



Northern Ireland
Assembly

Concurrent Committee of the Committee for
Enterprise, Trade and Investment and the
Committee for Justice

OFFICIAL REPORT (Hansard)

Northern Ireland Community Safety College

20 March 2014

NORTHERN IRELAND ASSEMBLY

Concurrent Committee of the Committee for Enterprise, Trade and Investment and the Committee for Justice

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Sammy Douglas
Mr Gordon Dunne
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Mr Raymond McCartney
Ms Rosaleen McCorley
Mr Fearghal McKinney
Mrs Sandra Overend
Mr Jim Wells

Witnesses:

Mr Brendan Smyth	Department of Health, Social Services and Public Safety
Ms Rosemary Crawford	Department of Justice
Interim Deputy Chief Constable	Police Service of Northern Ireland
Alistair Finlay	

The Chairperson: I welcome the interim Deputy Chief Constable, Alistair Finlay, who is now the chair of the programme board. Congratulations on your appointment as interim Deputy Chief Constable and commiserations on your role as chair of the programme board. Alistair is joined by Brendan Smyth from health estates and Rosemary Crawford, the deputy director of the Department of Justice's policing policy and strategy division. This meeting is being broadcast and will be recorded by Hansard. The report of the meeting will be published in due course. I will hand over to Mr Finlay to make some opening comments, after which I will open it up to members for questions, and we will try to engage constructively on the issue.

Interim Deputy Chief Constable Alistair Finlay (Police Service of Northern Ireland): Thanks very much, Chair. We are very pleased to be here, and we will try to assist the Committees with the current position of the programme to deliver the Northern Ireland Community Safety College at Desertcreat. The key message from the outset is that the procurement process for the building is still live and ongoing. This means that the detailed information and values remain commercially confidential. As members of the Justice Committee will be aware from previous evidence given by my predecessor in

this role, Judith Gillespie, that means that the litigation issue with the design team, Perkins+Will, also remains alive. Again, that process precludes full detail being shared at this stage if we are to realise the ambition of the fullest recovery for the public purse.

I am aware that the Justice Committee has followed these events closely and took evidence on three occasions last year. I am also conscious that members of the ETI Committee maybe have not had such an opportunity, so I propose to give a short oversight to contextualise how we got to where we are today.

The invitation to tender to build the college was issued between September and December 2012. In December 2012, the tenderers identified an issue with the works cost limit. They recognised that they could not supply the building as specified according to the limit that had been put on it in the invitation to tender. That caused the programme board to task the design team to re-cost. Very quickly, it found that it had made errors and that there was more than £30 million in additional costs than had initially been indicated. That created issues of professional competence, confidence and liability issues surrounding the design team.

In December 2012, the works cost limit was removed and the requirement for a bill of reductions process was introduced and accepted by all the tenderers. The submission date was extended to 21 December because of those changes. Eventually, five tenders were received with a price that was to be valid for one year.

In January 2013, work began on the bill of reductions — the work to bring the building specification down to manageable limits from where we had found it to be with the design team's errors. Work also began on revising the business case, because it had clearly been founded on different values from those that we had found for the building.

Tender evaluation took place from January to March 2013, which identified the preferred bidder-designate, now known to be FGP. In June 2013, the addendum to the business case was completed and submitted to the Department of Justice and DHSSPS for approval. That moved on into October, when the Executive approved the business case for transmission to DFP. In December 2013, the business case was approved by DFP and the preferred bidder was appointed. The preferred bidder had held the price for a year, as was required in the procurement process, and confirmed that it would hold that price for a further six months to June of this year.

Between January and March this year, the project team engaged with the preferred bidder on the detail of the project, with a timetable to achieve a contract for signature in May with on-site scheduled for June. That takes us to where we are with current events.

On 11 March, we held a programme board meeting in the morning and there was nothing untoward at that meeting. There was evidence of a strong commitment to the project from the preferred bidder, and it had spent a significant amount of its own funds undertaking site investigations. However, it was noted that the preferred bidder was indicating that its supply chain was a bit slow in submitting the estimates that were required to formulate the final contract.

On the afternoon of 11 March, the project team had a planned meeting with the preferred bidder at which the preferred bidder intimated that the subcontractor prices that were being returned to it were above its estimates and that it was looking like too big a challenge to hold its price. Later that day, it supplied a working document to illustrate the issues.

In the procurement process, holding the price is absolutely fundamental. If that price cannot be held, it is no longer a valid tender. The preferred bidder was contacted formally later that day and asked to conform whether it was indeed the position that it was not holding its price.

On 12 March, we held an extraordinary meeting of the programme board to discuss the issue, which concluded that we that we could not really take any matters further forward until we heard from the preferred bidder. On 13 March, the preferred bidder replied in writing to confirm that it was still standing by its tender, but this position does not sit comfortably with the cost information that it provided in its working document earlier in the week. The programme board was updated and, on 17 March, there was a face-to-face meeting with the preferred bidder. This concluded that there would be further cost-analysis work on the bill of reductions — those elements of about £20 million that had been taken out of the original specification. This is ongoing, and a further meeting is scheduled for early next between the preferred bidder and the project team to clarify the position, once armed with the information from the costing meeting.

On 18 March, the steering group, as part of the governance of the overall programme, met and considered the position, including scenario planning. Those scenarios include methods of continuing the procurement should the preferred bidder be unable to hold its price, noting, however, that, in that case, there would be a requirement for further business case approval, assessment of value for money and Executive approval. That would incur a considerable delay should that occur.

Should the preferred bidder continue to be in the position that it is currently stating to us — that it can hold the tender price — the process to achieve full business case approval, Executive approval and signing of the contract can still be achieved in the planned timelines, provided that the necessary approvals are given expeditiously. That is where we sit. If there is an issue with the preferred bidder being able to hold the price, we will look at what the cause of that is.

At the November meeting of the Justice Committee on this issue, Mr Wells commented on the rising costs in the construction industry, and that appears to be at the heart of the issue. The construction industry in Northern Ireland has significantly changed in the recent past. The very big contractors have been agile and have adapted to the market. It now appears that the bulk of their business is in GB, particularly the south-east of England, an area which has something of a housing and development boom and major infrastructure projects. The number of suppliers and subcontractors in Northern Ireland has reduced. Some have ceased trading due to economics, and competition is different. There is less capacity, and much of that capacity is supporting the contracts in Great Britain. This appears to mean that the capacity in Northern Ireland has reduced and that the cost has risen from that which informed the preferred bidder at its tender time. This, indeed, may be an issue for other construction projects costed over the same period.

I must emphasise in finishing that the steering group and the programme board remain fully committed to delivering an integrated training solution for the three services. The needs for those three services still exist; they have not changed. The existing facilities are tiring. This current process remains alive, and the ambition is to deliver this programme.

Chair, I trust that that is a helpful start, and we are happy to take detailed questions from members.

The Chairperson: Thank you. I ask members to take their mobile phones, if they have not been switched off, off the tables and away from the microphones, because I can hear the interference from them. Mr Dickson, there is a seat here for you beside Mr Maginness if you wish to join us.

Mr Dickson: I am not staying for very long.

The Chairperson: OK. I appreciate that.

Mr Finlay, £20 million in cost reductions was identified the previous time that there was a failure by the design team. In the region of £30 million was underestimated, and £20 million was found by way of reduction. I think that around 500 areas were identified right down to doorknobs to get a reduction to the £20 million mark. Additional money had to be found, and that was achieved, to allow it to progress. Now, you are indicating that the supply chain has indicated to the preferred bidder that the estimation around the costs are now, in the words that I think you used, "too big a price". Are you able to quantify exactly the figure that supply chain has indicated is too big a price?

Interim Deputy Chief Constable Finlay: I cannot indicate the exact pricing. We can say that it looks like there is somewhere in the region of a 24% increase coming through on some of the costs.

The Chairperson: Is that 24% of the construction costs as they have moved up to? You can correct me here. They were around £103 million, and there was £10 million more of construction. So, the construction costs were sitting at around £113 million, as I understand it. Is the new pressure 24% of the new construction costs? Obviously, that is somewhere in the region of £25 million.

Interim Deputy Chief Constable Finlay: That is not far away from the estimates, as we understand it. As we said, we have some working figures. Basically, it is some arithmetic from the preferred bidder; it has indicated to us the issues that it is facing. At the moment, it has not formally indicated that it cannot deliver the project for the tender price. That is why we are at odds. We have two conflicting bits of information: one that it describes as a working document; and one that is a formal document, which says that it is holding to its commitment to the tender price.

The Chairperson: As of March 13, it said that it is still going to hold to its tender price.

Interim Deputy Chief Constable Finlay: That is the current position.

The Chairperson: So, is it going to absorb that pressure.

Interim Deputy Chief Constable Finlay: That is to be teased out in the further meetings next week. At the moment, the potential gap looks like a large one. I suggest that it will be too big a gap for an economic operator to just absorb.

