

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





Northern Ireland Audit Office

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

Published 12 February 2013

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
12 February 2013

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.

For further information about the Northern Ireland Audit Office please contact:

Northern Ireland Audit Office
106 University Street
BELFAST
BT7 1EU

Tel: 028 9025 1100
email: info@niauditoffice.gov.uk
website: www.niauditoffice.gov.uk

© Northern Ireland Audit Office 2013

Contents

	Page
Introduction and Background	9
Previous Investigations	12
Findings of our review	13
Overall Conclusion	13
The investigation was not well planned	15
Guiding Principle	15
What we found	15
Conclusion and recommendation	16
The allegations were not addressed in a timely and prompt manner	16
Guiding Principle	16
What we found	17
Conclusion and recommendations	19
The Department did not adequately engage with the Whistleblower or manage his expectations	20
Guiding Principle	20
What we found	20
Conclusion and recommendations	22
There were gaps in the maintenance of records and storage of information	22
Guiding Principle	22
What we found	22
Conclusion and recommendation	23
There was limited use of forensic audit techniques	23
Guiding Principle	23
What we found	23
Favouritism	23
Allegations of Collusion	25
Benchmarking	26
Sampling	27
Interviews	29
Documentary Review	30
Conclusion and recommendations	32
The evidence was not collected to a sufficient standard	34
Guiding Principle	34
What we found	34
Conclusion and recommendation	35

All allegations were not adequately investigated	36
Guiding Principle	36
What we found	36
Conclusion and recommendations	37
Formal oversight by senior management during the progress of the investigation was limited	38
Guiding Principle	38
What we found	38
Conclusion and recommendation	38
The investigation did not take full account of relevant findings from a previous investigation	38
Guiding Principle	38
What we found	39
Conclusion and recommendations	40
The investigation was not completely objective	41
Guiding Principle	41
What we found	41
Conclusion and recommendations	42
Appendix 1:	46
Allegations considered in the January 2010 report	
Appendix 2:	48
Road Signage Contract Periods and Evaluation Criteria used in Award	
Appendix 3:	49
Whistleblower Allegations Raised which were Reworded in the January 2010 Report	
Appendix 4:	51
Whistleblower Allegations not Investigated and Reported on by Department	
Appendix 5:	53
Discussions at Audit Committee or with Senior Management	
Appendix 6:	54
Departmental Comments on the Relevance of the High Court Judgment	
Appendix 7:	55
Firm A's views on a redacted draft of this report	
NIAO Reports 2012-13:	57

Abbreviations

CPD	Central Procurement Directorate
DETI	Department of Enterprise, Trade and Investment
DFP	Department of Finance and Personnel
DSO	Departmental Solicitor's Office
FOI	Freedom of Information
GIAC	Government Internal Audit Certificate
GPA	Government Purchasing Agency
HPTO	Higher Professional and Technical Officer
LEDU	Local Enterprise Development Unit
MP	Member of Parliament
NDPB	Non Departmental Public Body
NIAO	Northern Ireland Audit Office
NICS	Northern Ireland Civil Service
NI	Northern Ireland

Introduction and Background

Introduction and Background

1. Whistleblowers¹ have an important role to play in bringing information to departments about matters that are troubling them in relation to the proper conduct of public business. The proper and timely investigation of such matters is a vital component of good governance arrangements which instils confidence that, where wrongdoing is proven, those responsible are held to account, mistakes are remedied and lessons learnt. This is a case study highlighting lessons that can be learnt as a result of our review of an investigation by the Department for Regional Development (the Department) of a Whistleblower's concerns.
2. Between July and September 2005, a Whistleblower contacted us with 15 allegations, some of which were very serious, on the procurement arrangements operated by Roads Service, an executive agency within the Department, for the supply, delivery and erection of road signs². These allegations were passed to the Department in November 2005 for investigation. At that time, Roads Service was spending between £700,000 and £900,000 a year on road signs. The Whistleblower had further contact with us on matters relevant to the investigation and made further allegations, some of them also very serious. These were passed on promptly to the Department in December 2006 and September 2007, by which time there were 29 substantive allegations. Examples of the range of allegations, in summary form, include:
 - Roads Service changed the tender evaluation criteria for the award of road signage contracts (production and delivery) from 100 per cent cost over a number of contract cycles to 20 per cent cost and 80 per cent for other subjective factors. The Whistleblower alleged that Roads Service used the changes to the tender evaluation criteria to ensure that its "preferred supplier (Firm A) obtained the lion's share of the work"³;
 - Roads Service, in collusion with other Government bodies, deliberately delayed the award of a signage contract until another contractor (referred to in this report as Firm A) had secured Government grants which made it financially sound and therefore eligible to be awarded the signage contract;
 - Roads Service receives very poor value for money as a result of the tender evaluation criteria that it uses. The Whistleblower estimated that Roads Service was paying about 30 per cent above the current market rates. This equates to a waste of around £2 million over the eight years that the Whistleblower has been in business;
 - Firm A cut costs after winning contracts, by producing signs of a much lower specification. The Whistleblower stated that he acquired one of these signs and it can be inspected. The Whistleblower

1 The term whistleblower, as used in this report, refers to either a worker (as covered by the Public Interest Disclosure (Northern Ireland) Order 1998) or a member of the public raising a concern about something that is troubling them and which they think the public sector body should know about.

2 The procurement process also involved Central Procurement Directorate (CPD), an executive agency of the Department of Finance and Personnel.

3 Roads Service strictly regulates all aspects of the production of road signs through a detailed specifications handbook. The inspection of signs on delivery ensures compliance with the handbook. Also firms are contractually bound to deliver signs within 15 days of receipt of order to manufacture signs. Compliance with these rules ensures the delivery of signs on time and to specified quality standards and challenges the need for changes to the evaluation criteria.

stated that poor quality steel frames with sign plates not to specification are now being produced;

- Roads Service had given work to Firm A and other firms without proper tendering procedures having taken place;
- Roads Service officials altered a tender evaluation scoring matrix relating to the Whistleblower. This changed the outcome of the tender evaluation and Firm A won the contract;
- the Whistleblower alleges that there is closeness between Firm A and Official A and other Roads Service officials. These officials were *'never out of Firm A's offices'*. Official A spent a full day with Firm A at a Trade Fair in Amsterdam in 2004. In comparison, the Whistleblower's firm only saw these officials at tendering stages as part of the qualitative assessment; and
- production orders for signs which should have been made by the Whistleblower's firm were given to Firm A.

An overarching theme to the allegations was that Roads Service consistently showed favouritism to Firm A.

3. On receipt of the initial allegations in November 2005, the Department's Accounting Officer commissioned Internal Audit to undertake a review of the allegations. This review, which also incorporated the allegations received in 2006 and 2007, concluded with a Report in January 2010 which recorded the Investigation Team's findings for what

it described as 22 key allegations (see Appendix 1). The 67 page report made 20 recommendations aimed at clarifying staff roles and responsibilities and ensuring compliance with established procedures.

4. Soon after the Report was produced, the Department's then Accounting Officer advised the Department of Finance and Personnel⁴ (DFP) and the Northern Ireland Audit Office (NIAO) that the allegations made by the Whistleblower had been investigated thoroughly. Having considered the findings he was reassured that Internal Audit had not found any evidence to support most of the allegations and that staff, with a small number of exceptions, had acted appropriately and to the standards expected. No evidence had been found of impropriety or sharp practice or that staff had deliberately shown favouritism to Firm A.
5. The Accounting Officer stated it was very important that contractors have confidence in the Department's tendering processes and feel that they are competing on a level playing field, and also that there is public confidence in the Department's systems. However, he expressed disappointment that the investigation had identified some deficiencies in processes and non-compliance with established procedures, but pointed out that many of the issues highlighted occurred almost 10 years ago. He also noted that procurement processes had evolved significantly, with considerable advances and improvements to those processes, as acknowledged in the Internal Audit report.
6. In 2010, CPD managed a procurement competition for the supply and delivery of road signs on behalf of the Department. The Whistleblower, who had tendered for these contracts, challenged the

⁴ The Department of Finance and Personnel had an interest in the Report because its Central Procurement Directorate (CPD) was implicated in the allegations.

Department's decision on the 2010 tender and initiated legal proceedings on a number of grounds. The challenge was considered by the High Court and a judgment was issued in 2011. The Department contends that the High Court judgment supports its 2010 Report. It is important to note that the 2010 tender was not part of the Department's investigation and is therefore outside the scope of this report. However, as part of its deliberations on the 2010 tender, the High Court did consider and make judgment on three of the Whistleblower's allegations (see paragraphs 70 to 75). The Department maintains that the High Court findings are relevant to other allegations in the 2010 report. It told us that, after a lengthy trial which dealt with many of the issues and allegations reported in the investigation, and also included the cross examination of members of staff under oath, the judgment found no evidence to support allegations of favouritism or bias against the Department. We have included further Departmental comments on this at Appendix 6. We do not agree with the Department's view on the relevance of the judgment to the Department's investigation and our view is outlined at paragraphs 47 and 75.

7. This report reviews the approach of the Department's Internal Audit from receipt of the initial allegations in November 2005. It does not re-perform⁵ their audit work. Internal Audit provided us with all their papers relating to the investigation. Our methodology was to review the documentary evidence gathered by the Department, which underpins the allegations made to us by the Whistleblower, concerning a number of

bodies (including Roads Service, CPD and LEDU⁶) about the procurement and administration of signage contracts and associated products, which resulted in the Department's January 2010 report. Our review, and the conclusions drawn from that review, are based solely on documentary evidence (paper and electronic) gathered by the Department during the course of its investigation. This report considers the matters arising within the context of what we would consider to be guiding principles for investigations of this nature. Our recommendations are important learning points, particularly on the handling of complaints from external whistleblowers. It is part of our normal practice to give other people or bodies that have been mentioned in our review the opportunity to provide any comments that they consider relevant. We received three responses, from Firm A, the Whistleblower and Official E⁷. We have taken these into account in drafting this report. Firm A's comments have been included in full in Appendix 7, given the allegations that were made by the Whistleblower specifically with regard to this firm.

8. The Department told us that it will take immediate steps to progress the adoption of our guiding principles and recommendations for future complaints. The Department accepts that guiding principles, included for the first time in this report, set the bar for investigations of this nature.
9. Figure 1 sets out, on an anonymised basis, the officials and firms mentioned in the Whistleblower's allegations and/or referred to in our review, with a summary of their involvement or

5 A re-performance is where the auditor gathers the evidence relevant to an investigation, undertakes audit work in accordance with the appropriate and expected professional standards and reports on the findings. A review is where the auditor considers the quality of the work undertaken by another party, benchmarked to the appropriate and expected professional standards.

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

7 See Figure 1 for an outline of the roles of Firm A and Official E.

relevance. Other individuals and bodies who had a prominent or key role were the Department's Accounting Officer, the Whistleblower, a Member of Parliament (MP) representing the Whistleblower, the Departmental Solicitor's Office (DSO) and Invest NI.

Previous Investigations

10. Prior to making allegations to us, the Whistleblower had complained to the Department in November 2001 and October 2002 about signs being ordered from Firm A which should have been ordered from his company. These

allegations were investigated jointly by Roads Service officials and Internal Audit. The investigation of the 2001 allegations confirmed that the Whistleblower's company might have some justification for concern and had highlighted a number of non-compliance issues (but no evidence of fraudulent activities) in the way procurement procedures were applied by Roads Service staff in its Southern Division. There was also an investigation by CPD in 2004 of other complaints made by the Whistleblower. These complaints were not upheld.

Figure 1: Outline of Officials and Firms in Review

Official	Role	Firm	Role
A	A Roads Service official involved in the 2005-07 procurement.	A	The Whistleblower's main competitor ⁸ .
B	A senior Roads Service official during the period of the allegations.	B	Competed in the 2005-07 procurement and won the 2005-07 contract for Motorway Signs.
C	A CPD official involved in the 2005-07 procurement.	C	Undertook sign erection work.
D	A Roads Service official who met the Whistleblower in 2007.	D	Provided road work signs and was the subject of Allegation 22 (Appendix 1).
E	A CPD official involved in the 1999-2001 procurement.		
F	A CPD official seconded to Roads Service at the time of the 1999-2001 procurement and working for CPD on the 2002-03 and 2005-07 procurements.		
G	A CPD official involved in the 1999-2001 and 2002-03 procurements.		
H	A Roads Service official involved in the 2005-07 procurement.		
I	A Roads Service official involved in the 2005-07 procurement.		
J	A Roads Service official working in its Southern Division.		
K	A Roads Service official who worked in Traffic Management.		
L	A Roads Service official involved in the 2002-03 procurement.		
M	A Roads Service official involved in the allocation of work.		

