



Northern Ireland  
Assembly

Committee for Culture, Arts and Leisure

# OFFICIAL REPORT (Hansard)

Public Accounts Committee and Northern Ireland  
Audit Office Reports on DCAL and Sport NI:  
DCAL Briefing

13 March 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for Culture, Arts and Leisure

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**Members present for all or part of the proceedings:**

Mr William Irwin (Deputy Chairperson)  
Mr David Hilditch  
Mr William Humphrey  
Ms Rosaleen McCorley  
Mr Basil McCrea  
Mrs Karen McKeivitt  
Mr Oliver McMullan  
Mr Cathal Ó hOisín

**Witnesses:**

Ms Deborah Brown	Department of Culture, Arts and Leisure
Mr Peter May	Department of Culture, Arts and Leisure
Ms Sinéad McCartan	Department of Culture, Arts and Leisure

**The Deputy Chairperson:** I welcome to the meeting Peter May, who is the permanent secretary in DCAL, Deborah Brown, who is the director of finance and corporate services, and Sinéad McCartan, who is the head of sports branch. This session will be recorded by Hansard. I invite you to make your opening statement.

**Mr Peter May (Department of Culture, Arts and Leisure):** Thank you very much. We welcome the opportunity to come before the Committee this morning to address two issues: the Audit Office and Public Accounts Committee (PAC) reports on major capital projects and the Audit Office report on St Colman's. Although the issues raised are, in many ways, distinct, there are overlapping aspects. I will start by addressing the PAC and Audit Office reports on major capital projects.

We have welcomed the reports and accepted the recommendations, acknowledging that some aspects fall to DFP rather than DCAL. I am confident that those recommendations that fall to DCAL will be implemented by April 2014. Seven of the nine Audit Office recommendations have been completed, with the remaining two being partially implemented, and seven of the eight PAC recommendations have been fully implemented, with one being partially implemented. We recognise that implementation is not a one-off process. It is critical that we continue to follow through, that we learn when things do not go perfectly and that we ensure that the spirit of the recommendations remains alive in both detail and in its arm's-length bodies (ALBs).

I do not intend to cover all the ground that the PAC has already covered, but I want to draw out some of the key changes that have been made as a result of the two reports. First, DCAL requires all capital projects, using a proportionate approach, to adhere to the best practice project delivery arrangements

set out in the Achieving Excellence in Construction initiative. Secondly, DCAL and its ALBs have changed their relationship with the Central Procurement Directorate (CPD). Our engagement is now in line with best practice and means that CPD is involved earlier in the drafting of business cases and in the procurement process, that it attends all relevant meetings relating to procurement and that it continues to work with the project during the construction phase. Thirdly, the Department is working to ensure that everybody has got the message. In December, we drew together senior representatives from our arm's-length bodies to set out the conclusions from the PAC report and to discuss its implications. CPD attended and provided presentations, and, in addition, we will provide training to relevant staff in the Department and in our arm's-length bodies to ensure that the right skills and awareness are in place. Fourthly, we have taken steps to complete a range of outstanding post-project evaluations, recognising that, on occasion, it has been difficult to get information from third parties. We have cleared the vast majority of overdue post-project evaluations. Fifthly, we have changed our practices in relation to the holding of information so that 10 years will be the period for which any tender information is held after a procurement exercise. In summary, on the PAC and Audit Office reports on major capital projects, I highlight that the changes that we have made have been in relation to systems, to roles and responsibilities, to training and to culture.

Turning to St Colman's, I know that you have already heard from the chief executive of Sport NI, but I highlight initially that the project commenced in July 2010 at about the time that the other major capital projects were coming to a close and well before the Audit Office began its investigation into those projects. That timing may explain why some of the same problems were experienced in the St Colman's project as had been experienced in the major capital projects.

The question that I particularly want to address in relation to St Colman's is how I, as accounting officer, this Committee and others can have confidence that similar difficulties will not arise in future. It is clear that the management of the St Colman's project was unacceptable in a range of ways, as has been drawn out by the Audit Office. Although my predecessor and I, as the accounting officer in DCAL, have overall responsibility, a significant part of the problems in this project rested with Sport NI. It was of particular concern that DCAL was not informed in this case of the issues with the project until far too late, contrary to long-standing requirements.

The Committee will understand that the question of how you can be sure that that will not happen in future is critical, but it is a difficult question to answer with certainty. A range of factors can inform such a judgement. First, Sport NI has accepted responsibility and has already implemented the four Audit Office recommendations on St Colman's. They have rehearsed to this Committee and to the Department the lessons that they have learned from the problems that arose and how they will ensure that they do not happen again. Moreover, they have done that in an open and transparent way. As I said earlier, culture matters significantly.

The Department has seen a change in the nature of the communication with Sport NI on governance issues. There is now greater openness and greater willingness to notify and speak to the Department to check out whether an issue requires the Department to intervene, to draw attention to any departures from project timescales or costs and to operate in a more collaborative way. In taking those steps, it is important that we recognise that there should be no obscuring of roles. For projects within its delegated limit, Sport NI remains responsible and accountable. Where a project such as St Colman's requires the approval of the Department, the conditions of any approval, when granted, must be observed.

