Northern Ireland Audit Office

A Review of the Gateway Process

The Management of Personal Injury Claims

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
NIA 175/08-09 8 July 2009

Northern Ireland Audit Office

Report by the Comptroller and Auditor General for Northern Ireland

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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.

J M Dowdall CB
Comptroller and Auditor General

Northern Ireland Audit Office
8 July 2009

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Abbreviations

CPD	Central Procurement Directorate
DFP	Department of Finance and Personnel
DRD	Department of Regional Development
NAO	National Audit Office
NIAO	Northern Ireland Audit Office
NICS	Northern Ireland Civil Service
OGC	Office of Government Commerce
PAC	Public Accounts Committee
PPP	Public Private Partnership

The Office of Government Commerce Gateway process provides for independent review of major procurement projects to improve delivery and value for money

1. Sir Peter Gershon's 1999 report[1] on government procurement highlighted problems of late delivery and budget overruns on government projects. He recommended the creation of a common process for the management of large, complex or novel procurements and in response, the Office of Government Commerce (OGC) developed its Gateway process. Gateway was launched in February 2001 and applies to all central government procurement, IT-enabled and construction projects in England. Scotland and Wales have adapted the process to their own requirements.

2. The Gateway process reviews projects at five key decision points or "gateways" in their lifecycle, three before the commitment to invest and two looking at service implementation and the delivery of benefits. Where several projects are coordinated at a programme level, a Strategic Assessment or "Gateway 0" review may also be carried out at the start of the programme and may be repeated at key decision points (see **Figure 1**). Reviews are carried out by a small team of experienced practitioners who are independent of the project, to provide a challenge to the robustness of plans and processes and to ensure that projects can progress successfully to the next stage.

3. Reviews are completed quickly, within three to four days and the team will normally make recommendations to improve the management of the project. A Red, Amber, Green (RAG) status is given depending on the urgency with which the recommendations should be addressed:

   Red – the project should take remedial action immediately
   Amber – recommendations to be carried out before the next Gateway review
   Green – the project is on target to succeed but may benefit from the uptake of the recommendations.

   Consecutive "Red" reviews are drawn formally to the attention of the Accounting Officer and the Comptroller and Auditor General. This serves to improve accountability and encourages departments to take urgent action where the viability of a project is at risk. The review team reports to the project's Senior Responsible Owner who is responsible for the implementation of the team's recommendations and any disclosure of the report.

4. The achievement of value for money savings has been a major objective of the Gateway process since its launch in February 2001 when the Treasury Minister stated that the taxpayer would benefit from *"a new procurement technique designed to deliver value for money improvements and successful completion of major civil central*

1 *Civil Procurement in Central Government*, HMT, April 1999

Figure 1: The Gateway Process

Scope of Review	Gateway Intervention	Stage in procurement lifecycle
Does the proposed programme meet the business need? Assesses the capability of those responsible for the programme and the support of users and stakeholders.	**Gateway 0** Strategic Assessment	**Develop business case** Options identified and appraised; affordability, achievability and value for money established.
Is the project feasible, affordable and likely to achieve value for money? Are the high level plans for establishing it clear and realistic?	**Gateway 1** Business Justification	**Develop procurement strategy** Develop procurement strategy; specify requirements; update business case.
Does the tendering strategy reflect business requirements, awareness of the market, good practice in procurement and changes to the business need? Is funding available and are adequate financial controls in place?	**Gateway 2** Procurement Strategy	**Competitive procurement** Evaluate bids; select or confirm supplier or partner; update business case.
Has the tendering process met its objectives and followed good practice? Is the contractor likely to deliver on time, within budget and achieved value for money? Is the business ready to implement the contract?	**Gateway 3** Investment decision	**Award and implement contract** Award of contract; asset ready for delivery.
Are project plans up to date and adapted to working successfully with the contractor? Is implementation going to plan with lessons for the future recorded?	**Gateway 4** Readiness for service	**Manage contract** Service delivered, benefits achieved; performance and value for money maintained/improved.
Are expected benefits being delivered and what is being done to pursue continuing improvements? What contingency plans are there for future changes?	**Gateway 5** Benefits evaluation (repeated as required)	**Closure** End of contract, work package etc.

Source: Northern Ireland Audit Office based on Office of Government Commerce material *government projects*". This emphasis on value for money has been maintained since then through:

- successive OGC savings targets, linked in turn to Treasury efficiency targets;
- the development of methodologies, in conjunction with the National Audit Office (NAO), to measure savings (see **Appendix 1**); and
- the joint promotion of Gateway by NAO and OGC, as a major source of improved value for money in procurement[2].

In 2007, Treasury reported[3] that the 700 projects reviewed in Great Britain since 2001 resulted in savings of over £2.5 billion. Similarly, in Northern Ireland, the Public Procurement Policy endorsed by the Assembly Executive in 2002 specifically identified the Gateway process as an important source of value for money savings to be included in future departmental targets. In reporting progress against its £250 million procurement value for money target set, the Department of Finance and Personnel (DFP) included savings of £25 million from Gateway reviews undertaken in Northern Ireland since 2004. DFP calculated these savings based on figures provided by OGC which are equivalent to around two per cent of capital cost.

5. The Department for Regional Development (DRD) and DFP told us that Gateway could influence delivery and potentially enhance value for money. However, they had difficulty with the assertion that value for money is a major objective of the Gateway process.

This study examines the operation of the Gateway process in the Department for Regional Development and its associated bodies

6. The Gateway review process has been mandatory for major central government projects in Northern Ireland since February 2004, including those procured through a Public Private Partnership (PPP) route. Gateway policy in Northern Ireland is the responsibility of DFP's Central Procurement Directorate (CPD) under the direction of the Procurement Board. In 2006, a Centre of Excellence for Programme and Project Management[4] was created within CPD which incorporates the role of Gateway Coordinator and is responsible for the delivery of the review process. Departments are responsible for initiating Gateway reviews on each project.

7. CPD is currently working towards the status of an Authorised Hub which will deliver the Gateway process under licence from OGC. When this is achieved, all Northern Ireland Gateway reviews will gain the OGC Gateway trademark. In the meantime, reviews apply the standardised OGC process and compliance is monitored by OGC. OGC carried out an assessment in November 2008 and made

2 *Getting Value for Money from Procurement*, National Audit Office and Office of Government Commerce, 2001
3 *Transforming Government Procurement*, H M Treasury, January 2007
4 The concept of Centres of Excellence for programme and project management was developed by OGC in response to the report *Improving Programme and Project Delivery – Increasing the Civil Service's Capacity to Deliver*, Office of Public Services Reform, February 2003. Centres of Excellence have been set up in GB departments. Similar arrangements are in place in Wales and Scotland.

9 recommendations. Hub status will be granted subject to the implementation of these recommendations.

8. In June 2007, the Public Accounts Committee produced a report on the upgrade of the Belfast to Bangor railway line[5], a multi-million pound project which was delivered late and considerably over budget. The Committee was critical of the DRD's oversight of Translink, but was told that the Gateway process would prevent such poor performance in future. The Committee was surprised however that despite having a very substantial capital works programme, Translink had carried out no Gateway reviews and recommended that the Comptroller and Auditor General review the operation of the Gateway process in DRD and its associated bodies.

The Department for Regional Development has the largest departmental capital spend in Northern Ireland

9. DRD has responsibility for Northern Ireland's road network, water and sewerage services and public transport. It does this through its associated bodies: Roads Service, an executive agency, Northern Ireland Water (previously Water Service), a government-owned company and the Northern Ireland Transport Holding Company, a public corporation which provides rail and bus services under the brand name of Translink. These are capital intensive activities which make DRD responsible for around one third of Northern Ireland Civil Service capital investment delivered through both conventional procurement and PPP routes. Since the Gateway process was introduced in 2004, DRD has undertaken projects worth some £2 billion and the Investment Strategy for Northern Ireland estimates that projects worth a further £6.3 billion will be carried out over the next ten years (see **Figure 2**).

Figure 2: Capital value of DRD projects

	2004-2008 £million	2008-2018 £million
Roads	735	3,095
Water	873	2,535
Public Transport	422	725
	2,030	6,361

Source: NIAO based on DRD and ISNI figures

Note: During the period 2004-2008, Roads Service has made payments of £518 million in respect of capital projects.

The Department for Regional Development has carried out Gateway reviews on two procurement projects

10. In the four years since the Gateway process was introduced in Northern Ireland, only two DRD procurement projects have been submitted for review, both from Water Service. These were the procurement of a customer billing service and the associated

5 Report on the Upgrade of the Belfast to Bangor Railway Line, - Public Accounts Committee, NI Assembly, 21 June 2007, 01/07R

mobile work management service. DRD also used the Gateway process to review the progress of its water reform programme, transferring Water Service to a government-owned company, although this was not a procurement programme. Neither Roads Service nor Translink have carried out any reviews to date although Translink plans to review a £128 million procurement of new trains.

11. DRD emphasised that it had fully applied DFP's risk-based guidance in identifying projects eligible for Gateway review and considers, under this guidance, that there should be no correlation between the level of spend which it is responsible for and the number of Gateway reviews which it undertakes. It also stated that best practice in project management and governance arrangements includes a range of factors including, but not only, the Gateway process and compliance with all these principles reduces risks. We recognise that these practices and procedures are essential for the effective delivery of procurement projects. However, omitting the Gateway process from this range of factors increases the risk to delivery.

Gateway policy as adapted for use in Northern Ireland is eliminating most projects from the review process

12. OGC Gateway guidance indicates that all projects are eligible for review irrespective of value, although the scale of reviews can be varied according to the level of risk identified and departments may set de minimis limits. A Risk Potential Assessment is carried out as a first step in the process. This provides a standard set of criteria (see **Appendix 2**) to assess the complexity and level of risk associated with the project and is used to determine the relative independence of the review team as follows:

	Risk Potential Assessment Score	Review team
High risk	40+	Team leader and members appointed by OGC and are independent of the department
Medium risk	31-40	Team leader appointed by OGC team members from department but independent of the project
Low risk	Less than 30	Team appointed by department but independent from the project

13. In Northern Ireland, the process applies only to "major" projects which are defined as those scoring 31 or more on the Risk Potential Assessment. Low risk projects are not eligible for Gateway review. However, if a department has no project exceeding 30 it is required to undertake a review of the project with the highest score exceeding 25. Our examination of Risk Potential Assessments undertaken within DRD since the introduction of Gateway in 2004 indicated that six have been scored above 30: Road Service's PPP programme; NI Water's customer billing system, Mobile Work Management system and Alpha drinking water project; Translink's new trains programme; and the Water Reform Programme.

