



Northern Ireland
Assembly

**PUBLIC ACCOUNTS
COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**NIAO Report: ‘Reducing Water Pollution
from Agricultural Sources: The Farm
Nutrient Management Scheme’**

15 June 2011

NORTHERN IRELAND ASSEMBLY

PUBLIC ACCOUNTS COMMITTEE

NIAO Report: ‘Reducing Water Pollution from Agricultural Sources: The Farm Nutrient Management Scheme’

15 June 2011

Members present for all or part of the proceedings:

Mr Paul Maskey (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Sydney Anderson
Mr Michael Copeland
Mr John Dallat
Mr Alex Easton
Mr Paul Frew
Mr Paul Girvan
Mr Ross Hussey
Ms Jennifer McCann
Mr Mitchel McLaughlin

Witnesses:

Mr Brian Ervine) Department of Agriculture and Rural Development
Mr Gerry Lavery)
Mr John Smith)

Mr Michael Brennan) Department of Finance and Personnel
Mr Stephen Fay)

Also in attendance:

Mr Kieran Donnelly) Comptroller and Auditor General
Mr Richard Pengelly) Acting Treasury Officer of Accounts

The Chairperson:

I welcome Mr Gerry Lavery, accounting officer for the Department of Agriculture and Rural Development (DARD), who is here to respond to the Committee. Mr Lavery, I will pass over to

you to introduce your colleagues.

Mr Gerry Lavery (Department of Agriculture and Rural Development):

Thank you. I am Gerry Lavery, accounting officer for the Department of Agriculture and Rural Development. On my immediate right is John Smith, the director of finance for the Department, and on my left is Brian Ervine, a principal officer with considerable experience in the area of the farm nutrient management scheme. On the other side of John Smith is Michael Brennan from central finance group and Stephen Fay from Land and Property Services (LPS).

The Chairperson:

You are all very welcome.

I remind members and people in the Public Gallery to switch off mobile phones and electronic devices. They can interfere with sound quality, and Hansard has a difficult enough job to do. It would be appreciated if those could be switched off.

Mr Richard Pengelly is here today in the capacity of Acting Treasury Officer of Accounts until Catherine Daly takes up her post. Richard, you are very welcome.

I will start off the questioning. The farm nutrient management scheme was run over a period of some five years at a cost of £121 million, making it the largest capital grants scheme ever run by DARD. What did the taxpayers get out of it?

Mr Lavery:

I admit at the outset that we did not implement the scheme perfectly. That will doubtless emerge in the questioning. However, it did a lot of good for Northern Ireland. First, it helped us to avoid the risk of infraction fines, running at potentially £50 million a year, from the European Commission.

Secondly, it improved water quality in the Province. Over 75% of the sites sampled show an improvement in phosphate levels. In the last closed season, no farmers were detected spreading slurry. It helped 3,900 farmers to build additional storage capacity, and storage capacity is not now seen as a problem by the Environment Agency or us. As the Chairman said, it invested £121 million of public money, but it also leveraged out over £80 million from the private sector —

from the farming community. It was an important boost to the construction industry at a time when public and private investment was tapering off very sharply.

As regards the original objective set for the scheme, it has helped to maintain the livestock numbers in the Province and, therefore, has helped to safeguard a £1,000 million a year export-focused industry. Overall, I think that the public have got a very good return on the scheme.

The Chairperson:

You reckon that it is value for money for the taxpayer.

Mr Lavery:

We do.

The Chairperson:

On page 28 at paragraph 2.38, figure 7 lists the steadily increasing range of budgets set for the scheme. It started at £30 million in 2004 and finished at £144 million in 2007. Does that not strongly suggest that the scheme was poorly planned from the start of the process?

Mr Lavery:

I do not think so. I accept that the budget for the scheme increased over time. First of all, however, that reflected affordability. From the very first discussions that we had in the Department and with the Department of Finance and Personnel (DFP), we were looking for more than £30 million. It was not the case that the need was not foreseen to be greater than £30 million. What you see is a series of steps taken within the affordability available to the Executive and also, I have to admit, an increase in costs over the time. If you recall, that was a period when the construction industry was working flat out and, therefore, not only did it have the opportunity to increase its direct costs, but a lot of its indirect costs — materials such as steel and concrete — were going up by inflation at a very sharp rate. So, it was not the case that we were not planning for a major scheme, but we did have to work with changing circumstances and to be flexible.

The Chairperson:

Do you not think that to have a starting point of £30 million increase by £114 million up to £144 million is some increase in the price of concrete and the other things that you mentioned? I am not sure what that percentage would be, but I would say that it was a hell of a lot.

Mr Lavery:

It was a very significant increase. To be fair, it was also a very significant increase for investment by the private sector — by the farmers. Their costs and investment went up too.

I make the point that we were working on several strands simultaneously. When we set out on the farm nutrient management scheme, we had not, at that point, agreed the specification of the nitrates action programme with the European Commission. Therefore, the requirement was changing even as we were launching the scheme, and it was only much later that we agreed, for example, that the storage period required would be 22 weeks; we had originally envisaged 20 weeks. It was only later that we were able, with the experience of the scheme, to recognise that farmers were taking very prudent long-term decisions about the investment they were making and were more inclined to build below-ground storage than above-ground storage. Frankly, the below-ground storage, although much safer for the farmer and for the public, is more expensive. So, a number of factors led to the increased budget.

The Chairperson:

OK. I do not want to dwell on the question — other members may have similar questions later. However, it seems a massive increase. Did the Department do any forward planning to find out what the percentage increase might be? Could there have been better value for money for the taxpayer?

Mr Lavery:

I would never rule out the possibility that, with hindsight, we could identify better value-for-money options. However, when we set out on that path, the initial approval from the European Commission was for a scheme that would have a 40% grant rate. We tested that, but we did not get uptake at 40%, so we had to enhance the grant rate to 60%, and that also increased costs. Therefore, with experience, we identified different factors as we went along. Good policymaking has to be flexible and outward looking, and we were taking account of changing circumstances.

The Chairperson:

Was there good planning, or could it have been better?

Mr Lavery:

Overall, the underlying concept and plan was right. In 2003, we were faced with a situation where we could have left the farmers to face enforcement and to take decisions on their own to destock their herd or, frankly, to wait until they were detected by inspection by the Environment Agency. We looked at that and said that there is better value for money for the taxpayer in protecting the level of herd size and keeping jobs in meat processing and in dairying. We proved that argument on value for money through economic appraisal, and we promoted a scheme. Between 2003 and 2008, we delivered £200 million of investment, working in co-operation with the farmers and getting to the point where, as I said, no farmers are being detected spreading slurry during the closed season.

The Chairperson:

That has to be welcomed.

Paragraph 1.9 tells us that, when the nitrates directive was introduced in 1991, member states had two years in which to identify and designate nitrate vulnerable zones. It took your Department eight years to do so. Can you explain the rationale for the Department's taking so long?

Mr Lavery:

Absolutely. I know that the Committee often has the disagreeable experience of not having the people in front of it who took the decisions, but I was working in that area in 1995. At that point, we were looking for nitrate vulnerable zones, and we could not identify them because it was like looking for a needle in a haystack. By 1999, we had identified only three nitrate vulnerable zones, and they were very small. By 2003, we had identified a total of seven, amounting to 0.1% of the land area of Northern Ireland. That is a very small area of between 100 and 200 hectares spread across Northern Ireland. It was very difficult to identify nitrate vulnerable zones, given the parameters that we understood the directive imposed.

It was only with a European Court case in 2002 that a decision was taken by Europe that the legislation extended to phosphate or phosphate-driven eutrophication. We knew that we had a problem with phosphate and eutrophication, and it was at that point that we realised that we had to get our act together and look at the designation of a much bigger area. It turned out to be either 85% or total territory designation. We went for total territory designation and, from there, moved

quickly to get an appropriate grant scheme in place to incentivise farmers to comply.

The Chairperson:

It took you eight years. I appreciate that you were there from the start of the scheme; it is a rarity for the person who took the decisions to appear before the Public Accounts Committee, because those people have usually moved somewhere else by the time we consider an issue. Did you have concerns about the ongoing pollution and the potential for infraction proceedings and fines for non-compliance throughout that eight-year period? A large amount of money was spent on the scheme. Why was it so difficult to source that?

Mr Lavery:

In 1995-96, we were facing the nitrates directive with no view anywhere that it extended to phosphate. So, we were not concerned about infracting the nitrates directive. We believed that we were making a proportionate attempt to find anywhere in Northern Ireland with elevated nitrate levels. We were also aware around 1995-96 that inland waterways and still waters were getting a lot of algal growth, which is the green scum that you used to see in Northern Ireland on the surface of areas such as the Quoile basin. That algal growth takes up all the oxygen in the water and everything else dies, especially fish and fish fry.

We were aware of that problem, and I recall that, under the first Peace programme, we got £1.6 million to look at Lough Erne and the Erne system and to offer people advice on how to manage the escape of fertiliser into the waterways. We thought that £1.6 million was a big scheme proportionate to the problem that we had with eutrophication. So, we were already looking at eutrophication as an issue, but we could not get anything remotely like the resources that we eventually got until it became clear, in 2003, that there was a risk of infraction and of daily fines that could amount to £50 million a year. Suddenly, the business case stacked up, and we could go for much a bigger scheme.

So, we had a problem with eutrophication, but not one that apparently concerned the European Commission. We had virtually no problem — or no identified problem — with nitrates at that point.

The Chairperson:

OK. Other members might want to follow up on some of that. I will pass the questioning over to

other members now.

Mr McLaughlin:

Good afternoon. Paragraph 2.4 states that the assumptions used in the economic appraisal on the existing level of slurry storage were based on data collected by the Department in 1996-97. That is some seven or eight years earlier. Given the problems that emerged and your admission that you had not managed it so well, do you think that it was appropriate to use such dated information when planning the scheme?

Mr Lavery:

If I was doing it again, I would like to have up-to-date information. I totally accept that. However, when we started to look at the scheme in 2002-03, we had carried out that study some five years previously. We had put advisers on the ground to give advice on fertiliser use and eutrophication. We had the specific experience of the Erne system, and we had no reason to believe that the figures from the 1998 study had changed. All our knowledge suggested that that study was still valid, and, rather than delay moving forward until we carried out a further survey, we took that survey as the basis of the economic appraisal that was done by Stoy Hayward. I would like to have had better and more current information, but all the subsequent evidence from experience of the scheme suggests that we were right in 2003 and that farming practice had not changed since the 1998 study. I accept that we could have been wrong, and, therefore, there was a risk that we did not mitigate as fully as we should.

Mr McLaughlin:

Did your consultants comment, express concern or suggest a different approach in the conduct of their economic appraisal exercise?

Mr Lavery:

I do not recall. Brian, do you recall anything?

Mr Brian Ervine (Department of Agriculture and Rural Development):

No, that was the best evidence that was available at the time, and the consultants consulted with stakeholders outside the Department to determine that the data that we were supplying was in accordance with what stakeholders viewed the position to be. That indicated that stakeholders in the farming industry and on the environmental side broadly agreed with the findings and the

study that the consultants subsequently based the economic appraisal on.

Mr McLaughlin:

Mr Lavery, you indicated that you went for a whole-area approach — widespread concern about the issues that you were seeking to address — in constructing a business case and an operational plan. We are left with the odd conundrum that the information that the strategy was based on was already dated before the programme began. You had a target of 42% of farm properties. In the event, the programme involved 15%, yet you were unable to answer the earlier question from the Chairperson on whether that represented a value-for-money project.