In relation to the problems that emerged from St Colman's, before the Audit Office initiated its report, Sport NI had put in place a governance review by the Chartered Institute of Public Finance and Accountancy (CIPFA) in 2012, which made a wide range of recommendations. A follow-up to that review demonstrated that good progress has been made, and Sport NI now reports in respect of that review that all but one of the 34 recommendations have been fully implemented. The one outstanding recommendation requires time for the risk-management process in the organisation to be properly embedded before it can be sensibly reviewed.

The Department has developed its approach to governance, placing responsibility on the board of Sport NI and, indeed, on all our arm's-length bodies to provide assurance that they are exercising oversight of the executive team and that returns from the executive team are full and complete so far as they are aware.

We have regular accountability meetings, and we attend audit committee meetings and have sight of all papers and minutes. They all reinforce the overall impression of each of our bodies. Through the audit committee attendance, we also have sight of internal audit reports. We have a regular peer

review of the internal audit of each arm's-length body. In the case of Sport NI, pending a structural review, the chief executive is procuring internal audit from outside the organisation for 2014-15.

Importantly — in this case, there is a clear linkage to the other major capital projects — St Colman's drew out that multiple funders generate issues in relation to roles and responsibilities. Implementation of the Audit Office recommendations means that, where multiple funders are involved, clear processes will be followed to ensure that each signs off at all important stages of the project.

Mr Deputy Chair, I wanted to give a reasonably full introduction to set out the ways in which we have addressed the recommendations and to highlight that it is not simply a change in processes but about ensuring that people have the right skills, that organisations have the right culture and that roles and responsibilities are clear. I know that you and Committee members will have questions; my colleagues and I will do our best to respond to them.

**The Deputy Chairperson:** OK, thank you very much. On capital projects, the Department denies that there was any rigging or manipulation surrounding tendering for reconstruction of the Lyric. How does the Department describe what occurred?

**Mr May:** The position that I adopted when I was before the Public Accounts Committee last summer is that I have not seen evidence to support the allegation of rigging or manipulation. We would take such evidence very seriously and refer it to the appropriate authority. In my terms, an allegation of rigging is essentially an allegation of criminal conspiracy. We would want to make sure that any such breach of procurement law would be properly investigated.

As I rehearsed with the Public Accounts Committee, it is clear that there were failings in the Lyric procurement. The fact that the tenders themselves do not exist because they were destroyed by the consultants managing the process is unfortunate. There is a tender report that exists and which has been properly reviewed by a range of people. However, the tenders themselves do not exist. The conflict of interest procedures that the Lyric adopted were not sufficient; there were some, but they were not sufficient. Changes have been made in that respect. There were things that were not done right. However, that is still short of saying that there is evidence that would support an allegation of rigging or manipulation.

**The Deputy Chairperson:** Normally, consultants are the experts in the field. Do you feel that those consultants did not do their job properly?

**Mr May:** I am not aware of any evidence that they did not do their job properly in managing the procurement process. What they did not do was retain the tenders. That followed what, I think, is common practice in the private sector, which is different from the public sector. They ought to have been required to hold the tenders for at least seven years. We have now said that they should hold them for 10 years in line with public sector practice, just to be sure. It was an oversight that that was not required of the consultants.

**The Deputy Chairperson:** Considering St Colman's and the redevelopment of the sports stadiums, can the Department give any assurances that similar issues will not occur again?

**Mr May:** That is the critical question. In my opening remarks, I tried to address some of the factors that we take into account. We look at the overall governance arrangements; our engagement with Sport NI; Sport NI's engagement with its executive; and the procedures that it has in place. Sport NI has changed both its risk management approach and its fraud management policy and has ensured that the organisation has gone through training on its fraud response arrangements.

I believe that Sport NI has understood the nature of the difficulties that were faced from the St Colman's project and has acted to ensure that there is no repetition. However, as I said in my opening remarks, assurance and governance are not a one-step process where you say that it is all done. Continual vigilance is required. The Department will play its part to ensure that it remains vigilant in relation to the arrangements that are in place in both Sport NI and in our other arm's-length bodies.

**Mr Humphrey:** Good morning. Thank you very much for your presentation. I have read the reports and the Department's recommendations. Mr May, do you, as a permanent secretary, believe that the Central Procurement Directorate is still the best, most efficient and most effective way of procuring in the Civil Service?

**Mr May:** That is a big question that takes me way outside the detail of the reports. I would answer it by saying that CPD provides professional procurement support for all Northern Ireland Civil Service Departments. We have sought to ensure that we have proper working relationships with CPD, underpinned by a service level agreement that we monitor on an ongoing basis. We believe that we are getting a good service from CPD on the projects that we are running.

It is hard for me to make a judgement about whether there is a better way of delivering procurement than CPD. I do not have a model in my back pocket that would easily replace it. That would be a major change for the Civil Service. Significant thought and consideration would be needed before going down that path.

**Mr Humphrey:** So, you believe that you get a good service. However, the question was this: do you believe that it is the most efficient and effective way for taxpayers' money to be spent to procure services, products or capital investment for the Civil Service?

**Mr May:** I appreciate that I did not answer your question fully. What I said was that I do not have in my back pocket an alternative model that would clearly be better. On that basis, I am extremely happy to continue to use the service provided by CPD.

**Mr Humphrey:** To be honest, when I read reports like these, I am not sure how you can be extremely happy. Surely, permanent secretaries across government in Northern Ireland, including the head of the Civil Service, should be looking at this issue. I am not sure that CPD does provide the most effective and efficient way for taxpayers' money to be spent on procuring services, and I think that the Civil Service should be looking at that.

