



**Northern Ireland
Assembly**

**PUBLIC ACCOUNTS
COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**‘The Management of Personal Injury
Claims’**

4 February 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Maskey (Chairperson)
Mr Roy Beggs (Deputy Chairperson)
Mr Jonathan Craig
Mr John Dallat
Mr Jeffrey Donaldson
Mr Mitchel McLaughlin
Mr Jim Shannon

Witnesses:

Ms Fiona Hamill)	Department of Finance and Personnel
Mr Stephen Murphy)	Department for Regional Development
Mr Paul Priestly)	
Dr Andrew Murray)	Roads Service

Also in attendance:

Mr Kieran Donnelly) Comptroller and Auditor General

The Chairperson (Mr P Maskey):

We move to the next evidence session on Audit Office’s report on the management of personal injury claims. Do any members want to express an interest in the matter? I welcome Mr Priestley. I will begin, and members will follow suit. Will you introduce your team?

Mr Paul Priestly (Department for Regional Development):

On my left is Dr Andrew Murray, who is the director of network services in Roads Service, which is part of the Department for Regional Development. On my right is Stephen Murphy, who is head of the central claims unit in the Department for Regional Development. You all know Fiona.

The Chairperson:

Paragraph 2.1 of the report outlines that Roads Service has procedures in place to maintain roads and footpaths and to provide a defence against claims for tripping and similar injuries. Given the rising cost of some claims, are you doing enough to repair and carry out maintenance work on roads and footpaths?

Mr Priestly:

I will begin with a reply, after which Dr Murray can outline the detail. We have been before the Committee previously and have complained about the size of our structural maintenance budget. However, in that budget, I want to emphasise that the safety of the public is the top priority, and we will seek to ensure that action to improve footways and other defects that might cause personal injury to individuals remains the top priority.

Dr Andrew Murray (Roads Service):

Under roads legislation, Roads Service has a duty to maintain the road network. It is a difficult task. The condition of the network has deteriorated to such an extent that we have to identify and repair hundreds of thousands of defects every year. We carry out our duty to maintain roads, and keep them in a safe condition, through a sequence of regular inspections of the road network. Each time we carry out an inspection, we identify all the defects that we consider to pose a safety hazard. We attribute a priority to each defect and issue instructions, either to our internal contractor or a private sector contractor, to have to have defects repaired.

We must get several things right in relation to the hundreds of thousands of defects that we identify. We must carry out inspections on time. We must identify defects. We must categorise defects correctly. We must ensure that our contractor receives instructions and that he carries out repairs within the required timeframe. We must also document the entire process of each of the hundreds of thousands of claims, because we must be able to provide that information as a defence in court. It is a very onerous exercise. However, we feel that, over the years, we have

developed and refined the process and that we carry out our duty very well.

The Chairperson:

I have no doubt that that is the case. The road network and the footpath network are both very extensive. A kerb outside my front door has been repaired probably six or seven times in the past two years. Every now and again, the defect is marked out with yellow spray. Someone comes out, within whatever timeframe, and fixes the defect. However, it is has not been fixed properly, because someone else has to back out to repair it again. Are there any figures regarding defects that have been repaired repeatedly? I am not talking about defects throughout the North of Ireland, rather than just the kerb outside my front door. Alarm bells would ring with me if I had paid someone to fix a problem six times.

A case example is cited on page 38 of the review. A 13-year-old boy tripped on a raised flag and damaged a tooth, which required root treatment. The accident happened in the time between detection of the defect during a routine inspection and the repair being carried out; the settlement was £3,000. Is there a timeframe within which a repair should be carried out after a defect is identified? I do not know whether this is a recurring problem; indeed, for all I know, the time lapse could have been five minutes in that example. However, the time between detection and repair cost £3,000 in that case. That is only one example, but I am sure that it has been replicated right across the North.

Mr Priestly:

As Andrew said, Roads Service faces a difficult and onerous task. We have timescales for both inspections and repairs. A road is inspected depending on the nature of the road and how much it is used. Inspection regimes vary between one month and four months. There are timescales within which defects should be repaired. I do not know what those timeframes are off the top of my head, but Andrew does.

Dr Murray:

Each defect is placed into one of four categories, depending on where it is on the network, whether it is on a road or footway, the level of traffic on the road, and, indeed, the size of the defect. The most serious defects are repaired as soon as possible. We respond to defects on busy footpaths as quickly as possible and certainly no later than the next day. The timeframe for the repair, for example, of a small defect in an area where traffic is light and there are no pedestrians,

could be four weeks. Indeed, we sometimes put such cases down for programmed repair. We have a well-developed sequence for prioritising the most hazardous defects and repairing them quickly.

Mr Priestly:

It is worth saying that — unless the work is contracted out — the same people who repair the defects are those who are expected to go out and salt the roads in the wintertime.

The Chairperson:

In my view, if one properly repairs a broken road, that repair need not be repeated five times in the following two years. Have you had people out on many occasions fixing the same repair? To me that sends a very bad message. You are paying someone five or six times for a job that should only have been paid for once. Is there a list of similar issues? If there is, the Committee would like to see it. I appreciate that you may not be able to give the information today.

