



Northern Ireland Audit Office

The Upgrade of the Belfast to Bangor Railway Line

Department for Regional Development

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

HC 343, Session 2006-07, 22 March 2007





Northern Ireland Audit Office

Report by the Comptroller and Auditor General
for Northern Ireland

Ordered by the House of Commons

to be printed 20 March 2007

The Upgrade of the Belfast to Bangor Railway Line

© Crown Copyright 2007

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be addressed to The Licensing Division,
HMSO, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ.
Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

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

J M Dowdall CB
Comptroller and Auditor General

Northern Ireland Audit Office
22 March 2007

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 Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

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

Northern Ireland Audit Office
106 University Street
BELFAST
BT7 1EU
Tel: 028 9025 1100
email: info@niauditoffice.gov.uk
website: www.niauditoffice.gov.uk

TABLE OF CONTENTS

	Page
Summary and recommendations	6
Part One - There was a very significant overspend on the project	10
Since 2000-2001 the Department for Regional Development has provided £155 million for capital investment in Northern Ireland's rail network.	11
The Belfast to Bangor railway line required an upgrade and a project was approved with a budget of £14.7 million.	12
The project experienced a number of difficulties during the pre-construction phase resulting in a very significant overspend and late delivery.	13
An independent project management evaluation highlighted a number of factors which contributed to the project's difficulties.	14
We examined the effectiveness of the management of the project by the Department, the Holding Company and Translink.	15
Part Two - The overspend on the project was the result of failures in several key areas	16
There were serious deficiencies in the economic appraisal. The approved budget of £14.7 million was not realistic and the project was not reappraised when it became apparent that the budget would be exceeded.	17
Maunsell's failure to deliver design and to adequately specify the contract contributed significantly to the increase in the cost of construction.	19
The absence of a comprehensive contract and proper contract variation procedures made it difficult for Translink to control cost increases arising from claims made by the contractor.	20
No damages have been recovered from Maunsell because the termination agreement did not adequately protect Translink's right to claim.	21
In addition to the increased cost of the project, there is uncertainty as to whether it has delivered all of its intended benefits.	23
Currie & Brown expressed concerns over the lead consultant's unwillingness to take on the role of "Lead Consultant Civil Engineer".	24

	Page
Part Three - Action is required to improve future performance	26
Procedures for project management and the management of consultants were not sufficiently robust for large scale capital projects.	27
There were shortcomings in procurement procedures and practices for the appointment of consultants and contractors.	28
Translink’s documented record was the worst we have ever encountered; key decisions were not documented and problems were compounded by the removal and destruction of documents by the former Head of Infrastructure.	29
There were several instances of excessive generosity in the use of public funds associated with the former Head of Infrastructure’s retirement.	30
Good practice corporate governance did not operate effectively and the Holding Company Board failed to exert a sufficient challenge function.	32
Translink has made progress with plans to improve project management but implementation in some areas has been slow and a key management post is still vacant.	33
The Department has taken action to improve control of Translink capital projects.	36
Appendices	37
1 Arrangements for the monitoring and control of public transport provision	38
2 List of key participants	40
3 Timeline	41
4 Statement by the Director of Corporate Affairs, Northern Ireland Transport Holding Company	42
Northern Ireland Audit Office Reports 2006-07	43

Summary and recommendations

1. From the late 1990s it was apparent that the Belfast to Bangor railway line was in need of refurbishment and in January 2001, the Department for Regional Development approved a project by Translink to completely re-lay the line. The project, which had an approved budget of £14.7 million, cost £33.9 million to complete and was delivered six months late despite a significant reduction in the scope of works.

2. There were serious deficiencies in the economic appraisal and the budget was unrealistically low for the project as it was originally specified. The Department's economist and the Department of Finance and Personnel both queried the accuracy of the appraisal estimates but the Department accepted assurances from Translink that the estimates were stable and sustainable. No reappraisal was undertaken when it became apparent that the cost of construction would put costs well in excess of the budget. This has been referred to as the "fatal flaw" in the decision making process, because a reappraisal at this stage would have highlighted that the project was not viable at the approved budget.

3. Maunsell Rail, the lead engineering consultant on the project did not specify the contract properly and failed to deliver track designs. Translink terminated Maunsell's appointment by agreement in November 2001 but these failures resulted in very significant claims from Mowlem, the contractor, for additions, variations and time

delays. The original construction contract was for £9.7 million but the contractor, submitted a final account of £33 million. The final negotiated settlement was for £23 million.

4. Translink's ability to control cost increases was severely prejudiced by omissions in the tender documentation prepared by Maunsell and the absence of effective contract variation procedures within Translink. The settlement process was protracted, lasting for 20 months after completion and one specialist advisor commented that he had never seen so many complex contractual issues in one project. It has been estimated that £22 million would have been a realistic cost for the project as a whole, therefore paying £23 million for the construction element alone would indicate strongly that Translink did not deliver value for money in this case.

5. Even though much of the increased cost of the project was attributable to failures on the part of Maunsell, no damages can be recovered because the Termination Agreement entered into when Translink terminated Maunsell's appointment, did not adequately protect Translink's right to claim. This has potentially resulted in a substantial loss to the public purse. It is difficult to be exact about the quantum of the loss which would be dependent on the extent to which liabilities could be legally attributed to Maunsell. However we estimate that it is in the region of £8 million to £13 million.

6. In addition to the increased cost of the project, there is uncertainty as to whether it has delivered all of its intended benefits. No post project evaluation has been carried out, however, the specification of the project was reduced from a 90 mph to a 70 mph line speed and the proposed enhancement of track alignment by new design was abandoned in favour of straight replacement of the existing track. It seems likely that these reductions in scope would impact adversely on the objectives of the project. If the intended benefits of the project have been delivered in spite of the reduced scope we would question why a more costly specification and ambitious realignment was put forward in the first place.
7. Many of the problems which arose on this project could have been avoided or mitigated by effective project management and proper management of the consultants. Translink did not have its own project management procedure and Maunsell contended that project management was not part of their remit. It would appear therefore, that this major project was carried out without any formal project management in place. Translink did not establish the credentials of the sub-consultants who would be carrying out the critical land survey and design work and did not monitor performance against agreed timescales or validate work as it progressed.
8. There was poor practice in the appointment of contractors and consultants including: a rescope tender which may have contravened European and company directives; appointment or extension of contracts without competition; and absence of written contracts.
9. Translink's documented record was the worst we have ever encountered, with: no central document registry; no document control procedure at project level; and significant gaps in the record where key decisions had not been documented. These problems were compounded by the fact that the former Head of Infrastructure removed and destroyed the bulk of the documentation in his possession when he left in March 2002.
10. There were instances of poor corporate governance, most notably failure to provide adequate information to Board members and the failure of non-executive Board members to exercise an effective challenge function. There were also several instances of excessive generosity to staff.
11. Translink has made progress with plans to improve project management following the approval of an action plan in February 2004 and a comprehensive suite of management procedures is now in place. However, progress in some areas has been slow: the procedures were not fully issued until April 2006 and two key management posts, in the proposed three-man Project Control Team, are still vacant.
12. The Department told us that significant lessons had been learned and applied. A specific unit has been created to deal with capital projects; the quality of economic appraisals had been improved; specific conditions were now attached to grants; and the Department is represented on project boards. A new Management Statement and Financial Memorandum has also been put in place detailing the relationship between the Department, the Holding Company and Translink.

Recommendations

On economic appraisal

13. Where professional economists identify particular risks or problems with appraisals, it is vitally important that the Department exercises an appropriately robust challenge and does not accept unsupported assurances. A more robust challenge in response to the economist's concerns in this case could have averted many of the subsequent problems.

14. The Department should comply fully with guidance on economic appraisal and should keep the Department of Finance and Personnel informed about events which could have implications for the viability of projects, including: increases in cost; changes in scope; and likely delays in completion.

15. A full post project evaluation of the Belfast to Bangor project should be carried out to determine the extent to which the intended benefits of the project have been achieved.

16. Translink and the Holding Company should ensure that future capital projects are not "gold-plated" and that specifications are set at the optimum level to deliver the approved benefits of the project within budget. This will help to ensure that value for money is achieved.

On construction procurement and project management

17. The Holding Company should review current practices for construction procurement in Translink, to ensure that:

- procedures are fully compliant with all legal requirements and accepted best practice; and
- they are applied consistently to ensure that Translink is not exposed in future to possible claims for non-compliance.

The results of this review should be formally reported to the Board.

18. Priority should be given to the recruitment of the remaining members of the Project Control Team, so that Translink can begin to develop in-house expertise as soon as possible and reduce its reliance on external consultants.

19. The Project Control Steering Group should review the strategy for filling these key posts and should provide quarterly progress reports to the Board and the Department.

20. Translink should explore the potential for involvement in the Department of Finance and Personnel's "Achieving Excellence" programme as a means of updating its approach to construction procurement and avoiding the kind of problems which arose on the Bangor project.

On records management

21. Translink should establish a comprehensive records management system which complies with current codes of practice for the maintenance of public records and freedom of information. As a minimum the system should provide:

- a policy statement endorsed by senior management;
- definition of individuals' responsibility to document their actions and decisions;
- records complete and accurate enough to facilitate an audit, protect the companies' legal rights and provide authenticity of the records;
- details of what records are held and where they are held;

- control over the movement and location of records;
- protection from unauthorised access;
- a formal disposal policy properly enforced; and
- a record of the destruction of records.

On ex-gratia payments to staff

22. Where ex-gratia payments to Translink staff are being considered, the case for making such payments should be clearly and formally stated and corporate decisions should be accurately recorded in Board and Committee minutes. We further recommend that the Department should consider:

- the applicability to the Holding Company of Northern Ireland Civil Service procedures for the approval of staff severance terms;
- the need to issue guidance to the Holding Company on the avoidance of excessive generosity to employees; and
- the need to incorporate any new procedures or guidance into the regulatory framework.