**Mr May:** The vast majority of the recommendations in both reports do not show failings on the part of CPD. They are, significantly, failings on the part either of the Department or one of its arm's-length bodies. That is unfortunate, and I am before the Committee to explain it. However, it is only fair to recognise that.

**Mr Humphrey:** Recommendation 2 from the Department states:

*"Inaccurate cost estimates undermine effective appraisal and the achievement of value for money and public bodies must, therefore, do more to ensure that cost estimates are realistic."*

**Mr May:** The issue there was that, when the major capital projects were being developed, at the outline business case stage between 2002 and 2007 some of those outline business cases were being finalised on the basis of incomplete information. CPD was not being involved sufficiently early in the process for its expertise and guidance to be offered. One of the changes that we have made is to involve it earlier in the process to ensure that we have more robust figures at outline business case stage.

**Mr Humphrey:** Following on from one of the points that the Deputy Chair made, does this open up Sport NI, the Department or the Civil Service to potential legal action? With that recommendation not being carried through, people might say that what was actually delivered was not what was put out there as a tender for people to respond to. In fact, if you look at the debacle that was St Colman's, there was a considerably greater spend than there needed to be; yes?

**Mr May:** I am not sure specifically which area you are referring to around legal action. However, in relation to St Colman's, the amount that was spent —

**Mr Humphrey:** To clarify: companies put in tenders that were for a greater amount than the successful company, but, then, when it comes to actual delivery of the project, the valuations that, at the tender process rendered those companies successful and ruled out their competitors, turned out to be more expensive.

**Mr May:** I understand. Thank you for that. In relation to St Colman's, the amount that was spent was the amount that was budgeted. The difference was that not as much was delivered as was in the original specifications, so there was a move from eight lanes to six lanes, for example, and one or two other changes to the scope of the project. That could give rise to the same issue. I am just explaining the background.

Any firm has the legal right to take action if it wishes. None has done so in this case. However, we are all mindful, and that is why we seek to follow procurement law and guidance to the full extent, of the risks of legal action, whether that action be sustainable or not.

**Mr Humphrey:** Mr May, with respect, as for the track being reduced from eight lanes to six, and your statement about extra money spent on the tender, when the lanes are reduced by two and it cannot be used for international competition because of that, that is a serious issue and shows that the tender process in this project and in this case did not work at all. It actually ended up costing the taxpayer and the rate payer probably more money.

**Mr May:** I have accepted that there were failings in this case. I think that the main failing was around the specification in the outline business case and the attribution of costs. I am not clear that there was a failure in the tender process that means that the wrong person was given the contract. I have seen no evidence to suggest that.

**Mr Humphrey:** This is key, given your evidence this morning on the post-project evaluations. I think that I read in the report that in at least one project there was concern in the Department that there was a lack of expertise around the delivery of post-project evaluations. In relation to the three stadia, where there are huge expenditures for the Department coming up, will that post-project evaluation expertise be available to the Department to ensure that issues such as St Colman's are not replicated? All the recommendations are fine and will make the Civil Service, your Department and Sport NI more robust — I will come on to Sport NI in a moment — but can you assure the Committee that that expertise will be there for those post-project evaluations?

**Mr May:** In relation to the three stadia specifically, yes, absolutely. We will ensure that proper post-project evaluations are completed. Post-project evaluations are normally done some time after the completion of a build. I do not have the timescales in my head, but we could write to you to let you know when they are envisaged.

**Mr Humphrey:** Were all the members of the audit committee of Sport NI, which is an arm's-length body of your Department, trained to the requisite standard?

**Mr May:** That is a question that I cannot answer factually today. Perhaps I could write to the Committee with the answer.

**Mr Humphrey:** Thank you. I appreciate that. Can I ask for your assurance that if they were not, they will be in future?

**Mr May:** I can give you an assurance that the audit committees of Sport NI and our other arm's-length bodies have received appropriate training now. What I do not know is what was in place at the time that St Colman's kicked off in 2010-2011. That is what I wanted to check.

**Mr Humphrey:** It was universally accepted across the parties when Sport NI and the Audit Office were before the Committee that we had real concerns and were appalled to hear that practices and procedures were not in place. That meant that the situation around the investment at St Colman's and the project there had the outcome that it did.

**Mr May:** I absolutely understand the Committee's concerns about St Colman's and more widely. I will write to the Committee about the point on audit committee members at the time.

**Mrs McKeivitt:** Thank you addressing the Committee. I want to go back to something that Mr Humphreys raised about the tendering process for the Lyric. Can you evaluate what you see as a tender? When a tender process is put in place, contractors declare that they may be interested in tendering for a job. They are all given a job specification, and there is a fair, open and transparent way in which all the tendering can be processed. Do you agree that that happened for the Lyric?

**Mr May:** Yes. I think that it is clear that it did.

**Ms Deborah Brown (Department of Culture, Arts and Leisure):** Yes. A gateway health check was done that concluded that a robust tendering process was followed.

**Mrs McKeivitt:** OK. Can you explain to me as a layperson why the report of the Public Accounts Committee states:

*"The private sector consultants who produced the tender evaluation report destroyed the tendering documentation very promptly after the tender evaluation meeting"?*

**Mr May:** As I said earlier, it is common practice in the private sector for tenders not to be retained for any length of time after procurement has been completed. We ought to have stipulated that it was a condition or requirement on the consultants to hold that information, but we did not do so in that case. That was an error.