Source: NIAO

11. In January 2002, the then Chief Executive of Roads Service advised his senior officials (including Official B) and the Head of Internal Audit that he viewed these findings as “a very serious offence and very possibly in breach of the Northern Ireland Civil Service (NICS) Code” which states at paragraph 905 that: *“a civil servant who knows that an applicant has a legal entitlement and uses grounds that he knows to be improper for denying it to him is in effect cheating him out of it. This is no less wrong when it is done in the name of a Government Department than when it is done by a private citizen.”*

The Chief Executive asked his officials to avoid any repetition by taking all necessary steps to ensure that correct procurement procedures were adhered to and all decisions were clearly documented and approved by the appropriate grade. The Whistleblower informed us that, in his view, over a long period of time and clearly highlighted over the years by him to senior civil servants, they failed to ensure mistakes made in 2002 were not repeated to his detriment.

Findings of our review

12. Our review of Internal Audit’s investigation found that:

- the investigation was not well planned;
- the allegations were not addressed in a timely and prompt manner;
- the Department did not adequately engage with the Whistleblower or manage his expectations;

- there were gaps in the maintenance of records and storage of information;
- there was limited use of forensic audit techniques;
- the evidence was not collected to a sufficient standard;
- all allegations were not adequately investigated;
- formal oversight by senior management during the progress of the investigation was limited;
- the investigation did not take full account of relevant findings from a previous investigation; and
- the investigation was not completely objective.

Each of our findings is considered in detail below, along with the Department’s comments where they disagree with our assessment and conclusions.

Overall conclusion

13. The role of whistleblowers is a vital one in ensuring that genuine concerns about the proper conduct of public business are raised and fully addressed. This point has been emphasised by the Public Accounts Committee in a number of its reports.⁹ Where a whistleblower takes the significant step of coming forward with serious allegations, it is incumbent upon the relevant public body to carry out a prompt, properly planned and thoroughly executed investigation of the issues raised. This is the best way in which the substance of the allegations can be confirmed or denied.

⁹ Public Accounts Committee: Report on the Investigation of Suspected Contract Fraud – 1st report of session 2009-10;

Public Accounts Committee: Report on Tackling Public Sector Fraud – 5th report of session 2007-08.

14. Our findings in this case lead us to conclude that there were significant weaknesses in the conduct of the investigation leading to the 2010 report. It is of major concern that the investigation took over four years to reach a conclusion, proceeded without a properly constructed plan, and failed to apply the professional investigative standards that we have seen delivered in other reviews of serious whistleblower complaints. It is also worrying that, while the allegations were addressed individually, consideration was not given to recurring themes across allegations, such as favouritism, which would have highlighted the Whistleblower's concerns about weaknesses in relation to the letting and administration of signage contracts in Roads Service.
15. As a result of these weaknesses, the credibility of the 2010 investigation is seriously undermined. We are therefore unable to agree with the former Accounting Officer's conclusions on the allegations made (see paragraph 4). Indeed, we are concerned that the Investigation Team gave the benefit of the doubt to Road Service officials in its analysis of the evidence. In our view, on the basis of the work done by the investigators, we do not consider that the allegations were investigated sufficiently. We are satisfied that, even on the limited forensic work undertaken by the Investigation Team, there were strong indicators of either favouritism towards a particular firm, or bias against the Whistleblower.
16. The Department notes the NIAO comments about the credibility of the 2010 Internal Audit report but does not agree with the conclusion. For the reasons it gives later in the report, the
- Department does not believe there is evidence of favouritism or bias, nor does it accept any inference of such behaviour.
17. In response to this report, Firm A and the Whistleblower provided comments. Firm A told us that it totally refutes that there was any conspiracy in the form of bias or favouritism. Firm A also totally refuted all of the allegations made by the Whistleblower against it (see Appendix 7). The Whistleblower told us that it is his belief that there was favouritism by the Department's Roads Service towards his competing firm and, moreover, that there was an inbuilt prejudice by senior management towards the Whistleblower personally and, by implication, to his firm. The Department refutes these comments and notes that evidence has not been put forward to support them.
18. It has been our experience that reports of investigations into whistleblowing concerns commissioned by Northern Ireland departments (including the Department) are generally well handled. This was not a typical case. From the outset, it raised a range of complicated issues and the complexity increased as the Whistleblower made new allegations and elaborated on existing ones. The proper handling of an investigation of this complexity is key to providing assurance to both the Department and the Whistleblower that all allegations have been thoroughly examined in a professional manner. A more wide-ranging and timely forensic investigation would have gone a considerable way towards either proving or disproving the allegations and providing the assurances that were needed. The investigation of allegations took over four years to complete, which in itself was unacceptably long but also meant
-

that the evidence trail was significantly compromised, hampering a proper investigation.

19. As a result of this review, we have made a number of specific recommendations in relation to each finding. These recommendations, and the supporting guiding principles on which they are based, have widespread application across the Northern Ireland public sector. In addition, we strongly recommend that a centralised and service-wide resource should be made available to lead or assist departments in complex investigations such as this. The capacity of individual internal audit units to handle serious complaints is limited, particularly in that they also have to discharge their core assurance work on behalf of their Accounting Officer. The Department agrees that there is a strong case for a centralised and service-wide resource to be available for complex investigation cases of this nature.

The investigation was not well planned

Guiding Principle

20. The key to good investigation is planning. This is essential to ensure that the investigation is carried out in a professional manner, resources are identified, methodologies determined and sources of evidence are identified and safeguarded. Terms of reference should be established to set the boundaries for the investigation and to help determine when the investigation can be concluded.

What we found

21. In the case of this investigation, we found that:
- terms of reference were established in late 2005. The purpose was to investigate the concerns raised by the Whistleblower, as set out in the correspondence and accompanying papers passed by us to the Department in November 2005. The terms of reference were later updated to incorporate the investigation of allegations which we passed to the Department in 2006 and 2007;
 - a formal investigation plan was drawn up. The Department advised us that the plan followed the format used by Internal Audit for its normal planning of work. The plan was compiled over the duration of the investigation and evolved as the Investigation Team reviewed the documentation received from the Whistleblower, completed investigative work including fact finding, and engaged with the various parties involved. We consider that this type of planning is acceptable as far as it goes but is a poor substitute for a formal plan drawn up prior to the commencement of investigative work as set out in the guiding principle;
 - the planning document did not consider the types of evidence to be sourced, their location and the methodologies to be used for gathering evidence relevant to individual or thematic allegations;

- staff competencies were not identified and resources were not ring-fenced. The Department advised us that all staff involved in the audit were Government Internal Audit Certificate (GIAC) qualified and careful consideration was given to the allocation of investigation tasks based upon skills and experience. However, we saw no documentary evidence of this;
- insufficient consideration was given to engaging with the Whistleblower or other third parties; and
- no timetable was set for undertaking the investigation or completing the report.

22. There was also no evidence to indicate that higher priority or urgency should be attached to investigating certain allegations. As well as an overarching allegation of favouritism, the Whistleblower alleged major propriety issues relating to conflicts of interest, fabrication of evidence and collusion between various parties. These serious themes were not given greater priority within the investigation.

Conclusion and Recommendation

23. On the basis of the evidence available and guiding principles we would expect for such a review, the investigation proceeded with a plan that was not sufficiently comprehensive to deal with the investigative challenges presented by the allegations. The investigation would have benefited from a planning document that brought together all aspects of the planning process, such as an outline of the resources, methodologies, timescale for the review and engaging with the whistleblower and other third parties, and which should have been maintained and updated on an ongoing basis.

24. The Department accepts that this investigation could have been better planned. However, it believed that the complexity of this case and the flow of allegations over a prolonged period did present significant difficulties and challenges for the Investigation Team.

The allegations were not addressed in a timely and prompt manner

Guiding Principle

25. It is important that, when a department recognises the need to investigate allegations made by whistleblowers, those investigations should be undertaken in a timely and prompt manner.

What we found

26. This was an inherently complex investigation. Apart from the overall number of allegations made, there was additional complexity because:

- many of the allegations alleged favouritism to Firm A;
- there were direct Allegations of fabrication by individual officials (Allegation 8 at Appendix 1), complicity by three bodies in different departments (Allegation 10) and conflicts of interest involving Official A's relationship with Firm A (Allegation 20);
- many of the allegations involved events that occurred more than five years previously;
- they encompassed both procurement and operational matters;
- some of the allegations would require investigation within DFP (at CPD¹⁰) and the Department of Enterprise, Trade and Investment (DETI) (at Invest NI);
- after 2005 and up until September 2007, further allegations were raised and forwarded to the Department during the course of the investigation; and
- a number of allegations would have required clarification from the Whistleblower.

27. The investigation began in late 2005 and concluded in early 2010. During this period we wrote to the Department in September 2006, December 2007 and June 2008, asking when it could expect to receive the investigation report. On the second and third of those occasions, we also stated that we were conscious that considerable time had elapsed since the initial concerns were raised. The Department commented that NIAO was still receiving allegations from the Whistleblower in 2007 and only received confirmation in February 2009 that all allegations had been submitted.

28. In a comprehensive response to NIAO in January 2008, the Department offered its explanation for the delay. It stated that it was of paramount importance that the investigation was carried out properly and correctly. It was not in a position to say with any certainty when the investigation would be concluded, but that it would be progressed as soon as possible, notwithstanding that it was one of a number of competing priorities for the Internal Audit Branch to handle.

The Department explained that:

- the Whistleblower had submitted a considerable amount of information and the most recent correspondence had introduced even more elements and issues to the scope of its investigation (see Figure 2); and
- the passage of time meant that it was often difficult to source relevant papers and identify and contact individuals.

¹⁰ CPD told NIAO that the Department's Investigation Team engaged with it during the investigations.

Figure 2: Details of Investigation Timeline

Date	Details of Submission
11 November 2005	NIAO wrote to the Department's Deputy Secretary detailing the Department's agreement to NIAO's request to examine the Whistleblower's allegations – the details of which were noted in the letter.
13 December 2006	NIAO wrote to the Department's Internal Audit, stating that the Whistleblower had provided further information in relation to the investigation.
27 June 2007	The Whistleblower met with NIAO and the Department's Internal Audit to restate his allegations and present additional information in support of these.
31 July 2007	NIAO had a further separate meeting with the Whistleblower at which he restated his allegations and presented additional information in support of these. The Department was not present at the meeting but was copied the relevant papers on 22 August 2007.
22 August 2007	NIAO wrote to the Department's Internal Audit with a record of the 27 June 2007 meeting (agreed with the Whistleblower) including additional clarification on some of the points raised and further information in support of his allegations.
4 September 2007	NIAO wrote to the Department's Internal Audit, passing on a letter and further documentation from the Whistleblower setting out allegations and detail that was not raised at the June 2007 meeting.
9 February 2009	The Department received, through NIAO, confirmation from the Whistleblower that he had submitted all of the evidence he intended to submit.
September 2009	Additional work was required on issues highlighted during a meeting between the Investigation Team and NIAO.

Source: Department for Regional Development

29. The Department also explained that, after 2008, it was reluctant to bring its investigative work to a conclusion until the Whistleblower had submitted all his allegations and supporting evidence. The Whistleblower's MP had made it clear in November 2006 that the Whistleblower should be allowed whatever time was required to submit all evidence he considered appropriate. In October 2008, the Whistleblower contacted the Department advising of his intentions to submit further information. The Department therefore allowed additional time in support of this request.
30. The Department explained that investigative work began on receipt of the initial allegations from NIAO in 2005 and continued through the intervening years as further allegations and information were received, until the Department was notified in February 2009 that the Whistleblower had provided all of the information he intended to submit. Our review found that not all the initial allegations passed to the Department in 2005 were progressed during that period.
- The Whistleblower provided confirmation in February 2009 that all information had been submitted.