On corporate governance

23. The Department should ensure that all Holding Company Board members have a clear understanding of their responsibilities under accepted standards of corporate governance and that in appointing non-executive members, an appropriate range of skills and personalities should be provided to support an effective challenge function. We would draw particular attention to:

- the obligation of executive members to provide information to the Board in a form and of a quality to enable it to discharge its duties;
- the role of non-executive members to hold executive members to account through proper challenge and scrutiny and that in carrying out this duty they should seek clarification or amplification as appropriate; and

- the need to ensure that Board minutes summarise issues of concern which have been raised, particularly where these have not been addressed to the members' satisfaction.

24. The Holding Company should review the current provision of internal audit services to ensure that there is full coverage of key systems based on a comprehensive risk assessment and should consider making the Audit Committee fully responsible for: agreeing the programme of coverage; reviewing all reports; and monitoring the implementation of recommendations.

25. In December 2004, the Department for Regional Development's Internal Audit recommended that the Department should routinely receive copies of all Translink internal audit reports and that the Translink internal audit function should be subject to peer review by the Department to ensure that it meets established audit standards. We endorse these recommendations.

On departmental control of capital projects

26. The Department should consider the merits of a further review by Internal Audit to provide assurance to the Accounting Officer on the operation of new controls, particularly as they are applied to projects in excess of £1 million.

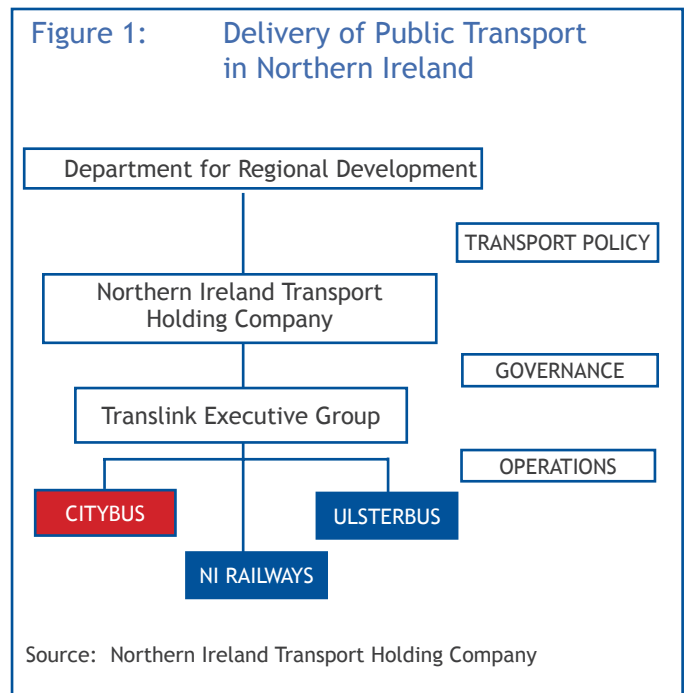
Part One

There was a very significant overspend on the project



Since 2000-2001 the Department for Regional Development has provided £155 million for capital investment in Northern Ireland’s rail network.

1.1 A number of organisations are involved in the delivery of public transport in Northern Ireland. The Department for Regional Development (the Department) has overall responsibility for public transport policy and planning. The implementation of policy is the responsibility of the Northern Ireland Transport Holding Company (the Holding Company), a public corporation established by the Transport Act (Northern Ireland) 1967. Services are provided by the Holding Company’s operating subsidiaries Citybus, Ulsterbus and Northern Ireland Railways which operate under the brand name of Translink¹.



1. Translink was the brand name adopted in 1995 for the integrated operations of the three subsidiaries, which, while remaining separate legal entities, operate under the direction of a single executive management team who report through a Chief Executive Officer, to the Holding Company Board. At the time of the Belfast to Bangor re-lay there was a Managing Director as opposed to a Chief Executive Officer.

1.2 The Holding Company Board, which consists of a Chairperson, two executive directors and six non-executive directors, is appointed by the Minister. Its role is to approve the strategic direction of the operating companies and to ensure their proper governance. The Department is accountable to Parliament for the activities and performance of the Holding Company and its subsidiaries and it has established a Regulatory Framework for monitoring and control (see Appendix 1).

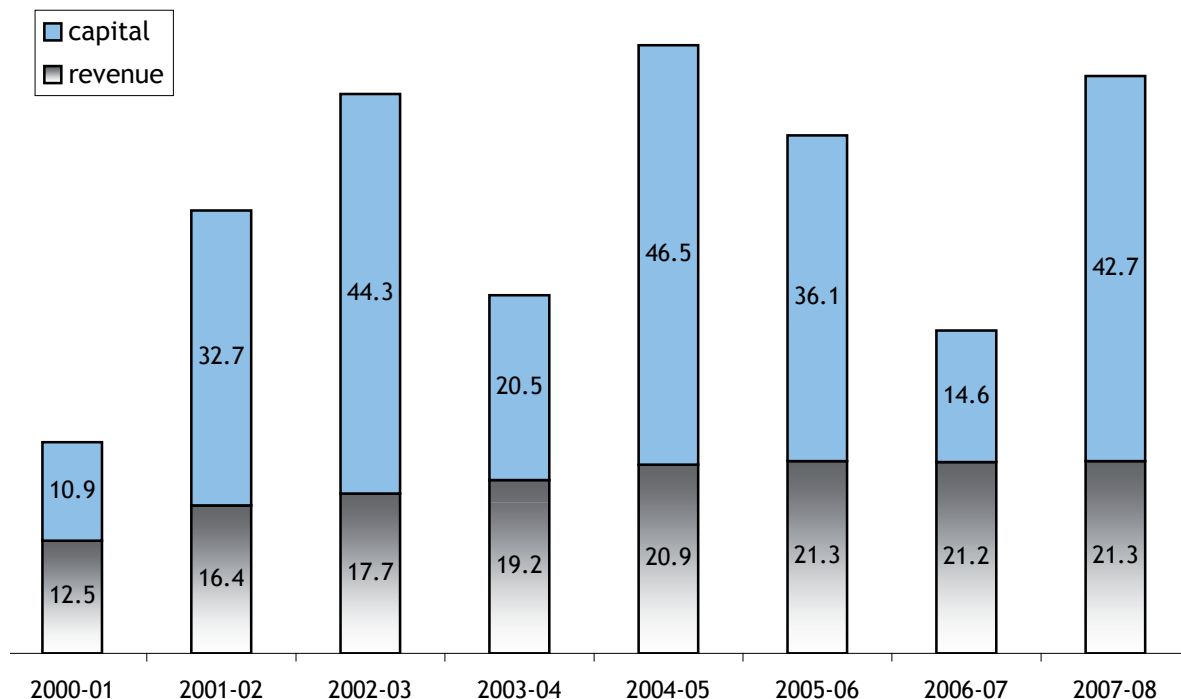
1.3 The Department funds the revenue deficit of Northern Ireland Railways (NIR) and finances virtually all capital investment in railways. Revenue deficit funding has increased steadily since 2000-2001 and is currently running at some £20 million a year. Capital spend similarly has increased following the Railways Task Force Report in 2000 and its recommendation for increased investment in the “core network” of the most heavily used lines. In the five years to 2004-2005, the Department provided £155 million to NIR for major capital projects such as the replacement of rolling stock, the Antrim - Bleach Green line, the

Belfast - Whitehead reconstruction and the Fortwilliam train cleaning facility. Capital spend reduced somewhat in the last two years due to slippage in the programme, but is expected to increase to previous levels in 2007-2008 (see Figure 2).

The Belfast to Bangor railway line required an upgrade and a project was approved with a budget of £14.7 million.

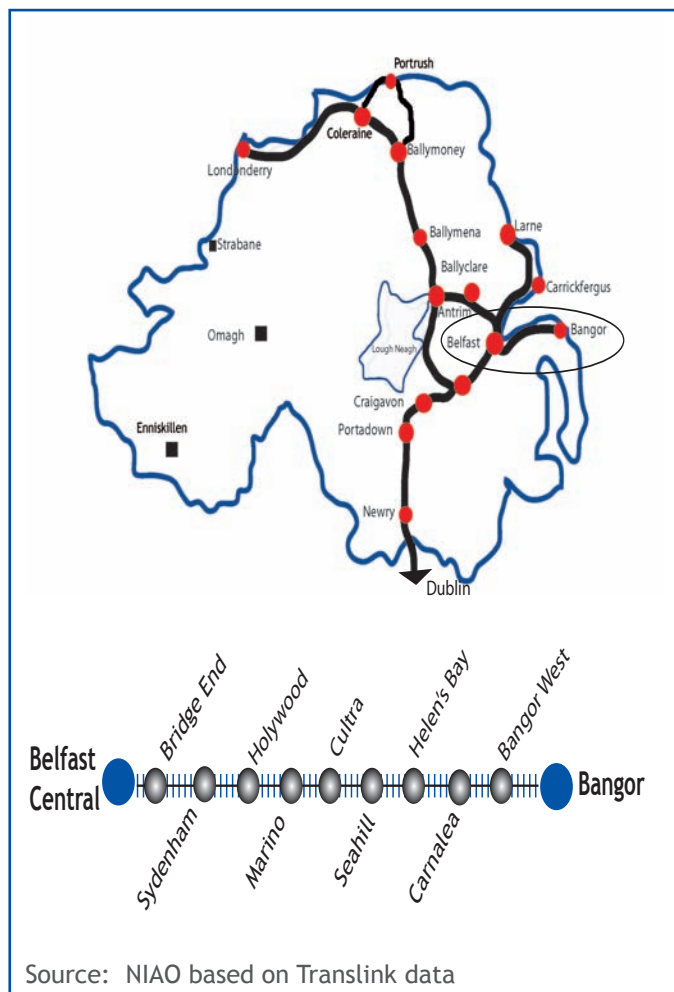
1.4 The Belfast to Bangor railway line, which consists of 11.5 miles of double track serving eleven stations, is one of the rail network’s busiest routes carrying nearly 2 million passengers a year (see Figure 3). From the late 1990s it was apparent that it needed refurbishment to enable speed restrictions to be removed and restore the line to its design specification. In May 1999 an economic appraisal was prepared. This proposed the renewal of all 23 miles of track, with full ballast replacement, new piped drains, sleepers and rails. In addition, new signalling works

Figure 2: Departmental Funding of Northern Ireland Railways (£million)



Source: NIAO based on Department for Regional Development data

Figure 3: The Belfast to Bangor Railway Line



Source: NIAO based on Translink data

were to be provided; three bridges and two underpasses were to be replaced; and sea defences at Hollywood were to be strengthened. It was intended that this would allow a reduction in passenger journey time of up to two minutes in each direction. The need for a complete re-lay of the line was reinforced by a strategic safety review² and a Northern Ireland Affairs Committee Report³ in 2000.

