



to either bank statements or a returned paid cheque. It later told the Inspectors that reliance had been placed on the representation made by MTF to FPM in its letter of 31 August 2001 that payment had been made. The result was that a claim was submitted by MTF, on behalf of Fusion, for a cheque payment that was never presented.

14. BTI made a payment to Fusion on 17 August 2001 for £494. As with Genomic, the Inspectors could not trace this to any invoice, but noted that in the books of MTF, Fusion and BTI, the relevant entries related to conference expenditure. It is not clear, however, why this payment was made by BTI to Fusion, given that payment was expected to be made by Fusion to BTI.
15. Overall, the Inspectors calculated that Fusion made a 'gain' of around £4,000 from the transactions surrounding the Bio 2001 San Diego conference. This arose through a combination of Fusion's non-payment of the BTI invoice, the retention of the LEDU grant (despite Fusion's costs being borne by BTI) and receipt of the unsubstantiated payment from BTI.

## Appendix 7 (paragraph 6.18)

### Examples of conflicts of interest that were poorly handled in BTI

#### Case 2

##### Genomic Centre of Excellence (GCE)

BTI's business plan included the creation of profit-making spin-out companies in which BTI would hold an equity stake. Profits attributable to BTI were not to benefit any individual, but instead were to be re-invested in further projects and developments.

One such spin-out company was 'Genomic Centre of Excellence' (GCE). When BTI purchased the £357,000 worth of equipment in 2001 (paragraph 5.17), it appears that this was to meet GCE's needs - the equipment bought by BTI matched that listed in the GCE business plan, prepared by MTF.

In BTI's business plan, ownership of the spin-out company (at that stage not yet created) was to be vested in three entities - BTI, venture capital and a named US-based company. In practice, however, ownership was held by individuals, three of whom were on the BTI Board:

Name	Shareholding (%)	Position
Teresa Townsley	18.5	Director
Paddy Johnston	18.5	Director
Roy Spence	3.7	-

As GCE was set up as a profit-taking company, a conflict of interest was created - but not addressed - for Teresa Townsley, Paddy Johnston and Roy Spence, each of whom stood to benefit from any future profits. 18.5 % shareholdings were also held by Michael Townsley (the company secretary) and Jim Johnston, a director and brother of Paddy Johnston.

We also noted that, in March 2002, GCE received a £1.2 million offer of assistance from IRTU. However, no funds were ever drawn down – we understand that GCE was always a dormant company and never traded. The company was dissolved in March 2005.

#### Case 3

##### Fusion Antibodies Limited\*

Following BTI's purchase of equipment, most items were placed in storage (paragraph 5.17). Two items, however, including a 'DNA sequencer', were delivered to, and set up by, another BTI spin-out company, Fusion Antibodies Limited (Fusion). Fusion was a profit-taking company in which two BTI directors, Paddy Johnston and Roy Spence, held shareholdings of 12.3% and 2.5% respectively. Michael Townsley was also a shareholder (16%), a director and company secretary; Jim Johnston was a shareholder (45.7%), director and Chief Executive. Points to note are:

- We understand that Fusion began to use the DNA sequencer around the end of 2001, but without paying BTI a rental. From early 2002, another BTI spin-out company, 'Genomic Mining Ltd', also made use of the sequencer and paid Fusion for its use. Fusion was therefore generating income from BTI's equipment while itself not paying for the use of it.
- Some 18 months later, following negotiations between Barry Gibson and Fusion, rent was agreed for the sequencer at £625 per month from October 2003, increasing to £825 in April 2004. However, Barry Gibson had advised the Board in September 2003 that his research indicated the machine had a rental value of some £2,250 per month. This is substantially more than BTI actually received. While it appears that BTI rented the sequencer to Fusion at well below market value, Fusion has commented in interview that it was in a good bargaining position on the rental price, as the machinery at that point was two years old and BTI had nowhere to store the machine, had it taken re-possession.
- There are no related party disclosures in the BTI accounts from 2002 to 2004. We would have expected disclosure of the names of the BTI directors who had a material interest in Fusion's use of the DNA sequencer, the nature of the transaction and the value.
- In November 2004, the sequencer was sold to Fusion for a sum of £15,000. There is no evidence that BTI sought an independent valuation prior to sale nor that IFI or IRTU were informed of the sale and the consent of IFI sought, as required under the terms of offer. The sequencer had cost £99,379 in September 2001 and was therefore sold at a loss of £84,379. Against this, it generated rental income of only £10,354. Without a valuation of the sequencer, there is again a concern that a company in which certain BTI directors had an interest, gained financial benefit at the expense of BTI.