31. Our review of papers noted that:

- in January 2009, the then Accounting Officer advised Official B and the Head of the Investigation Team of his direct interest in bringing the investigation to a conclusion as soon as possible, expressing the view that the delay was now damaging the Department's reputation; and
- specific tranches of work were not undertaken until the latter stages of the investigation. For example, almost all the documented interviews of officials and contractors were undertaken during 2008 and 2009, the third and fourth years of the investigation. In one instance, an official (Official C) whom the Investigation Team considered interviewing in relation to allegations first raised in 2005, was not interviewed because she was six months into a career break. We also noted an absence of documentary evidence of the investigation of Allegation 15 (about the revenue streams to the Whistleblower's company and Firm A) prior to January 2010.

Conclusion and Recommendations

32. We are concerned that it took four years to complete the investigation. We recognise that an inherently complex investigation at the outset was complicated by the receipt of further allegations and new information from the Whistleblower in the first and second years of the investigation. However, this does not excuse the inordinate delay in tackling allegations as they were received. In order to ensure that such situations are better managed in future, it is important that:

- a realistic but achievable timescale is set for completion and reporting of investigative work;
- whistleblowers are permitted a reasonable but definitive period for the submission of all evidence;
- all sources of documentary evidence are secured as early as possible in the investigation; and
- allegations are investigated and all relevant individuals are interviewed as early as possible.

33. The Department welcomes the recommendation that Whistleblowers are permitted a reasonable but definitive period for the submission of all evidence. In its view, the uncertainty over whether further allegations were to be made, and the timing and possible significance of these, was a significant contributory factor to the delays that occurred. The Whistleblower told us that in his opinion he finds it regrettable that the Department contends that the delay was caused by his allegations being made over an extended period of time. The Whistleblower believes that there was an inordinate time delay which, in his view, clearly prejudiced a proper investigation of the issues, to the Whistleblower's detriment. The Department disagrees with the Whistleblower's comments for the reasons stated above. Firm A told us that NIAO's report was based primarily on the previous report [Department's 2010 report]. Firm A noted that it was surprised that this had gone on for so long, particularly as there was no substance in the allegations which had since been through a lengthy court process. Firm A noted that the 2010 report took a very long time and that new allegations were added as it went along and, in the interest of fairness, the Investigation Team had to go through each one.

The Department did not adequately engage with the Whistleblower or manage his expectations

Guiding Principle

34. As part of any effective investigation of a whistleblowing complaint, we would expect the body conducting the

investigation to seek regular proactive liaison with the Whistleblower. This helps to:

- avoid misunderstandings on the nature and gravity of allegations;
- address unrealistic expectations of whistleblowers; and
- avoid the belief by the whistleblower, when there is a delay in the investigative process, that the investigating body is involved in a cover-up or conspiracy, or is deliberately obfuscating because it has something to hide.

What we found

35. The investigators did not engage frequently enough with the Whistleblower to discuss and fully understand his allegations and concerns or manage his expectations. There were two meetings and one telephone conversation with the Whistleblower between 2005 and 2010:

- one meeting at Stormont in June 2007, at which Official B, Official D and the Whistleblower's MP were also present;
- one meeting in June 2007, which NIAO hosted, in order to clarify the nature of the allegations; and
- a telephone conversation with the Whistleblower on 1 October 2008.

The Department told us that it believed that the Whistleblower wished to engage with NIAO rather than itself. However, while we accept that the Whistleblower engaged regularly with us, there was a

basic requirement for the Investigation Team to have regular liaison with the Whistleblower, from receipt of allegations to the publication of the Report, for the reasons set out in the guiding principle.

36. While the investigation was ongoing, the Whistleblower, through Freedom of Information (FOI) requests, obtained additional information from the Department and, as a result of this information, made further allegations in support of his increasing concerns about widespread impropriety in Roads Service. More regular liaison with the Whistleblower may have obviated the need for these FOI requests. The Department disagrees with this finding and told us that it believed that the Whistleblower used the FOI provision to seek evidence to substantiate allegations made. In our view, the fact that further allegations resulted from these FOI requests, subsequent to the initial allegations in 2005, demonstrated the failure by the Department to engage meaningfully with the Whistleblower. The Whistleblower told us that, in his view, the Department deliberately obstructed his FOI requests which, although eventually met, were delayed and made the process difficult in a way that was not in accordance with the principles of open government. The Department strongly refutes this allegation, and points out that no evidence has been put forward which shows there was a deliberate intent to obstruct FOI requests. The Department told us it advised the complainant and his
37. We also noted that, in August 2008, the Whistleblower complained about the investigation to the then Departmental Minister, specifically about Official B and to a lesser extent about the actions of the Head of the Investigation Team. He was concerned that Official B had been allowed to influence the ongoing investigation and that, more generally, there was no desire or will to see the investigation concluded. The Department replied in September 2008 with a robust defence of its actions and also of its officials. In the same correspondence, the Department requested that the Whistleblower confirm that he had submitted all of the evidence he intended to submit to the investigation. The Whistleblower provided this confirmation to us in January 2009 and we in turn notified the Department in February 2009.
38. In November 2009, when the Accounting Officer was seeking a definite and final date for the completion of the report, he was prepared to brief the Member of Parliament (MP) who was representing the Whistleblower, but without the Whistleblower present.

Conclusion and Recommendations

39. It is disappointing to find that the Department failed to properly engage with the Whistleblower in a meaningful way to enable it to fully understand his allegations and manage his expectations. In our view it is vital to have regular contact with a whistleblower to establish if all relevant information has been provided and maintain their confidence that:

- the allegations are being taken seriously;
- the allegations are being properly investigated in a professional and objective manner; and
- a report will be produced within a set timescale.

40. The Department maintains that the Whistleblower had a clear preference to engage with the NIAO.

There were gaps in the maintenance of records and storage of information

Guiding Principle

41. We would expect those conducting an investigation to maintain and store a systematic record of all potentially relevant sources of evidence, their location, those examined, information gathered, and the timeframe within which these actions took place. This provides assurance about the management of the progress of the investigation.

What we found

42. In this investigation, we found that the Department had undertaken an extensive search for, and collation of, the evidence across the relevant public bodies (Invest NI, the Department, Roads Service and CPD). In addition, it had the evidence provided to the Whistleblower under FOI (paragraph 36). However it was not possible for us to review the evidence for completeness as:

- no list was prepared of Departmental files and other sources of evidence potentially relevant to the investigation, for example relevant files, TRIM¹¹ documents, emails and hospitality registers;
- no list was prepared of sources of evidence examined;
- documents extracted were not referenced to their source;
- no record was kept of dates when sources of evidence were examined; and
- there was an inadequate trail of records relating to earlier versions of the final report and comments from various parties. This may have been the reason for an earlier version of the final report not being released to the Whistleblower following a FOI request. He was incorrectly advised that it had been destroyed¹². The Department pointed out that TRIM provides access to earlier versions of documents including final reports. However, if this was the case, we cannot understand why the Whistleblower was advised that the draft report was destroyed.

¹¹ TRIM is the NICS common records system.

¹² I have referred this matter to the Information Commissioner.

Conclusion and recommendation

43. The gaps in cataloguing the evidence gathered during the investigation do not provide sufficient confidence that all potentially relevant evidence has been uncovered and considered as part of the analysis of each allegation. A rigorous investigation of whistleblowing allegations requires evidence of the records and information examined, by whom, and when, throughout the course of the investigation.

44. The Department acknowledges that the evidence was not catalogued fully but highlights that (as recognised at paragraph 42) extensive work was undertaken to investigate the allegations.

There was limited use of forensic audit techniques

Guiding Principle

45. We would expect the investigation of whistleblowing allegations to be characterised by a rigorous application of professional skill and diligence, to enable investigators to demonstrate that they have got to the heart of the matter. The forensic audit techniques adopted and the way they are used are a means to that end. Forensic audit is the application of accounting methods to the tracking and collection of forensic evidence. An example of forensic audit is the investigation of cases of suspected fraud so as to prove or disprove the suspicions and if they are proven, to identify the persons involved, support the findings by evidence and present the evidence in an acceptable format, in any subsequent criminal or disciplinary proceedings¹³.

What we found

46. Given the nature and seriousness of some of the allegations, various sources of evidence potentially relevant to this investigation, such as emails, office computers, office diaries and travel claims, were either not accessed or were used in a very limited way. The Department stated that it examined emails, office diaries and travel claims, employing a reasonable and proportionate approach, which led to the conclusions within the report. We noted that there is no documented evidence in the review papers of any examination of office diaries and travel claims and there was no evidence of a systematic search of relevant emails. A reasonable and proportionate approach must recognise the nature and seriousness of the allegations and the concerns of the Whistleblower.

Favouritism

47. Within the context of this investigation, it was clear to us that there was a recurring theme of favouritism embedded in the allegations made by the Whistleblower. The Department told us that, throughout the investigation, its Investigation Team considered a range of factors, including perceived favouritism, and found no evidence to indicate that Firm A had been intentionally favoured by Road Service officials. The Department contends that the results of its investigation are supported by the findings of the High Court in February 2011. It maintains that the High Court judgment, in a case brought by the Whistleblower which involved complaints about earlier competitions, is relevant. The Department stated that this found

¹³ An important part of forensic auditing is that auditors need to be alert for situations, control weaknesses, inadequacies in record keeping, errors and unusual transactions or results which could be indicative of fraud, improper or unlawful expenditure, unauthorised operations, waste, inefficiency or lack of probity.

no evidence of favouritism or bias by officials. However, it is our view that this part of the later judgment only dealt with two of the 22 allegations (Allegations 8 and 20) reported on by the Investigation Team but, in any case, is not relevant to us in forming a view on the adequacy of the earlier investigative process.

48. In reviewing the Investigation Team's papers, we noted a number of issues of non-compliance that were explained as operational mistakes. The Department maintains that the Investigation Team carried out detailed examinations into these issues in an effort to determine how these errors had occurred. It was alert to the possibility of favouritism or bias but, based on the information obtained, concluded that mistakes were due to a combination of procedural shortcomings, human error and expediency. We found no evidence to show that these matters were examined forensically to determine if there was either favouritism to a particular firm or bias against the Whistleblower.
49. Allegation 14 alleged that orders which the Whistleblower's company should have received were given to Firm A. The Investigation Team examined this allegation and found that six errors favoured Firm A (valued at £2,813) and one error (valued at £850) favoured the Whistleblower's firm. The errors were predominantly in one of the Road Service Divisions. The Investigation Team viewed the errors as mistakes rather than as an indicator of potential wrongdoing and undertook neither further forensic work nor more targeted sampling to determine whether favouritism or bias was a cause. The approach taken demonstrates a lack of desire to determine the true level of error or assess whether favouritism or bias
- was present. Additionally, a previous investigation (see paragraphs 10 and 11) which found non-compliance errors to the value of over £22,000 relating to Firm A should have impacted on the Investigation Team's considerations of its findings. In our view, the presence of errors, which over a sustained period favoured one firm, is a strong indicator of the possibility that something other than human error is the sole cause, such as either favouritism or bias.
50. The Department maintains that the Investigation Team was alert to the possibility of favouritism or bias but, based on its analysis of the relevant evidence, concluded that the more likely cause was a combination of procedural shortcomings, human error and expediency.
51. In relation to Allegation 18, it was found that in July 2004, Road Service allocated work to Firm A which was covered by a contract to another company. Roads Service sought a single quotation from Firm A when non-contracted work of this nature required three quotations. The official involved, Official M, recognised his mistakes, but they occurred in the context that he should have been alert to the existence of a contract and he would have been familiar with procurement procedures and guidance issued by the Chief Executive of Roads Service (paragraph 11). In our view, the fact that Official M did not fully apply an existing contract or adhere to procurement procedures may be viewed as an innocent mistake but equally may be considered a 'red flag', indicating possible favouritism to a particular contractor. In this case, the Investigation Team failed to investigate sufficiently whether favouritism existed.

52. The Department maintains that Official M ordered the signs from the correct supplier under the supply and delivery contract (Firm A). In the Department's view, his mistake was to order Firm A to erect the signs as well, rather than requesting a Road Works Contractor to do the work. The Department does not view this as a disadvantage to the Whistleblower's firm and the Department does not see this as an indicator of favouritism.

53. The Whistleblower alleged that, in the evaluation of a contract in 1998, an annotation on his scoring frame was to his disadvantage. The Investigation Team examined this allegation as part of its work on Allegation 4. It found that:

- the Whistleblower's scoring frame had been annotated with the comment '*past delivery difficulties*'; and
- Firm A also had delivery difficulties but this fact was not recorded on its scoring frame.