The Chairperson: You mentioned the rising costs of construction. You indicated that it agreed to hold its tender price for, initially, 12 months. It then extended it by another six months, which took you up to June last year. If the project had been managed better from the start, would we be facing this problem in the first case?

Interim Deputy Chief Constable Finlay: There are a couple of things. The first is the commitment that we have seen from the preferred bidder. The amount of investment it has put in to site investigations and other work suggests that there is no lack of commitment from it. It has been somewhat surprised by its supply chain coming back. There is something going on between the contractor's understanding of the environment and the amount of money that it has committed to this. All through this, as we have moved from the appointment of a preferred bidder through the further developing conversations in which we get down to the detail, there has been very strong commitment. There has been investment in people, resources and investigations, as I said.

Overall, the programme management has been very sound. The issue that we have goes all the way back to the fact that the design team got it wrong in the first place. If that had been properly priced, we would not be at this stage now because of the whole momentum; a year would have been gained. We would have been able to move rapidly to the preferred bidder in a seamless way. At the moment, we would be in the middle of a building phase. We can point it back to the failings of the design team.

The Chairperson: Obviously, we have interrogated the governance around that issue. The design team priced the original concept at around £103 million. That was to do with the construction of the project. That came in £30 million underestimated for the construction. You had a reduction of works that saved £20 million. Now, you are saying that there is another £25 million because of the supply chain. The design team did not just get it wrong by £25 million or £30 million in the first case; it got it wrong to the region of £50 million. It has been paid £6 million, and it is owed around £2.5 million. The Minister indicated that legal advice was being sought. Are you able to update the Committee on where that currently stands by taking action against the design team, which has catastrophically failed in what is a Programme for Government commitment?

Interim Deputy Chief Constable Finlay: The design team has clearly admitted the professional failings. It has significantly changed its make-up, such as through the incorporation of a major architectural brand in the UK, the appointment of a board member to lead this and a complete change of cost consultants and other members. It has recognised its failings and reconstructed itself in a way that has the confidence of the programme board.

We have absolutely clear legal advice that we should maintain to the contractual arrangements that persist around this issue. To do otherwise would seriously undermine the likelihood of us being able to recover the losses incurred due to its lack of competence. So, we have firm legal advice that we should maintain with them and continue to abide by our contractual obligations. That means that we will continue to pay them if that is necessary and appropriate to ensure that, at the end of the day, we recover as much money as we possibly can. I think that Judith described it as every penny that was incurred as a quantified loss that can be put back as a consequence of their professional negligence.

The Chairperson: This is my last question, and I will then bring in Mr McGlone. What is required for the programme board to be satisfied that the difference of approximately £25 million can be absorbed into the existing tender price that you have allocated a preferred bidder to meet? If that does not happen, what are the options for the programme board?

Interim Deputy Chief Constable Finlay: The tender price is the tender price. If the contractor intimates that it cannot complete for the tender price, that will fundamentally flaw its bid and it would, therefore, be extracted from the process. We would then have to consider our procurement options. There are options with the five tenders that were received in the first place, and we can go back to them in due course. However, that would require us to have a think — what we would maybe call a

strategic pause — to consider the value-for-money argument and the specification to see what was the most appropriate way forward. The alternative, or an alternative, would be to start a completely new procurement process. If it transpires that the preferred bidder withdraws or is unable to demonstrate that it is able to complete the process and we move to that position, the programme board and the steering group will have to consider those options. That will clarify itself in the next week to 10 days.

The Chairperson: OK. Thank you.

Mr McGlone: Thanks very much, Mr Finlay. I have a constituency interest in the issue and, like all the members, a wider interest. I have to say that the way that it has been handled locally in the constituency is seen as disastrous. We had a meet-the-buyer event in Cookstown and 200 people, suppliers and the like attended that event. The project has nosedived as far as its credibility is concerned. I have to reflect that to you. If that is the way that the consortium does business, I do not have much hope for it or faith in it.

On a previous occasion with your predecessor, Judith Gillespie, I reflected the concerns of sections of the supply chain and small and medium-sized enterprises (SMEs) about FCC's payment methods — that was previously at Enniskillen. I find it absolutely incredible that a firm that is on the cusp of entering into a major project like this is only just coming back with soundings from suppliers and subcontractors about their costings. It is about to start in a few weeks, and I find that astounding to the point of being utterly unprofessional and incredible. I do not get that bit. I wonder whether the prices that are now coming in is the way that those companies build in some sort of risk assurance that they will be paid. That is a concern that I have, and I am duty-bound to reflect that to you.

I want to move on. Will you talk me through how many times the project has been costed, re-costed, revised, by whom and at what cost? Will you go through that sequence, please? Somebody somewhere along the chain is getting it very badly wrong.

Interim Deputy Chief Constable Finlay: It was costed initially by the design team. As part of that process, the design team had a firm of cost consultants working to it, and it was in the design team aspect that the original errors were made about the initial costings. They were validated by another firm of architects in due course, and those costings have been gone over with a great degree of diligence following the issues that arose when the initial costings were wrong.

Mr McGlone: So, how many revisions of those costings had been done at that point?

Mr Brendan Smyth (Department of Health, Social Services and Public Safety): I will maybe comment on that.

Mr McGlone: By whom were they done? I am trying to get a sequence here. It seems to have been costed ad nauseam.

I am the chair of the all-party working group on construction, and the one issue that comes up time and again is subeconomic tendering. That does not square with what you have just reflected about their telling you about the lack of the availability of subcontractors and the supply system or chain. It also does not square with what I am hearing from the industry about what a major problem it is. I do not know who is squaring what circle or who is trying to square what circle, but those of us who have an interest in the project going ahead, as you evidently have, want to make sure that it is being done, but that it is being done professionally.

Mr Smyth: Mr McGlone, can I try to put a little bit of context to that series?

Mr McGlone: Please do.

Mr Smyth: Throughout 2012, there were a series of iterations of the cost. From recollection, it was probably in the order of five to six revisions of the cost estimate as the design information progressed and the consultants received more information from the whole of the design team.

Mr McGlone: Was that revisions of the original one?

Mr Smyth: Yes. From recollection, that was probably fairly consistently reported to the project team as a figure of around £100 million. It probably varied between £100 million and £104 million; it was that sort of figure. The project team had a high degree of confidence that those estimates were accurate. As it transpired and as we found, subsequent market intelligence informed us that the cost was inaccurate and that there were manifest errors in it. The design team, including the original cost consultants, did a reconciliation of that cost, and that is when it then came up with an approximate £30 million error in the pre-tender estimate.

Mr McGlone: So, that had been looked at about seven times at that stage.

Mr Smyth: As the design progressed and we worked through the development of the design, that was costed routinely. Every six to eight weeks, there would have been an update and, throughout 2012, the cost was reported at about that £100 million figure — between £100 million and £104 million; that sort of figure. That gave the project team an assurance that it was being managed properly. That was a false assurance because, as it happened, at the end of the day, it was not just the cost consultant's error; the whole design team had a degree of responsibility. Information was passed through at a late stage in the tender preparation that was not captured by the cost consultants.

Mr McGlone: What information was that?

Mr Smyth: It was information on the detail of engineering services in the scheme, specifications and all the detailed aspects that go together to make up the tender packages.

Mr McGlone: Who did not fit that bit in?

Mr Smyth: As they were working towards completing the tender package, the consultants that formed the design team — all the various strands of those consultants — were passing information to the cost consultants to cost it. It was in the examination of why the pre-tender estimate was approximately £30 million in error that it was determined that the core cause of that error was that the information that was passed through to the cost consultants at a late stage was not reflected in their pre-tender estimate. When that went to the market, it picked up that it was not deliverable for the £103 million and that it was significantly in excess of that.

Mr McGlone: And by that stage it had been looked at about seven times.

Mr Smyth: Yes, that is correct.

Mr McGlone: How many times has it been looked at between then and now and by whom?

Mr Smyth: It requires a little bit of explanation of what happened. The competition was run. One of the initial requirements of the tender documentation was that they should submit a tender within the works cost limit of £103 million. Clearly, they were unable to do that, so, to receive valid tenders, we got agreement from all the tenderers to withdraw the works cost limit so it was no longer a constraint and advised them all that a bill of reductions would be applied to the tenders to bring us back down to an affordable level. That was signed by and agreed to by all the tenderers — all the economic operators that were bidding. That resulted in the FGP consortium winning the competition, if you like.

Mr McGlone: I am sorry. Who is that?

Mr Smyth: That is FCC and Gilbert Ash. The consortium won the competition, in effect. That gave them the designation of preferred bidder. It is still a tender process, and they still do not have a contract and have never had one. So, we have not signed a contract with anyone. However, that gave them preferred bidder status, and that status is a phase through which we examine the detail of part of that tender assessment. If they put forward efficiencies, we ensure that they are acceptable to the project team and that they are of sufficient standard. They can be part of that tender process.