Mr Lavery:

You are right that, in 2003, there was concern about the total territory approach. That was consistent with nothing having really changed since 1998. In 2003, farmers saw slurry primarily as an inescapable waste product that they had to deal with, largely by land spreading. At the same time, they were applying large amounts of chemical fertiliser. When we approached the farming industry with the issue of the total territory designation and the concept of a grant scheme, it was a shock to the farmers, because they did not expect to be held to invest a large amount of their money in slurry storage. They regarded their existing systems as adequate, and that is where the scheme really started to take effect.

If we had done nothing in 2003, I believe that you would now be faced with enforcement, prosecution and farmers complying only as they were inspected and found wanting. Instead of that, we have delivered a scheme that encouraged farmers to comply and which changed the mindset about slurry, so that farmers now see it as a nutrient and as a substitute for expensive chemical fertiliser. They apply the slurry to the land consistent with what the land will take up, and they benefit from that by having a reduced requirement to spend money on fertiliser, prices for which have gone through the roof.

Mr McLaughlin:

We are talking about the expenditure of £121 million. We are talking about 4,000 farm holdings out of 25,000. We are talking about a continued incident of water pollution. Does that sound like a success story?

Mr Lavery:

Without wishing to disagree, I point out that 4,000 farmers directly built additional storage and are compliant with the requirement to have a minimum of six months' storage available to them. In addition, other farmers, who looked at the scheme and decided that they could not make that investment because it was not worth their while to do so, were educated and had advice from the Department and arrived at an alternative solution.

You said that there was a continuing picture of water pollution. That is not water pollution arising from the absence of slurry storage or inadequate slurry storage. That is not being found today. The practice of spreading slurry is hugely improved. Going back 10 years, I regularly looked at issues of river pollution from slurry or fertiliser run-off leading to fish kills up and down the country. We do not see that today, certainly not from slurry storage.

Mr McLaughlin:

That remains to be seen. I can think of a number of fish kills in recent times where — fair enough, we have not had the benefit of an examination of the detailed investigations — I am not so confident that that connection cannot or will not be made.

My theme is accountability. Frankly, a number of issues relating to the scheme alarm me. Paragraph 2.9 outlines that DFP's approval for the scheme was conditional on an interim review being undertaken after the end of the first year of the scheme, but that was never completed. Why not? Who decided that that was not necessary?

Mr Lavery:

The report makes it clear that, because we had carried out an initial economic appraisal and then had a further addendum and further economic appraisal at 12 months and at around two years, we considered that we had carried out a review and that all the facts required to make a judgement on whether it was a prudent investment were available to the Department of Finance and Personnel. The Department of Finance and Personnel made the decision in June 2007 that it was a prudent investment — good value for money — for Northern Ireland. To that extent, we are in a good position.

Mr McLaughlin:

Given that you have accepted that it was not your finest or best-managed project — I cannot

remember your exact words, but you used an interesting turn of phrase — has the Department carried out a full post-project evaluation yet?

Mr Lavery:

Yes; we have carried out a post-project evaluation.

Mr McLaughlin:

What results have emerged?

Mr Lavery:

As you would expect, there have been both positives and lessons to be learnt. We will also take account of the lessons to be learnt from the NIAO report. Key recommendations from the post-project evaluation, for example, are around setting up a project board and project implementation team working from a centralised location from the outset. We should have devised a scheme manual and standard operating procedures. Importantly, we should have had sufficient resources, and a dedicated team with the necessary technical skills, to deliver a scheme of this nature. There are lessons to be learnt. In mitigation, I have to say that we are always working at the limit of the resources available to us, and that shows through.

Mr McLaughlin:

May the Committee have a copy of the report?

Mr Lavery:

By all means.

Mr McLaughlin:

I was going to address some questions to the Treasury Officer of Accounts, but I do not know how to proceed with that. May I come back to the subject?

The Chairperson:

The Acting Treasury Officer of Accounts is here. Before you put those questions, I will bring in Michael Copeland for a supplementary.

Mr Copeland:

Thank you. As you know, I have been away from this place for about four years. If I remember correctly, there were no Committees the last time I was here, so this is a new experience for me. Before I begin, I congratulate the Chair on his recent success in other places.

As I understand it, the scheme benefited, or was taken up by, about 4,000 farmers. It cost about £120 million. There are more than 4,000 farmers in Northern Ireland. You had a throw-away line that not all of the farmers who were offered it took it up and others found alternatives. What other alternatives were available and how did some manage to satisfy the requirements of the legislation, which I presume they were trying to satisfy, without the necessity to participate in one four-thousandth of £121 million, or whatever the figure happened to be?

Could I dig a little deeper? Most plans and schemes have, at the outset, a limit on the amount of money apportioned to them. Inbuilt into that, most of them have milestones that flag up concerns or questions at certain stages. Did that happen in this case, or am I sensing that the thing cost an awful lot more than it was anticipated to cost? If it did, the funding or the finance to do it must have come from somewhere, which meant that that something else possibly did not get done. Where did the money that was expended come from?

Mr Lavery:

I will take those questions in order. With regard to the alternatives, one has to bear in mind that, although this is predominately a livestock industry, there are farmers who do not have livestock and there are farmers who had adequate storage before the scheme commenced. Our target group was probably around 12,000. As you quite rightly say, Mr Copeland, of that 12,000, 3,900 benefited directly from the scheme. However, others would have decided that they could accomplish a lot by separating out more diligently the dirty water from the slurry. "Dirty water" is a technical term that means water contaminated by urine, faeces and so on. However, when you wash a farmyard, if you can separate out rainwater and so on, you can have a flow of clean water directly into a watercourse. There were mitigating solutions, such as the roofing of middens and so on, which was fairly minor work that could be done by farmers in their own capacity.

Farmers also had the option of reducing their herd size, and some will have decided simply to reduce the number of animals that they kept so their existing storage capacity was sufficient.

Some farmers will have benefited from advice on renting adjacent land for spreading slurry. A whole host of options was available. Our understanding is that farmers are compliant today with the nitrates directive and that no difficulty has been detected with storage.

Mr Copeland:

As far as you are aware, are all the farmers now compliant? The target was 12,000. We assisted 4,000, which leaves 8,000. Therefore, 4,000 were made to comply through the expenditure of £121 million, and 8,000 were made to comply through advice or steps that they took themselves?

Mr Lavery:

That is what I suggest, and that is what the enforcement record by the Environment Agency suggests. Small defaults are being detected, but not significant ones.

Mr Copeland:

I understand that. Was the cost of bringing about the compliance of 8,000 farmers included in the £121 million scheme, or was that from another heading? Presumably, if they were getting advice and people were looking at roofs on middens and clean water, someone was giving them that advice. Did that come out of another budget, or was it included in the £121 million?

Mr Lavery:

I think that the £121 million is the direct grant cost. For instance, the administration of the £121 million would have cost around £5 million, and that might have included some of those advisory visits; it should have included those advisory visits.

Mr Copeland:

Would it be possible to get that clarified at some stage in the future?

Mr Lavery:

Yes, we will give you the costs of administering the scheme, which will include the advisory costs.

Mr Copeland asked three questions; I do not want to deprive him. One was about the limit that is set in beginning a scheme of this kind. Certainly, when we began the scheme, the original economic appraisal predicted that around 12,000 farmers needed to do something in the areas of

slurry and herd size and that up to around 5,000 would be willing to benefit from a grant scheme. That, in a sense, is the limit within which we worked throughout that period. It was not the case that we could set a hard and fast financial limit, because the time period for operating the scheme eventually became around five years, and it was simply not possible at the outset to predict the cost at the end of the five years. The initial decision was taken that £30 million was all that could be afforded. That was the limit and was why the scheme was originally conceived as a first-come-first-served scheme. Eventually, it became a total scheme.

Mr Copeland:

What were the proposals for dealing with those who had money left but had not participated in the scheme or become compliant after the scheme was closed? Did you go down the route of prosecutions and detection?

Mr Lavery:

We went down the route of inspection and enforcement, which was a demand on the Department of the Environment and the Environment Agency.

Mr Copeland:

With an associated income stream, possibly, of fines?

Mr Lavery:

I cannot say what happens to fines, but I do not think that they go directly to the Environment Agency.

Your third question was about the implications of funding the scheme. That is a very difficult question to answer. The decisions were taken initially by direct rule Ministers and then by the Executive, which had a robust economic appraisal that said that it was a good investment. They made that investment. Against a background of public expenditure, it is not possible to say what did not get done.

Mr Copeland:

Was the £30 million a guillotined figure for total foreseen expenditure at some stage?

Mr Lavery:

Yes, it was.

Mr Copeland:

Not per annum but for the —

Mr Lavery:

At that point, that was all that could be afforded. As the table shows, it very rapidly became £45 million. We then entered into dialogue that eventually led to the expenditure of £121 million.

Mr Hussey:

You said that consultants consult stakeholders; naturally, they would. Do we know how many stakeholders they consulted?

Mr Ervine:

Yes, I can explain. We set up a stakeholder group to implement the whole policy, which included the farm nutrient management scheme and the nitrates directive, and we had all the main representative bodies from the farming unions and a significant number of environmental organisations. Roughly 16 to 18 organisations were represented on that stakeholder group. Furthermore, once that economic appraisal had been put to the stakeholders, the proposals for the scheme were then subject to public consultation for a three-month period from April 2004. So, the projections that were contained in the economic appraisal were subject to public consultation, and no responses came back that disagreed with the initial findings that there was a large storage deficit and that around 4,000 to 5,000 farmers would avail themselves of a scheme.

The Chairperson:

Mitchel McLaughlin, there is a microphone beside the Acting Treasury Officer of Accounts. You might want to direct your question to him.

Mr McLaughlin:

I looked round one time, and he was not there, but Richard has that gift. You are very welcome, Richard. I am interested in the arrangements that DFP has in place to monitor compliance with the conditions for approval that it sets down. Paragraph 2.9 indicates that you:

“pointed out that ‘these monitoring arrangements will be particularly important to ensure cost-effective and successful

implementation of this scheme’.”

How does DFP ensure that the conditions that it regards as very important to its approval are complied with?

Mr Richard Pengelly (Acting Treasury Officer of Accounts):

The essence of it is ongoing dialogue. Supply teams in the Department of Finance engage with their colleagues in the other Departments on a very regular basis. The important point in this context is that, as Mr Lavery pointed out, the interim review was effectively overtaken by events, namely the addendum in July 2005, which reshaped the ground on which we moved forward. That is a specific issue.

Generally, there is clearly a lesson for DFP to learn as regards a better articulation of the exact compliance. We put in place conditionality for approval of schemes, which becomes part of very regular dialogue and stocktake with Departments as schemes roll forward and is then reflected in things like post-project evaluations. It is not a tick-box exercise in which we put forward a condition, they send a piece of paper and we tick a box. It is about a dialogue and continuing to move and shape things. As you can see, in this case, there was the initial business case in 2004, an addendum in 2005 and a revised business case in 2007. That would have been underpinned by very lively dialogue between DFP and the Department of Agriculture throughout the period.

Mr McLaughlin:

Did the 2007 appraisal refer to the Crossnacreevy element as well? I do not intend to go into that, but I just want to know, for clarification, whether it was part of that appraisal.

Mr Pengelly:

The conditionality of the 2007 approval concerned resolving the affordability issue. Crossnacreevy came in the week or so after the approval.

