



Northern Ireland
Assembly

Public Accounts Committee

**OFFICIAL REPORT
(Hansard)**

**Ilex Urban Regeneration Company:
Accounts for 2010-11**

25 April 2012

NORTHERN IRELAND ASSEMBLY

Public Accounts Committee

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Members present for all or part of the proceedings:

Mr Paul Maskey (Chairperson)
Mr Sydney Anderson
Mr Michael Copeland
Mr John Dallat
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Conor Murphy

Witnesses:

Mr Will Haire	Department for Social Development
Dr Aideen McGinley	Ilex Urban Regeneration Company
Mr Noel Lavery	Office of the First Minister and deputy First Minister

Also in attendance:

Mr Kieran Donnelly	Comptroller and Auditor General
Ms Fiona Hamill	Treasury Officer of Accounts

The Chairperson: This session is about the Ilex accounts for 2010-11. Will you introduce your team, please?

Mr Noel Lavery (Office of the First Minister and deputy First Minister): On my left is Will Haire, permanent secretary and accounting officer of the Department for Social Development (DSD); and Dr Aideen McGinley, chief executive and accounting officer of Ilex.

The Chairperson: Thank you. I will start, but other members will also come in with questions. Please keep your comments and answers succinct, because we need to push this on. Members have an updated biography of Dr Aideen McGinley, which was tabled today.

I think that it is nine years since Ilex was established. It has had four chairmen and the same number of chief executives. That seems a very large number of chairpersons and chief executives. Paragraphs 4.14 to 4.16 of the Comptroller and Auditor General's report that we were considering in the previous session state that there have been major problems with working relationships, staffing levels, skills, quality of corporate planning, governance and delivery. There seem to be a lot of serious issues with

those with a number of sponsoring Departments. How long have the Departments been aware of these issues, and what have you done about it?

Mr Will Haire (Department for Social Development): Chair, I will lead off on that, as we have a shared accounting role. We are very aware of the challenges that there have been and of their history. The quinquennial review by BDO, which was done last year, made these points very clearly. It pointed to the real problems that the body had in organisational and other terms over the first six years. It pointed out that, with Sir Roy arriving, there had been an improvement in other structures but that the organisation was taking time to bed down.

It also pointed to the issue of two Departments, which comes from the fact that my Department has responsibility for Fort George, which we own, and that Ebrington has been gifted to the Office of the First Minister and deputy First Minister (OFMDFM). I should also point out that Ministers decided at the time that both Departments would act as sponsor. We have produced a lot of joint documentation and processes and have split the work as best we can, but I think that that report and the recent work by the Department of Finance and Personnel (DFP) indicates that we need one Department with a clear line of sight to take a clear lead responsibility. That is an issue that Noel and I are working through. I want to make sure that any clear line of sight is clear for everybody and does not produce more complexities with government.

That said, we have worked together, and since Noel and I have been together in this dual role and since Dr McGinley has been there, we have tried as best we can to make sure that Departments speak with joint voices on these issues, that we combine processes as best we can and that we can simplify processes. However, complexities are thrown up for Ilex that it has to deal with. It is not an easy environment, but we are very conscious of it. As I said, the clear line of sight process, which we hope to conclude in the coming months, will be piloted for the rest of this year, and, next year, one Department will be in a stronger lead role. I think that that will be helpful to Ilex.

The Chairperson: Are you saying that the process will be concluded within the next couple of months? Do you have a date or a time frame for that?

Mr Haire: I have been talking to my finance colleagues, and we hope to conclude the work in the coming months. Obviously, we have to engage with our Ministers to see that they are content with the process. The aim would then be, I understand, to run the organisation in the new way in shadow form for the rest of this financial year but to do the formal process only from April 2013 to ensure that the financial side is right.

The Chairperson: If that is provided to us in writing, we could include it in our report. That would be quite useful.

Mr S Anderson: Dr McGinley, I find paragraph 11(i) of the accounting report totally astonishing. Expenditure on consultancy was £75,000, but the contract was extended to £479,000. That is £404,000 in excess of the original approval, yet DSD was told about that only in November 2011. By that stage, huge amounts of unapproved expenditure had already been incurred. How do you explain what appears to be, quite honestly, a blatant disregard for the rules and for sponsor control?

Dr Aideen McGinley (Ilex Urban Regeneration Company): First, I want to say that I and the board are extremely disappointed at what we have found in the organisation, and we are committed to addressing it. The Peace Bridge project is a very good case in point. That was tendered under the Central Procurement Directorate (CPD) secondary framework back in 2008, and, as an NEC3 contract, the scale of the project and the nature of the consultancy support that was required went from A to C. In other words, it was a better level of project management. I think that that was the right thing, because it made sure that the project itself was run. As you say, the original tender came in very low compared with the final tender, and I know that the Committee is very tasked by the scale of the differences. At the time, it was procedurally correct, and it was possible to extend contracts. It pre-dated a European case in 2008 about reporting of extensions of contracts subsequently, either for re-tendering or going back out. CPD has assured us that there was no breach in procedure. It reflected the change in the nature of the surveillance that we were asking for. However, it was wrong for us to not let the

Department know. We did not find that until we did the review of adherence generally between May and September 2011, and, as soon as I was aware of it, I brought it to the Department's attention.

Mr S Anderson: We are talking about a vast amount of money and consultancy fees of £75,000 that jumped to £400,000-odd. Surely something would have got the alarm bells ringing to make you think, "We cannot not run without approval for this. Someone needs to be told what is wrong and why things went wrong before we forge ahead and do something." There is surely something wrong in the organisation if that was not picked up and acted on.

Dr McGinley: In this case, the contract management was done according to procedures. You are quite right to question the extension. In theory, it was a single tender action (STA), but it could have been classified as a single tender negotiation (STN) and should have had approval. We have had assurances from CPD that we got value for money on the issue. It is against a £13.5 million build of the Peace Bridge, and I am assured about the value for money. I, personally, have a difficulty, and you are quite right about this, as we should have kept the Departments informed of the change in the nature of the contract that led to the increase in the fees. However, the value for money has been agreed. A recent report of yours was on any preponderance for fraud, and my internal audit, which is provided to me by DSD, is looking at this case along with a number of others to satisfy me that no other alarm bells are ringing. I think that that is the point that you are making.