Dr Murray:

We know that there are cases where there are defects which, for one reason or another, are difficult to repair in a long-term manner. Therefore, we end up doing short-term repairs.

I take the view that all repairs are temporary. The only real way to repair a road is to resurface, which is a proper job that will last for 20 years. Pothole repairs can last for several years but, depending on the weather, the size and the location, and we may not get that life out of them.

The Chairperson:

In the street I am talking about, the footpath was renewed seven years ago. Over the last two years, men have been out six times, fixing the same thing. That occurred after repair, relaying and resurfacing; and yet there is still a defect in it. I do not want to go on about it, because it is outside my own front door. I want to get on to discussing the report. However, that is an issue. You say that all repairs are temporary unless an overall job is done. Surely, if men are out that often to the same location, something is wrong. You have a list of such cases and I hope the Committee can get a copy of it. If the repair is done properly on the first, second or third occasion, that is fair enough. After that, questions have to be asked, for example, whether the right cement is being used.

Mr Priestly:

I do not make excuses, but the range of circumstances that cause defects must be taken into account. When MLAs come to Stormont, they may enter by Massey Avenue, which is lined by trees. The footpath around those trees is cracked and broken by tree roots. The only way we can stop that happening is to remove the trees and their roots. Similarly, vehicles may drive onto footpaths that are unable to bear their weight. If they keep doing it, it will eventually cause defects. I do not for a moment make excuses —

The Chairperson:

I hope you are not slagging my driving.

[Laughter.]

Mr Priestly:

Not unless you drive a heavy goods vehicle. I have to say that you are breaking the law if you park on the footpath.

The Chairperson:

I have a driveway at my house.

Dr Murray:

We monitor repair costs on different roads, and when we draw up our re-surfacing programme, we try to carry out resurfacing in the areas where our patching costs have been highest.

Mr McLaughlin:

Do you send a bill to the person responsible?

[Laughter.]

The Chairperson:

I appreciate the measures that you have taken. Would you consider putting more resources into the fixing of potholes in a more lasting or permanent manner? A 13-year-old youth who trips on a broken pavement, falls and breaks a tooth may well put in a claim for £3,000. That money is paid out by Government, and had the defect been fixed sooner the young lad might not have fallen. That would have saved £3,000 in costs. From the last witness session, we know that

every Department is strapped for cash; but is there any way that more resources could be applied to this? It would result in fewer claims.

Mr Priestly:

The assurance I gave in my opening comments was that within the structural maintenance budget, the safety of the public is the highest priority. As Andrew Murray has said, where we identify serious defects, they are repaired as soon as possible, which means that it is done within 24 hours.

The Chairperson:

I move on. In paragraph 1.1, it is stated that since NI Water was established, that company has not used the DRD central claims unit. Have you compared the performance of NI Water's claims service with that of the central claims unit?

Mr Priestly:

We have not. The management of personal injury claims in Northern Ireland Water is an internal operational matter for its senior management. Although we monitor Northern Ireland Water's costs through monthly performance reporting and quarterly shareholder meetings, we do so at a strategic level and do not delve into the detail of the company's operational costs. On the other hand, DRD has some information that shows that the costs that we pay to the central claims unit provide us with good value for money. We do not compare our costs with those of Northern Ireland Water. Northern Ireland Water does not have an in-house legal unit to handle its claims. That function is contracted out.

The Chairperson:

You said that you get value for money for your costs. Can you share the information on what those costs are with the Committee? We would also like to make comparisons.

Mr Priestly:

I will take that away, think about it and write to the Committee. Some of the information is likely to be commercial in confidence if the costs are being compared with private companies.

The Chairperson:

I appreciate that, and I will leave that question there.

Mr Craig:

Paragraph 2.2 on page 38 of the report refers to an issue that I find interesting. Approximately 36% of claims are settled without the Department's offering any legal representation. Interestingly, the report states:

"We examined a sample of these in-house settlements and found that in 70 per cent of cases, no defence could be offered due to problems with the quality of inspection and repair, including: inspections not carried out; defects missed; and repairs not carried out properly."

That is quite a damning statement. Have you gone to the bother of investigating any of the cases for which you cannot provide any legal defence? Are you doing anything to improve that situation?

Mr Priestly:

Thank you for your question. I will set the issue in context for the Committee. Northern Ireland has the highest proportion of adopted highway and footway in the United Kingdom. I am told that there is around 14.7 m of highway and footway for each person in Northern Ireland compared with 5.7 m for each person in the UK as a whole. As Dr Murray said, that imposes a heavy burden on Road Service's resources to inspect it all. Within finite staff resources, repair work is checked on a sample basis. The low number of settled cases must be set against the thousands of repairs that are carried out annually. In 2008-09, 228,000 repairs were carried out, and in 2007-08, 205,000 repairs were carried out.