1.5 The project was approved by the Department in January 2001 at a total budget of £14.7 million to be funded in part by a European Regional Development Fund grant of £7.5 million. The project was scheduled for completion by December 2001, which was also the deadline for draw-down of the European grant.

The project experienced a number of difficulties during the pre-construction phase, resulting in a very significant overspend and late delivery.

1.6 Maunsell Rail Limited were appointed as lead engineering consultants in January 2001 with responsibility for: progress of site investigations; detailed design of a new track alignment; preparation of tender documents for the construction contract; recommendation for the award of the contract; and supervision of the construction work. Maunsell sub-contracted the bulk of this work to six sub-consultants.

1.7 The economic appraisal estimated the cost of the construction contract at £8 million, however, tenders received in May 2001 put the cost in the region of £15 million. In an attempt to keep costs within the approved budget, Translink reduced the project specification by removing elements of bridge work and sea defences included in the original appraisal and including only a partial re-lay of 8 track miles between Bridge End and Hollywood. The remaining 15 track miles were to be totally re-laid. The construction contract, based on the revised specification, was awarded to Mowlem Rail in July 2001 at a cost of £9.7 million. At this point the total cost of the project was estimated at £18.2 million, which was still significantly in excess of the approved budget.

1.8 From as early as February 2001, Translink were expressing concerns about Maunsell and as the project progressed, they became increasingly dissatisfied with their performance in several areas including project scoping, accuracy of tender estimates and progress with design. Several crisis meetings were held with Maunsell's senior management between June and September 2001 at which undertakings were given that the project would be brought back on course, but with little effect. Design for the new track alignment was to be delivered by June 2001, however by August, with the construction contractor (Mowlem) already on site, design drawings had still not been delivered. Draft drawings were provided in September, but were described as hopelessly inadequate.

2. Strategic Safety Review of Northern Ireland Railways, Arthur D Little, March 2000.

3. Northern Ireland Railways: Financial provision for New Rolling Stock in 2000-2001, Northern Ireland Affairs Committee, July 2000.

1.9 Translink decided at this point to terminate Maunsell’s appointment. A Termination Agreement was made with Maunsell whereby the contracts with the sub-consultants were “novated” to Translink. This would put Translink in a contractual relationship with the sub-consultants who were expected to produce the necessary designs under Translink’s supervision. Maunsell had been paid £154,000 for invoiced work up to June 2001 but at the date of termination they had issued further invoices and claims for additional works totalling some £655,000, which were unpaid and disputed by Translink. On termination Maunsell received £200,000 in settlement of all claims, with the proviso that outstanding amounts of some £173,000 would be paid to the sub-contractors, to facilitate novation. The Termination Agreement was signed on 23 November 2001 and Ferguson McIlveen were appointed in place of Maunsell in December, with responsibility for project management and site supervision.

1.10 Usable designs for the realignment of the track were never produced and in February 2002, Translink instructed Mowlem to carry out the work on the basis of straight replacement of the existing track, as opposed to the enhancement of alignment by new design. The project received a certificate of substantial completion in September 2002, some nine months late and over the following year to December 2003 Mowlem submitted measured works certificates and claims totalling £33

million. In April 2004, Mowlem accepted £23 million in full and final settlement for the construction contract, bringing the total cost of the project to £33.9 million against an approved budget of £14.7 million (see Figure 4).

An independent project management evaluation highlighted a number of factors which contributed to the project’s difficulties.

1.11 Following a request from the Minister, the Holding Company commissioned an independent evaluation of the management of the project. Currie & Brown (IRL) Limited, a consultancy firm specialising in project management and with experience of the railway sector, were appointed to undertake the review and reported in February 2004. Their report was critical of the performance of Maunsell in several key areas, but also highlighted serious deficiencies in Translink’s project management capability and practice. The report made recommendations to improve procedures for the management of future projects and strengthen in-house resources.

Figure 4: Analysis of overspend compared with economic appraisal

	Economic Appraisal £,000	Outturn £,000	Increase/(Decrease) £,000	
Construction Contract	7,982	23,082	15,100	190%
Materials and Equipment	2,893	6,667	3,774	130%
Professional fees	934	1,823	889	95%
Other	2,899	1,753	(1,146)	(40%)
Bus substitution costs		538	538	
	14,708	33,863	19,155	130%

Source: NIAO based on Translink data

We examined the effectiveness of the management of the project by the Department, the Holding Company and Translink.

1.12 Given the widespread problems encountered on this project and the very serious increase in public spending which resulted, we examined the decision-making and management processes employed by the Department, the Holding Company and Translink to determine:

- what failures in the management of the project had led to the overspend; and
- what action is required to improve future performance.

1.13 The Comptroller and Auditor General does not audit the financial accounts of the Holding Company, but has rights of access to carry out value for money studies under the Audit (Northern Ireland) Order 1987, as amended by the Government Resources and Accounts Act (Northern Ireland) 2001. The Comptroller and Auditor General exercised these rights of access for the first time on this study.

Part Two

The overspend on the project was the result of failures in several key areas



There were serious deficiencies in the economic appraisal. The approved budget of £14.7 million was not realistic and the project was not reappraised when it became apparent that the budget would be exceeded.

2.1 The project management evaluation carried out by Currie & Brown highlighted serious deficiencies in the economic appraisal which resulted in under-statement of the project costs at the outset. They indicated in particular that:

- not all costs required to complete the project were included and while this would have been a suitable basis for choosing between options, it was not suitable as the basis of an approved budget for the project;
- the overall cost estimate was based on a 10 per cent contingency, but with the outline nature of the design carried out at that stage, a much higher contingency of around 30 per cent would have been appropriate;
- a risk assessment should have been carried out; and
- estimates should have been validated independently.

Currie & Brown estimated that £22 million would have been a more realistic cost for the project as opposed to the £14.7 million estimated in the appraisal.

2.2 We noted that both the Department's economist and the Department of Finance and Personnel (DFP) queried the accuracy of the estimates at the appraisal stage, pointing out the history of overspend on previous projects and the importance of accurate estimates given the marginal nature of the benefits being claimed for the project. The Department communicated these concerns to Translink who stated in response that the estimates were stable and sustainable.

2.3 The Department told us that there have since been marked improvements in appraisals presented by Translink and in the extent of the challenge it exercises. We note this assurance but would emphasise that where professional economists identify particular risks or problems with appraisals, it is vitally important that the Department exercises an appropriately robust challenge and does not accept unsupported assurances. A more robust challenge in response to the economist’s concerns in this case could have averted many of the subsequent problems.

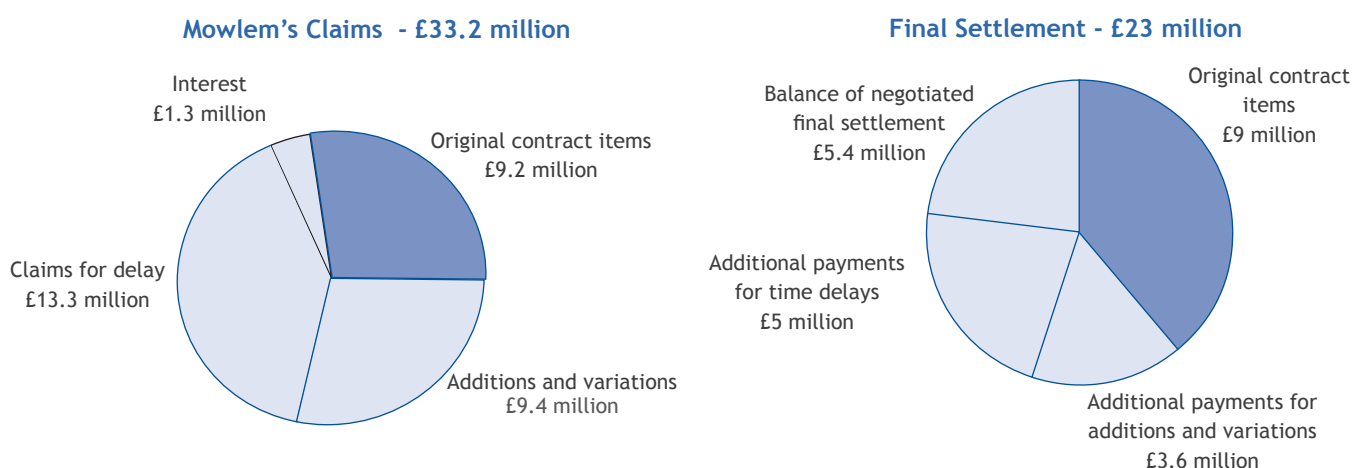
2.4 It was apparent after tendering the construction project for the second time, but before the contract with Mowlem was signed, that the estimated cost of the project exceeded the approved budget by 24 per cent. Under established convention, because the cost of the project exceeded the budget by more than 10 per cent, it should have been reappraised and resubmitted to DFP for approval. Both the Department and the Holding Company were aware of this, but did not reappraise and Translink signed the construction contract with Mowlem. Currie & Brown state that this was the “fatal flaw” in the decision making process and that “a remeasure of works combined

with a project risk assessment would have uncovered the non-viability of the project at approved budget limits.”

