

**Public Accounts Committee**

# Report on The Cross-border broadband initiative: the Bytel project

Together with the Minutes of Proceeding of the Committee relating to the  
Report and the Minutes of Evidence

Ordered by the Public Accounts Committee to be printed on 3 June 2015

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**THE REPORT REMAINS EMBARGOED UNTIL  
00:01AM ON 1 JULY 2015**

## Membership and Powers

The Public Accounts Committee is a Standing Committee established in accordance with Standing Orders under Section 60(3) of the Northern Ireland Act 1998. It is the statutory function of the Public Accounts Committee to consider the accounts, and reports on accounts laid before the Assembly.

The Public Accounts Committee is appointed under Assembly Standing Order No. 56 of the Standing Orders for the Northern Ireland Assembly. It has the power to send for persons, papers and records and to report from time to time. Neither the Chairperson nor Deputy Chairperson of the Committee shall be a member of the same political party as the Minister of Finance and Personnel or of any junior minister appointed to the Department of Finance and Personnel.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

- Ms Michaela Boyle<sup>3</sup> (Chairperson)
- Mr John Dallat<sup>5</sup> (Deputy Chairperson)
- Mr Roy Beggs<sup>14</sup>
- Mr Trevor Clarke<sup>8</sup>
- Mr Alex Easton<sup>12 15</sup>
- Mr Phil Flanagan<sup>13</sup>
- Mr Paul Girvan
- Mr Ross Hussey
- Mr Daithí McKay<sup>7</sup>
- Mr Adrian McQuillan<sup>1</sup>
- Mr Seán Rogers<sup>6</sup>

- 1 With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew
- 2 With effect from 23 January 2012 Mr Conor Murphy replaced Ms Jennifer McCann
- 3 With effect from 02 July 2012 Ms Michaela Boyle replaced Mr Paul Maskey as Chairperson
- 4 With effect from 02 July 2012 Mr Conor Murphy is no longer a Member and his replacement on this committee has not yet been announced
- 5 With effect from 07 September 2012 Mr John Dallat replaced Mr Joe Byrne as Deputy Chairperson.
- 6 With effect from 10 September 2012 Mr Sean Rogers was appointed as a Member
- 7 With effect from 10 September 2012 Mr Daithi McKay was appointed as a Member
- 8 With effect from 01 October 2012 Mr Trevor Clarke replaced Mr Alex Easton
- 9 With effect from 11 February 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
- 10 With effect from 15 April 2013 Mr Chris Hazzard replaced Mr Mitchel McLaughlin
- 11 With effect from 07 May 2013 Mr David McIlveen replaced Mr Sammy Douglas
- 12 With effect from 16 September 2013 Mr Alex Easton replaced Mr David McIlveen
- 13 With effect from 06 October 2014 Mr Phil Flanagan replaced Mr Chris Hazzard
- 14 With effect from 06 October 2014 Mr Roy Beggs replaced Mr Michael Copeland
- 15 With effect from 18 May 2015 Mr Jim Wells replaced Mr Alex Easton



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## List of Abbreviations Used in the Report

|               |  |
|---------------|--|
| the Committee | Public Accounts Committee (PAC)                            |
| C&AG          | Comptroller and Auditor General                            |
| DETI          | Department of Enterprise, Trade and Investment             |
| EU            | European Union   |
| SEUPB         | Special EU Programmes Body                                 |
| DFP           | Department of Finance and Personnel                        |
| DCENR         | Department of Communications, Energy and Natural Resources |
| JlAs          | Joint Implementing Agents                                  |
| DSD           | Department for Social Development                          |
| DCMNR         | Department of Communications, Marine and Natural Resources |