## Case 4

### Arcom Limited\*

The marketing contract for BTI was awarded to Arcom Limited, a media production company in which Michael Townsley was a director and shareholder. This award was discussed at a Board meeting in February 2001. There is no evidence of any tendering process in relation to this marketing contract and no record of Teresa Townsley making a declaration of the conflict of interest. Overall, Arcom received some £10,200 from BTI.

## Case 5

### MTF Chartered Accountants and FPM Chartered Accountants

The EU Structural Funds Manual requires an appraisal of any project applying for funding under P&R. In early January 1999, DETI sent Teresa Townsley the DFP guidance on P&R economic appraisal, together with contact details of three leading economic consultancies – 'A', 'B' and 'C'. DETI asked to be informed when a consultant had been selected.

## Appendix 7

### (paragraph 6.18)

On 13 January 1999, a fax from Teresa Townsley to a named Director in FPM Chartered Accountants stated, *"As per our discussion, quote [less than] 3k!"*. FPM faxed its tender letter to Mrs Townsley at 9.18 am on 15 January 1999. The tender, dated 14 January 1999, detailed costs of £2,762.50 (excluding VAT and travelling expenses). A note on the fax cover sheet, signed by the named Director, stated FPM had also requested two other tenders (one from Consultancy 'A' and another from a consultancy which was not on the DETI list) and had asked them to fax these to FPM that morning. On the same day (15 January 1999) at 12.37 pm, FPM received a fax from Consultancy 'A' enclosing its tender with a projected cost of £3,187.50. This was forwarded to Mrs Townsley.

Mrs Townsley subsequently faxed a letter to DETI on 25 January 1999 stating that she had initially contacted a number of people on the DETI approved list. She said that she had been informed through another party that the person with most knowledge of the sector worked for Consultancy 'C', but that this person was not available; however, the named Director of FPM had been recommended. In her letter, Mrs Townsley listed the quotes from Consultancy 'A' and FPM, but indicated that Consultancy 'A' could not start immediately. (In actual fact, the Consultancy 'A' tender indicated that it was in a position to start upon confirmation of appointment.) Mrs Townsley also said that, despite requests to two other approved providers, she still had not had a response. A handwritten note by DETI, dated 25 January 1999, on the fax received from Mrs Townsley indicates the decision to go for FPM.

We have seen no letter of engagement between DETI and FPM or BTI and FPM for the economic appraisal. Following completion of the appraisal, FPM raised an invoice to BTI dated March 1999 for fees *"as agreed in our terms of reference dated 14 January 1999"* (the date of the FPM tender). This invoice was forwarded by MTF to DETI in May 1999 for payment directly by DETI to FPM.

There is a lack of documentation available to fully evidence the handling of the procurement process - for example, there is no evidence of any contact between Mrs Townsley and the three named consultancies ('A', 'B' and 'C') suggested by DETI, or any other consultant on the DETI/IRTU approved list. Based on the available evidence, however, there are a number of concerns about the procurement process and the conflict of interest involving FPM:

- the procurement of FPM was handled by BTI, the project promoter, rather than by DETI as the funding body
- the instruction from Mrs Townsley as to what to quote appears to have been given to only one provider - FPM
- it was improper for FPM to request tenders from other providers and, subsequently, collect and forward the tender from Consultancy 'A' to Teresa Townsley, given that this was a job for which FPM was itself tendering
- The Rules of Professional Conduct of the Institute of Chartered Accountants in Ireland state that members acquiring information in the course of their professional work will neither use, nor appear to use, that information for their personal advantage. Even though the tender from Consultancy 'A' was received by FPM after FPM had submitted its own tender to BTI, it is clear that FPM had not informed Consultancy 'A' about Teresa Townsley's instruction to *"quote [less than] 3k!"*. This gave FPM a clear and improper advantage over Consultancy 'A' in the tender process.

- the statement by Teresa Townsley that Consultancy 'A' "cannot start immediately" was a misrepresentation. The Consultancy 'A' tender letter clearly indicated that it was in a position to start upon confirmation of appointment.

