

The Investigation of Suspected Contract Fraud





Northern Ireland Audit Office

Report by the Comptroller and Auditor General for Northern Ireland

Ordered by the Northern Ireland Assembly to be printed and published under the authority of the Assembly, in accordance with its resolution of 27 November 2007

The Investigation of Suspected Contract Fraud

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

J M Dowdall CB
Comptroller and Auditor General

Northern Ireland Audit Office
29 April 2009

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

The NIAO study team consisted of Jacqueline O'Brien and Patrick O'Neill, under the direction of Kieran Donnelly.

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 2009

Contents

Part One	Introduction	2
Part Two	The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure.	8
	Allegations of fraud and corruption were made to the Department of Education in August 2003	8
	BELB had received two previous anonymous allegations relating to maintenance contracts	10
	The Department and the boards agreed how the investigation would be managed	10
	The way in which maintenance work was awarded made value for money difficult to achieve and demonstrate	11
	The initial BELB Internal Audit investigation found no evidence of corruption	12
	Internal Audit's analysis of maintenance contracts showed an inequitable allocation towards certain contractors. In NIAO's view this is an indicator of favouritism	13
	An independent review was commissioned by the Department	14
	BELB's Action Plan raised concerns for the Department	15
	The Department commissioned a consultant to conduct an independent review of the case	15
	BELB commissioned legal advice on the consultant's report	18
	Progress in following up the issues raised in the consultant's report was slow	19
	Communication with the Police Service of Northern Ireland	19
	BELB, supported by the Department, worked to develop a new Procurement Strategy	20

BELB's new procurement strategy has the potential to deliver improved performance and value for money	21
Disciplinary action was taken against two officers	22
The recommendations of a 2001 NIAO report on property services had not been fully implemented	23
NIAO Conclusions	23

Part Three

The Fraud Investigation into Library Building Works

In August 2005 BELB found it had paid for building work at two libraries which had not been done	28
The investigation into the library case was thorough and professional	29
CFU found there had been clear breaches of Standing Orders and Board Procedures	30
Officer E was inadequately supervised	30
CFU identified possible criminal charges – but the absence of any documentation undermined the prospect of a successful prosecution	31
CFU recommended that criminal action should not be pursued	32
DDA work undertaken was often poor value for money	32
NIAO Conclusions	33

Part Four

The Departments' Roles in the Investigations

The Department provided effective oversight of the investigation into the whistleblower's allegations (Part 2 of report)	36
The Department followed good practice in its management of the investigation into the whistleblower's allegations	37

Contents

	The Department consulted with fraud and other experts as appropriate	38
	The Department has sought to learn the lessons of the investigation	38
	DCAL was content with the conduct of the library building works investigation (Part 3)	39
Appendix 1	DFP “Managing the Risk of Fraud” A Guide for Managers, September 2003	42
Appendix 2	Office of Fair Trading : Cartels and the Competition Act 1998, A Guide for Purchasers	44
Appendix 3	HMT Guidance on Indicators of Procurement Fraud	45
Appendix 4	Chronology of the Investigations into the Whistleblower’s Allegations	46
Appendix 5	Maintenance Expenditure	49
Appendix 6	BELB Maintenance Section Payments to Preferred Contractors: April 2002 to August 2003	50
Appendix 7	Extracts from the Quantity Surveyor’s report on Whiterock Library	51

Abbreviations

BELB	Belfast Education and Library Board
C&AG	Comptroller and Auditor General
CFU	Central Services Agency's Counter Fraud Unit
COPE	Centre of Procurement Expertise
CORGI	Council for Registered Gas Installers.
CPD	Central Procurement Directorate
DCAL	Department of Culture, Arts and Leisure
DDA	Disability Discrimination Act
Department	Department of Education
DFP	Department of Finance and Personnel
DSD	Department for Social Development
NIAO	Northern Ireland Audit Office
NAO	National Audit Office
HMT	HM Treasury
MTC	Measured Term Contract
NDPBs	non-departmental public bodies
OFT	Office of Fair Trading
PAC	Public Accounts Committee
PSNI	Police Service of Northern Ireland
SEELB	South Eastern Education and Library Board
QC	Queen's Counsel

Part One:
Introduction



Part One: Introduction

The interface between public bodies and their private sector contractors presents management challenges

- 1.1 The purpose of this Report is to examine the issues involved in preventing and investigating suspected fraud in public sector contracts and to point up what should be best practice. The report considers two cases from the Belfast Education and Library Board (BELB).
- 1.2 A significant proportion of public expenditure is directed to the purchase of goods and services from the private sector. The scale of such purchasing has increased in recent years as public bodies have pursued the efficiency gains which partnerships with private sector contractors/suppliers can offer. In response to this there has been a substantial investment in upgrading the procurement process in the public sector. It is recognised that the interface between public bodies and their contractors presents particular management challenges.
- 1.3 A key challenge, which goes to the heart of securing value for money from contracts, is to ensure that there is genuine competition between contractors and, at the same time, that contracts are fairly awarded. It is important to prevent collusion, either between groups of bidders or between bidders and those officials who are in a position to place orders. Public bodies are expected to be alert to these risks, have formal procedures to deter attempted fraud and assist detection, and respond vigorously to any evidence of impropriety.

In the majority of contracts controls work well

- 1.4 The Northern Ireland Audit Office (NIAO) has responsibility for the audit of almost every public body in Northern Ireland and in the course of every annual audit would inspect, on a sample basis, a wide range of contract expenditure. In the vast majority of cases we find that proper procedures have been followed, controls work well and no concerns are raised.

There are specific risks associated with the use of contractors

- 1.5 In 1997 the Department of Finance and Personnel (DFP) issued specific guidance on Estate and Building Services Procurement¹. This made it clear that property maintenance has long been regarded as carrying "a high risk of fraud, corruption and other irregularity". The guidance described the following basic principles of control necessary to minimise the risk of fraud in building services:
 - **separation of duties**, for example between staff who place orders, receive services and authorise payments
 - **authorisation** by a manager/supervisor before activities are undertaken
 - **competitive tendering** should be the norm

¹ New guidance was issued in June 2007 on Measured Term Contracts for Project Sponsors and Project Managers which superseded that issued in 1997. Paragraph 2.26 provides more details.

- **regular supervision** involving regular and unannounced checks of transactions
- **record keeping** which allows every decision and transaction to be traced through the system
- **documentation** should be standardised to help enforce conformity with procedures and legal requirements
- **budgetary control** will help minimise the risk of fraud, by linking expenditure to planned objectives for which managers are accountable.

1.6 There is a range of guidance on detecting fraud and corruption which is relevant to the procurement process. Among recent guidance issued is the 'Good Practice Guide on Tackling External Fraud' jointly produced by the National Audit Office (NAO) and HM Treasury (HMT) and issued in Northern Ireland by DFP in August 2008². This revises previous NAO/HMT guidance issued in 2004. Key guidance from HMT, DFP and the Office of Fair Trading (OFT) is summarised at Appendices 1 and 2.

There have been a number of reports on suspected contractor fraud

1.7 NIAO has reported on a number of cases in recent years, and noted others where there has been evidence of contractor fraud including possible collusion. For example:

NIAO Reports

Investigation of Suspected Fraud in the Water Service, HC 735, June 2003

This report examined two cases of suspected fraud. The first involved a contractor engaged in sewer maintenance work, and alleged impropriety on the part of staff in a divisional office of the Water Service. Overpayments to the contractor, estimated at almost £100,000, were identified and the report detailed disciplinary proceedings against a number of staff. Northern Ireland Water, which took over the responsibilities of the Water Service, continued to pursue recovery. The second case involved a contractor who made a number of allegations about the administration of contracts. While investigation uncovered examples of working practices which seemed to indicate that the allegations had some foundation, the evidence was not considered sufficient to support action. The report concluded that:

- in response to a serious allegation of fraud, the senior management of the Water Service should have initiated an independent and properly resourced investigation, but failed to do so
- the handling of the Water Service case did not send the right signal to staff about the rigour with which the Department concerned would pursue and punish fraud and impropriety; nor did it send the right signal to contractors about the vigour with which it would react to suspected fraud or overcharging

2 *Good Practice Guide on Tackling External Fraud*, issued under circular reference FD (DFP) 10/08

Part One: Introduction

- investigations needed to be handled by suitably qualified and experienced personnel who are completely independent of the management area that is the subject of the allegation.

Introducing Gas Central Heating in Housing Executive Homes, HC 725, June 2004

This NIAO report supported findings by the Housing Executive's Internal Audit that some contractors engaged in heating installation may have been practising collusive tendering to win contracts. The report identified the indicators of collusive tendering, summarised at Appendix 3.

Other Audit Agencies

Report by the Comptroller and Auditor General, Republic of Ireland: National Education Welfare Board – Lapses in Internal Control, September 2007

This report by the Comptroller and Auditor General, Republic of Ireland, found that the National Education Welfare Board:

- had IT equipment, costing almost €200,000, in excess of its needs
- had suffered estimated losses of up to €271,000 as a result of payments for IT services not provided to the Board.

The losses and the surplus equipment were attributable to internal control weaknesses which were exploited by a member of staff, apparently in collaboration with a supplier.

Public Accounts Committee (PAC) Report **PAC Report on Tackling Public Sector Fraud, 13/07/08R, December 2007**

In August 2003, an internal fraud was uncovered within the Accounts Branch of the Ordnance Survey of Northern Ireland and a subsequent investigation found that the fraudster, a supervisor, had defrauded £70,690.

PAC made a number of recommendations arising from the fraud including:

- departments and their agencies cannot afford to simply assume that the controls they have in place are sufficient and are working effectively. In high risk areas, such as cash handling, management must assure themselves that controls are appropriate and are being applied rigorously. Management should put in place arrangements, commensurate with the level of risk involved, to test and record the level of compliance. All managers and supervisors should be fully aware of their responsibilities
- limited disciplinary action fails to send the right signal about the seriousness of ineffective supervision
- DFP, in consultation with departments and agencies, should devise and implement a strategy for firmly embedding a counter-fraud culture in all parts of the public sector.

Additionally, PAC considered wider counter-fraud initiatives being taken

forward or considered by DFP. These included:

- new legislative powers for the Comptroller and Auditor General (C&AG) enacted in the Serious Crime Act 2007, which provides new data matching and data sharing powers. The public sector can now share data both internally and with the private sector to prevent and detect fraud. The Act also allows the C&AG to replicate data matching exercises like those conducted by the Audit Commission in England and Wales, to identify cases which could signify fraud or error
- DFP's Fraud Forum has produced a "Memorandum of Understanding between the Public Sector and the PSNI". PAC considered it essential that the public sector has the capacity, and a sufficient number of trained investigators, to deliver its responsibilities under the memorandum. Subsequently, the Fraud Forum has discussed the benefits to be gained from a centralised fraud investigation unit
- PAC wanted to see much more emphasis given to whistle-blowing as an important means of identifying potential fraudulent activity. In November 2008, DFP issued guidance on whistleblowing³ to all Northern Ireland departments, asking them to ensure that they have organisation-specific whistleblowing procedures in place. The guidance includes a template which should

be tailored to an organisation's own structures and reporting arrangements. DFP also intends, through Public Concern at Work, an independent authority on public interest whistleblowing, to co-ordinate some high level implementation training for Northern Ireland public sector bodies.

NIAO notes that BELB is participating in the 2008–09 data matching exercise and has submitted its payroll, pensions and trade creditors data sets.