2.5 We could find no documented justification or rationale for this decision and asked the Department why it had not insisted on a reappraisal when informed of the extent of the budget overrun. The Department told us that it accepted that it should have required a reappraisal, but Translink had decided that continuing with the project was the preferred option. This was based on: the level of “sunk costs” already committed on preparatory work and materials; the likelihood of claims for delay from Maunsell and the sub-contractors; and the fact that line closures had been announced.

2.6 The threat of losing the EU grant if the deadline for draw-down was missed, was a consideration for Translink, but Currie & Brown observed that the draw down date for grant was “the apparent justification for making numerous flawed decisions” and the Department told us that it did not accept this as a valid reason, since the opportunity existed to transfer EU funding to alternative schemes.

Figure 5: Analysis of Mowlem’s Claims and Final Settlement



Source: NIAO based on Translink data

2.7 In our view, neither the risk of losing EU grant, nor the level of sunk costs justified the decision not to reappraise. Whilst the project may have lost some grant due to delay, it is unlikely to have resulted in a loss to the Northern Ireland Block because the Department was willing and able to transfer it to alternative schemes. Similarly, guidance on economic appraisal⁴ indicates that in appraising options, “sunk costs” in the form of expenditure already incurred, should be ignored since what matters are costs about which decisions can still be made.

2.8 The only proper means of assessing the options open to Translink in this situation was through formal reappraisal and we are concerned that the Department allowed the project to proceed without subjecting it to this discipline. The outcome of this case demonstrates vividly the consequences which can arise when key controls are set aside.

2.9 We are concerned that the Department did not insist on a reappraisal and recommend that it complies fully with current guidance on appraisal and keeps the Department of Finance and Personnel informed about events which could have implications for the viability of projects, including: increases in cost; changes in scope; and likely delays in completion.

Maunsell’s failure to deliver design and to adequately specify the contract contributed significantly to the increase in the cost of construction.

2.10 The tendered price for the construction contract was £9.7 million. However, Mowlem’s final account totalled £33 million including claims arising from two main causes: time delays due to the lack of usable design and additional works and variations for items not specified in the tender (see Figure 5). A negotiated settlement of £23 million was eventually agreed (see paragraphs 2.14 to 2.20).

2.11 It was originally intended that design for the realigned track would be delivered by June 2001, before the construction contract was let. However Maunsell failed to deliver usable designs and Mowlem were instructed, in February 2002, to replace the track as originally laid. By this time, Mowlem had been on site for some seven months and the project was not completed until September 2002, nine months overdue. As early as October 2001, Mowlem had given formal notice that the absence of usable design was causing significant delay and registered their intention to claim extensions of time and associated costs. Delays due to failures which were Translink’s responsibility were finally agreed at 39 weeks and Mowlem submitted claims in this respect totalling £14.6 million.

2.12 Maunsell were responsible for the preparation of the tender documentation specifying what work was required under the construction contract. Currie & Brown reported that the tender documentation contained numerous errors and omissions which artificially reduced the contract value. The accuracy and completeness of the tender specification is critical since it commits the contractor to complete the project at the agreed price. In this case, the tender, and consequently the contract, did not contain all the work necessary to complete the project and Mowlem issued claims totalling £9.4 million comprising £6 million for additional works and £3.4 million for variations to the contract.

2.13 We also noted that claims for additional works included some £2.5 million relating to the disposal of excavated materials and the transport of materials provided by Translink. These items were queried at the post-tender stage and it was confirmed that Mowlem had included them in their tender. However, they were not brought forward to the contract document and when Mowlem later claimed for them, legal advice indicated that Translink was liable because they were not in the contract.

4. The Northern Ireland Preface to the Green Book.

The absence of a comprehensive contract and proper contract variation procedures made it difficult for Translink to control cost increases arising from claims made by the contractor.

2.14 The construction procurement was carried out through a conventional remeasurable contract with a bill of quantities. It is generally recognised that this approach is characterised by contractors bidding low in order to be competitive and seeking to maximise income from additional claims⁵. It is vital therefore when adopting this procurement strategy, that the client can minimise the potential for cost increases by:

- ensuring that the contract clearly and comprehensively details what work is required to complete the project; and
- operating a clearly defined variation procedure whereby works which the contractor indicates as additional to the contract are approved and a price agreed in advance.

In this way, payment certificates can be issued by the Engineer as the work progresses, minimising the potential for disputed claims by the contractor.

2.15 This process did not operate effectively on the Belfast - Bangor project. Due to the errors and omissions in the tender documentation, Translink did not have a clearly defined contract and Currie & Brown reported that no structured variation procedure was implemented to approve changes to the contract prior to the execution of the works. The absence of these key controls impacted adversely on the management of claims.

2.16 At completion in September 2002, 77 individual instances of variation were in dispute and over the following 15 months Mowlem continued to issue further claims until their account reached a final total of £33 million in December 2003. At this point Translink was only able to certify some £17.6 million including a substantial amount paid on account for valuations where a definitive decision could not be made (see Figure 6).

Figure 6: Analysis of Valuations and Certified Payments

	Mowlem's Valuations £m	Certified Payments £m
Original contract items	9.2	9.0
Claims for additional works and variations	9.4	3.6
Claims for delay	13.3	5.0
Interest	1.3	
	<u>33.2</u>	<u>17.6</u>

Source: NIAO based on Translink data

2.17 The settlement process lasted for 20 months following completion during which Translink was advised by two sets of consultants. One specialist advisor commented that in 35 years experience he had not seen so many complex contractual issues in a single project. Solicitors Arthur Cox advised initially, supported by specialist claims advisors. At the completion of the contract, before all claims had been submitted, they assessed the likely settlement between £20 million and £29 million and advised Translink to make a lump sum offer of £16 million before further claims were submitted. We could find no record of any consideration of this proposal or why it was not adopted.

2.18 Ferguson McIlveen who were appointed as project managers following Maunsell's termination, also had duties in support of the Engineer (see paragraphs 2.36 to 2.42) which included valuation of claims after the project was complete and told us that they were unaware of the Arthur Cox proposal. They adopted a different approach by attempting to agree the extent of the time delays. This took more than a year to achieve by which time Mowlem had submitted a further £10 million in claims. A method of valuing these time delays could not be agreed however, and they proposed an alternative approach which involved the verification of Mowlem's gross costs. Translink rejected this approach and entered into negotiations

5. Modernising Construction Procurement in Northern Ireland HC 161/03.

with Mowlem to agree a settlement figure. In April 2004 Mowlem accepted a figure of £23 million in full and final settlement.

2.19 In February 2002 a fatal accident occurred during construction and Mowlem was successfully prosecuted by the Northern Ireland Health and Safety Executive. Currie & Brown stated that this had a significant impact on the project programme. However, Translink did not quantify the effect of the delay and it is not clear how, or if, this was taken account of in the final settlement.

2.20 Given that Currie & Brown have indicated that £22 million would have been a realistic cost for the project as a whole, paying £23 million for the construction element alone would indicate strongly that Translink did not deliver value for money in this case. Whether this represents a fair settlement to the contractor given the delays to the project and the incomplete specification is more difficult to answer definitively. It is clear however that Translink's ability to control increases in cost was severely prejudiced as a consequence of incomplete tender documentation and the absence of a proper contract variation procedure. It is also possible however, that a similar or better solution could have been reached 18 months earlier, by adopting the Arthur Cox approach (see paragraph 2.17) and avoiding the apparently nugatory cost of the work carried out to agree the quantum of the time delay.

No damages have been recovered from Maunsell because the termination agreement did not adequately protect Translink's right to claim.

2.21 When the Department began to query the increases in the anticipated outturn of the project in July 2001, Translink advised that their priority was to complete the project and thereafter, recover the increased costs arising from Maunsell's poor performance by claiming against their professional indemnity. In July 2002, however, they advised the Department that they were not actively pursuing legal action against Maunsell and in February 2004, Currie & Brown reported that Translink's right to claim appeared to have been waived.

2.22 The Agreement which terminated Maunsell's appointment in November 2001, stated in Clause D (ii), that the payment of £200,000 to Maunsell was in settlement of all claims between both parties except for "*negligent errors and / or defects in the design of the project not known to Translink at the date of this Agreement which require repair and / or physical rectification*". Translink were aware of a large number of errors and defects before termination and because the faulty designs provided by Maunsell were not used as the basis for construction they did not give rise to repairs. Consequently this clause makes the Agreement a "full and final settlement" and there is no possibility of recovery of damages from Maunsell.

2.23 Translink were advised on the detail of the Termination Agreement by solicitors Arthur Cox and the Holding Company sought a legal opinion on the adequacy of the advice given. The Holding Company told the Department in March 2006, that Arthur Cox had made "*all reasonable efforts to highlight the restriction Clause D(ii) would place on future claims*". Arthur Cox had consistently advised that Translink should reserve its right to pursue a claim against Maunsell. However, we found a notable lack of documented advice from Arthur Cox on Clause D(ii) other than to point out that Translink needed to be satisfied that it provided adequate protection in respect of claims. The fact that the legal advisors were looking for this assurance from their client however, would seem to imply that there was a serious question over the level of protection. Translink's Finance Director confirmed that they were content.

2.24 The Holding Company also told the Department that in the later stages of the termination process, Translink had abandoned the principle of holding Maunsell liable for any loss in the interests of getting the agreement finalised so that other consultants could be appointed and the work progressed urgently. In explaining why this urgency was given a higher priority than the protection of contractual rights, the Holding Company has drawn particular attention to two points:

- the need to get track design drawings which the Head of Infrastructure⁶ considered were capable of being salvaged and made usable at minimal cost and effort; and
- the deadline for draw down of EU grant.

We have seen no evidence that the Head of Infrastructure had expressed an opinion on the design drawings. He has subsequently stated that he did not have sight of the design drawings prior to termination and that as far as he can recall designs were not a major issue (see paragraph 2.26). This would not seem to be a legitimate reason to forfeit the ability to make future claims. Nor is it clear why Translink would have paid for design without first having reviewed the quality and usability of what they were paying for, particularly since the contractor had indicated that there were very serious problems with the track designs they had received.