# Executive Summary

## Introduction

1. The Bytel project aimed to provide high-speed broadband connectivity between Belfast, Craigavon, Armagh, Dundalk and Dublin. The project promoter was Bytel Ltd and a subsidiary, Bytel Networks Ltd, was established to deliver the project. The project received funding from the European Union (EU) Interreg III programme. The Special EU Programmes Body (SEUPB) was accountable to the European Commission, the Northern Ireland Executive and the Irish Government for managing and delivering this programme. Departmental responsibility for SEUPB lies with the Department of Finance and Personnel (DFP) in Northern Ireland and the Department of Public Expenditure and Reform in the Republic of Ireland. SEUPB appointed the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland and the Department of Communications, Energy and Natural Resources (DCENR) in the Republic of Ireland<sup>1</sup> as Joint Implementing Agents (JIAs) for the project.
2. As a cross-border project, effective co-operation was required between the departments in Northern Ireland and the Republic of Ireland and SEUPB. However, from the outset there were serious failings in the handling of the project, with a catalogue of mismanagement, poor communication and inadequate responses to warnings. As a result, the project delivered very poor value for money.
3. In October 2004, the JIAs offered funding of €4.3 million to Bytel against estimated total project costs of €12.4 million. Actual project costs were significantly lower. Bytel incurred eligible costs of only €0.9 million but was paid all of the €4.3 million assistance between December 2004 and December 2005. It is clear that grants were hugely overpaid.
4. On a number of occasions during his evidence to the Committee, the DETI Permanent Secretary stated that he has grave concerns in relation to both his own Department's handling of this project and over aspects of the work of its advisers. This frankness is welcome, but it is only belatedly that the Department appears to have recognised the gravity of what has occurred. From 2006 onwards there were numerous warning signs that there were serious problems with the project. These signs were effectively ignored by DETI and, for far too long, the Department behaved as if nothing was wrong. The Committee is left with the impression that DETI hoped that silence and inaction would make these issues disappear.
5. Although DETI was aware of serious concerns with the project as early as 2006, it did not inform the Department of Communications, Energy and Natural Resources or SEUPB of these issues until early 2011. This delay was unacceptable. The failure to share information on a timely basis prevented these concerns from being addressed properly. A subsequent forensic review of the project concluded that 97% of the €4.3 million grant paid to Bytel was irregular and the project was then withdrawn from the Interreg programme. Because of the delays in identifying and dealing with these concerns, €2 million of EU funding which should have been available to DETI was lost.
6. The failings are similar to those reported by the Committee in 2012 in relation to the Bioscience and Technology Institute. This was another DETI project from around the same time as the Bytel project. The Committee is very concerned that poor project management and disregard for value for money appear to have been endemic within the Department at that time.
7. The Committee notes the assurances from both DETI and SEUPB that improvements in systems and processes in recent years should substantially reduce the risk of similar failings in future. However, DETI provided unsubstantiated assurances over many years in

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1 Until June 2007, DCENR was named DCMNR (Department of Communications, Marine and Natural Resources)

relation to the Bytel project. Important as systems and processes are, it is vital that these work in practice. It is clear that this case only came under proper scrutiny because of the allegations made by whistleblowers. It is essential that the culture within DETI is changed and the Department must recognise the need to take decisive and prompt action to address problems such as those which arose in the Bytel case.

8. During the evidence session, the DETI Permanent Secretary openly acknowledged on many occasions that he was unable to provide satisfactory answers to the Committee's questions. As a result, the Committee still has concerns about: why the project was approved for funding in the first place; why it was not re-appraised when it changed fundamentally within a few months of the offer of assistance; why grant claims for ineligible or non-existent expenditure were paid; inadequate responses to whistleblower allegations; DETI's failure to inform SEUPB and DCENR of major concerns about the project; and why a decision was taken to shelve a proper investigation of the project to PACE<sup>2</sup> standards. The Committee considers that a rigorous, independent PACE investigation is needed to get to the root of these issues.

## Conclusions

9. The assessment and appraisal of the project was seriously flawed, and it is likely that with due diligence and more robust probing of the proposal, the project would not have had funding approved. The Committee believes that the Joint Implementing Agents' overwhelming focus was to ensure that the Bytel project was approved for funding, rather than applying proper scrutiny to confirm that it was viable and would deliver value for money. There was a failure to accurately identify the costs required to deliver the project before issuing the letter of offer and steps were not taken to confirm the key partner's commitment to the project.
10. The Department admits that it did not have sufficient technical expertise to understand the project. The failure to re-appraise the project when it changed significantly was a fundamental shortcoming which contributed significantly to the problems which followed. This was a critical lost opportunity to re-assess costs and to ensure that the level of grant payable was reduced accordingly.
11. The pressures within DETI to meet grant expenditure targets within tight deadlines overtook the need to ensure that grant claims were properly scrutinised. The Committee is convinced that DETI's main concern in approving grant claims for the project was to ensure that available EU funding was spent. The Department's primary responsibility was to scrutinise claims properly to ensure that they were valid. The Committee concludes that DETI failed fundamentally to meet this responsibility.
12. The Department knowingly agreed to fund €1.3 million of ineligible expenditure in respect of the Nortel equipment. It is a major concern that DETI failed to carry out basic checks on the value of the equipment and whether it was required for the project. Subsequent investigations have shown that the equipment, which was purchased by Bytel from a sister company, was worth only €30,000 and it was never used in the project.
13. It is beyond comprehension that over €2 million of grant was paid for the final claim on the basis of a single-page statement from Bytel that contained no substantive information to justify the payment. In the Committee's view, this claim had no validity whatsoever.
14. The investigations into concerns raised about the project were completely mishandled and a detailed review was unacceptably delayed. The Committee regard the investigation of 2006 allegations by the DETI branch which had managed the project and checked the grant claims as a totally unacceptable arrangement. Unsurprisingly, this investigation failed to identify the

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2 An investigation which would comply with the requirements of the Police and Criminal Evidence (Northern Ireland) Order 1989.

main concerns with the project. The failure to carry out a meaningful investigation at this stage was another lost opportunity to identify and address concerns with the project.