Other Regulatory Reports

1.8 In April 2008 OFT formally accused 112 construction firms in England of participating in bid rigging⁴. The OFT investigation had begun in 2004 following a complaint from an East Midlands council. Among the accused are some of the most prominent construction companies in the UK. OFT has alleged that the firms in question were involved in collusive tendering in their bids for thousands of public sector construction contracts. The contracts, including those for schools, universities and hospitals, are valued at £3 billion. OFT is to make its final ruling in 2009.

1.9 NIAO asked DFP's Central Procurement Directorate (CPD) what action it had taken in Northern Ireland in the light of OFT's findings. CPD told us it had:

- issued a 'Construction Procurement Guide'⁵ in June 2007 which gives guidance on the selection of contractors and reduces the possibility

3 Whistleblowing circular issued under reference, DAO (DFP) 11/08

4 In particular 'cover pricing' - this involves providing a high bid in order to allow a competitor to win. The term also includes 'compensation payments' - in effect paying off competitors who agree not to bid. Bid rigging is illegal under the Competition Act 1998.

5 The Guide is available at http://www.cpdni.gov.uk/construction_procurement_guide_master.pdf

Part One: Introduction

of contractors being favoured by individual officers or of contractors forming cartels.

- copied the OFT Information note and other relevant OFT guidance to Heads of Procurement in the other Centres of Procurement Expertise (COPEs)⁶.
- discussed the OFT report at a meeting of the Construction Industry Forum for Northern Ireland. The Forum was told that the Construction Employers Federation (NIF) has already issued guidance to its members on anti-competitive behaviour.

1.10 The case studies from BELB are considered in Parts 2 and 3. Part 4 reviews the roles of the Department of Education (the Department) and the Department of Culture, Arts and Leisure (DCAL) in supporting the Board in the investigation of suspected fraud.

⁶ Apart from Central Procurement Directorate, there are seven COPEs in Northern Ireland. These were established in May 2002 as part of the Public Procurement Policy reforms and are from within the health, education, housing and transport sectors and from Roads Service and NI Water (formerly Water Service). These organisations have procurement expertise in their respective areas of responsibility. COPEs are appointed and monitored by the Procurement Board for Northern Ireland.

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure



Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

Allegations of fraud and corruption were made to the Department in August 2003

2.1 In August 2003 a whistleblower⁷ made a number of allegations of fraud within Belfast Education and Library Board's (BELB) and South Eastern Education and Library Board's (SEELB) Property Services Units⁸. The allegations in respect of SEELB have been the subject of a separate investigation, and appear to echo many of the lessons which are drawn out in the BELB case. However, the C&AG has decided not to report on this case.

2.2 The whistleblower's key allegation in respect of BELB was that a price-fixing cartel was in operation, led by a named contractor, and that the cartel operated with the collusion of BELB officers within the Property Services Unit. The whistleblower also alleged that six BELB officers within Property Services accepted inducements to award

schools' maintenance work to favoured contractors. The allegations were made directly to the Department's Internal Audit Unit. The Department notified DFP, NIAO and the Police Service of Northern Ireland (PSNI) of the allegations, in line with the then requirements of Government Accounting⁹.

2.3 As background to these allegations, BELB's Internal Audit section had produced reports between 1997 and 2002 which included findings that a core of contractors was allocated the majority of work in certain fields. In February 2001, following a November 2000 audit, BELB's Chief Administrative Officer issued, on behalf of the Chief Executive, comprehensive instructions that included the direction **"staff must ensure that a wide range of contractors be given the opportunity to undertake work for the Board"**.

BELB has also advised NIAO that:

- Following his appointment in 1998, the current Chief Executive undertook a review of the key risks across the organisation. Following this review BELB introduced many system improvements in the area of property services, taking into account the findings of the internal audit reports. This included the creation of new standing lists of approved contractors in 1999. The senior management team was restructured in January 2000, resulting in the Chief Administrative Officer becoming responsible for the Building Maintenance Section. A new post of Head of Property Services was created in 2001. Due to the retirement of the previous senior maintenance officers, new officers took up post in 2002.
- In 2001, following the publication of a NIAO report¹⁰, the five education and library boards and the Department agreed that BELB would pilot the development and

⁷ A chronology is at Appendix 4

⁸ It is NIAO's policy not to disclose the identity of whistleblowers who seek anonymity.

⁹ Paragraphs 5.1.9, 5.2.19 and 5.3.1 to 5.3.6. From June 2008 Government Accounting has been replaced by Managing Public Money Northern Ireland which contains the same notification requirements.

¹⁰ Building Maintenance in the Education and Library Boards, NIA 72/00, July 2001

implementation of the Estates Management System. This computerised system replaced the existing paper-based system used across all boards, which generated a large number of manual orders each week within this complex area and was unable to produce management information. The Estates Management System was implemented in all five education and library boards and the Department by 2005.

- The five boards also introduced a new accruals accounting system during this period which enhanced the financial information available to management.
- The Chief Executive continued to allocate substantial internal audit resource to this area of operation, totalling over 922 direct audit days from 1998-99 to 2007-08.
- The Chief Executive and senior management were fully committed to reviewing the issues identified in this area of operation in an open and transparent manner, with full communication and feedback to BELB's Audit and Risk Management Committee. The following are examples of actions taken by senior management:
 - BELB's anti-fraud policy and fraud response plan were presented to the Audit Committee in February 2000 and were also published on the BELB website
 - BELB has recently updated the anti-fraud policy to reflect the Fraud Act¹¹ and Memorandum of Understanding between the public sector and PSNI. This policy was issued to all contractors active on the Estates Management System in November 2007
 - BELB has developed and issued codes of conduct for board officers since January 1999
 - BELB has issued fraud awareness circulars and guidance to officers and schools since 2001
 - since 2001 an annual declaration of pecuniary and non-pecuniary interests (including those of a partner, spouse or close relative) is required from key BELB officers including all officers employed in Property Services
 - the assessment and management of the risk of fraud is included in section, department and corporate risk registers.

11 The Fraud Act 2006, which came into effect in January 2007

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

BELB had received two previous anonymous allegations relating to maintenance contracts

2.4 Prior to the whistleblower's allegations in August 2003, BELB had received two anonymous letters (the first dated 29 November 2002 and the second dated 10 February 2003) which made allegations of corruption in the Property Services Unit. The second letter went beyond the first in alleging that *"a ring...of four or five contractors continually appear on tender lists"*. BELB management, in consultation with Internal Audit, conducted a review into the allegations made in the first letter. The review identified that 21 contracts had been awarded during the period referred to in the letter, all contracts had been subject to the tendering process and 41 different contractors had been invited to tender. All the contracts had been awarded and managed by nine external consultants. Six contractors were asked to tender for each contract and the tendered cost of each contract was within each consultant's estimate. The findings of the review, which was led by BELB's Head of Property Services, were presented to the BELB Audit and Risk Management Committee. A BELB Internal Audit Report of February 2004 subsequently concluded that *"The review was unable to find any evidence to support the allegation of corruption, non-compliance with standing orders or poor value for money based on the information provided in the letters"*. There was no investigation of the issues raised by the second anonymous letter. BELB has further advised NIAO that the second letter did

not contain any additional information to the first and, as the initial review had reviewed all contracts during the period, it considered that nothing more could be gained by a further review of the same material.

The Department and the boards agreed how the investigation would be managed

- 2.5 The Department informed BELB and SEELB of the August 2003 whistleblower's allegations and at an initial meeting agreed that:
- due to the nature of the allegations, the complexity of the environment and the importance of protecting the identity of the whistleblower, the Department decided that the best approach was for the boards' internal auditors to initially conduct discrete investigations to establish if there was any substance to the allegations
 - Internal Audit, as part of these investigations, would interrogate the computerised property service system, to analyse patterns in the allocation of maintenance work to contractors
 - the Department would liaise with the whistleblower, whose anonymity would be protected (including from board investigators) at their request.

At an early stage the Department and the boards discussed the possibility of precautionary suspensions of staff named by the whistleblower; in the event no staff

members were suspended. In 2002¹² PAC expressed its views that *“it is an overriding principle that when someone is suspected of fraud, they should be suspended immediately, as suspension does not imply guilt.”* Senior BELB officers decided that suspensions would not be pursued given the general nature of the allegations, their legal duty of care to employees, the legal rights of the officers, the nature of the industry and the need to protect the identity of the whistleblower. Additionally, the Department has confirmed it and BELB were content that all necessary sources of evidence had been secured (none of the officers against whom allegations had been made had the facility to amend or delete data on the estates management system nor had access to the batches of paid invoices).

The way in which maintenance work was awarded made value for money difficult to achieve and demonstrate

2.6 All education and library boards, including BELB, are Centres of Procurement Expertise (COPEs - see paragraph 1.8). The boards are responsible for the maintenance of controlled and maintained school premises under the Education and Libraries Order 1986. Total expenditure on maintenance in BELB during the six year period ending March 2007 was £28.9 million. An analysis is set out in Appendix 5. Figure 1 below describes the BELB process for the procurement of schools' maintenance until the introduction of revised procedures from November 2006, (see paragraphs 2.26 and 2.27). The key features of the system are the lack of focus on cost and the reliance on BELB's officers providing an effective challenge function over the hours invoiced by contractors.

Figure 1: Schools' Maintenance Expenditure – The Procurement Process

The rules governing how the procurement process was managed were set out in BELB Standing Orders. Expenditure on maintenance covers three areas:

(i) Response maintenance, covering repairs of less than £1,500 in value. These jobs were allocated to 'preferred contractors' following competitions in 1999 for mechanical and electrical maintenance and for buildings maintenance respectively. The firms were assessed on quality – not price. BELB had, for example, six preferred contractors (and two reserves) to provide mechanical (heating and plumbing) response maintenance at specific schools in six areas of Belfast. The allocation of schools to contractors was made by BELB Officers and BELB has told us these allocations were ratified by the relevant board committee. This type of maintenance was paid on a 'time and materials' basis and could therefore be very expensive. The contractor was paid in accordance with the hourly rates of the relevant trade association plus an 85 per cent 'labour on-cost' to cover the contractors overheads and profit.

(ii) Emergency maintenance, authorised if *“essential for the preservation of property or the safety of persons”*. Again, it was paid on a 'time and materials' basis and was to be authorised in advance. Contractors were

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

selected from the list of preferred response maintenance contractors by maintenance officers. This selection process should have been based on the location of the emergency, the size of the job and the capabilities of the preferred contractor for that site, given the work to be undertaken and the health and safety issues. All emergency orders should have been approved by the Head of Property Services.

(iii) Planned maintenance. In accordance with BELB's standing orders there were two types: (i) *Quotation* – where the estimated cost was £1,501 to £15,000. Under £8,000 three quotes were to be obtained, over £8,000 four firms should be invited to quote; and (ii) *Tender* - £15,001 to £300,000 – six firms should be invited to tender. Firms were selected from the standing lists of contractors drawn up in 1999 for mechanical and electrical maintenance. For example, there were 37 contractors approved to provide mechanical and electrical planned maintenance. A building maintenance standing list for contractors drawn up in 2002 was never implemented. All contractors were judged to have met the standard for quality and were to be invited to tender on a rotational basis. In practice, contractors were selected from the list by the Board's maintenance officers.

Source: BELB Standing Orders and Consultant's Report of January 2005.