Settlement of a case does not necessarily mean that an inspection has been inadequate. It means that Stephen Murphy and his staff have to make a practical assessment based on the facts of each individual case. The courts here will apply a defect dangerousness test at a level higher than elsewhere in the United Kingdom, and we have to make our liability risk assessment in that type of legal environment. The figures should not point automatically to a fundamental problem in the inspection regime. We can, of course, always do better, but the inspection is carried out with finite resources.

Dr Murray:

I reiterate my earlier comments about the number of things that can go wrong in each case. A million things can go wrong each year.

Of the large number of things that can go wrong, in most claims against the Department, we have not just a statutory defence with which we are satisfied, but one that we believe will be foolproof

and watertight in the courts. Overall, the number of cases in which we decide, on legal advice, the system is at fault is very small. Indeed, the report recognises that our inspection and repair regime is working very well.

Mr Craig:

The Comptroller and Auditor General would differ with you on that point, which is why I deliberately read from the report. I did not want you to think that I made up that comment.

You did not address the question of whether cases that prove to be legally indefensible are analysed in order to improve your inspection regime. One point that jumped out at me, about which I have asked a few questions, concerns the area-based statistics for many of the injury claims. It is interesting that the numbers of claims in some areas of the Province are extremely high. Does that observation tie-in with the idea that common sense should apply and that more inspections and a bit more maintenance should be carried out in those areas to bring the numbers down? Do you look at area-based statistics when considering whether to rejig your maintenance and inspection regime?

Mr Priestly:

We do have such monitoring arrangements, and we look at the level of claims for each section office. We try to learn lessons from that type of analysis, and we know which section offices have disproportionately high, or low, levels of claims. We cannot identify a connection between inspection, maintenance and repair levels and the level of claims.

Dr Murray:

That is the case. Given that we apply a consistent inspection and repair regime throughout the Province, different area characteristics give rise to claims in any particular area.

The point to which I referred is in paragraph 2.2 of the report:

“The reducing number of claims and the high rate of rejection by CCU would suggest that Roads Service’s inspection and repair regime is working effectively most of the time.”

Obviously, “most of the time” leaves room for improvement. However, as I pointed out, there is huge scope for things to go wrong and, in a relatively small number of occasions — a little more than 100 times a year — things do go wrong, although not necessarily as a result of faults by inspectors. Things may go wrong due to some aspect of the inspection. For example, the size of

a defect may be close to the threshold and we decide that it is not worth defending, it may be something to do with documentation or, indeed, a repair may have been carried out in poor weather conditions and, consequently, failed shortly afterwards. Therefore, there are a number of reasons why we cannot offer a statutory defence. Although a job might be looked on as having been particularly badly done, that happens in a very small proportion of cases in which there is a claim. There is a range of reasons for that happening, and in the overall context of the number of things that can go wrong, I think that our performance is good.

Mr Priestly:

Members may believe that this is what I would want to say. Of course I want to say it, but, in the past ten years, the Department has performed well in reducing the number of personal injury claims. The central claims unit rejects about 70% of new claims due to a lack of evidence of negligence by Roads Service. So the inspection regime is working. Given the legal environment in which we work, we think that a 70% rejection rate is exceptionally high. Andrew Murray has already quoted from the report, which says that the inspection and repair regime is working effectively most of the time. Only a third of rejected personal injury claims are contested and pursued to proceedings and, from the 1997-98 until 2007-08, the average successful defence rate in such proceedings was 54%. We win more than half of those claims that go on to proceedings.

Mr Craig:

I do not want to misquote you. Dr Murray made a very interesting comment. You are really telling me that you have found no correlation between the level of maintenance carried out in an area and the level of claims that are made in that area.

Dr Murray:

Yes, that is correct. Consistent standards are applied throughout the Province, but claim levels are not consistent throughout the Province.

Mr Craig:

Well, there you are; you have surprised me. I find that an astonishing statement, but I am not going to argue with you about it. The central claims unit provides you with all that information: paragraph 2.4 of the review indicates that there are issues about the information that comes from the unit. It says that some reports were incomplete. Have you taken any action to improve that?

Mr S Murphy:

The review points to some instances in which information was not complete. However, to a large extent, that was down to the current litigation system in which we work, whereby claimants' solicitors are not required to give us information. In most instances that was down to the fact that we had recorded as much information as we had. There were some instances in which some staff had not done that, but we have put in an IT solution with drop-down boxes that people must complete. Under current legal rules and limitations, however, the information that we can obtain is limited.

Mr Craig:

What are those limits?

Mr Priestly:

An applicant's legal team does not have to give us the information.

Mr Craig:

Right. So you are hamstrung because they just refuse to give it?

Mr S Murphy:

We are hamstrung by the legal system.

Mr Craig:

That is interesting.

Mr Dallat:

I have sat here for an hour and a half, and I wonder whether it was a waste of time. I have not heard one single comment so far that suggests that there could be improvement or that it was within the witnesses' remit to do things better. That is only an observation arrived at over an hour and a half. I will study the transcript of this meeting to see what we have achieved in it. So far, I have not heard a single promise to make things better, despite the fact that this is a most serious subject at a time when health, education and everything else is being cut to the bone.