The Investigation Team stated in its Report that it was unable to establish why the comments were made on the scoring frame and their impact on the award of the contract. In our view, there was a failure by the Investigating Team to clearly highlight in its Report the strong indicator of bias being shown against the Whistleblower with regard to the annotation of '*past delivery difficulties*' on his scoring frame.

54. It is apparent from these examples that there are strong indicators that either favouritism was being shown to Firm A or there was bias against the Whistleblower. Our assessment is based on the aggregation of 'red flags'

over a number of allegations and this suggests to us that the explanation of human error was a premature judgment in the absence of further forensic work. In response to this report, Firm A and the Whistleblower provided comments. Firm A told us that it totally refutes that there was any conspiracy in the form of bias or favouritism. It added that it had always won tenders strictly according to the criteria (see Appendix 7). The Whistleblower told us that it is his belief that there was favouritism by the Department's Roads Service towards his competing firm and moreover that there was an inbuilt prejudice by senior management towards him personally and, by implication, to his firm. For the reasons provided in this section, the Department does not believe there is evidence of favouritism or bias, nor does it accept any inference of such behaviour

Allegations of Collusion

55. Another recurring theme in the allegations was that of collusion¹⁴ between Roads Service, CPD and LEDU. We noted that the Investigation Team provided Invest NI with a list of questions in relation to Allegations 10 and 19 to which Invest NI provided answers. The Investigation Team visited Invest NI premises and examined Invest NI files. DFP told us that all relevant CPD files were made available to the Investigation Team. However, in our review of the Investigation Team's papers, we noted the absence of a complete audit trail showing how the allegation of collusion was comprehensively investigated, and what facts were established from the review of Invest NI, Road Service and CPD files and by way of interviews, which led to the conclusion in the 2010 Report.

¹⁴ The theme of collusion is present within Allegations (including subsequent elaborations from the Whistleblower) such as 4, 8, 9, 10, 12 and 19.

56. The Department notes that there is no evidence to support the allegation of collusion, merely the absence of an appropriate audit trail in the Investigation Team's papers. Firm A told us that it totally refuted that there was any conspiracy between LEDU, Roads Service and CPD (see Appendix 7). Official E told us that, as the purchasing manager responsible, he cannot recall any contact from LEDU or any other Government agency discussing any company involvement in this procurement.
57. The techniques used by the Investigation Team in its review included benchmarking, sampling, interviews and documentary review. The application of these techniques, and examples of the weaknesses in their use, are discussed at paragraphs 58 to 69.
- Benchmarking**
58. In Allegation 1, the Whistleblower alleged that the evaluation criteria were changed over a number of contract cycles as a mechanism to ensure that Firm A obtained the lion's share of work. Significant changes occurred in the evaluation criteria and their weightings over five procurement cycles, for example an increase in the weighting of quality factors from zero in 1997 to 70 per cent in 2005 (see Appendix 2). The Whistleblower saw this trend as a means of favouring Firm A. We found no evidence in the Investigation Team's papers during the four years of the investigation to benchmark these changes against procurement competitions run by the Department for other non-complex goods and services. The Investigation
- Team relied on changes in procurement policy and practice for explaining this trend, but did not question the basis of the significant increase in the weighting of non-cost factors from 0 per cent in 1997 to 70 per cent in 2005.
59. In response, the Department told us that the Investigation Team had questioned the basis for the decisions made to change the weightings and received the explanation that the split was appropriate and permitted by the EU Public Supply Contract Regulations 1995. The Department provided us with evidence of comparisons with weightings applied in other competitions run by Roads Service/CPD. The information provided on comparison of procurement weightings was gathered after the publication of the 2010 Report, in response to the subsequent High Court action, and is therefore not relevant to our review of the adequacy of the earlier investigation process. Official E told us that he was the CPD purchasing manager for the 1999 tender and that, during this period, the trend was very much away from using lowest price and it was entirely appropriate to introduce a qualitative element.
60. Our review also noted that only limited benchmarking was undertaken on Allegation 13, where the Whistleblower claimed that Roads Service received very poor value for money over an eight year period, "*paying about 30 per cent above current market rates*". In addition, little consideration was given to the impact on value for money of the move from price to quality factors between 1997 and 2009 on signage products, whose manufacture is regulated by a detailed Roads Service specification handbook.

61. The Department pointed out that contracts were tendered through the European Journal, which provides a control to mitigate against poor value for money, and that the use of price/quality evaluation is based upon an analysis of whole-life costs. The Department emphasised that focussing on cost only does not take account of associated costs that might be incurred by organisations such as Roads Service in following up late or overdue orders.
62. We found no evidence of any consideration of whole life cost and while we accept that competitive tendering took place, a quality weighting of up to 70 per cent for a regulated product increases the risk of favouritism, because of the subjective nature of the assessment of non-cost factors. In our view, these road signage contracts, where the quality of the product is regulated and inspected on delivery, should be procured substantially on price or on price alone. Indeed, we consider that many other products purchased by the public sector should be procured on this basis.
63. In relation to benchmarking, the Department stated that it was its understanding that Roads Service carried out a benchmarking exercise in response to communications with the Whistleblower. The benchmarking exercise compared one year's pricing information from two sources in Great Britain. The Department pointed out that the Investigation Team examined the benchmarking work carried out by Roads Service as part of its enquiries when undertaking its investigation on Allegation 13. We are concerned that the Investigation Team did not carry out its own benchmarking exercise but simply relied on evidence provided by Road Service officials. Additionally,
64. we found no evidence that the basis of the Whistleblower's own benchmarking evidence had been obtained and considered.
64. The Department maintains that during several meetings and contacts between the Whistleblower, NIAO and the Investigation Team, information was requested from the Whistleblower to support his views that Roads Service was paying about 30 per cent above current market rates. The Department states that the Whistleblower did not provide information to either NIAO or the Investigation Team in support of his claims.
- ### Sampling
65. In response to Allegation 14, a judgmental sample of 168 orders was tested, selected evenly from across the four Roads Service Divisions (Eastern, Southern, Western and Northern). In reviewing the sampling approach, we identified a number of issues:
- the Investigation Team was not able to use a statistical sampling approach for the identification of orders to be tested and therefore any errors found could not be extrapolated to arrive at a view as to the likely size of total error. The Department explained that the Investigation Team did not have details of all the orders placed, as the order monitoring spreadsheet was only introduced in 2002. In addition, older order books had been destroyed in line with the disposal policy. The Investigation Team selected its sample by trawling through order books, searching for orders placed for road traffic signs;

- we noted that the sample was extracted in 2009, yet the original allegation was received in November 2005;
- because the Whistleblower had alleged particular concern in relation to Northern and Western Divisions, the basis of sampling was inappropriately focused. The Department stated that the Whistleblower had raised concerns about all four Divisions at various times so the Investigation Team considered that orders placed in each Division should be examined. While we accept the Department's comment, we would have expected to have seen consideration of a weighted sample to address the Whistleblower's particular concerns in relation to the Northern and Western Divisions;
- Western Division accounted for five of the seven wrongly placed orders (see paragraph 49), yet a larger additional sample was not extracted in that Division to help make a more accurate assessment of the actual level of wrongly placed orders. The Department commented that further analysis was conducted within Western Division as to why the seven orders were misplaced. This revealed that there had been a high turnover of staff and the inexperience of newly appointed staff appeared to be the most probable explanation for the errors. The Department also commented that the Investigation Team had found there was scope for potential confusion in the allocation of work to the successful tenderer, which resulted in three recommendations being made in the 2010 Report. While we note the Department's comment, it particularly concerns us that additional testing was not undertaken for the reasons given by the Department, when the testing undertaken had revealed that the majority of errors found disadvantaged the Whistleblower and favoured Firm A;
- the sample covered the period 2002 to 2008, yet the Whistleblower's company went into liquidation in November 2005. The Department told us that it was important to ascertain if there were still problems with orders being misplaced, hence the decision to include some orders from 2006-2008, after the Whistleblower's company had gone into liquidation. A further reason was to ascertain if the problems were systemic and whether there were any underlying reasons, for example whether at the start of new contracts, staff had erroneously referred to previous contract schedules instead of the extant ones. We disagree. The correct sequence should have been to sample the period covering the Whistleblower's concerns, before extending the sampling to later periods; and
- the Investigation Team drew its sample from across all orders for road traffic signs when, in our opinion, the focus of the sample should have been on orders placed with Firm A. The Department told us that it was good practice within investigations of this nature to assess the extent of any problem that may be identified, hence the wider sample. This approach identified one supplier who was not contracted to supply

road traffic signs. Once again, in our opinion, the investigation should have looked first at the specific concerns of the Whistleblower and, if those concerns were found to have merit, then extended the investigation to look at orders placed with other suppliers.

Interviews

66. Internal Audit conducted interviews and discussions with 16 officials and three contractors. There is documentary evidence of these interviews and discussions, including the questions and answers. Five of the officials were interviewed in 2007 and 2008 in relation to Allegations 16 to 18, which involved motorway signage. The other 11 officials and the three contractors were interviewed in February and March 2009. Many of the questions asked were standard questions about procurement processes, relevant to Allegations 1 to 3, with specific questions on other allegations¹⁵. These interviews were a significant source of evidence for the 2010 report. We found that:

- Official B, who was mentioned frequently in the Whistleblower's correspondence as a witness or as being present at meetings which were the background or preamble to allegations, was not interviewed. Also, the documentation held by the Investigation Team, and interviews with other officials, indicated that Official B may have had a role in decisions which were relevant to allegations made by the Whistleblower. The Department told us that, while none of the allegations were specifically directed at Official B, it had spoken to him on a number

of occasions to clarify matters relating to his involvement in the procurement competitions and other matters raised by the Whistleblower. We noted that there is no record of these discussions in the investigation papers;

- the Whistleblower was not interviewed, even though he was a material witness in relation to some of the allegations made and could have been interviewed to ascertain facts relating to the events referred to in the allegations. The Department advised that sufficient information was gleaned from:
 - the two meetings in 2007 at which the Whistleblower and the lead investigator were present and the lengthy telephone conversation between them in October 2008 (paragraph 35); and
 - extensive correspondence submitted by the Whistleblower through the NIAO.

In the opinion of the Investigation Team, this negated the necessity for a further meeting with the Whistleblower. Notwithstanding the Department's comment, it is our opinion that the failure to hold a structured interview with the Whistleblower about any of the allegations represents a significant mistake on the part of the Investigation Team;

- where the responses to interview questions merited further investigation, this did not always happen. For example, there was no further interviewing to clarify inconsistencies in the responses of Officials E, F and G in relation to questions on

¹⁵ Various officials were interviewed in relation to 15 other Allegations (4 to 14, 16 to 18 and 20).

Allegation 4. These related to the alteration of markings on a scoring frame alongside references to the Whistleblower's past performance difficulties during the evaluation of the 1999-2001 procurement. The Investigation Team told us that it regarded the evidence to be inconclusive. It was therefore unable to comment definitively on the issue; and

- Firm A told the investigation that Official A had requested sponsorship from 2005 to 2007 for the Annual Golf Tournament of Official A's professional body and had received between £50 and £100 each year. The disclosure by Firm A occurred after Official A had been interviewed by the Investigation Team and had not mentioned that he had any personal dealings with Firm A. We did not see evidence to show that disciplinary proceedings were considered against Official A. The Department told NIAO that existing Roads Service Conflict of Interest guidelines had not been breached by Official A. There was evidence that the Investigation Team consulted the NICS Code of Ethics but the detail of its consideration as to whether the Code had been breached or not was not recorded. However, the Report recommended the strengthening of guidelines for Roads Service officials, including consideration of the obligations set out in the NICS Code of Ethics.

Documentary review

67. There was insufficient forensic analysis of documents in relation to a number of allegations¹⁶ which clearly suggested issues more serious than administrative or process irregularities. For example, in Allegation 4 the Whistleblower alleged that the evaluation scoring frame for the 1999-2001 tender had been amended to favour Firm A, the successful tenderer. His firm's scoring frame had also been annotated with the comment "*Past delivery difficulties*" (see paragraph 53) against the delivery criterion. No comments had been made on the other tenderers' scoring sheets. The Investigation Team queried the use of this remark with CPD, who were unable to offer a definitive explanation but sought the reason for its inclusion from Roads Service staff. An explanation was later received confirming, and providing evidence, that Roads Service had raised concerns about the Whistleblower's previous poor delivery record. The Investigation Team concluded that it had been unable to establish why the scoring frame had been annotated with this comment and to what extent this impacted on the overall score on the awarding of the contract.
68. Our review found that:
- the basis of this specific criticism of the Whistleblower's delivery performance was not investigated sufficiently by the Investigation Team to get to the heart of the matter (alleged bias against the

¹⁶ Examples included Allegations 1, 4, 6, 10, 16 and 17.