2.25 The EU deadline was December 2001 therefore £9 million needed to be spent by then to recover the £7.5 million grant. Terminating Maunsell's appointment in November was not going to make a significant difference to the total amount spent in less than four weeks. We estimate that at most £1.7 million was at risk and DRD were still asking in September 2001 whether the balance of any grant needed to be transferred to other transport measures. In fact, terminating Maunsell's appointment did nothing to ensure that grant was not lost, and Translink made an advance payment to Mowlem to ensure that enough spend could be claimed by the deadline to maximise grant.

2.26 In an attempt to reach a fuller understanding of these and other issues, the Department met with the former Managing Director and Head of Infrastructure who have both since retired. We also consulted with them as part of our reporting process:

- both were unclear as to the origins of clause D(ii);
- the former Managing Director told us that both the quality and ownership of track design drawings were key issues in determining the need for a Termination Agreement and novation rather than summary dismissal of Maunsell. He further stated

that although there were problems with the quality of the drawings, the Head of Infrastructure had articulated his view that they were capable of rectification at reasonable cost

- the former Head of Infrastructure stated that he did not have sight of the track design drawings and that in his view the need to retain signaling designs was more important to ensure the continuity of single line passenger services during the construction project; and
- the former Managing Director indicated that in his view the Termination Agreement did not preclude right of redress against Maunsell.

2.27 The Department told us that at the time the Termination Agreement was signed, there was a belief in the minds of the Translink management team, that the designs were capable of being used. If this had occurred, then the clause may have offered some measure of protection against defects which were not known about at that time. However, the Department also said that the risks which were clearly substantial, of losing any right of redress against Maunsell do not appear to have been articulated. Neither is there evidence of any internal challenge to the approach which was taken.

2.28 We have been unable to obtain satisfactory explanations on the issues surrounding the termination process because decisions on key issues have not been properly documented and subsequent explanations are inconsistent and contradictory. It would appear however, that Translink were made aware of the risks posed by Clause D(ii) but chose to proceed nonetheless. In our opinion, this decision was not justified by the claimed urgency of replacing Maunsell and has potentially resulted in a substantial loss to the public purse in the form of damages which cannot be pursued. It is difficult to be exact about the quantum of the loss which would be dependent on the extent to which liabilities could be legally attributed to Maunsell. However, we estimate the loss to be in the region of £8 million to £13 million.

6. The official title for this post was "Infrastructure and Property Executive".

In addition to the increased cost of the project, there is uncertainty as to whether it has delivered all of its intended benefits.

2.29 The economic appraisal stated the operational objectives of the project as the reduction of passenger journey time by an average of two minutes and avoidance of future significant increases in journey time. It was intended that this would deliver further benefits in the form of an increase in both patronage and revenue and the appraisal recommended that a post project evaluation should be carried out a year after completion to measure the extent to which these benefits had been achieved. To date no post project evaluation has been carried out.

2.30 Translink made two significant changes to the project as it was originally conceived, which raise concerns as to whether the project has delivered its intended benefits: the specification was reduced significantly in an attempt to keep the cost of construction within budget; and the proposed enhancement of track alignment by new design was abandoned in favour of straight replacement of existing track.

2.31 The original specification was for a 90 mph speed limit and the scope reduction involved the removal of those items which were required for 90 mph but which were not needed for a 70 mph speed limit. These included: partial rather than full re-lay of sections of the track; a significant reduction in bridgeworks; reductions in drainage and sea defences; and no replacement of stockproof fencing. The Currie & Brown report is slightly ambiguous on this point. On the one hand it states that the 90 mph limit was a primary client requirement and therefore a scope reduction which reduced the line speed to 70 mph was not justified. Equally, the report states that the objective of 90 mph should be viewed as unrealistic both in terms of the limited financial resources available and the physical geography of the line.

2.32 It is clear from our review of the pre-tender documentation that Translink originally specified a 90 mph limit and indeed when Maunsell queried this in light of the suburban nature of the line and the additional costs involved, Translink specifically confirmed that it might want to run trains through at higher speed. There was no mention of a 90 mph speed limit in the economic appraisal however and in the absence of a post project appraisal,

it is not possible to be conclusive as to whether the scope reduction has had any effect on the delivery of the intended reduction in journey time, or the other benefits.

2.33 The partial replacement of some of the track will result in a shorter lifetime than was originally intended, requiring replacement in ten to fifteen years rather than the expected 25 years. The bridgework and sea defences were identified in the appraisal as having safety implications, so these may also need work in future. Any additional work of this kind on the line is likely to cause further disruption to the traveller. The Department told us that whilst items of bridge work and other works were deferred, these do not in any way compromise safety or the functional operation of the completed works.

2.34 If all of the intended benefits of the project have been delivered in spite of the reduced scope and abandonment of the new design, we would have to question why a more costly specification and ambitious realignment was put forward. This could have been a source of additional cost and delay in a project which was already on a tight timetable and budget.

2.35 We recommend that a full post project evaluation is carried out to determine the extent to which the intended benefits of the project have been achieved. We further recommend that Translink and the Holding Company ensure that future capital projects are not “gold-plated” and that specifications are set at the optimum level to deliver the approved benefits of the project within budget. This will help to ensure that value for money is achieved.

Currie & Brown expressed concerns over the lead consultant's unwillingness to take on the role of "Lead Consultant Civil Engineer".

2.36 Part of Maunsell's role as lead consultant was to act as Lead Consultant Civil Engineer for the construction contract. This includes specific responsibility for ensuring that design complies with local codes of practice and that work is carried out according to the design. When Ferguson McIlveen took over responsibility for the project from Maunsell, they did not take on this role. Instead, a Translink employee was appointed as Engineer and Ferguson McIlveen provided advice and support.

2.37 We could find no documented explanation as to why Ferguson McIlveen did not take on this role when they were appointed in November 2001. When asked for a second time to take on the role of Engineer in November 2002, they again declined, stating that: a further change would not be in Translink's best interest; that the responsibility for design was unclear; and that documentation of design was incomplete.

2.38 Currie & Brown stated that Ferguson McIlveen's unwillingness to accept professional liability was a "serious concern" and that the issue of the quality of design and construction should have been further investigated. They indicated that a technical audit should have been carried out at the time to address Ferguson McIlveen's concerns and recommended that an investigation be carried out to determine if there was "any possible legal exposure in the event of a design-related system failure".

2.39 Following a presentation by Currie & Brown in November 2003, a report from the Infrastructure Executive was presented to the Board in December 2003 which stated that checks to the "as built" alignment were being carried out and that "the infrastructure on the Bangor line is sufficient for our current level of operations". We could find nothing on the record however, which linked this assurance to the concerns raised by Currie and Brown about Ferguson McIlveen's apparent unwillingness to take on the role of Engineer, or any indication of how the Board responded to this.

2.40 Subsequent to our audit, in May 2006, the Holding Company's Director of Corporate Affairs reported to the Board that:

- because of the urgent need to progress the project in November 2001, Ferguson McIlveen had insufficient time to carry out the review and acceptance of design which would have been required for them to accept the professional liability associated with the role of Engineer. They estimated that this would have taken six to eight weeks;
- Ferguson McIlveen provided close support to the Engineer and had all powers of the Engineer delegated to them with the exception of payment certification, extension of time and valuations;
- A survey was carried out in December 2003 which confirmed that the newly-laid track complied with operating speeds;
- Since reopening the line in June 2002, there had been no major incidents and track engineers had reported no evidence of unusual deterioration or other design or construction problems; and
- Translink accepts that the liability for the work on the Bangor line rests with the Company and the employee who acted as Engineer, but that the likelihood of such liability crystallising and being linked to the actions of the Engineer will diminish over time.

2.41 The Board concluded that in the light of this evidence, all concerns regarding the design, construction and operational safety of the line have been properly addressed and that the issues raised by Currie & Brown in this regard had been appropriately dealt with to their satisfaction.

2.42 The Holding Company has stated that the Board considered that they had sufficient assurances on line safety, both when the line was reopened in July 2002 and following the Currie & Brown review, to allow the matter to be closed. The Department told us that it accepts this assertion. We welcome the fact that the Board has now dealt definitively with this issue and put its conclusions on the record. We also recognise that in October 2003, Ferguson McIlveen recommended a review of the re-laid line and that the results of this review were reported to the Board in December 2003. However, where serious issues of this kind are addressed, it is important that they are dealt with transparently and that Board decisions are fully and unambiguously reported in the minutes.



Part Three

Action is required to improve future performance



Procedures for project management and the management of consultants were not sufficiently robust for large scale capital projects.

3.1 We examined in Part Two how problems arose as a result of deficiencies in the work carried out by Maunsell on the preparation of the alignment designs and the contract tender. These problems could have been avoided or their effects mitigated, if Translink had operated an effective project management process and if the work of the consultants had been properly managed.

Project management

3.2 Currie & Brown reported that Translink had failed to provide structured project management and that this was a fundamental cause of the problems experienced on cost and delivery. Translink did not have its own project management procedure for consultants to use and consequently, relied on the existence and quality of consultants' documentation to provide a project management framework.

3.3 This approach failed totally on the Bangor line project because of a lack of clarity on where responsibility for project management lay. Translink referred to Maunsell as project managers, but it was Maunsell's contention that they had not been employed in this role. No project execution plan was prepared which would have clearly

defined the roles of project sponsor and project manager, but Currie & Brown confirmed that under the terms of their appointment, Maunsell had not been employed as project manager. It would appear therefore that this major project was carried out without any formal project management in place and Currie & Brown reported that these shortcomings were not addressed when Ferguson McIlveen took over from Maunsell.

Management of consultants

3.4 In terms of the management of consultants, Translink failed on two counts: they did not establish the credentials of the sub-consultants; and they did not systematically monitor performance. In our view a consultant's resource of expert staff will always be limited to a greater or lesser degree. It is important therefore that the client ensures at the outset that staff assigned to the project are suitably qualified and experienced. Translink did not do this and indeed, did not know until six weeks after Maunsell's appointment that the bulk of the site investigation and design was to be contracted out. This included the critical land survey and design work and the failure of these sub consultants to deliver had very serious consequences for the project.