FGP, as the preferred bidder, agreed to enter into this process with us. So, we are bound, but, for any reductions, we were tied to their tender rates. Any variations had to be in things that were tendered in their original package, so that all bidders are treated equally, and so that they will not have an advantage over someone else. That is, for example, so that the person who came second in the competition cannot say, "If I had had the opportunity to do that, I could have beaten that price". It is a

rigorous process that only allows variations, omissions or substitutions of materials that are already priced in their tender in the bill of reductions.

There has not been, in effect, a further pre-tender estimate. We are still tied to the original competition.

Mr McGlone: Have you used any third-party consultants as a sounding board to check those figures? Has any external consultancy firm been paid from the public purse to run its eye over those figures that are coming in from the contractor?

Mr Smyth: Yes.

Mr McGlone: Who is that?

Interim Deputy Chief Constable Finlay: Are you asking about figures coming in from the contractor?

Mr McGlone: Yes. Who is checking this stuff for you to make sure that it is verifiable and that it stacks up?

Interim Deputy Chief Constable Finlay: Just so that I am not confused, are we talking about the preferred bidder or the design team?

Mr McGlone: The preferred bidder. At this stage, we are with the preferred bidder. Who checks those figures for you to make sure that they stack up?

Interim Deputy Chief Constable Finlay: The preferred bidder just puts in a tender. As part of it, the new cost consultants who are associated with the design team —

Mr McGlone: Who is that?

Interim Deputy Chief Constable Finlay: Bruce Shaw, who validate the detail of those figures.

Mr Smyth: We looked at all the reductions in the bill, and Bruce Shaw valued them on the rates that were submitted by FCC in its tender. That was without any involvement from FCC —

Mr McGlone: Well, it would not be. This is keeping yourselves right. So, have you been back to Bruce Shaw? Is he a consultant or something?

Interim Deputy Chief Constable Finlay: Bruce Shaw is a consulting firm. It is a cost consultant.

Mr McGlone: And does it still stand over its view of those figures? Do the figures still stack up?

Mr Smyth: Its figures are to do with the bill of reductions.

Mr McGlone: I appreciate that.

Mr Smyth: That has been validated by our contact with FGP, because that bill of reductions, as estimated by Bruce Shaw Partnership, is in the order of £20 million. That is in the region of the same figure that FGP has agreed to be its value. There is no major dispute about the value of the bill of reductions, as estimated by Bruce Shaw Partnership.

Mr McGlone: There is no major dispute about that. The major dispute is where we are now, apparently.

Mr Smyth: That is correct, yes.

Mr McGlone: Have you checked with Bruce Shaw consultants about that? I presume that you have.

Mr Smyth: Yes, we are in constant contact with Bruce Shaw consultants. There is constant engagement.

Mr McGlone: I have one final question at this point. How much are you paying those consultants for doing this work?

Interim Deputy Chief Constable Finlay: Bruce Shaw?

Mr McGlone: Yes.

Interim Deputy Chief Constable Finlay: Bruce Shaw is part of the design team tender. Under the pre-existing contract for Perkins+Will, Bruce Shaw is the cost consultant, so it is a component of the design team. So, it is still under the original contract for the design team. We have not contracted separately with it; it is part of the design team.

Mr McGlone: OK. What is the total cost to date of this scheme, including lands acquisition and the like, please?

Interim Deputy Chief Constable Finlay: The total capital cost is £157.2 million.

Mr McGlone: Sorry, what has been spent to date?

Interim Deputy Chief Constable Finlay: We have spent just over £9 million, of which £7.4 million — probably the part that you are interested in — is related to the design fees. There are land acquisition costs of about £2.85 million.

Mr McGlone: Is that part of the £9 million or is that additional to the £9 million?

Interim Deputy Chief Constable Finlay: That is additional.

Mr McGlone: And they are what?

Interim Deputy Chief Constable Finlay: There is £2.85 million in relation to the site acquisition, and £9 million has been spent on programme costs, the bulk of which is the £7.4 million paid to the design team.

The Chairperson: As of June 2013, the design team, which was responsible for this failure, had been paid just over £6 million. So you have continued to pay.

Interim Deputy Chief Constable Finlay: Yes, we are contractually obliged to continue to pay. I know that that is an issue, but that is the legal advice that we have, which is unequivocal. In order to recover costs incurred by what appears to be professional negligence, we have to maintain the contractual relationship. That is counsel's opinion.

The Chairperson: We would like to think that that is another item that the PAC will look into — albeit, so can we. However, it seems strange to spend £6 million of taxpayers' money on a company that you have said and your predecessor has said did not do its job. Now, we are continuing to give it a further £1.4 million.

Interim Deputy Chief Constable Finlay: At the point when it was recognised that there was this issue, Perkins+Will took action. The people who are dealing with this now are virtually indistinguishable from the people who were dealing with it when that error was made. The key person who was involved in that no longer works for Perkins+Will. It took dramatic action. We have referred to Bruce Shaw as the cost consultants, which is part of that design package. It was not the cost consultant at that time; Perkins+Will changed its cost consultants. It incorporated a new lead architect, who is a former president of the Royal Institute of British Architects and is highly regarded in the industry, and brought that person forward as part of the new team of Perkins+Will. The programme board has confidence in Perkins+Will now, and Perkins+Will has agreed that there was a shortfall in its professional competence. We are continuing the contract because of the confidence that we have in Perkins+Will at this time. However, the legal advice is that we resolve the issues with regard to the quantification of losses incurred as a result of that negligence at the end.

The Chairperson: White Young Green was brought in and paid £2,000 to review the bill of reductions. Does it continue to play a role in this process?

Interim Deputy Chief Constable Finlay: No, it was brought in to give a one-off assessment.

The Chairperson: And that was just to verify the £20 million bill of reductions.

Mr Smyth: It was brought in prior to the tender to verify the pre-tender estimate, and that was prior to December 2012. Clearly, that verification process did not highlight the errors, and that was partly because the information that it was reviewing at that time was not the full information that went out in the tender package.

The Chairperson: That brings me to my earlier point about the mismanagement on the part of the programme board, because you had a design team that failed. Did the programme board then bring in White Young Green to overlook some of the work that had been done by the design team, and White Young Green did not detect it either?

Mr Smyth: As part of the process, it was normal practice to bring in a third-party cost validation exercise. That was meant to be a light touch. Unfortunately, that did not highlight the major discrepancy, but that was probably because it was looking at the same erroneous information that the original cost consultants were looking at. However, that was not a particularly different approach; that was part of a routine approach that we take to validate costs.

The Chairperson: You said it was a "light touch". I would say that, in the scale of this project, £2,000 is a very light touch. I am surprised at how little White Young Green got on this occasion, but Judith Gillespie said:

"It gave us, as the programme team, an assurance. This was a very important piece of work. His report has added a huge amount of value, even to our conversation today."

That was back in June 2013. It was not the light-touch, tick-box exercise that you seem to infer, Mr Smyth. That was not what Judith Gillespie said about White Young Green's piece of work.

Interim Deputy Chief Constable Finlay: It was a layer of further assurance. Where the issue arises is that it was an assurance based on a false premise. The underlying information coming from the design team was flawed and incomplete. Those people did what they were asked to do on the information provided, and, on the information provided, gave that assurance that was accepted by the programme board. What was not known by anyone at that time was that the information that they were using to study and provide that assurance was incomplete and flawed.

The Chairperson: OK. Let me bring in the Deputy Chair of the Justice Committee, Mr McCartney.

Mr McCartney: Thank you very much, Chair, and thank you for your presentation.

I do not want to dwell on the previous section, but, at that time, Judith Gillespie told us that the fault that lay with the costings should have been detected earlier in the process. I think that is accepted. As to what unfolded — I am looking at the chronology of events supplied by the Department — there was a prearranged meeting with the preferred bidder. Was there an agenda for that?

Interim Deputy Chief Constable Finlay: That was the prearranged meeting that we had on 11 March. I am not aware if there was an agenda. There was a whole series of meetings grouped under themes and workshops in order to consider the detail of particular types of work, whether that is ground excavation, building or mechanical and electrical. I am not sure whether there was a particular agenda other than what had been a series of positive meetings with the preferred bidder.

Going back to the Deputy Chair's point, there is a mismatch here. You mentioned the meet-the-buyer event in Cookstown. The preferred bidder has committed a huge amount, as in hundreds of thousands of pounds, to undertaking site investigations. The amount of resource that we have put into these meetings and the different skills that have been brought into these meetings shows, on one side, a huge and very visible commitment by this organisation who, for all intents and purposes, seems to have gone into this wholeheartedly, hence the meet-the-buyer meeting. Somehow, and I share your issue about this, it seems to have been surprised by the costs coming back when it went to the subcontractors. There appear to be two bits: one is going with enthusiasm and commitment, and then, out of left field, the part about the costs does not add up. I cannot explain that.