The initial BELB Internal Audit investigation found no evidence of corruption

2.7 BELB Internal Audit's investigation into the issues raised by the whistleblower ran from August 2003 to February 2004. Two reports were produced, one into the specific allegations against officers and the second a more general analysis of procurement contracts awarded by Property Services. The first report found no evidence of payments to Board officers. Two of the 42 allegations made by the whistleblower were considered substantiated, 24 were not substantiated and 16 required further information. One of the substantiated allegations was that contracts involving gas installations had been awarded to two contractors (Contractor A and Contractor F) who were not CORGI¹³ registered. The

Department subsequently asked all Boards to ensure gas installation work was safe and had been carried out by registered contractors. Although there had been a clear breach of requirements to allocate work to contractors who were properly CORGI registered, BELB ascertained that (in respect of health and safety) the gas element of the work referred to above had been sub-contracted to a CORGI registered individual. The second substantiated allegation related to BELB's allocation of work to Contractor A, who charged a higher hourly rate than other contractors (see Figure 2, Response Maintenance). BELB has pointed out that the rates for all contractors performing work for it at that time were within the agreed industry rates set by the relevant recognised industry body.

13 Council for Registered Gas Installers; registration with CORGI is a legal requirement for anyone installing or repairing gas fittings or appliances.

Internal Audit's analysis of maintenance contracts showed an inequitable allocation towards certain contractors. In NIAO's view this is an indicator of favouritism

2.8 The second Internal Audit report found that two contractors named by the whistleblower were consistently awarded the majority of jobs in the period examined. BELB also reported a lack of

rotation of contractors – the same few contractors were frequently competing against each other - creating an environment that could be used to inflate or fix prices. This was in contravention of the instructions issued to staff (paragraph 2.3). Figure 2 sets out some of the main findings from the second Internal Audit report.

Figure 2: Internal Audit Findings: Period Examined April 2002 to August 2003.

Response maintenance

- There were no formal procedures for the 'helpdesk operation'¹⁴ for the selection of contractors for response work nor were there formal procedures for emergency work which clearly defined what was deemed to be an emergency.
- There was no clear audit trail and senior maintenance officers had the facility to initiate orders, in addition to their role as authorising officer.
- Contractors A and B accounted for 50 per cent of response maintenance expenditure, valued at £471,000, and were allocated 84 of the 222 locations (38 per cent) (Appendix 6 provides a summary of work awarded to the main contractors).
- Contractor F (one of the two reserve contractors) received more response maintenance work than one of the preferred contractors – Contractor G. Of the 132 orders given to Contractor F, 107 (81 per cent, worth £64,000) were approved by Officer D, who had a family connection to Contractor F (the relationship had been declared to the Board¹⁵). There were no payments to the second reserve contractor in this period.
- Three contractors (A, E and F) charged for two men attending every job (a plumber and an assistant), substantially increasing the hourly rate for the job. There were also instances of inconsistent or surprisingly high hours charged for routine jobs. For example, Contractor E charged 8 hours each for a plumber and assistant to plumb a washing machine at a total cost of £266.
- There was a 43 per cent difference between the highest charge of £13.78 an hour and the lowest charge of £9.65 an hour, yet the highest charging firm (Contractor A) received the most work. However, rates were within the limits set by the accepted trade organisations (see Figure 1).
- For both response and emergency maintenance work the actual cost differed significantly from the estimate. In the period April 2001 to August 2003, work cost on average 56 per cent more than estimated. Work carried out by Contractor A was 72 per cent higher than estimated and work by Contractor B was 70 per cent higher.
- Internal Audit also found that there was no written record of work being verified by maintenance officers, i.e. that the job paid for had been done to standard, even on a sample basis.

Emergency maintenance

- Contractors A and B carried out 73 per cent of emergency work but had been allocated only 38 per cent of locations.

14 The 'helpdesk operation' receives telephone calls from schools where unplanned maintenance work is required. The helpdesk contacts the preferred contractor.

15 Officer D received a verbal warning during February 2004 for receipt of hospitality, by attendance at two golf outings, from an external contractor. This was unrelated to the family connection but did arise from the whistleblower's allegations.

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

Planned maintenance

- Contractors A and C accounted for 65 per cent of all quotation work.
- Only 11 contractors on the list of 37 were given the opportunity to quote; Contractor A was invited on all 12 possible occasions (winning 8 times), Contractor B was invited 8 times (winning once) and Contractor D six times (winning twice).
- 34 projects were subject to tender. Contractor A was invited 16 times (winning 5 times, more than any other contractor), Contractor B -14 times, Contractor C -12 times, Contractor D -10 times and Contractor E- 13 times. These five firms were among the eight firms awarded the higher value contracts, ie higher than average values (greater than £107,000).

Source: BELB Internal Report, February 2004

2.9 As part of the investigation, the Department commissioned CPD to conduct a desk review of a sample of tenders, quotations, invoices and emergency orders which were supplied by the boards and covered the period under review. Twelve tenders, eleven quotations and six emergency orders, totaling £1,138,912 were submitted by BELB to CPD for review. The review found that the sample examined fell within an acceptable price range.

An independent review was commissioned by the Department

2.10 The Department commissioned the Corporate Investigations Unit of the Department for Social Development (DSD) to quality assure BELB's investigation. DSD reported in March 2004 that: "BELB Internal Audit have thoroughly investigated the allegations highlighted in the interviews with the whistleblower and agree that there is no substance to most of the allegations of criminal behaviour. On those allegations where BELB Internal Audit was unable to

substantiate, the information was vague. They have acted responsibly on the information received and the Department can be assured there is no evidence of fraudulent activity which would support criminal proceedings. DSD has also discussed these latest findings with PSNI who agree there is no evidence of fraud and there is nothing further to investigate unless further information is received." However, the report also made the point that "if the whistleblower had not made the allegations these [issues] would have gone undetected and if left unresolved would leave the Boards vulnerable to abuse.... The reports [produced by BELB Internal Audit] clearly identify many examples of gross negligence, incompetence and/or complete disregard for procedures within the Mechanical Maintenance Section.... I would thank [the whistleblower] for coming forward and mention some of the audit recommendations and the far-reaching effect this will have on contract work in all the Boards."

At the BELB Audit Committee in February 2004, BELB officers presented an update on the actions taken to date, and an

action plan to address the weaknesses identified. At this meeting, NIAO representatives advised that the indicators of fraud were so extensive as to warrant further investigation (see paragraph 2.12).

BELB's Action Plan raised concerns for the Department

2.11 BELB provided an Action Plan in April 2004 which was designed to address the control weaknesses identified in its Internal Audit Report (see paragraph 2.8). The key feature was the adoption of a new standing list for maintenance work. The Department had concerns about the list; although the process was managed by an independent engineer, the criteria had been set by Officer A, who had been accused of favouring certain contractors. The Department required the Board not to put the list into effect until its concerns were resolved. The Department had noted that all the contractors about whom concerns had been raised remained on the list; however another contractor, who had complained that he had not received a fair share of the available work, no longer appeared. The list was stopped on 12 May 2004; too late to prevent a number of notification letters being issued to contractors and the list being used in error by BELB maintenance officers on seven occasions. BELB told NIAO that it established that the issuing of notification letters and use of the new list were straightforward administrative errors.

The Department commissioned a consultant to conduct an independent review of the case

2.12 In April 2004 the Department commissioned an independent consultant to determine if there was any evidence of misconduct which supported the whistleblower's allegations. The consultant was also to provide assurance that the action plan developed by the Board adequately addressed system weaknesses. The consultant was highly experienced in disciplinary matters and also had experience of working with NIAO but he was not a trained fraud investigator. In April 2004, the Department determined on the advice of DSD, that BELB should not interview the officers against whom the whistleblower made allegations but that the consultant should conduct these interviews as part of his review. It was agreed that any disciplinary process would take into consideration the outcomes of the independent investigation. The consultant's report was issued in January 2005 and identified contractor malpractice (overcharging), disciplinary offences committed by two officers (see Figure 3) and possible contractor fraud.

Contractor overcharging and the possible operation of a price-fixing ring

2.13 The consultant reported that he found evidence of contractor malpractice (and possibly fraud) involving consistent overcharging by Contractor A, who claimed and received overtime at the full rate instead of the agreed lower

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

rate. Contractor A also charged for a labourer when only an apprentice was provided. In the 88 invoices examined, the resulting overpayment by BELB was £2,032. These instances were discussed with PSNI, but they later agreed the evidence was not strong enough to support criminal charges. The consultant advised BELB to remove this contractor from existing standing lists and debar him from all future lists – in line with Treasury's 'Procurement Guidance No 3'¹⁶. The contractor was not suspended, in light of legal advice obtained by BELB from a senior Queen's Counsel (QC) who stated there was insufficient evidence at that time of a fundamental breach of contract.

- 2.14 The consultant was also persuaded that a price-fixing ring was operating for minor works exceeding £15,000 in value. The consultant, in order to provide an indication of the materiality of the potential loss, estimated that where assumptions could be made that a tender ring was operating, and that prices had been inflated by at least 10%, there may have been a potential loss to the BELB of £180,000 for tenders awarded for minor works between April 2002 and August 2003. A summary of the OFT's guidance on identifying and tackling price-fixing (also known as bid rigging) is at Appendix 2.

The allegations against individual officers were partly substantiated

- 2.15 The consultant concluded that allegations against two officers were unsubstantiated; allegations against a further two were partly substantiated (Officers B and E); and in the most serious case, further formal investigation was recommended (Officer A). The consultant found that an allegation against Officer B, that he had been on a visit to Italy paid for by a contractor (not one of those already named), was substantiated. The four-day visit to an Italian manufacturer, which included a trip to the Ferrari factory, was described by the consultant as a 'junket'. The consultant noted that no business was placed with the supplier as a result of the visit. Officer A, Officer B's supervisor, was also 'guilty of misconduct' for permitting Officer B to attend.

The consultant concluded that favouritism shown by two officers towards Contractor A amounted to gross misconduct

- 2.16 The consultant found that the actions of two officers (Officers A and B) arising from their relationship with Contractor A "amount to wilful neglect of the financial and contractual interests of the Board" and that they "represented gross misconduct". Details are at Figure 3.

16 The guidance states that criteria for selecting firms to be invited to tender can include personal criteria such as "grave misconduct in the course of business" – the guidance does not specifically address the subsequent disqualification of firms previously included on a standing list.

Figure 3: The Consultant found Evidence of Gross Misconduct

- The consultant found evidence that Contractor A was awarded a job in January 2003 which should have been offered to the preferred contractor for the school¹⁷. There was also evidence that Contractor A was awarded work which should have gone out to tender¹⁸.
- There was evidence of work allocated to contractors that did not need to be done, or could have been done more economically, for example, 'emergency work' to replace pipes in an area which was demolished two months later when a new planned extension was built.
- Contractor A had been allocated a group of schools which, because of their age and condition, were more likely to attract significant maintenance work.
- Contractor A was invited to quote in all 12 competitions in the period examined, when 26 of the 37 contractors were not invited to quote.
- Both officers were responsible for authorising and approving payments to the named contractor (Officer B - all payments; Officer A - all payments greater than £700). Both knew the circumstances in which the reduced rates for overtime were payable, but neither queried invoices from Contractor A which charged the full rate instead.
- By not rotating contractors, to the extent required by their own Chief Administrative Officer in February 2001 and recommended by NIAO in July 2001 (see paragraph 2.31), the officers had failed to ensure equitable treatment of contractors and had contributed to the creation of circumstances in which a price-fixing ring could operate.
- By failing to apply BELB Standing Orders which limited the work that could be awarded under emergency procedures, the officers had "suppressed the normal competitive process" which may have resulted in BELB paying more than necessary.
- By favouring Contractor A the officers had left BELB open to compensation claims from other contractors who had been disadvantaged.