14 Limiting the Gateway process to medium and high risk projects is a significant departure from the OGC approach and it would appear that this adaptation is effectively eliminating most, if not all, DRD projects from the process. As a consequence, the majority of DRD's very considerable capital spend is not being subject to the discipline of the Gateway process and opportunities to achieve improvements in value for money are being lost. While we have limited our review in this case to DRD, we are concerned that this may apply to other Northern Ireland Civil Service departments carrying out large capital procurements, estimated in the Investment Strategy at £13 billion over the next ten years.

Very few projects are being considered for Gateway review

15 DFP guidance indicates that a Risk Potential Assessment should be carried out as a first step in the Gateway process, to determine if a review is appropriate. On this basis we would expect to see a Risk Potential Assessment for all procurement projects. We found however, that very few DRD projects had been assessed. Details of the projects considered for review and the reviews undertaken are at **Figure 3**.

16 Since 2004, NI Water has carried out capital projects worth £873 million, including 20 projects in excess of £5 million, but has undertaken only five risk assessments. NI Water told us that historically it did not carry out risk assessments for conventionally procured projects for Gateway review, because they would never score more than 30 on the Risk Potential Assessment. This decision was based on the assessment of a "sample" of two projects in 2006, the Belfast Sewers Project valued at £136 million and a small IT project worth £500,000, neither of which scored above 25. An internal audit review in 2007 recommended assessing all projects over £5 million. NI Water rejected this recommendation, but is currently reviewing its approach to Gateway (see paragraph 30).

17 Roads Service has carried out capital projects worth £735 million since 2004, including 15 over £5 million. It only carries out Risk Potential Assessments for projects over £10 million, again on the basis that smaller projects will not score

Figure 3: DRD projects considered for Gateway Review

Project / Programme	Capital Value £m	Risk Potential Assessment score	Gateway Review undertaken	Gateway Review planned
Water				
Belfast sewers project	136	25		
Capital works management system	0.5	22		
Customer billing system	n/a	47	✔	
Mobile work management system	n/a	32	✔	
Alpha drinking water PPP	154	61		
Roads				
PPP Packages 1&2	374	35		
A2 Broadbridge dualling	25	23		
A6 Randalstown – Toome dualling	31	22		
A6 Toome – Castledawson dualling	44	23		
A2 widening Greenisland	39	28		
A2 Newtownards Southern Distributor	52	27		
M2 Ballee Road East	13	21		
A55 Knock Road Widening Scheme	12	28		
Cairnshill Park and Ride	10	20		
A32 Cherrymount Link	11	26		
A31 Magherafelt Bypass	33			
Translink				
Ballymena – L'derry track life extension	13	27		
Knockmore – Lurgan track relay	40	26		
Newry railway station	13	25		
New Trains 2 - trains	95	29		
New Trains 2 – Adelaide facility	15	26		
New Trains 2 – Programme[1]	128	35		✔
Records management	2	29		
Corporate asset management	4	22		
DRD Core				
Water Reform Programme	n/a	57	✔	

Source: NIAO based on DRD and DFP data

n/a = these projects do not involve the acquisition of a capital asset

[1] The New Trains Programme includes: two projects for the purchase of trains and the construction of the Adelaide maintenance facility; and miscellaneous infrastructure adjustments required for the operation of the new trains. Gateway reviews are being applied to the programme and project elements simultaneously.

more than 30. To date it has carried out ten Risk Potential Assessments, nine on conventionally procured projects, none of which have scored above 30 and one for its extensive PPP programme, which was assessed as medium risk, but was not Gateway reviewed (see paragraph 25).

18. Translink has spent £422 million since 2004, but did not adopt the Gateway process until late 2007. Translink told us that it only became aware of its requirement to comply with DFP guidance following the Public Accounts Committee report on the Belfast / Bangor project. Since then Translink has carried out eight Risk Potential Assessments, only one of which has been scored above 30, although several have been rated in the high twenties. DFP told us that these scores were determined following an advisory review by CPD.

Where projects have been considered for review, most have been classified as low risk, or otherwise ineligible for Gateway

19. DFP's guidance indicates that the Gateway process should apply to:

- projects scoring 31 or more on the Risk Potential Assessment;
- "mission critical" projects which are essential to the delivery of a Public Service Agreement or a Programme for Government commitment or which would have catastrophic implications for the delivery of a key public service if unsuccessful; and
- projects exceeding a 25 Risk Potential Assessment score if bodies have no projects in the first two categories in any given year.

20. Risk Potential Assessments undertaken by DRD in the last two years, indicate that only one project was appropriate for Gateway review. In effect, this means that DRD has only one major project and has no projects essential to its Public Service Agreement or the Programme for Government. Indeed, few projects score more than 25 (see **Figure 3**). DRD emphasised that Risk Potential Assessments in the department are carried out by professional procurement staff in designated Centres of Procurement Expertise, one of which, Roads Service is rated in the "excellent" category.

21. Given the level of DRD capital spend and the essential nature of the services which it provides we are concerned that risk scores have not been higher. If as DRD states, risk assessment is being carried out correctly, this may indicate that the risk model which has been taken from OGC is not appropriate to the nature and scale of projects in Northern Ireland.

22. For example, NI Water's "Belfast Sewers Project" which is valued at £136 million has been described as one of the biggest civil engineering infrastructure projects in the UK. It is needed to deliver a modern sewerage system to Belfast, replacing a 19th century network which can no longer cope with the city's needs. Yet it is not considered mission critical and is scored at 25, not even enough to warrant inclusion in Gateway, if there were no other eligible projects.

23. DRD told us that this project was assessed in accordance with the methodology appropriate at the time and did not achieve a score sufficient to warrant a Gateway review. It further stated that in addition to having a risk score below 31, the project was not deemed to be mission critical. Because the project was not essential to the delivery of the Public Service Agreement targets, it was not a specifically identified commitment in the Secretary of State's Priorities and Budget 2005-2008 or the Programme for Government 2008-11. Subsequent major capital projects have not been valued at more than 25 per cent of the Sewers project and have not been as complex. It has not been considered necessary therefore to undertake a Risk Potential Assessment, but to rely on NI Water's internal approvals procedure.

24. We noted however, that NI Water reviewed its approach to Gateway following its transfer to a government-owned company (see paragraph 30). This included completing a risk assessment for a sample of five projects in its Business Improvement Programme, three of which were rated medium and one high, making them eligible for review under the current guidance. This is in marked contrast to the low risk scores of projects assessed by Roads Service and Water Service.

24. Roads Service anticipates that a number of future dualling projects may require Gateway review. Review of these projects would mean that around 90 per cent of new dual carriageway and a third of the 2008-2018 roads investment will be covered by Gateway.

25. Roads Service's biggest projects such as the Westlink upgrade and the Ballygawley dualling project are included in two PPP packages, covering eight projects, worth £374 million (see **Figure 4**). A single Risk Potential Assessment was carried out in 2005, which put the programme into the medium risk category and therefore eligible for review. However, we were told that DFP gave approval not to review the component projects on the grounds that the first package was nearing Gateway three and OGC would not review at this stage[6]. No further Risk Potential Assessment was carried out and the DFP approval was deemed to cover all projects. In approving the Full Business case for the first package in January 2006, DFP recorded its agreement to these projects proceeding without Gateway. DFP told us that this approval only applied to the first package and not to the component projects of the second package.

26. NI Water has two major PPP projects worth some £232 million which are running concurrently. The £110 million Alpha drinking water project will upgrade water treatment facilities at five locations responsible for half of Northern Ireland's water production. The £122 million Omega wastewater project involves the upgrade and operation of six existing treatment facilities, representing 20 per cent of the total wastewater treatment capacity. A Risk Potential Assessment was completed for Alpha in February 2004, which scored the project as high risk. However, several postponements of the review process on the advice of CPD, meant that when the initial review was

6 OGC will not accept projects for a first gateway review after Gateway 2. It will however, refer such projects back to the departmental Centre of Excellence or Gateway Coordinator to action a "Healthcheck" review.

Figure 4: Roads Service PPP Projects

	Project	Value £million
PPP1	M2 Crosskennan Slips	2.6
	M1 Westlink upgrade	103.9
	M2 Sandyknowes – Greencastle widening	19.5
	M22 Safety fencing and motorway communications	4.9
	Total	130.9
PPP2	A1 Beech Hill to Cloghogue	109.1
	A4 Dualling Dungannon to Ballygawley	102.0
	A4 Annaghilla / A5 Tullyvar	15.7
	A1 Junctions	16.3
	Total	243.1
Total		374.0

scheduled for August 2005, the project had reached Gateway 3 and was thus no longer appropriate for a first review. An OGC Healthcheck was offered as the normal alternative in cases where Gateway reviews two and three have not been carried out, but NI Water opted for an Internal Audit review which was carried out in 2006. Internal Audit recommended that future projects of this size and complexity should be subject to Gateway review.

Roads Service and NI Water have internal "Gateway-type" processes which are applied to low risk projects

27. DFP told us that it encourages departments to carry out "Gateway-type" reviews for projects scoring less than 31 and DRD stated that internal processes in Roads Service and NI Water provide assurance for these low risk projects. DRD also pointed out that Roads Service had its own Gateway review process in place in 2001, well ahead of the OGC process; that it is designated as a Centre of Procurement Expertise; and that both Roads Service and NI Water are staffed by procurement professionals dealing with project management on a daily basis. DRD further stated that the processes in operation in Roads Service and NI Water were assessed by Internal Audit as satisfactory and had very positive independent assessment from other sources.