Mr McCartney: OK. When the preferred bidder told you at the programme team meeting that it was experiencing difficulties, did that come as a surprise?

Interim Deputy Chief Constable Finlay: Yes.

Mr McCartney: Did the preferred bidder say when it detected the problem? If it was within the supply chain, I am sure that it resulted from a number of contacts with different companies. Why did it wait to tell you in this particular way?

Interim Deputy Chief Constable Finlay: Our sense is that it told us at the first available opportunity about the returns that it was getting from subcontractors, from the industry and from the supply chain. I sense, and I can only say that I sense because I do not know, that it was when it realised that there was a pattern of these coming back. It was not just one or two coming back. As we understand it, it was going to subcontractors that it would have normally expected to engage with, and some subcontractors were saying that they did not have the capacity, that they were too busy or that they could not do it in the time frame.

The surprise appeared to grow as those returns came in. I think that that is when it would argue, although I cannot speak for it, that this was the first opportunity it had to say that it might have a bit of an issue here. It was not saying that it had an issue, it was saying that it is an emerging issue and it could be a bridge too far.

Mr McCartney: They have said that it is an emerging issue; it is not a live issue.

Interim Deputy Chief Constable Finlay: It appears to be emerging. With the overall costs, we do not know if we can hold on to our price. They subsequently shared some figures about that which would validate that position, if they are an actual reflection of the information they were getting from the subcontracting and supply chain industries.

Mr McCartney: The previous day, on 11 March, when the programme board met, there was no indication. Would the preferred bidder have known that the board was meeting on 11 March?

Interim Deputy Chief Constable Finlay: I am not able to say if the preferred bidder knows the frequency of the programme board meetings, but I can say that, at the programme board, there was no indication other than a very positive and full commitment from the preferred bidder. We have given some of the indications of that. The meetings had all taken place when they ought to have taken place. They were purposeful and were moving forward at pace. There was no suggestion of anyone dragging their heels over it at all. The only suggestion that we had at that point was an almost conversational piece, which was that the returns from the supply chain — as they had now moved into preferred bidder status and they were looking to firm up on it — were taking longer than they anticipated.

Mr McCartney: At the urgent meeting of the programme board on 12 March, was a decision made to meet the preferred bidder?

Interim Deputy Chief Constable Finlay: On 12 March we needed to clarify the preferred bidder's position, because certain members of the preferred bidder's team had had this conversation with the project team. They had followed that up by formally putting a document into the process, which they described as a working document. That just contains figures, which, if you look at them as we did, take you to a certain conclusion. It did not overtly express the position of the preferred bidder. It did not say in black and white, "We are now concluding that we cannot hold to our tender price", which is why a formal request was sent to them on that day asking them to clarify that position. The board agreed to wait for that position. All of the indications that we had at that moment were that it was beyond them and that the preferred bidder was going to withdraw. It was a little bit of a surprise when their formal communication came back to say that they were holding to their price. That then instituted what had to be a face-to-face meeting with the preferred bidder to try to square two conflicting bits of information.

Mr McCartney: At the meeting on 17 March, was there a reason why it was the programme team and not the board that met the preferred bidder?

Interim Deputy Chief Constable Finlay: There is best practice, and maybe Brendan can speak to that. It has caused a bit of disquiet in different parts of the programme board, but there is best

practice for when the actual client meets the preferred bidder, as opposed to the expertise in the project team.

Mr Smyth: The iteration throughout the process has been the design team, with members of the project team, meeting various members of the preferred bidder's supply chain and commercial interests. That is really so that people with the expertise can agree that the specification that they are putting forward meets the specification set out in the documentation and agree that any alterations or variations from that are part of the specification as designed. At that meeting on 17 March, two other members of the project team and I met two representatives from FCC and one representative from Gilbert Ash, which formed that FGP consortium. We had a fairly lengthy and frank meeting to discuss the apparent contradiction between the position reported at the previous meeting, where they gave us information that indicated that it would not be possible to commercially close the deal, and the letter stating that they were holding on to their tender price and were willing to hold that until June this year.

We discussed that at length, and the company was probably trying to see whether there was some way of movement whereby it could reach a resolution. We are bound very much by the procurement rules. We have to treat everyone with openness and transparency, and we did not want to and would not get into a situation where we do a deal with someone simply because they are the preferred bidder. That is work in progress and work that we expect to conclude within the next week to 10 days. If we genuinely believe that the deal cannot be closed and there is no commercial reality in it, we will conclude the process.

Mr McCartney: The summary states that both parties are now committed to a further round of meetings over the next two weeks. So, you are saying that that will have to be concluded.

Mr Smyth: We will conclude the process within the next two weeks, whether it results in an agreement to go or an agreement that they cannot remain as preferred bidder.

Mr McCartney: How do you satisfy yourselves that they are now in a position to finish it for the agreed price?

Mr Smyth: We would ask them to commit to that, if we thought that it was a possibility. If we can manifestly see that that is not a possibility, we will deem that that is the case and that their tender is non-compliant. However, that is speculating. It is still a tender period.

Interim Deputy Chief Constable Finlay: We are saying that we will be proactive and responsible about this. We will not let the preferred bidder inch their way along over a period of time. We do not have a period of time. If we cannot be satisfied, from the information that is provided, that this is going to work, we will draw it to a close.

Mr McCartney: I do not want to predict the outcome either way, but do you have a plan for whatever scenario unfolds?

Interim Deputy Chief Constable Finlay: We have limited routes for alternatives. We could continue the procurement process that we have, and go back to the five companies that tendered for that, but that would require us to look at the reality of the situation given what the preferred bidder seems to be saying about how much it will cost to deliver this to the market. There is no point going back out to the market and going round with the same thing if the reality is that, as is being suggested, it cannot be delivered for that price. We would have to do something different, such as use more money or change the specification or change what it looks like in some way, to reduce the cost.

Mr McKinney: I will preface my question with a comment about context. Desertcreat was not just a golden opportunity for the police, the Fire Service and the Prison Service; it was also a wonderful economic opportunity and an opportunity for us to say something different about Northern Ireland. For that reason and more, it is important that this does not fail. In the widest context, we seem to lack the basic competencies to make the big capital projects happen — witness Narrow Water, the A5, Long Kesh and now this. We cannot afford to lose this project. Damage has been done, not just to the project but to confidence, hope and our reputation. I assume that you accept that.

Interim Deputy Chief Constable Finlay: I accept that, yes. Absolutely there is a requirement for the facility for the three services but, from talking to people, I know that there is a much wider impact on the construction industry, suppliers, jobs and Cookstown, for example. However, we have to be

governed by the procurement process and have to deliver value for money. That is overseen by DFP with Executive sign-off. We do not want to embark on something that fails. That is why we have to know what the current situation is.

Mr McKinney: Given the narrow windowsill that you are on now, if the current process does not result in the appointment of a contractor, what will happen next?

Interim Deputy Chief Constable Finlay: If it does not result in a contract, we will end up with a bit of a strategic pause. In any event, it is going to take a significant time to move this back forward. Whether we go for a whole new procurement process or do a reconfiguration and offer it back, if the preferred bidder cannot build what we are asking them to build for the price, and if that is reconstructed in some way where we go back to all of them and say, "Build something that is slightly different", that starts a different kind of tendering process — not fundamentally different, but we look at it again.

We have taken £20 million out in the bill of reductions. If there was no more money, there would have to be some more radical look at that.

Mr McKinney: Are we caught, as the taxpayer, in the middle of this process in terms of being forced into a position that we do not want to be in — either we reduce the scale or we pay up?

Interim Deputy Chief Constable Finlay: I think that is the reality. The reality is that if we want what we have currently specified, it will cost more. If we want the facilities but not quite what we have currently specified, and we have a cost envelope, then we cannot get exactly what we currently specified for that. It has to be one or the other. We have to go through the proper procurement processes that allow that to deliver a competitive bid, quality and value for money.

The clear thing I should say again is how committed the steering group, the three services and the programme board are to delivering this. There is no group more injured about this than the three services, which have been looking at this for so long, and also Cookstown and working as we have with the community there. For this to happen in the way that it has happened, in a way that we sought so many times to put in checks to see whether we were sure about this — the preferred bidder was appointed on 19 December and, realising the time that had passed and the long delay, we asked at that time, "Can you hold your price?". The answer was, "Yes, not only can we hold our price now but we will hold our price for six months".

That was a quite clear question to people who must be regarded as being big players in this operating environment and who should be able to answer that question competently.

Mr McKinney: I am looking to see how that can happen, as much as the interrogation around what has happened. Could the project be broken into bundles to allow a quicker phased procurement around smaller projects, with more competition in the procurement process?

Interim Deputy Chief Constable Finlay: I will turn to Brendan for advice on procurement, but that sounds significantly different from where we are.