Mr S Anderson: Given that there was such a vast difference, I do not know whether you got value for money.

Dr McGinley: It came in at 3.9% of fees against the capital value, which is under the threshold of what is acceptable for a large capital project.

Mr S Anderson: You have accepted that that was unapproved and should not have happened.

Dr McGinley: We did not report it to the Departments, and that is where we went wrong and why it was unapproved. That should not have happened.

Mr S Anderson: Are you saying that lessons have been learned?

Dr McGinley: Absolutely.

Mr S Anderson: Are procedures now in place so that things like that will not happen again?

Dr McGinley: We have put very formal systems in place for our purchase order procedures and the logging of our business cases. We have looked at literally all our systems. When we discovered a number of issues similar to this, we went right back to basic principles and have now put an action plan in place that reflects what the Departments have subsequently asked us to do. We had a report in March against progress, and our internal audit team told us that they saw some improvements. There is still work to be done, and we will report again in June on the progress of the plan. It is about having a fundamental system of logging business cases and purchase order systems and making them much more robust. That will mean that, literally, work cannot be done without formal approvals.

Mr S Anderson: Is that action plan completed and in place?

Dr McGinley: Yes. We started it in December, and there has been an outworking of some of the actions. For example, as discussed in the previous session, we have implemented procedures for information issues. It will take a while to align our electronic records with our manual records, but we have started that process. So, the actions that we have identified in the plan have all been commenced. Some have been completed, and some are in progress.

Mr S Anderson: When do you hope to complete those actions?

Dr McGinley: By the end of this year. We have completed the actions that we wanted to complete by March, and there will be a further review in June. We have reported to Ministers on our March progress and will report in June on further progress. Our audit committee has set up a special committee, called a governance committee, which meets monthly to scrutinise our progress on issues. The Departments are also assisting us with some of the backlogs to ensure that we meet our targets.

Mr S Anderson: I suppose that that is progress, Chair. That finishes my supplementary questions.

The Chairperson: I ask members to keep their supplementary questions as brief as possible.

Mr Haire: Chair, I want to make one additional point. This is obviously a very serious issue for us. Our Minister has met with the board of Ilex, emphasised the importance of the issue and got a clear statement from the board about the seriousness with which it takes the matter.

Noel and I meet with Dr McGinley and her director of corporate services once a month to go through the action plan and a number of other actions, including a review by the performance and efficiency delivery unit (PEDU) of the governance and other structures in the organisation, to make sure that the processes are correct. There are a range of issues to consider, but, in those meetings, we look at the processes and the capabilities. Until I can assure the Ministers that all those issues are dealt with and are in the blood of Ilex, as it were, that system will be in place.

Mr Copeland: Thank you, Chair. Good afternoon, Dr McGinley. What was the purpose of the first tendering process that led to the acceptance of a tender of £75,000? What was that designed to do? Did the company that won that tender win a £75,000 contract or a £479,000 contract? That is the essential question and is one that some of the other companies that tendered could express an interest in. You have told me that the contract represented value for money, and I have no reason to doubt that. However, the bottom line is that a company was asked to do x, y and z, and it said that it could do it for £75,000. When they got x, y and z with a, b and c tagged on by some external process, the contract ended up at almost half a million pounds.

Secondly, how is it possible to spend half a million pounds when you do not have it? Was that money owed or written off? Did you submit a docket to the Department that it stands over? Again, from my experience in the ubiquitous community groups, I know that you cannot spend tuppence unless you have it. Do you have an overdraft facility?

Dr McGinley: Absolutely not. It is a very good question. The lesson from this is that we should be as sure as we can at the outset of what the requirement is when we go out to tender. The original requirement was for basic design. Subsequently, the scale of the project, which is European funded, increased. The percentage of 3.9% was well within the allowance set by the European funding for the fees against the capital.

Mr Copeland: I do not doubt that. What I am questioning is the attitude that will be taken to all the other companies in Northern Ireland who are hungry for this sort of work and who find themselves excluded from £479,000 of business on the basis of an accepted tender for £75,000.

Dr McGinley: It would not happen now, because the European procedures have changed since the Pissetext case in 2008, insofar as if you were aware of any substantial increase you would have to go back out to tender. At the time, it was acceptable to do that. We have had CPD guidance, and we are still talking to SEUPB about these matters.

You are right: the ideal would have been to go back out to tender. We used the CPD secondary framework, which is, as you know, open to a variety of companies, and there is a call-off. I believe that a couple of companies responded to the tender at the time, and the lowest tender was accepted. The business case cost was slightly larger as well; it was approximately £79,000. However, the fact that the tender came in low, together with the change in the nature of the contract, is what led to the increase in the fees regime.

Again, there are two lessons: first, we should be clear about what we are looking for in our tender at the outset so that we go out to the market in a fair way; secondly, it would not happen now, because even in European terms, the precedent has now been set that in the event of any substantial increase you would be expected to at least consider going back out to the market.

Mr Copeland: I would be more content if it would not happen now because we have learnt the lessons here rather than importing anything from Europe. Can you tell me how you spend money that you do not have?

Dr McGinley: No, this would have been part of the overall contract for the building of the bridge. We would have worked with SEUPB on that element of the spend in the budget that was allowed to us for the building of the bridge. Another thing to mention is the managing of the risk. The existing company had the design, and it was a huge capital infrastructure project. The level of scrutiny that was brought to it was that which was required to ensure the safe provision of the bridge. The technicality is that we should have declared that the schedule had changed and had gone back out to market. Those were some of the factors that were taken into account when the decision was made.

Mr Copeland: Has this happened on many occasions?

Mr Haire: The Committee looked at this issue recently. The issue exists across the system, and we know that there are lessons that we have to learn around that. We have here particular instances reported against Ilex where there have been a range of incidents of misunderstandings around clarity.