28. Procedures are in place in Roads Service, NI Water and Translink, whereby projects cannot proceed without Board-level

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approval at key stages or "gateways". However, these processes differ significantly from the OGC Gateway process. We found that:

- Gateways are not the same as OGC Gateway;
- the coverage of reviews differs from OGC Gateway;
- review teams are not independent of the project;
- No Red / Amber / Green status is given; and
- no recommendations for improving delivery are made and no action plans are prepared.

In our view, these are the normal expenditure approval and project management procedures which we would expect to see in any public sector organisation carrying out major capital works. The Gateway process was designed to complement these processes and most importantly, to provide independence from the project. In our opinion these internal procedures, whilst essential for successful project management, are not a substitute for independent Gateway review.

29. DRD told us that it is satisfied that it has adequately reviewed each of its projects and through its internal gateway process, has scrutinised each project with proportionate effort to ensure that the best delivery path has been adopted. It also stated that should DFP choose to revise its guidance it would update its internal policy to comply with any new requirements.

30. NI Water told us that, since its transfer to a government-owned company in April 2007, it now falls outside the scope of the Gateway process which applies to NICS departments and their Agencies. It is currently piloting a "Tailored Gateway Review Process" for projects in its Business Improvement Programme. It considers this process closer to the OGC rather than the DFP approach and more inclusive than that previously applied by Water Service. All projects will have a Risk Potential Assessment completed and because many projects classified as low risk are likely to contain significant procurements, projects in the range 20 to 30 will be reviewed. A de minimis cut-off will apply to projects with a risk score below 20 and a cost below £100,000. Whilst we have not reviewed the content of the proposed NI Water reviews, we welcome the changes being made to extend the coverage of the review process.

There is a need to review the application of the Gateway process in Northern Ireland

31. Public Accounts Committee was told that all major projects must now go through the Gateway process (see paragraph 8). However, very few projects in DRD have gone through this process and there appears to be little prospect of future review, despite a very large capital spend. Since the Gateway process in Northern Ireland only applies to projects of medium

and high risk and since the Risk Potential Assessment model as it is currently applied by DRD, is defining most projects as low risk, the existence of the Gateway process has little relevance to the bulk of procurement projects. It seems likely that if the current guidance had been applied to the Belfast / Bangor project, it would have been assessed as low risk and not reviewed, yet the risk to public money on projects of this scale has been well evidenced.

32 It is not clear why the Gateway process is not applied to low risk projects in Northern Ireland since under OGC guidance all projects are eligible. We recognise that departments in England may set de minimis levels for low risk reviews, but OGC guidance makes it clear that this must be done on the basis of a full understanding of the implications and departments are accountable for the consequences of their decisions. If the intention in Northern Ireland was to limit the number of reviews carried out, then some adjustment is required to ensure that significant projects and a significant proportion of the total spend is captured.

33 The Northern Ireland Audit Office (NIAO) report *Modernising Construction Procurement in Northern Ireland* in 2005 expressed concern that limiting review to medium and high risk projects would have the effect of removing most projects from the discipline of Gateway and recommended that DFP consider extending eligibility within the low risk category. DFP acknowledged the need for review at that time and when the Policy Framework for Construction Procurement was issued in 2005, departments were required to review at least one construction project each year. Since departments had always been required to review one project scoring more than 25, this change did not extend the scope of Gateway to any meaningful extent. In 2006, the NIAO report *Reinvestment and Reform Improving Northern Ireland's Public Infrastructure* again recommended that DFP amend the Gateway thresholds to reflect the risks and values of projects in the Northern Ireland context. To date there has been no change to Gateway guidance. Full details of NIAO and Public Accounts Committee recommendations on the Gateway review process in Northern Ireland are at **Appendix 3**.

34. In our opinion the delay in addressing this issue has resulted in the loss of value for money savings. The potential for savings from projects not reviewed, is difficult to quantify in retrospect and DFP told us that the same level of savings could not be expected from low risk projects as on those higher risk projects reported to the Procurement Board (see paragraph 4). We note, however, that OGC has developed a separate methodology for the calculation of savings from low risk projects to be applied on a project by project basis by the review team. It is likely, therefore, that if low risk projects had been reviewed, savings would have been achieved. It is also likely that, taken together, savings could have been significant. For example, if the Gateway process had been applied to all DRD projects over £10 million since 2004, this would have covered over £1 billion of

spend for the review of only 34 projects. If these projects had delivered savings even at half the rate applied by DFP to projects which were reviewed, this would have amounted to some £10 million.

35 DRD strongly contests this figure and does not accept that in complying with current DFP guidance, there has been a loss of value for money savings. DRD stated that it has made very significant cost savings through conventional procurement methods amounting to some £34 million in the three years to March 2008. It told us that Roads Service only carries out risk assessments on projects costing more than £10 million because schemes costing less than this are highly unlikely to score more than 30 or be classified as mission critical. To put this into context, DRD explained that the estimated cost of one kilometre of dual carriageway with grade separated junctions is in excess of £10 million.

36 DFP told us that it also had difficulty with the attempt to attribute lost value for money savings to projects not reviewed. It stated that, whilst it had applied the OGC methodology to the calculation of benefits generated by Gateway reviews carried out in Northern Ireland, it had seen no recommendations arising out of Gateway reviews which referred to value for money savings. Its primary focus for procurement value for money has been in the four areas referred to in its value for money guidance: improved deals, aggregation of demand, reduced transaction costs and improved project management[7].

37 We fully recognise that value for money savings have been achieved from a range of other sources and that these are substantial. However, DFP guidance identifies savings from Gateways as separate and additional to these sources. We remain convinced that value for money savings do accrue from Gateway reviews and where reviews are not undertaken, opportunities to maximise value for money savings, particularly through cost avoidance, are lost.

38 It would not be practical or economic to subject all projects to Gateway review irrespective of the level of risk and spend. However, given the planned Investment Strategy spend of £6.3 billion over the next ten years, it is likely that the opportunity to improve project delivery and to make considerable value for money savings will be lost, if the Gateway process is not applied to a greater number of procurement projects. DFP told us that it has plans to revise existing guidance and we recommend that urgent consideration is given to ways in which more projects in Northern Ireland can be brought within the scope of Gateway.

There is a need to improve central oversight and coordination of the Gateway process

39. CPD's Centre of Excellence was set up in 2006 to provide strategic oversight, scrutiny and challenge across Northern Ireland's portfolio of programmes and projects. This includes the role of the Gateway Coordinator and a responsibility

7 *Procurement Value for Money and Efficiency Measurement,* Central Procurement Directorate Procurement Guidance Note 01/05

to ensure that Gateway disciplines are applied. Under the OGC process, the Gateway Coordinator is pivotal to the operation of Gateway and guidance requires that *all* completed Risk Potential Assessments are forwarded to the departmental Gateway Coordinator to be checked for consistency and accuracy. The guidance also indicates that where scores are on the boundary between risk categories, all decisions on which category to apply should be agreed with the Gateway Coordinator.

40. This is a particularly important role in Northern Ireland where projects classified as low risk are not subject to Gateway. To date however, CPD has not exercised this role and no Risk Potential Assessments for low risk Roads or Water projects have been sent to CPD. DFP told us that while a Gateway Coordinator had been appointed within CPD, their remit does not extend to validating Risk Potential Assessment scores, although this will be done where they are sent to CPD. In assessing CPD for Authorised Hub status in November 2008, OGC identified this as a risk area and recommended that CPD provide "Portfolio Leaders" who are sufficiently experienced to challenge Senior Responsible Owners in a number of areas, including the validity of risk assessment scores.

41 The Centre of Excellence and Gateway Coordinator have an important role in providing a challenge function and quality assuring the Gateway process in Northern Ireland. We recommend that the CPD should:

- ensure that Risk Potential Assessments are carried out for all projects and submitted to the Centre of Excellence;
- review Risk Potential Assessments to ensure accuracy and consistency;
- where Risk Potential Assessment scores border the low risk category, reassess the decision and agree the need or otherwise for a review with the department; and
- identify suitable low risk projects for review each year, in departments with no medium or high risk projects.

42 Since the Gateway process was introduced in 2004, Northern Ireland has been heavily reliant on consultant reviewers accessed through an OGC call-off contract. CPD told us that there are 245 trained reviewers in Northern Ireland, but there are often difficulties in getting members of this "pool" to participate in reviews. Around 60 per cent have never taken part in a review. It is likely, therefore, that the availability of qualified reviewers will be a serious limiting factor on the ability of Northern Ireland Civil Service to carry out a full programme of Gateway reviews.

43. We asked DFP what action it was taking to ensure that sufficient reviewers of an appropriate level of expertise are available to carry out Gateway reviews in Northern Ireland. DFP told us that CPD has organised further training targeted at senior officers in NICS and is reviewing its accreditation process to align it with

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the OGC model. An accreditation panel will meet shortly, chaired by OGC, to vet reviewers in Northern Ireland. It is anticipated that when this is complete there will be some 80 reviewers in Northern Ireland fully accredited to OGC standards. DFP further stated the recent appointment of its Permanent Secretary as Programme and Project Management champion, and the Director of CPD as Head of Profession will further raise the profile of programme and project management. CPD together with the Centre for Applied Learning is considering how these skills should be formally recognised.

44. We consider that regular membership of Gateway review teams should be regarded as an essential element in the job description of senior staff in NICS. We recommend that all departments, particularly those with substantial capital works programmes, such as DRD, ensure that senior staff are adequately trained and participate fully as reviewers in the Gateway process.

Appendices

Appendix One:
Calculation of Value for Money Savings (paragraph 4)

Office of Government Commerce Methodology

Value for Money in Gateway

Value for money is defined in Northern Ireland procurement policy as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements". In terms of the Gateway review process, the Office of Government Commerce (OGC) sees value for money in terms of cost avoidance, i.e. the costs which would have been incurred had Gateway review recommendations not been made and implemented.