Whistleblower), nor was it formally recorded through a review of the records of the Whistleblower's company's delivery performance and comparison with the performance of the other tenderers, and the interview of relevant officials;

- during the period 1999-2001, there was no order monitoring system detailing delivery performance.¹⁷ Prior to this, Roads Service relied on correspondence on files;
 - while we did not conduct our own review of these circumstances, we did note from both the Report and the evidence held by the Investigation Team that Firm A also had delivery difficulties when the order monitoring system was introduced. This point was acknowledged in the 2010 Report;
 - CPD officials advised the Investigation Team, at interview, that the performance of companies on previous procurements should not have been taken into account in this competition. In its report, the Investigation Team referred to the inclusion of a comment on '*past delivery performance*' on the tender evaluation scoring sheet but did not disclose the view of CPD officials relating to the improper use of the comment. We are concerned at the failure to disclose this important point. The Department noted that it was not possible to confirm the reason for
- the inclusion of the comment or to what degree this had impacted on the scores awarded. In completing our review, DFP told us that, while the record of interview may be correct, the comment attributed to CPD official(s) was factually incorrect and should not have been stated. It added that, in 1999, it was legitimate for comments to be recorded on a tenderer's past performance; and
- the risk of operational bias in Roads Service's dealings with the Whistleblower was not examined, which is surprising given other findings in the report (see paragraphs 48 to 54). The Department told us that the Investigation Team was alert to the bias theme throughout the investigation and that the High Court had considered and dismissed certain aspects of discrimination and bias, for instance the conduct of the 2010 tender evaluation panel, as alleged by the Whistleblower. While we note these findings, it is important to point out that the subsequent High Court findings are not relevant to our review of the adequacy of the earlier investigative process. Furthermore, the High Court proceedings did not cover 19 of the 22 allegations made by the Whistleblower.

¹⁷ An order monitoring system was introduced in May 2002, but in its investigation of Allegation 14, Internal Audit found that one of Roads Service's Divisions had not entered any details between May 2004 and March 2005, whilst in another Division there was a retrospective exercise in April 2009 to enter orders placed since late 2007.

Conclusion and recommendations

69. We found a number of significant weaknesses in the application and use of forensic audit techniques employed by the Investigation Team in investigating the Whistleblower's complex complaints. These techniques should have been used to prove or disprove serious aspects of a wide range of allegations with a recurring theme, such as favouritism, where there were, in our view, strong indicators that other firms may have been the beneficiaries of preferential treatment or that bias may have operated against the Whistleblower. As a result, we are not satisfied that all of the allegations were thoroughly investigated. It is important that:

- at the outset of an investigation, there is an initial evaluation of all allegations, to identify the forensic analysis that should be applied, particularly in situations where there may have been economic crime or loss; and
- the application of these techniques should be critically assessed by the lead investigator and any inconsistencies or uncertainties arising from the collection of evidence or interviews should be the focus of further forensic analysis, to establish the factual accuracy of the events that took place. The aim of this work must be to prove or disprove the allegations and, if proven, provide evidence in an acceptable format for any subsequent criminal or disciplinary proceedings.

70. For the reasons it gives above, the Department does not believe there is evidence of favouritism or bias, nor does it accept any inference of such behaviour. The Department also maintains that in his legal action (see paragraph 6 and Appendix 6) the Whistleblower alleged bias (actual or apparent) against his firm in relation to the 2010 competition and earlier competitions. The Department therefore considers that the High Court findings are relevant to the assessment of the adequacy of its investigation process. It told us that, after a lengthy trial which dealt with many of the issues and allegations reported in the investigation, and also included the cross examination of members of staff under oath, the judgment found no evidence to support allegations of favouritism or bias against the Department.

71. Firm A told us that poor delivery should be set in context and it referred to the Investigation Team's report which showed that approximately 75 per cent of all orders from the Whistleblower's firm and approximately 30 per cent from Firm A were being delivered outside the 15 day requirement. Firm A also noted that it had records to prove that Roads Service was satisfied with its delivery and that these could be forensically tested (see Appendix 7).

72. The relevant extracts of the Court judgment stated that:

In favour of the Department:

- There was no wilful attempt to conceal the existence of relevant information [Allegation 8 at Appendix 1 of this report];
- I am satisfied that [in relation to the award of contract schedules under the 2005 competition] the decision was not made to advantage or disadvantage any particular tenderer nor was the advice offered on that basis. Further, I am satisfied the circumstances in which schedules O,P, Q and R of the 2005 tender were dealt with by [these officials were named in the judgment] provide no basis for any complaint of actual or apparent bias;
- I am satisfied that there was no impropriety arising from his visit [Official A] to the [Firm A is named in the judgment] trade stand [Allegation 20 at Appendix 1 of this report];
- I have not been satisfied that there is any basis for concluding that Roads Service officials acted in a discriminatory manner or that there was bias, actual or apparent, in not contracting with the Plaintiff's [Whistleblower's] company between 2006 and 2009;
- I have not been satisfied that there is any basis for concluding that Roads Service officials acted in a discriminatory manner or that there was bias, actual or apparent, in not

contracting [for the supply of traffic signs] with the Plaintiff [Whistleblower] between 2009 and 2010;

- I am satisfied that, in effect, the decision to adopt the 40 per cent quality mark was that of [a named official] and I am further satisfied that he did not adopt the 40 per cent quality value so as to advantage or disadvantage any particular tenderer. The Plaintiff's [Whistleblower's] alternative complaint of favouring [Firm A] concerned the change of the price/quality ratio in April 2010 from 80/20 to 60/40. Again I am satisfied that the change was brought about by [the same named official's] decision to secure a 60/40 split and that he did so without seeking to advantage or disadvantage any particular tenderer;

In favour of the Whistleblower:

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

73. The Whistleblower told us that his long-standing belief is that the Department had been applying an inappropriate cost/quality split for the purchase of traffic signs and noted that the most recent competition used a 100 per cent cost basis. The Department points out that the High Court endorsed the principle of a cost/quality split (as recorded at paragraph 72). The Department adds that the most recent competition did include a quality requirement validated by accreditation through the relevant Highway Sector Scheme.

74. The Department advised us that it sought an independent legal opinion on the court judgment. The opinion re-affirmed that the judge, after taking account of a past history of dispute with the Whistleblower, rejected all the bias-related allegations, as well as other allegations of manifest error in the marking of tenders. Furthermore, the opinion highlighted that it would have been very difficult for the Whistleblower, had he chosen to appeal, to overturn factual findings on the bias issues, made by the judge, after hearing the relevant witnesses.

75. It is important that our review is clearly understood in the context of the Department's comments on the High Court judgment. Our work reviewed the adequacy, quality and thoroughness of the Department's investigation process and subsequent report on allegations made by the Whistleblower and our findings are set within the context of what we would consider to be guiding principles for investigations of this nature. Our work did not re-perform the Investigation Team's work, which would have required interviewing the

relevant individuals and gathering and marshalling evidence, still available, to form a view on the truth of each allegation. The High Court examined oral and documentary evidence (including the Department's 2010 report) in respect of only three of 22 allegations made by the Whistleblower and contained in the 2010 report, and made a judgment on the truth of those allegations.

The evidence was not collected to a sufficient standard

Guiding Principle

76. At the start of an investigation, a planning document should clearly state how evidence is to be handled. This should include the evidential standard that is to be applied (for example criminal, civil and/or disciplinary) to enable appropriate sanctions to be applied.

What we found

77. Given the seriousness of the allegations, it would be good practice for evidence to have been collected to a standard that would have facilitated further action, if the evidence supported this. The following matters are pertinent:

- there was limited examination of potential breaches of legislation, rules and regulations and public standards of propriety, including the full extent, quantification, and reason for breaches of internal controls and the identity of the officials involved (for example in relation to Allegation 14). The Department stated that where

breaches or non-compliance were identified (in Allegations 14, 17, 18 and 22), they were investigated. However, the Department also stated that, given the dates concerned, the investigation was constrained by lack of access to all historical information and relevant staff;

- the formal record of interview notes on file was not signed and agreed between the parties; and
- on two occasions, the Investigation Team interviewed two officials together (F and G; H and I) instead of individually:
 - Officials F and G were interviewed together on matters relating to Allegation 4, where the Whistleblower alleged that markings on his firm's scoring frame for the 1999-2001 tender were altered by CPD/Roads Service and consequently his firm lost out on major parts of the contract, which were given to Firm A; and
 - Officials H and I were interviewed together on Allegation 8, where the Whistleblower alleged that they were two of the three officials who fabricated a site visit to his premises.

78. The Department told us that Officials F and G were both involved in the 1999-2001 procurement but the focus of the interview was Official G. Official F was accompanying him, as is permitted practice, at his request and was offering comment from his perspective as a buyer in Roads Service and a seconded member of CPD. We note

the Department's explanation but in our view it was wrong for Official F to be in attendance at this interview. Separate interviews should have been conducted to get to the heart of the conduct and actions of each of the officials in relation to the procurement exercise which was the subject of the allegation under investigation. Allowing both officials to be interviewed together heightens the risk that the interviewer may not sufficiently challenge and compare individuals' accounts of their conduct and actions. CPD told NIAO that its officials, F and G, were not asked to attend separate interviews.

Conclusion and recommendation

79. Notwithstanding the Department's comments, we doubt whether the planning and execution of the collection of evidence (including the timing) met proper investigative standards, had appropriate sanctions been found necessary.
80. It is important that investigators assess at the planning stage the potential gravity of the allegations made and the potential breaches of rules and regulations, and consequently investigate these to a commensurate standard without undue delay.

81. The Department acknowledged that, while in some instances record keeping could have been enhanced, the Investigation Team fully appreciated the potential gravity of the allegations. It stated that the Team conducted its work diligently and was mindful of its obligation to adhere throughout to the professional and ethical standards laid down by the Internal Audit profession.

All allegations were not adequately investigated

Guiding Principle

82. It is important that all allegations made by whistleblowers relating to the proper conduct of public business are rigorously evaluated and, where warranted, thoroughly investigated to the fullest extent required by the substance and nature of the complaint made.

What we found

83. The Investigation Team did not investigate and report on all allegations made. This occurred in the context of limited engagement with the Whistleblower (see paragraph 66, second bullet point). There was no evidence in its papers of:

- a proper evaluation of the allegations to determine those that warranted investigation;
- who made the decisions not to investigate certain allegations, when those decisions were made and why they were made; and
- the criteria for regarding particular allegations as key ones.

84. The Department told us that, in certain instances, the absence of supporting evidence or substantive detail provided by the Whistleblower, the absence or unavailability of relevant documentary evidence on departmental files, a lack of, or incomplete, recollection of events by officials (or the unavailability of officials) alleged to have been involved, limited the amount of work that could be undertaken. Furthermore, in relation

to decisions made on what allegations were key, it accepted that the agreed outcomes may not always have been comprehensively documented in the working papers or referred to in the final Report.

85. In the 2010 report, the wording of seven of the 22 allegations examined differed from that stated by the Whistleblower and passed to the Department (see Appendix 3). This editing reduced the scope of the allegations and potentially the amount of investigative work required. For example, in Allegation 17, the Whistleblower also made a serious allegation in the context of 24 motorway signs purchased by Roads Service from Firm A in 2004, but not erected by Roads Service until Spring 2006. The Whistleblower pointed out that the language used to an MP conveyed a clear impression that Roads Service had received the signs prior to the start of design work. He claimed that the reluctance to provide information and the reluctance to tell the truth to an MP are symptomatic of Roads Service's culture of covering up the truth. The Department told us that its response to the MP was factually correct. The signs were received and paid for by Roads Service and held in store by the supplier until they were erected. The Department said that this was investigated as part of Allegation 17 (see Appendix 1) but accepts that it was not explicitly reported on in the conclusion reached.