However, I will start with the potholes. Over Christmas we had terribly bad weather during which potholes appeared everywhere. What are the procedures for patching potholes before we

get an avalanche of claims? What happens?

Mr Priestly:

I will begin by responding to the points that you have made. I have acknowledged several times during this hearing that we see value in the gateway process, that we will comply with the new policy and that we will undertake gateways on all projects that cost more than £20 million.

The Chairperson:

I will stop you there because we have moved away from the gateway process and on to a new subject. I know that Mr Dallat said that he had sat waiting for an hour and a half for issues to be addressed, but the Committee will make recommendations based on the content of the reports which will be included in the transcript of today's meeting. We will await your memorandum of understanding on that, but I do not want to move away from the subject of the meeting.

Mr Priestly:

OK. I will just note that we have come here briefed to talk about personal injury claims rather than potholes.

Mr Dallat:

On a point of order, Chairperson. Can I have some explanation for that remark?

Mr Priestly:

Potholes are generally on the roadway. The point I am making is that people do not trip over potholes. Maybe I am wrong.

Mr Dallat:

Yes, you are.

Mr Priestly:

All right. Andrew?

Dr Murray:

When it comes to improvements I am happy to admit that I would like there to be a statutory defence in every single case.

Mr Dallat:

That is hardly a good remark.

Dr Murray:

There is not, and that leaves room for improvement.

In relation to potholes, rural areas in particular recently had about three weeks during which there was snow on the ground, which meant our staff could not inspect the road network because they could not see it. Even if they had been able to inspect it, we would have had a real problem, because they would have been employed driving gritters.

The subsequent thaw occurred over a couple of days and revealed a large number of potholes. We have two ways of dealing with potholes. First, we have our inspection process, but getting round the network takes a bit of time. We cannot get round it in a couple of weeks. We also respond to public complaints. If a member of the public reports something particularly bad to us, we will try to respond to that within the time, as laid out in our guidelines. We have had a large number of reports from the public through the roads' e-mail inbox and telephone calls to section offices.

Mr Dallat:

I am very pleased with that answer. The review found that levels of compensation were much higher in Northern Ireland than in England and Wales. Has your Department or the Government considered making a submission to the Judicial Studies Board to bring Northern Ireland's tariff closer to that applied in England and Wales?

Mr S Murphy:

The issue here was tried and tested in our courts some years ago, when a test case was brought in a bid to bring Northern Ireland damages levels into line with England's. The case was rejected because the historical background of the legal jurisdictions is respected. Tariff alignment is a matter for the judiciary, and it is a matter that affects not only Government Departments but private claimants, public companies and anybody else involved in litigations. It is a matter of common law. As the law stands, damages are fixed by judges, which is the proper procedure.

Mr Dallat:

Is there nothing the Department can do? Is that it? Is it Christmas every day for claimants?

Mr Priestly:

We can, of course, make representations.

Mr Dallat:

That is what I asked.

Mr Priestly:

However, I would not want to hold out a high expectation of any change in long-established procedures for setting damages' levels. They are largely without our control, but we can make those representations.

Mr Dallat:

We will come back to that. Paragraph 3.4 of the report states that a tariff is a "guideline" that is:

"not supported by the authority of judicial decision".

Have you ever considered departing from those guidelines to apply a different tariff?

Mr S Murphy:

The contents of paragraph 3.4 are accurate but simplistic and they do not reflect case law on the matter of guidelines. There have been at least four or five High Court and Court of Appeal cases on the guidelines, and they are now firmly embedded in the legal system as the eminent source and authority for the assessment of damages.

Mr Dallat:

I am surprised to hear that comment at this stage, because I presume that the report was agreed and its contents deemed accurate by the Comptroller and Auditor General. Yet the suggestion seems to be that there is a bit more to it than that.

Mr S Murphy:

The comment in paragraph 3.4 of the report is accurate in a simple manner, but it does not detail the more fundamental legal arguments and the bases and substantiation of the guidelines. What I have said does not detract from that paragraph; I am just amplifying what is not set out in it.

Mr Priestly:

I will address the question in a slightly different way. In his day-to-day work on cases in which we admit liability, Stephen Murphy will try to agree a reasonable settlement that is, hopefully, less than the guidelines. However, all of the legal profession in Northern Ireland are aware of those guidelines, so they take cases to court, where judges use the guidelines, which reinforces our difficulties.

Mr Dallat:

I realise that you have difficulties in that claim forms are not complete and that workers are gritting when they should be filling potholes; we know that, but let us move on.

Paragraph 3.6 of the report states that a change to County Court fee scales in 2003 resulted in an increase in fees paid, which was far in excess of the 4% intended. Did the representatives of the County Court consult with you before making that change, or have you made recommendations to them?

Mr S Murphy:

The County Court Rules Committee made those changes. There is no discussion with the Department about such matters. Those scales brought outdated fees up to date, and any representation on fees would have to come from a source higher than the Department. It would have to come from a higher legal source.