**Mrs McKeivitt:** Do you think that there is an open door for the other contractors who put in tenders to take legal action against the Department?

**Mr May:** In the first instance, it would not be against the Department. However, they would have had the opportunity to take legal action at the time if they had had concerns about the process. Deborah mentioned the gateway review, and there are other factors that provide some assurance. They do not provide complete assurance, because not all the paperwork exists. The assessment panel was broadly based, with a wide range of individuals with professional skills; it was not simply representatives of the Lyric. CPD had been involved in the procurement process, and, although it was not represented at the meeting that determined the outcome of the tender, it had confidence in the tender process. An internal audit report found the overall approach to tendering to be in line with best practice. Then there was the gateway health check that stated that it had found a robust tendering process. All those provide some assurance. I agree that they do not go the whole way, but they are relevant.

**Mrs McKeivitt:** I do not understand the tendering process, but this document indicates that one submission was further adjusted and that others were not. However, there is no proof or follow-up information for others to look at it because the documentation has been destroyed.

**Mr May:** In relation to that point, which I think goes to the scaffolding costs that were attributed to the programme, the Public Accounts Committee asked for further information, and it was provided with a series of e-mails that showed that all the firms were asked about their scaffolding costs, and that Committee was shown the replies from those firms. I know that that matter is before the Public Accounts Committee. The information exists in the e-mails, and it has been provided.

**Mrs McKeivitt:** Let me turn to the St Colman's College project. You spoke about how Sport NI came to the Committee in an open and transparent way. Do you think that it was open and transparent when the Chief Executive said that she would reflect on an apology to a journalist?

**Mr May:** That is a matter for the chief executive of Sport NI. What I described was the way in which Sport NI took responsibility for the problems that existed in St Colman's and the steps that it had taken on the four Audit Office recommendations. I was not being specific to its attendance at the Committee; I was also referring to our engagement with it on the follow-up to St Colman's.

**Mrs McKeivitt:** Were any of the recommendations made to Sport NI made previously by a different inquiry but were not followed?

**Mr May:** In relation to the four specific Audit Office recommendations, I am not clear that they had been brought forward before. What may be at the root of your question relates to a previous incident, involving Ulster Camogie, where Sport NI did not follow the fraud policy properly. It is true that in the case of St Colman's, once again, Sport NI did not follow the fraud policy correctly. However, it has put in place a new and better fraud policy and has ensured training throughout the organisation. It is critical for us and others that we should have assurance that it will not happen again.

**Mrs McKeivitt:** As an arm's-length body, Sport NI did not know the serious effect that the removal of a high jump from the project at St Colman's would have. Do you think that is acceptable, given that Sport NI was one of the leading funders?

**Mr May:** Clearly, it is not acceptable. I think that the executive team will recognise, without it being explained, that that was not acceptable, and it had not taken the oversight needed for that decision, which led to some bad decisions about the use of public money.

**Mr Hilditch:** You are very welcome. Peter, you mentioned changes in CPD about the use of consultants and third parties and that you experienced difficulty getting information. Over the years, I have sat on a few project teams involving DCAL issues. Thank God I do not do that all the time because it is a headache; of that there is absolutely no doubt. I do not envy your positions at all. However, there is a bigger picture in two areas. At the end of the day, it is about how consultants are managed. My experience of working with consultants is not great. It is hard work at times, and it takes a robust system to manage it.

My other concern is the treatment of whistle-blowers in the Civil Service and, in this case, specifically in DCAL. We cannot go back, and we are where we are with the thing. Will you reassure me that, as the Department moves forward, there will be robust management of consultancy and third parties?

**Mr May:** Thank you for the question. You have highlighted two important areas. Consultants are generally brought in to provide expertise to a project or programme where that does not exist in-house. However, there needs to be a sufficiently intelligent customer role in the Department to make sure that expertise is managed properly and that the contract is set up properly in the first place — it is not open-ended. That is an ongoing challenge for all Departments, not least DCAL. We have robust mechanisms in place. We seek to avoid using consultants wherever we can, but there are times when it is appropriate and necessary, particularly —

**Mr Hilditch:** Sorry. In the course of this case, were there about four different consultants engaged at various levels?

**Mr May:** I do not know whether you are referring to the Lyric, where there were several consultants.

**Mr Hilditch:** I am talking about the sports grounds one.

**Mr May:** Right. To involve consultants at different stages can make it harder to hold them to account, but you sometimes need different sorts of skills brought in by different organisations. It is not necessarily the answer to get just one organisation to deliver —

**Mr Hilditch:** Consultancy is probably one of our biggest businesses in Northern Ireland; they are trying to ensure that they get the work. I am not saying that they cut corners or change things to suit, but there is a difficulty with managing them. That is all I see at the minute.

**Mr May:** It is something that we work hard to overcome.

**Ms Brown:** We involve CPD in the management of consultants. The issue is in how the contract is set up from the outset; making sure that they are monitored carefully against that; and if there are any issues that they are addressed when they occur and are not left to much later in the process when it is much more difficult to take appropriate action.

**Mr Hilditch:** I see from personal experience the difficulties that there are in working with third parties outside the Department. There is no doubt about that. On whistle-blowers, then?