86. The Department advised us that, for the majority of the seven cases, the detail omitted in editing the allegations was merely contextual and the wording used still retained the essential thrust behind the allegation. We disagree. The example

given above demonstrates clearly that editing was not merely contextual. Furthermore, we conclude that, while aspects of Allegation 17 were examined, there was nothing in the investigators' papers challenging the accuracy and completeness of the information given to the MP.

87. A significant number of the identifiable allegations that the Whistleblower made, particularly in 2006 and 2007, were linked or overlapped with allegations already made and therefore fell properly within the investigative scope of allegations in the 2010 report. The Whistleblower made seven allegations (see Appendix 4) to us that were not covered in the 2010 report. Examples of allegations not investigated are:

- substandard signs were observed at Omagh depot and a sample was given to Official B (Appendix 4, number 2); and
- Firm A cut costs after winning contracts by producing signs to a much lower specification (Appendix 4, number 5).

88. Firm A told us that it totally refuted the allegation that it would cheat on the specification, by producing signs to a lower specification. Firm A pointed out that this allegation was not included in the Department's report and it has no evidence of this, having not been given the opportunity to inspect the alleged sign. Firm A did inform us that it was aware of signs supplied by others that did not meet the standard and recommended that the Department should use an independent expert to check signs produced by all contractors (see Appendix 7).

89. The Department accepts that the outcomes of the investigation of all allegations were not fully reported in the final report.

Conclusion and recommendations

90. Some allegations were not investigated adequately.

91. A number of allegations were edited, which resulted in important aspects of the original allegation by the Whistleblower not being adequately investigated. This was done without discussion with the Whistleblower.

92. A whistleblowing report should include a verbatim record of all allegations made by a Whistleblower. Decisions not to investigate particular aspects should be communicated on a timely basis to the Whistleblower, explaining the reasons.

93. Investigation reports should contain a statement that the report encompasses the investigation of all allegations made. Where this has not been possible, or has not been undertaken, the limitations on the investigation, including the reasons for such exceptions, should be disclosed in a transparent manner.

94. The Department told us that the scope, complexity and volume of allegations received were relevant contextual factors. It fully accepts that, for the future, the procedures recommended at paragraphs 91 to 93 should be followed.

Formal oversight by senior management during the progress of the investigation was limited

Guiding Principle

95. The Management Board, Audit Committee and senior management of the body with responsibility for the area under examination need to be kept informed of all serious allegations, the terms of reference of investigations, their progress and outcomes.

What we found

96. In the case of this investigation, we noted that senior management oversight was exercised through regular updates to the Department's and Roads Service's Audit Committees which were attended by the Accounting Officers. The matter was also discussed during stock-take meetings between the Department's Deputy Secretary and the Head of the Investigation Team and also at meetings between the Permanent Secretary and the Head of the Investigation Team. We were told that throughout the period of oversight there were 39 such meetings, at which the progress of the investigation was discussed (Appendix 5). However we noted that, over the four calendar years, there were only eight occasions when the minutes of the meetings recorded a discussion on the investigation, and on those eight occasions there was no evidence of challenge from those charged with governance.

Conclusion and recommendation

97. There was insufficient evidence to confirm that this substantial and long running investigation was adequately considered by senior management and by those charged with governance, particularly the departmental Audit Committee which is attended by the Accounting Officer.
98. The important lesson for future investigations is that there should be regular reporting and recording of progress to those charged with governance, including any risks to delivery and proposals to manage those risks. After consideration of the issues arising, this will allow board members and senior management to be better informed as to progress and take the appropriate steps to facilitate timely delivery.

99. The Department accepts that there was an insufficient evidence trail maintained to illustrate the nature and extent of senior management oversight. It fully accepts the recommendation at paragraph 98 above for future investigations.

The investigation did not take full account of relevant findings from a previous investigation

Guiding Principle

100. In planning an investigation, investigators should have an awareness of previous investigations that may be relevant, as findings based on work of a professional standard represent good evidence. The planning stage should also involve ascertaining if there are

any other reports, investigations or concerns raised by others that could be relevant to the allegations being investigated. Investigators should not make the assumption that the findings will repeat or be similar to those of previous investigations, but if non-compliance is found, then the relevance of the work and findings of previous investigations must be considered carefully.

What we found

101. Complaints made by the Whistleblower in 2001 and 2002 (see paragraphs 10 and 11) were similar to Allegation 14 and related to orders which the Whistleblower should have received but which were given to Firm A. Investigation of the 2001 complaint revealed there was substance to some of the Whistleblower's allegations to the extent that, at three sites under investigation, it was found that:

- conventional signs purchased from Firm A (at the same time as plastic signs (for which no contract was in place)) could have been sourced from the Whistleblower's firm under contract;
- staff made unilateral decisions about using plastic signs and going off-contract, not adhering to the procurement procedures for the purchasing of these signs; and
- there was no evidence that other Roads Service Divisions used plastic signs and in the instances under investigation, it would have been appropriate to use conventional signs from the Whistleblower's contract.

102. During a 2002 investigation of four further complaints from the Whistleblower, the Department found that they had merit to the extent that:

- 12 signs were purchased from Firm A although the Whistleblower's firm was the approved contractual supplier;
- 12 similar signs were purchased from Firm A (off-contract) without quotations from either Firm A or any other supplier, including the Whistleblower's company ; and
- 8 speed limit signs were purchased (off-contract) from Firm A, without quotations from either Firm A or any other supplier.

The Whistleblower did make other complaints in 2001 and 2002 which were not sustained or were withdrawn.

103. These earlier findings were not taken into account by the investigators, except for a note in their report that, as a result of a complaint made in November 2001, an Order Monitoring spreadsheet was established in May 2002 to monitor delivery performance. The Department disagrees that the earlier findings were not taken into account. It told us that they were noted, but that this investigation had focussed on the fresh allegations which the Whistleblower was making. The Department stated that it would have been prejudicial to have had preconceived views about the likely outcome of the investigation. The Investigation Team based its conclusions on a balanced and objective assessment of the available evidence, and the earlier reviews were not considered to be part of the scope of the current

investigation. In our opinion, as the findings of the earlier investigation found that signs were incorrectly ordered from competitors, more weight should have been given to these previous findings in shaping the direction of the investigation, particularly given the comments in 2002 of the then Chief Executive of Roads Service. He was of the view that the 2001 findings were a very serious offence and potentially ones that breached the NICS Code and asked his officials to take all necessary steps to avoid any repetition (see paragraph 11).

104. The Department told us that the Investigation Team did examine work in previous investigations carried out by Internal Audit/Roads Service and CPD (see paragraph 10) and took these into consideration. While these Reports are on the investigation files, consideration of them is not documented, apart from the reference outlined in the first sentence of paragraph 103.
105. In this investigation, in the judgmental sample of 168 tested as part of its work on Allegation 14 (see paragraph 65), the Investigation Team found seven orders incorrectly allocated to suppliers, with most of the errors relating to orders placed in 2002. It concluded that the errors may have been due to a combination of procedural shortcomings, human error and expediency. The investigators did not take account of similar findings in the 2001 and 2002 investigations. We note that the errors were repeated despite the strong view expressed by the then Chief Executive.

106. Another investigation by CPD in 2004 (in which the complaints were not upheld – see paragraph 10) was passed to the Investigation Team in early 2006. The team met the relevant CPD official in January 2006 to discuss his investigation. The Department told us that this was a fact finding interview to ascertain whether there was any direct read-across between the issues investigated by CPD in 2004 and the allegations which the team were investigating. The discussion was not documented by the Investigation Team. Supporting papers relating to the findings/conclusions were also examined by the Investigation Team.

Conclusion and recommendations

107. Previous investigations with findings that were adverse to Road Service were not adequately considered when similar findings were made during the course of the investigation. While there is a need to be aware of the risk of placing absolute reliance on previous investigations, current investigations should:

- take into account the work, results and recommendations of any previous relevant investigations or trends in complaints received; and
- ensure that the report also includes a concise summary of relevant work from previous investigations and/or similar complaints received.

108. The Department considers that the findings of the previous investigations were taken into account in this investigation.

The investigation was not completely objective

Guiding Principle

109. Independence, and the objectivity it promotes, is a basic good practice feature of whistleblowing investigations and not just those of alleged fraud, impropriety or irregularity. All members of an Investigation Team, including its leader, should be totally independent of the business unit under investigation. This is a principle enunciated by the Public Accounts Committee in more than one report¹⁸. Investigators must conduct their work in accordance with the highest standard of public principles, but particularly objectivity. This applies equally to those being investigated and those making complaints.

What we found

110. Much of the evidence and information on which the final report was based was provided to the investigation by Roads Service, CPD or Invest NI on the basis of requests made by the Investigation Team. Official F provided most of the information from CPD yet he was one of the officials who signed the scoring frame which was the focal point of Allegation 4 (paragraph 66). The devolution of evidence gathering was also evident in relation to Allegations 10 to 12, 16, 17, 19, 20 and 22.

111. The Department stated that at all times it had free and unfettered access to relevant files and documents relating to areas about which allegations had been made. The Investigation Team sought expert advice from Roads Service engineers, Departmental accountants and statisticians. The Department pointed out that the accountants and statisticians were not made aware of the context in which the evaluation was being sought. The documentation was then considered and analysed further by the Investigation Team. The Department also told us that there was a challenge function employed throughout the duration of the investigation. In addition to its perusal of information supplied during this process, the Investigation Team examined relevant files (see paragraphs 42-44) and interviewed relevant personnel (see paragraph 66). We did not see documentary evidence to support this further consideration and challenge.

112. The Investigation Team also based its reporting of Allegation 13 on limited benchmarking work undertaken by Roads Service in late 2006. The benchmarking data was collected by Official H, who was on the qualitative panel for the 2005-2007 competition, a panel which the Whistleblower claimed, in Allegation 8, had fabricated a site visit. This information relating to Official H was passed to the Investigation Team in March 2009. The Department told us that in relation to this allegation, the High Court judgment concluded that this site visit had not been fabricated.

¹⁸ Public Accounts Committee: Report on Internal Fraud in the Local Enterprise Development Unit – 11th Report of Session 2001/2002 (June 2002).

Public Accounts Committee: Report on the Investigation of Suspected Contract Fraud – 1st Report of Session 2009/2010 (July 2009).

113. In November 2009, the Investigation Team sent a draft version of the report to various officials in the Department, DFP and Invest NI. The purpose of circulating the draft was to enable the officials to advise of any factual inaccuracies. In December 2009, the Department was advised by the Departmental Solicitor's Office (DSO) that it was only necessary to clear the draft report with parties subject to adverse findings and in such cases they should be provided with just the relevant extracts. A complete draft of the report was sent to Firm A in late January 2010. Extracts of the draft report were sent to Firms B and C. However, nothing was sent to the Whistleblower.
114. In October 2009, the Head of the Investigation transferred to Roads Service, from an internal audit role to a line management one. He continued to head up the Investigation Team and complete the final report in January 2010. The Department maintains that the final report in January 2010 was not materially different to the draft issued prior to the transfer of the Head of the Investigation.

Conclusion and recommendations

115. The independence and objectivity of the investigation were weakened where aspects of the evidence gathering was devolved, in some cases, to officials who were implicated in the allegations. The Investigation Team gave less favourable treatment to the Whistleblower than to other competitor firms at a key point in the investigation. The head of the investigation transferred to Road Service while the investigation was ongoing.
116. Arising from this examination, our recommendations are:
- those tasked with investigating allegations must be completely independent of the officials or bodies being investigated. It is wrong that officials who are the subject of particular allegations should be gathering information relating to other allegations;
 - only the factual accuracy of draft reports should be cleared with those subject to adverse findings (not potential adverse effects, for example, a potential reduction in business);
 - those investigating allegations should take care to ensure that there is consistency and equality of treatment of all parties during the investigation process and up to the issue of the final report; and
 - if conflict of interest issues arise during an investigation, mitigating steps should be taken to protect the independence of the officials and the wider reputation of the Department concerned. The Public Accounts Committees of Westminster and the Assembly have issued recommendations on the handling of conflicts of interest.