Mr McLaughlin:

I am just trying to figure out how much weight to attach to these references. Did DFP sign off with DARD on an agreement that the addendum was sufficient for the interim review, or was it post facto?

Mr Pengelly:

In the approval process, there is a high level exchange of letters between the Department and DFP, which is underpinned by very extensive dialogue at operational level. In that dialogue, we were very content and satisfied that that substantive addendum represented an interim review.

Mr McLaughlin:

Right. It was in that context? It was not done after the fact? You agreed with —

Mr Pengelly:

As part of that dialogue; yes. It was also in the context that the interim review was to happen a year after scheme implementation. The scheme was only rolled out in the early part of 2005, and the addendum was a few months after that. It was not *post facto*.

Mr McLaughlin:

OK. So, the ongoing dialogue that underpinned the whole process did not flag up to DFP, at that stage, that there were problems with both the design and implementation of the scheme?

Mr Pengelly:

I cannot sit here and say that it did. Clearly, we signed off on the business case and the approach that was being taken. The fact that we were dealing with the addendum meant that we recognised that we were dealing with a moving feast and a complex area. I do not suggest that all was perfect, but we certainly did not flag up to DARD any deep-rooted concerns about its methodology in handling the scheme.

Mr McLaughlin:

Is there anything relating to the record at that time that would help the Committee in compiling its report? I will not rehearse the stats again — I am sure that you are familiar with those. However, given that, of a target group of approaching 12,000, the scheme attracted 4,000 applicants who actually delivered on their project submissions, surely it was clear at an early stage that there were problems in both the methodology and design of the project?

Mr Pengelly:

I am not aware of factual information from that time, but we will certainly go back and go through the record of the dialogue at that stage.

Mr McLaughlin:

That would be helpful.

Ms J McCann:

I have a few questions about the money that was spent and what was achieved. You said that the target group was 12,000, and that the target was achieved for about 4,000 of the targeted 12,000, and that is one third. However, the scheme was launched on a first-come-first-served basis in the initial stages, and it was not structured to target or direct the money to where it was needed. You said that you had a total territory approach, but 17% of the land did not need it. Given that the European Union flat rate of 60% was given to everybody, no matter what size the farm or whether the farmer was rich or poor, do you think that doing it in that fashion and in an unstructured way, where you were not targeting the money where it was needed, was money well spent and a good way to approach it?

Mr Lavery:

Thank you for those questions. Maybe my ambition was too modest back in 2003. However, I saw £30 million as a very sizeable amount of money. I knew that it was insufficient and rapidly went back and got it raised to £45 million, which I saw, again, as a very sizeable amount of money. At that point, that was the outworking of decisions within government about the relative merits of our expenditure and that of other Departments. It was an affordability issue. It was only as we went forward, as the case for the investment got stronger, as our knowledge of the costs involved and as the willingness of the farming industry to co-operate emerged, that we were able to get to the final amount that was spent, which was £121 million. We did not think, at the outset, that we could ever have covered 5,000 farms for a total of £30 million. In the middle stages, we were looking at options such as improving the farms that we could with the budget available. At one stage, we calculated that we would have covered only 1,200 farms, which seemed wholly insufficient to the problem. There was a development of the budget and a development of our thinking and ambition as we went along.

As regards the total territory designation, once we took the decision that it was going to be more convincing to the European Commission and that it was going to be better for the environment to designate the total territory, the rules from there on about slurry spreading applied to all the farmers in the territory; therefore, all the farmers would require whatever assistance was

necessary to allow them to work within those closed periods.

As regards the flat rate, schemes operate on the basis of being fair and equitable to applicants. Therefore, we offered all applicants the same flat rate of 60%. However, not everybody got 60% of their project costs for several reasons. One reason was that we kept the costs to the public sector down. We insisted that we would pay only 60% of the first £85,000 of the cost of a project. We insisted that we would only pay on the capacity that a farmer had applied for in the first application; they were not allowed to amend their application. We insisted that we would only pay on the costs that they had submitted in their application; in some cases they were getting work done a couple of years later at a higher cost, but we did not take account of that. We also set standard costs and capped some costs at reasonable costs. All of those were downward pressures on how much a farmer got.

If you take the largest project that was carried out by a farmer, the total investment was over £200,000, and his grant aid would have been around £50,000. That gives you an idea that it was not the case that every farmer was getting the identical percentage of their actual project.

Ms J McCann:

You talked about being fair. I remember watching on the television people having to queue up for the grant, which was granted on a first-come-first-served basis in the initial stages, although it changed later. Also, improvements did not need to happen on 17% of the land, and that was not fair on the people who owned that land. Do you feel that it was fair that additional costs were incurred by the taxpayer? I am trying to tease out the value-for-money aspect.

Mr Lavery:

To be clear as regards first-come, first-served, I do not think that the scheme in 2003-04 resulted in queues. There were queues on a first-come-first-served scheme, but that was much more recent, and it was a high-volume scheme. This scheme was a relatively low-volume scheme, and applications came in by post and were then organised according to date of receipt. It did not result in queues. I will ask Brian to say something on the issue of the total territory designation.

Mr Ervine:

Perhaps I could explain some of the detail behind it. The 17% is made up predominately of upland areas of the Mourne, the Sperrins and the Antrim plateau, where there are very few

farms.

Ms J McCann:

Do you mean the areas that are marked in white on the map?

Mr Ervine:

Yes.

Ms J McCann:

That is south Armagh and the Ards Peninsula—

Mr Ervine:

Maybe that is not the same map. The areas that would not, perhaps, have merited designation on eutrophic waters — the remaining 15% to 17%, which was, predominately, in those areas — had very little need for additional slurry storage. Due to the land type, the farming is extensive and tends to be sheep farming with less intensive cattle farming. There was very little difference with regard to the overall expenditure or the demands on the farmers. Their farming systems were already compliant. The real impact was on the more intensive cattle farms and other farms with high livestock numbers. There was an environmental reason for designating the whole area. Experience in other member states had shown that where you had a nitrate vulnerable zone where the rules and measures were applied, there tended to be a dumping of slurry in the other areas. That subsequently led to pollution in those areas, and, ultimately, those areas had to be designated anyway. It was far better to adopt that total approach.

Ms J McCann:

I know what you are saying, but would it not have been better to target certain areas, for instance, farms near a river, where the pollution would have been felt by everyone? It would probably have been better if the scheme had been targeted and directed in certain areas.

I want to move on to my second question. Paragraph 2.31 points out that the cost of the scheme increased because almost 80% of the farmers opted for the more expensive underground tank, rather than the above-ground tank. Why did the taxpayer have to foot the bill for the more expensive preference? Could the scheme not have been limited to the cheaper option?

Mr Lavery:

I have already outlined some of the ways in which we kept the costs down. A farmer must decide what is best for his farmyard and how he organises his animals. It would have been very difficult for us to intervene in every case and impose an alternative solution.

Ms J McCann:

The economic appraisal assumed that 25% of tanks would be underground; is that correct?

Mr Lavery:

That was our prediction. We were not going to set a rule that only 25% of farmers would be permitted to have below-ground storage. Frankly, we anticipated that farmers would choose the cheaper option. As it turned out, more farmers were willing to invest. As I have said, in 2003, farmers had not been investing in waste storage to the extent that they should have been. It was not as seen as an attractive investment that would give a direct productivity return in the same way as a new tractor or a new harvester. We were trying to convince farmers to invest in slurry storage, which is not the most appetising subject. They were willing to invest more than we had predicted, and we were willing to walk the last mile with them, subject to affordability.

Ms J McCann:

Can you give us a sense of how much more it cost the taxpayer? I am not talking about the cost to the individual farmer. How much more did the installation of underground tanks instead of above-ground tanks cost? May we have a note on that?

Mr Lavery:

It is difficult to give a hypothetical answer.

Ms J McCann:

I am not asking for it today, but could we get a note?

Mr Ervine:

Whether it was feasible for us to insist on, or fund, only above-ground storage was examined in great detail and evaluated as one of the options in the 2007 business case. However, that was dismissed; there were a number of reasons why it was not viable. Many farms do not have the space or layout to suit above-ground storage tanks. We also had a supply capacity issue. The

supply base for above-ground storage was significantly smaller than the capacity to build below-ground tanks. Therefore, had there been a shift to above-ground tanks on some of the farms that could have taken them, the scheme could not have been completed. There simply was not the capacity to deliver within the timescale.

Ms J McCann:

I appreciate that, but all I am interested in is the cost difference. Maybe you could give us a sense of that.

Mr Lavery:

Brian can take that from the economic appraisal and give you a note.

Mr Ervine:

Certainly, I could —

The Chairperson:

With respect, we know all the issues. You are going to go over those again, but Ms McCann has asked for some figures. We would appreciate if we could get those in writing at some stage before we compile our report.

Mr Frew:

Good afternoon, gentlemen, and thank you for your answers so far. I want to talk about Crossnacreevy, which seems to be a very big issue in the report. Paragraph 2.40 indicates that, in June 2007, the Department put forward the sale of Crossnacreevy in the context of seeking increased funding for the scheme from DFP. That was to allow all the applications to be funded at that time. The Department's initial valuation was the crucial factor in obtaining the capital cover required, yet it was ludicrously wide of the mark. How can an asset worth less than £6 million be valued at over £200 million?

Mr Lavery:

In essence, it was not, but let me explain. In early June 2007, we had a very unusual and urgent situation. There was a new Executive and a new Minister, and they were facing enormous pressure and criticism about what was perceived as a delay in getting applications approved under the farm nutrient management scheme. We knew that, within the first fortnight of June, we

would have completed all the approvals that we could afford within the existing budget of £55 million and, unless we found new funding, we would have to redeploy our inspection staff. That would have become known to the farming industry and the construction industry, and it would have diminished their confidence and, arguably, the confidence of the European Commission that we were tackling the nitrates problem and could escape the infraction fines.

We needed £10 million in 2007-08, but we needed £79 million in 2008-09. At that point, the Executive had not even begun to discuss their first Budget, which was to apply from 2008-09 forward. There was no process — there never had been a process — to pre-empt those discussions. That was a difficult situation. Our Minister at the time circulated a draft Executive paper setting out the position and the difficulty. That led to a dialogue between the Department of Finance and Personnel and us. I was a participant in that dialogue, and I was asked about what DARD could bring to the table that could assist matters and what it could do to help itself.

I was aware that, when we set up the Agri-Food and Biosciences Institute (AFBI), we reserved ownership of its assets on the basis that, eventually, there would be the opportunity to unlock some of the value. I spoke to the then chief executive, and he indicated that, in AFBI's review of its assets, it was identifying an opportunity to vacate Crossnacreevy. I told DFP, in terms, that we could vacate Crossnacreevy and put some 80 acres of land on the table. DFP said, again in terms, that it needed a figure.

I asked a member of my staff to contact Land and Property Services and find out what could be done. She came back and said that the only advice that she had from Land and Property Services was that development land in greater Belfast, with full planning approval, was changing hands at up to £2.5 million an acre. I multiplied £2.5 million by 80 acres and came up with a figure of £200 million. It was only ever an indicative figure and was not specific to Crossnacreevy. That figure went into the correspondence, and it was made clear in the correspondence that, if DFP was going to proceed with that dialogue, the first thing that would have to be done would be that Land and Property Services would have to carry out a valuation. That was stated in the same letter that refers to the £200 million figure.