Mr Dallat:

Did you make any representation to the County Courts?

Mr S Murphy:

I did not make any representations on the basis that I had no grounds to do so.

Mr Dallat:

Did it not occur to you that there is a gravy train here?

Mr S Murphy:

I have dealt with compensation claims now for 30 years; 12 years for plaintiffs and 18 years for

defence. I am aware of the culture in Northern Ireland, but County Court fees are set by a judicial committee consisting of solicitors, barristers and judges. Fees are made up in consultation with the Law Society and the Bar Council. Once they are fixed, all solicitors and parties involved in the negotiation — including the Government and private parties — everybody is bound by those rules.

Mr Dallat:

No one is well-off from breaking an ankle, but judging by the amounts of compensation paid for such an occurrence as detailed in figure 4 of the report, they would be better off doing it here than in England.

Mr S Murphy:

You are going back to the history of our compensation awards; back to the abolition of jury awards in 1987. That is part of the history of the Northern Ireland legal system, and we have to work within that background.

Mr Dallat:

That was 22 years ago. Surely, at some stage the Department should ask questions about the money-making machine in Northern Ireland built on compensation claims from government Departments?

Mr Priestly:

No, it has not.

Mr Dallat:

Why has that not been done?

Mr Priestly:

We are working in an environment where legal costs are fixed under rates set in the High Court and statutory scales set in the County Court, as Stephen has tried to explain. They are set by the legal profession. We can make representations, but we have not.

Mr Dallat:

Even the judicial system is subject to public pressure and reform. I understand that it has gone

through quite a bit of that. I do not understand why you have not been banging on their big oak doors and telling them to get compensation claims in line with England and Wales, and to stop the gravy train.

Mr S Murphy:

There are completely different sets of rules in England with several rules of procedure. England has deviated for a long time since the Woolf report. We operate as best we can under the system, but there is a certain degree of consultation when changes come through. If there are consultation exercises involving legal costs, we will try and offer input. We have done so on a number of cases in the past with regard to peripheral cost issues. On every occasion, we have received polite letters thanking us for our contribution, yet nothing occurred as a result of our advice.

Mr Dallat:

I have no more questions.

Mr Shannon:

I have a couple of questions to do with the solicitors' fees. Paragraph 3.11 of the report states that the cost of the departmental solicitor's office has risen dramatically by 65% since 1998-99. We are all pushed all the time: government, the Assembly and the Finance Minister say that all the time. He refers to efficiency savings and how we can improve. During a time of efficiency savings and efficiency drives, why has there been such a large rise in litigation costs? Have you at any stage considered buying legal services elsewhere at a lower cost?

Mr Priestly:

I will ask Fiona to deal with the detail of that question. However, the final bit of it asked whether we have considered going to the market. The answer is no. We have not done that. There is a statutory reason for that; proceedings must be served on the DSO.

Mr S Murphy:

Under the Crown Proceedings Act 1947, all proceedings must be served in the Departmental Solicitor's Office. Before Fiona responds, I will make two points. First, since 2002-03, DSO costs have been reducing and we are now back down to the 2002-03 costs, because they have reduced increases. Secondly, I monitor and compare DSO costs with the costs charged by claimants' solicitors in the private sector on a regular basis. DSO costs are approximately 50%

lower than those of private sector firms.

Mr Shannon:

I am not trying to be smart, and I ask the question respectfully: if you have not asked for tenders to outline other costs — regardless of the legal impediment that Stephen referred to — how can you judge value for money? There will always be solicitor groups who are more than willing to offer a keener price. If you could get by the legalities of the 1947 Act, would you not consider whatever changes are necessary to enable you to price more efficiently?

Mr Priestly:

We have hinted at the answer, but I will make it slightly more explicit. The information that is available suggests that the DSO provides good value for money. Compared with the charges that plaintiffs bear — we actually pay them — and what their solicitors charge, the DSO charges represent good value for money.

Ms Fiona Hamill (Department of Finance and Personnel):

Mr Shannon referred to the 1998-99 figures. Responsibility for litigation services transferred to the Departmental Solicitor's Office in August 2000. In the 2001 financial year, the Departmental Solicitor's Office set fees on the basis of staff transfers and other costs. I cannot speak about the costs before that date, and I do not have the basis or the background to compare the costing regime that set those fees. However, from 2001-02, the increase in DSO fees reflects salary inflation. I apologise; I cannot provide an answer about the figures for the previous years.

Mr Shannon:

The best way to test any pricing or price structure is to put it to the open market and examine the responses. Although Paul said that the feedback indicates that it would not be much cheaper, I suspect that a tendering process, by its very nature, might generate a keener price. However, we must go through the procedure. Earlier, the Chairman mentioned the fact that Northern Ireland Water no longer uses the central claims unit. Who does it use?

Mr Priestly:

I do not know off the top of my head.