Source: Consultant's Report - January 2005

The consultant found evidence of deliberate manipulation of the May 2003 competition for the revised select list

- 2.17 In May 2003, prior to the whistleblower's allegations, BELB advertised for contractors to apply for inclusion on Standing Lists for three categories of minor works¹⁹ (see paragraph 2.11). The completed applications were opened

as they were received (they should have been opened after the closing date) and were passed to Officer A to hold for assessment. A qualified quantity surveyor, recently appointed to BELB, undertook the assessment together with a consultant engineer. The applications were marked against criteria drawn up by Officer A in late 2003 at the request of the Head of Property Services i.e. months after the May 2003 applications had

17 In 2008 BELB undertook further analysis which showed that this occurred at a busy period when schools had reopened after Christmas holidays. NIAO also sought some additional information on the pattern of work. This additional analysis and information was reviewed by the consultant who confirmed that they did not alter his view that the job should have been offered to the preferred contractor.

18. BELB have asked us to include that the analysis, undertaken by it, identified that the preferred contractor was fully committed to other response maintenance jobs at that period and that given the nature of the school environment and health and safety considerations to protect children, an operational decision was made to allocate the job to the contractor who covered the neighbouring area once it had been confirmed by a Board official that the contractor had the resource to respond to the job immediately. However, NIAO would point out that the key issue is that the work was not offered to the preferred contractor, as it should have been, and no record for the rationale behind this decision was recorded at the time.

19 (i) Works greater than £15,000; (ii) Works between £15,001 and £300,000; and (iii) Servicing and Testing

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

been advertised and received. This was despite DFP Guidance²⁰ which stated that a key control over the risk of irregularity in the evaluation of tenders is that *prior to tendering*, the evaluation criteria are agreed by the panel who will conduct the evaluation.

- 2.18 The consultant had serious concerns about the extent to which applicants received points for information not requested in the application. His concern was how some firms knew to include information that was not requested, but which earned points. Of the 14 firms which reached the pass mark for the competition, three supplied all seven pieces of information which were not asked for but which earned marks. Five firms supplied six pieces of the additional information and two firms supplied five pieces. The consultant ruled out coincidence as an explanation. He concluded that some contractors may have been 'tipped off' about what to include. One firm, which had previously complained about a lack of opportunities to bid for work, did not include any of the additional information and was unsuccessful in the competition.
- 2.19 Contractor A's successful application was submitted under cover of a letter dated 6 May 2003 (the closing date was 16 May 2003). The application was stamped in the Chief Administrative Officer's Office on 15 May 2003 – it is not known when it arrived in BELB. The application contained three items in the category 'other information' and not listed in the index – which proved to be worth

an additional seven marks. The consultant said *"it is difficult to resist the conclusion that the [contractor's] application was 'vetted' before it was eventually submitted"*.

BELB commissioned legal advice on the consultant's report

- 2.20 BELB has consistently challenged the level of analysis and evidence used by the external consultant. However, the consultant's report was presented to the Board's Audit Committee on 16 May 2005. BELB has explained that, given the complexity of the contractual and employee issues contained within the report, and following consultation with board members, the Chief Executive sought legal advice on the consultant's conclusions and recommendations. BELB told us that, on the oral advice of the boards' Joint Legal Service it sought a QC opinion, given the complexity of the issues and the likelihood of legal challenge. The senior QC advised on a number of concerns raised by BELB relating to the consultant's findings and conclusions. However, the QC also raised the point that the weight to be attributed to the consultant's report was ultimately a matter for BELB rather than its legal advisors. The Department subsequently queried whether using a senior QC was an appropriate use of public funds and whether appropriate advice was sought. BELB responded that taking early advice was considered cost-effective management of risk, given that the cost of the advice received was £850.

20 *Estate and Building Services Procurement : Prevention of Fraud and Irregularity in the Award and Management of Contracts* issued under circular reference DAO(DFP) 8/97, Annex

Progress in following up the issues raised in the consultant's report was slow

- 2.21 Following the issue of the consultant's report, the Department asked BELB for a revised Action Plan which would address the report's findings. Between February 2005 and August 2005 there were ongoing discussions between the Department and BELB about the status of the consultant's report and the anonymity of the whistleblower. There was some disagreement between the Department and BELB as to when the Action Plan was to proceed; in the Department's view it could have been implemented, subject to further additions requested by the Department being made, in May 2005. A final version of the Plan which was agreeable to the Department and BELB was not produced until February 2006 – over a year after the consultant's report was finalised.
- 2.22 BELB is keen to highlight that, whilst the above discussions were on-going, it restructured the Property Services Unit, enhanced controls and redefined roles and responsibilities of officers. It also established a new facilities manager post, formed a procurement steering group and developed a new procurement strategy. BELB has stated that, as a result of these enhanced management controls within Property Services, it identified a suspected fraud in respect of Disability Discrimination Act (DDA) works in libraries (Part 3 of this Report), with the investigation into this being instigated by the BELB Chief Executive in August 2005.

- 2.23 BELB told us that, following the reconstitution of its Board in September 2005, the new Audit and Risk Management Committee first met in November 2005 to approve the action plan developed by BELB to address the outstanding recommendations in the Internal Audit, NIAO and consultant's reports. At the request of the members of the Committee, to allow legal clarification to be sought on an item of business, the meeting was postponed until January 2006. Updates on the implementation of the action plan were provided to the BELB Audit and Risk Management Committee on a regular basis.
- 2.24 In January 2007 BELB Internal Audit carried out further analysis²¹ in relation to Contractor A which had been requested in the consultant's report. This covered a sample of payments and rates charged for operatives. The review concluded that the labour costs reviewed were in compliance with relevant guidelines and that the grading of employees was accurate.

Communication with the Police Service of Northern Ireland

- 2.25 The Department arranged several meetings with the acting Chief Inspector of the PSNI Economic Crime Bureau, which officials from the Department, BELB and SEELB attended at various times during the investigation. Copies of the boards' internal audit reports on their investigations into the whistleblower's allegations were provided, as was,

21 Internal Audit examined payments for the period April 2004 to February 2006.

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

subsequently, a copy of an external consultant's report. The acting Chief Inspector also met and interviewed the whistleblower. In addition to this, the Department and BELB also met with representatives of the local PSNI Criminal Investigation Department to obtain advice on identification and collation of evidence. In November 2004, PSNI provided advice and guidance to the Department and boards, concluding that the standard of '*beyond reasonable doubt*' necessary to pursue a criminal conviction '*has not yet been established*' and noting that PSNI was not persuaded, on the evidence presented, that this standard was capable of being achieved.

practice being operated within the public sector, including the NI Civil Service. DFP has confirmed that the preferred procurement route for estate and building services maintenance is via MTCs. DFP Properties Division and CPD have produced detailed guidance on the administration of MTCs for Project Sponsors and Project Managers. CPD has told us that it was consulted regarding the new procurement strategy but that it had no involvement in the procurement process, as BELB has COPE status. Following press advertisements in June 2006, a pre-qualification process was conducted by Constructionline²³. Completed tenders were assessed on the basis of quality (60 per cent) and price (40 per cent) by two firms of independent consultants.

BELB, supported by the Department, worked to develop a new procurement strategy

2.26 From November 2005, the Department and BELB worked together to examine ways to improve value for money in building maintenance. In March 2006, BELB formed a Procurement of Maintenance Contractors Steering Group with Departmental and SEELB officials, to further advance this work and identify this strategy. In developing this strategy BELB has advised us that it consulted with CPD, visited other large public sector authorities, received guidance from external consultants and had business planning workshops with all staff. Following consultation and assessment of all opinions, a Measured Term Contract (MTC)²² basis was developed which BELB is confident followed current best

2.27 Following the competitive tendering process, contractors were appointed to two geographical areas in three disciplines (building, mechanical and electrical) for the period November 2006 to March 2008. Four firms were appointed in total as, in the building and electrical disciplines, a single firm was successful in both geographical areas. This meant that the number of contractors working in all maintenance areas reduced from over 100 to just four appointed contractors. However, an unsuccessful building contractor obtained an injunction to stop the implementation of the contract in that discipline, and the former 'time and materials' system continued to operate in that area of maintenance work until the case was resolved in the courts in March 2008.

22 Measured Term Contract (MTC) – a contract for a range of maintenance work placed with a single contractor for a specified period of time. Work is measured and valued on the basis of an agreed schedule of rates.

23 Constructionline is the UK's register of pre-qualified construction contractors and consultants. It is owned and endorsed by the Department for Trade and Industry.

BELB has informed us that a new tender process for building maintenance was commenced in April 2008 and the contract awarded in July 2008.

BELB's new procurement strategy has the potential to deliver improved performance and value for money

2.28 In addition to enhancements in internal control, the new maintenance procurement procedures adopted by BELB have the potential to deliver improved value for money for the following reasons:

- a smaller number of contractors has been appointed but the competition for appointment has been enhanced, as the tendering process assessed price as well as quality
- there are early indications that, as a result of improved competition and tighter control of rates paid, costs have been reduced
- there is more input from senior staff who are, for example, required to attend monthly meetings with senior management from the contractors
- there is an increased focus on managing contractors
- performance measures have been set, for example for how quickly contractors arrive on site

- a user group and a complaints procedure have been established
- maintenance officers are required to conduct site inspections where the value of the work exceeds a threshold.

2.29 BELB has additionally highlighted that:

- the reduction of the BELB supply chain has resulted in a considerable reduction in administrative time
- key performance indicators have been introduced to measure client satisfaction and contractor response time
- new governance structures have been created to oversee the management of contracts. Three groups have been set up to monitor various aspects of the contract (Strategic, Operational and User Groups)
- BELB has developed a number of policies in relation to the MTC contract which include working practices, child protection, health and safety and 'sole working'²⁴. These have been discussed and agreed with the contractors
- as part of the new MTC contract, enhanced control procedures have been introduced regarding the operational sign-off of work undertaken by contractors at locations
- additional quantity surveyors have been appointed with the sole

24 Covers supervision arrangements for unaccompanied contractors working on school premises during school hours.

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

responsibility for checking payments relating to the MTC contract. This has enhanced the segregation of duties of staff between those who place orders and those who authorise and check payments

- a course has been developed for building supervisors in schools, to teach them how to carry out works to reduce the need for schools to pay contractors to undertake small jobs and meet legal requirements regarding health and safety and insurance.
- following implementation of the new procurement strategy, BELB has established improved value for money and enhanced management information in line with current best practice.

Disciplinary action was taken against two officers

2.30 In January 2005 the Department asked BELB to conduct a formal disciplinary investigation into the two officers identified by the consultant (paragraphs 2.15 and 2.16 refer). The BELB Audit Committee discussed the consultant's report in May 2005 and agreed that it gave sufficient weight to conduct a preliminary disciplinary investigation. BELB disciplinary investigations were initiated against Officers A and B in May 2005, and disciplinary hearings were held; the cases were not finalised until January 2007 (the delay was caused by BELB also taking into account matters

arising from a second investigation, see Part 3). Officer B received a formal written warning for misconduct which was to be removed from his record after one year's satisfactory conduct, in accordance with the approved inter-board disciplinary scheme. The findings related in part to his trip to Italy (although BELB accepted the trip was undertaken in his own time and with the knowledge of his line manager). BELB also found that he had failed to rotate contractors on an equitable basis in accordance with the Chief Administrative Officer's memo of February 2001 (see paragraph 2.3). Officer A also received a formal written warning (again, it was to be removed from his record after one year's satisfactory conduct in accordance with the approved inter-board disciplinary scheme). The disciplinary grounds were:

- failing to advise Officer B to obtain approval for his four-day trip to Italy
- failure to follow instructions to ensure the rotation of contractors and to ensure his staff adhered to the instructions
- failure to ensure that controls for approving works orders were protected, by allowing an Administration Officer to use his logon and password to authorise the orders. He also failed to ensure that these orders had the necessary approvals from the General Purposes and Finance Committee of the Board (this last point is linked to the library case discussed at Part 3 of this report).