OGC, in conjunction with the National Audit Office (NAO), developed a methodology to measure these costs avoided. This was primarily to quantify Gateway's contribution to OGC's value for money targets and to HM Treasury's 2007-08 PSA target of £3 billion savings from improvements in delivery of programmes and projects. The methodology covered both high /medium risk projects in which OGC are involved and a simplified approach for low risk projects reviewed by departments.

Sample Selection

A representative sample of reviews is selected for value for money assessment. NAO advised at least a five per cent sample, including all projects with whole life costs over £1 billion, 80 per cent of projects over £500 million and a proportion of projects of lower whole life value. NAO developed a statistical model for calculating sample size which reflects the spread of project value. Samples also take account of the gate number, the RAG status and the level of expertise within the department.

Assessment of Sampled Reviews

The value for money provided by sampled reviews is assessed using a model which builds on existing OGC guidance on Value for Money Measurement (mirrored closely by Northern Ireland guidance) but has been amended to reflect the time and functionality impacts of Gateway recommendations.

The model expects a business case to contain base project data on the programme and budget broken down into the forecast of expenditure on:

- investment costs;
- costs of delivery; and
- costs of operation.

Calculation of value for money savings is based on an analysis of the likely time and cost impacts of recommendations on these three key components.

Assessment involves five steps as follows:

1. The whole life cost of the project is established in terms of investment, process and operational costs. The profile of these three cost centres is recorded in a bespoke Excel workbook and whole life costs expressed as a net present value using a 3.5 per cent discount rate.

2. The top two or three recommendations are considered. Each is assessed separately with the Project Manager to identify a best case, worst case and most likely estimate of additional time and cost impacts if these recommendations had not been implemented. Savings are only calculated where a business case exists to inform the Project Manager's assessment and where recommendations apply to issues falling within the business case.

3. These estimates are entered into an industry standard risk assessment software package to determine the single most probable value for the total cost avoided and a standard value for money assessment report is produced.

4. The modelled value for money assessment is discussed with the Project Manager to confirm that this is a realistic interpretation and refined through further iterations as necessary.

5. At the next review, the team will confirm that the recommendations are implemented and the value for money benefits can be recorded as achieved.

Extrapolation of results

At the end of each financial year a percentage is calculated based on the total value for money savings assessed from the sample projects and the total value of the projects sampled. This percentage is then applied to the total value of projects subject to Gateway in that year to give an overall figure. NICS projects were included in the UK Gateway portfolio during the period when the Assembly was suspended. OGC's Internal Audit quality assures this process, examining a sample of individual assessments, validating the percentage and the overall value for money figure.

Percentages reported by OGC have been in the region of 2.5 per cent of project value. OGC has pointed out that it was not possible during the last Spending Review period to assess all projects over £1 billion and where an assessment had not taken place, this had been recorded as a nil percentage. It is likely therefore that the last percentages produced, were conservatively stated.

Based on its value for money estimates, OGC provided adjusted percentages to CPD to reflect the smaller scale of projects in Northern Ireland as follows:

2004-05 1.96%
2005-06 1.89%
2006-07 1.89%

CPD applied these to the value of projects Gateway reviewed in Northern Ireland to give a total value for money figure of £25 million which was recorded against its £250 million value for money target and reported to the Procurement Board in 2008.

Assessment of Low Risk Projects

OGC developed a simplified approach to calculating value for money on low risk projects. The key principles are the same as for high / medium risk projects, but it takes the form of an Excel Workbook which is designed to be completed by the departmental review team as part of each review, with no need for input from OGC or other departmental resources. Departments are expected to forward annual returns to OGC stating the total value of projects reviewed and the value for money benefits arising from them.

Appendix Two:
Risk Potential Assessment (paragraph 12)

When completed please forward to your Departmental Gateway Coordinator

click here for guidance on completing this assessment

Programme/Project Details	
Programme/project name or title	
Programme/project description	
Programme/project type	
For programmes only, list name of supporting projects Click here to enter details	Click here to enter details
If a project, provide, where applicable, the name of the overarching programme	
Department, Agency or NDPB name Name of parent department	
Total (whole life) costs of the programme/project to be OGC Gateway Reviewed	
Proposed contract/service length (yrs)	
Proposed procurement arrangements (e.g. conventional/PFI/PPP/design & build/PRIME)	
Expected next OGC Gateway review	
OGC Gateway review requested for week commencing dd/mm/yyyy (8 weeks after the assessment meeting)	
Date of first issue of RPA dd/mm/yyyy	
Date of current update/version number	

Senior Responsible Owner	
Name	
Address	
Town	
Postcode	
Telephone no.	
Mobile no.	
E-mail address	

Programme/Project Manager	
Name	
Address	
Town	
Postcode	
Telephone no.	
Mobile no.	
E-mail address	

If not the SRO or PM, please provide details of official who completed the return	
Name	
Postal address	
Telephone no.	
Mobile no.	
E-mail address	

In addition, for all Mission Critical and/or high risk programmes/projects, the following details are required:
Further information is available from your departmental Centre of Excellence (COE), or Gateway Co-ordinator or at:

Centres of Excellence Information Pack

The RPA is to be completed for all Mission Critical and/or high risk programmes/projects to help understand the nature of the programme/project and its associated complexity. Programmes/projects without the entries below completed are not ready for review.

Programme/Project Approach	
Please enter the name of the responsible Minister	
Confirm that the track record of the SRO has been verified	
Confirm that the track record of the PM has been verified	
• Confirm that, for projects at Gate 2 or beyond, the Accounting Officer has assured him/herself that the project does not suffer from any of the NAO/OGC common causes of failure	
• For IT enabled projects, is the project development or implementation approach Big Bang?	
"• If yes, please confirm that any 'Big Bang' approach has Central Scrutiny Group approval	

(Note: Mission Critical and/or high risk programmes/projects without the above entries completed are not ready for review)

STRATEGIC CONTEXT AT REQUESTED OGC GATEWAY™ REVIEW

		Comments:
Programme/Project Status For Departments, Agencies and NDPBs, what is the present programme/project categorisation agreed with your Centre of Excellence?	○ Mission Critical ○ Highly Desirable ◉ Desirable	
Legislative Requirement To what extent is the programme/project a prerequisite for the successful delivery of a major legislative requirement?	○ Essential ○ Important ◉ Not linked	
PSA Target To what extent is the programme/project directly linked to a PSA (Public Service Agreement) target?	○ Essential ○ Important ◉ Not linked	
Relationship to Major Policy Initiative announced or owned at Cabinet level To what extent is the programme/project a prerequisite for the successful delivery of a major policy?	○ Essential ○ Important ◉ Not linked	
Dependency Level Is the delivery of a key public service, national security or key internal operation dependent on this programme/project?	○ Yes ◉ No	
Stakeholder Buy-In Have the key stakeholders been identified and engaged with the programme/project?	◉ Key stakeholder buy-in secured ○ Stakeholder analysis undertaken ○ Key stakeholders not identified	
Potential impact on the public and other businesses/organisations on implementation Please tick all those sectors who will be directly affected by the outcome of this programme/project	○ Internal ○ Other departments/organisations ○ Private sector organisations ○ Members of the public	

BUSINESS ISSUES AT REQUESTED OGC GATEWAY™ REVIEW

Potential Benefits Total value of the business benefits (advice is available from HM Treasury Green Book)	(●) Less than £10M ( ) £10M - £100M ( ) More than £100M	
Costs Total whole life costs including all bought in and in house costs (advice is available from HM Treasury Green Book)	(●) Less than £10M ( ) £10M - £100M ( ) More than £100M	
Staff Affected Number of people affected within organisation	(●) Fewer than 1,000 ( ) 1,000 to 10,000 ( ) More than 10,000	
Business Process Change Impact that the programme/project will have on the organisation both during development and after implementation	( ) Not significant ( ) New business processes ( ) Significant re-training ( ) Significant organisational ( ) Significant logistical staff & equipment move ( ) Transfer of staff/outsourcing	
Programme/Project Impact on Organisation Which business areas/units will be directly affected by this programme/project?	(●) Single business stream with org. ( ) Multiple business streams with org. ( ) Multiple organisations	
Complexity of Contractual Arrangements Complexity of the supply side arrangements	(●) Single supplier ( ) Multiple with prime contractor ( ) Multiple without prime contractor	

DELIVERY CAPABILITY AT REQUESTED OGC GATEWAY™ REVIEW

Delivery Skills/Team Capability What is the allocated team's experience of successful delivery of this type of programme/project?	(●) Successful track record ( ) Mixed track record ( ) No track record	

Supplier Side Capability

How mature is the prospective market in delivering or meeting the needs of this programme/project?

- ◉ Not Applicable
- ○ Successful track record
- ○ Mixed track record
- ○ No track record

Organisation Resource

Is the allocated team resourced according to the programme/project requirements?

- ◉ Fully resourced
- ○ Most key posts filled
- ○ Posts to be allocated

Supplier Resource

Has the supplier allocated the agreed resources to this programme/project?