Mr Smyth: The answer, in theory, is yes, but in practice that would cause a significant delay because we would have to go back out and advertise it differently. The procurement as set out envisages a scenario where the preferred bidder cannot agree a price. In the event of that, there is a clear description in all the tender documents — indeed, it was reiterated in the letters sent out last year to the preferred bidder and the unsuccessful bidders — that we retained the option of going back to tender on a lowest-price basis only.

The initial tender was a combination of quality and price, which is the most economically advantageous. We do have the option, which was stated in all the documentation, and tenderers will be aware of this, that we can go out on a lowest-price basis to the five shortlisted tenderers. As Alistair said, there are other issues about affordability and the business case cover to do that should that cost more. That is one of the options that would be open for consideration.

The procurement is not dead by any means. It is still alive in terms of preferred bidder, although our confidence is probably low in reaching a resolution on that. However, there is the option then to go out to the five shortlisted bidders and actively retender. Doing that also gives us the option to reduce scope and specification somewhat.

Mr Wells: That sounds fine. However, are you aware that the second tenderer is also indicating privately that they cannot do it for their bid?

Mr Smyth: We are not aware of that in detail, but we heard your comment on it to Minister Ford.

Mr Wells: That is worrying. It is seldom that I find myself quoted by a Deputy Chief Constable — I should frame that — but, as you say, the market is moving rapidly. While this is all going on, prices are moving at a speed that has taken a lot of us aback. One of the bits of bright news in the economy is that the construction market is picking up rapidly. You are trying to hit a moving target. I have to ask this question, and it is a difficult one. If this debacle had occurred in the private sector, what would have happened to the people who were responsible for it arising?

Interim Deputy Chief Constable Finlay: The debacle, as you describe it, points back to the design team. The design team was the starting point of things going awry. I do not know what would happen with the design team in the private sector in terms of the confidence that people would have in it and the actions that would be taken. I would be speculating. I can only go on the huge lack of confidence that there was; the creation of the confidence recovery group and other mechanisms that were put in place to validate the way forward; the actions that were taken by Perkins+Will to clear out those who had been working previously and to substitute and build confidence, which they did; and the strong legal advice — which I understand is a concern and raises issues for members — that the most appropriate way to seek to recover as much as can be recovered as a consequence of that professional negligence is to continue in the contract.

Mr Wells: It strikes me as bizarre that, when something goes badly wrong, you keep force-feeding the culprit with money to get money back from him. I would love to see what the logic of that is. It is the most bizarre thing that I have heard all day. The reality is that, in the private sector, not only would the design team be in big trouble but the people who supervised the overall contract would probably be checking where the nearest jobcentre is.

Interim Deputy Chief Constable Finlay: The governance around this has been strong and very competent. In what is a complicated public sector procurement process, the governance has identified things at the earliest possible opportunity and sought to take firm remedial action. My predecessor, Judith Gillespie, led the programme board resolutely at the time when this crisis emerged, and pushed on the issue of getting work done on the bill of reductions to minimise the time of the delay and get us to a point where we want to build what, for us, is a highly desirable and required training facility. So I would argue that the governance around this has been more than competent. It has been let down. We know where that failure is, and it has been admitted. We will recover the losses from this. The thing that we are not recovering is the time, and, as you say, during this period, the market is changing, which gives us a cost issue.

Mr Wells: It reminds me of somebody like David Moyes saying, "We are losing every week, but corporate governance is excellent". You are saying to me that this is an undoubted fiasco but that the corporate governance was OK. That strikes me as a difficult issue in that we are talking about the PSNI, which is a major player in property. As you know, your organisation has a section that is dealing in significantly valuable sites because of police station closure, newbuild etc. I am a bit surprised that that expertise within the PSNI did not drop you an email to say, "Hold on, boys. I think that you have a problem here. We have seen how the market is going".

Interim Deputy Chief Constable Finlay: The expertise in the PSNI is supplemented by that of the Strategic Investment Board. Therefore we have the best assets that the government has to play in delivering a major capital programme. We can talk about construction inflation as running at about 6%, but the procurement process does not include any uplift for that. The procurement process does not operate in that way.

If there is an issue, it is the passage of time. It was first delayed because of design team issues, the bill of reductions and then the requirements of the business case, which was submitted in June but did not receive final sign-off until December. So a whole period of delay was incurred. Some of that delay is outwith the gift of the programme board and the steering group.

Mr Wells: I was a bit concerned when Judith Gillespie told the Justice Committee that the first she was aware that things were going astray was when the tenders started to come in and they realised that they were significantly above the estimate. This is your most important capital project and,

indeed, with the dropping of the A5, it is probably the most important in the civil sector in Northern Ireland. The generation of 2,000 jobs in mid-Ulster would have been a huge economic boost for the area. I am surprised that nobody in the PSNI's land and architectural team was watching to see what was going on in the real world.

Interim Deputy Chief Constable Finlay: I will bring Brendan in here, but the design team was contracted to deliver this aspect; it was not asked of the PSNI's estate branch or other parts. It was first a procurement exercise conducted to appoint a design team and they were given the job, so it has to be held to account. Perkins+Will is regarded as one of the world's top companies for delivering this sort of project. Clearly, its professional reputation has been damaged as a consequence of this. To be let down to such a degree after trying to find the best people is a significant issue.

Mr Wells: That is like David Moyes saying that he is let down by a centre forward when he is ultimately responsible for picking him.

Interim Deputy Chief Constable Finlay: There was a process to pick the design team, and it was a matter of huge concern when this emerged. However, you are right about the timing of the emergence of what was described as "market intelligence", after we had gone through the European notice and the pre-qualification process. We then got to the invitation to tender. When it gets to that stage, the economic operators — the companies — do the really detailed work on what they will bid for the contract. That is when they said that something was wrong; that it was not close to our cost envelope.

Mr Douglas: Thanks for your presentation. You talked about the rising costs. In relation to the preferred bidder, are you aware of examples of such problems with supply chains in similar projects in Northern Ireland or across the United Kingdom?

Interim Deputy Chief Constable Finlay: I am only aware of this emerging with such an impact on this project, and, to be clear, it has emerged only in the past 10 days or so. In my opening remarks, I said that if this project has been hit in that way, other projects in Northern Ireland, perhaps of different scales, could be in the same position. However, if this is an issue of capacity and cost in the sector, which has changed significantly — some major players no longer exist because of the economic period that we have undergone, and the competition and capacity dynamic has changed — in all likelihood, other public sector procurement contracts operating in a similar way will be in the same position.

Mr Douglas: That is a big concern for us all. There are school and university projects that I am sure will face those dilemmas in future.

Interim Deputy Chief Constable Finlay: In all likelihood. If they are not, there is something even more peculiarly wrong with what we are being told by our preferred bidder.

Mr Smyth: It does not exist across all sectors. It is the construction industry. Those are specialist areas, particularly for mechanical and electrical subcontractors, who are quite different from house or school builders. There are some very complex installations that have planned for infrastructure and electrical works. At present, capacity in the Northern Ireland construction industry for those is limited; several of the big players in that sector have disappeared. There is probably still good coverage in the building sector for the traditional trades: building, plastering and such; however, in the specialist areas, there is a disproportionate effect. Because of the complex nature of the college — there are some quite sophisticated areas, such as the firing ranges and the technical training areas — it is not routine work where you would get lots of small and microbusinesses that are short of work and which would not understand what we are describing here as a shortage of capacity. It is in the specialist areas that the influence has been most notable.

Mr Douglas: If, in the worst-case scenario, the whole thing collapsed and we had to start again, what would we have for the money that has been invested so far in the design work? Does it belong to us or to the design team?

Interim Deputy Chief Constable Finlay: It belongs to us; we have the intellectual property rights. We would not start with a blank sheet. We can realise the investment that has been made through the detailed drawings, considerations and the engineering work that has been done to prepare the ground.

Mrs Overend: Thank you very much. This has been very informative. We have gone through a range of questions that I had listed.

Further to Sammy Douglas's point, if it was to be re-tendered, what costs would be lost?

Interim Deputy Chief Constable Finlay: If it was to be re-tendered, the costs lost would be some of the work associated with the initial delivery of the tender and some of the consulting work that has taken us so far; for example, programme management fees and the accountancy expertise that supported the business case. More would be required, in any case, to get to the full business case, but, if we are to look at the business case fundamentally again, those costs would be lost. We had to do work on the site, and we would probably have to keep doing work on the site, on trees and hedges — the care and maintenance work that needs to be done. The investment in design fees and that work would not necessarily be lost because of the product that we will get at the end of it. If we did not deliver, it would be the programme running costs that would be lost and the effort that people have put in. That said, much of the work that we do in the capital works programme or the ICS would not be lost either, because all the work going on under the different pillars of the programme board stands for a combined college. If another bidder is to deliver it, we have done the work. The amount of work lost would probably be fairly limited. It would come down to £679,000 on programme management fees and about £400,000 on business case fees. That would be our loss.