The recommendations of a 2001 NIAO report on property services had not been fully implemented

2.31 NIAO reported on Building Maintenance in the Education and Library Boards (footnote 10) in July 2001. The report highlighted:

- the need for systematic management information to demonstrate that fairness and equity in the treatment of contractors was being achieved. NIAO found that none of the Boards had systematic management information to enable them to demonstrate equitable rotation of contractors
- the scope for greater standardisation of procedures and sharing of good practice between the Boards, with a view to a more regional approach to the awarding of building maintenance contracts
- that, in addition to existing codes of conduct, Boards should have arrangements in place to determine whether contractors have had any relationship, other than as a contractor, with the Board, or a relationship with the employees of a Board. In July 2001 NIAO recommended that maintenance contracts should include an obligation for contractors to advise of any known potential conflicts of interest (BELB has stated that it implemented a requirement for a declaration of

possible conflicts of interest from November 2003 onwards)

- that Boards should establish benchmark costs, both for overall maintenance in schools and for specific types of maintenance work, and should collaborate in undertaking a regular benchmarking exercise.

In our view these recommendations had not been fully implemented in BELB. In 2001²⁵ the Public Accounts Committee at Westminster identified that *“the threat of fraud in property management is intrinsically high and ever present”* and it emphasised the importance of benchmarking against other similar organisations. This should have reinforced the recommendation in the NIAO report.

NIAO Conclusions

It is important to recognise that the allegations, concerns and subsequent investigations dealt with in this report stretch back to 1997. As recorded in the report, BELB has developed and improved its procedures over this period. Nevertheless, looking at the circumstances which gave rise to the allegations, NIAO believes that important lessons need to be learned from the case.

- 2.32 **BELB failed to develop and instil a strong anti-fraud culture.** It failed to adequately protect itself against the risk of fraud, through a strong control environment; whilst it did take a number

25 *“Ministry of Defence: The Risk of Fraud in Property Management”*, The Committee of Public Accounts, Twenty-Fourth Report, 2001-2002, HC 647

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

of actions, BELB could have developed more robust systems to fully recognise the warning signals of fraud, or taken prompt and effective action to address risks.

- 2.33 **NIAO considers that this case illustrates how the failure to implement effective controls, many of which were nominally in place, increased the risk of fraud and acted against the achievement of value for money in maintenance expenditure.**

What is disturbing is the extent to which Internal Audit brought to management's attention weaknesses in control, yet no effective action was taken. Management information on the use of contractors was poor but the problem of favoured contractors had been raised by Internal Audit as early as 1997. In our view, BELB has been content to accept a level of risk of fraud and malpractice which, we consider, it should not have tolerated.

- 2.34 **Not only were controls weak, they were bypassed by middle managers; policy was not followed, and there was a lack of management oversight and review.**

Indeed the attitude seemed to be that maintenance ran itself and senior managers either did not understand or had little interest in the area. BELB has attributed its problems to a culture in which contractors became overly powerful.

- 2.35 **The proper checking of contractors' invoices before payment and the physical inspection of maintenance work are key to the prevention and detection of fraud in this area.** These simple checks were, at best, ignored

at the time in BELB; they must be implemented in future. BELB has stated that new structures and systems of control have now been implemented within Property Services to address the identified and assessed risks.

- 2.36 **BELB procedures placed no emphasis on the avoidance and identification of price-fixing rings.**

In addition to Internal Audit's warnings that most maintenance work was awarded to a small group of contractors, the anonymous letters in November 2002 and February 2003 (see paragraph 2.4) had warned that a price-fixing ring was operating. NIAO considers that BELB did not treat these warnings with the seriousness required and that the reference to a price-fixing ring merited further documented analysis. Records systems should have been analysed to identify patterns in the award of contracts and relationships between contractors and staff. Where suspicious activity was identified, BELB could then have taken appropriate action, for example re-tendering and involving PSNI and OFT.

- 2.37 **Potential criminal conduct by contractors went unchallenged by BELB staff – undermining any future criminal cases.**

The poor controls and procedures undermined any criminal case BELB might have had against contractors in this case. NIAO notes that a number of officers under investigation were recruited from firms who were BELB contractors. BELB emphasised it had in place a code of conduct for board officers which had been in place since 1999 which details public sector ethics. In circumstances such

as these however, NIAO considers that it is crucial that employees must be fully aware of, and trained in, public sector ethics, proper contract procedures and the importance of avoiding perceptions of conflicts of interest.

- 2.38 **The BELB Internal Audit investigation uncovered significant misconduct but would have benefited from the additional expertise of a trained fraud investigator.** Given its necessarily restricted scope (due to a lack of qualified fraud investigators across the entire education sector), the BELB Internal Audit report did not address which criminal charges might be applicable, nor did it compare the actions of officers against their job descriptions or staff objectives; that is, against what they ought to have done. NIAO notes that BELB has recognised the need to have staff qualified as fraud investigators. Currently, four of five Internal Audit staff have completed training and have been awarded the Advanced Professional Certificate in Investigative Practices. BELB has informed the Department that these officers have since successfully undertaken a number of investigations.

- 2.39 **Fraud training was inadequate. BELB has not conveyed a 'zero tolerance to fraud' message to contractors or staff.** Staff had no fraud awareness training and until recently Internal Audit staff did not have the appropriate level of fraud investigation training. It was not made clear to contractors what would happen if they were found to have been involved in, or suspected of, fraud or corruption.

Two maintenance officers and one senior maintenance officer – the manager of the unit – were disciplined. BELB grade these staff as equivalent to deputy principal and principal (Grade 7) in the NI Civil Service. Actions the consultant regarded as “gross misconduct” were deemed to be “misconduct” when disciplinary cases were concluded through the formal agreed BELB disciplinary scheme.

- 2.40 **BELB's Fraud Policy, particularly in relation to line managers' responsibilities, was not fully implemented.** BELB's Fraud Policy states that the primary responsibility for the prevention and detection of fraud falls to line managers (while overall responsibility lies with the Chief Executive as Accounting Officer). Line managers are required to:
- assess the types of risk involved in the operations for which they are responsible
 - ensure that adequate systems of internal control exist within their areas of responsibility
 - ensure that controls are being complied with
 - satisfy themselves that their systems continue to operate effectively
 - provide assurances on their internal control systems.

Line managers are also responsible for ensuring that all staff are provided

Part Two:

The Investigation into Whistleblower Allegations of Price-fixing and Collusion in Schools' Maintenance Expenditure

with fraud awareness training specific to the business area in which they are employed. They should also have minimized opportunities for fraud by using measures such as rotation of staff in key posts and separation of duties. In addition, the Policy specifically states that staff nominated to carry out initial enquires and full investigations should receive appropriate training, which should comply with the provisions of the Police and Criminal Evidence (NI) Order 1989. In all these areas BELB did not implement its own policies.

2.41 **Risk management arrangements did not adequately address the risk of fraud.**

BELB's Risk Registers (at the Corporate and Departmental level) record fraud as a risk to the organisation as a whole but there is no detailed analysis of the risk of fraud in Property Services. Given the concerns arising from this case and the recent changes to its maintenance procurement procedures, we would expect BELB to reconsider its fraud risk assessment in line with the guidance provided in 2003 by HM Treasury.²⁶

2.42 **NIAO believes that many of the problems identified within Property Services procurement could have been avoided had the recommendations contained in our 2001 report (see paragraph 2.31) been fully implemented.** BELB has informed us that it was fully committed to implementing the recommendations of the NIAO report and that the key action was the development and implementation of the computerised Estates Management

System. As a major new system, this was piloted in BELB and required a period of time to test and implement across the five education and library boards and the Department.

2.43 **NIAO notes that it took a year to interview the subjects of the allegations.**

This is not good practice, as delays may compromise subsequent legal action (see paragraph 2.12).

2.44 **BELB's procurement procedures for response maintenance had, for a number of years, placed little or no emphasis on achieving value for money.**

This has undoubtedly meant that considerable sums of money were spent unnecessarily which would otherwise have been available for schools' funding. BELB has stated that the guidelines it had in place, which its officers in the maintenance section should have been following, were the same as those used in the rest of the education sector at the time.

2.45 **NIAO notes that there was a parallel investigation in SEELB into the whistleblowers allegations.** Although the C&AG has decided not to report separately on this case, it appears to NIAO that many of the lessons arising from the BELB case apply equally to SEELB.

26 *Managing the Risk of Fraud: A Guide for Managers*, Chapter 6, HM Treasury, May 2003. A Northern Ireland version of this document is available on the Accountability and Accountancy Services Division website - <http://www.aasdni.gov.uk>.

Part Three:
The Fraud Investigation into Library Building Works



Part Three: The Fraud Investigation into Library Building Works

In August 2005 BELB found it had paid for building work at two libraries which had not been done

- 3.1. The Department of Culture, Arts and Leisure (DCAL) funds the five education and library boards to provide a public library service in their respective areas. In November 2004, DCAL provided BELB with funding of £232,000 for the 2004-05 financial year, to bring its libraries into compliance with the access requirements²⁷ of the Disability Discrimination Act (DDA). The funding was based on a programme of DDA works required at 16 libraries, based on external consultants' DDA compliance reports. Funding unspent at the end of the financial year was to be returned to DCAL.
- 3.2. BELB has informed NIAO that senior libraries management in BELB immediately notified Property Services, who were responsible for planning and delivering agreed capital works schemes including placing orders for work and processing invoices. Senior libraries management monitored the budget and sought frequent updates and assurances from Officer E²⁸ (who was managing the project) that work relating to the £232,000 would be completed by the end of the 2004-05 year. In March 2005, DCAL made a further allocation of £161,000 for the 2005-06 financial year for the remaining DDA work required (but which had not previously been scheduled for completion within the £232,000 budget for 2004-05).
- 3.3. In August 2005, following the introduction of revised procedures by BELB's new Facilities Manager, and in light of her concerns about the amount of work awarded to a particular contractor, she asked to inspect the documentation for the completed library works. Shortly afterwards, a BELB Property Services Officer visiting Whitewell Library discovered DDA work had not been completed, and raised concerns. The maintenance officer (Officer E) who had authorised payment of the invoice then alleged that documentation relating to the library work had been stolen from his car. Given that it now appeared that BELB had paid for work which had not been carried out, Officer E was placed on precautionary suspension on full pay. BELB Internal Audit conducted a review of payments authorised by this official and identified a second case (Oldpark Library) where Officer E had authorised payment on the basis that work was complete – this job had also never been started.
- 3.4. BELB Internal Audit conducted a preliminary investigation. It found that Officer E had allocated contractors²⁹ to these libraries without going to tender/quotation and the amounts paid (£80,000 in total) were substantially higher than those estimated. In December 2005, BELB commissioned an independent investigation of the case from the Central Services Agency's Counter-Fraud Unit (CFU), based on the information collected by Internal Audit. CFU is a specialist team of trained and accredited counter-fraud specialists. In October 2006 the investigation

27 This includes, for example, the provision of ramps, widening of doorways and lowering of counters.

28 This officer was subject to investigation following allegation by a whistleblower (Part 2 of this report) and fully exonerated.