The Chairperson: I remind members to be brief with their supplementary questions, because we are probing supplementaries at this stage.

Mr Dallat: Will, you had officials sitting on the board of Ilex. Were they sitting on their hands or were they sleeping? They were bound to know about all this.

Mr Haire: We had observers in that process. The interesting point is that these issues were not being reported. The quality of information was not coming to the board, so it was not getting the insight because reporting was not clear enough. That is interesting, because we have entire systems, and we are getting assurances from the chief executive about all these systems, but the key point is that when Dr McGinley came into the system, the quality of information, as I understand it, coming from the staff who were operating the systems showed that they were not pushing these issues up the system. Therefore, we were getting false information in the process. The lesson that I take from this is that you have to build in the quality of information right from the start.

Mr Dallat: That is important for our report, because it is not just a question of tendering but of information that is flowing right to the top.

I hear many good stories about Ilex. The one criticism here is that perhaps it is not moving fast enough. Is it a question of being damned if you do and damned if you do not? Perhaps things are being held up because you need to get approval from Departments. I am not saying that you should not get that approval, but is that an issue?

Dr McGinley: What we want is performance with compliance. The company has made considerable progress in the past three years, which was recognised in the BDO report; there is some very good development. Will was saying that there were no real alarm bells when I came into the post; we had not really had any qualification on the accounts. Issues had been raised by the Audit Office for the financial year 2009-2010; however, it was October 2011 before those were formalised and there were internal audit issues.

I brought in a gateway review as soon as I started because, as accounting officer, I needed assurance about going into a very different phase for the company. You heard this afternoon about the slow start; we were starting to move into a phase where we had to deliver and I had to assure the Departments and the board that the company was fit to deliver. It has been an iterative process for about the past year and a number of these issues have now emerged. I am confident that we know what has gone

wrong and that we can deal with it. We got it wrong, and we are going to put it right. Part of the dilemma is that it is difficult, but it is essential. We cannot use public money in the wrong way. Part of this is about knowing where we are going from here and doing it.

Mr Dallat: The Peace Bridge is a wonderful project. It symbolises much more than two communities coming together again; it symbolises everything that is right and proper and is a reflection of the future that we want. Unfortunately, that includes questioning the methods of procurement for consultancy fees.

Dr McGinley: More than half-a-million people have been over the bridge since it opened in June.

Mr Dallat: I know; I went there myself and thoroughly enjoyed it.

Mr McQuillan: I appreciate what you said, Dr McGinley, about a lesson being learned, and that you brought it to the Department's attention in November; however, at £404,000 it was a very expensive lesson. Did this take place under the watch of the former chief executive who was on £110,000 a year? Over the two and a half or three years that he was in post, he received £29,500 in bonuses. Is there any clawback there?

Dr McGinley: Some of the issues date back to 2007 and before, and some are on my watch. I am reluctant to comment on the salary or performance of my predecessor.

Mr McQuillan: I did not expect you to, but I thought that the Department might have had something to say.

Mr Haire: My understanding is that the payment there was one where —

Dr McGinley: It was contractual; it was as per the contract agreed with DFP. The payment was made on that basis. Again, the mistake made was that it should have been reported because it was a bonus. No bonuses have been paid in the company since.

Mr McQuillan: It is refreshing to hear that.

Mr McLaughlin: I want to associate myself with the positive comments about the developments, including the Peace Bridge. At a social level, that becomes more and more evident each day. The issue that has been skirted around is the blatant disregard for rules and sponsor control. That has not been addressed at all. I am looking at three senior civil servants. You, Dr McGinley, are a former permanent secretary of two Departments — the Department for Employment and Learning and DCAL. Are we expected to believe that you did not know the absolute duty to report these issues that are now dealt with as unapproved expenditure, or do you expect us to accept that you blatantly disregarded rules that you are completely familiar with?

Dr McGinley: No. There are two things here; one is that, because I have experience at accounting officer level, when I came into the organisation I started with a gateway review. I also did a staffing review, and I introduced a balanced scorecard methodology to improve performance management. I did the basics of what I felt was necessary to make the organisation the best that it could be. One of the things that had been identified was the need for a senior support on corporate affairs. As soon as I got a director in that post, I was able to address forensically some of the issues that had started to emerge. As soon as those issues were addressed, I reported them to the Department and to the Audit Office.

Mr McLaughlin: You came into post knowing that you had a responsibility to get expenditure approved; you did not need the gateway process to tell you that. We assume that, as a permanent secretary, you had the knowledge, experience and skills from your previous appointments. Why were they not applied to this post? You still have not addressed that question for me.

Dr McGinley: That is the second point that I was going to make.

Mr McLaughlin: It was absolutely your responsibility, and you accept that you failed and blatantly disregarded standard practice that every permanent secretary should be completely and absolutely familiar with.

Dr McGinley: I am totally aware and totally committed to being the accounting officer responsible for the stewardship of the funds. I made the mistake in two instances. In the first, the work of the OECD was interpreted as a grant and should have been treated as an STA and reported.

The second involved the City of Culture. I set about working retrospectively to try to regularise that spending. The company took a positive decision to partner the City of Culture competition, because it helped us to realise some of the issues that arose in the earlier evidence session about attracting private-sector investment and other things to the city. After our bid was successful, there was an interim period where we did business cases for smaller items, and the board agreed that we continue in the partnership. It became evident that we had to report to the jury team in October.

Mr McLaughlin: My colleague will come to the City of Culture. I simply want to nail the fact that you came into post with the necessary training, qualifications and experience and blatantly disregarded standard operating procedures on clearing expenditure.

Dr McGinley: No. As soon as I became aware of the issues, I dealt with them as my experience allowed me. I did not know many of the issues when I came into the organisation, but I identified and addressed them.

Mr McLaughlin: No, but you knew that you had to have approval for expenditure. I know that, and I am not a permanent secretary.

Dr McGinley: Yes, absolutely. That is the basic principle.