Mr S Murphy:

Since 1 April 2007, Northern Ireland Water funds its claims through a public liability insurance policy. Its claims investigations are contracted out in-house to an insurance service called Aon. When a person deals with Northern Ireland Water now, it is rather like making a claim against a car insurer. The insurer's public liability for the year and its panel of solicitors will deal with that.

Mr Shannon:

You have not made any comparisons with Northern Ireland Water's processes, Stephen. You mentioned the issue of commercial confidentiality when comparing costs, and I understand that, but have you been able to make comparisons between what you do and what Northern Ireland Water does?

Mr Priestly:

We are getting into slightly difficult territory. Some comparisons can be made. Anecdotal evidence shows that some of Northern Ireland Water's solicitors have to come to Stephen to learn about Northern Ireland law. Stephen is used to handling Northern Ireland Water claims, so he is well versed in that area of the law. Those solicitors do not understand local law and have to come to Stephen. That reinforces the argument that we are well served.

Mr S Murphy:

When Northern Ireland Water's claims unit was being set up, my team and I assisted it with procedures, forms and guidance. We are in a regular work relationship with Northern Ireland Water. It has around 600 cases a year, and, therefore, we are in weekly contact with its claims handlers. We see how Northern Ireland Water's claims handling works, but we still give help and guidance to it.

Mr Shannon:

Detailed guidance has been provided on interdepartmental charging as an important means of encouraging efficiency. That is a dreaded word that everyone hates to hear but it is necessary in today's climate. However, paragraph 3.14 of the report states that the DSO does not comply with the guidance. As part of DFP, the DSO should set an example and follow each word of the detailed guidelines. The report states:

“Charges are not based on the cost of the service ... Charges do not adequately reflect the cost of services consumed ...

DSO does not produce a memorandum trading account ... outturn cost figures are not produced and DSO cannot tell whether a surplus or deficit has been generated.”

As Treasury Officer of Accounts, are you satisfied that the DSO is doing the job correctly?

Ms Hamill:

The guidance in ‘Managing Public Money Northern Ireland’ for setting fees and charges is clear. It deals primarily with the setting of charges or fees for the public. That guidance can also be applied in circumstances in which Departments provide services to each other, but it always remains a matter of discretion for Ministers and for the Assembly, from which the setting of charges and fees sometimes needs authority.

I will comment on the points that are raised in paragraph 3.14. The report states correctly that DSO charges only for litigation services. The DSO provides services in two broad areas: with discretionary services, where it supports litigation; and with advice. When it provides advice it does so for services that are in the common good. It provides advice on policy and strategy to Ministers and Departments. DSO follows the Attorney General’s practice that government is best served by providing that advisory service centrally to Departments. It does not impose hard charges on Departments for the services, but it hard charges for litigation services for claims.

The report states:

“Charges are not based on the costs of the service.”

DSO recognised in its own review that, in the absence of a time-recording system, it is impossible to provide highly detailed fees. It uses a scale that was developed by the Crown Solicitor’s Office in conjunction with the claims unit before the transfer to set fees that reflect how far through the legal process a claim will travel and which reflect the complexity of the claim, using the compensation as a proxy for complexity. That is not necessarily outside the guidance. ‘Managing Public Money Northern Ireland’ says that when delivering services one should group them into criteria and try to set common fee rates for those sub-units. However, the Departmental Solicitor’s Office (DSO) introduced a time recording system in September 2009 that allows it to review actual fees against the fee structure and confirm or revise that fee structure as it is set.

The report says that:

“Charges do not adequately reflect the cost of services consumed.”

Again, I would go back to the introduction of a time recording system, which will allow the DSO to respond to that question and be able to show that there is a proper reflection of the costs. The report goes on to say that:

“DSO does not produce a memorandum trading account”.

That is correct; DSO was not producing a memorandum trading account. In 2008-09 it produced a partial memorandum trading account; it has improved the quality of that for 2009-2010. The introduction of the time recording system will allow DSO to seek to produce a full memorandum trading account from April 2010 onwards. It is making progress against that.

Mr Shannon:

The purpose of the PAC is to question Government bodies. We always seek improvements in the system, and if improvements are made, our inquiries are justified. Dr Murray used the word “watertight”. Only a duck’s you-know-what is watertight; that being the case, I will suggest a methodology for improving the claims system.

It goes back to what Mr Dallat said earlier; Mr Craig and others have mentioned it. When an elected representative contacts the Department to make it aware of a problem and outline a trip hazard, an official may come out and use his 12-inch ruler — the same one that everyone else has — to check the hazard. He may decide that the hazard does not meet the criteria. Someone has tripped over that hazard, but the official says that it is not a problem, because he has checked it with his 12-inch ruler and decided that there is no problem. My 12-inch ruler may reveal something completely different, but in the meantime, while the Department decides what to do, another three people trip over the hazard in question. The Department, however, persists in saying that there is no trip hazard.