15. The excessive delay to commence a meaningful investigation was deplorable. Following more whistle-blower allegations in 2008, DETI identified the main concerns with the project in early 2009. However, plans to undertake a PACE investigation were inexplicably shelved. The Department was unable to offer any satisfactory explanation to the Committee for this investigation not proceeding. In 2011, when SEUPB had become aware of the problems with the project, a forensic review was finally commissioned. However, this review was not conducted under PACE requirements.
16. The Committee is gravely concerned that DETI withheld vital information about the project from key stakeholders, including SEUPB and DCENR, for far too long. In fact, SEUPB only learned of some aspects of the 2006 whistle-blower allegations on the day of the Committee's evidence session. In view of DETI's failure to properly investigate the project and share key information with stakeholders, the Committee suspects that it was attempting to cover up the problems.
17. The Committee is incredulous that no-one within the Department has faced any disciplinary action for the many serious shortcomings in this project. DETI takes the view that as responsibility for key decisions on the project involved a number of people, staff actions had amounted to "collective misjudgement" rather than individual misconduct. The Committee does not accept this argument and is of the view that DETI has used the unsatisfactory concept of "collective responsibility" as a way of absolving individuals from their responsibilities at that time.
18. As a result of the mismanagement of the project, it delivered very poor value for money. The only redeeming feature of this debacle is that a broadband network was actually provided in return for the public funds invested in it. However, the grant paid exceeded project costs. Bytel incurred eligible expenditure of €0.9 million on the project. On this basis, grant should have been restricted to €0.3 million (35% of costs) but assistance of €4.3 million was actually paid, representing an effective grant rate of 462%. This was a totally unacceptable outcome.
19. The withdrawal of the project from the EU Interreg programme meant that DETI had to fund €2 million from its own budget and that a further €2 million of available EU funding was lost to the Northern Ireland block. Had a proper investigation of the concerns raised been completed sooner and SEUPB informed of the irregularities, it is very likely that a replacement project could have been identified to utilise the €2 million of EU funding.

## Recommendations

### Recommendation 1

**Where a project is heavily dependent on the support of a partner, the Committee recommends that the strength of the partner's commitment is fully tested before funding is approved. Furthermore, where the proposed specification or costs of a project are subject to change, it should be re-appraised immediately to confirm that it remains viable and represents value for money. Eligible grant assistance levels should also be re-assessed where appropriate.**

### Recommendation 2

**For all complex technical projects, the Committee recommends that independent and reliable technical expertise is engaged at the outset to provide advice on appraising and managing such projects.**

### Recommendation 3

**The Committee recommends that grant checking and vouching procedures are reviewed within six months to determine whether these are sufficiently robust to ensure that only valid and eligible expenditure is approved for payment. Specifically, checks must determine whether: items claimed for are eligible for support; the existence and valuation of assisted items is properly verified; and reliable third party evidence is obtained to show the valuation and source of items which have been supplied by related companies. The risks created by the submission of claims close to payment deadlines must be recognised and managed effectively.**

### Recommendation 4

**The Committee has stated previously that fraud investigations can only be effective where investigators have an appropriate level of expertise and understanding of the law. Public bodies should ensure that only suitably qualified and experienced staff lead fraud investigations<sup>3</sup>. All investigations should be commenced on a timely basis.**

### Recommendation 5

**The Committee recommends that all key stakeholders are notified immediately when serious allegations are received or concerns arise over the conduct of public business. An action plan for investigating such concerns should be established as a matter of priority.**

### Recommendation 6

**Too much reliance was placed on whistleblowers to identify concerns over the mismanagement of public money in this case. The Committee recommends annual 'test drilling' on a small number of funded projects to provide assurance that all expenditure incurred is valid and eligible. This work should be undertaken by individuals independent of the management and oversight of projects.**

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3 Report on NI Water's Response to a Suspected Fraud & DRD: Review of an Investigation of a Whistleblower Complaint (NIA 172/11-15)

### Recommendation 7

**The Committee recommends that DETI commissions a PACE investigation of the Bytel project as a matter of urgency. This investigation should focus on establishing whether any individuals bear responsibility for the shortcomings within the project and whether there is any evidence of misconduct or criminal activity either inside or outside the Department.**