- ◉ Not applicable
- ○ Fully resourced
- ○ Most key posts filled
- ○ Posts to be allocated

TECHNICAL ISSUES AT REQUESTED OGC GATEWAY™ REVIEW

Innovative Approach

The extent to which the programme/project depends upon an innovative solution to the business requirement

- ◉ Stable, proven technology
- ○ Stable technology, new application
- ○ New technology, stable application
- ○ Unproven approach

IT-Enabled Related Criteria

Scope of IT Services and Supply

The range of activity that will be undertaken by the IT supplier

- ○ Not applicable
- ○ Deliver infrastructure
- ○ Packaged software
- ○ Bespoke application
- ○ Packaged software plus some bespoke work

IT Integration Issues

Highlight the level to which the project will need to develop interfaces to existing systems and processes

- ◉ Not applicable
- ○ Stand alone – no integration
- ○ Data migration
- ○ Some links to legacy systems
- ○ Extensive links to legacy systems

Property & Construction Enabled Related Criteria

Scope of programme/project What does this programme/ project involve?	◉ Not applicable ○ Acquiring/disposing of assets including lease nenewal ○ Acquisition of services including managed workspace ○ Acquiring assets involving construction, e.g. PDS or PRIME ○ Construction Procurement e.g. Design & Build	
Nature of Programme/Project What is the nature of the programme/ project?	◉ Not applicable ○ New construction ○ Refurbishment ○ Extension	
Site Occupation What will the status of the occupation of the site be during the project?	◉ Not applicable ○ Unoccupied Site ○ Occupied site but segregated ○ Involves phased decants ○ Occupied and remaining in use ○ Occupied, in use and open to the public	
Type of Facility What are the features of the facility that impacts on its complexity?	◉ Not applicable ○ New or existing facility standard construction ○ New or existing facility non-standard construction ○ Facilities with planning or heritage sensitivities	
Site Constraints Are there any constraints that will affect the site development?	◉ Not applicable ○ Launch of site knowledge ○ Sie access ○ Environmental issues ○ Location	
	TOTAL SCORE:	

Note Score:
30 or less: Low risk
31-40: Medium risk
41 or more: High risk

Appendix Three:
Northern Ireland Audit Office and Public Accounts Committee recommendations on the Gateway process (paragraph 33)

Modernising Construction Procurement in Northern Ireland

Northern Ireland Audit Office, 3 March 2005, NIA 161/03

1.37 We are also concerned that reviews will not be carried out on the vast majority of projects classified as low risk. This is a significant departure from the OGC approach which applies the review process to all projects, whilst recognising that individual departments may wish to set de minimis limits for which they will be accountable. OGC has recognised that the Risk Potential Assessment may classify projects as low risk, which are significant in terms of value and it has been suggested that given the smaller scale of projects in Northern Ireland, use of the Risk Potential Assessment could result in a high proportion of projects being classified as low risk. There is a possibility therefore that a significant proportion of the total capital spend in Northern Ireland would not be subject to the discipline of the Gateway process and that opportunities to improve value for money could be lost.

1.38 We recommend that departments should participate fully in the Gateway process, both in terms of carrying out reviews and providing staff for review teams. We also recommend that DFP takes a proactive role in encouraging full participation and that following the initial implementation, it should review the effect of excluding low risk projects in terms of the proportion of capital spend and the number of projects covered. We further recommend that DFP consider extending the coverage within the low risk category to optimise the potential for improvements in value for money.

1.39 DFP acknowledge that there is a need to reassess the way in which low risk projects are covered by the Gateway process and told us that further guidance will be issued in the form of a Dear Accounting Officer letter in due course.

PFI: Electronic Libraries for Northern Ireland (ELFNI)

Northern Ireland Audit Office, 10 November 2005, HC 523

2.12 In November 2001, the project board introduced Gateway Review to the procurement process (at Gate 3 Investment Decision) in order to ensure compliance with best practice. This process is now mandatory for all capital investment projects from February 2004, but was optional at the time of adoption by the ELFNI project board. In this initial review, 16 recommendations were made by the review team each of which were dealt with by the project team in its formal response….

2.16 The Department believes that availing of OGC's services and advice in this process albeit only from stage three of the five stage process, contributed to the ELFNI team's accomplishment of the overall satisfactory outcome of the project. The Committee of Public Accounts Report, *"The Impact of the Office of Government Commerce's initiative in the delivery of major IT-enabled projects"* (HC555, Session 2004-05) has also highlighted the potential benefits of adopting the Gateway process.

Reinvestment and Reform Improving Northern Ireland's Public Infrastructure

Northern Ireland Audit Office, 7 December 2006, HC 79

2.17 We consider it important that Investment Plans for each sector should be produced to complement the Investment Strategy. These should show, as part of the justification for an investment, a clear link between a programme or project and its anticipated contribution to the delivery of priority outputs and outcomes in Public Service Agreements and other strategic documents. In our opinion applying the Gateway process particularly Gate 0, Strategic Assessment and Gate 1, Business Justification, will contribute to this. There is some evidence that Gateway is not yet applied as extensively as it might have been. There is, we believe, a case for considering the GB guidance and amending the thresholds to reflect the relative risks and values of projects in the Northern Ireland context. We also recommend that Investment Plans should contain an assurance from the relevant Accounting Officer, that Gateway will continue to be applied to those projects for which funding is being sought.

The Upgrade of the Belfast to Bangor Railway Line

Public Accounts Committee, 21 June 2007, 1/07R

11. The Treasury Officer of Accounts highlighted that, subsequent to this project, DFP had introduced the Gateway Review process, which all major projects must now go through, and that, had this been applied at the time, the outcome for this project would have been completely different. The Committee welcomes this development.

12. However, the Committee is concerned to note in the Accounting Officer's letter of 15 June 2007 that Translink has not identified any projects as falling into the Gateway category since its introduction in October 2004. The schedule of projects over £1 million details that there are several in excess of £10 million and one planned in excess of £40 million. Whilst Translink is applying its own review process to all projects, this is no substitute for an independent Gateway Review.

13. The Committee recommends that the C&AG review the implementation of the Gateway Review process in DRD and its sponsored bodies and report back to the Committee.

Shared Service for Efficiency – A Progress Report

Northern Ireland Audit Office, 24 July 2008, NIA 206/07-08

4.7 Six of the projects have been subject to elements of the Gateway process. CAL [Centre for Applied Learning] did not conduct a Gateway Review or a formal written risk assessment. Reasons cited by CAL for this decision are that the nature, duration, scale and cost of the project (circa £0.1 million) meant that CAL was not "major project" within the context of the OGC's guidance and therefore a formal Gateway process was neither appropriate nor required

Public Accounts Committee, 11 December 2008, 21/08/09R

11. By definition, all of these reform projects are central to the future organisation and delivery of public services. The Committee recommends that all such projects, including Centre for Applied Learning, undertake Gateway reviews at the prescribed stages in their procurement, implementation and service operation. This includes Gate 5 reviews (Benefits Realisation) for each project when it reaches that particular stage (see paragraph 43).

Statement of Rate Levy and Collection 2006-07

Public Accounts Committee, 16 October 2008, 13/08/09R

19. This IT project has had four Gateway reviews, three of which were assessed as having red status and one amber. DFP informed the Committee that, for each review, it addressed the concerns that had been identified and that it believed that sufficient remedial action had been taken to allow the implementation of the project.

20. The Committee is surprised by this response given the significant pressures faced by almost every part of the business, at that time, and the resultant chaos that ensued. Many of the problems arose due to the rush to meet a deadline that is set in stone. Shortcuts were taken with the system's implementation and resources re-allocated from the Agency's day to day business to meet the deadline. The Committee is not convinced that all the Gateway recommendations were implemented as effectively and as quickly as was necessary, particularly the concerns raised by the Gateway team about time pressures and the adequacy of resources. The Committee can only conclude that the Department is mistaken in its positive assessment of the actions it took and/or the speed with which it took them.

21. The Committee recommends that DFP examines, in consultation with the Office of Government Commerce, why the Gateway process did not lead to a better outcome in this case. There are obviously lessons

to be learnt. The Committee wishes to be informed of the results of this review.

DFP Memorandum of Reply, 20 January 2009, NIA 74/08-09

DFP accepts this recommendation. DFP's Central Procurement Directorate (CPD) has responsibility for the delivery of the Gateway process in the Northern Ireland public sector and follows closely the OGC procedures. CPD will review the use of the Gateway process in relation to this project to assess what lessons might be learnt and will report the outcome to the DFP audit and risk committee and board.

Delivering Pathology Services: The PFI Laboratory and Pharmacy Centre at Altnagelvin

Public Accounts Committee, 6 November 2008, 16/08/09R

11. The Committee acknowledges that this was the first time that the Department had been involved in this type of PFI negotiation and the process had proved more complex than had first been anticipated. However, it is clear that the delivery of the Centre took longer than was hoped for and that there is clearly room for improving such an outcome. The Committee notes that HM Treasury has found that similar, lower value PFI capital projects have also faced difficulties, including disproportionately large procurement times. The Committee considers that this was evident in this project.

12. While there was no requirement to carry out a full Gateway Review as the project was well advanced when this became compulsory, the Trust arranged for an independent "health check". The Committee commends the Trust for taking this action and on the positive outcome of that review. However, the Committee wishes to stress the need to ensure that the Gateway review process is fully applied at the appropriate stages throughout the ongoing redevelopment of the Altnagelvin complex.