**Mr May:** We have done quite a lot of work on whistle-blowers to make sure that we have an appropriate policy and that everyone is properly trained in how to take it forward. St Colman's, where there was a failure of the fraud policy, emphasises the importance of that. We have, I believe, robust processes in place. We have used them where whistle-blowers have come forward. I think that we have used them effectively, but, as I said before, that is something that you have to continue to work at. It is important to get the right balance to ensure that you protect whistle-blowers but avoid a presumption of guilt against those against whom allegations are made. It is about making sure that we have a process that is fair to all concerned.

**Mr B McCrea:** Can you explain to me why neither a representative of CPD nor DCAL attended the tender evaluation meeting with regard to the Lyric Theatre?

**Mr May:** I think that the date of the meeting was changed and CPD was not able to field a representative. That practice has now changed and we have made it clear — CPD has accepted it — that it will always attend such meetings going forward. The Department did not see its presence as being critical. The Department was not the procurement expert for that, so it would have had an oversight role but not the expertise — at that time — to assess whether it was being done properly.



**Mr B McCrea:** So, what do you make of the fact on page 144 of the NIAO report on the tender evaluation process? I do not know whether you have the same pack that I have; it is at page 144 in my pack.

**Mr May:** I have the Audit Office report on major capital projects.

**Mr B McCrea:** Figure 11 on page 44 of the NIAO report summary of the tender evaluation process has a column for "Adjusted tender price". In the column for "Contractor B", it states:

*"tender report incorrectly states adjusted price as £10,076,029".*

In actual fact, it was £11,076,009. In fact, apart from the winning contractor, all the adjusted tender prices were wrong.

**Mr May:** OK.

**Mr B McCrea:** I just wonder how you can do a tender report or be involved with such sums and not have a representative present, and neither did CPD. This entire process looks like being incorrect.

**Mr May:** The fact that some of the numbers in the various tenders did not add up to the number at the bottom is not that uncommon. It is important that there is a level playing field, as it were, and that the right price is recognised before the evaluation is done. That was taken forward in this case by the consultants running the procurement process. I accept that it would have been better if CPD had been present at the relevant meeting, but my understanding is that these sorts of adjustments are not unusual.

**Mr B McCrea:** The NIAO noted that variances were allowed for scaffolding. Similar variances were allowed for staff, but a similar approach was not taken with regard to staff. The allegation is that £347,915 was removed from the Gilbert Ash tender but that that opportunity was not given to other people. That does seem to be a rather significant adjustment, given that it is also offsetting the £413,000 taken out for scaffolding. These were the numbers that turned the decision on who was going to win the contract at the tender evaluation stage. It just seems to be really strange that such large numbers were moving around and nobody was saying that they were concerned about it.

**Mr May:** Any adjustments that were being made would have been fully rehearsed with the panel that was set up. As I explained, that was a broadly based panel, I think of seven people, representing a wide range of interests, including relevant professional skills. That is the background to how that would have happened. It is not that it would have happened in a way that was invisible. Clearly, if CPD had been present, it would have been able to validate that in a way that it is not now able to. That is part of the problem that existed.

**Mr B McCrea:** Although CPD is useful for giving you advice, the Department would still be the central funder.

**Mr May:** The money in this case, I think, was coming from the Arts Council, but, yes, the Arts Council and the Department were joint investment decision-makers. The Department would have heard the explanations. The point I was making was that it would not necessarily have had the professional expertise to know whether those were the right explanations, which is why the role of CPD is important in this case.

**Mr B McCrea:** So, was there any point in having the Department there?

**Mr May:** There is a purpose in being there, but it is not sufficient.

**Mr B McCrea:** We talk about expertise and managing large capital projects. We will come to the St Colman's project in a moment. Surely the Department must have some expertise in evaluating tenders and how the money is spent, given that it ultimately comes from it.

**Mr May:** In a range of areas, the Department will evaluate tenders itself, using CPD's advice for projects that it is running. The point is that there is a very wide range of capital projects, and the Department does not have expertise in how to build a theatre or a new sports stadium. It brings in

expertise for that purpose. So, it is important that we do not set ourselves up to be experts in a very wide range of fields where it is not possible to be so, and when experts exist in those fields and are present at the —

**Mr B McCrea:** OK. So, let us take something non-technical. Paragraph 38 of the PAC report states "rigged and manipulated". This is the statement, and I would like your response to it:

*"The preferred bidder provided a donation of £150,000 to the Lyric Theatre."*

Was that donation acceptable?

**Mr May:** The conflict-of-interest procedures were not sufficient in this case. There is evidence of a clear separation regarding how the Lyric sought that donation — it also got a donation from one of the unsuccessful bidders — from the team that was running the procurement. Nonetheless, there was not a recognition of how it might look in the public mind, and perception is important in these cases. So, there are now more developed conflict-of-interest procedures in place.

**Mr B McCrea:** I accept your point that it was not followed and should be followed. Having had a chance to evaluate the situation, is the Department confident that there was no inappropriate relationship, in relation to the £150,000, with regard to the awarding of the tender?

**Mr May:** I have no evidence to suggest any impropriety.

**Mr B McCrea:** The PAC is suggesting that there is some evidence of impropriety. It refers to "unacceptable departures" from established good practice, and it has given a list. So, I am asking you the question because it reflects on the professional and public integrity of some very senior people within the Lyric Theatre. Those people have been doing a very good job, but their integrity is called into question. Do you support the integrity of the people within the Lyric Theatre, or do you think that it needs to be investigated further?