### Recommendation 8

**The Committee recommends that DETI improves its systems for tracking the ownership status of grant-funded assets to facilitate the exercise of clawback.**

## Introduction

1. The Public Accounts Committee (the Committee) met on 18 March 2015 to consider the Comptroller and Auditor General's report "*Cross-border broadband initiative – the Bytel project*". The main witnesses were:
  - **Dr Andrew McCormick**, Accounting Officer, Department of Enterprise, Trade and Investment;
  - **Mr David Sterling**, Accounting Officer, Department of Finance and Personnel;
  - **Mr Pat Colgan**, Accounting Officer, Special EU Programmes Body;
  - **Mr Eugene Rooney**, Deputy Secretary, Department of Enterprise, Trade and Investment;
  - **Mr Kieran Donnelly**, Comptroller and Auditor General; and
  - **Mr Jack Layberry**, Treasury Officer of Accounts.
2. The Bytel project was offered assistance under the European Union (EU) Interreg III programme. The Special EU Programmes Body (SEUPB) was accountable to the European Commission, the Northern Ireland Executive and the Irish Government for managing and delivering this programme. Departmental responsibility for SEUPB lies with the Department of Finance and Personnel (DFP) in Northern Ireland and the Department of Public Expenditure and Reform in the Republic of Ireland. SEUPB appointed the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland and the Department of Communications, Energy and Natural Resources (DCENR)<sup>4</sup> in the Republic of Ireland as Joint Implementing Agents (JIAs) for the project.
3. In October 2004, the JIAs offered Bytel funding of €4.3 million against estimated total project costs of €12.4 million. This assistance was paid in full to Bytel between December 2004 and December 2005.
4. In 2006 and 2008, serious allegations were received about the delivery of the project, and the operations of the Bytel group of companies. There followed an extremely protracted process of investigating the concerns about the project. This culminated in 2012 with the completion of a forensic review of the project. This review concluded that 97% of the €4.3 million grant paid to Bytel was irregular and ineligible for EU funding. As a result, the project was withdrawn from the Interreg programme.
5. In March 2015, a report by the Comptroller and Auditor General (C&AG) identified a wide range of concerns about the management of the project and poor outcomes achieved from it. The C&AG concluded that grant had been significantly overpaid and that €2 million of EU funding which should have been available to DETI was lost when the project was withdrawn from the Interreg programme.
6. In its evidence session, the Committee explored the following key aspects of the Bytel project:
  - assessment and appraisal of the project;
  - checking and payment of grant claims submitted by Bytel;
  - the response to whistle-blowers' concerns about the project; and
  - the value for money of the project.

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4 Until June 2007, DCENR was named DCMNR (Department of Communications, Marine and Natural Resources).

# Project Management

## Project assessment and appraisal

7. The Committee concludes that the assessment and appraisal process was unduly focused on ensuring that the Bytel project was approved for funding, rather than proper scrutiny to confirm that it was viable and represented value for money. In June 2004, an assessment by the JIAs' technical consultants, Western Connect, had rejected the project for funding. This was because of concerns over high project costs, poor value for money, Bytel's limited financial capability and insufficient detail about the proposed contribution from Aurora Telecom, a key partner in the project.
8. In due course, these concerns would crystallise and undermine the delivery of the project. However, just one month after the proposal was rejected, it was re-assessed by Western Connect and narrowly passed the threshold to proceed to economic appraisal.
9. The Committee sought to establish why the project was re-assessed and the decision to fund it changed so quickly. The Department acknowledged that the desire to utilise available EU funding had created a determination to make sure that the project happened and that this had overtaken the need to ensure that it was carefully and properly managed. In the Committee's view, such an attitude displayed a lack of regard for the required standards of accountability and value for money and led to many of the serious concerns which emerged later.
10. The Committee is unable to dismiss the possibility that there was an ulterior motive behind the 'Road to Damascus' decision to fund the project. On far too many occasions, the Department by its own admission was unable to provide clear answers to the Committee about the numerous shortcomings which characterised the management of this project. This lack of clarity, together with the Department's acknowledgement of potential relationships between Bytel and staff within DETI and Western Connect, leaves the Committee with no assurance that the project was free of wrong doing.
11. The failure to test Aurora Telecom's commitment as a key partner was a significant shortcoming in the assessment. Aurora's proposed €7.8 million contribution of assets and infrastructure was the key factor in the project's approval for funding. The Committee is astonished that the Department relied on a single letter from Aurora which had not been endorsed at Board level within either Aurora or Bord Gais (Aurora's parent company) as evidence of support for the project.
12. In the Committee's view, this letter did not provide adequate evidence to support investment of €4.3 million of public money. The Department told the Committee that it had no reason to doubt that the individual who had signed this letter was acting on Aurora's behalf. However, basic probing of Bytel's relationship with Aurora, as had been advocated in the project's economic appraisal, would have shown that no approvals had been given within Aurora or Bord Gais for any agreement with Bytel. Aurora withdrew from any involvement in the project in December 2004 shortly after the offer of assistance was issued to Bytel. Had its commitment been properly tested, the Committee considers it likely that the project would not have been funded and the significant overpayment of grant and loss of EU funding which occurred subsequently would have been avoided.