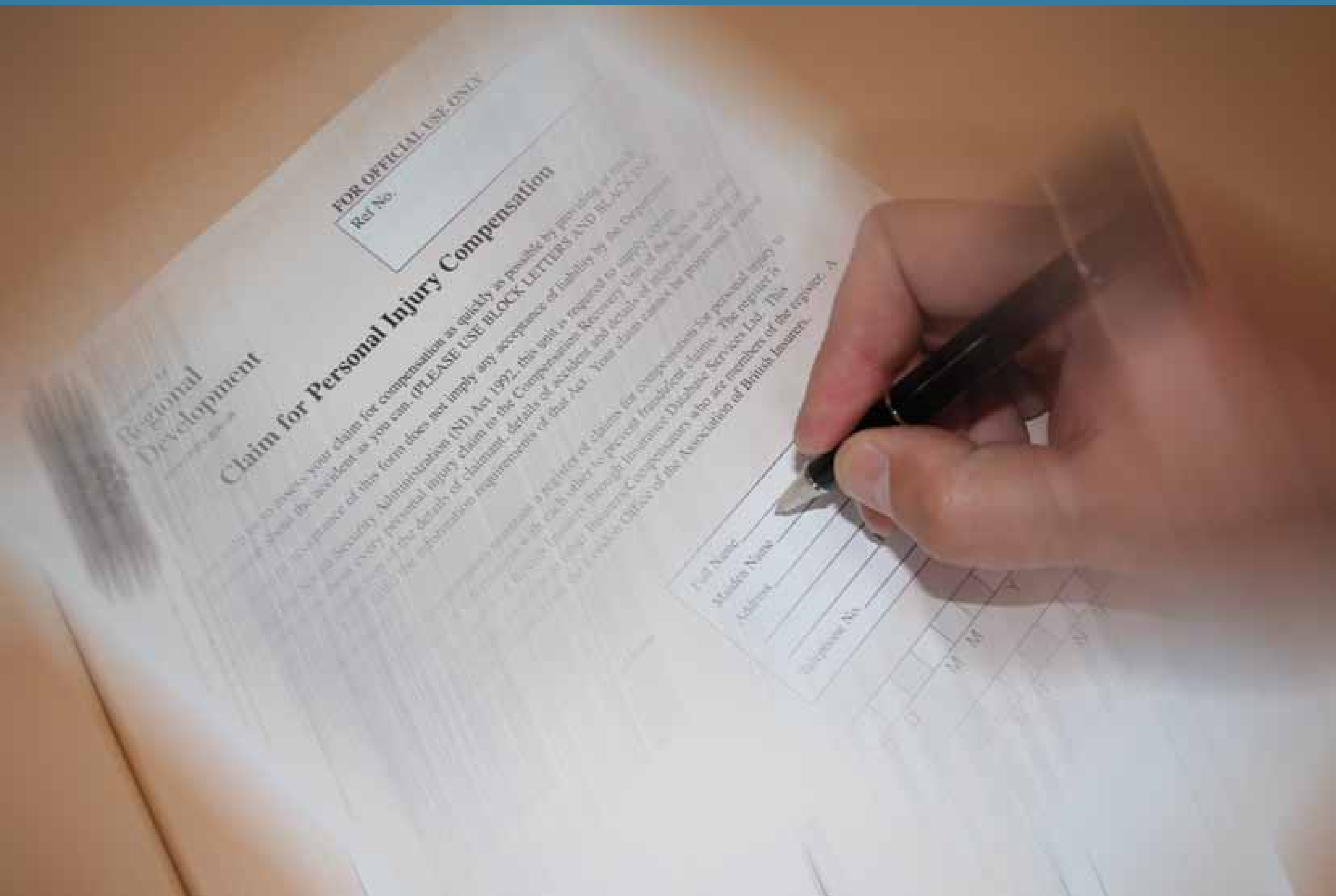
13. The Committee recommends that the Department should apply the Gateway review process fully to the remaining programme of redevelopment at the Altnagelvin complex. All departments and public bodies must ensure that the Gateway process is used at the appropriate stages on all major capital programmes and projects.

DFP Memorandum of Reply, 20 January 2009, NIA 74/08-09

The Department of Health, Social Services and Public Safety accepts the need to apply a comprehensive review process incorporating Gateway requirements to the remainder of the Altnagelvin Redevelopment as it will to all major capital redevelopments within the Department's Capital Development Programme.

DFP is very supportive of the Gateway process and agrees on the need to use it at the appropriate stages in the lifecycle of major capital projects which fall into the scope of Gateway reviews.

The Management of Personal Injury Claims



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.

J M Dowdall CB
Comptroller and Auditor General

Northern Ireland Audit Office
8 July 2009

The Comptroller and Auditor General is the head of the Northern Ireland Audit Office employing some 145 staff. He, and the Northern Ireland Audit Office are totally independent of Government. He certifies the accounts of all Government Departments and a wide range of other public sector bodies; and he has statutory authority to report to the Assembly on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

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Contents

Abbreviations

CCU	Central Claims Unit
DFP	Department of Finance and Personnel
DSO	Departmental Solicitor's Office
NIAO	Northern Ireland Audit Office
NICS	Northern Ireland Civil Service

Part One:
Managing Personal Injury Claims

The Central Claims Unit handles public liability claims made against Roads Service

1.1 The Department for Regional Development's Central Claims Unit (CCU) was set up in 1989, to improve the processing of public liability claims made against the department[1]. CCU currently processes all public liability and employer's liability claims against the Roads Service and several other public sector agencies. Until April 2007 CCU also dealt with Water Service claims however, since water and sewerage functions were transferred to a government-owned company, the newly-formed NI Water no longer uses CCU. Consequently the vast majority of claims processed by CCU now come from Roads Service for both, damage to vehicles and injuries on public roads or footpaths. "Tripping" injuries on roads and footpaths account for over 80 per cent of the cost of claims and over the past ten years have cost some £33 million including £15 million in compensation and £17 million in legal costs paid to both claimants' solicitors and in-house government advisors (see **Appendix 1**). Annual costs of personal injury claims are currently running at around £4 million (see **Figure 1**). Administrative costs for CCU are around £1 million a year.

Figure 1: Claims handled by Central Claims Unit 2007-08

Type of claim		Cost of claims concluded £'000
Roads Service		
Public Liability:	Vehicles	162
	Property	55
	Personal Injury	3,985
Employers liability		248
Other Agencies		424
Total		4,874

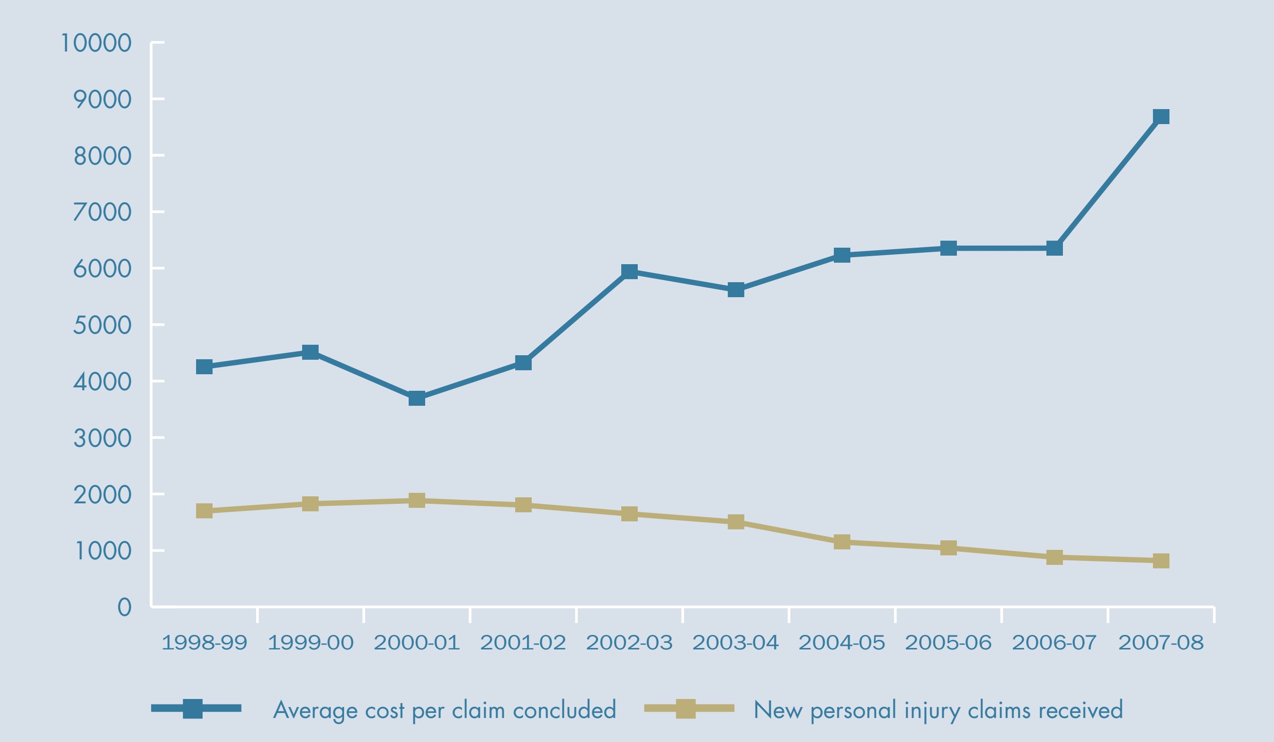
Source: NIAO based on data provided by Central Claims Unit

The number of personal injury claims made against the Roads Service has reduced, but the average cost of claims has increased

1.2 The number of new personal injury claims made against Roads Service has decreased by over 50 per cent from 1,698 in 1998-99 to 820 in 2007-08. However, the total cost of personal injury claims has reduced by only 18 per cent in the same period and the average cost of a successful claim has risen from £4,250 to £8,683 (see **Figure 2**). This is almost four times the rate of inflation. The Department told us that most of this increase is outside its control, for example claimant's legal costs have risen by more than four times the rate of inflation but CCU seeks to minimise this increase (see paragraph 3.7).

1 This was in response to criticisms from the Westminster Public Accounts Committee. See Committee of Public Accounts, 17th Report DOE: Road Accident Compensation HC198 – House of Commons, Session 1987-88

Figure 2: Roads Service personal injury claims



Source: NIAO based on data provided by Central Claims Unit

Note: detailed analysis of average costs per claim is at Appendix 1

We examined the action being taken to minimise the cost of claims

1.3 Expenditure on personal injury claims is determined both by the number of successful claims made and the component costs of the process. To determine the reasons why the cost of Roads Service public liability claims had not reduced further therefore, we examined:

- the effectiveness of the Roads Service inspection and repair regime in limiting the potential for claims; and
- the factors which influence the major elements of the cost of claims, namely - the level of compensation paid to claimants, the legal fees paid to claimants' solicitors, and CCU's own legal costs.

Part Two:
Reducing the number of successful personal injury claims

Legislation provides Roads Service with a "statutory defence" against claims if roads and footpaths are adequately maintained

2.1 Roads Service has a statutory duty to maintain all public roads and footpaths in a reasonable condition and legislation[2] provides a defence against a claim for injury or damage, if it can be shown that reasonable care had been taken to ensure that the road in question was not dangerous to traffic. The legislation specifically states that courts should take into account the standard of maintenance appropriate for the road and the state of repair which a reasonable person would expect. Roads Service has established procedures for inspection and repair to meet these criteria and experience has shown that where these are adhered to, the courts will generally accept this as a "statutory defence" against public liability claims.