Mrs Overend: The delay would mean that good farming land could have been used for considerably longer. That is a loss, in effect.

You have gone through the rising cost of construction etc, but could other issues, such as security, affect costs?

Interim Deputy Chief Constable Finlay: As we have gone through the bill of reductions, some things have been taken out and others added. There have been some changes to specification — adding fencing and glazing, for example. Some of that has increased. The £20 million that we talk about is a net figure. There is more that comes out to offset what goes in. That is on the building security aspects. I am not sure that there are any other security aspects that have been raised with us that would cause an issue.

Mrs Overend: Do you know whether any security aspects were raised by subcontractors at the meet-the-buyer event, for instance?

Interim Deputy Chief Constable Finlay: Not that I am aware of. I was not present at the meet-the-buyer event. I am not aware of anything coming back from the industry. We have done checks for any form of influence or intimidation that would affect this. If there is anything affecting the market, it is strategic alliances between big companies and their subcontractors. A big contractor who has a relationship with another contractor will, as I understand it, want to ensure a continuing relationship with the subcontractor to guarantee that that capacity can be delivered elsewhere. It might prefer some subcontractors not to work for another project but to stick with them. However, that is part of market forces at work; it is not a security issue.

Mr A Maginness: The bill of reductions still stands. However, because of delays, inflation in the construction industry etc, the potential cost exceeds even what was estimated at the time of the bill of reductions. That is the situation.

Interim Deputy Chief Constable Finlay: It appears to exceed the tenderer's bid.

Mr A Maginness: Yes.

Interim Deputy Chief Constable Finlay: The bill of reductions would be applied to that.

Mr A Maginness: If that is not resolved by the tenderer saying, "We can absorb this; we can cope with this", the project, as we know it, cannot proceed.

Interim Deputy Chief Constable Finlay: The current preferred bidder can retain the preferred bidder status.

Mr A Maginness: Hold on a little bit, Mr Finlay. The likelihood of any other contractor saying, "Well, don't worry about that; we'll deal with this at the price that you want it dealt with" is remote.

Interim Deputy Chief Constable Finlay: Yes, if the information that the preferred bidder has provided in that working document is right.

Mr A Maginness: Yes. One suspects that it probably is right, given the anecdotal information or evidence of rising costs in the construction industry. That is reflective of inflation in the industry. Perkins+Will, the architects, have already got £6 million. In fact, it might have got more than that.

Interim Deputy Chief Constable Finlay: It has £7.4 million.

Mr A Maginness: Well, £1 million here or there seems to matter little now. What was it due?

Interim Deputy Chief Constable Finlay: In total?

Mr A Maginness: In total; yes.

Interim Deputy Chief Constable Finlay: Off the top of my head, I think that it was due somewhere in the region of £9 million.

Mr A Maginness: If I were building a house — I know that building a house is a very simplistic thing, given that you are building a big college — I do not think that I would pay the architect two thirds of the fee up front. Is that my simple mind expressing something absurd?

Interim Deputy Chief Constable Finlay: It is a feature of the contract. That is my view on it.

Mr Smyth: Such a breakdown of fees is standard practice.

Mr A Maginness: Roughly two thirds of the fee even before a brick is put in place.

Mr Smyth: Yes. It is reflective of the work put into it. The vast bulk of the work is their being able to resource that and get to that stage in developing the design, the specifications and the tender package. Once they get on site, they just monitor progress. That is a much smaller commitment to them. There are recognised scales and breakdowns of the percentages for the various work stages, and that aligns with standard practice.

Mr A Maginness: I am surprised at that. Is that for big commercial contracts?

Mr Smyth: A breakdown whereby you pay 60% to 70% of the fee prior to going on site is typical for any contract. It is normal practice. I understand members' shock at the figure. Seven million pounds is a huge figure, and it seems ridiculous, on the face of it, for that to be paid to one firm. I am in a no-win position if I try to defend that. This scheme is not a building or a college; it is like building a small town. From a greenfield site, we have to set up the infrastructure and a whole range of buildings. I think that there are some 145 buildings on it.

Interim Deputy Chief Constable Finlay: Different units, yes.

Mr A Maginness: I understand the point that you are making, and you make it well. However, seeing as they made a hames of employing the cost consultants, you would think that they would say, "Hold on". You have been damaged reputationally, and we have been damaged because of international big shots in Manhattan or somewhere. Is that right?

Mr Smyth: Perkins+Will is American-based; it has offices in Chicago and New York.

Mr A Maginness: Would you not think that they would say, "By the way, as we have made such a hames of this, we will either not charge you further or, alternatively, we will not insist on further upfront payments"?

Mr Smyth: The upfront payments have been relatively limited since that time. In effect, I suspect that, commercially, they have been running at a loss for the past nine months because of the recovery work. That has been their own fault; they made the mess to start with, so I do not have sympathy. However, they are probably operating at a loss considering the reimbursement against the time that they are now having to put into this. Having made the mess, they have a much bigger exercise to extricate themselves from it. I am sure that all sorts of commercial arrangements have gone on with the new firm.

Mr A Maginness: Mr Smyth, they have not just made a mess but have delayed the process hugely.

Mr Smyth: That is correct.

Mr A Maginness: In so delaying it, there has been consequential loss to the project, and the increased costs have been enormous, or so it seems from what your preferred bidder is saying. They were central to that, and, surely, in those circumstances, they should be saying, "We will do this for practically nothing". Otherwise, you will have to recoup money from somewhere, I would have thought.

Interim Deputy Chief Constable Finlay: The ambition is to recoup every additional penny that has been costed due to their incompetence. It was against that ambition that we got the legal advice.

I understand that I am not convincing members about that approach —

Mr Wells: Well spotted. That is why you are the DCC.

Interim Deputy Chief Constable Finlay: I recognise that, but the legal advice is unequivocal. It has, with the action that it has taken, allowed the project to proceed when not doing that. For example, bringing someone else in — I am not entirely sure if someone else would stand over some of the pre-work — would cause huge delays as they got up to speed with what the project entailed.

Mr A Maginness: In effect, you would be causing the damage.

Interim Deputy Chief Constable Finlay: There is that potential. Being purposeful, delivering the project and moving it forward, having built confidence with entirely new people, and investment from this team and the very strong legal advice, is what we have to do. I am sure that the Public Accounts Committee, which you mentioned earlier, and the Northern Ireland Audit Office will want to look at this. We have to have a commitment to quantifying the additional costs as a consequence of that professional negligence. We have to be able to offset that.

There is an issue, I suggest, for the company with its insurers, and we will have to resolve that. When that point comes will depend on what happens over the next period of time. If the preferred bidder says that it got it all wrong, that someone in the office did this, that or the next thing, but that it can deliver and demonstrate confidence and we can move forward, that will probably take us to the end of the process. If, as looks more likely, the preferred bidder finds it not economical to go ahead and we have the strategic pause that I described, then we have to take a position at that point and think about what the appropriate thing is to do in order to deal with this issue, because it is clearly an issue.

I understand members' concern about the approach. The programme board and I have obligations to deal with it properly and appropriately and to ensure not only that we deliver the building for value for money but that we recover for the public purse every penny that has been additionally incurred as a consequence of negligence.

Mr A Maginness: Thank you very much. I understand the points that you are making; that you are mitigating your loss and that to abandon the contract would actually incur more costs.

Interim Deputy Chief Constable Finlay: It could cause a further delay and more costs. I think that it was dependent on confidence being rebuilt; that is why the confidence recovery group was built when the issue arose. That brought in additional expertise and legal advice from the Strategic Investment Board and brought in the key expertise that we have in Government in Northern Ireland to deal with the issue. Perkins+Will recognised that it had made a huge error and did something about it: it bought a major architectural practice in London, incorporated it into its business and brought those

people into the project. It has spent a great deal of money as a consequence, I am sure, on the professional reputation that it is seeking to recover.

The Chairperson: Before I bring in Mr Humphrey, can members at this point agree for the Chairmen of the two Committees to sign off the minutes of this meeting when it is concluded? Two members need to leave, and it would be better if we decided that now.

Members indicated assent.

The Chairperson: We still need four members from Justice and four from ETI to remain, so one from Justice and one from ETI can leave.

Mr Humphrey: Thank you very much for your time today.

This is a debacle. You talk about confidence, but confidence in this project has been eroded, Deputy Chief Constable. You talk about the process remaining alive, but if it is, it is on a life-support machine. I understand members' frustration, particularly members who represent that constituency, and two of them are here, about the effect that it will have in that part of the country. You mentioned your design team a few times. Who exactly is it?

Interim Deputy Chief Constable Finlay: The company is Perkins+Will.