Obviously, that was a highly provisional figure, and we had no reason to believe that it would be anything other than indicative. I did not believe then and do not believe now that the figure would have been unacceptable had it been £50 million or £30 million. DFP was not looking for

£200 million, or even for £100 million, as a figure. It simply wanted some indicative value for that piece of land.

The real context underlying this is that, from 2000 onwards in Great Britain, Whitehall Departments had been sweating their assets. They had been looking at disposing their assets to fund ongoing activity. That was not a feature of how we were doing business in Northern Ireland, and I thought — I still do think — that the prize for the Department of Finance and Personnel was that we were setting a contribution clearly on the table by offering to dispose of an asset that was not a surplus asset but an asset in use. It saw that as potentially establishing a new way of doing business and one that would be possible to show as a template to other Departments.

So, that is the background. It was never a valuation, and it has never been presented as a valuation, other than in the terms in that letter.

Mr Frew:

I understand what you say, and I understand the principles of Crossnacreevy and why we went down that road. I agree with that mode of action. However, the question was: how did we get to such a differential? You are basically saying that there was not even an initial, informal valuation. It was not even an indicative value. Do you think that the best way to do business is to pluck a figure out of the air and try to equate it to a balance sheet? Is that what we are saying here?

Mr Lavery:

Let me put it this way: looking back on it with the benefit of hindsight, I would wish to have done things with a lot more time and a lot more caution. First, one of the learning points for me, and maybe for the wider system, is that, as I said, this was not surplus land but land in use. It was in use as an agriculture research station, and the only organisations that operate agriculture research stations are the Department and AFBI. So, it has no sale value as an agriculture research station, and we had to find a value other than as an agriculture research station. It is hard to find a way of valuing an asset other than for its current use, and that was one of the issues when we started trying to put a figure to it. The only figure that we could put to it was a generalised one.

It was unfortunate that the figure of £200 million was used, but it was the only figure that had

any basis at all, and it was very unfortunate that that figure gained public currency very quickly. There was an attention that I had not foreseen, and it became the subject of correspondence, including with the then Agriculture and Rural Development Committee, which took an interest in it. The initial reaction was not to say that the land was overvalued but to say that, if the land was worth £200 million and I was going to get only £79 million from the Department of Finance and Personnel, would I be sure to reserve the remaining £121 million as well. So, it was not the case that it was an incredible figure at the time. You have to remember that in 2007 we had a soaring property market; land was changing hands at unbelievable figures. Yes, I would be the first to admit that disposal is a protracted process. The market can change, and the market has changed. Figures that might have been credible in 2007 are not credible today. That is maybe a lesson for many people in the property world as well as for me.

Mr Frew:

I take your point on that. You talked about soaring prices that were changing every day. We are, at the end of the day, talking about pounds and pence here — the public's pounds and pence. I cannot recall — I certainly was not an MLA at the time — but was time an issue? Did you not have the time to get a formal valuation of some description by a professional body in order that that could at least go on the balance sheet? Was there no foresight there with regard to that?

Mr Lavery:

This was being conducted under enormous pressure. When this dialogue was taking place, we were down to days, if not hours, of having to pull inspection staff off. We cannot keep inspection staff idle; they are a very precious and scarce resource. If we pulled them off, the entire area of work was going to collapse: it was as simple as that. And with that would have gone our credibility with the construction industry, which, at that point, had alternative work available to it, and the farming industry. We were under very heavy pressure from the Assembly. All of that was saying, "This needs to be resolved now. We need an exchange of correspondence now."

In fact, the then permanent secretary wrote to the permanent secretary of DFP on 1 June and got his reply, following an Executive process, by 12 June. By 11 June, we had already formally contacted Land and Property Services to ask it to begin the work to value Crossnacreevy. It was not the case that we were behind doors in trying to get it off the ground. A proper valuation, for a purpose other than we held the land, was going to take time, and so it proved. We only got the final, proper valuation from Land and Property Services in March 2008.

Mr Frew:

Perhaps it was unfair of me to talk about plucking a figure out of the air. You referred to the market value of comparable land in Belfast. However, Crossnacreevy is located in a green belt. Was that given any consideration? You talked about not knowing exactly how much ground is worth when it is not known what it is to be used for, but was no consideration given to the fact that Crossnacreevy was in the green belt?

Mr Lavery:

Let me put it this way: no such consideration was given in the first 24 hours. However, very rapidly, we started to get a better feel for the issues involved. By 1 August 2007, the advice from Land and Property Services was that we needed to employ a planning consultant and, through the planning consultant, to engage with the planning process for the Belfast metropolitan area plan, within which the land was not zoned for development. At that point, the impression was that a negotiation could take place. We were quite cautious about approaching the Planning Service because we did not want to be seen to be unduly or improperly influential. Nevertheless, we employed a planning consultant, and we were informed by the Planning Service by 18 December that the Belfast metropolitan area plan was closed for objections, that it was considering a number of objections that had been received before 2007, and that it would reopen at a date in the future. That is how the issue of the green belt was dealt with. As far as I know, we are still in the position that the Belfast metropolitan area plan is closed for objections, but we continue to regard ourselves as under an obligation to engage with it when it does reopen.

Mr Frew:

What do you think DFP would have done if the figure had been worked out at £70 million or £80 million?

Mr Lavery:

First, let me say that we only ever indicated to the Department of Finance and Personnel that there was the prospect of getting a capital receipt at the end of the Budget period in 2010-11. It was never going to directly fund the £79 million that we needed in 2008-09. That was always going to be funded by the Executive from their normal capital-planning cycle. If we had said that it was worth £80 million, the Department of Finance and Personnel and the Strategic Investment Board would have built that figure into their capital projection. As it was, they built a figure of

£200 million into their capital projection for 2010-11. When it did not materialise, there were other capital projects that were not proceeding and were running slow, so they were able to offset one against the other.

Mr Michael Brennan (Department of Finance and Personnel):

I will add to Mr Lavery's final comment. DFP was advising the Executive on the construct of its first Budget. The 2010-11 year was the third year of that Budget, which is what we term the indicative year. We constructed the capital side of the Budget in a very conservative fashion. Most of the risks, for example, were on the downside. Mr Lavery flagged up earlier the important principle that the new Executive were keen that an example should be shown that Departments should sweat their assets, realise assets and bring their receipts to the table for the Executive to reallocate. DARD set an important precedent by bringing the principle of Crossnacreevy to the Executive. However, it was an indicative value that DARD brought to the table.

As regards DFP approval, we were quite clear then that a formal valuation process should commence, and that did happen. The £200 million was an indicative value that was factored in. From a DFP perspective, we were always conscious that there were significant downside risks in the capital budget. For example, £300 million of capital that was built into that same year for two projects alone, namely the Royal Exchange and the strategic waste infrastructure fund, did not materialise. With the benefit of hindsight, in many ways, it is just as well that Crossnacreevy did not materialise — with the Treasury unilaterally taking away the end-year flexibility scheme in 2010-11, that £200 million would have been surrendered to the Treasury.

Mr Frew:

OK. Thank you for your answers.

The Chairperson:

Before you move on to your next question, I will bring in Ross, Jennifer and Mitchel for supplementary questions. I ask that both supplementary questions and answers are kept brief. The answers need to be succinct, without missing the point or failing to actually answer the question.

Mr Hussey:

I have written a few comments on what has been said. It is true that money is a precious and

scarce resource, and, yes, there has to be credibility with the construction industry and farming community. However, there also has to be credibility with this Committee. I am afraid that I find the answers very vague. I find it very amateurish that a figure such as £200 million can be just plucked out of the air. I do not see how that can be accepted in a professional organisation, particularly a government organisation. I find that answer incredible; I really do.

Ms J McCann:

How can DFP take a decision on the future direction of a scheme such as this based on an informal, rather than a proper, valuation?

Mr Brennan:

The two central concerns in a business case are value for money and affordability. From the DFP perspective, it was clear when the business case came in that the value for money concerns were addressed, which left the remaining affordability concerns. The DARD accounting officer wrote to the DFP accounting officer stating his initial valuation of the asset to be £200 million. In the wider scheme of things, as regards the construct of the Budget, we were aware where the capital envelope was going. A number of conditions were put in, but part of the approval was for DARD to go out and bring professional valuation expertise to that site. It could then be brought into play to take the project forward.

Ms J McCann:

Is it normal practice for DFP to base the future direction of a scheme on an informal valuation?

Mr Brennan:

As I mentioned, this was quite an unprecedented scheme. The new Executive were keen for Departments to think innovatively about bringing assets such as this to the Executive in respect of disposal and realisation values. It was a novel experience for the Executive. It was a signal that DFP was keen to encourage other Departments to pursue such action. The valuation was put forward by the DARD accounting officer. At that point, we had nothing to suggest that it was fundamentally flawed.

Mr McLaughlin:

The report tells us that the argument being made about the £200 million valuation was, for DFP, an important and, in the final analysis, the persuasive point. We have been back and forward over

the credibility of that exercise. However, another important issue arises when we look at the budget for this scheme. In March 2007, it was £55 million; by June 2007, it had jumped to £144 million — £89 million of a difference. My concern is about what schemes were knocked aside to allow that to happen. In monitoring round exercises, there is an opportunity for all Departments to put forward bids, some of which are very important. Some of them can be met; many of them cannot. Here we have a project that appears to have been based on quite spurious rationale being accepted by DFP. It cites as persuasive the fact that the Executive were going to be in pocket with additional receipts while able to support the scheme, but that did not happen. So, the £89 million was denied to other, perhaps more substantive, applications. I wonder whether the treasury officer would comment on that; and, if possible, with regard to compiling a final report on this, we could identify the projects that lost out on that occasion.

Mr Pengelly:

It would be very difficult to come up with a definitive list of projects coming to that amount because the nature of a Budget process is that we do not hypothecate the money. We look at all projects that are viable.

As Michael mentioned, we need to clearly separate the value for money and the affordability arguments. Valuation very much goes to the affordability argument. By the time we were debating affordability, the value-for-money case was proven. We were also in the context, as Mr Lavery mentioned, that, in the absence of this scheme going ahead, the Executive would have faced infraction fines over a number of years. So, the case for the investment was made. We had a separate debate about how we financed that. It was slotted into the 2008-09 year. Absolutely, some projects did not happen in 2008-09 that may have happened. It is difficult to define those. However, as regards the upside of those projects, I suspect that they would not have had the same benefit as heading off tens of millions of pounds of infraction proceedings.

To go back to the affordability issue: there was nothing, ultimately, that did not happen in 2010-11 as a consequence of this receipt not materialising. I accept absolutely that that may be rather fortuitous, but it is not all solely fortuitous in the context of us having some experience of managing capital programmes over a number of years and balancing both sides of the risk equation.

Mr McLaughlin:

Presumably, we could go back to the records of that time of the various scrutiny Committees, the report to the Finance and Personnel Committee, and the Assembly discussion on the monitoring round outcomes. Are you saying that there would be no additional material that would give us an indication of what choices the Executive made, or what recommendations were made to the Executive for consideration?

Mr Pengelly:

It may be possible to get a list of illustrative projects, but what tends to happen in the Budget process is that the Finance Minister receives bids from ministerial colleagues and makes a recommendation about those projects that he proposes to fund. There is no ranking or prioritisation of everything else that is below the line. Certainly, we could give you a sense of some of the projects for which Departments sought but did not get funding. The difficult piece of the jigsaw is what would have been the first £80 million of those.

Mr McLaughlin:

I suggest that we follow this line of inquiry, wherever we have to go to get the material. I assume that we will receive support from within the system for getting the information that I think may turn out to be quite relevant.