At what stage could the Department be more efficient and work better to respond to elected representatives and the concerns of the general public when they highlight hazards on the roads? By spending £150 or £200 on repairs, for example, the Department could save its solicitors and its insurance company costs of approximately £15,000. The first claim will be made and there are three more to follow. The first claim sets a precedent for the following three claims. The first claim costs £3,500; the next three will cost the same. Would it not be more efficient to respond to the elected representative and the general public and do the job? We are talking about

improvements in the system.

Dr Murray:

The general view in case law is that around a depth of an inch is the threshold at which a defect becomes a hazard. It is obvious that a person can trip over a hazard that measures less than an inch deep. Our policy is set so that we can determine every defect over 20 millimetres deep as a hazard.

Last year, we fixed 208,000 defects of that size. If we were to start fixing defects at a lower threshold, say a depth of 10 millimetres, the number of defects would increase exponentially. There might be 10 times the number of defects in the network at 10 millimetres than there would be at 20 millimetres. Consequently, the network would be full of patches, each of which has the potential to create a further defect. It might seem, in the example that Mr Shannon gave, that a hazard exists. There may be examples whereby a court has ruled that a defect measuring less than the normal threshold did constitute a safety hazard.

Mr Shannon:

The Department paid out just last week.

Dr Murray:

It does happen.

Mr Shannon:

With respect, I am not sure whether the Department has grasped what I am asking it to do. I hope that it does, because that would result in better service from the Department and would stop the claims coming through.

When a member of the public, through his elected representative, makes the Department aware of a trip hazard, would it not be advisable for the Department to respond in a positive fashion? If it can get the job done for £150, or pay out £15,000, which is the better job?

Dr Murray:

It is not a single job.

Mr Shannon:

It is. The precedent was set on every claim because the Department held fast to criteria which were proven by the courts to be wrong. That is the point that I am trying to make. If something can be made better, we should not make it worse. The Department should learn from those examples in a constructive fashion; however, I am not sure that it has. We are looking for improvement, fewer trip hazards, and fewer people being injured.

Mr Priestly:

We will certainly take away your suggestion and look it. However, going back to what Andrew said earlier in response to Mr Dallat, we do listen when members of the public and elected representatives report hazards.

Mr Shannon:

You do not. I have a number of examples of when I had to use the office of the Minister to ensure that work was done. I have made it quite clear what we tried to do and that we used the process correctly. However, the Department did not make the improvements. Therefore, the Minister had to come down and use his directive. By then, of course, it was too late, and approximately four claims had been made.

Mr Priestly:

With respect, I am not going to argue. We will listen to what you have said, and I repeat that we do try to respond to members of the public and to elected representatives. Those reports, believe it or not, are sent down to section offices, where staff go out and look at the hazard and make a judgement call. Things have to be prioritised.

Mr S Murphy:

The important point is that it is judicially recognised that anything, down to 1 mm, can be a hazard. We are talking about situations in which the courts say that something is an accident hazard. That is the basis behind the Roads (Amendment) (Northern Ireland) Order 2004. With a finite budget it is simply impossible to repair every defect.

I am aware of the cases that you are talking about, Mr Shannon. However, the courts impose a threshold of what is an accident hazard. There simply is not the budget to repair every hazard.

Mr Shannon:

I am not asking you to repair every hazard. Earlier, Andrew mentioned heavily pedestrianised areas, and that is another criterion that you could use to improve.

I am not just here to criticise. I am suggesting how to do it better. I hope that that filters into the system and makes life better.

Mr Beggs:

I will directly follow Jim's question, as I also have personal experience of dealing with constituents in similar situations. Somebody from Larne contacted my office to advise me that a lady had tripped on a manhole on Main Street. We reported that to the Department, but, before anyone got back to us, a shopkeeper tripped on the same spot. The Department's response was that the hazard was below the 20 mm threshold and did not take account of the fact that it was a trip hazard in a busy pedestrianised area, in a town centre, on which lots of people have tripped, and on which somebody could break an arm or a leg.

Legally, you may not bear the cost, but, nevertheless, a good public service is not being provided. Costs may fall on the Health Service, or, because the injured person is unable to work, on the economy. I ask you to reflect on areas in which there are accident black spots and where, legally, you are getting off because of the dimensions of the defect, but, about which you are receiving regular complaints from members of the public who have fallen. I support the view that that area should be examined, particularly in respect of town centres.

Ms Hamill, paragraph 3.14 states that the Departmental Solicitor's Office charges for a small part of its overall activities — I think that it was £1.3 million of its £7 million budget. On that basis, how can the Department offer any assurance that DSO is providing a cost-effective service? How does the Department know what it is spending its money on?

Ms Hamill:

At the time of the report, the Departmental Solicitor's Office generated £1.3 million by charging for the litigation services that it provided. DSO's primary, and original, role is core service delivery through the provision of advice and guidance on governmental legal issues to Departments, Ministers and so forth. The services that it delivers are for the common good, and that is what it seeks to do.

You asked how the Department can be certain that DSO is a cost-effective service. I refer to the fact that the DSO is participating in a project, which is being led by the National Audit Office of Scotland, that examines key performance indicators and benchmarking information to ensure value for money in the delivery of legal services. It also provides more central legal services and works with colleagues in the sphere of government legal support.