## Recommendation 1

**Where a project is heavily dependent on the support of a partner, the Committee recommends that the strength of the partner's commitment is fully tested before funding is approved. Furthermore, where the proposed specification or costs of a project are subject**

**to change, it should be re-appraised immediately to confirm that it remains viable and represents value for money. Eligible grant assistance levels should also be re-assessed where appropriate.**

13. The project appraisal failed to accurately assess project costs. The initial assessment considered Bytel's estimated costs of €13.2 million to be excessive. These were reduced only marginally to €12.4 million when the project was approved for funding and the subsequent appraisal did not challenge these costs. Crucially, it failed to identify that Bytel's €7.8 million estimate for cabling costs was far higher than that required (€1.9 million). This resulted in a significantly higher amount of grant (€4.3 million) being approved than was warranted.
14. The Department told the Committee that it did not have access to sufficiently reliable technical expertise to assist it with appraising and managing the project. The Committee is appalled at this admission. The project was complex and highly technical and there was clearly a need for such expertise to help the Joint Implementing Agents to manage it properly. The absence of such technical assistance was a key factor in the failure to accurately identify project costs and to set the level of grant accordingly.
15. The Department's acknowledgement is made worse by the fact that it had engaged and paid Western Connect for this purpose. The Committee has deep concerns at aspects of this arrangement. In the Committee's view the service and advice provided by Western Connect fell below the standard required and concerns are amplified by the fact that the employee who played a lead role in advising the Joint Implementing Agents went to work for Bytel only months after Western Connect's contract had ended. The Department was well aware of this. The Committee is very surprised that DETI apparently had no concerns over this relationship, let alone assess whether it may have influenced Western Connect's performance as a management agent on the project.
16. DETI told the Committee that a key lesson from the project was the need for "technical expertise that you can rely on" and to have advisers who are "on your side". This admission of DETI's unease over aspects of Western Connect's performance underscores the Committee's concerns over the role played by the consultants in the project.

## Recommendation 2

**For all complex technical projects, the Committee recommends that independent and reliable technical expertise is engaged at the outset to provide advice on appraising and managing such projects.**

17. The over-estimate of costs was compounded by the Joint Implementing Agents' failure to re-appraise the project following Aurora's withdrawal in December 2004 and Bytel's signing of agreements with Eircom in September 2005. This changed the project specification fundamentally from one involving the construction of infrastructure to one involving leasing of existing assets. It also reduced total costs dramatically, from €12.4 million to €3.9 million.
18. The Department did not provide satisfactory answers to explain why it failed to re-appraise the project. It could only speculate that staff managing the project at the time had been focused on achieving a certain outcome and had regarded the means of achieving this as secondary. If so, such a mindset is entirely unacceptable. The Department has acknowledged that a re-appraisal should have been carried out. The failure to do so was yet another critical missed opportunity to exercise proper control over the project and ensure value for money.
19. Grant of €4.3 million was ultimately paid to Bytel against eligible project costs of €0.9 million, a grant rate of 462%. The Committee is utterly dismayed at this totally unacceptable outcome.