Mr Copeland:

Mr Lavery has illustrated roughly where the figure of £200 million arose from. How did it come to be that that figure was accepted for inclusion as an indicative figure in the Budget? What was the mechanism for that? In other words, who accepted it?

Mr Brennan:

The Executive accepted it in terms of its incorporation into the Budget that was agreed in January 2008.

Mr Copeland:

Was the mechanism for that a recommendation of acceptance from the Finance Minister?

Mr Brennan:

The Finance Minister would have put a recommendation to the Executive on the construct of the

budget for each Department.

Mr Copeland:

Which officials would have advised the Finance Minister that the £200 million figure was robust?

Mr Brennan:

The central finance group in DFP would have advised him.

Mr Copeland:

Who are they?

Mr Brennan:

It includes me, the budget director, the supply divisions and the central expenditure divisions. There are a number of teams in that group. They all have separate responsibilities, but it is all brought together and integrated under a budget.

Mr Copeland:

There is a transaction here of one form or another between two sets of people — one is the vendor, and one is the purchaser — for an asset that has a value, and they are transferring the asset in return for money. Was there a notion that it might be safe to seek a second opinion? I know building land, and I know what it costs. I live in the area, and I am a Castlereagh councillor. So, I am familiar with it. £200 million is an incredible amount of money. Maybe it is not in here; I have been away for four years. However, I had a constituent this weekend who was driven to the point of almost taking her own life by four letters from the Inland Revenue — one from England, one from Scotland, one from Wales and one from Northern Ireland — that all related to an alleged £750 debt. She nearly killed herself. I do not get it. There is a valuer sitting beside you from Land and Property Services. Could I ask him: would you ever on a rainy day on a Sunday have placed a value on that land of over £10 million, possibly closer to £5 million?

Mr Stephen Fay (Department of Finance and Personnel):

Ultimately, we valued the land at between £2.28 million and £5.87 million, reflecting the various planning assumptions that were outlined in the planning consultant's report.

Mr Copeland:

In your view, would that value have changed dramatically between when you actually did it and when you might have done it earlier on?

Mr Fay:

Mr Lavery has already raised the point that, during 2007, the property market was booming and we were at the pinnacle of house prices and land values. It might help if I explain the way that we carry out an assessment. The market looks to the size of the site; the ground conditions; the services; the access; the level of demand for property in that area; the type of development, if any, that will be placed on the property; the density; and the development timescale, particularly for sites such as Crossnacreevy, which is a very large site that extends to some 86 acres. So, in determining the value of land, the market will look at the completed units that will be placed on that type of site, the cost of construction, the fees and the profit that the developer will take. The market would not take the headline figures that were in the press around 2007, particularly if those figures were extrapolated from very small sites, and apply them to a very large site, particularly if the site is in the green belt.

Mr Copeland:

Those figures were based on central Belfast as I understand it. How much do you think a bank would have lent you on it?

Mr Fay:

I would have thought that the bank would look at a development appraisal-type scenario to determine value from the end product, such as the number of units that you could place on the site.

Mr Copeland:

What would a bank have lent you on it as it was?

Mr Fay:

We ultimately came to the conclusion that it was £2.2 million to £5.87 million, reflecting the various planning options that were available.

Mr Frew:

The point has been raised today that the property market was all over the place. It was rising and soaring, and then, the next minute, it crashed. However, it did not crash in the time that elapsed between the figure of £200 million being first estimated and the valuation. Of the £200 million, the report states:

“In DFP’s view, this was ‘an important and in the final analysis the persuasive point’.”

Land and Property Services completed its valuation in March 2008, so how can we fall from a valuation of £200 million to one of £6 million in that time? It is not as though it is being valued today at £6 million. That might be a wee bit more realistic, but how could we come to such a big differential in that space of time? To me, that is just amazing.

Mr Lavery:

That quotation in the report is from a letter from the DFP permanent secretary to my then accounting officer. As you said, it states that the valuation of £200 million was, in the final analysis, the persuasive point. However, in the letter, the requirement on my Department was that, in the comprehensive spending review (CSR) period, we would:

“seek to maximise the capital receipt arising from the Crossnacreevy site”.

That was the undertaking that we gave and that we saw as the most important contract between the two Departments. We have done our level best to deliver on that contract, and we will continue to do our level best to deliver on it. That is why I said that, in the event that the Belfast metropolitan area plan (BMAP) opens for objections, we will go back to that subject.

The Committee has made the point cogently that that figure was never a proper valuation, because we would have needed much longer to carry out the valuation. As it was, getting a proper valuation took until March 2008, and it was only then that we could see the full picture. We were not in the position of having a vendor and a purchaser; we were in the position of simply putting an indicative figure. A learning point for me and, I hope, for others, is that, whenever an indicative figure was allowed to enter first the investment strategy and then the Budget, we should have flagged up a concern that that initial indicative figure was simply not robust enough to bear that future potential pressure.

However, having been present in that dialogue, I know that we had no alternative figure to put on the table. Therefore, the point that those who were compiling the Budget and the investment

strategy made was that that was the only figure that we had. They said that we could either have valued the site at book value or at potential indicative value, which we had stated was £200 million. At that point, the dialogue should have been deepened, and I accept that as a learning point.

Mr Frew:

Are there any other areas throughout the Budget process from that day to now where that has occurred again? Are any more situations going to come out where we are budgeting for something that is not there? I will leave that point there.

I will ask the Acting Treasury Officer of Accounts whether it is the practice that DFP makes decisions on those sorts of valuations. Why did DFP not insist on a proper valuation?

Mr Pengelly:

As Mr Lavery indicated, the Department of Agriculture insisted on a proper valuation. It put forward an indicative valuation based on all the information that was available to it as part of the very time-pressurised dialogue in the early part of June 2007. The Department immediately commissioned a formal valuation from LPS. Due to the complexity of the issue and the unique nature of the site, that process was not concluded until, I think, March 2008. In the meantime, the Budget process was concluded, and, for the necessity of the Budget process, our indicative figure was used. I do not want any Committee members to think that nothing further happened until 2010-11 and that the asset was not sold. The reality is that colleagues in the Department of Agriculture, myself and colleagues in DFP were in continuous dialogue about this. We knew at a very early stage in the Budget process that realisation of that level of receipts from that site was not going to happen. However, as an immediate response, the Department of Agriculture stepped ahead of all the other Departments in the pack to look at an asset management strategy. It has worked closely with us on that, and it continues to work with colleagues in the Strategic Investment Board. We are nearly at the stage where that has been an exemplar practice for other Departments where rationalising assets is concerned.

As regards Mr Brennan's point, at an early stage in the Budget process, we realised that there were two fundamental risks against capital expenditure, in excess of £300 million in 2010-11. That was the counterbalance to this issue. In a sense, we knew that those issues were there, that they were not upsetting planned capital expenditure in any way, and that they were not causing

the prevention of the delivery of any other services. I absolutely accept that there is an issue about valuation practice going forward, but the issues were being monitored and did not fundamentally cause us any significant problems.

Mr Copeland:

As I understand it, the £200 million valuation enjoyed some degree of acceptance. What was the consequence of that acceptance, and what flowed from it?

Mr Pengelly:

As regards the June 2007 exchange of letters and the indicative valuation of £200 million, the work on what we called the Budget 2007 process was completed towards the latter part of 2007. That set departmental allocations for 2008-09, 2009-2010 and 2010-11. I cannot remember the exact date, but I think that the Budget was signed off late in 2007 or early 2008. That happened in advance of the formal valuation. Therefore, that £200 million was planned in as an assumed receipt in 2010-11.

Mr Copeland:

An assumed receipt —

Mr Pengelly:

An assumed receipt, based on —

Mr Copeland:

— that did not materialise.

Mr Pengelly:

It did not materialise, but likewise, over £300 million of expenditure planned for 2010-11 did not materialise. Part of the Budget process is about managing the subtleties and nuances within that broad portfolio of risk.

Mr Copeland:

Does the ownership title, for want of a better term, of the piece of property or land at Crossnacreevy still reside where it was before this process started, or has title, of any description, been transferred from the Agriculture Department to the Department of Finance and Personnel?

Mr Pengelly:

It sits with the Agriculture Department.

Mr Dallat:

Mr Lavery, at the very beginning of the meeting, which was almost two hours ago, you spoke a degree of truth when you said that the Department was facing millions of pounds of infraction fines and that you needed to rob the kitty in some way.

Mr Lavery:

I do not think that I used those words.

Mr Dallat:

If I had been listening to a damage limitation exercise, I would have been kinder, but I have not. I have experienced a great degree of arrogance. To me, this is the great drain robbery, but Ronnie Biggs brought only £1 million to Leatherslade Farm; you managed to bring £200 million. That money might have gone to health or education services or to somewhere else. Even though this session has been long, the issue is very serious.

You drew parallels between the private sector and yourselves. If you had been in the private sector, would you now be part of the National Asset Management Agency (NAMA), or would you still be sitting there unscathed and untouched? I do not think so.

I know that property valuations in Castlereagh fluctuate quite a bit, but I do not think that you have answered sufficiently the question of how on earth the valuations could have been so wide of the mark, given, as Paul said, that this was a green belt that could never be built on and that it was a research station. In all honesty, was there ever any intention to dispose of the asset?

Mr Lavery:

I can say categorically that there was an intention to dispose of the asset, and there remains an intention to dispose of it if it is good value for money to do so. Our economic appraisal at the moment shows that it would become good value to do so only if the value of the site were to exceed some £14 million, which would allow for the relocation of the activities on the site. However, we remain committed to looking at disposal as and when the Belfast metropolitan area

plan re-opens.

Mr Dallat:

Did I pick you up correctly when you said that you had considered going to the planners to get them to change the Belfast metropolitan area plan so that you could get planning permission for that green belt?

Mr Lavery:

Our advice was that we should employ a planning consultant, who would advise on the best way to derive the maximum value from the site. That might have included, for example, obtaining planning permission for part of the site. For instance, part of the site is already occupied by residential property, and part is occupied by buildings. So, we were looking for the best possible return for the public sector.

As I also said, we were scrupulous to hold back from directly approaching the Planning Service in case an allegation was made that we were exerting undue or improper influence. I should say that part of the site is occupied by residential property that is occupied. Obviously, we were concerned that, in any transactions to do with the site, we would have regard to the rights of the individuals occupying property and that we would never be seen to have exerted undue influence.

Mr Dallat:

Chairperson, you know, probably better than I do, that, down through the years, “planning” has been a bad word. There have been all sorts of cases of people trying to abuse the system by switching green belts to development land for profit, and here we have a government Department even thinking about doing that. Was that not absurd?

Mr Lavery:

With respect, Mr Dallat, we were thinking about relocating the activities carried out at Crossnacreevy to elsewhere on either cheaper land or on our own estate, that is, on land that we already owned. That would release an asset that remains not surplus today — it is still in use as an agricultural research station. The very essence of what we were trying to do was to come up with a way to get the maximum value from the asset for the taxpayer.

Mr Dallat:

You said that you might still consider disposing of Crossnacreevy. Would you not agree at this stage that it was a major mistake to become pretend property developers? Would you not accept that that was almost an unscrupulous way to try to get money to fund a nitrate scheme on farms?

Mr Lavery:

I would not, first, because we did nothing improper, and we have certainly abided by the terms of the exchange of correspondence between the two accounting officers, and, secondly, because it was never intended that we would fund the nitrate-related work directly from the sale of this property. It was always intended that the farm nutrient management scheme would be justified by its own economic appraisal.