Mr Humphrey: So it is a company. When you say team, it sounds as if there is a group of people. You talk about the Strategic Investment Board, and Mr Wells asked you a question about the in-house specialist expertise that will be available to the police. Why was it not on the design team?

Interim Deputy Chief Constable Finlay: Because the contract was designed to specify what the design team would deliver as an entity. The ambition, and it remains the ambition, is to have a world-class facility. It went out to a world competition to find what were believed to be the best people in the world to deliver a complex project, and they demonstrated experience of delivering projects of that scale and type. That was some time ago. The contract specifies what they have to deliver and they have to be held to account on that contract.

Mr Humphrey: I wonder whether, on reflection — hindsight is a wonderful thing — was it not a mistake not to have the Strategic Investment Board and key people from your own organisations and departments involved in that design team?

Interim Deputy Chief Constable Finlay: There is quite a technical issue as to what technical expertise we have in that. I do not know whether Brendan wants to say something about the industry, because it is a very specific industry-type approach.

Mr Smyth: I will do that and perhaps just clarify. Perkins+Will is an architectural firm that is leading the design team, but there are other strands to that design team.

Mr Humphrey: What are the other strands? That is the question I was asking.

Mr Smyth: One of the other strands was DBK Consulting, which was the cost consultant. It has been removed from the team and replaced by Bruce Shaw, which is an international company based in Belfast. There are engineering firms, such as the world-renowned Atelier Ten, which is a huge global engineering firm with international expertise. There are different strands that look after the safety elements of the design. There are structural engineering elements. There is a whole raft of people who make up the team, but they are led by Perkins+Will, and the contract is with Perkins+Will. There is another specialist company that came with it for the technical training and fire-range areas. As part of the competition, which was run some years ago, there was a broad spectrum of people assessing that. All the services were represented, and SIB was represented as well.

Mr Humphrey: From the start?

Mr Smyth: From the start. SIB and PSNI estates have been involved from the start; they have all been part of the project team. They have not been part of the design team that has been delivering it,

but they have been sitting right through the process, adding value, expertise and guidance to the programme.

Mr Humphrey: Would it not have been a mistake for them to be fully in from the start?

Mr Smyth: I am not the PSNI, but I am aware of it. The PSNI has a very small technical resource. The PSNI typically does not deliver. It manages its project and it might do some minor works, but it does not design its own police stations, for example; it brings in professional design teams to do that. This is on a scale way beyond all that, so I do not think that that would have ever been a feasible concept.

The Chairperson: Yes, but your health estates had a role in it and you are responsible for hundreds of millions of pounds of capital projects.

Mr Smyth: Yes, absolutely. We are the centre of procurement expertise (COPE). All major procurements have to be procured under the influence of a COPE, and we were —

Mr Humphrey: The Deputy Chief Constable picked up that he is struggling to convince us, and I am becoming more unconvinced as this meeting goes on, to be honest. You talked about the legalities around the contractual liabilities. A contract is a two-way thing. You are talking about the point of view from your side of the table in terms of your contractual obligations. Surely there are contractual obligations on those people providing the services at taxpayers' expense — £9 million to date.

You used the word "incompetent", and that just about fits it. Where exactly in the contract that was negotiated is the clause that that incompetence should continue to be rewarded when it should have been penalised by termination of the contract or clauses to claw money back? Who negotiated that contract? I am intrigued by this: you said, and I would be interested to know at what point, that few up-front payments have been made since. Is that not a breach of the contract? And when did that start?

Interim Deputy Chief Constable Finlay: This is not in the contract. The contract is designed so that the contractor has to deliver x. Our argument, which is accepted by the contractor, is that they have not delivered x. They have not met their contractual obligations.

Mr Humphrey: They broke the contract.

Interim Deputy Chief Constable Finlay: They have not met the terms of the contract. Therefore, there is compensation due in terms of litigation as regards losses incurred as a result of poor performance of the contract. The legal advice on the best way to recover the largest amount of money or the best opportunity for that was, if we could gain confidence with the supplier, with the contractor and supplier having recognised that they have not performed to the contract specification and for us to continue engaging with them, and then we will seek to recover at the end all that we measure as being a consequence of that.

Mr Humphrey: But it will get to a point in a contract, especially a contract of this magnitude and cost, when it is more cost-effective to continue than to retrace, stop and start the whole process again. I accept that you made that point to Mr Maginness. I see here contracts that they have not met, as you put it. There is a clawback and costs can be recovered. They have "not met the contract" was the term that I think you used, so that is a breach of the contract.

I am not a lawyer, but, having worked in business for 16 years, it is clear to me that that is a breach of the contract. If you stopped making upfront payments at a certain point, that was a recognition by your side that there was a breach of contract. I suspect, therefore, that there was a point when you could have stopped this and you did not. That is regrettable because the taxpayer in Northern Ireland is going to have to pay dearly for that.

When you talk about £20 million going out, you equally admitted that an extra £50 million is going in, Mr Finlay. This whole thing really is just so regrettable. It has damaged our reputation locally, nationally and internationally. If only steps had been taken. I accept that there were issues. In the Culture, Arts and Leisure Committee, a much lesser contract worth much less money was discussed only a few weeks ago. This preponderance of employing consultants to do work and then suddenly the wheels come off is costing government in Northern Ireland a huge amount of money. Given the

resources in the Department of Justice, the Health Department, the police and the Strategic Investment Board, I am shocked that they were not involved at a much earlier stage and did not apply the brakes.

Interim Deputy Chief Constable Finlay: If I may just briefly reply to that, the issue is entirely about the commitment to recover for the taxpayer all that is due. Although I accept that the point — I do not land it — that the legal advice that we have does not seem to resonate with the Committee, the entire purpose of this is to ensure that we get two things: the building in Desertcreat to the cost and specification, and we were hoping to achieve that on time, though potentially the timeline may slip; and that we do not pay a penny more than was required to deliver the specification in the contract and, where the specification in the contract has not been delivered, appropriate compensation is applied and the taxpayer can see that no more money has been paid. I accept your point, and also accept that, on the face of it, this may seem to be a slightly perverse way to go about it.

Mr Humphrey: I took note of what you said:

"The governance around this has been more than competent".

I think that that was the term you used. And you said: "We will recover the money." I am not so sure that the governance has been more than competent. I think it abundantly clear that that has not been the case. As I said earlier, you used the term "incompetence".

I wish you well in recovering the money because, as a taxpayer, I want to see that happen. However, I represent a constituency in which there is a huge number of people who are unemployed and who could do with the work. The 2,000 jobs that Jim Wells talked about earlier are much-needed in the Northern Ireland economy and particularly in that part of the world. You have a great job of work to do to provide confidence, not just to the people around this table, but to the people of Northern Ireland who want to see this happening and want to see the positives that there will be for the police and fire services, the health service and all the other organisations that will benefit from it. I suggest to you that that has to happen very quickly.

Interim Deputy Chief Constable Finlay: I am grateful for those views. I think that we are on the same page in wanting to achieve exactly the same outcomes. There is a part, I recognise, round about the issue of Perkins+Will, which is a rubbing point. It is a rubbing point for us too, because the professional failure is the source of the issues of where we are, in time, delay and cost. Our commitment is to recover that.

The Chairperson: I think that others will look into the way in which this has been managed by the programme board.

Mr Dunne: Thank you very much for coming in and having this session with us. I have just a few points; most of the issues have been well covered. You mentioned earlier that the preferred bidder had carried out some work on site. I understand that they ran the meet-the-buyer events and so on. So, that bidder has made considerable commitment. What sort of buy-in have you with them? Are you legally bound to proceed with them? Is there any understanding with them, or has there been any sign-off of documentation in relation to your set-up with them at present?

Interim Deputy Chief Constable Finlay: No. We have no relationship with the preferred bidder, other than that they are the preferred bidder.

Mr Dunne: What does that mean really, in relation to the others who have bid for tenders?

Interim Deputy Chief Constable Finlay: Brendan, could you deal with the technical aspect of that?

Mr Smyth: Effectively, we ran a competition, and that bidder provided the most economically advantageous bid, a combination of price and quality. That put them into a position whereby we can discuss and fine-tune some of the aspects of the tender and give ourselves assurance that everything that they are offering fully complies with the requirements of the tender. In the normal course of events, we would have gone on to agree a final price with them, which might have been adjusted slightly on the basis of some efficiencies that they are allowed to put forward as part of the tender process, and enter into a contract with them. There is a provision in the contract that, if, for some reason, we as the authority do not enter into a contract with them, they are paid a sum that is like an

honorarium of £10,000. It would not come anywhere near their expenditure, which is probably a hundred-fold more than that, at least.

Mr Dunne: So, you are saying that the work that they have done is done at risk?

Mr Smyth: Yes. They are a tenderer working at risk, and they are fully aware of that.

Mr Dunne: They are fully aware of it. Are you satisfied that, if you applied the bill of reductions, there would be no real risk of compromising the build specification or the quality of the build standard of the whole project?