Mr S Anderson: We have touched slightly on the City of Culture. Paragraph 10(i) of the report deals with the City of Culture expenditure and states that Ilex did not request approval on the grounds of urgency. That does not seem very convincing. How long does it take to prepare and submit a proposal to your sponsoring Departments? Did it not occur to you that if you won the bid you would have to spend money? Did you not think it prudent to flag that up to your sponsor Departments, or were they unaware that Ilex was planning to submit a bid?

Dr McGinley: First, the Departments were very supportive of the bid, as the Executive have been, even recently. We worked with the Departments as we went along. When we won the bid, there was an interim steering group. We identified the work streams with our partners: Derry City Council and the Strategic Investment Board. Winning the bid was unexpected. We were absolutely delighted to have secured what the OECD said is "the" success for the city rather than "a" successful opportunity.

As I explained to Mr McLaughlin, we followed due process on smaller business cases. It was when it became evident that the quantum would exceed my delegated limit that we went wrong. In parallel, we were doing the terms of reference. We appointed external consultants in October to go out between July and October and do the larger business case for the long-term input of £2.2 million. Indeed, the lesson is that there has been no expenditure whatsoever by Ilex on the City of Culture in 2011-12, because we did not have approvals.

I apologise and accept full responsibility. The business case should have been in with the Departments; it should not have become a retrospective matter. I understand why it was not approved; that is where I take responsibility. There were issues, and we had obligations to the jury and to DCMS. We secured events such as the Turner Prize and the Peace One Day concert, we did more than 30 community meetings, we were meeting with business, and we attracted a £3.75 million investment from BT for digital infrastructure during that time. That is not excusable. I can explain but cannot defend what I did. I was aware that I should have had approvals, and it should not have been retrospective. In that instance, I take full responsibility.

Mr S Anderson: You accept full responsibility in this case? You said that when you came into the organisation with your experience you were perhaps just testing the water as you went along to pick up on things. However, in this case, are you telling the Committee that you totally accept that that should not have happened?

Dr McGinley: I am. It should not have happened. I have discussed that lesson with my staff to show that I also should not have got into that position. We have taken it very seriously, and the staff team is fully aware of the need to follow due process. Our theme is performance and compliance; we will not avoid compliance. We want to perform as a company, but we want to do so on a very sound basis. There has been a real lesson personally and corporately.

Mr S Anderson: What is the Department's view? Dr McGinley says that she accepts full responsibility in this case in working with the Department and knowing that she did not have approval.

Mr Haire: In this case, we did not give approval because it was retrospective and we could not do so. However, no more unapproved expenditure has taken place in that area since then. As Dr McGinley said, that is wrong. The key lesson for all of us in managing public funds is that the organisation, along with the supply division of DFP, should have made sure in this process that there was general agreement that if one wins this sort of process, there is agreement on how things go straight away. It was too slow, and Ilex will admit that it did not scope the amount of work that it had to do; it grew very big too rapidly, and it failed. However, the accounting officer has made her position absolutely clear.

Mr Lavery: There is now an oversight board to co-ordinate the funding for the City of Culture and to make sure that business cases are all in place. All the relevant Departments are involved in that, and the Executive have since announced £12.6 million of funding for the City of Culture.

Mr S Anderson: We have established today, Dr McGinley, that when you went to the organisation many issues needed addressed, and it took you some time to address them. However, on the back of that, you are now telling us that perhaps, in this case, you got it wrong even after trying to make the organisation fit for purpose. Is that what you are telling us?

Dr McGinley: That is a good summary.

Mr S Anderson: That is fine. You are openly accepting that, and we have to accept that. We will move on.

Mr Copeland: Dr McGinley, you have been very courageous in coming here and saying that; it is a fair cop. Did anyone have a responsibility to make sure that you could not make those mistakes? What there anyone at a higher level who had oversight of your activities?

Dr McGinley: I report to the board and to the accounting officers in the Departments. However, I am the accounting officer, and I have to accept responsibility; I am the designated accounting officer, and the buck stop here. Noel and Will have described the lesson, and it was learned very quickly. I hasten to add that I was not comfortable, and there were many pressures to do a great deal at the time. However, that is still not a good excuse, but at least we got the business case. Once we went into the next financial year, there was absolutely no spend because I was not going to allow us to get into that situation. Subsequently, the stewardship arrangements, which Noel chairs, will bring in the layer that prevents that happening again.

Mr Copeland: You, as a position, are one thing and you, as a person, are another. The fact that you have been an accounting officer may or may not have given you some inherent advantage. Somebody who had not been an accounting officer could have got the job. Was there something in place to ensure that, whether or not you had experience as an accounting officer, you could not get it wrong when such a set of circumstances happened?

Dr McGinley: I am responsible to the board. However, the measures that I described earlier that we have implemented on purchase ordering and the basics now mean that alarm bells would ring. My

staff would now be able to tell me if we were starting to exceed budgets or over-running. We now have better information, and I hope that we have addressed that gap.

Mr McLaughlin: The City of Culture bid involved Ilex and two other partner organisations, Derry City Council and —

Dr McGinley: The SIB.

Mr McLaughlin: Who is responsible for the City of Culture project now? I understand that there is some incoherence in the management and the decision-making process. That alarms people, including me.

Dr McGinley: Derry City Council is the lead organisation; it has the memorandum with DCMS in London. There is a publicly appointed board that oversees the work of the Culture Company, and there is a very busy —

Mr McLaughlin: You have answered that question.

Dr McGinley: Sorry.

Mr McLaughlin: Ilex expended a quarter of a million of pounds-plus of unapproved expenditure on the City of Culture. What was the total expenditure? What did the partner organisations bring to the table?

Dr McGinley: We picked up the expenditure for that period; indeed, that was part of the dilemma. I was able to secure the funds from my existing baseline and prioritised the City of Culture over other things, because the other partners did not have the resources. I hasten to add that SIB resources tend to be repaid in kind with its expertise, and it has been invaluable in that respect. The council did not have the funds in its baseline. We were in a position to cover the expenditure, but we did not do so correctly.