Mr Hussey:

I am sure that I heard an answer to this question, but I want to hear it again. Did you say that money had already been spent looking into the relocation of the unit at Crossnacreevy? If so, how much?

Mr Lavery:

We assessed the requirement for relocation. We have not spent any money on actually relocating. The assessment will have cost a nominal amount. We carried out an economic appraisal into the disposal, as well as into ascertaining the point at which it would be worthwhile to vacate the Crossnacreevy site. We can get you a figure for how much the appraisal cost.

Mr Copeland:

I think that Mr Hussey is referring to the figure of £14 million.

Mr Lavery:

That is the figure at which it would become good value for money to the taxpayer to relocate. Obviously, relocating a research station would mean relocating grass trials and crop trials. That would take time and money.

Mr Copeland:

I am having difficulty with that, because if it is only worth £2-and-a-bit million —

Mr Hussey:

Minus 12. That goes back to the school of non-accountancy. It does not add up.

Mr Copeland:

I do not follow the figures, but I will not push it any further at this stage.

Mr Dallat:

The proper term for this is “creative accountancy” because that is all it was. You mentioned consultants. For our report, I would like to see who the consultants were and how much they were paid. You also mentioned a couple of permanent secretaries. I am certainly interested to know who they are, because, at the end of the day, in these austere financial circumstances, every individual needs to be accountable for their actions. I notice that you did not tell us who they were. Perhaps we will get their names for our report.

If I return to the report, paragraph 3.8 tells us that 15% of farm businesses proceeded with the scheme, even though your research suggested that 42% of farms did not have sufficient storage capacity. That adds up to 6,750 farms and is shown in paragraph 4.7. Does that mean that as many farms are unable to comply with the nitrates directive?

Mr Lavery:

No. As I explained, farmers have taken a variety of means to comply with the directive. As set out in the annexes to the Audit Office report, enforcement by the Environment Agency is not showing a high level of non-compliance; quite the contrary.

Mr Dallat:

Paragraph 3.13 tells us that 424 applicants withdrew from the scheme after pre-inspection and approval. Did the Department subsequently follow up those cases to see what action they took to become compliant?

Mr Lavery:

No, I do not think that we did, because of pressure on resources in the Department. It would not have been our responsibility —

Mr Dallat:

Mr Lavery, my heart really goes out to you: the pressures that you must have been under, handling that £200 million project. Did you follow up and ascertain the reasons why they withdrew?

Mr Lavery:

Brian can come in on that point.

Mr Ervine:

To accompany the scheme, we provided advice through the College of Agriculture, Food and Rural Enterprise (CAFRE), and those advisers were available to farmers to help them to evaluate their options. So, 2,800 farmers received a personal consultation to decide whether investing through the scheme was their best option. Of those, only 2,000 moved through to the stage of applying. That indicates that about 800 of 2,800 found other ways of addressing their storage needs. Subsequently, the inspections by the Environment Agency and the compliance with the closed period indicate that, by and large, the actions that those farmers took have addressed their storage need. In the last closed period from October to January, no breaches were detected. In about 23,000 farms with livestock, there were no breaches of the closed period, and no farmers were so short of storage that they had to spread slurry. Moreover, we engage quite regularly with the Environment Agency, and its farm inspection programme shows that lack of storage capacity is not a significant issue.

Mr Dallat:

I would question that, Chairperson. However, that is for another day. We were told, just in case you have forgotten, that farmers had to meet three eligibility criteria: ownership, viability, occupational skills and competence. I think that adds up to four. However, the report notes that the Department did not request any supporting evidence to check whether successful applicants met those criteria. Why were the criteria not confirmed for each applicant?

Mr Lavery:

I agree that they should have been confirmed. What happened was not what should have happened. I will not go over the ground about scarcity of resources again, but among other reasons, they were not confirmed, because people took pragmatic views. We were talking about a scheme where a farm was going to have to invest a significant amount of capital in that area. It

could not do so unless it was viable. It could not meet the technical requirements and conditions unless it was viable. The level of advice and inspection that we applied to the scheme meant that every farm was inspected, and the inspector had the opportunity to gauge pragmatically whether farms were complying in their ownership and viability. As I said, I agree that those criteria should have been both set out and tested clearly. If it had not been intended that they would be tested, they should not have been in the scheme literature, which they were.

Mr Dallat:

That is a fairly honest answer, but what is the point in setting criteria if you then fail to confirm them?

Mr Lavery:

I am not going to try to defend the indefensible. I agree fully that, when you set criteria, you must expect to test them and to document the response. That did not happen. In fact, if we look at a test that says, for example, that a farm business should be viable, that places a potentially demanding and onerous burden on a farm to prove from accountancy records, for instance, that it is a viable business. It should not have been there, frankly.

Mr Dallat:

Finally, do you agree that there is a risk that some claimants were ineligible?

Mr Lavery:

Where the test of eligibility is concerned, it could have happened that we had an approach from a landowner who wanted to improve a holding by having slurry capacity even though they had no animals. We would have resisted that, and that is perhaps why having those criteria would have been of assistance in that dialogue. However, generally, the criteria were not tested and the responses were not documented. I can remember only one case where we had to rule someone ineligible, and I think that it was on those grounds.

Mr Ervine:

I will just add to that by saying that the inspection process was particularly detailed. For example, if a farm were ineligible with no livestock, that was picked up before it even got through to claim stage. There was a two-stage inspection process, and, before grant aid was offered, there was a detailed inspection to check all the details and the technical aspects of the

project. Typically, that will have taken an inspector at least half a day on a farm. Once the project was completed, there was a pre-payment inspection to check all the details of the project on the farm. So, it was inspected in quite some detail both before the offer of grant was issued and before any grant was paid, and the details were recorded and are on file.

Mr Dallat:

Given the comedy of errors that we have heard today, what assurances can you give to the Committee that that will not happen again?

Mr Lavery:

We aim to pay attention to reports of this Committee. We aim to learn lessons both from those reports and, as I said, post-project evaluations. Tomorrow, I will be relaying my initial appreciation for this Committee to the senior civil servants in my Department. I will be very prompt in making them aware of my degree of discomfiture.

Mr Dallat:

I agree totally with Mr Lavery. He should never again have to appear before this Committee to answer questions, which, no doubt, were raised by others who are not here. That is where I feel sorry for Mr Lavery.

Mr Easton:

The pre-approval inspection process took over three-and-a-half years to complete, and the final pre-inspections were carried out only two or three months before all the construction work was meant to be completed. Why were you not geared up to complete the process much sooner to allow the construction work to get under way well before the final deadline?

Mr Lavery:

There are several points to that. As we explained, initially we went out and invited applications but received only about 400. We then took the decision to increase the grant rate on the foot of a proper addendum to the economic appraisal. That brought in around 11,000 initial applications, which we had to work our way through.

In working our way through the application process, we were conscious that we always had to have regard to the amount of money that was available. This was a necessarily complicated

scheme that required farmers to get quotations and to assess their slurry storage capacity and the condition of their existing facilities. We were putting farmers to enormous difficulty, so we had to make sure that we had a realistic opportunity to offer them grant aid. That, in fact, was the position in June 2007 when we could not continue unless we had access to additional funding. Is that fair, Brian?

Mr Ervine:

Yes. I would add that, looking at the scheme in retrospect, we found that the inspection process turned out to be more lengthy and resource intensive than we had envisaged. Part of the reason for that was that farmers' understanding of matters such as storage capacity, issues with dirty water, the most suitable yard layout and the most cost-effective way to deal with the issue was not what we had hoped for, although we did provide advice and training through CAFRE. The result was that the inspection visit also had a large advisory element. At that stage, most applications needed revision, with the inspector liaising with the farmer to work out the best way to tackle the project. It did take more resources, yes.

Mr Easton:

Did you find that it became more and more complicated as you went along?

Mr Lavery:

Yes, I think that that is a fair summary.

Mr Easton:

The Department introduced a 50% part-payment option in August 2008. The target was to process those part payments within four weeks of receipt of a valid claim. However, of the 2,189 claims, 1,300 payments — some 60% — missed the deadline. Why was there such a high failure rate when the purpose of the initiative was to alleviate hardship?

Mr Lavery:

That was in the final stages of the scheme. We had to have all works completed by December 2008. In August 2008, the Assembly Committee was very keen that we afford farmers some part payment in recognition that many of them had borrowed the necessary capital to invest. We went out with the part-payment option on that basis. In the event, however, very few farmers availed themselves of that option until December. At that point, we got a large volume of claims on

which we were able to make full payment after December. Therefore, it did not operate quite as we might have hoped and expected, but it did afford some relief to some farmers.

Mr Easton:

Did the 60% who missed the deadline still get the 50% part payment?

Mr Lavery:

Can you remember back to the first half of 2009, Brian?

Mr Ervine:

Yes. The part payments went out, but they did not go out within the timescale that we had envisaged, because of the sheer surge of claims at the closure of the scheme.

Mr Easton:

Given all the problems, mounting bureaucracy and extra work that you had, do you feel that you maybe did not have enough staff to cope with demand?

Mr Lavery:

I would have liked to have had more staff. Frankly, all the time, we work at the limit of the resources that are available, particularly where skilled staff are concerned. That is not a plea for an intervention.

Mr Ervine:

Processing the claims was not straightforward because of the detail and the requirements for engineer certificates, receipts, invoices, and such like. There was a lot of follow-up in going back to farmers. Very few of the claims that came in went through the system cleanly without a query that needed a follow-up with the farmer for an engineer certificate and those details. That added to things.

Mr Easton:

OK. Thank you.

Mr Copeland:

Paragraph 4.5 states that the Department did not have a set of outcome measures or 'SMART'

targets for the scheme. Was there a reason for that? Would it not be reasonable to expect that having those might be standard practice for such schemes in a Department such as this?

Mr Lavery:

I think that it would be standard practice. In the event, people went with a very bald, summary objective of getting the maximum number of farms to comply with the nitrates directive by increasing their slurry storage. The evidence is that they did comply and the scheme achieved its objective. However, it would have been far better to have a much more detailed set of output and outcome indicators and to have those available today. On the outcome side, we can say with confidence that the levels of phosphate in the Lough Neagh and Lough Erne systems are significantly down and are coming down more quickly than we expected. Lough Neagh is down 20%, and the Erne system is down 14%. Those are good figures, but they are not a suite of performance indicators that the Committee has the right to expect.

Mr Copeland:

I also make reference to paragraph 1.23. This Committee seemingly recommended, 10 years ago, that the Department should monitor the outcome of all its anti-pollution activities against clearly defined, measurable impact indicators. Has that just fallen by the wayside? Is it a work in progress after this time? Where are we with that?

Mr Lavery:

Obviously, we have completed a post-project evaluation, which will be available to the Committee, and we have commissioned the Agri-Food and Biosciences Institute to carry out research in the area of the practice of slurry spreading and the measures that we are undertaking. Yes, I accept that that recommendation has not been implemented in the way that it should have been, particularly in this scheme.

Mr Copeland:

Paragraph 4.6 indicates that the information systems at that time could not provide accurate data on the under-capacity of slurry storage in Northern Ireland immediately prior to the scheme being launched, the increase in storage capacity as a result of the scheme, and the under-capacity still remaining. Without that, what tools can you use to assess the situation then, the current situation, and the consequential change?