## Checking and paying grant claims

20. Grant claims which accounted for 85% of the assistance paid to Bytel were submitted very close to spending deadlines. In its evidence to the Committee, DETI acknowledged that there was a lot of pressure to meet these deadlines and that this may have influenced the behaviour and thinking of staff involved in checking the grant claims. The Committee concludes that, because of pressure to make grant payments, proper controls were not exercised over grant payments and due regard was not paid to the propriety of this expenditure or to value for money. The standard of DETI's checking of Bytel grant claims was shockingly poor.
21. Grant of €1.3 million was paid in respect of one piece of equipment, the Nortel racks. This equipment was ineligible under the project letter of offer. DETI told the Committee that, at the time this claim was submitted, it had not been possible to make a payment of grant in respect of Bytel's proposed agreement with Aurora Telecom. In the face of an impending spending deadline and the possibility that EU funding would be lost, a decision was taken by the Joint Implementing Agents to grant-aid the Nortel equipment. The Committee agrees with the DETI Accounting Officer's comments: the fact that the Department knowingly funded ineligible expenditure was unacceptable and indefensible and that the pressure to meet the spending deadline was no good reason for doing the wrong thing.
22. The decision to fund the ineligible Nortel equipment was exacerbated by a catalogue of failings in checking its value, condition and acquisition. Bytel purchased the equipment from a sister company. This should have led the Joint Implementing Agents to carry out basic checks to confirm the purchase of the equipment by the related company and the acquisition cost; this was not done. Instead, the Joint Implementing Agents relied on a valuation provided for the economic appraisal. This valuation represented the cost of obtaining new equipment and was a totally unsuitable basis for vouching the obsolete equipment actually procured.
23. There is evidence that the equipment was worth only €30,000, that it was obsolete and that it was never used in the project. The Committee is alarmed at the failure to undertake the most basic of checks on this claim and that proper process was circumvented in such cavalier fashion.
24. The evidence to support the final grant payment of €2 million to Bytel was completely inadequate. The claim consisted of a single-page statement and contained no substantive information to justify the payment. In its evidence to the Committee, DETI acknowledged that there were grave doubts over the factual accuracy of the claim and that it should not have been paid. It is clear to the Committee that this claim had no validity whatsoever and it is beyond comprehension that DETI paid grant solely on the basis of this document.
25. DETI told the Committee that it has made changes to its processes and procedures in the period since grant was paid to the Bytel project. These include a separation of roles between those sponsoring and leading on projects and those responsible for authorising and approving funding. Given the basic failures of process evident in this case, the Committee remains to be convinced that these procedures operate as intended and that these improvements are being delivered in practice.
26. The Department issued revised guidance in November 2014 on how transactions between related companies should be managed. This new guidance is welcome. However, the Committee is astounded that it has taken so long to introduce the guidance, coming as it did eight years after the final Bytel grant claim was paid and after the C&AG's investigation was largely complete.

### Recommendation 3

**The Committee recommends that grant checking and vouching procedures are reviewed within six months to determine whether these are sufficiently robust to ensure that only valid and eligible expenditure is approved for payment. Specifically, checks must determine whether: items claimed for are eligible for support; the existence and valuation of assisted items is properly verified; and reliable third party evidence is obtained to show the valuation and source of items which have been supplied by related companies. The risks created by the submission of claims close to payment deadlines must be recognised and managed effectively.**

- ## The response to whistleblowers
27. DETI received allegations about the delivery of the project from a whistleblower in June 2006. The whistleblower alleged that Bytel had used a sister company to order equipment for the project and had claimed grant for assets which it did not own. Although DETI investigated these allegations at the time, the investigation was fundamentally flawed. The Committee is dismayed that an opportunity to identify and address the key concerns with the project at a relatively early stage was missed. It is also unacceptable that the Department did not notify the C&AG of these allegations.
  28. The allegations were investigated by the same staff in DETI's Telecommunications Branch who had overseen the delivery of the project and checked the Bytel grant claims. DETI stated that this arrangement was in line with its Fraud Response Plan at the time. However, DETI acknowledged that this effectively led to staff "marking their own homework". In the Committee's view, this lack of independence made the investigation flawed and ineffectual.
  29. The investigation carried out by Telecommunications Branch concluded that there were no matters for concern with the project. Senior management within DETI readily accepted these assurances without question, let alone any meaningful challenge to the investigation. DETI told the Committee that four or five management tiers, including senior management, had been made aware of the allegations and knew that Telecommunications Branch staff were effectively investigating themselves. The Committee cannot understand how so many layers of management could have known of these serious allegations and the flawed investigation of them without alarms being raised. The Committee views this as a failure to exercise even the basics of good governance.
  30. The Department told the Committee that it had introduced a revised Fraud Response Policy in 2012 under which allegations received will be subject to an independent investigation. The Committee has commented before on the need for independence in these circumstances and is surprised that it has taken DETI so long to implement such basic good practice.
  31. As well as the lack of independence, the way in which the 2006 investigation was conducted was about as flawed as anything the Committee has seen. The investigation placed total reliance on the original vouching of grant claims which had been undertaken in 2004 and 2005 and did not include any further additional probing or checking. This resulted in DETI simply repeating its earlier mistakes from the grant checking process. The Committee considers it particularly unforgivable that, at this stage, DETI had twice failed to identify blatantly obvious concerns including, for example, Bytel's use of a sister company to procure equipment for the project.
  32. DETI also failed to respond to allegations contained in documents provided to it in relation to the 2006 whistleblowing. DETI received a Bytel internal e-mail which contained allegations about improper activity by the company and connections between Bytel and a DETI member of staff. The Committee cannot comprehend why the grave content of this documentation has never been subject to any form of investigation by DETI and views this lack of action as deplorable. In its evidence, DETI stated that there was "no good explanation as to why no action was taken" to investigate the allegations and that receipt of this document in 2006 should have triggered a full and proper investigation.