117. The Department considers that independence and objectivity were maintained throughout the investigation but will nevertheless ensure that the points raised at paragraph 116 are considered for future investigations.
-

Appendices

Appendix 1: (paragraphs 3,26,72,85)

Allegations considered in the January 2010 report

1. The evaluation criteria were changed from 100 per cent cost over a number of contract cycles to 20 per cent cost and 80 per cent other. The changes to the evaluation criteria were just a mechanism used by Roads Service to ensure that their "*preferred supplier (Firm A) obtained the lion's share of the work*".
2. He (the Whistleblower) was never informed of the changes to the evaluation criteria.
3. At a debriefing interview for the 1999 contract, he (the Whistleblower) was told that the tender had been assessed on an 80:20 cost/quality basis. There was no reference in any of the tendering documentation to a quality dimension and he had not completed any paperwork relating to quality.
4. The markings on the Whistleblower firm's scoring frame for the 1999-2001 tender were altered by CPD/Roads Service and consequently his firm lost out on major parts of the contract which were given to Firm A.
5. Roads Service removed the Whistleblower's firm from the restricted list for the 2002-2003 tender competition on wholly spurious grounds but after the Stormont meeting they were reinstated.
6. For the 2002-03 tender competition CPD advised him (the Whistleblower) that the value of the contract schedules awarded to his firm would amount to 46 per cent of the total contract value, but in reality the value of the work given to him was somewhere between 18 per cent and 25 per cent as Roads Service gave most of the work to Firm A.
7. His (the Whistleblower's) main competitor [Firm A] was in financial difficulties at the evaluation period of the tender [1999-2001] and therefore should have been excluded from the process.
8. The qualitative panel (consisting of three Roads Service HPTOs and a CPD officer [Officials A, H, I and C]) who visited his premises fabricated a site visit record that was not factual and accurate. For example, the only person who took detailed notes during the visit was Official C. Some of the other officials have made written qualitative assessments on parts of the factory that they had not visited.
9. The sign he (the Whistleblower) was asked to make during an assessment [in relation to the 2005-2007 contract] was wrongly drawn as it was in accordance with the English handbook and not the Northern Ireland Road Sign handbook. He assumed that this was a deliberate mistake and part of the assessment. He alleges that the other companies who were also assessed would have been asked to make the same sign as he was asked to make and would have made the 'English' sign. He alleges that they [the other companies] all received higher marks than he did.
10. The award of the [1999-2001] contract was deferred so that his main competitor [Firm A] could gain a major financial injection from LEDU. He (the Whistleblower) alleges that his competitor gave LEDU a 66 per cent equity stake in the company for £20,000 and was offered a £60,000 grant. The £20,000 was paid on 25 February 1999 and £49,000 of the grant was paid over. He alleges that the tendering delay was to facilitate Firm A in sorting out its problems and in doing so, GPA (now CPD), Roads Service and LEDU were complicit in keeping Firm A afloat. He also alleges that his firm was now competing against a company where the majority shareholder was the government.^{19 20}

¹⁹ See Firm A's refutation of this allegation in Appendix 7, paragraphs 1 and 2.

²⁰ Official E told us that, as the purchasing manager responsible, he cannot recall any contact from LEDU or any other Government agency discussing any company involvement in this procurement.

11. Firm A had the contract for Motorway signs in three successive tenders and Firm B, who currently has the contract, will not receive any orders for Motorway Signs.
12. There are no tender procedures for the rental of large variable signs and this work has been allocated to Firm A. ²¹
13. Roads Service receives very poor value for money. He (the Whistleblower) estimates that Roads Service is paying about 30 per cent above the current market rates. This equates to a waste of around £2 million over the eight years that he has been in business.
14. Orders which he should have received were given to his (the Whistleblower's) competitors (Firm A).
15. The revenue stream afforded to the Whistleblower's company by Roads Service was very erratic compared with that provided to Firm A.
16. Roads Service employees show favouritism to Firm A by instructing third parties to allocate work to Firm A and not the Whistleblower's company. This was in relation to the erection of signs at Moira when he (the Whistleblower) alleges that Firm C told him they were phoned by Roads Service and told to appoint Firm A to erect signs.
17. New signage for the M2 Motorway was ordered in 2004 but not erected until 2006 by Firm A, as Firm A had the contract for these signs in 2004 and a new contract was being let in 2005.
18. In the Republic of Ireland, signage work is turnkey, i.e. the contractor makes the sign and erects it. The Whistleblower has asked Roads Service for similar work. This work is not tendered and his company has never been given it. Firm A do all this work.
19. Firm A received £80,100 in addition to the equity loan and the £49,000 grant. He (the Whistleblower) alleges that he applied for similar grants but wasn't awarded any until very recently [allegation made in July 2005]. ²²
20. An officer from Roads Service (named by the Whistleblower [as Official A]) is friendly with Firm A, the main Roads Service contractor. He spent a full day with Firm A at a trade fair in Amsterdam last year. ²³
21. Firm A is based in Louth and has never published accounts. ²⁴
22. Why is Firm D permitted to provide Road Work Signs without any Tender being in place?

Notes

1. NIAO passed fourteen of the allegations (1 to 3, 7 to 10, 12 to 14, 18 to 21) to the Department in November 2005.
2. The Whistleblower raised Allegations 6 and 11 directly with the Department in October 2006.
3. NIAO passed Allegations 16 and 17 to the Department in December 2006.
4. NIAO passed Allegations 4, 5, 15 and 22 to the Department in September 2007.

21 See Firm A's refutation of this allegation in Appendix 7, paragraph 8

22 See Firm A's refutation of this allegation in Appendix 7, paragraph 1

23 See Firm A's refutation of this allegation in Appendix 7, paragraph 4

24 See Firm A's refutation of this allegation in Appendix 7, paragraphs 3 and 9

Appendix 2: (paragraph 58)

Road Signage Contract Periods and Evaluation Criteria Used in Award

Contract Period	Evaluation Criteria	Weighting (%)
1997/1998	Price	100
1999/2001	Price – (lower weighting for non strategic items) Quality/delivery/aesthetic and functional characteristics	80/60 20/40
2002/2003	Price How the product range is delivered Systems employed for order receipt and payment	60 20 20
2005/2007	Price Manufacturing Processes Company Experience and Service Delivery Quality Environmental Benefits	30 25 25 15 5
2009	Price Process and Delivery Accreditation Environmental Benefits	30 45 15 10

Notes:

1. The contract periods for 2002/2003 and 2005/2007 were extended.
2. The 2009 cycle was discontinued and the procurement in 2010 was subject to a legal challenge by the Whistleblower.

Appendix 3: (paragraph 85)

Whistleblower Allegations Raised which were Reworded in the January 2010 Report

Allegations ²⁵ and Date raised with Department	Action Taken:
<i>Passed to Department in November 2005</i>	
<p>1. In the 1997-98 tender exercise, the Whistleblower's Firm were awarded what the Whistleblower described as a 'decent slice' of the business. However, to his dismay the awarding of the contract did not result in much business, as Roads Service bought the products that he had been awarded to supply, from other suppliers, principally Firm A. Two regions, Northern & Western, were most at fault.</p>	Allegation 14 in the Report (reworded).
<p>2. For the 1999 -2001 tender, the Whistleblower learnt that in December 1998, three days before the tender should have been let, Firm A held an emergency meeting in Newry to have the Memorandum and Articles of Association of the company revised to allow them to give LEDU a 66% equity stake in the company for £20,000 and offered a £60,000 grant. The £20,000 was paid on 25th February 1999 and £49,000 of the grant was paid over. The Whistleblower feels that the tendering delay was to facilitate Firm A in sorting out its problems and that in doing so GPA, Roads Service and LEDU were complicit in keeping Firm A afloat. This also meant that his firm was now competing against a company where the majority shareholder was the government. The Whistleblower also questioned whether LEDU would have bought a 66% stake in Firm A and give a large grant if Firm A did not have an order book of work. ²⁶</p>	Allegation 10 in the Report (reworded).
<p>3. A forensic audit will show that his main competitor (Firm A) was in financial difficulties at the evaluation period of the tender [1999-2001] and therefore should have been excluded from the process.</p>	Allegation 7 in the Report (reworded).

25 Some of the allegations investigated by the Department were reworded or edited by them. Edited allegations did not change the essential thrust of the allegations. Reworded allegations did significantly change the allegation in the 2010 Report and the significant changes are in bold.

26 See Firm A's refutation of this allegation in Appendix 7, paragraph 1

<p>4. The qualitative panel (consisting of three Roads Service HPTOs and a CPD officer) who visited his premises fabricated a site visit record that was not factual and accurate. For example, the only person who took detailed notes during the visit was the CPD staff officer (Official C). Some HPTO officers have made written qualitative assessments on parts of the factory that they had not visited.</p> <p>The Whistleblower questioned the competency of the Roads Service Officers to assess qualitative processes within a factory when they have displayed an ignorance of the fact that the specifications for the 'trial test' on his premises did not conform with the Northern Ireland Road Service signage handbook. He states that this can be verified by an inspection of the 'trial test' signs for both his company and the other tenderers.</p>	<p>Allegation 8 in the Report (reworded)</p>
<p><i>Passed to Department in December 2006</i></p>	
<p>5. The Whistleblower stated that Roads Service embarked on a programme to upgrade the direction signs on the M2 motorway between Belfast and Junction 5 at Templepatrick. His research indicated that in 2004 Roads Service designed 24 replacement signs and purchased them from Firm A under their term contract for the supply of traffic signs. Under the terms and conditions of these contracts the signs should have been delivered to Roads Service within 15 days. The Whistleblower noted that these signs were erected in the Spring of 2006 and delivery of the signs did not take place until they were required. He pointed out that the language used to an MP MLA conveyed a clear impression that Roads Service had received the signs prior to the start of design work. He claimed that the reluctance to provide information as detailed above and the reluctance to tell the truth to an MP are symptomatic of Roads Service's culture of covering up the truth.</p>	<p>Allegation 17 in the Report (reworded).</p>
<p>6. The Whistleblower also suggested that we examine the erection of signs at Moira and Sprucefield. In the case of the erection of signs at Moira which came after the M2 Motorway signage work, Firm C told him that they were phoned by Roads Service and told to appoint Firm A to erect the signs. The Whistleblower stated that the signage for the two gantries cost around £7,000. The Roads Service official who gave this instruction was an officer under the direction of Official J. This officer is suspected by the Whistleblower as one of the officers who shows favouritism to Firm A. Firm C phoned the Whistleblower as they did not want him to hear through the grapevine that Firm A were doing work for them when they always use him for their work.</p>	<p>Allegation 16 in the Report (reworded).</p>
<p><i>Raised by Whistleblower with NIAO in August 2007 and passed to the Department in September 2007</i></p>	
<p>7. The alteration made by them on our scoring sheet where they changed the figure from 40 to 30 in the delivery column effectively overturned the entire award that was, quite clearly, their motive/intention.</p>	<p>Allegation 4 in the report (reworded).</p>

Appendix 4: (paragraph 87)

Whistleblower Allegations Not Investigated and Reported on by Department

Allegations and Date raised with Department
<i>Passed to Department in November 2005</i>
1. The Whistleblower alleged that he tried to find out the competency and qualifications of those officers who were undertaking the assessment. He was refused this information. He is adamant that anyone who purports to quality score a contractor must know what the manufacturing process is about.
<i>Raised by Whistleblower with the Department and NIAO in June 2007 and passed to the Department in September 2007</i>
2. A lorry load of seriously substandard signs were observed at the Omagh Depot. A sample of these signs was placed in the possession of Official B at his request but we are not aware of any action being taken in respect of this. The Whistleblower also made known that many similar events regarding signs and marker posts had occurred mainly in the Armagh and Omagh depots.
3. The Whistleblower wanted to know how invoices were raised for the offending signs (particular signs that his company were on contract as being the sole supplier for some ten years but had not received all the work) by these other suppliers. He stated that either Roads Service had knowingly entered into separate arrangements with these suppliers, agreeing with them new rates/prices for work, or that they had made known to these suppliers his company's prices.
4. When Roads Service ran down their direct labour squad, Firm A got the work for erecting signs on motorways. The Whistleblower had repeatedly asked Roads Service for some of this work or at least the opportunity to tender for it. This never happened. Roads Service always indicated to the Whistleblower that there was a contract for the erection of signs. He wanted to know year by year, exactly what Firm A received for the erection of signage work on motorways. The Whistleblower referred to the erection of the 24 M2 Motorway signs in 2006. Firm C held the contract for the erection of the bases and a clause in his contract allowed him to erect the signs although, according to the Whistleblower, Firm C was under the impression that Firm A had a contract for this work. Firm C erected the bases during 2005 and finished in early 2006 but at that point the Whistleblower was never asked to erect the signs. Instead Roads Service asked Firm A for a quotation for the erection of the signs. Roads Service allocated the work to Firm A and they completed the erection of the signs in the Spring of 2006. The Whistleblower stated that however with him asking lots of questions, Roads Service were aware that they could be exposed as showing favouritism to Firm A, as Firm A had been allocated work but not under a contract. On 7 June 2006, Official K sent an email to an employee in Firm C authorising him to erect the 24 signs on the M2 although they were already erected. This was to create an audit trail that would show that the work was properly let under a contract. Firm C would be paid for the work and they would pay Firm A for the work in erecting the signs. Firm C would receive a fee for handling this process, some 15 [per cent] to 20 per cent of the amount paid to Firm A. This same process [as at June 2007] has happened since then and should be investigated.