3.5 It is important that consultants' work is effectively monitored to ensure that it is of acceptable quality so that remedial action can be taken in a timely fashion without prejudicing project timescales. Again, Translink did not do this. Mechanisms were not in place to monitor performance, there was no monitoring against agreed timescales and no systematic validation of work as it progressed. Currie & Brown stated that the Maunsell appointment probably should have been terminated sooner and that a proper process for measuring the consultant's performance would have provided early warning and clear evidence of non-performance which would have facilitated termination.

3.6 The Department has pointed out that it was Translink's monitoring of performance which led to Maunsell's termination and that Translink does not believe that the timescale for termination could have been materially shortened. We recognise that Translink did pursue Maunsell for non-performance, however, there are indications that even as late as November 2001, just before termination, there was still doubt as to whether Translink could adequately demonstrate that Maunsell were in breach of their obligations under the contract. This may have weakened Translink's position in negotiating the Termination Agreement and contributed to the very limited rights of redress provided under the Agreement. Unfortunately the records around this decision are incomplete (see paragraphs 2.23 to 2.28). It seems likely that a clear and formal record of the consultant's performance which would have been provided by a proper system of measurement and reporting would have provided a more secure basis for termination and may have resulted in better protection of Translink's position.

There were shortcomings in procurement procedures and practices for the appointment of consultants and contractors.

3.7 The project has highlighted several instances of poor practice in the appointment of contractors and consultants:

- Currie & Brown indicated that the appointment of Mowlem following rescoping and retendering may have contravened EU and company directives and recommended further investigation. The retendering process raised a number of legal and best practice issues, which have not yet been dealt with definitively.
- Ferguson McIlveen who took over as lead consultants in place of Maunsell, were included in the original competition for the assignment, but were appointed as replacements without further competition.
- Consultants' assignments have been extended resulting in payments far in excess of their originally contracted fees. Ferguson McIlveen were appointed to carry out work valued at £85,000 but were eventually paid £490,000 for work including the settlement of Mowlem's claims. Currie & Brown were engaged to carry out the project management evaluation at a fee of £30,000 but have carried out additional project management work worth £69,000.
- There were no written contracts for either Maunsell or Ferguson McIlveen although the Maunsell conditions of engagement were set out retrospectively as part of the Termination Agreement.

3.8 We recommend that the Holding Company reviews current practices for construction procurement in Translink, with a view to ensuring that procedures are fully compliant with all legal requirements and accepted best practice and that they are applied consistently to ensure that Translink is not exposed in future to possible claims for non-compliance. We further recommend that the results of the review are formally reported to the Board.

Translink’s documented record was the worst we have ever encountered; key decisions were not documented and problems were compounded by the removal and destruction of documents by the former Head of Infrastructure.

3.9 Translink does not have a central document registry and has no document control procedure at a project level. Currie & Brown noted that documents were generally kept by individual personnel. This was the source of particular problems for the review of this project, because the Head of Infrastructure removed and destroyed the bulk of documentation in his possession when he left Translink in March 2002. The Head of Infrastructure told us that he had been acting as a responsible manager in preparing his office for his departure and protecting the company from any external access to its files. He stated that he was confident that any material which he disposed of was either redundant or existed elsewhere in the company.

3.10 A record of the project was reconstituted from papers held by other staff, and formed the basis of both Currie & Brown’s review and our audit. The Holding Company told us that it was not aware of any material omissions in the record. However, we cannot be sure we have had access to a complete set of records and we noted significant gaps in the record of key decisions associated with the termination of Maunsell’s contract and the appointment of Ferguson McIlveen as their replacement:

- the decision to accept the limitation on the right to claim damages in the Termination Agreement and the legal advice given (see paragraph 2.23);
- the view that designs were capable of being salvaged and made usable at minimum cost and effort (see paragraph 2.24); and
- the reasons why Ferguson McIlveen declined to take on the role of Engineer (see paragraphs 2.36 to 2.40).

These gaps in the record represent failures either to adequately document or to preserve the record of these key decisions.

3.11 The approach to records management in Translink falls far short of the standards expected of a public body. This has serious consequences for audit and accountability and raises questions as to the ability of Translink to meet its obligations under public records and freedom of information legislation⁷. The Department told us in November 2005 that Translink had purchased proprietary software to assist in file management and while we welcome this acknowledgement of the need to improve records management at a project level, we do not consider that this in itself will improve records management sufficiently.

3.12 We recommend that Translink establishes a comprehensive records management system which complies with current codes of practice for the maintenance of public records and freedom of information. As a minimum the system should provide:

- a policy statement endorsed by senior management;
- definition of individuals’ responsibility to document their actions and decisions;
- records complete and accurate enough to facilitate an audit, protect the companies’ legal rights and provide authenticity of the records;
- details of what records are held and where they are held;
- control over the movement and location of records;
- protection from unauthorised access;
- a formal disposal policy properly enforced; and
- a record of the destruction of records.

7. Public Records Act (Northern Ireland) 1923. Disposal of Documents Order (Northern Ireland) 1925. Freedom of Information Act 2000.

3.13 Because of the lack of proper records management in Translink, it is not possible to get a complete list of the papers which the Head of Infrastructure took with him when he left. However, we know that the quantity was substantial and that they related to several major projects which he had been involved with in addition to the Bangor line. The matter was investigated internally by the Managing Director and the Director of Corporate Affairs and was reported to the Police Service of Northern Ireland (PSNI) who carried out their own investigation. We were told that PSNI concluded that there was no case to answer on grounds of theft, because they believed that the documents were available elsewhere within the organisation. Only a few documents were recovered.

3.14 The internal investigation concentrated solely on the issue of theft and the recovery of the documents. It did not address the possibility of fraud or impropriety. The Managing Director told us that he raised the possibility of fraud when he reported the matter to the police, but was told that there was insufficient evidence at that stage to warrant a fraud investigation by the police. Following our fieldwork, the Department consulted further with PSNI and were told that “the issue of possible fraud was considered in 2002 before being rejected as inappropriate...based on the absence of the necessary evidence”.

3.15 In our opinion there were significant risk factors indicating potential impropriety in this case:

- on being interviewed by the Managing Director concerning the large number of files which had gone missing from his office, shortly after his departure, the Head of Infrastructure stated that he had disposed of them internally and took away only a small quantity of personal material. However, recordings from surveillance cameras showed him removing large quantities of documents from his office when it was closed at the weekend and he subsequently confirmed to police and Translink management that he had removed some official papers and dumped them in a skip; and
- as Head of Infrastructure for many years he was involved in areas such as the appointment of contractors and the settlement of claims for multi-million pound projects, which carry an inherently high risk of fraud and impropriety.

Notwithstanding the lack of evidence at the start of the police investigation, Translink should have tailored their investigation, to address the possibility of fraud or impropriety and either rule out the possibility, or gather evidence which could be presented to the police for consideration. Internal Audit should have been involved at the outset to bring specialist knowledge to the investigation and PSNI’s fraud specialists should have been consulted.

3.16 Subsequent to our audit, the Department recognised the need to address the possibility of fraudulent activity and commissioned a forensic audit of the major schemes overseen by the Head of Infrastructure. The audit, which was undertaken by a contracts expert, examined the available files on thirteen projects with which the Head of Infrastructure had been connected since 1991 to determine whether he had the opportunity to have been involved in inappropriate or fraudulent activity. The audit concluded that due to his executive role, he had no such opportunity, having no responsibility for the selection or appointment of contractors or consultants and no involvement in the preparation of valuations for payment. The possibility of collusion was considered highly improbable and no evidence was found to suggest any fraudulent or inappropriate activity on any of the projects examined.

There were several instances of excessive generosity in the use of public funds associated with the former Head of Infrastructure’s retirement.

3.17 During the pre-construction phase of the Bangor project, in April 2001, the Head of Infrastructure expressed a desire to retire early and requested the Holding Company to assist in this by providing a pension. No pension was provided, but an agreement was reached that a “golden handcuff” of £28,500 would be paid, if he would stay on until March 2002.

3.18 There is some ambiguity as to why the Holding Company wanted the Head of Infrastructure to stay on. No formal written presentation was made to the Board’s Remuneration Committee, but minutes indicate that they viewed the matter as a succession issue and approved the additional payment to allow for the recruitment and handover to a successor. The Holding Company told us

however, and the former Managing Director subsequently confirmed that the arrangement was made because he wanted to retain the Head of Infrastructure until the Bangor project was complete. In fact, no successor was appointed and the Head of Infrastructure left in March 2002 six months before the end of the project. We also noted that he resigned formally in October 2001 and with three months notice to work, the additional payment only secured an additional three months in post.

3.19 It is not clear what Translink sought to achieve by paying this premium, nor is it clear, given the decisions on design and the restriction of the right to claim which were made during this period, whether the payment was justified in terms of delivering additional benefits to the project. The Department told us that it was not made aware of the “golden-handcuff” arrangements at the time. However it had since been told by the Holding Company that the payment effectively secured the services of the Head of Infrastructure from July 2001 to March 2002, because his original intention had been to retire at the earliest opportunity. The Department recognised that this was treated as an operational decision and the Holding Company believed that it was justified at the time for commercial reasons. However, it would have expected to have been told of the payment because of its size and unusual nature and that it has included specific provisions to this effect within a revised regulatory framework.

3.20 Translink also paid for two retirement functions. The Head of Infrastructure used his company credit card to pay £515 for an event at Powerscourt Golf Club in County Wicklow. There was no prior approval and no supporting documentation was provided, but the Managing Director authorised the payment to American Express and no attempt was made by the Holding Company to recover the money. The Head of Infrastructure told us that this was a function which he had arranged for about twenty four people which the Managing Director was made aware of because a number of staff would be absent from work on that day. We note that the loss of staff time in this way would considerably increase the cost to Translink, but the Head of Infrastructure pointed out that only the morning hours of the working day were affected because staff only work to lunchtime on a Friday.