## Recommendation 4

**The Committee has stated previously that fraud investigations can only be effective where investigators have an appropriate level of expertise and understanding of the law.**

**Public bodies should ensure that only suitably qualified and experienced staff lead fraud investigations<sup>5</sup>. All investigations should be commenced on a timely basis.**

33. In June 2008, the C&AG received further whistleblowing allegations about the project. The C&AG referred these allegations to DETI for investigation. The allegations broadly mirrored those from 2006 but were more substantive in detail. Specifically, the whistleblower alleged that Bytel had obtained the Nortel equipment for €30,000 from its sister company and subsequently claimed €1.3 million grant for it from DETI. The whistleblower also alleged that two Bytel directors had each withdrawn €100,000 of Interreg grant from company funds.
34. Initially, DETI afforded these allegations the attention they merited. By January 2009, an investigation by internal audit had identified the main concerns with the project, including the value and source of the Nortel equipment, the checking of grant claims and non-compliance with Interreg regulations. DETI also commissioned a further review of the project by consultants which was completed in September 2009 and confirmed that there were significant issues over the eligibility of project expenditure.
35. At this stage, DETI was considering carrying out a full PACE investigation of the project, but this was never commissioned. DETI told the Committee that this was due to the absence of key staff and the need to address competing priorities during this period. While DETI acknowledged that a full and proper investigation should have moved much more rapidly, in the Committee's view there is simply no excuse as to why such an investigation did not commence.
36. DETI failed to inform SEUPB of key events about the Bytel project from 2006 until early 2011. The Committee is particularly disturbed by the fact that SEUPB was unaware of the existence of the internal Bytel e-mail, which DETI had received in 2006, until the day of the evidence session. SEUPB was also not made aware of the 2008 whistleblower allegations and the 2009 internal audit and consultancy reviews until 2011 and, even then, this was only after repeated requests from SEUPB for more details about the emerging concerns with the project. As DETI acknowledged to the Committee, there was simply no good reason for this. DETI's failure to share key information with SEUPB alongside its very poor handling of the investigations gives the Committee reason for concern that it was attempting to cover up the serious issues associated with this project.
37. In its turn, SEUPB accepted unwarranted assurances from DETI which suggested that there was no cause for concern with the project on a number of occasions. In the Committee's view, SEUPB should have pressed DETI to provide the evidence to underpin these assurances.
38. SEUPB told the Committee that it finally became aware of the seriousness of the situation in February 2011. SEUPB then commissioned a full forensic review of the project in April 2011 with the agreement of other stakeholders. This review was completed in March 2012.

## Recommendation 5

**The Committee recommends that all key stakeholders are notified immediately when serious allegations are received or concerns arise over the conduct of public business. An action plan for investigating such concerns should be established as a matter of priority.**

39. The unacceptable delay in completing investigations into the 2008 allegations and in sharing relevant information with SEUPB and other stakeholders resulted in DETI incurring significant costs and losses. SEUPB told the Committee that it was only in March 2012 when the forensic review was completed that it was able to confirm that the expenditure paid to the project was ineligible for Interreg support and that the project needed to be withdrawn from the EU programme. SEUPB told the Committee that had it known before June 2009

<sup>5</sup> Report on NI Water's Response to a Suspected Fraud & DRD: Review of an Investigation of a Whistleblower Complaint (NIA 172/11-15)

that the expenditure was ineligible, it could likely have re-directed the EU funding from Bytel to a replacement project. In the event, the withdrawal of the project at a late stage of the programme meant that €2 million of available EU funding was lost to Northern Ireland and that DETI also had to meet €2 million of the project's €4.3 million grant from its own funds. In the Committee's view, DETI carries full responsibility for this dismal outcome due to the delays and prevarication which characterised its investigation of the project.

40. The Committee is seriously concerned that the problems with this project only came to light as a result of information provided by whistleblowers. The allegations in 2008 were the catalyst for the investigations which ultimately led to the serious failings in this project being identified and reported. DETI's own systems failed to prevent or detect these problems. Whilst DETI repeatedly stated that it has improved its procedures significantly, the Committee does not have confidence that the checks and controls in place are either strong enough or properly applied to ensure that any issues similar to those which occurred in the Bytel project would be identified. The Committee is not assured that there are no other cases like Bytel which may have remained undetected because no-one has been sufficiently disgruntled to blow the whistle.