Mr McLaughlin: You did not seek approval or follow the procedures that you understood so well.

Dr McGinley: No. We completed a business case, but it was not submitted in a timely manner.

Mr McLaughlin: Thank you.

Mr Dallat: Chairperson, we want to produce a report that is useful for the future, and I do not think that it is sufficient simply to say that Aideen McGinley blatantly disregarded protocol. I am reflecting on the television pictures and the enormous pressures that there must have been to get all the professional work done. It was an emotional time, and the whole of Northern Ireland and far beyond backed Derry in its bid for the City of Culture. I am not taking up your position, but, for the future, our report needs to reflect the conditions that you were working under at the time. I share Michael's view that you have been very courageous in coming here and putting your hands up, and I hope that that was not rehearsed.

How can we have a system that would react much more quickly to a situation such as Derry's having the opportunity to win an award that could transform it for ever? What is wrong with a system that put you in the position that you disregarded the protocol for consultancy fees? What element of the £404,000 related to the City of Culture bid?

Dr McGinley: The City of Culture bid cost £254,000, approximately £130,000 of which was for community events and for securing the Tate etc. Approximately £75,000 was set aside to set up the Culture Company, which was done in record time. Again, I am not trying to excuse what happened, but you are right: the quantum and momentum meant that we had to meet some requirements for DCMS in October, and we also had a deadline to have the Culture Company in place. I was perhaps light on internal resources to complete the business case and, perhaps, I should have resourced it externally. However, it can take between six and eight weeks to get external resources. That describes some of the factors, but, again, I am not using those as excuses.

Mr Dallat: Finally, I do not understand the whole workings of Ilex, and, as an outsider, I am envious of some of the things. I do not hear any criticism of the work that was done at St Columb's Cathedral. That went very well. The work at First Presbyterian Church went brilliantly, as did the Guildhall Square project and the Walled City project. Are you working on different models? I know that much of it was done under the integrated development fund.

Dr McGinley: That is right.

Mr Dallat: Did that model create fewer problems?

Dr McGinley: Ilex was responsible for the integrated development fund, and, with £33 million, we delivered about £122 million worth of benefit to the city. Most of the projects that you cited were recipients of funds from the integrated development fund.

Mr Dallat: Yes, I wanted to hear that because I was not sure. The Chairman is looking at me in disgust for spinning this out, but it is important.

Mr Murphy: He thinks that you have been kidnapped and replaced by somebody else.

Mr Dallat: It is important that we go away from here recognising that there were problems, but, having known Aideen McGinley for a long time, I do not think that she blatantly did it. There were other factors, and the report should reflect that.

The Chairperson: I will ask a brief question before I bring Sydney back in. As the accounting officer of that organisation, you have been very honest in saying that this was done and should never have been done. If it had been a member of staff below you, what action would you have taken?

Dr McGinley: We have been much more robust in our performance management and dealt with some difficult issues in the organisation. We have built into everyone's job plan 20% on governance issues, and it would have been addressed as part of the performance-appraisal process. I had a discussion with the chairman of the company on my performance appraisal. Hands up, I accepted that I did not perform on that front by sticking to the rules.

The Chairperson: Would you have gone through any other procedure to take action against an individual who was below your grade?

Dr McGinley: When necessary, we have done so on several issues. We take performance management very seriously.

The Chairperson: You said that you spoke to the chairperson. Did the chairperson come up with any other decision? Was there any procedure to go through?

Dr McGinley: I made him aware of what had happened, and, obviously, he did not condone it in any way. I appreciate Mr Dallat's intervention —

The Chairperson: I am sure that you do.

Dr McGinley: Absolutely. The chairman recognised the similar pressures, and we set about ensuring that it would not recur. Hence, there is no expenditure in this current year. The lesson was learnt.

Mr S Anderson: Fiona, are any procedures available to organisations such as Ilex to seek approval for spending in situations where an urgent response is important?

Ms Fiona Hamill (Treasury Officer of Accounts): If you are talking about where there is a need to make an urgent decision, the answer is yes. The principles of 'Managing Public Money' must be followed; however, 'Managing Public Money' is also clear that if an accounting officer considers that they need to

resolve an issue quickly, they should do so directly, in this case with the sponsor body and with DFP. Several mechanisms can be brought into play in those circumstances. Noel referred to one in the previous session when he mentioned the ministerial direction for Shackleton. Actions can be taken, and there is a way to deal with the short-term approval cover that would be required to allow the business cases to proceed.

Mr S Anderson: Therefore there was a procedure that Dr McGinley could have availed herself of in that case.

Ms Hamill: Yes.

Dr McGinley: It was a matter of timeliness. During that period, we did not bring the business case to the Departments quickly enough to enable them to make a decision. It was a matter of about four or five months. We should have brought it to the Departments on a more timely basis.

Mr S Anderson: You have been very open and honest about the organisation from the start, and you have accepted your position on not seeking approval. I know that there are procedures to prevent it from happening again, although I hope that it does not.

Mr McLaughlin: Turning to paragraphs 27 and 28 of the report, Dr McGinley, why did Ilex feel that it was appropriate to appoint a new director on a salary of £80,000, when the normal starting salary for that grade would have been about £57,000?

Dr McGinley: The company designated that post as far back as 2007. Indeed, the board agreed the post in 2008, and the Departments approved it in March 2010. With the help of SIB, we went out to the market, and it was felt that the nature of the post was such that it needed international experience. We had 20 applicants, seven of whom were shortlisted, and the list was further reduced to four. One of the applicants was not interviewed, because their salary scale exceeded the salary range.

Mr McLaughlin: The point that I am getting at is that you did not submit a business case. If, in your view, the existing salary level was too low, according to the memorandum under which Ilex operates, you would have been required to seek prior approval again and to submit a business case to argue for and get support for an increased salary.