3.21 A second function costing £625 was held at Whitehead Golf Club. There was no supporting documentation and no evidence of approval other than an instruction to the cashier to issue a cheque. The Head of Infrastructure told us that this was a surprise evening function organised by his staff. An official retirement function was planned but was cancelled following the removal of documents (see paragraph 3.13).

3.22 We also noted that the Head of Infrastructure used the credit card to pay for Christmas functions for his staff in 2000 and 2001, costing £460 and £796 respectively. Again there was no supporting documentation and no evidence of prior authorisation, but payments to American Express were subsequently approved and not recovered from the Head of Infrastructure. He told us that it was his long-time practice to arrange Christmas lunch for his staff as a way of allowing the company to acknowledge their work during the previous year.

3.23 Whilst the Translink companies operate within a commercial context, they are substantially funded by public money and the procedures and conventions which govern the use of public money should be fully applied. We recommend that where payments of an ex-gratia nature such as the “golden handcuff”, are being considered, the case for making the payment should be clearly and formally stated and corporate decisions should be accurately recorded in Board and Committee minutes. We further recommend that the Department should consider:

- the applicability to the Holding Company, of Northern Ireland Civil Service procedures for the approval of staff severance terms; and
- the need to issue guidance to the Holding Company on the avoidance of excessive generosity to employees.

Good practice corporate governance did not operate effectively and the Holding Company Board failed to exert a sufficient challenge function.

3.24 The Holding Company and its subsidiaries have a common Board of Directors, consisting of: a Chairman; two executive directors, the Chief Executive and the Director of Corporate Affairs, who acts as Secretary to the Board; and six non-executive directors. The Chairman and non-executive directors are paid emoluments totalling some £120,000 a year. We note that none of the non-executive members who dealt with the Belfast - Bangor project are currently serving on the Board and a new Chief Executive was appointed in 2003.

3.25 In 2002 a Deputy Secretary from the Department was appointed as a non-executive member of the Board with the intention of securing better communication between the Holding Company and the Department. When new appointments were made to the Board in June 2005, however, the Department decided not to include a departmental representative. This decision was made in response to new guidance from the Department of Finance and Personnel which stated that departments should avoid participation on the boards of the Non-Departmental Public Bodies which they sponsor because of the potential for conflict of interest which such arrangements could create. The guidance allows for representation in special circumstances provided that the official's role is clearly defined, but the Department decided, based on its experience of Board membership since 2002, that it was preferable to maintain communication through ad-hoc attendance at Board meetings on specific issues and regular meetings between the Chairman and senior officials.

3.26 The Director of Corporate Affairs, in responding to queries arising from the Currie & Brown report told the Department in 2004, that the former Managing Director had not properly informed the Board of the implications of the Termination Agreement and in particular, had not indicated that the terms of the Agreement would result

in most, if not all of the Company's rights of future legal redress being waived (see paragraphs 2.21 to 2.28). He stressed that the Board members had no direct sight of the Agreement at any stage in the drafting process, nor were they given access to the legal advice which was available. He further stated that given the facts which were available to them, it is not surprising that Board members felt that they had no real option but to back management's judgement on this issue.

3.27 In January 2007, the Director of Corporate Affairs provided the following clarification of his 2004 report through solicitors acting on his behalf:

- he did not mean to suggest that the Board was intentionally misled or that information was intentionally withheld from the Board;
- there was no evidence to suggest that the Managing Director or any executives realised that their right of legal redress had been significantly compromised by the Termination Agreement; and
- that it is entirely normal for detailed contractual issues to be delegated in their entirety to the executive management team and the process of termination was not an exception to the usual procedures.

The Director of Corporate Affairs' statement is reproduced in full at [Appendix 4](#).

3.28 The former Managing Director told us that there was little obvious reason to be concerned about rights of redress, because it was perceived that extra costs would be fairly minimal.

3.29 Our review of the Board papers and minutes would support the assertion that the Board members did not see papers and we could find no evidence that issues such as the level of protection provided by the Agreement or the legal advice obtained were discussed by the Board.

3.30 Good practice guidance on corporate governance⁸ emphasises the importance of good quality information in enabling the Board to discharge its duties effectively.

8. The Combined Code of Practice on Corporate Governance, Stock Exchange July 1998. Internal Control: Guidance for Directors on the Combined Code, ICAEW September 1999 Corporate Governance in central government departments, HM Treasury July 2005. The Good Governance Standard for Public Services, Independent Commission on Good Governance 2004.

However, the guidance also recognises that the role of non-executive directors is to offer constructive challenge to the executive directors. The non-executive directors on the Holding Company Board could reasonably have been expected to ask for sight of key documents and the Chairman and Secretary both had a role to play in facilitating access to any information necessary for proper decision making on these difficult issues.

3.31 We also noted that the Board delegated the key decision on the construction contract to the Chairman and the Managing Director before breaking for summer recess in July 2001, despite the fact that there were clear budgetary and appraisal issues to be considered and no further meeting was scheduled until September (see paragraphs 2.1 to 2.9).

3.32 In our opinion this represents a significant failure on the part of the Board to properly exercise its challenge function. A more robust challenge by the non-executive members of the Board may have exposed the risks that were being taken in the handling of this project.

3.33 We recommend that the Department ensures that all Board members have a clear understanding of their responsibilities under accepted standards of corporate governance and that in appointing non-executive members, an appropriate range of skills and personalities should be provided to support an effective challenge function. We would draw particular attention to:

- the obligation of executive members to provide information to the Board in a form and of a quality to enable it to discharge its duties;
- the role of non-executive members to hold executive members to account through proper challenge and scrutiny and that in carrying out this duty they should seek clarification or amplification as appropriate; and
- the need to ensure that Board minutes summarise issues of concern which have been raised, particularly where these have not been addressed to the members' satisfaction.

3.34 The Board has an obligation to maintain a robust system of internal control and an effective internal audit function is essential in this regard. We are concerned therefore, given the absence of key systems of control such as project management and management of consultants, that Translink's internal audit had not reported these deficiencies. We also noted that internal audit is supervised by the Executive Committee and that the Board's Audit Committee only reviews a summary of internal audit work.

3.35 We recommend that the Holding Company reviews the current provision of internal audit to ensure that there is full coverage of key systems based on a comprehensive risk assessment and that consideration is given to making the Audit Committee fully responsible for: agreeing the programme of coverage; reviewing all reports; and monitoring the implementation of recommendations. We note that in 2004 DRD internal audit recommended that the Department should routinely receive copies of all Translink internal audit reports and that the Translink internal audit function should be subject to peer review by the Department to ensure that it meets established audit standards. We endorse these recommendations.

Translink has made progress with plans to improve project management but implementation in some areas has been slow and a key management post is still vacant.

3.36 In February 2004, the Holding Company Board agreed an action plan in response to Currie & Brown's seven key recommendations for the improvement of project management (see Figure 7):

- an in-house project management capability was to be established in the form of a three-man project control team, consisting of a Project Control Manager, Commercial Manager and a Project Planner; and
- a standard project management process was to be established consisting of some 23 standard procedures including independent technical appraisal of projects, risk assessment, value engineering and change control procedures.

Figure 7: Progress on key recommendations from Currie & Brown

Recommendation	Proposed Action	Progress
Establish an in-house programme management capability to be able to effectively manage externally appointed consultants and contracts.	<p>Project Control Team to be set up consisting of Project Control Manager (lead), Commercial Manager and Project Planner.</p> <p>Project management training workshops to be provide to relevant infrastructure staff.</p>	<p>Project Control Manager appointed April 2005. Project Planner appointed in November 2006. Commercial Manager post advertised June 2006.</p> <p>Project management training provided to infrastructure engineers and other key staff.</p>
Pre-funding of design at an early stage to provide more robust cost estimates.	Develop a project management process that requires project identification documentation at an early stage and approval of pre-apparaisal funding.	Procedure issued in October 2005 to define and assess projects at inception. DFP and the Department has accepted the concept of initial project funding and a “prior approvals” process has been implemented.
Independent cost consultants should be engaged to prepare the project estimates and carry out contract administration of the works.	Commercial Manager in the Project Control Team will provide greater rigour in cost management.	Commercial Management post vacant and advertised in June 2006.
An independent technical appraisal or due diligence study should be carried out on the project prior to funding approval.	Review of projects to be undertaken by the Project Sponsor or Project Control Manager, prior to the completion of the economic appraisal.	Procedure formally issued in October 2005.
Risk assessments should be incorporated into the project delivery process to identify, quantify and mitigate the risks associated with the project.	Include a comprehensive project risk assessment in the project management process.	Risk assessment procedure formally issued in October 2005.
Value Engineering procedures should be incorporated into the project delivery process to improve value for money.	Include Value Engineering in the project management process.	Value Engineering procedure issued in April 2006.
A suite of project management procedures to be used on all projects.	A suite of project management procedures to be developed.	A core suite of 10 procedures issued in October 2005 and all 23 procedures issued by April 2006.

Source: NIAO based on Translink information

It was proposed that Currie & Brown would be used during an interim six month period to carry out the role of the Project Control Team, to draft procedures, provide training, assist in the recruitment of the in-house team and review existing larger projects.

3.37 A Project Control Manager was appointed in April 2005 but at June 2006, the remaining two posts in the Project Control Team were still vacant. The project management process was piloted on four projects in 2005 and a full compliment of 23 procedures was issued in April 2006.

3.38 The Department told us that Translink had run two competitions for the Project Planner post in August and December 2005, but were unable to make an appointment. The post was filled on a temporary basis in July 2006 and a permanent appointment was made in November 2006. The Commercial Manager Post was advertised for the first time in June 2006 but no appointment has been made.

3.39 The proposed action plan has the potential to significantly enhance Translink's capacity to manage major projects and to address the shortcomings highlighted by the Currie & Brown review. However progress in implementation in some areas has been slow. We are particularly concerned that almost two and a half years after the Board's approval of the plan, the key project control team is still not in place and extensive use is still being made of consultants.