## Recommendation 6

**Too much reliance was placed on whistleblowers to identify concerns over the mismanagement of public money in this case. The Committee recommends annual 'test drilling' on a small number of funded projects to provide assurance that all expenditure incurred is valid and eligible. This work should be undertaken by individuals independent of the management and oversight of projects.**

41. No-one within the Department has been held accountable or faced any disciplinary action for the catalogue of serious shortcomings in this project. DETI told the Committee that it had examined the scope for disciplinary action and had concluded that, as responsibility for key decisions taken on the project had involved a number of people, staff actions had amounted to "collective misjudgement" rather than misconduct and no individuals could be held responsible. The Committee does not accept this argument and considers that DETI has used the unsatisfactory concept of "collective responsibility" as a way of absolving individuals from their responsibilities.
42. DETI told the Committee that it is reviewing evidence in relation to the internal Bytel e-mail which it had received at the time of the 2006 whistleblower allegations. The Department has stated that if this review provides "prima facie evidence of behaviour in breach of the expected standards", it would consider commencing a disciplinary process.
43. The Committee considers that too many unresolved questions remain about the serious failures in this case. The forensic review completed by consultants in 2012 was a detailed investigation but it was not completed to PACE standards. Consequently, there is a lack of clarity about who bears responsibility for the shortcomings and whether there was any misconduct or criminal activity by individuals inside or outside DETI. The Committee is convinced that only a PACE investigation offers any prospect for resolving the serious matters which remain outstanding.

## Recommendation 7

**The Committee recommends that DETI commissions a PACE investigation of the Bytel project as a matter of urgency. This investigation should focus on establishing whether any individuals bear responsibility for the shortcomings within the project and whether there is any evidence of misconduct or criminal activity either inside or outside the Department.**

## Value for money

44. In the Committee's view, the only redeeming feature of this debacle is that a project was actually delivered in return for the public funds invested. However, the Committee is in no doubt that this was only by good fortune given the very poor management and oversight of the project. The Committee welcomes the fact that the main objectives set for the project at the outset were achieved. It is also positive that the project contributed to the revival of the Saturn Ring telecommunications network and helped facilitate the re-entry of Eircom to the local broadband market.
45. Overall, the value for money achieved in this project was clearly very poor. DETI acknowledged that Bytel had only incurred eligible expenditure of €0.9 million in delivering the project. As assistance for the project was capped at 35% of eligible costs, grant should have been restricted to €0.3 million but Bytel was paid the full €4.3 million grant approved at the outset of the project. This equates to a grant rate of 462%. The Committee believes that this appalling outcome was attributable to the Joint Implementing Agents' failure to re-appraise the project and re-assess the level of grant payable when the project specification changed significantly following the withdrawal of Aurora Telecom. The SEUPB Accounting Officer confirmed that the project should only have received "a fraction" of the grant that was paid.
46. In addition to the massive overpayment of grant, the Committee is dismayed that €2 million of available EU funding was lost to Northern Ireland due to the complete mismanagement of the project and the failure to inform SEUPB of the concerns around it much sooner.
47. When Bytel sold the funded assets in 2009, DETI was entitled to claw back the grant paid to the company. However, DETI failed to take this opportunity as it was unaware of the ownership status of the assets until a technical review was completed in 2013. The Committee regards the failure to invoke claw back as yet another missed opportunity and another failure in DETI's management of the project. Claw back may have represented the best opportunity to mitigate the very poor outcome from the project. The Committee considers it unacceptable that the Department did not have better arrangements in place to track the ownership status of assets which were funded from €4.3 million of public money.

## Recommendation 8

**The Committee recommends that DETI improves its systems for tracking the ownership status of grant-funded assets to facilitate the exercise of clawback.**

48. The Department commenced legal proceedings to recover the grant paid to Bytel and a statement of claim was served on the company in March 2013. DETI informed the Committee that it is unable to comment on any legal advice received on the prospects of recovering the grant as this is subject to legal privilege. Whilst the Committee understands the Department's position, it is frustrated by the length of time that has passed without any further progress in the case. The Committee expects to be advised promptly of the final outcome of the legal proceedings.
49. The Department told the Committee that it had been engaged in discussions during 2014 with both the PSNI and a Department for Social Development (DSD) counter-fraud investigator about the issues around the project. The Department has undertaken to provide an update to the Committee on whether the PSNI intends to pursue a fraud investigation. In the Committee's view, this is too little, too late. It is beyond comprehension that the Department took so long to consider seriously the question of fraud. No report of suspected fraud has been made to the C&AG, despite the requirement to do so. Given the weight of suspicion, fuelled by the evidence that has emerged since 2008, the Committee cannot understand or condone the Department's inaction.