29 These are not the same contractors which are the subject of comment in Part 2 of this report.

concluded that a successful prosecution was unlikely, but that BELB should proceed with a disciplinary case. These conclusions were accepted by BELB's Audit and Risk Management Committee and the formal complaint to PSNI was withdrawn. In August 2007, Officer E's employment was terminated on ill-health grounds and the disciplinary case against him was wound up (BELB said this action was taken on medical advice and in line with BELB disciplinary procedures). The Boards' Joint Legal Service (a five Board service) has issued legal papers to the relevant contractors in order to recover the outstanding balance of £41,000. This is currently ongoing.

3.5 In keeping with NIAO's policy of openness and transparency each contractor was provided with relevant extracts of our report and invited to comment. The legal advisor for the contractor involved in the Oldpark Library case told NIAO that there was at all times a contractual relationship between BELB and his client; at no time was his client involved in any alleged fraud against BELB; and that BELB's investigations into alleged irregularities concerning payments by its Property Services Unit were entirely unfounded. The legal advisor also stated that the investigation explicitly cleared his client of any allegations of fraud.

The investigation into the library case was thorough and professional

3.6 The strengths of this investigation were:

- Officer E was immediately suspended and the two contractors involved were suspended from the standing list within days
- all DDA work in respect of the funding received from DCAL for the 2004-05 and 2005-06 financial years was suspended and action initiated by BELB to recover the monies paid out
- steps were taken to secure potential evidence; Officer E's papers, computer and mobile phone were seized and examined. Access to BELB's property planning and management system (Manhattan) was restricted, as was physical access to the invoice store
- steps were quickly taken to address the control weaknesses identified; for example, as an interim measure BELB required all work over £1,500 to have Head of Department approval
- BELB Internal Audit liaised effectively with PSNI, making a formal complaint and preparing an evidence pack to assist with the police investigation
- BELB sought and took expert advice from DSD and CFU

Part Three: The Fraud Investigation into Library Building Works

- BELB engaged fraud specialists (CFU) to review BELB papers, conduct interviews with Officer E and the contractors and make recommendations on the prospects for a successful prosecution
- when the criminal route had been fully explored, BELB continued to pursue recovery of the £80,000 paid to the contractors
- BELB kept interested parties advised of progress in the case, including NIAO, DCAL and the Chair of its Audit and Risk Management Committee.

CFU found there had been clear breaches of Standing Orders and Board Procedures

3.7 In January 2005, BELB's General Purposes and Finance Committee had approved an exception to Standing Orders so that DDA work in certain libraries could go ahead without tender/quotation. DDA work at Whitewell and Oldpark was not included in this exception, as these libraries were being considered for closure. When BELB decided to retain the libraries, the work should have been tendered. Instead Officer E decided to directly allocate this work to two contractors. The contractors confirmed at interview that orders were made verbally and no contracts for the work had been seen or signed.

Officer E was inadequately supervised

3.8 CFU found no evidence that DDA work was supervised or inspected by Officer E; he also appears to have been left entirely to his own devices with little, if any, supervision or control from his line management. The orders for work at Whitewell and Oldpark were authorised on BELB's Manhattan system by the Administration Officer using the logon and password of one of the two Senior Maintenance Officers and not, as required, by a Senior Maintenance Officer (see paragraph 2.30). The invoices were approved by Officer E and authorised by the second Senior Maintenance Officer (his supervisor) on the basis of trust, without inspecting all of the documentation or visiting any of the sites. CFU concluded that "*Senior Maintenance Officers appear to have abdicated any role in verifying the invoices approved by their maintenance officer.*" NIAO notes that, in June 2007, Officer E's supervisor was disciplined for serious misconduct in respect of his supervisory failings and received a final written warning. This was to be removed from his record after one year's satisfactory conduct.

CFU identified possible criminal charges – but the absence of any documentation undermined the prospect of a successful prosecution

3.9 CFU identified six possible charges in this case – three under the Theft (NI) Act 1969:

- theft;
- obtaining property by deception; and
- false accounting³⁰

The further charges were:

- making a false instrument;³¹
- using a false instrument;³² and
- conspiracy to defraud³³.

NIAO considers there may have been value in CFU considering the offence of misconduct in public office³⁴.

3.10 Key issues for the investigators were:

- whether Officer E and the contractors intended to “permanently deprive” BELB of the funding or whether they intended to do the work at some point. Both Officer E and the contractors argued that it was always intended that the work would be completed and payments were made

only to use the budget allocation before the financial year-end (when unused funding would have to be returned to DCAL)

- whether the contractors intended to deceive BELB in preparing invoices for work which had not started or whether the invoices were prepared on the instructions of Officer E to facilitate the work being carried out. Both contractors stated that they were acting under instructions from Officer E not to start work before the year-end
- whether Officer E was under pressure from senior staff to ensure DDA funding was used and whether, as the contractors claimed, payment in advance was common and accepted practice in BELB. Internal Audit later prepared an analysis³⁵ showing that prepayment was not common practice but this analysis was not available to CFU when making its recommendations

3.11 In the absence of any documentation it was impossible for CFU to come to a definitive conclusion on these issues. However, its analysis proves the value of having the view of a fraud specialist with a detailed understanding of the relevant legal issues.

30 Fraud legislation has been amended by the introduction of the Fraud Act 2006 which deals with offences committed after 15 January 2007

31 The Forgery and Counterfeiting Act 1981, Section 1(1)

32 The Forgery and Counterfeiting Act 1981, Section 3

33 The Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988, Section 11

34 An offence under Common Law

35 In order to determine if there was a pattern of payments being made before work had been undertaken, Internal Audit examined the extent to which invoices were paid unusually quickly after orders were placed. In the four financial years from April 2002 to March 2006, 45 orders placed in the last quarter of the year were invoiced within ten days; 18 of these were those authorised by Officer E in 2004-05.

Part Three: The Fraud Investigation into Library Building Works

CFU recommended that criminal action should not be pursued

3.12 BELB's case was weak because, as there was no contract, there was no evidence of what contractors were asked to do or when it was to be done. It is the opinion of CFU that there was insufficient conclusive evidence to support a criminal prosecution. It was possible there was a conspiracy to commit a deception against BELB but the reasons behind the contractors' actions "cannot be conclusively determined 'beyond reasonable doubt'" and "neither can it be found that they [the contractors] acted dishonestly".

DDA work undertaken was often poor value for money

3.13 DDA work undertaken in other libraries was often incomplete, poor quality and more expensive than anticipated. BELB has reviewed the work actually carried out in accordance with the schedule of works and estimated that, of the total of £287,291³⁶ paid for work in 16 libraries, £110,000 was paid for work which was either not carried out (excluding the £80,000 in respect of Whitewell and Oldpark, where no work was started) or was not carried out to the required standard (see **Figure 4** and photographs at **Appendix 7**). BELB told us that it has issued legal papers to recover these amounts.

3.14 DFP's 1997 Guidance on Estate and Building Services Procurement³⁷ identified

the risk that poor contract management could result in false claims and payments for work not carried out, or exaggerated claims for actual work done. The guidance identified that the key controls to prevent this type of irregularity were:

- a clear audit trail with written records, any changes authorised by senior management
- site checks, which should be random and systematic
- clear separation of duties between ordering the work, certification and authorisation of payment.

Such controls were nominally in place in BELB but in practice they were not implemented. BELB has stated that the breakdown of procedures has been the subject of disciplinary action as detailed in paragraph 3.4. Additionally, BELB has assured DCAL that new procedures are now operating within its Property Services, requiring all contractors to submit a works completion schedule detailing times, numbers of operatives and descriptions of work carried out. These schedules are signed by a BELB representative at the location of the works and invoices received from contractors will not be processed without a completed works schedule. Sample checks are performed on payments up to £2,000 and all payments in excess of £2,000 are subject to a verification visit and check.

36 This was £50,000 more than the estimated cost and £149,000 more than had been approved by the Board's General Purposes and Finance Committee.

37 *Estate and Building Services Procurement: Prevention of Fraud and Irregularity in the Award and Management of Contracts* issued under circular reference DAO(DFP) 8/97, April 1997

Figure 4: Case Study – Whiterock Library DDA Work

In the case of Whiterock Library, an independent surveyor had initially estimated the cost of DDA compliance as £14,625; funding of £16,575 was approved and £15,920 was spent. After the Whitewell and Oldpark cases were discovered, the value of the work carried out at Whiterock was assessed by BELB's surveyor; it was valued at £4,700. The quality of the work was poor and did not comply with building regulations; BELB had to pay another contractor £900 to bring it up to standard. The contractors had, for example, widened two doorways without also extending the lintel supporting them; as a result the walls above were supported only by the doorframes. The quantity surveyor found that only two of the seven jobs detailed on the external consultant's DDA audit schedule of works, and which were necessary to make the library DDA compliant, had actually been done – the fitting of an induction loop (carried out by library staff – not the contractor) and work to make the counter wheelchair accessible. The cost of a new counter was priced at £5,000, but the contractors simply cut out a section of the old counter and dropped in a new section made from a kitchen worktop. The value of the work done on the counter was estimated at £200-£300.

Note: The contractor in this case was also the contractor for Whitewell Library.

NIAO Conclusions

- 3.15 The poor controls and procedures undermined any criminal case BELB might have had against contractors in the library building works case because suspected contractor wrong-doing went unchallenged by BELB staff.
- 3.16 **This case reinforces the point that proper checks of contractors' invoices before payment and physical inspection of work are key to the prevention and detection of fraud.** NIAO notes that the discovery of this case was prompted by the action of a newly appointed Facilities Manager. This illustrates how important it is for new managers to examine existing processes, and not allow them to continue unquestioned.
- 3.17 **It is a concern that the failure to carry out library works to a satisfactory standard (or not at all in two instances)**

was not identified or raised by library staff, nor did they create or maintain any record of what work was done and when. For example, there was no log of when contractors were on site. BELB has informed NIAO that when the DDA work was undertaken, its Property Services, as opposed to library staff, were responsible for managing the capital works schemes as agreed with library management. Libraries management, who are located centrally and not at the sites where the DDA work was being conducted, sought and received assurances from Property Services that work relating to the £232,000 funding across 16 libraries would be completed by the end of the 2004-05 financial year. The remaining DDA work, amounting to £161,000, was scheduled for completion during the 2005-06 financial year. Libraries management were not involved in the on-going delivery of the capital works. The reliance by BELB libraries management

Part Three: The Fraud Investigation into Library Building Works

solely on the information provided by Property Services has been recognised as a system weakness and new arrangements have been implemented to address this.

3.18 **There were clear benefits from involving qualified fraud investigators in the case.**

NIAO considers that there was scope for better utilisation of a joint project team formed by BELB at the outset to oversee this investigation. While this team demonstrated elements of good practice, in that it included representation from Internal Audit and Human Resources, there would have been clear benefits in also having representation from legal services. BELB told us that the project team met on three occasions (only the first meeting was minuted) and, having produced clear terms of reference for the CFU investigative team, it was disbanded and responsibilities for the receiving of updates and progress reports transferred to the BELB Audit and Risk Management Committee.