**Mr May:** If further evidence comes to light that casts doubt on either that particular donation or the tender process, that should be investigated further. However, in the absence of that information, I am not clear what could be brought forward.

**Mr B McCrea:** Are you investigating it further?

**Mr May:** Not at this stage. If there is further information. That is why we have asked the Public Accounts Committee whether it has any information that it can draw to our attention.

**Mr B McCrea:** This is my last point on this issue. The PAC report states:

*"Despite £413,000 being stripped out from one of the tenders, this cost was later paid in full".*

**Mr May:** All scaffolding costs were removed from all five bids. That is not to say that scaffolding would not be needed for the project. The belief was that different bidders had used very different bases for including the costs for scaffolding. I understand the fact that the original cost that Gilbert Ash had offered was paid in full, because its cost was higher than others, makes it look as though it was in some way inappropriate. I am not clear that that is the case. I do not have the detail about how the scaffolding costs were decided after the tender process.

**Mr B McCrea:** OK. I move to the St Colman's project. The nub of the presentation made to us by the NIAO was that there were three failings. One was that the requirements were incompletely put together and that there was a weakness in that submission. The second was that the journalist who made inquiries was not responded to and was essentially correct in what he had said. The final thing was that the internal audit procedures failed, I think, on three occasions. That is the nub of what was wrong with that submission. Who was the first person in the Department to realise that there was a problem with the St Colman's bid?

**Mr May:** The issues were raised with us in —

**Ms Brown:** March 2012.

**Mr May:** I am not sure which person was notified of them, but I am sure that it would have come through to —

**Ms Brown:** The whistle-blower sent the letter into the Department as well.

**Mr B McCrea:** I am sorry that I cannot remember the name; that is why I had to ask. However, there was a statement in the NIAO's possession that said that, when it went to the Department, somebody — it may not have been the accounting officer, and I am just asking whether it was Sinéad, Deborah or somebody else — came back and said, "No, there is a problem here".

**Mr May:** Once the Department received the whistle-blowing letter, it took a series of steps to make sure that it was being properly examined and considered. Had the Audit Office not being going to do its own report, we would have put in our own internal audit, because we had not been satisfied with the completeness of the responses that we had received.

**Mr B McCrea:** You said that arm's-length bodies and others will get proper training. What will they be trained in regarding people in internal audit being asked to investigate their boss?

**Mr May:** There are clear procedures. Any internal audit function should report appropriately to the audit and risk committee, which has independent board members —

**Mr B McCrea:** This particular lady was being asked to investigate the chair of the audit committee, and the NIAO report said that that was unfair pressure to put on anybody. Your Department must be putting procedures in place and saying, "Where you feel that there is a conflict of interest with an internal audit, here is the procedure that you go through".

**Mr May:** In this case, reports had been done, including one, as you say, by the chair of the audit and risk committee. Essentially, the wrong order was followed. The internal audit should have been invited to do work in the first instance, rather than any board member being invited to look at the issues. However, yes, there are clear escalation procedures in place that mean that this situation would not occur again. It would be reported to an audit and risk committee, and, at that stage, the Department would ensure —

**Mr B McCrea:** I do not know whether this is what you have done, but there are two things that I would like to see. One is that you need to disseminate to all and sundry guidance that states that, where a person is asked to do something that they do not think is right, it has to be referred to a higher authority. It should not be seen as whistle-blowing for an internal auditor to say, "I cannot do it". It needs to be understood that that is the proper way of dealing with these issues. Has that been put out? Secondly, you talk about this meeting at which everybody is trained. How detailed is the training on this issue?

**Mr May:** The training relates to whistle-blowing and fraud rather than internal audit. There is different training for professionals in the internal audit field. On Sport NI specifically, I know that the chief executive has already moved to having internal audit reporting directly to her. As I explained in my opening remarks, she is also seeking to procure from an external provider the internal audit function in 2014-15 while she does a structural review within the organisation.

**Mr B McCrea:** I, nor this Committee, have a remit with her, but we can talk to you.

**Mr May:** Sorry, I am just explaining some of the background about why you can take some assurance that the same would not happen where —

**Mr B McCrea:** Mrs McKeivitt brought up the point that, at this Committee, we asked the chief executive about an apology, which she was reflecting upon but has not yet given. It is my impression that she has not yet accepted that Sport NI or NI Sport — which way around is it?

**Mr May:** Sport NI.

**Mr B McCrea:** So, it is NI screen and Sport NI. Sport NI has not really taken onboard what has been said.

At the start of the meeting, I raised with the Deputy Chair the point that there was a series of emails from the journalist asking for information about what was done. The response to most of those was that the information requested is exempt because it is privileged and whatever. I have not met the journalist, but, given that he was largely correct on a lot of these issues, there needs to be a proper acceptance that it is right and proper for people to ask questions about procurement issues, particularly when they go wrong. I am not sure that that message has genuinely got through to the arm's-length body. The only person who I can talk to about it is you, and what I am asking you is this: how do you go and deal with, first, the issue of appropriate internal audit reviews, because, let us be honest, it failed three times?

**Mr May:** The internal audit failed. There was only one internal audit report, but there were three separate reports within Sport NI, none of which was viewed to be sufficient; I accept that.