Some successful claims are due to shortcomings in Roads Service's inspection and repair regime

2.2 The number of personal injury claims has declined consistently over the last ten years and CCU currently rejects around 70 per cent of new claims received because there is no evidence of negligence by Roads Service in carrying out its statutory duty. The reducing number of claims and the high rate of rejection by CCU would suggest that Roads Service's inspection and repair regime is working effectively most of the time. However, we noted that

Case Examples

Repair not completed in time
A 13 year old boy tripped on a raised flag, damaging a tooth which required root treatment. Although the defect had been identified during routine inspection, the repair was not made until three months after the target date specified in the inspection and repair standards. The accident happened between detection and repair of the defect therefore no statutory defence was available. CCU negotiated a settlement of £3,000.

Defect missed in routine inspection
A 69 year old woman tripped on a gap in the kerbline, sustaining soft tissue injuries to her arm, neck, elbow and knees. Routine inspections had been carried out in accordance with inspection and repair standards but had missed the defect which had clearly been actionable for some time. CCU negotiated a settlement of £3,000.

Area not included in inspection cycle
A claimant tripped on a rough ground car park sustaining a fractured foot. The car park was leased to the local council, but Roads Service was responsible for maintenance. However, the Section Office had not included the area in the inspection cycle and no statutory defence was available. CCU negotiated a settlement of £4,500.

Inspection cancelled
A claimant tripped because of a missing "toby lid", sustaining a sprained ankle. No defence could be offered, because all inspections had been cancelled in the area of the alleged incident because of staff absences. CCU negotiated a settlement of £2,000.

2 Article 8, Roads (Northern Ireland) Order 1993 SSI 1193/3160 (NI 15)

a significant proportion (36 per cent) of successful claims was settled without any legal defence being offered. We examined a sample of these in-house settlements and found that in 70 per cent of cases, no defence could be offered due to problems with the quality of inspection and repair, including: inspections not carried out; defects missed; and repairs not carried out properly.

2.3 We recognise the reduction in the number of successful claims, however, given the increasing costs of personal injury claims, it is important that Roads Service minimises the potential for successful claims by ensuring that inspection and repair procedures are applied consistently and at an optimum level. We recommend that Roads Service reviews the operation of its inspection and repair process in those section offices with a high incidence of claims where no statutory defence is available.

Central Claims Unit provides management information to Roads Service but there is scope for improvement in its quality and completeness

2.4 In response to an Internal Audit review in 2004, CCU agreed to provide Roads Service with trend information on claims. CCU currently issues monthly reports to each of the 24 section offices and to Divisional Roads Managers. These reports list details on the number of new claims received and claims concluded. We reviewed the information provided and found that the data recorded for each case was often incomplete.

2.5 DRD told us that an IT solution has been introduced to minimise human error but prior to the introduction of a Pre-action Protocol on 1 April 2008, the information provided by claimants tended to be minimal. However, the Protocol was suspended on 19 December 2008. It is currently the subject of consultation and may be reintroduced in the same or revised form. Until then the former practice of claimants providing minimal information has been resumed.

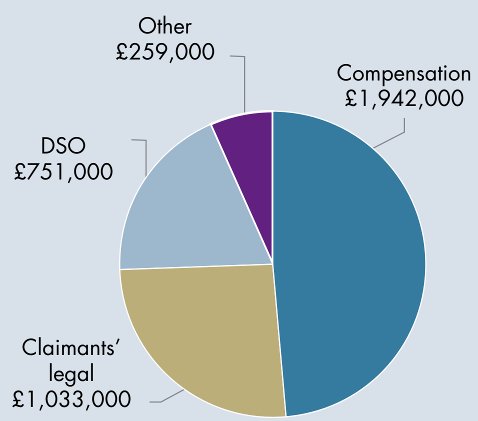
2.6 It is important that Roads Service gets accurate and complete information on claims to enable it to monitor the inspection and repair performance of Section Offices and to take remedial action where required to minimise the number of successful claims. We recommend that CCU consults with Roads Service to ensure the monitoring information provided is still appropriate and that it reviews the operation of its management information systems to ensure that this information can be provided accurately, consistently and on a timely basis.

Part Three:
Managing the cost of personal injury claims

The cost of personal injury claims is determined by factors largely outside the control of Central Claims Unit

3.1 The total cost of personal injury claims in 2007-08 was £4 million. This is made up of three main cost elements: compensation paid to successful claimants, the legal costs of successful claimants, which the department is also liable for; and payments to the Department of Finance and Personnel's Departmental Solicitors Office (DSO) for costs incurred defending claims (see **Figure 3**). While CCU can seek to minimise these costs, rates of payment are largely determined by factors outside its control.

Figure 3: Personal Injury costs 2007-08[3]



Source: NIAO based on data supplied by CCU

The levels of compensation paid in Northern Ireland are higher than other parts of the UK

3.2 Compensation paid to claimants is the main element of the cost of personal injury claims, accounting for £1.9 million, or 48 per cent of the total in 2007-08. Levels of compensation in Northern Ireland are higher than in England and Wales and this has been attributed to the fact that historically, the assessment in Northern Ireland was carried out by juries[4].

3.3 It has been the practice in England and Wales, to produce guidance setting ranges of compensation for different types of injuries and in 1997, the Judicial Studies Board[5] introduced similar guidelines for Northern Ireland. However, rather than applying the values set down in the England and Wales guidelines, the Committee took into account the 1987 levels of compensation in Northern Ireland and adjusted these to reflect inflation. A new edition of the guidelines in 2002 saw compensation ranges generally increased by 30 per cent and ranges were increased again in 2008. For illustrative purposes, **Figure 4** compares the current ranges of compensation for an ankle injury in the two jurisdictions and demonstrates that the recommended levels of compensation in Northern Ireland are roughly twice the level of those in England and Wales.

3 "Other Costs" are an unusually large proportion of the total cost in 2007-08. In previous years these costs have accounted for only two to three per cent of the total. Five claims concluded in 2007-08 accounted for £165,000 of Other Costs. This money was paid to the Department of Social Development to meet the cost of social security benefit paid to claimants as a result of their accident.

4 Simpson v Harland and Wolff [1988] NI 432

5 The Committee of Judicial Studies Board for Northern Ireland monitors the level of compensation awards and keeps judges up-to-date on legal developments. Membership of the Committee is drawn from the Northern Ireland Judiciary and appointments are made by the Lord Chief Justice. There is a comparable Board for England and Wales.

Figure 4: Recommended compensation levels are higher in Northern Ireland

Severity of injury	Northern Ireland	England and Wales
Very Severe	£42,000 - £85,000	£29,000 - £40,750
Severe	£36,000 - £70,000	£18,325 - £29,000
Moderate	£18,000 - £42,000	£7,625 - £15,500
Modest injuries	Up to £18,000	Up to £8,150

Source: NIAO

3.4 Although these are guidelines and are not supported by the authority of judicial decision, they clearly have a significant impact in terms of the settlement of personal injury awards. The guidelines are circulated to judges involved in personal injury cases, as well as the legal profession in general. When the CCU negotiates an out-of-court settlement, the claimant's solicitor will often refer to the guidelines as a basis for those negotiations.

Payments for claimants' legal costs have increased above the rate of inflation

3.5 When compensation is awarded for personal injury, the department also becomes liable for the claimants' legal costs. A total of £1,033,398 was paid to claimants' legal advisors in 2007-08, representing 26 per cent of the total cost of claims. The average cost of fees has increased by more than 50 per cent in the last ten years. This is more than four times the rate of inflation, (see **Figure 5**).

3.6 Fees payable to solicitors are based on the County Court Fees scale[6]. Fees are set out in increasing bands, related to the level of compensation paid. In March 2003, a new scale was introduced which reduced the number of bands from 13 to 7. The legislation which brought the new scale into force stated that this represented an increase of 4.3 per cent over the previous 1999 scale. However, because the majority of CCU cases are settled for less than £5,000, the reduction in the number of bands has had the effect of increasing fees, well above the 4.3 per cent intended. We examined a sample of cases settled in 2003-04 and found that conversion to the new bands resulted in a 30 per cent increase in fees payable. There have been two subsequent fee increases in 2007 and 2008 (see **Figure 6**).

6 County Court Fees (Amendment) Order Northern Ireland (2007)

Figure 5: Average claimant's legal costs

Source: NIAO based on data provided by Central Claims Unit

Note: details of the average cost calculation is at Appendix 1

Figure 6: Comparison of old and new fee bands

Fees before 2003 revision		Fees after 2003 revision		Current Fees
Band	**Fee**	**Band**	**Fee**	**Fee**
Less than £500	£172	Less than £1,000	£450	£517
£501-1,000 £1,001-2,000 £2,001-3,000	£422 £674 £925	£1,001-2,500	£950	£1,092
£3,001-4,000 £4,001-5,000	£1,136 £1,285	£2,501-5,000	£1,350	£1,552
£5,001-6,000 £6,001-7,000 £7,001-8,000	£1,432 £1,566 £1,689	£5,001-7,500	£1,750	£2,012
£8,001-9,000 £9,001-10,000	£1,799 £1,896	£7,501-10,000	£2,000	£2,229
£10,001-12,500	£2,057	£10,001-12,500	£2,200	£2,529
£12,501-15,000	£2,261	£12,501-15,000	£2,400	£2,759

Source: NIAO based on County Court Fees scales

Central Claims Unit seeks to minimise the cost of claims as far as possible

3.7 Two inter-related factors are having the effect of pushing up the cost of public liability compensation in Northern Ireland. Levels of compensation are higher than in England and Wales and the differential is being maintained by periodic increases in guidelines. Since payments to solicitors are determined by the level of compensation, increases in compensation will generate a proportionate increase in legal costs, a "multiplier" effect which has been reinforced by the recent revision of scale fees. In this context it is difficult for CCU to greatly influence the cost of claims, but as costs increase, even marginal effects become more significant and it is important that CCU exerts any downward pressure possible, to minimise the cost of claims.