Mr Beggs:

DSO lost the Water Service trade. Did that change the staffing arrangements in DSO, or was it just the extra overheads that stayed with it?

Ms Hamill:

I will have to come back to you on whether or not the removal of that litigation service impacted on staffing arrangements. I cannot answer that now.

Mr Beggs:

Given the kind of business involved, it would surely have had an impact.

Paragraph 3.19 states that 'Managing Public Money in Northern Ireland' no longer requires the use of charges between Departments. That seems to be a major shift in government accounting policy. Why has that change been made?

Ms Hamill:

Where DSO charges for services to the public or services that it is choosing to provide, potentially, in competition with an external provider, it must demonstrate the economics of its argument and its efficiency.

It is worth reflecting on the fact that 'Managing Public Money in Northern Ireland' was introduced together with 'Managing Public Money in the UK' after a long and extensive period of consultation. There are times when charging for services is a valuable tool, but the decision to charge must be a discretionary matter for Ministers and the Assembly. That point is made clearly in 'Managing Public Money in Northern Ireland'. The issue also needs to be considered in the context of whether or not it is economic to establish a charging regime and whether or not that will create an over-bureaucratic process. If we choose to deliver services to one another even

though there is an alternate external provider, we must justify the commercial reason for doing so.

Mr Beggs:

Has the Department considered whether its systems are bureaucratic and whether that has meant that its services are expensive to administer? Have you considered putting in place in better systems that are not as bureaucratic?

Ms Hamill:

'Managing Public Money in Northern Ireland' seeks to establish the principle that all public sector organisations must examine the services that they are providing and consider whether or not it would be valuable and helpful to charge for those services.. For example, it could be argued that an awful lot of what I do is a service that is common to all Departments, and I could, therefore, charge for that. I would have to introduce a time-recording system to drive off the costing methodology for my staff, and I could then charge for the service according to the time that is spent delivering it, but that would quickly take away from the service that I am seeking to deliver.

Mr Beggs:

It seems that £6.7 million is not charged against anything. Do you not accept the danger that you may not pick up on regular issues because you have to be consulted and take advice on changes that may be needed to policy areas or legislation? Do you not accept that, by not charging, those issues just disappear into the system and into the mist?

Ms Hamill:

The Department of Finance and Personnel's 2007-08 resource accounts estimated the cost of litigation services at £1.9 million. Some £5.1 million of the costs of the Departmental Solicitor's Office (DSO) are estimated to be the costs of the legal advice and the guidance that it provides to Departments and other bodies.

After the introduction of a full time-recording system in September, the DSO will be in a position to advise Departments of the notional cost of those services going forward. Indeed, it is setting a timetable for doing that. Following on from the guidance issued by the Attorney General on these matters, it is clear that there is real value in keeping government advice as an internal service. That allows cross-departmental issues to be reflected properly rather than each

Department appointing its own legal council.

Mr Beggs:

That is a welcome development. Paragraph 3.14 of the review refers to the setting of fees. You indicated that a County Court rules committee sets the fees. If I have picked you up correctly, that Committee consists of judges, barristers and solicitors. Do you see a problem with that?

Ms Hamill:

County Court fees are set as an amendment Order that is made by the Lord Chancellor. However, it is not a devolved matter, so I cannot comment on that policy.

Mr Beggs:

Any bad legislation can be changed if it needs to be changed. Do you see any governance issues with the fact that it is solicitors and judges who set compensation fees? If it was an Assembly Committee or a local council making the judgement, I would have to declare an interest and leave the room. Is it not correct that the fees payable to those solicitors and barristers are related to the level of compensation?

Ms Hamill:

I will very happily report your concern to the Departmental Solicitor's Office and see whether it has any comment to make. I am sorry, but it is not a matter on which I can make an open assertion.

Mr Beggs:

Do you accept that we are essentially allowing the people who receive the increased compensation claims to set those compensation claims? Indeed, that problem may account for the 50% increase in fees, which is four times the rate of inflation, over a 10-year period. I accept that it is not a devolved matter. However, the fact that we are paying compensation and paying solicitors and barristers means that Roads Service has less money to fix potholes. It is a live issue. I feel strongly that we should address it and feed it up the system to whoever sets the rules and regulations. If there is something wrong, we should work together to fix it.

Ms Hamill:

I will be happy to take the matter back to the DSO and ensure that your concerns are reflected

correctly.

The Chairperson:

That is fair enough. You will be very pleased that no other members have indicated that they would like to ask a question. We have examined differences today, but the discussion illustrates how important it is that the guidance issued by DFP fully supports the efficient and effective use of taxpayers' money and that the guidance is properly implemented by Departments; that is one of Mr Priestly's tasks.

We will consider the views that have been expressed in today's meeting, and we will write to you with any further relevant information. Likewise, you can come back to the Committee with any views that you did not get a chance to express today. I thank Fiona, Stephen, Paul and Andrew. I also thank Hansard for its coverage of today's session and all the Committee staff.