Dr McGinley: We got actuarial advice on the post and put a case to the Department, which considered it. However, there was something that we did not do, which I think that we probably should have sought approval for. We had a grant from the Department of Arts, Heritage and the Gaeltacht in the South, reflecting the cross-border nature of some of the work. That meant that the actual expenditure to the public purse in Northern Ireland was within the minimum range of the scale. Therefore, it was interpreted that there was no issue. However, we now recognise that even getting that additional resource of £20,000 should have been reported to DFP.

Mr McLaughlin: You did not actually know that? Even with your background and experience, you did not realise that you needed to submit a business case to pay an enhanced salary?

Dr McGinley: We worked closely with the Department on this issue.

Mr Haire: The point is that that was submitted to the Department at the time.

Dr McGinley: Yes, it was submitted in August.

Mr Haire: There was a failure in the Department to understand it. Someone read that the salary was at the lower level and that the cost to the exchequer in the North was at the lower end. The Department should have gone to DFP to argue the case, and there was a failure in that Department to do that. However, Dr McGinley apprised the Department of that issue.

Mr McLaughlin: What really alarms me is that, up to now, I have been dealing with one former permanent secretary who was disregarding guidance, but now I am being told that two permanent secretaries were in difficulty about following procedures.

Mr Haire: The situation was that the permanent secretary did not know about this issue because it was not —

Mr McLaughlin: Is that not why you get paid so much money? Are you not supposed to know all this?

Mr Haire: Omniscience is not one of our qualities, as you know. The point is that our systems failed. We should have known about it, and the Department should have reported the matter to DFP. We put our hands up on that issue. Somebody misread the information about the cost to the exchequer. The point is that this could have been seen as contentious and the rules should have therefore said that the matter should have been referred to DFP. That was an anomaly in the Department.

Mr McLaughlin: Let me clear this up between you and Dr McGinley. Was a business case submitted? You said that it was raised, which might be a different thing. Was a business case submitted?

Dr McGinley: We submitted a submission. It would not have —

Mr McLaughlin: Sorry; was a business case submitted?

Dr McGinley: It would not have constituted a business case, but actuarial advice was included to justify the salary. It was within the delegated limits. The interpretation by officials at the time was that we were offering the candidate the lower end — the minimum — of the scale and that we had sought resource to allow the enhancement on the actuarial advice. That is the piece —

Mr McLaughlin: I understand the thought processes. I want to be clear in my conclusion that a business case was not submitted, although you knew that it should have been.

Dr McGinley: There was an actuarial —

Mr McLaughlin: Was there a business case? That is all I am asking.

Dr McGinley: It was not a formal business case; it was actuarial advice.

Mr McLaughlin: Thank you. Could we, perhaps, move on?

Mr Murphy: Can I just ask one question? The money from the Department of Arts, Heritage and the Gaeltacht was specifically for the post, but you could assume that it was almost sleight of hand for —

Dr McGinley: Yes —

Mr Murphy: If you would let me finish. I do not mean that it was almost sleight of hand for you and the Department to say that the money was always going towards contributions to that salary. However, you then disregarded it and went with the lower level of salary that was available to you.

Dr McGinley: If I can explain, that particular post was crucial to the bid, even in the run-up to the City of Culture award. It was one thing that the jury was seeking the appointment of. As part of the bid process, we had been in discussion with our colleagues in the South of Ireland, who were very supportive of the bid. When it became clear that we could not make an appointment on the salary scale, we had already had the interviews, and it became clear that two candidates were suitable for appointment, both of whom were at the top end of the scale.

We did not offer any posts, and we did not do anything until we went to the Department in the South and said that we wished to secure the post holder at that salary. It offered and said that it would be content to make a contribution, because it saw the benefit of cross-border cultural relations. It was on

that basis that we secured the additional resource to be able to secure the candidate. We would have made no appointment to that post and would have had to go back out to the market. This was the culmination of the extensive recruitment selection exercise that we had already had.

Mr Murphy: It just strikes me as a bit strange that someone was recruited on the basis of a certain salary, and the two candidates that you end up with wanted a bigger salary. You then dipped in to a supporting agency, which was the Department in the South, and got the top-up that was required to pay that salary. How fair was that to all the people who were looking at the process from the application at the start and at what was available for the post?

Dr McGinley: The salary range was £57,000 to £80,000; it was in the grade 5 range. Candidates would have been made aware of that. The ad did not specify that; it invited applications and expressions of interest, so it was wide open in the marketplace, and any candidate who applied was told the salary range. The actuarial advice was based on post holders' existing circumstances, because we would not have offered anything over and above the norm unless that was where the post holder was starting from.

Mr Murphy: Sorry, I have just one final point to make. If your salary range was up to that level, why did you need to go to the Department in the South for a top-up?

Dr McGinley: The minimum of the range is now more or less the standard of what is offered. That has become the norm.

Mr Murphy: It seems slightly misleading to offer a salary range if you are going to get only the bottom end.

Mr McLaughlin: We will move on to another subject — the tax and national insurance contributions that were paid on behalf of the chairperson. That amounted to some £30,735. Did you consider that to be a novel or contentious issue on which you should get advice from the sponsor Departments?

Dr McGinley: That dated from July 2009 to October 2011. The advice that we got from HMRC was that the liability was placed on the company. Again, that shows that the advice that we got was that the liability was for the company, and I think that the Departments recognised that and were working with the Audit Office on this ongoing issue. There is also Cabinet Office guidance that shows that it is the Department's responsibility to make this payment. So, it was on that basis that we proceeded to make the payment.

Mr Lavery: If I can just come in there, Mr McLaughlin. The Cabinet Office guidance concerns independent board members. The question is whether that applies to board members, and we are consulting with DFP on that. We think that this could have implications for board members elsewhere in the public sector.

Mr McLaughlin: Of course it does. There is a considerable amount of disquiet at the level of remuneration and performance bonuses that do not seem to be related to performance and expenses. On this issue, travel expenses were paid to the individual, and the company paid the tax and national insurance contributions. That seems to be an absolutely wonderful sweetheart deal. I would have thought that it should have been challenged in Ilex as opposed to simply being complied with.