3.40 We recommend that priority is given to the recruitment of the remaining member of the team, so that Translink can begin to develop in-house expertise and reduce its reliance on external consultants. We welcome the creation of a Project Control Steering Group in May 2005 to oversee the implementation of the plan. We recommend that the Group reviews the strategy for filling these posts and provides quarterly progress reports to the board and the Department.

3.41 We reported on the use of innovative approaches to construction in our report Modernising Construction Procurement in Northern Ireland (NIA 161/03) and consider that adoption of some of these approaches such as partnering, integration of design, target price and incentivised remuneration could have avoided or mitigated the consequences of many of the problems which have arisen with this project. Translink has used some of these approaches on the recent Bleach Green to Whitehead project and we note that it is being assessed for designation as a Centre of Procurement Expertise under the NICS-wide procurement policy. We recommend that Translink explores the potential for involvement in the Department of Finance and Personnel's "Achieving Excellence" programme as a means of up-dating its approach to construction procurement and avoiding similar problems in future.

The Department has taken action to improve control of Translink capital projects.

3.42 The Department told us that significant lessons had been learned and applied as a result of the experience of the Bangor project including:

- creation of a specific unit within the Department to deal with the evaluation, approval and monitoring of capital projects;
- improvement of the quality of investment appraisals through extensive engagement with Translink and government economists;
- provision of funding at an early stage of planning to improve the accuracy of appraisal estimates. The introduction of “optimism bias” to the Green Book has also improved the accuracy of appraisal estimates;
- introduction of Letters of Offer which attach specific conditions to grants to Translink and the maintenance of detailed financial information to allow monthly review of spend at project level;
- Departmental representation on the project boards of all complex capital projects;
- Establishment of an anti-fraud policy and fraud response plan in Translink;
- Establishment from July 2006 of a new Management Statement and Financial Memorandum which reflect best practice guidance and represent a substantially improved framework of accountability and control; and
- Review of the minutes of the Holding Company Audit Committee.

3.43 We note the actions taken by the Department to improve control of Translink capital projects. Given that these are relatively recent introductions, we recommend that the Department considers the merits of a further review by Internal Audit to provide assurance to the Accounting Officer on the operation of these controls, particularly as they are applied to projects in excess of £1 million.

Appendices



Appendix 1

(Paragraph 1.2)

Arrangements for the monitoring and control of public transport provision

Arrangements at the time of the Belfast-Bangor project

Regulatory Framework Document - sets out the broad framework for the control of public transport provision. It defines the roles and responsibilities of the various parties involved and formally states the Holding Company's responsibility for ensuring that its affairs and the affairs of its subsidiaries are managed with due regard to public accountability, budgetary control and value for money.

Roles and Responsibilities

Minister

- Policy direction
- Appointment of the Holding Company Board

Department for Regional Development

- Accountable to Parliament / Northern Ireland Assembly for the activities and performance of the Holding Company
- Revenue and capital funding
- Regulation and monitoring

Northern Ireland Transport Holding Company

- Monitoring and challenge function in respect of the operating subsidiaries
- Corporate planning
- Property management
- Pensions administration

Translink

- Delivery of public transport services

Source: NIAO based on Regulatory Framework Document

Memorandum of Agreement - between the Department and the Holding Company, defines the duties and responsibilities of the Board. The Board is responsible for the long term strategic direction of the Holding Company and has corporate responsibility for ensuring that the Holding Company complies with any statutory or administrative requirements for the use of public funds.

Dossier of Controls - sets out the detailed requirements for corporate planning and the procedures which the Department will follow to control and monitor the Holding Company and its subsidiaries. These include:

Corporate Plan - covering a rolling three year period, submitted annually by the Holding Company covering the activities of its subsidiaries and prepared in accordance with the Department's policies, the Programme for Government and the Spending Review.

Performance Review Meetings - normally held twice a year with the Minister, the Chairman of the Holding Company Board and the Permanent Secretary to examine performance against budget allocations and wider corporate plan targets and to consider any actions or implications for current or future programmes.

Monthly Monitoring Meetings - provide a regular departmental review of operating performance, review of the capital programme and economic appraisals. If the group has significant adverse variances from budget, the Holding Company would be required to provide an explanation and a plan for remedial action.

Recent changes to monitoring and control arrangements

From 31 July 2006 the Regulatory Framework Document and Memorandum of Agreement has been replaced by a Management Statement and Financial Memorandum which reflect best practice guidance for the control and governance of arms-length bodies. The Department is confident that these new arrangements will provide substantially improved levels of control such as:

- designation of the Translink CEO as Accounting Officer;
- controls over the approval and monitoring of capital projects;
- more explicit reporting requirements;
- key performance indicators;
- improved access to Translink's risk management process and audit arrangements; and
- specific guidance on hospitality and special payments.

Appendix 2

List of key participants

Maunsell Rail

Original lead engineering consultants from January to November 2001.

Arthur Cox

Solicitors who advised Translink on various aspects of the termination process.

Mowlem Rail

Construction Contractor appointed in July 2001.

Ferguson McIlveen

Consultants appointed to take over from Maunsell in December 2001.

Currie & Brown (IRL) Limited

Management consultants appointed to undertake a review of project management.

Timeline

October 1998	Application for EU grant
May 1999	Economic Appraisal estimates the cost of the project at £14.7million
December 1999	Department of Finance and Personnel approval for project
July 2000	Railways Task Force Report
December 2000	NI Assembly approves budget allocations
January 2001	Maunsell appointed as lead engineering consultants Department for Regional Development approval for project at £14.7 million
May 2001	First round of construction tenders received Scope of work reduced and contract retendered
July 2001	Second round of construction tenders received. Decision taken to appoint Mowlem. Project continued without reappraisal
August 2001	Mowlem starts work on site
September 2001	Mowlem indicates problems with track designs
November 2001	Mowlem submits first claims for delay due to lack of designs Maunsell's appointment terminated and Ferguson McIlveen appointed
December 2001	Deadline for draw-down of EU grant
February 2002	Mowlem instructed to replace existing track "as laid" Fatal accident on line during possession by Mowlem
July 2002	Reintroduction of full timetable
September 2002	Issue of certificate of substantial completion
December 2003	Mowlem submits final claim bringing total account to £33 million
February 2004	Project Management Evaluation completed by Currie & Brown
April 2004	Final Settlement of Mowlem's account and claims at £23 million

Appendix 4

(Paragraph 3.27)

Statement by the Director of Corporate Affairs, Northern Ireland Transport Holding Company

By way of clarification of my letter to the Department for Regional Development, dated 3 December 2004, with particular reference to Section 3 and the extent to which the NITHCo Board was briefed on the termination of the contract with Maunsell Rail during October / November 2001, I would wish to emphasise:

1. My use of the words “not properly informed” suggests that either the Board was intentionally misled or information was intentionally withheld from the Board. I accept that this use of these words was unfortunate and not supported by evidence. Accordingly, I retract this statement.
2. There is no evidence to suggest that at the time when the Board was being informed of progress with the proposed termination, the Managing Director (Group Operations) or any of the executives realised that their right of legal redress had been significantly and materially compromised as a result of the Agreement. It was only with the benefit of hindsight many months after the event that this outcome started to become clear. Regardless of whether or not management ought to have been aware of the true position, if they were unaware then they could not have advised the Board. My letter implies that the MD(GO) may have been aware but chose to withhold the fact from the Board - I acknowledge that this assertion cannot be substantiated.
3. In 2001 the NITHCo Board would not reasonably have expected to have sight of a lengthy and detailed legal agreement or the legal advice which supported it, particularly when there was an urgent need to bring the termination process to a speedy conclusion. On the contrary, it is entirely normal for detailed contractual issues to be delegated in their entirety to the executive management team and reported in summary to the Board. I would wish to correct any inference in my original letter to DRD that the process of finalising the Termination Agreement and keeping the Board informed represented an exception to the usual procedures.

Director of Corporate Affairs

24 January 2007.

NIAO Reports 2006-07

Title	NIA/HC No.	Date Published
2006		
Insolvency and the Conduct of Directors	HC 816	2 February 2006
Governance Issues in the Department of Enterprise, Trade and Investment's Former Local Enterprise Development Unit	HC 817	9 February 2006
Into the West (Tyrone & Fermanagh) Ltd: Use of Agents	HC 877	2 March 2006
Department for Social Development: Social Security Agency - Third Party Deductions from Benefit and The Funding of Fernhill House Museum	HC 901	9 March 2006
The PFI Contract for Northern Ireland's New Vehicle Testing Facilities	HC 952	21 March 2006
Improving Literacy and Numeracy in Schools	HC 953	29 March 2006
Private Practice in the Health Service	HC 1088	18 May 2006
Collections Management in the National Museums and Galleries of Northern Ireland	HC 1130	8 June 2006
Departmental Responses to Recommendations in NIAO Reports	HC 1149	15 June 2006
Financial Auditing and Reporting: 2004-2005	HC 1199	21 June 2006
Collections Management in the Arts Council of Northern Ireland	HC 1541	31 August 2006
Sea Fisheries: Vessel Modernisation and Decommissioning Schemes	HC 1636	26 October 2006
Springvale Educational Village Project	HC 40	30 November 2006
Reinvestment and Reform: Improving Northern Ireland's Public Infrastructure	HC 79	7 December 2006
The Fire and Rescue Service Training	HC 80	14 December 2006
Internal Fraud in Ordnance Survey of Northern Ireland	HC187	15 March 2007

Printed in the UK for The Stationery Office Limited
 On behalf of the Controller of Her Majesty's Stationery Office
 PC1919 C5 03/07

Printed on paper containing 75% recycled fibre content minimum

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

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders / General enquires 0870 600 5522

Fax orders 0870 600 5533

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Email book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders / General enquires 020 7219 3890

Fax orders 020 7219 3866

Email bookshop@parliament.uk

Internet bookshop.parliament.uk

TSO@Blackwell and other Accredited Agents