Part Four:
The Departments' Roles in the Investigations



Part Four: The Departments' Roles in the Investigations

- 4.1 The Department is the sponsoring department for BELB and is responsible for exercising an appropriate and effective level of oversight, as well as ensuring that BELB has in place the necessary financial and management controls and procedures. The responsibility for oversight of the library building works investigation lay with DCAL as the funding department.
- 4.2 Experience of investigating suspected fraud and impropriety can be relatively rare in non-departmental public bodies (NDPBs). It is important therefore that, when suspected fraud is identified, the parent department should be prepared to provide support and advice to ensure that any investigations and follow-up actions are in line with best practice in the public sector³⁸.
- The Department provided effective oversight of the investigation into the whistleblower's allegations (Part 2 of report)**
- 4.3 The Department initiated a number of steps which advanced the investigation:
- with the agreement of BELB and SEELB, it established how the preliminary investigations would be conducted
 - it commissioned DSD's review of the preliminary investigations
 - it also commissioned CPD to provide technical support for the investigation, for example an analysis of the reasonableness of a sample of contractor invoices (CPD found these were within the acceptable range)
- 4.4 The Department's internal review of the investigation (see paragraph 4.14 below) found that it progressed in a timely manner from the initial allegations but that the timescale had been adversely affected by the time taken to implement the recommendations of the various investigations within BELB. NIAO agrees with this finding.
- 4.5 The Department offered financial support to BELB and SEELB to meet the additional costs of the investigations.
- 4.6 In April 2004 the Department asked for an Action Plan to address the findings of the Internal Audit investigations and the 2001 NIAO Report. It later asked for the plan to be updated to take into account the findings of the consultant's report.
- 4.7 The Department acted to ensure that issues arising from the investigations were considered by all education and library boards; it sought assurances that registered gas installers had been used and gas installations represented no risk to children. The Department also asked all boards (together with the Department's Head of Internal Audit) to develop options to monitor NIAO recommendations effectively. In April 2004 the Department asked the other four boards to review their progress in implementing the 2001 NIAO Report and their arrangements for ensuring value for money in building

38 *Report on Internal Fraud in the Local Enterprise Development Unit*, Committee of Public Accounts, Eleventh Report of Session 2001-2002, paragraphs 5.17 and 30.

maintenance. They were also asked to analyse payments to contractors, rates charged and the rotation of contractors. In March 2006, the Department held a workshop on procurement best practice for education and library boards, to discuss and disseminate best practice. NIAO participated in this workshop.

- 4.8 From March 2006 the Department was fully involved, with BELB and SEELB staff, in the Procurement of Maintenance Contractors Steering Group (paragraph 2.26). The Group had an oversight role in the development of the new procurement strategy adopted by BELB.

The Department followed good practice in its management of the investigation into the whistleblower's allegations

- 4.9 In accordance with Government Accounting requirements (paragraph 2.2), the Department notified NIAO, DFP and PSNI of the allegations at the earliest opportunity.
- 4.10 The Department's Internal Auditors maintained regular contact with the whistleblower, who provided further details and some new allegations which were passed on to the investigating auditors. However, while the Department provided verbal feedback, its internal review (paragraph 4.14 below) identified that the whistleblower would have welcomed more regular updates on the progress and outcome of the investigation. However, we accept that there were matters of a sensitive

nature which the Department could not disclose, for example, details of ongoing disciplinary cases. The Department took action to protect the identity of the whistleblower in accordance with their wishes and reviewed the sensitivity of the information provided by the whistleblower to determine if their identity could be established from the material released. However, the Department ensured that the whistleblower was aware that this was a possibility, and additionally took steps to ensure that BELB was also aware of its responsibilities to protect the identity of the whistleblower.

- 4.11 The Department acted in accordance with its own Fraud Policy and Fraud Response Plan. We note that the Department states that it is responsible for ensuring that "*staff who carry out fraud investigations are properly trained*". The Department agreed that both BELB and SEELB would carry out the preliminary investigation into the whistleblower's allegations knowing they had no trained investigators. However, the Department has informed us that, in order to comply with its own Fraud Response Plan, it decided upon a limited remit for the BELB and SEELB internal audit investigations, which would later be quality assured by qualified fraud investigators. The Fraud Response Plan also calls for a report to be produced when the case does not provide sufficient grounds for a formal complaint to PSNI, giving reasons why. This requirement was met through the analysis provided by DSD in its report (paragraph 2.10).

Part Four: The Departments' Roles in the Investigations

4.12 The Department's whistleblower policy at the time was rudimentary and provided little information beyond the purpose of the relevant legislation and the role of the prescribed persons. It provided no guidance to staff on how to deal with a whistleblower and did not address issues such as requests for anonymity. The Department has now revised its whistleblower policy, which can be accessed on its website.

The Department consulted with fraud and other experts as appropriate

4.13 The Department:

- consulted with NIAO staff to determine best practice in fraud investigation, including the desirability of having qualified fraud investigators involved
- maintained regular contact with BELB Internal Audit to monitor progress
- took appropriate legal advice from the Departmental Solicitor's Office
- consulted as appropriate with PSNI and, in line with its Fraud Response Plan, attended meetings with PSNI and BELB Internal Audit. It provided PSNI with access to the whistleblower and obtained feedback from them on the consultant's report. The PSNI officer concerned was "impressed" by the report's "thoroughness".

The Department has sought to learn the lessons of the investigation

4.14 The Department's Internal Audit unit conducted a review of the Department's performance in investigating the whistleblower's allegations. The Department told us that 18 of the review's 20 recommendations have been implemented; the remaining two are partially implemented. Among the key recommendations arising from the review were:

- the Department should carry out appropriate fraud risk analysis, which should include evaluation of the need to have sufficiently trained fraud investigators within its remit
- the Department should liaise with representatives from its NDPBs to establish a set of protocols that clearly define the roles, responsibilities and expectations of all concerned in an investigation of fraud within NDPBs
- in future, where the Department directs a fraud investigation to be carried out in an NDPB, there should be a formal terms of reference clearly defining roles and responsibilities of all concerned
- within future fraud investigations concerning NDPBs, senior management should liaise more closely with the NDPB Audit and Risk Committees to ensure that both the Department and committee members

- are kept fully informed of investigation issues
- the Department should consider engaging functional branches from an early stage in future fraud investigations. The Department's Building Branch provided valuable assistance to the consultant and could usefully have been brought in to support the investigation at an earlier stage
 - for future investigations the Department should ensure that a summary of the recommendations is circulated to all Boards
 - the Department should consider establishing a dedicated fraud unit for the new Educational and Skills Authority. NIAO would expect many of the 14 officers who received specialist fraud training to form the nucleus of such a unit.
- 4.16 As the funding department for the DDA work, DCAL was regularly updated and content that BELB's conduct of the investigation was well-handled. In addition, DCAL ensured that the Department was regularly briefed on its progress.
- 4.17 DCAL also asked all other education and library boards to review their own procedures and provide assurance in light of the library case.
- 4.18 DCAL has also drawn the issues relating to libraries to the attention of the Northern Ireland Library Authority in order that it can take account of the findings as it establishes its procurement arrangements.

DCAL was content with the conduct of the library building works investigation (Part 3)

- 4.15 In the DDA case, BELB notified the Department and DCAL of the suspected fraud. NIAO received suspected fraud notifications from all three bodies.
-

Appendices



Appendix One: (Paragraph 1.6)

DFP “Managing the Risk of Fraud” A Guide for Managers, September 2003

The key guidance on the management of fraud in the public sector is that contained in Government Accounting³⁹ and the DFP’s Managing the Risk of Fraud. This states that departments must undertake fraud investigations where there is suspected fraud and take the appropriate legal and/or disciplinary action in all cases where that would be justified. The guidance makes clear that everyone in an organisation contributes to the management of fraud risk. This starts at the top where senior management set the tone and promote an anti-fraud culture throughout the organisation. Addressing the risk of fraud includes putting in place effective accounting and operational controls and the maintenance of an ethical climate that encourages staff at all levels to actively participate in protecting public money and property.

The following are examples of possible fraud indicators, many of which are relevant to the cases described in this report:

- Unusual employee behaviour (e.g. a supervisor who opens all incoming mail, refuses to comply with normal rules and practices, fails to take leave; managers by-passing subordinates; subordinates by-passing managers; living beyond means; regular long-hours working; job dissatisfaction/unhappy employee; secretiveness or defensiveness)
- Key documents missing (e.g. invoices, contracts)
- Inadequate or no segregation of duties
- Absence of controls and audit trails
- Inadequate monitoring to ensure that controls work as intended (periodic testing and evaluation)
- Documentation that is photocopied or lacking essential information
- Missing expenditure vouchers and official records
- Excessive variations to budgets or contracts
- Bank and ledger reconciliations which are not maintained or cannot be balanced
- Excessive movements of cash or transactions between accounts
- Numerous adjustments or exceptions
- Overdue pay or expense advances
- General ledger out of balance
- Duplicate payments
- Ghost employees on the payroll
- Large payments to individuals
- Crisis management coupled with a pressured business environment
- Lack of established code of ethical conduct
- Lack of senior management oversight
- Unauthorised changes to systems or work practices
- Lack of rotation of duties
- Policies not being followed
- Post Office boxes as shipping addresses
- Lowest tenders or quotes passed over with minimal explanation recorded
- Single vendors
- Unclosed but obsolete contracts
- Defining needs in ways that can be met only by specific contractors
- Splitting up requirements to get under small purchase requirements or to avoid prescribed levels of review or approval
- Vague specifications
- Disqualification of any qualified bidder
- Climate of fear or an unhealthy corporate culture
- High staff turnover rates in key controlling functions
- Chronic understaffing in key control areas

39 From June 2008 *Government Accounting* has been replaced by *Managing Public Money Northern Ireland*. Annex 4.7 deals with fraud matters.

- Low staff morale/lack of career progression/weak management
- Excessive hours worked by key staff
- Consistent failures to correct major weaknesses in internal control
- Management frequently overrides internal control
- When an employee is on leave, the work is left until the employee returns
- Lack of common sense controls such as changing passwords frequently, requiring two signatures on cheques or restricting access to sensitive areas
- An employee's lifestyle is more affluent than would be expected from his/her employment.

The 2003 guidance also highlights the specific risks associated with the use of contractors:

- A contractor could be selected as a result of favouritism or despite not offering best value for money.
 - Payments could be made for work not carried out, as a result of collusion between the contractor and official.
-

Appendix Two: (Paragraphs 1.6 and 2.14)

Office of Fair Trading Cartels and the Competition Act 1998, A Guide for Purchasers

What is bid rigging?

Bid rigging is a form of cartel that may arise when contracts are awarded by competitive tender. Members of the cartel agree with each other on who should win a particular contract and at what price. The possibility of bid rigging will be particularly relevant to public sector purchasers, given their legal obligations to award certain contracts by competitive tender.

What are the signs of bid rigging?

Although bid rigging operations are often very sophisticated in order to avoid detection, there are certain signs that you can look out for, particularly where public bodies award contracts regularly. For example:

- do certain suppliers unexpectedly decline an invitation to bid?
- is there an obvious pattern of rotation of successful bidders?
- is there an unusually high margin between the winning and unsuccessful bids?
- do all bid prices drop when a potential new bidder (i.e. who is not a member of the cartel) comes on the scene?
- is the same supplier the successful bidder on several successive occasions in a particular area or for a particular type of contract?
- are there one or more suppliers who continue to submit bids although they consistently fail to win a contract?

How can you tackle bid rigging?

There are certain steps that you can take to hamper the success of bid rigging operations or reduce the likelihood that they will occur. For example, you can:

- make any bid qualifications as broad as possible so that they can be met by the widest range of suppliers
- shop around for suppliers when inviting bids
- ask for bids to be broken down into as much detail as possible
- keep records of bids for comparison purposes
- insist that main contractors assign sub-contracts through a competitive process
- seek information from bidders about their associated companies and subsidiaries
- obtain a signed declaration of non-collusion from each bidder and make this a term of the contract.