3.8 DRD told us that CCU does this mainly by seeking to settle claims, where it is appropriate to do so, before legal proceedings are issued. This avoids incurring DSO costs and reduces the claimant's legal costs to two-thirds of the scale fee. For this purpose, CCU staff undertake extensive training including negotiation skills and legal aspects before being given financial authority to settle claims by the Head of the Unit. These skills ensure that pre-proceedings settlement amounts are at the lower end of the Guidelines scales mentioned in para 3.3 or lower if there are other considerations such as contributory negligence. This achieves savings in compensation payments in addition to savings in costs.

3.9 We recommend that CCU remains alert to the upward trend in the cost of personal injury claims and continues to review its approach to minimising the effect of this trend on the public purse

Payments to the Departmental Solicitor's Office for legal advice have also increased at a much greater rate than inflation

3.10 When a claim cannot be resolved by negotiation, the claimant's solicitor will often issue court proceedings and at this stage CCU must engage legal advisors to act on behalf of Roads Service. In these cases, legal advice is provided by DSO which is a directorate within the Department of Finance and Personnel (DFP). DSO charges CCU for its services and in 2007-08, CCU paid £751,000 in respect of Roads Service personal injury claims. This was 19 per cent of the total cost.

3.11 DSO took over responsibility for litigation services from the Northern Ireland Office in August 2000 and set charges for the first time in 2001-02. The average cost of a case taken by DSO increased to a peak in 2005-2006 at £2,225 which was 65 per cent above the 1998-99 level when Northern Ireland Office was responsible for this work. The last two years have seen reductions in the average cost, but this still represents an increase of nearly twice the rate of inflation (see **Figure 7**).

3.12 DFP told us that since DSO took over responsibility for litigation services from the Northern Ireland Office in 2000-01,

Figure 7: Average DSO costs

Source: NIAO based on CCU data

Note: details of the average cost calculation is at Appendix 1

charge out rates have increased in line with Northern Ireland Civil Service (NICS) salary costs. This accounts for a 25 per cent increase in costs, however, DFP also told us that the number of cases being presented as High Court Writs has risen substantially, from 20 per cent in 2000 to 35 per cent in 2007, with an associated significant increase in preparation and presentation time and costs.

The Departmental Solicitor's Office's charging system does not meet the requirements of guidance for managing public money

3.13 It has long been a general principle of Government Accounting that where one department provides a service to another, the customer department should pay for the service it receives. Where exceptionally, services are provided free of charge, such as where the cost of payment transactions outweigh the benefits, the department should be informed of the cost through notional charging. Meeting the cost of their activities is intended to encourage departments to use resources more efficiently and economically. It also provides a basis for comparison of the cost of alternative providers and in this way provides an efficiency incentive to the supplying department to provide services that represent value for money.

3.14 To ensure that these objectives are met, DFP has provided detailed guidance on the operation of charging systems[7]. DSO's charging policies and procedures do not comply with this guidance.

Current policy is for DSO to charge for its litigation service only - DSO provides a range of legal services to the whole

7 Before June 2008, *Government Accounting Northern Ireland* and the *Fees and Charges Guide 2004*; after June 2008 *Managing Public Money Northern Ireland* 2008, Chapter 6 Fees, Charges and Levies and associated Annexes.

of NICS and had running costs of £7 million in 2007-08. However its objective currently is to charge for litigation services only which generated income of £1.3 million in 2007-08, 74 per cent of which came from CCU. It is reviewing the scope of its charges.

Charges are not based on the cost of the service - Fees and charges should be set at a level to recover the full cost of the service, calculated on an accruals basis including both cash and non-cash costs. DSO uses a scale of fees, similar to the County Court approach, inherited from the Northern Ireland Office, when litigation services were transferred in 2000-01. This has simply been uplifted by a percentage each year and is not based on any calculation of the running costs of the current operation. DFP's 2007-08 resource accounts estimated the full cost of litigation services at £1.9 million compared to income generated of £1.3 million.

Charges do not adequately reflect the cost of services consumed - Charges levied on departments should reflect the cost of the resources they consume and charges should be based on the average unit cost of the service. Under the current scale fees approach, the fee increases with the value of the compensation paid and the more advanced the case is in the litigation process, rather than the time billed to the case. This approach is appropriate in a private sector context as an incentive to lawyers to obtain the maximum compensation for their clients. However, this method of calculating a charge is not appropriate in the public sector, where the objective should be to minimise the level of compensation and the cost to the public purse.

DSO does not produce a memorandum trading account - Departments should use memorandum trading accounts to: forecast the cost of the service; set fee levels; and monitor the surplus or deficit achieved each year. DSO does not produce a memorandum trading account, outturn cost figures are not produced and DSO cannot tell whether a surplus or deficit has been generated.

3.15 The steep increase in average costs to CCU inevitably raises questions as to the efficiency of DSO's litigation services. DFP guidance makes it clear that the lead department is responsible for the efficiency of service provision and recommends that a fundamental review of costs is undertaken periodically to ensure that the service continues to provide value for money. For example the lead department should ensure that efficiency improvements are effectively managed to avoid a "last year plus x per cent" approach and assess whether the level of resources used to provide the service remain appropriate in the light of changing demand and other factors. The current charging regime in DSO does not allow it to demonstrate that this is being achieved.

3.16 To facilitate the efficient provision of DSO services and provide assurance to the Accounting Officer we recommend that:

- DSO establish a memorandum trading account on an accruals basis as per

Managing Public Money, to establish the full cost of provision, set charges based on full cost recovery and monitor recovery against outturn costs;

- DSO reviews the basis of charges to ensure that they properly reflect the cost of resources consumed;

- DFP considers the introduction of charging for all of DSO's inter-departmental services in compliance with the requirements of Managing Public Money;

- DFP carry out a fundamental review as recommended by current guidance to ensure that DSO's interdepartmental services provide value for money and to assess whether the level of resources used to provide the services remain appropriate in the light of changing demand and other factors; and

- CCU carries out a review of the efficiency of provision of litigation services, including an assessment of the cost of alternative providers.

3.17 Recent reports from Internal Audit have drawn these issues to the attention of DSO and recommended the implementation of a time recording system to provide a robust billing system, accurately quantify cost and facilitate full cost recovery. We asked DFP what action was being taken in respect of this recommendation. DFP told us that "an objective to carry out a "Review of Charging" was included in the 2008-09 Business Plan. Work commenced on this in advance in October 2007 and a draft report was presented to the Senior Management Team in March 2008. On 30 April the Senior Management Team approved a phased approach to widening the scope of hard charging. Since then work has been on-going to identify, develop and implement effective Case Management / Time Recording and Management Information Systems to ensure the transparency of financial and charge management and support the roll-out of hard charges for a wider range of the work of DSO".

3.18 In June 2008, the detailed guidance in "Government Accounting Northern Ireland" and the "Fees and Charges Guide" was replaced by "Managing Public Money in Northern Ireland". This is a shorter document intended to give the essence of what is required when handling public funds but DFP indicated that the principles contained within it are essentially the same as in Government Accounting.

3.19 DFP told us that Managing Public Money does not mandate the use of charges between departments. It accepts that charges can be a useful tool to provide economic signals and promote efficiency and it would not want to discourage interdepartmental charges. However, DFP wants to protect the right of a minister to determine whether a charge is appropriate and to avoid bureaucratic arrangements being put in place. It considers that there are a large number of services provided by departments (especially DFP) which it believes should not be charged for.

3.20 NIAO considers this to be a significant reduction in the requirement for interdepartmental charging compared with previous guidance, which may impact adversely on the efficiency of interdepartmental services.

Appendices:

Appendix One:
Analysis of the cost of claims (Figure 5 and Figure 7)

Personal Injury Claims Average Cost Analysis

Year	Compensation £	Claimant Legal Costs £	DSO Costs £	Other Costs £	Total Cost £	Claims Concluded* £	Average cost of claim £
1998-99	1,595,309	781,612	854,238	10,495	**3,241,654**	762	**4,254**
1999-00	1,255,648	641,735	705,050	113,389	**2,715,923**	602	**4,511**
2000-01	855,604	536,212	557,879	47,457	**1,997,152**	540	**3,698**
2001-02	1,082,749	663,610	893,056	62,992	**2,702,407**	625	**4,324**
2002-03	2,258,897	902,671	942,350	120,468	**4,224,386**	711	**5,941**
2003-04	1,841,413	1,083,274	1,174,035	97,487	**4,196,029**	747	**5,617**
2004-05	1,566,782	1,004,489	1,045,986	101,655	**3,718,912**	597	**6,229**
2005-06	1,628,860	903,280	987,718	25,221	**3,545,079**	558	**6,353**
2006-07	1,331,819	900,911	858,471	35,132	**3,126,333**	492	**6,354**
2007-08	1,941,861	1,033,398	750,934	259,092	**3,985,285**	459	**8,683**
Total	15,358,942	8,451,192	8,769,717	873,388	**33,453,239**		

*Claims concluded - these figures represent all claims concluded in each year, where compensation, claimants' legal costs or DSO costs have been paid

Average Claimants' legal costs

Year	Total legal costs £	Number of Claims*	Average legal costs £
1998-99	781,612	420	1,860
1999-00	641,735	360	1,782
2000-01	536,212	282	1,901
2001-02	663,610	320	2,073
2002-03	902,671	392	2,302
2003-04	1,083,274	421	2,573
2004-05	1,004,489	373	2,692
2005-06	903,280	325	2,779
2006-07	900,911	292	3,085
2007-08	1,033,398	263	3,929

*These figures represent all claims concluded where claimants' legal costs are paid. These are claims where a compensation award has been made.

Average Departmental Solicitor's Office costs

Year	Total DSO costs £	Number of Claims*	Average DSO costs £
1998-99	854,238	635	1,345
1999-00	705,049	450	1,567
2000-01	557,878	452	1,234
2001-02	893,055	524	1,704
2002-03	942,350	582	1,614
2003-04	1,174,034	610	1,925
2004-05	1,045,985	487	2,148
2005-06	987,718	444	2,225
2006-07	858,471	397	2,162
2007-08	750,933	365	2,057

*These figures represent all claims concluded where DSO costs have been paid. These are claims where legal proceedings have been issued.

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