Dr McGinley: We were in discussions with HMRC from July 2009 to October 2011. It took a considerable amount of time to resolve the issue, because, as Noel said, there is a potential precedent in it. If we had not acted on the payment, we would potentially have been fined the equivalent amount, so we had to make a judgement. The liability was on the company, and that was the advice that we were given. We negotiated down from a figure of potentially £56,000 to £30,000 with HMRC. There was a long process of negotiation, and I think that there is an issue going forward.

Mr McLaughlin: Was adjudication of responsibility or liability established in discussions with the revenue authorities?

Dr McGinley: Yes, and also through the legal advice that we sought.

Mr McLaughlin: Is it possible that we could have sight of that advice?

Dr McGinley: Certainly.

Mr S Anderson: Were the tax and national insurance contributions on travelling expenses?

Dr McGinley: It was on travelling expenses over four years.

Mr S Anderson: What did the travelling expenses come to if those payments amounted to almost £31,000? What travelling expenses were paid out?

Dr McGinley: I can give you the figures. I do not have them added up. The figure involved other expenses; it would have been out-of-pocket expenses if the chairman was staying. It was expenses in general, not just —

Mr S Anderson: Can we get those figures from you? Can you forward them?

Dr McGinley: Certainly. They are in the annual accounts, which are in the public domain. There is no problem in doing that.

Mr S Anderson: It seems that £31,000 is a lot of money for tax and national insurance contributions in comparison with what was actually paid.

Mr McLaughlin: Before we depart from that issue, the expenses were paid on an ongoing basis. They were being paid in full to the chairperson. Does that mean that Ilex was operating on the assumption all along that the chairperson would look after his own national insurance and tax liabilities, or was Ilex operating on the basis that it was going to have to pick up the tab, which it eventually did?

Dr McGinley: That is one point that needs to be clarified for the post that is currently being advertised. The Departments are looking at that. There was nothing in the contract —

Mr McLaughlin: The entire claims for travel expenses, the detail of which would be very interesting, were paid 100% by Ilex. Was that done on the assumption that the chairperson would then look after tax and national insurance liabilities, or was it done on the assumption that Ilex would subsequently have to pick up the bill, which amounted to £30,000?

Dr McGinley: It was all around the interpretation of travel to work and where your home base is.

Mr McLaughlin: Sorry; I understand that, but who, all along, was to be responsible for paying the tax and national insurance? Was it the chairperson, out of the expenses that were paid over by Ilex, or was Ilex coming in behind that, so that the chairperson departed with whatever the amount was for travel and other expenses that were claimed, but, when the bill emerged, Ilex would pick up the tab for tax and national insurance?

Dr McGinley: The chairman was recompensed for actual out-of-pocket expenses. It then became a taxation issue about the interpretation of whether he was an employee and where the place of work and the home base were. We will be happy to give you a further, more detailed note to explain it, because it is quite a technical issue.

Mr Lavery: I suspect, Mr McLaughlin, that nobody was thinking about any tax implications of the travel —

Mr McLaughlin: Nobody was.

Mr Lavery: It was not an issue at the time.

The Chairperson: The chairman won.

Mr Lavery: The Cabinet Office guidelines state:

"we have entered into special arrangements with HM Revenue and Customs, which mean we can effectively pay the tax on your behalf."

Mr McLaughlin: Nobody anticipated it; nobody rang the alarm bell. Who picks up the tax and national insurance liabilities for the travel expenses of senior civil servants?

Mr Dallat: Do not go there.

Mr McLaughlin: I am just wondering why nobody thought of it.

The Chairperson: The Treasury Officer of Accounts may be able to comment on that.

Ms Hamill: To clarify, the travel and subsistence rates set by the Civil Service are negotiated with HMRC to be tax exempt. Any non-business travel and subsistence payments are made through pay and are taxed at the normal rate.

Mr McLaughlin: Thank you for that clarification; that was helpful. That was really only an aside for me about how we arrived at the situation and how we always seem to deal with situations post facto. That leads me to my final question. Paragraph 17 refers to the role of the sponsor Departments in ensuring that Ilex is fully aware of the spending control process. Can you explain the steps that the respective Departments have taken over the past few years to ensure that Ilex understood the spending control rules?

Mr Haire: Over many years and at different times, Ilex has been provided with a series of training courses on different aspects of the spending control rules. In my time, as we worked on various elements of consultancy, training courses were provided, and my economists and internal audit people ensured that Ilex's staff members were trained in those processes. As you said, our responsibilities are referred to in paragraph 17, and we explained those to the Audit Office.

The key element for me is that you can do those things, but you really have to go in deep, get a good quality of training and put structures and systems in place to change the processes. We have seen that with the new systems that Ilex has put in place for the purchasing order system and the enhanced role of the director of corporate services, who, in essence, watches all the expenditures and ensures that all the approvals are in place. As part of his role, he makes a monthly report to us to give us the quality assurance that he is tasked with and to ensure that all those things are being done effectively. The process is a combination of all those elements.

On 19 April, the entire board and staff of Ilex went through the report, looked at every case and identified the failures in the processes. Bespoke training was then given. This is an issue for which you have to constantly ensure that the systems and the training are right. That is where we are the moment.

Mr Lavery: A breach of approvals is, by definition, a breach. One of the key controls that Ilex has put in place is the mapping of expenditure against each approval. That means that it is able to track each approval letter, the conditions in each approval and the expenditure. That should deal with the core issues. Through the stewardship statements, the Departments get confirmation that all approvals are in place on drawdown and expenditure.

I want to link that to Mr Dallat's point about boards. The Departments are represented on Ilex's audit committee, which plays an important monitoring role. It is expected that the board's audit committee would deal with governance and delivery through its governance assurance processes, and we want to control those. As Will said, we also have a monthly meeting with the Ilex accounting officer.

Mr McLaughlin: Given the material and information that we have before us, that is positive. However, it begs the question: could and should the responsible Departments have acted sooner?