Mr Lavery:

We have looked a bit further at the capacity that has been created and have compared it to the amount that was envisaged in the economic appraisal. However, we did not have a database as we should have had. Brian, do you want to say something about where we actually are with this?

Mr Ervine:

We have analysed what storage capacity has been installed under the scheme, and we estimate it to be approximately 2.4 million cubic metres of slurry storage. The projection in the original economic appraisal had been 1.8 million cubic metres. Therefore, more storage has been installed under the scheme than the economic appraisal envisaged.

As regards the overall storage under-capacity in Northern Ireland, we have analysed the farms that participated in the scheme. Although approximately 16% or 17% of the overall number of farms in Northern Ireland were in the scheme, the farms in the scheme hold 45% of the cattle livestock units in Northern Ireland. So, they are bigger farms — on average, 76 hectares. The average farm size is around 40 hectares. It is the bigger, intensive farms that largely have the slurry storage issues, and they have been in the scheme and now have the capacity.

As regards the overall storage that is out there, the Northern Ireland Environment Agency (NIEA) is finding with inspections that farmers are complying with the closed period. The evidence of inadequate storage capacity is farmers not being able to comply with that.

Mr Copeland:

I wind you back slightly to the economic appraisals. Paragraph 2.8 notes the predictions in the Department's economic appraisal that 5,000 farmers would or could avail themselves of the scheme, at an average grant of just under £12,000, with an expected total cost of £40 million. That was used to justify and plan the scheme, as we have discussed.

Figure 13, on page 48 of the report, compares those estimates with the actual outturn. As it turned out, the uptake was 20% lower than anticipated, yet the cost was three times higher. Reference was made earlier to the private sector. Those are fairly substantial variations. Was anything intrinsically wrong in the economic appraisal for the predictions to be so vastly out?

Mr Lavery:

The signal issue in the economic appraisal was maintaining the Northern Ireland herd size and getting the benefit of retaining jobs in the meat processing and dairy industries. That has been achieved, and we calculate that the value added to Northern Ireland of this scheme is around £40 million a year. So, in terms of a £120 million investment, it is paying for itself in three years, and it is showing a positive return over the 20-year lifespan of the tanks that have been constructed.

With regard to something being wrong with the initial projections, the surprise is, perhaps, that right from 1998 we were predicting that there could be 12,000 farms that would need additional storage capacity and that 5,000 may be interested in a grant. That has remained a constant, and we have delivered for 3,900 against full applications from 4,900. So, I do not think that there was anything intrinsically wrong in the thinking or in the concept.

Mr Copeland:

It was just in the conclusions.

Mr Lavery:

No. The experience was that we had much higher unit costs per tank arising from construction price inflation, materials inflation, decisions by farmers to go for a below-ground tank, and negotiated decisions between us and the European Commission on the length of capacity that would have to be created. That was a further inflating or increasing factor in that we ended up with a longer closed period than we initially thought.

Mr Copeland:

Did the Department at any time challenge any of the assumptions made in the economic appraisal, such as the likely inflation, the cost of doing it, and the possibility of people going for the underground option? Were those recognised, and were the problems that may have arisen from that recognition factored in, or did it just sort of emerge as it went along?

Mr Lavery:

In practice, we challenged at every point. We worked with the construction industry, but we also recognised the temptation for the construction industry to inflate costs. Therefore, we capped costs, as I said, at the initial prices that farmers had obtained by quotation, and we capped capacity at the initial capacity. The economic appraisal had an area on risk. There was challenge

within that, and challenge from the Department of Finance and Personnel. These economic appraisals have to go through our own economists' quality assuring, and the Department of Finance and Personnel economists interrogate them. None of this was done in a casual way.

Mr Copeland:

I was not suggesting that. How much did it cost?

Mr Lavery:

I cannot remember a figure for the cost of the economic appraisal.

Mr Ervine:

The original economic appraisal by the consultants cost approximately £43,000.

Mr Copeland:

Was that over or under the budget that was apportioned for it?

Mr Ervine:

It was somewhere around what had been allocated at the time.

Mr Copeland:

Did you say £43,000?

Mr Ervine:

Yes.

Mr Copeland:

Was that for external consultants?

Mr Ervine:

Yes, it was at that stage. The second business case, in 2007, was completed in-house, and that was probably a more detailed analysis.

Mr Copeland:

How much did it cost?

Mr Ervine:

We would not have a cost for that. It was staff time. We went into great detail at that stage because we had found that there was an issue with the costs escalating. We looked into that in that economic appraisal and business case, and we identified the issues that Mr Lavery has outlined.

Mr Copeland:

You initially had an economic appraisal carried out by an external consultant, and, when it sort of became apparent that it was not watertight and 100% robust, you decided to conduct an in-house economic appraisal.

Mr Lavery:

No. You have to bear in mind that, with the initial economic appraisal, there was an addendum when we wanted to change the grant rate. When we were looking at a significantly greater amount of expenditure, it would have been quite improper for us to rely on the original appraisal. We had to satisfy ourselves that the original estimate on the herd size would still provide good value for money. It convinced us that it did, and, today, we remain convinced. Our experience is that it is good value for money.

Mr Copeland:

I appreciate your answers and the forbearance that you have displayed in the face of what I admit must be a difficult afternoon. You have gone through the process of an economic appraisal through an external consultant, and you have paid £43,000, perhaps plus VAT, for that. That is not a large amount of money in the scheme of this, but, to go back to my constituent and her four letters from the Inland Revenue about £750, it is still a substantial amount of money. If you get an economic appraisal, on which you base certain assumptions, for a project from a consultant who you may or may not have used in the past and the passage of time proves that their work was not what you might have expected, does that make it more or less likely that you will go back to that consultant in the future?

Mr Lavery:

As you know, employment of any service is dictated by procurement rules, and it would be exceptional for us to remove someone from a select list. It has happened, but it is exceptional. It

is not the case that we are criticising the original economic appraisal. The economic appraisal that was conducted in 2007 had to deal with a much greater weight of scheme. We were looking at much larger expenditure.

The Chairperson:

Is the expertise to do the economic appraisal in your Department?

Mr Lavery:

It can be, and, on occasion, we carry it out.

The Chairperson:

Given that the expertise was in the Department, who made the decision to take the first economic appraisal outside the Department?

Mr Lavery:

As I said earlier, an economic appraisal has to pass our own economists' scrutiny. Obviously it is difficult, but not impossible, for us to take one or more of our economists and separate them by a Chinese wall and tell them to do the economic appraisal.

The Chairperson:

Who made the decision to have the first economic appraisal outside the Department? You have said that the expertise was already in the Department.

Mr Lavery:

Frankly, I cannot say who took the decision. I am accountable for that decision, and I am explaining how that decision will have been taken. We have an obligation to have an independent economic appraisal, which is then scrutinised by our economists and by economists from the Department of Finance and Personnel. It is difficult, but not impossible, to complete that process by putting a Chinese wall between some of our economists and other economists in the Department. We have done that on occasion. For instance, in 2007, because of the urgency of the issue and because we needed the work done by people who were knowledgeable about the farm nutrient management scheme, we did that in-house. It was done in an effort to be helpful.

The Chairperson:

You talk about the Chinese wall. With the amount of expenditure that is given to external consultants, you could probably rebuild the Chinese wall. So, we have to get realistic about this, because £43,000 might seem a small amount of money in a very large scheme, but £43,000 multiplied by how many outside consultants you got in all adds up. This is a time when we need to make sure that there is value for money and that every single penny goes as far as it can go.

The expertise is in your Department. You are saying that you do not know who made the decision. As the accounting officer, you could maybe find that out and write to us about who made the decision to give the £43,000 the go-ahead. That is not good enough when the expertise is there. It is too easy for people like you to give the go-ahead and to let someone else do it. The Audit Office has put out a report again this week, and the Audit Office has put reports out in the past. In fact, the PAC carried out an inquiry into that as well. It is very easy for civil servants to get someone else to do it, either because the Department cannot be annoyed doing it or because it does not have the expertise. However, you have already admitted that it does have the expertise. So, what is it?

Mr Lavery:

I am happy to give you further information in writing. The position today is different from that in 2003. Quite properly, in line with this Committee's concern, our Minister has indicated that she will have to sign off any request to use an external consultant. Her bias is against using external consultancy, as was that of her predecessor. Our strong desire, therefore, is to maximise the amount of work done by our own skilled staff in the Department. I am happy to give the undertaking that, if the issue arose today, that piece of work would not go outside the Department.

Mr Copeland:

How many economists are employed?

Mr Lavery:

We have a small team of economists. It does not run into double figures. I am happy to come back with a number.

Mr S Anderson:

Good afternoon. Paragraph 4.8 indicates that participation in the scheme was limited to those who could afford it, and that has been touched on slightly in some of the earlier supplementaries. How do you know that the problems with water pollution will not persist because farms that needed help could not afford to make the required investment?

Mr Lavery:

In this instance, we have to rely on the inspection and enforcement activity of the Environment Agency. The position today is that the Environment Agency not only carries out water quality inspections but keeps us in contact with the implications of those for farmers' subsidy payments. So, people know that to cause a pollution incident or to fail a pollution inspection will have financial consequences for them. There is a very robust framework within which we do not see a high level of problem.

Mr S Anderson:

Does the internal procedure have the resource to go out and look for all those incidents or possible incidents that may occur? How confident are we that the number of inspections taking place is adequate?

Mr Lavery:

I can give you the assurance that, in our cross-compliance framework for the farm subsidy scheme, there is a requirement for the Environment Agency to carry out a preset percentage of inspections, and it is meeting that objective. It has the resources to carry out the level that Europe would require it to carry out.

Mr S Anderson:

It is good to know that one agency has resources in this age that we are in.

Figure 14, on page 51 of the report, shows that more than one in three — some 38% — of planned inspections by the Environment Agency in 2009 detected a breach of the nitrates action programme. Can you tell us why, in the wake of the £120 million grant scheme to facilitate adherence to that action programme, such a level of non-compliance exists?

Mr Lavery:

The reasons for nitrates action programme breaches are not to do with the storage capacity. The reasons tend to be the maintenance of stores, specifications for manure storage and spreading distances from waterways. A lot of it is around management issues rather than capital investment issues. To that extent, I think that is consistent with what I have said throughout the afternoon; we are not seeing issues around the capacity to store effluent. We are seeing continuing, but not very high, levels of default in the management of effluent.

Mr S Anderson:

I take your point. However, all breaches relate to the protection of water against nitrates pollution. Surely that is the point of the farm nutrient management scheme? Would you agree?

Mr Lavery:

First, the purpose was, among other things, to achieve compliance with the directive, which we have done. There will always be someone somewhere who has an accident or who neglects their duty. Secondly, I agree that we want farmers to be 100% compliant, and we are encouraging them in that direction through advice and inspection and by the application of penalties where appropriate.

Mr S Anderson:

Do you know whether any of the farms in breach had received a grant under the farm nutrient management scheme?

Mr Lavery:

One of the pieces of communication between the Environment Agency and us relates to the farms where it detects any poor management. We would look at that, but, primarily, from the point of view of whether those farms still have their capacity and are operating it properly. I am not aware that we have checked those figures against participants in the scheme.

Mr Ervine:

No; we do not do cross-checks. However, we have supplied the Environment Agency with a list of farms that participated in the scheme. We discuss regularly with the Environment Agency — we meet with it on a quarterly basis — risk assessment, how implementation is going, and how we address any breaches. DARD may provide more advice on things that are causing problems.