Mr Smyth: Some of that reduction was a different specification. One example that we have discussed before is that some of the road specification was to motorway standard, and so it was possible to reduce the depths of build-up of that road and to reduce the specification to something that was still fit for purpose but to a lesser specification. Similarly, we looked at options on the cladding of the building and used cladding elements that were used in some other parts of the complex to reduce the cost. We assured ourselves that, in the context of life cycle and whole-life value, it was not going to create an increased burden. There have been changes in the specification. Some of the training facilities were omitted but only with the assurance that the functionality for training was not diminished. One example of that was that some of the training that was provided previously independently for the Fire Service and the police was combined, and that resulted in efficiency. Those were the types of elements. The functionality of the training was not reduced — that was a given — and there was no impact on the whole-life-cycle cost of the facility. It was a very detailed scrutiny, and we looked at every aspect that we could to maximise the reductions without compromising the specification or functionality of the complex.

Mr Dunne: The quality of the build standard is still assured?

Mr Smyth: The quality of the build standard would not be affected by it.

Mr Dunne: I understand that there are 180 people on the design team. So, it is quite a large team. It is up to 180 people from various specialities and so on. Apart from the cost element, which obviously went badly wrong, are you satisfied that the rest of it meets requirements?

Mr Smyth: Yes, we are satisfied. The project team has been scrutinising that in detail, particularly since the manifest error became apparent after the tender and before that. We have confidence in the design team now. It has had to convince us, and we have not made it easy for the team, given the challenge function that was laid down. We are confident that what it has now produced is robust. That has been, to a degree, verified by FGP concurring with the value on the bill of reductions in that that aligns with our estimate of it.

Mr Dunne: I take it they are paid on a staged-payment basis.

Mr Smyth: The contractor is.

Mr Dunne: What about the design team?

Mr Smyth: Yes, it is.

Mr Dunne: Finally, who verified the payment to the design team? Who finally signed that off on behalf of the PSNI or the Department?

Mr Smyth: That was led by the project team, and the programme director was responsible for signing off that that work was completed to a satisfactory standard.

Mr Dunne: Who signs stage payments off on behalf of the PSNI?

Interim Deputy Chief Constable Finlay: Ultimately, the finance director, and there is a finance group as part of the governance structure. However, the project team worked to the combined entities of the three services and has the mandate to take forward, on behalf of the three services, sign-off on those technical aspects and to commit expenditure.

Mr Dunne: It signed off in good faith, but there should be a system and processes in place to give assurance that the work that has been done is what is required under the contract and meets the specification. Unfortunately, there has been a major failing there.

Interim Deputy Chief Constable Finlay: There is a contradiction between the major failing of the supplier, in terms of the design team, and the legal advice to continue our contract obligations.

Mr Dunne: That is understandable.

Interim Deputy Chief Constable Finlay: There is conflict around that. I can see why that is causing some questioning.

Mr Dunne: Are you happy for the design team to continue with the project if we are to proceed?

Interim Deputy Chief Constable Finlay: The programme board has confidence in the design team as it stands at present — the way in which it is constructed and the component parts. Therefore, we have confidence to continue with it. As I said, depending on what happens during the next couple of weeks, the programme board will have opportunities to consider options about how long it will take and whether there is a different procurement route and, therefore, what is the construct. There is a feeling that we need to clear the ground with the design team, but that has to go into the detailed considerations of the programme board, if we come to that particular issue.

With regard to the governance, which I know has been questioned and, as the Chair has recognised, will be questioned by others going forward, there is a huge amount of additional work. There have been governmental standard gateway review processes; there has been scrutiny by the internal audit aspect, which is contracted out in PSNI; and, as we need to build in confidence for some of those technical aspects, there has been a whole series of peer reviews, where other engineering companies come in to look at the particular specialist elements that are required and to give confidence to the programme board that what has been specified is delivering what is required.

Mr McGlone: I listened very carefully. On 19 December 2013, they said, "Yes, we stand over that price, and we stand over it for a further six months." Yet, 10 weeks later they said, "Whoops, it is up 24%." To my mind, they were, wilfully or otherwise, providing you with inaccurate or maybe even misleading information on one or both occasions. You come to the point — I am sure that you have thought about this — where you wonder whether you should give the preferred bidder a deadline and tell them to either get on with the work or withdraw from it. I will take you through the sequence and the consequences of that, because I need it clarified in my own mind. What happens at that point? Do you go back to the original pool of tenderers, or is the procurement exercise wide open again? We do not want to even consider that, because lot of people's reputations are at stake — yours and others — as many people involved feel deeply let down. What is the sequence? Do you start looking at it afresh and consider breaking the entire project into various packages for other contractors to do? Where do we go with it?

Interim Deputy Chief Constable Finlay: I will let Brendan deal with the technical question of where we go with procurement if that were to happen.

With regard to the timeline, as I said, we are not going to be led along by the preferred bidder on this. There are ongoing meetings, and a meeting is planned for early next week. The situation has to be clarified to the programme board's satisfaction during those meetings over the next week; otherwise, it is for the programme board to take matters into its own hands. If it does not have confidence from the information supplied that the preferred bidder can deliver to the cost in the contract, it is for us to take the initiative and end it if we do not see any prospect of it achieving an outcome. We will be proactive on it, because there is the risk that we could be led from one meeting at the beginning of one week to another week and so it goes on, and all that we are doing is drawing out time. We believe that we understand the situation and that we may have to be proactive, even though that might seem to be a semi-destructive act, if you like. However, it is about having confidence in the preferred bidder. Brendan can maybe cover the options.

Mr Smyth: The fallback option, as identified in our memorandum of information, our invitation to tender document and the letters that we sent out to the preferred bidder and the unsuccessful bidders, is that, in the event of failure to reach agreement with the preferred bidder, we retain the option to go out to all of the shortlisted contractors on a lowest-price basis. Other factors could impact on that.

There is no point in going out again if we are not confident that the budget available is deliverable. So, we need to do a little bit of work, which we have already initiated, to start looking at what we believe the correct pre-tender estimate for this piece of work should be. It may sound like a strange statement to make because you may ask why we had not done that, but we were previously tied —

Mr McGlone: Why have you not done it before? You said that it had been looked at on multiple occasions.

Mr Smyth: Yes. We have a lot of really good intelligence through the bill of reduction exercise that the quantity surveyor has done on the tendered rates, supported by the evidence that FGP has come back with on its assessment of the value of the bill of reductions. The core issue is what the base value of that estimate is. We need to determine that figure, which will probably take four to six weeks, to give us a robust assurance, through Bruce Shaw doing a detailed analysis of the bill of quantities in the current pricing environment. That will give us a robust analysis. The issue is then whether we have the financial envelope to go out to tender to those five shortlisted consortia. If we do not, there are two ways to go. We either reduce the specification to a level that allows us to go out to tender or we increase the budget. A third option is to find something in the middle that works both ways.

Interim Deputy Chief Constable Finlay: In the middle of that is the necessary governmental permission for the processes or business case, because, if this is changed, the business case needs to be changed. That has to go through the Departments, including DFP, and then to the Executive for sign-off. So, whichever way we go, governance comes into this that will, in itself, incur delay.

The Chairperson: Two members have quick supplementary questions, and then we will finish. So, Mr McKinney and, straight after him, Mr Wells. In fact, combine the two questions.

Mr A Maginness: Could they not just stay, and we can all go on? *[Laughter.]*

Mr McKinney: Thank you for your indulgence, Chair. Notwithstanding events, can you say tonight that those events will not divert the ambition, aim and intent behind the project to have three services at a training college on one site, and that site is Desertcreat?

Interim Deputy Chief Constable Finlay: I can. We are committed to the Desertcreat site, which has been scoped at various times to establish whether it is the right site. It is, and the services are committed to that.

Mr Wells: Mr Finlay, you started by giving me the best quote for years. You called all this a significant pause —

Interim Deputy Chief Constable Finlay: A strategic pause.

Mr Wells: A strategic pause. *[Laughter.]* The captain might have said that his business had a strategic pause as the Titanic hit the iceberg. I think that it is a wee bit more than that.

Interim Deputy Chief Constable Finlay: The strategic pause indicates that it is not at an end; it is a gathering of, or reflection on, where we are now, what the options are and what is the right way to deliver the outcome that we want, as described by Mr McKinney.

Mr Wells: There is still an iceberg to get round, mind you.

The Chairperson: Thank you very much for coming to the joint Committee. There will obviously be follow-ups as we continue to look at this, but I thank you all for coming to the Committee.

I thank members for the joint Committee meeting, which I am sure you agree was required because of the extraordinary nature of this. The Justice Committee had been looking at this matter in some depth. I assume that members are agreed that the Justice Committee will take it from here. It will continue to do that work and will want to follow up on it. I thank you all for coming today.

Mr McGlone: Thank you, Chair.