Mr Haire: We were very shocked by the report. We thought that we had the systems in place, as we had done the training in the past. It comes back to the point that we did not have the quality of information that would have told us that the approvals were not being dealt with. We have had very tough discussions in the system about why that was not happening, and we now have the assurance of a director of corporate services, who is deputy chief executive to Dr McGinley, working on that. We have had very tough discussions, and our Minister has had very clear discussions with the board, such as the importance of the issue. The question that we have to ask is a bit like Rumsfeld's "known and unknowns", and we have to reflect on the reason why. That is certainly a big issue for Noel and me.

Mr McLaughlin: You will be glad to hear that I am finishing my questions. Are the two Departments now confident that the action plan that Ilex has devised will resolve these issues and meet its objectives? The question that underpins that is the existence of an oversight board. How unusual and uncomfortable is the fact that an oversight board is required in these circumstances?

Dr McGinley: If I can explain, the oversight board that Noel referred to is the one for the City of Culture. As a company, we have tightened up on project management very significantly, so we now have an oversight board over the two sites. So, there are project boards for each of the sites and an oversight board on which the Department is represented. That tightens up our project management.

The Departments have asked for further oversight, as the delegated limits have been reduced from £150,000 to £100,000. PEDU's work, which will be starting shortly, is a further test to see that we are doing what we said we were going to do. We got this wrong, and we are putting it right. I am here to explain, but there are things that I cannot defend. I am confident that we now know what it is that we have to do, and, as a company, we need to be in good shape. We have a lot of things to do for the city and a lot of very exciting things to be delivered on the two sites and through the One Plan. We need to regain the trust and confidence of this Committee, the Assembly, our sponsor Departments, but, most importantly, the city. As a board and as a staff, that is what we are determined to do.

Mr Haire: Mr McLaughlin, you asked how often this is done, but when I went to the Department of Education, I inherited a situation in which two education and library boards had faced problems, and such a regime was required for a year. In fact subsequently, I had to bring a board back into this regime. As Dr McGinley said, it is difficult and it takes up a lot of time in everybody's diary, as well as a lot of focus, but it is necessary, because these things should not happen. The system should work. If it does not work —

Mr McLaughlin: Outside the timeline that is defined in this report, have those new oversight arrangements informed you of other problems that have happened after the report was compiled and that are now coming down to us? I am getting indications that there are other issues that are not reflected in this report but that reflect the character of the mistakes and misjudgements that have been made.

Dr McGinley: One point to note is that we will have qualified accounts for the next two years because of the irregularity of the expenditure. As you know, once the spend is declared irregular, the subsequent spend of any description is irregular; therefore, we will have the qualification of accounts. My assurance is that there will be no new departures from the line that has been drawn by this report. That is what we are aiming to achieve.

Mr McLaughlin: Let me be specific and go back to my question, because I really am trying to get finished. I have information that there is an issue with the electricity supply of the parade ground, which is to be used as an open-air site and performance area. The issue is that that supply may have been underspecified. These examples are outside the scope of this report, but they reflect the unfortunate history. The parade ground was initially intended to be a grassed area, and a contractor was in position. I presume, as I have no information saying otherwise, that the procurement process was satisfactory. The contractor was preparing the ground for a grassed area and was putting in subsoil and whatever, and there was a change of plan. It was decided to change it to a gravelled area.

The contractor involved, somehow, and clearly from within the system, was alerted to the fact that there had been a change of job specification. Immediately, a convoy of lorries turned up to complete the subsoil process and the preparation for the grassed area, and the same convoy of lorries was used to take the soil back out again because of the decision to put in a gravel surface. In other words, a contractor was paid to prepare the ground for a grassed area and got the word in advance so pretty much completed the process, but the same contractor was used to dig it all back out again because there was a change of plan. We have only heard about that. Can you enlighten us today?

Dr McGinley: Absolutely. The references to the changes in the contract for the parade ground relate to what you just described, Mr McLaughlin. The contract for the parade ground went through all the proper protocols and procedures, and the business case was approved. That was all part of a larger project in three parts. I will deal with the electricity as well.

The three parts were the parade ground, the car park and infrastructural works. The parade ground was to be a grassed area with a change of surface. It was an undulating surface that was much more like a parkland. A couple of planning situations arose. We had work done by Space Syntax, which showed that the plan for the parade ground was not the most favourable. The original business case had looked at hard surfacing, but that would have cost £1.6 million more, so it went for the lower option, which was the grass.

We went back to the Department. The board felt quite concerned that, once we had won the City of Culture bid, the nature of the use of the parade ground changed, because we needed a large-scale event space for which grass would not have been suitable, never mind a change of surface, for health and safety reasons and even for vehicular access for large trucks coming in for events and so forth.

The board did an extra piece of work and went back to the Department to see whether we could get an extra £1 million to change the surface. The Department did not have the resource, so we went back to the original business case, and we treated it as a compensation event within the original case. The grass was nowhere near being laid. There were some savings, and we will be negotiating the final contract price in the next couple of weeks. I do not want to get into too much detail, because I do not want to lose my opportunity to negotiate, but I can assure you that the subsurface that was installed for the grass was also suitable for the surface that we have now. What you are describing is entirely in the report.

A myth has emerged about the electricity at Ebrington. I referred to the infrastructure works, and, given the fees issue, we have stopped work on the car park and the infrastructure works. We are working with the Departments to compile a revised business case. The electricity will be dealt with as part of the infrastructure works. Originally, an issue came to light that caused people to worry, but I do not know where that came from, because I can show minutes dating back two years to CPD, which has assured us that what we need to do for City of Culture can be done. If we lit up Ebrington completely as it will be in the next 10 years, we would need additional infrastructure for electricity. For the next two or three years, for the projects that are planned, we do not have any issues about electricity.

The Chairperson: You will be glad to hear that that is it for now. Other people may want to write to us, because there are other issues out there, but we will take all that on board. We may request other information from you, which is just standard practice. It has been a long day, especially for you, Noel, but you did get a short break, so you can count yourself lucky. Thank you very much, Will and Dr McGinley.