5. Firm A cut costs after winning contracts by producing signs of a much lower specification. The Whistleblower stated that he acquired one of these signs and it can be inspected. He removed it from Robb's Road, Dundonald and replaced it with one of his own. Poor quality steel frames with sign plates not to specification are now being produced.²⁷

Passed to the Department in September 2007

6. During a meeting in June 2002, Official B provided an assurance that the events of the past would cease and that *"a line would be put in the sand and that we would try to start afresh."* The Whistleblower stated that he was instructed that in the event of any grievance he was to go to him [Official B] directly.

On 6 September 2002, the Whistleblower wrote to Official B advising that the practice of giving work to others had not ceased. At a meeting shortly afterwards, the Whistleblower alleged that Official B was at pains to point out that mistakes were pure human error (the same story his company had heard since 1997).

Official B asked the Whistleblower to desist from seeking legal rectification, making one final attempt to find a way forward. It was agreed at the meeting that the Whistleblower's company would prepare a document setting out clearly the signs to be supplied by them under the contract; the main purpose of the document to alleviate misunderstandings by the Department's Purchasing Officers.

The Whistleblower's company produced a document which was passed on 30 October 2002, on Official B's instruction, to Official L for checking prior to distribution to relevant staff. Despite numerous phone calls and e-mails the document had simply been made to disappear. Eventually knowing that legal questions were being asked, Official L informed the Whistleblower on 3 August 2004 that the document required a few amendments and had been returned to us. We never received this and when we asked for a copy showing the described changes we were informed that they had been scribbled on to a compliment slip. This doesn't seem like normal or believable practice of a government department. Official L could provide no further evidence of when this actually happened and he stated that he was no longer involved.

7. Despite their attempts the Whistleblower's company did nonetheless win the chapter 8 section [for the 2005-2007 contract] in its entirety so the cabal would employ a new fictional argument that there had been omissions in the pricing schedule and they had decided to sub divide that schedule. This they had no authority to do under the clearly defined conditions of contract. There were no omissions in his company's bid and the only elements they did not provide costs for were items that do not, nor ever will exist. Even if there had been a failure to provide full price on one element, then, if their prognosis had been valid, surely the winners of the correctly priced elements would have been awarded that portion. Using their contrived method to award the Whistleblower's company only plastic Chapter 8 signs, they did so knowing that this product had not been purchased in the past nor did they place a single order for it to the point when his company closed. The Auditor should be encouraged to check the total value of purchase of steel framed Chapter 8 bought within this same period. The Whistleblower's company had virtually been the sole supplier/manufacturer of for some ten years and certainly had been the winner of it again this time.

By their thoroughly corrupt actions CPD/Roads Service committed the public purse to a spend that was probably about double what it should have been in this entire area of work. Added to this we know that much of the product being accepted by Roads Service is seriously below specification and of a standard that would never have been accepted from the Whistleblower's company.

²⁷ See Firm A's refutation of this allegation in Appendix 7, paragraph 6.

Appendix 5: (paragraph 96)

Discussions at Audit Committee or with Senior Management (minuted discussion of investigation indicated in bold)

Year/ Quarter	Department's Audit Committee	Roads Service Audit Committee	Permanent Secretary	Stock-take - Deputy Secretary
2006/Q1				January
2006/Q2	June	May		May
2006/Q3				
2006/Q4	December	December		
2007/Q1				
2007/Q2	June	May		
2007/Q3				
2007/Q4	October, December	November	December	
2008/Q1			March	
2008/Q2	April , June	April, May	May	
2008/Q3	September	September	August	September (2)
2008/Q4	December		November	
2009/Q1	April	March		January, March
2009/Q2	June	June	April	May, June
2009/Q3	September	September		August
2009/Q4	November	November		
Total Meetings	13	11	6	9
Minuted discussion of investigation	4	4	N/A	N/A

Notes:

1. There were two stock-take meetings in September 2008.
2. Meetings with the Permanent Secretary and Deputy Secretary are not minuted.

Appendix 6: (paragraph 6, 70)

Departmental Comments on the Relevance of the High Court Judgment

"Findings from a recent, related High Court judgment, in which the plaintiff was the Whistleblower, are relevant to this matter because it considered a number of the allegations detailed in this NIAO report together with their context.

The main court hearing was held over 16 days and heard evidence from the Whistleblower covering matters back to 2005 and beyond, as well as the cross-examination of Departmental, CPD and Roads Service staff.

The case centred on a 2010 tender competition, but the judgment acknowledges in paragraph 9 that allegations in relation to previous competitions "have been carried over into the present proceedings". The court found that, in general, there was no evidence of bias or manifest error by Roads Service or CPD, although the judge set aside the award of 3 out of the 18 lots of the 2010 competition because he ruled that a proper analysis of the impact of adopting a particular price: quality ratio had not been undertaken.

Much of the evidence in the case related to the conduct of previous competitions, including the 2005 competition which was the subject of the Whistleblower's allegation and the subject of the Department's Investigation.

Individual allegations that are mentioned in this NIAO report are specifically referred to in the judgment. For example:

- Allegations²⁸ 1, 2 and 3 relate to the use of the percentage evaluation split of contractor price and quality (in the 2005 competition) as a means to favour a particular supplier. The Department had found no evidence to support such bias and the judge was satisfied that adoption of the same type of price: quality split in the 2010 competition was not intended to favour any particular tenderer.
- Allegations 8 and 9 focus on the conduct of the site visit undertaken as part of the 2005 competition and include an allegation by the Whistleblower relating to the falsification of parts of a site visit record by the tender evaluation Panel relating to who was and was not present in the 'screen room'. The High Court judgment states at paragraph 24 that the plaintiff was mistaken in his recollections of the site visit.
- Allegation 11 concerns the award of a particular contract to Firm A for three successive years. The High Court however examined the award of contracts from 2005 onwards (paragraphs 37- 45) and the judge concluded that he was not satisfied that Roads Service officials had acted in a discriminatory manner, nor that there was actual or apparent bias in the contract allocation.
- Allegation 20 claims an inappropriate relationship existed between Firm A and Official A (a Roads Service employee). Paragraph 32 of the judgment records that the judge was satisfied that "there was no impropriety arising from his visit to the [Firm A] trade stand".
- Allegation 22 concerns Firm D providing road signs without a tender being in place. This matter is specifically referred to and restates the findings of the Investigation Team in paragraph 44 of the High Court findings. Paragraph 45 of the judgment records that the judge agreed with the Investigation Team's conclusions that there were "issues as to compliance with procurement principles". This demonstrates that the Department's Investigation was able to highlight errors where there was supporting evidence."

28 Allegations refer to the allegations recorded at Annex 1 of the Department's Report and set out at Appendix 1 of this report.

Appendix 7: (paragraphs 7,17,54,56,71,88)

Firm A's views on a redacted draft of this report

1. LEDU/Invest NI. We totally refute that there was any conspiracy between what was then LEDU, Roads Service and CPD. The letter of offer that we received from LEDU on 23rd February 1998 had nothing whatsoever to do with the contract. It was for a new project, export only, for solar powered portable variable message signs.

2. LEDU/Invest NI loan to Firm A. This was in the form of non-cumulative preference shares. The shares were taken to secure the loan of £20,000 to the company. I confirm that Firm A paid the loan back fully, including 7% interest, to LEDU within the agreed time limit. I totally refute as being untrue that LEDU had any voting rights in this company at that time or any other time.

3. Roads Service officials were never out of our offices. I totally refute this allegation. I would like to make the point that the Whistleblower did not know where our offices were and maintains in Allegation 20 that our offices are in the Irish Republic in County Louth. We are celebrating our 50th anniversary this year (1962 – 2012) and have always been based in Northern Ireland. Roads Service officials are free to visit our offices with technical queries, however this rarely happens.

4. A Roads Service official spent a full day on our stand at a trade show in Amsterdam. This is completely untrue and we very much regret that our good name was used to defame an individual like this.

A Roads Service official did visit our stand at an exhibition in Amsterdam. He was there as Secretary of the Institute of Highway Engineers. He spent no more than 10 minutes on our stand!

5. Bias & favouritism. I totally refute that there was any conspiracy in the form of bias or favouritism. We have always won tenders strictly according to the criteria. I can refer

to a tender that we did on 22nd December 2003. In that tender we were cheapest and fully compliant but the tender was awarded to a contractor who was more expensive and supplied a non-compliant product. There has never been any favouritism shown to Firm A.

5. New allegation that we are producing signs to a lower specification. We totally refute this allegation that we would cheat on the specification. We absolutely would never do this! This was not mentioned in the last report [by the Department's Investigation Team] dated January 2010 although the Whistleblower had confirmed that he had nothing new to add to 22 allegations. It was not mentioned in the 2010 court case. We have no evidence of this and have not been given the opportunity to inspect this sign.

We have been aware that signs have been supplied to the Roads Service by others that do not meet the standard. We have written to the Roads Service about this, on 29th July 2011 and the 1st September 2011. Nothing has been done about this.

We have recommended that an independent expert should check signs supplied by all contractors.

6. Past delivery difficulties. We are aware that Roads Service recorded poor deliveries by all suppliers. This should be taken into context, in section 4.1.3 of the report [by the Department's Investigation Team] it refers to approximately 75% of all orders from the Whistleblower's firm were delivered outside the 1.5 day requirement and approximately 30% from Firm A.

We have records to prove that Road Service was satisfied with our delivery and these can be forensically tested.

There was no tender for the rental of variable message signs. This was true for a period. This product did not exist until we introduced them with the support of LEDU. Roads Service started to rent them after a serious problem on the M1. This followed a serious incident on the M1 when road works caused a serious disruption and it was taking people as much as 6 hours to travel from Lisburn to Belfast. Roads Service used them for emergency response preventative action.

The Roads Service found these very useful and later went out to tender. On the current hire contract nine of these items are being hired from this company.

7. Allegation 21. I have already pointed out where we have always been located and also totally refute that we never published accounts. We understand that your report is based primarily on the previous report. We are surprised that this has gone on for so long particularly as there is no substance in the allegations that have since been through a lengthy court process. I know that the report took a very long time and that new allegations were added as it went along and in the interest of fairness they had to go through each one.

Our recommendations are as follows:

We believe that the report should have gone into past delivery performance in more depth and analysed in more details how companies performed. We were treated unfairly in this section. If this had been done we are confident that this company would have ranked considerably higher than other companies.

This investigation must have been a very costly exercise. In our opinion we believe that there were key performance indicators in the complaints that had a pattern of no substance and wild allegations and that this could have been completed quicker to avoid unnecessary expense.

NIAO Reports 2012-2013

Title Date

Published

2012

Continuous Improvement Arrangements in the Northern Ireland Policing Board	20 March 2012
Invest NI: A Performance Review	27 March 2012
The National Fraud Initiative: Northern Ireland	26 June 2012
NIHE Management of Reponse Maintenance Contracts	4 September 2012
Department of Finance and Personnel - Collaborative Procurement and Aggregated Demand	25 September 2012
The Police Service of Northern Ireland: Use of Agency Staff	3 October 2012
The Safety of Services Provided by Health and Social Care Trusts	23 October 2012
The exercise by local government auditors of their functions in the year to 31 March 2012.'	19 December 2012

2013

Department for Regional Development: Review of an Investigation of a Whistleblower Complaint	12 February 2013
--	------------------



Published by Corporate Document Services and available from:

CDS Belfast
4c Heron Wharf
Sydenham Business Park
Belfast
BT3 9LE

Telephone: 028 9045 7772
Email: cds-ni@cds.co.uk

CDS 93664

ISBN 978-1-909532-15-1



9 781909 532151