The Environment Agency factors into its risk assessment farms that are in the farm nutrient management scheme when it is selecting farms. Those farms are factored in as lower risk because they have been through the process. We cannot guarantee that a farmer who has installed a tank will not fall down and get a non-compliance notice for not keeping adequate records or for spreading fertiliser too close to a waterway or something like that. We cannot guarantee that, but farms in the scheme are deemed by the Environment Agency to be lower risk.

Mr S Anderson:

Surely, if farms have participated in the scheme and have got grants to do so, is it not the case that you should do follow-up checks? Could that be done, and can we have those if there are any breaches?

Mr Ervine:

Certainly, if any farms are found to have caused serious pollution, they are referred to us by the Environment Agency, and our advisers go out to those farms and follow that up.

Mr Lavery:

We will look at the 2009 and 2010 Environment Agency inspection results and whether any of those farms participate in the farm nutrient management scheme and will give the Committee a figure for each year.

Mr S Anderson:

Many grant schemes are followed up. Those who administer the grants follow them up to see how they perform. I think that that should be done in this case. Hopefully, we can get some report back on that.

Finally, the report that we are dealing with contains figures from 2009. We are now in 2011. What is the present position in relation to compliance or non-compliance?

Mr Lavery:

We are still compliant with the nitrates directive.

Mr S Anderson:

What is the performance, up to the present day, in relation to the checks on those who fail to

comply? 2009 was two years ago — we are now in 2011.

Mr Ervine:

2011 is ongoing, but we have the 2010 figures. The number of farms breaching the directive has come down 22% since 2009.

Mr S Anderson:

Do you find the figures acceptable or unacceptable? A lot more work needs to be done to ensure compliance.

Mr Ervine:

It is an ongoing process. The nitrates action programme contains a lot for farmers to take on board, and it requires a change to farming practice. A lot of the main things have been done, and we see that in the compliance with the closed period for slurry spreading. However, other things, such as keeping the required farm records, have been an issue in the past. We have focused advisory effort on that, and the numbers of record-keeping issues, problems and non-compliances are coming down. Non-compliance may be due to a record-keeping issue rather than actual farm performance or environmental impact.

The action programme has many factors. Admittedly, it is difficult for farmers to comply with the nitrates directive, and that is common in all member states. However, we continue to provide advice, guidance documents, online calculators, and training courses through CAFRE to raise awareness.

Mr S Anderson:

So, there is a lot more work to be done.

Mr Ervine:

Yes; it is a continuous process.

Mr Lavery:

To be fair, the demands on farmers continue to progress. Brian referred to the need to keep documentation. What we are talking about now is farmers keeping documentary evidence of what fertiliser was bought; when; from whom; where it was applied on their farm, not simply that

it was applied on the farm but which field it was applied to; and what happened. They should also have a record of the nutrient balance on that field. So, we are asking them to take a very technical approach to fertiliser spreading. That is not easy for the industry, and I have sympathy with farmers. We require them to do it, because Europe requires us to have this degree of rigour. That is the background to what may present as a level of breaches. However, the number of breaches was down to 176 in 2010, so we are talking about fairly small numbers.

The Chairperson:

OK. Before I bring in Paul, I ask all members for a bit of respect: their mobile phones are interfering with the sound system and making it hard for people to take a recording.

Mr Girvan:

I appreciate that a lot of the programme was brought about because of the potential threat of infraction. If we did not meet with the European Commission's directives, we would be non-compliant and receive fines. What is the potential for Northern Ireland to receive fines at this stage? Have any fines been issued?

Mr Lavery:

We have not been fined in respect of the nitrates directive, and we have no reason to expect a fine. However, as is very clear from the Audit Office report, in 2002-03, there were a number of directives that Northern Ireland had not implemented fully or on time. We — and by “we” I mean the entire Administration, not the Department of Agriculture — were very concerned about the risk of infraction and the fact that it could hit any particular area, of which the nitrates directive was one. The evidence is that, between 2003 and today, a number of member states have infringed the nitrates directive, including the United Kingdom. It is not a theoretical risk by any means.

Mr Girvan:

You said that we are unlikely to have infraction proceedings taken against us. Is that on the basis that we never really had a nitrates problem in Northern Ireland? Granted, there has been a phosphates problem, but that is not necessarily what this programme was intended to deal with. If you look at how phosphates have been reduced in our inland waterways, it might be due to the proliferation of the zebra mussel, which was identified in 2005 and which has improved the water quality. It has caused a lot of other problems, but it has improved the water quality. The nitrates

directive was intended, among other things, to improve water quality, but the nitrate problem never existed to the level that we should have to spend such sums. England, Scotland and Wales spent only a fraction of the money that we have spent on driving forward a programme for which we have no measurable outputs. We cannot tell whether the programme will achieve anything.

I want to find out whether a business case was ever made that this programme would have had any major impact or led to any improvement? The nitrates problem might never have existed. There might never be infraction proceedings against Northern Ireland, considering the amount of water that we get and the run-off that we have. We have invested a large amount of money, and all we have done is encourage farmers to spread slurry in a smaller window, which means that they must put out a lot more in a shorter time. That creates its own problems, and farmers tend to cover fields doubly at certain times to ensure that they get their slurry out. That also creates problems; the land cannot properly breathe, as it is sealed up. I apologise for going on a bit, there. That is the first part.

Mr Lavery:

That is the first part? *[Laughter.]*

Let me deal with the first part. As I said earlier, we did not have a nitrates problem. I am happy to have an area of agreement with a member of the Committee. The difficulty arose when the European General Court ruled in 2002 that, even if you do not have a nitrates problem, if you have eutrophication for any reason, all the land draining into that eutrophic water has to be designated. In our case, there was no question about the eutrophic state of Lough Neagh, the hypertrophic state of Lough Erne and the issues that we had with the River Quoile. All those pointed to our having eutrophication arising from excess phosphate. We could have infringed at that point. The European Commission could have taken infraction proceedings against us on the basis that now it had a clear ruling from the European Court that this directive applied in what was an unforeseen way.

Mr Girvan:

Can I come back on that? Is there not potentially a natural reason why the level of nitrates has reduced over a period of time? There are other aspects. Farmers' use of fertiliser has reduced in the past few years, primarily because of the cost. Artificial fertiliser has doubled in price in the last three and a half years. A farmer will use what is cheapest; I understand that. Would that not

be one of the contributing factors to that reduction?

Mr Lavery:

There have been a number of contributing factors, and I take your point about the introduction of the exotic zebra mussel and the fact that it is a filter feeder. As well as that, as you will be very well aware, Northern Ireland Water's massive investment programme, which vastly dwarfs what we spent, has improved sewage outflows, particularly those into Lough Neagh. Therefore, lots of factors may have brought it down. However, I am not sure whether farmers would have reduced the rate of application of chemical fertilizers by as much had our Department not engaged in dialogue with the fertilizer companies to get phosphate-free fertilizer, which took us several years, and had they not had the benefit of our advice and encouragement to see slurry as a nutrient rather than a waste product. It is very difficult to add in all those factors, but I am absolutely convinced that the scheme has made a major contribution, and it is justified to some extent by the argument around infraction and destocking.

You made the very good point that England, Scotland and Wales have not invested at the rate that we have, but that reflects the fact that in England and Wales, for instance, there are large areas of arable land, with relatively few intensive farms. We have the opposite. We have predominately a livestock industry, with very little arable land available for sacrifice slurry spreading. Farmers here have a shorter window in which to spread slurry, and that window is, by and large, in the wettest part of the year, when slurry should not be spread because it runs straight off into watercourses. That is the argument. I sincerely hope that we do not get the sort of summer that we had in 2007 and 2008, which would disprove my contention that the slurry-spreading closed season occurs at the wettest part of the year. It should be the wettest part of the year.

Mr Girvan:

My other point relates to identifying farms that have the potential to pollute or create a problem. What mechanism is in place to identify those farms and to ensure that they are flagged-up and inspected, not only by your Department but by the Department of the Environment?

On that point, the Department of the Environment claims that it will inspect a certain number of watercourses located in farming areas. What areas have they identified? Some farms have not received the grant, so perhaps they should be targeted to see if there is a difference. The point is

that, given all the money that we have put in, we need measurable outputs. That is what brought all this about. We have put an awful lot of money in, so we need be sure that we are getting the right results. I am not necessarily saying that we are not; however, if the Department of the Environment and the Department of Agriculture and Rural Development do not take a joined-up approach to inspections, it will be impossible to say for any given area how many farms received a grant, so it is imperative that you identify and compare differences between areas.

Mr Lavery:

First, I reassure the Committee that we do indeed have a joined-up approach with the Department of the Environment. Information flows both ways. As Brian said, we have quarterly meetings, and we are looking for a joint assessment of where there is risk. We believe that the risk from farms that have participated is lower, and the Environment Agency accepts that, although it carries out the risk assessments. Uptake for the scheme was fairly level throughout the Province or Six Counties, although it was marginally higher in Tyrone, where you would expect to see a heavier concentration of livestock farming. I am not sure whether there is much more that I can say on that.

Mr Ervine:

As regards the risk assessment, we do factor things in with the Environment Agency, and it has access to data from us to select the areas to inspect. That data includes livestock numbers, as that is a factor, along with farms that are in our agrienvironment programme. We have about 12,000 farms in that programme, and they have all been visited by DARD inspectors. Therefore, the Environment Agency would attach a lower risk weighting to those and look to the other farms.

Mr Girvan:

I am very sceptical about the benefits of this programme. I appreciate that you put the figure of £40 million as a net benefit, and I would dearly like to see where that figure came from because I know what the industry is worth and how much it costs to run the Department. However, that is beside the point.

We had 27 incidents in 2007, 74 in 2008 and 141 in 2009, and you alluded to the fact that we had 176 in 2010. There has been an increase of incidents and breaches over that period. Is that simply because more people are doing inspections?

Mr Lavery:

It is partly due to the fact that the requirements of the nitrates action programme have come in progressively. We are now inspecting against more requirements, and that is certainly a factor. We said all along that we would see an improvement in water quality over 10 years. Frankly, I am surprised at the improvement that we are now seeing in a much shorter time.

Mr Girvan:

Are you attributing all of that —

Mr Lavery:

I am not. However, if an indicator is going the right way, there will be many factors in it. It is very good that it is not going the wrong way and that we are not seeing increasing levels of serious breaches, issues around slurry storage or increasing levels of phosphate loading in the Lough Neagh and Lough Erne systems. A positive picture is emerging. I am not going to claim that all credit belongs to this scheme.

Mr Girvan:

What work has been undertaken to ensure that spraying does not take place at the wettest time? I appreciate that we are very much driven by Europe, but it is not a case of one size fits all. It should have been more targeted to identify exact areas. Northern Ireland is probably one of the wettest parts of the United Kingdom. Therefore, there is no point in identifying the same criteria in the south-east of England, which has a completely different climate.

Mr Lavery:

We negotiated directly with the European Commission around the requirements of Northern Ireland and achieved the best result that we could for the specific —

Mr Girvan:

On the dangers of spreading?

Mr Lavery:

Yes, very much so. That was a hugely contested area at the time for the farming industry.

Mr Girvan:

I appreciate that a lot of that has more to do with the Department of Agriculture, as opposed to going into detail. Whether it stacks up or not, I still remain to be convinced that the £120 million spend has delivered the value that it should have.

The Chairperson:

Thank you. We may have other questions for you and request more information. We will write to you next week.