Appendix Three (Paragraph 1.7)

HMT Guidance on Indicators of Procurement Fraud⁴⁰

The guidance sets out the fraud 'indicators' in the contract process:

- disqualification of suitable tenderers
- 'short' invitation to tender list
- unchanging list of preferred suppliers
- consistent use of single source contracts
- contracts that include special, but unnecessary, specifications, that only one supplier can meet
- personal relationships between staff and suppliers
- withdrawal of a lower bidder without apparent reason and their subsequent sub-contracting to the successful bidder
- 'flexible' evaluation criteria
- acceptance of late bids
- changes in specification after bids have been opened
- consistently accurate estimates of tender costs
- poor documentation of the contract award process
- consistent favouring of one firm over another
- unexplained changes in the contract after award
- contract awarded to a supplier with a poor performance record
- split contracts to circumvent controls or contract conditions
- suppliers who are awarded contracts disproportionate to their size
- frequent increases in contract specifications.

⁴⁰ This guidance was reproduced in NIAO's report *Introducing Gas Central Heating in Housing Executive Homes*, NIA 43/03, 1 July 2004

Appendix Four: (Paragraph 2.1, footnote 7)

Chronology of the Investigations into the Whistleblower's Allegations

Date	Event
November 2002	Anonymous letter to the Chief Executive of BELB alleged "widespread corruption within mechanical and engineering departments".
January 2003	The outcome of BELB's review of the allegation by management in consultation with Internal Audit presented to the Audit Committee. It found no evidence to support the complaint.
February 2003	Second anonymous letter to BELB alleged that a price-fixing ring was in operation.
July 2003	Whistleblower phoned the Department's Internal Audit. The whistleblower alleged favouritism, bribery and over-charging by contractors in the award of maintenance work in BELB and SEELB.
August 2003	The Department and BELB Internal Audit met to discuss responsibilities and roles in the investigation. It was agreed that BELB Head of Internal Audit would take forward the investigation.
August 2003	DFP (Fraud and Internal Audit Policy Branch), NIAO and PSNI notified of suspected fraud.
November 2003	The Department engaged DFP's Central Procurement Directorate to provide technical support to BELB Internal Auditors conducting the investigation
December 2003	Preliminary reports provided by BELB. BELB found no evidence that "any officer has received payments from contractors" and no "direct evidence of price-fixing or inflating by contractors".
February 2004	BELB Audit and Risk Management Committee meeting (the Department and NIAO represented). NIAO expressed view that there "were so many indicators of fraud that they considered further investigation was required."
March 2004	DSD (Corporate Investigations Unit) reviewed the Internal Audit Reports and found "there was no substance to most of these allegations of criminal behaviour". However, there were many examples of "gross negligence, incompetence and/or complete disregard for procedures..."

April 2004	The Department asked BELB for an Action Plan to address the findings of the Internal Audit Investigation and the 2001 NIAO Report on buildings maintenance in education and library boards.
May 2004	The Department appointed a consultant to determine if there was evidence of misconduct. The Department asked BELB to take no further action on its draft action plan, which included the introduction of new contractor lists, until its adequacy was reviewed by the consultant.
January 2005	Consultant's report issued. He found that the actions of two BELB officers arising from their relationship with a contractor " <i>amount to wilful neglect of the financial and contractual interests of the Board</i> " and that they " <i>represented gross misconduct</i> ". The report also found evidence of contractor malpractice and that BELB's procurement exercises in May 2003 and December 2003 were seriously flawed.
January 2005	The Department wrote to BELB asking for an action plan which would address the issues raised by the consultant.
August 2005	BELB uncovered that it had paid £80,000 for building works at two libraries which had not been carried out. The officer who approved the payments was suspended and a fraud investigation launched.
November 2005	The Department maintained contact with BELB on the production of an adequate Action Plan between January and November 2005. This included attendance at the BELB Audit Committee during May 2005 to further discuss what was required. In November the Department wrote to BELB indicating that it had yet to receive a detailed action plan which would address all the recommendations of the consultant's report, the recommendations of NIAO's 2001 report and issues highlighted by the Department. The Action Plan was finally agreed in February 2006.
October 2006	CFU's Report on the Library Works investigation recommended that criminal action should not be pursued but noted that there were clear breaches in Board procedures. The contractors were asked to repay £80,000 that they had received.
October 2006	BELB Audit and Risk Management Committee accepted the New Procedures for the Procurement of Maintenance Contracts; these allowed for the use of Measured Term Contracts for all maintenance work. The new contracts were introduced from November 2006.

Appendix Four: (Paragraph 2.1, footnote 7)

December 2006/ January 2007	Arising from the investigation into the whistleblower's allegations, two BELB officers received formal written warnings which were to be removed from their record after one year's satisfactory conduct.
August 2007	The officer who authorised payments in the library case was dismissed on ill-health grounds and the disciplinary case against him was wound up. His supervisor received a formal written warning in June 2007 for serious misconduct in respect of his supervisory failings.

Source: the Department and BELB papers

Appendix Five: (Paragraph 2.6)

Maintenance Expenditure

Belfast Education and Library Board Maintenance Spend 2001-2007							
	2001-02 £m	2002-03 £m	2003-04 £m	2004-05 £m	2005-06 £m	2006-07 £m	Total £m
Response	3.5	5.2	5.1	2.8	2.4	1.9	20.9
Planned	1.1	2.1	1.1	2.5	0.8	0.4	8.0
Total	4.6	7.3	6.2	5.3	3.2	2.3	28.9

Source: BELB

Appendix Six: (Paragraph 2.8, Figure 2)

BELB Maintenance Section Payments to Preferred Contractors: April 2002 to August 2003

Contractor ⁴¹	No. of Payments	Response £	Emergency £	Quotation £	Tender £	Misc. £	Total £	% of Total
A	741	187,810	123,251	49,455	512,566	24,981	898,063	33.5
B	919	283,621	113,125	15,309	127,526	15,752	555,333	20.7
C	679	172,389	23,600	30,842	170,006	17,749	414,586	15.5
D	375	79,745	37,756	4,500	231,288	0	353,289	13.1
E	467	87,858	5,387	13,845	143,929	22,299	273,318	10.2
F	161	73,929	5,367	0	20,710	6,508	106,514	4.0
G	351	59,772	16,893	4,438	0	0	81,103	3.0
Total	3,693	945,124	325,379	118,389	1,206,025	87,289	2,682,206	100.0
%		35.2	12.1	4.4	45.0	3.3	100.0	

Source: BELB Internal Audit, February 2004

41 Contractors A – E and G were the six preferred contractors for response maintenance work. Contractor F was one of two reserve contractors; the second reserve contractor was not awarded any maintenance work in this period.

Appendix Seven: (Paragraph 3.13)

Extracts from the Quantity Surveyor's report on Whiterock Library

View of Lintel above Storeroom Door



The lintel above the storeroom door extended approximately 2 inches past the edge of the recently installed doorset. Current regulations state a minimum 4 inches must protrude beyond the doorset into the brickwork on each side. The lintel did not appear to be of new construction.

View of Lintel above WC Door



The lintel was original and actually rested on the new doorset. Current regulations state a minimum 4 inches must protrude beyond the doorset into the brickwork on each side. In addition it was noticed that there was evidence of cracking from the corner of the doorset and travelling upwards. It is not known whether this cracking was in existence prior to the new doorset and/or its structural significance.

Modification to Existing Ramp



The contractor has provided two steps to the landing of the ramp. It is not known why the provision of steps to an existing ramp would be required under Disability Discrimination legislation. The existing handrail was not modified to permit the use of the steps thus creating a hazard in the event of an emergency.

Provision of New Counter with Lowered Sections



Modifications were made to existing counter. No new counter was installed. The standard of workmanship is generally poor and the use of a 'kitchen worktop' as a front reception counter does not reflect the quality expected by the Board.

NIAO Reports 2007 - 2009

Title	HC/NIA No.	Date Published
2007		
Internal Fraud in Ordnance Survey of Northern Ireland	HC 187	15 March 2007
The Upgrade of the Belfast to Bangor Railway Line	HC 343	22 March 2007
Absenteeism in Northern Ireland Councils 2005-06	-	30 March 2007
Outpatients: Missed Appointments and Cancelled Clinics	HC 404	19 April 2007
Good Governance – Effective Relationships between Departments and their Arms Length Bodies	HC 469	4 May 2007
Job Evaluation in the Education and Library Boards	NIA 60	29 June 2007
The Exercise by Local Government Auditors of their Functions	-	29 June 2007
Financial Auditing and Reporting: 2003-04 and 2004-05	NIA 66	6 July 2007
Financial Auditing and Reporting: 2005-06	NIA 65	6 July 2007
Northern Ireland's Road Safety Strategy	NIA 1/07-08	4 September 2007
Transfer of Surplus Land in the PFI Education Pathfinder Projects	NIA 21/07-08	11 September 2007
Older People and Domiciliary Care	NIA 45/07-08	31 October 2007
2008		
Social Security Benefit Fraud and Error	NIA 73/07-08	23 January 2008
Absenteeism in Northern Ireland Councils 2006-07	-	30 January 2008
Electronic Service Delivery within NI Government Departments	NIA 97/07-08	5 March 2008
Northern Ireland Tourist Board – Contract to Manage the Trading Activities of Rural Cottage Holidays Limited	NIA 113/07-08	28 March 2008
Hospitality Association of Northern Ireland: A Case Study in Financial Management and the Public Appointment Process	NIA 117/07-08	15 April 2008
Transforming Emergency Care in Northern Ireland	NIA 126/07-08	23 April 2008
Management of Sickness Absence in the Northern Ireland Civil Service	NIA 132/07-08	22 May 2008
The Exercise by Local Government Auditors of their Functions	-	12 June 2008
Transforming Land Registers: The LandWeb Project	NIA 168/07-08	18 June 2008
Warm Homes: Tackling Fuel Poverty	NIA 178/07-08	23 June 2008
Financial Auditing and Reporting: 2006-07	NIA 193/07-08	2 July 2008
General Report by the Comptroller and Auditor General		

Brangam Bagnall & Co Legal Practitioner Fraud Perpetrated against the Health & Personal Social Services	NIA 195/07-08	4 July 2008
Shared Services for Efficiency – A Progress Report	NIA 206/07-08	24 July 2008
Delivering Pathology Services: The PFI Laboratory and Pharmacy Centre at Altnagelvin	NIA 9/08-09	3 September 2008
Irish Sport Horse Genetic Testing Unit Ltd: Transfer and Disposal of Assets	NIA 10/08-09	10 September 2008
The Performance of the Health Service in Northern Ireland	NIA 18/08-09	1 October 2008
Road Openings by Utilities: Follow-up to Recommendations of the Public Accounts Committee	NIA 19/08-09	15 October 2008
Internal Fraud in the Sports Institute for Northern Ireland/ Development of Ballycastle and Rathlin Harbours	NIA 49/08-09	19 November 2008
Contracting for Legal Services in the Health and Social Care Sector	-	4 December 2008
2009		
Obesity and Type 2 Diabetes in Northern Ireland	NIA 73/08-09	14 January 2009
Public Service Agreements – Measuring Performance	NIA 79/08-09	11 February 2009
Review of Assistance to Valence Technology: A Case Study on Inward Investment	NIA 86/08-09	25 February 2009
The Control of Bovine Tuberculosis in Northern Ireland	NIA 92/08-09	18 March 2009
Review of Financial Management in the Further Education Sector in Northern Ireland from 1998 to 2007/ Governance Examination of Fermanagh College of Further and Higher Education	NIA 98/08-09	25 March 2009





NIAO Reports 2007 - 2009



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Tel 028 9023 8451 Fax 028 9023 5401

ISBN 978-0-337-09184-1



9 780337 091841