**Mr B McCrea:** They were not only not sufficient; they failed.

**Mr May:** They were inadequate, yes.

**Mr B McCrea:** That is Civil Service speak. They failed, because there was a complete disaster. The systems should have worked, and the systems did not work. You, as the accounting officer, need to ensure that there is a chain of command, because it will end up back with you. Antoinette said that, if this happens again, there will be no excuses and no whatever. Her organisation would be in really serious trouble, but, Peter, the Department would also be. You need to reassure us that you are going to deal with that.

Secondly, we need a policy whereby we can be more open with people who ask for information. We cannot come back and say that we are not going to give them any information, particularly when they have been adjudged by independent people to have been largely correct in their early assessments. You need to manage that.

**Mr May:** On the latter point, there are very clear escalation procedures in response to any freedom of information request from any individual, whether it be a journalist or anyone else, who is not comfortable. They can ask for an internal review initially. They can then appeal to the Information Commissioner's Office if they remain unhappy with the way in which any exemption has been applied. My understanding is that some of the issues here relate to legal professional privilege. Those issues need to be explored and that escalation procedure gone through. In a moment, regarding the escalation process, I will ask Deborah to say a little bit more about how we can give you confidence that the right procedures are in place.

The problem here was that the right fraud response was not initiated on receipt of the whistle-blowing letter. Everything flowed from that. The steps that we have been taking are to ensure that that cannot happen again. However, there are clear procedures in place whereby, if there is a conflict and the internal audit function is not able to sensibly perform that function, the Department will do so, or, where it is a fraud investigation, we will use the Department of Agriculture and Rural Development's central investigation service (CIS) to do so. We have gone through those escalation procedures effectively in other cases. Do you want to add to that, Deborah?

**Ms Brown:** We have a very clear whistle-blowing policy. We have a very clear fraud response policy. We accept that there were failings in Sport NI with not recognising this properly from the outset as a suspected fraud. Consequently, it was not dealt with in that way. We have had assurances from Sport NI. We have met Sport NI on a number of occasions to ensure that it fully understands the steps that should be taken and that we should also be involving, as Peter said, DARD's CIS, who are experts in fraud investigations. That is the process that should have been followed in this case. As I said, we have received assurances that it will not happen again and that staff have been appropriately trained.

We have shared the lessons from both these reports with our arm's-length bodies. We are working on some capital guidance. However, absolutely, given the member's comments this morning, we will be making sure that we get these messages to our other arm's-length bodies to ensure that they understand that, when it comes in as a whistle-blower, it is treated as such; that they invoke their fraud response plan immediately and inform the Department; and that, if they are unclear about any of the steps that need to be taken, we are here to assist and advise as appropriate.

**Mr B McCrea:** So, the last question is just — *[Interruption.]* Who said that? I heard that.

**The Deputy Chairperson:** I think that you have had a fair hearing. Other members want to ask questions.

**Mr B McCrea:** OK.

**Ms McCorley:** Go raibh maith agat, a Chathaoirleach. Thanks for the presentation. I will not go on for too long; most of it has been covered. What I really am concerned about is how this is perceived in the public eye, how many things have been got wrong in the one case and how that creates a picture that something is maybe really wrong. It is very easy to get the impression that something was happening here that was almost illegal, or, at the very least, inappropriate. I am thinking about how a person in a low position in an organisation would be sacked for much, much less than what has gone on here. I think that the public will say that it is a case of the higher up you go and the bigger your mistake, the more you can get away with, and it looks like that. What you do to dispel those kinds of views that people will have and which I think are valid? What disciplinary procedures have been taken against any individuals in any of these cases?

**Mr May:** Thank you for the question, and you are right to highlight the issue. There is a clear process whereby people go through their annual reporting and have judgements made about their performance at all levels through the organisation right up to chief executive. My understanding is that this issue of St Colman's, for example, was reflected through that process. I do not believe that any disciplinary action flowed from that, and I assume that, in that case, a decision was taken that the threshold for disciplinary action was not met. I understand why you asked the question. There has, of course, been quite a significant change in the board and with the chief executive of Sport NI since these events took place, and, therefore, we are dealing with a historical issue rather than necessarily with the individuals who were in post at that time. That makes it a bit more awkward to make those judgements now about what could or should have been done in 2012.

**Ms McCorley:** Yes, but all of that does nothing to inspire public confidence. There is nothing there that tells me that this will not happen again. You will have the passage of time and people will be gone, and you will be left in the same situation. I just think that anybody looking in will be saying that it is depressing. It strikes of grave injustice when you consider the people who failed to get the tender and possibly should have done above Gilbert Ash all the ensuing things that happened.

**Mr May:** The issue about the tender relates to the Lyric, which was sponsored by the Arts Council and DCAL, rather than the St Colman's project. Very significant steps have been taken since St Colman's. I mentioned the governance review that was conducted by CIPFA and a very wide range of recommendations that were taken forward. I also talked about the different nature of the engagement that we now have with Sport NI than we had previously. I know that Sinéad attends regularly meetings of the audit committee and the board. Sinéad, do you want to say something about the nature of that engagement and so on?