### **Referral to the Chartered Accountants Regulatory Board**

We note that, in May 2010, concerns about the conduct of the named Director and FPM in relation to the above procurement, were referred to the Chartered Accountants Regulatory Board (CARB). In February 2011, CARB responded as follows:

*"The Committee, having considered the complaint, formed the opinion that a prima facie case had not been made out that the member was liable to disciplinary action under the Disciplinary Bye-Laws. In forming that opinion the Complaints Committee had regard to the provisions of Bye-Law 6 [Liability of Members ... to Disciplinary Action] as to the liability of the member to disciplinary action and it considered all the evidence before it. Having done so the Complaints Committee concluded that the evidence was not sufficient to ensure that a complaint brought pursuant to Bye-Law 6 had any real prospect of being established before a Disciplinary Tribunal. The Committee decided that it is appropriate that this matter be closed."*

CARB's decision was appealed in April 2011, when DFP requested that the case be referred to an 'Independent Reviewer of Complaints'. The outcome of the appeal, however, was to uphold the original decision.

Note: \* The Westminster Public Accounts Committee has previously reported on the links between MTF, Fusion and Arcom in their report on the former 'Emerging Business Trust'. The reference is - 'Governance issues in the Department of Enterprise, Trade and Investment's former Local Enterprise Development Unit', Forty-sixth Report of session 2005-06.

## Appendix 8 (paragraph 1.18)

### NIAO Methodology

1. This appendix outlines the methods that we used for our review of the 'BioScience and Technology Institute Limited' (BTI). Our report examines the reasons for the failure of BTI and reviews the project from its initial establishment, through to its ultimate demise.

#### **Methodology**

2. The main elements of our methodology were as follows:
  - review of key DETI, Invest NI and Company Inspection documents
  - review of the records of BTI and the associated records of MTF Chartered Accountants (where available)
  - structured interviews with current and former BTI directors and the former CEO and discussions with certain other third parties
  - consultation with the Company Inspectors, Insolvency Service, Invest NI and relevant Departmental staff
  - financial analysis of the records of BTI
  - formal consultation with each of the third parties specifically referred to in the report.

Our approach was aimed at providing sufficient, accurate and relevant audit evidence for our report.

#### **Review of key DETI, Invest NI and Company Inspection documents**

3. We reviewed a wide range of documents to establish the case history of the funding bodies' involvement with the Institute. These included:
    - funding applications submitted to the various funding bodies
    - the funding bodies' appraisal of BTI's business case
    - letters of offer
    - the funding bodies' monitoring of progress in the project
    - the Company Inspectors' report and supporting documents.
-

### **Review of the records of BTI and the associated records of MTF Chartered Accountants**

4. We undertook a review of the corporate documents held by the Institute, together with the associated documents (where available) of MTF Chartered Accountants, who had provided administrative support to the company. These documents included:
  - business plans
  - minutes of Board meetings
  - internal letters and memoranda
  - correspondence with funders and others.

### **Structured interviews with current and former BTI Directors and the former CEO**

5. We conducted face-to-face interviews with former and current directors and the former CEO of the Institute, to inform our understanding of the running of the company and the key events which impacted on the project. Our enquiries included the following:
  - the establishment of BTI
  - arrangements for securing funding for the project
  - internal processes and financial procedures within BTI
  - corporate governance within BTI.

### **Consultation with the Company Inspectors, Insolvency Service, DETI and Invest NI**

6. We engaged with the Company Inspectors who had an in-depth knowledge of the events surrounding the failure of BTI.
  7. In addition, we liaised with relevant staff from the Department and the other funding bodies to inform our understanding of the project appraisal processes, the purpose and structure of the funding packages and the procedures for claiming grant. We also reviewed the funders' oversight mechanisms and their provision of general support to BTI.
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## Appendix 8 (paragraph 1.18)

### **Financial analysis of the records of BTI**

8. We carried out a review and analysis of the financial records of BTI, including the sources and application of funds and the outstanding debts of the company.

### **Formal consultation with third parties specifically referred to in the report**

9. We provided the third parties specifically referred to in the report with the relevant extracts from our draft, together with the opportunity to submit comments and supporting evidence. All responses were carefully considered and, where the Comptroller and Auditor General considered it appropriate, these have been reflected in the final report.
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# NIAO Reports 2010-2011

Title	Date Published
<b>2010</b>	
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Title	Date Published
<b>2011</b>	
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