**Ms Sinéad McCartan (Department of Culture, Arts and Leisure):** The Department has in place a number of formal mechanisms that determine the nature of the relationship with Sport NI in the context of the management statement and financial memorandum, but it is the degree of communication and engagement underpinning those formal mechanisms that speak to the quality of that relationship, which has improved since the occurrence of the St Colman's project and some of the recommendations coming out of the governance review. That is because there is a better understanding of the rationale and the nature of the formal mechanisms, and Sport NI and DCAL have taken on significant ongoing work since 2012 to re-establish relationships and build confidence and trust through improved communications. In my role, I can attest to an improvement in the regularity and quality of communication with the Department at an operational level, and, at a strategic level, I have experienced a greater sense of partnership working in agreeing and reporting issues of strategic opportunity and collaborative risk management. As Peter said, I have sat as an observer on the audit committee, and I can advise the Committee of the level of business engagement by the board and, indeed, the tone of the meetings, where challenge of the executive is welcomed. This is a positive indicator of effective performance management, so we are seeing a cultural change and an improvement in relationships.

**Ms McCorley:** In a general sense then, how can you allay public concerns about procurement procedures in any of your procurement practices? How can you assure the public that everybody has a fair opportunity to tender and that applications will be dealt with fairly? The perception of that is not there.

**Mr May:** That is a perception that may go beyond just DCAL. Clearly, we have our part to play in that, and we try to make sure that we absolutely follow the right processes as set out in law and the processes that the Civil Service has in place in order to make sure there is a regularity and a clarity about the process. In my experience, any contractor who felt that they had not been given a fair crack of the whip would not be slow to seek legal recourse. We have seen that with some procurement exercises, but we did not see it regarding the Lyric or St Colman's. That is the obvious recourse that any individual has if they feel that the process has not been fair.

**Mr McMullan:** I will be reasonably brief. Regarding the St Colman's thing, I was quite pleased to hear from the new chief executive when she came before the Committee and admitted that there were failings. She said that changes would be put in place and things would be looked at differently in future. Having read through the report, we could talk today and tomorrow about some of the failings recorded in it, and some of them are quite startling. However, we are where we are with that and we have to get over it; we cannot do anything about that.

The word "confidence" has been used here, and that is something that needs to be put back in again by the Department and by everybody here. The link has to be put back into the chain again so that there cannot be any failings. I believe passionately that, if consultants or whoever they are transgress, they should not be put back on the list of tenders nor should they be permitted to do work for the Department again. There has to be something there, and that is a way of showing confidence that you are cracking the whip. I believe that you are doing that. There was too much pressure to spend money in the financial year. Getting the money spent was one of the main driving forces in this project.

**Mr May:** You are right to make your last point. The Government, by and large, work on the basis that money has to be spent in the year that it is allocated to, which means that all public bodies need to be very vigilant in the way they manage their resources. Certainly, DCAL tries to ensure that it spends the vast majority of its money, and no more than that, within any given year. I know that there has been criticism in the past, rightly, from members about the fact that there had been too great a level of underspend, which leads to money potentially not being used to revitalise the economy or produce the benefits that are needed. You are right. There is a balance there, and we should make sure that the money is going to be spent appropriately and properly within the year. It is not just about getting the money spent but, equally, it is right that there should be an onus on us to try to ensure that we spend what we have allocated to us and try to maximise the benefits to the community that accrue from that. That is the balance that we are always trying to manage.

**Mr McMullan:** Just to finish, anybody who is promising money should provide a letter of comfort along with that offer to say that the money is there. It is too easy for somebody to say that they are putting so much into the pot and for that to be used in a business case, whereas, in fact, there is no legal obligation to go ahead with that. Something like that should be put in as a check and balance mechanism, because it is too easy to say it as part of a tender or a business case. There is nothing to stop that at all in any part of any tendering process.

This is a bad story that we are looking at, but it in no way mirrors the vast majority of good stories that exist, with the benefits that they provide to the community. That should come out of here as well; it is not all doom and gloom. The schemes that are going through around sport, such as the stadia projects, are well ahead of the game, and we are the envy of quite a lot of people. We will learn from this and it will make us even better going into the future.

**The Deputy Chairperson:** We have one last quick question from Mr Humphrey.

**Mr Humphrey:** It is not so much a question; it is just a point that I would like to make. There is an irony in what we have discussed in the past hour or so regarding Sport NI. All of us in our constituencies will have worked with community groups or sporting organisations and amateur clubs that are run by volunteers who are committed and give of their time daily and nightly, many of them four or five nights a week. However, if every "i" is not dotted and every "t" is not crossed by those volunteers in those clubs, money is not allocated or it is withheld or withdrawn. There needs to be an understanding of the capacity in those clubs. I would like to think that a more common-sense approach will emerge out of this, because it is really not acceptable that, when people are trained and work hard to work with young people in various sporting codes and disciplines, they are expected to have this capacity that clearly is not in the organisation that demands that they have it. There needs to be a more common-sense approach.

**Mr May:** I absolutely understand the tension that exists there. On the one hand, we want to require that the right standards be set so that we know public money is going to be spent appropriately. We recognise, otherwise, the damage to public confidence and so forth that will flow from that. Equally, Sport NI recognises the important fact that it does not merely have a policing role; it also needs to have a developmental role. I heard Antoinette McKeown talking about the fact that she wants Sport NI to become even more an organisation that will be out trying to assist those who are looking for funding in order to understand what is required and to enable them to have the capacity to attract funding. That is a good direction of travel, but the proof of the pudding is in the eating, so it is a question of whether that can be delivered.

**Mr Humphrey:** It is about the practical implementation of that.

**Mr May:** We need to maintain some standards as well, otherwise there are risks.

**Mr Humphrey:** Thanks.

**The Deputy Chairperson:** Thank you very much for your presentation. I wish you well.