



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Review of Campbell Tickell Report

21 November 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Jim Allister
Ms Paula Bradley
Mr Gregory Campbell
Mr Trevor Clarke
Mr Michael Copeland
Mr Stewart Dickson
Mrs Dolores Kelly
Mr Fra McCann
Mr Sammy Wilson

Witnesses:

Mr Donald Hoodless Northern Ireland Housing Executive

The Chairperson: Donald, will you begin?

Mr Donald Hoodless (Northern Ireland Housing Executive): I am sorry if members feel that they have not had enough time, and I can understand that. However, I want to emphasise that our anxiety was that the Committee should hear first and have the information. The report was restricted to us, we have now released it and it is a public document on our website. We have no intention of holding back. The story is here. We think it much more sensible to publish it in full so that people can see what happened and we can deal with the issues and move on. I am willing to take advice from the Chair and the Committee on when and how we should release information in future to help you, but I did not want a great public discussion of the issue prior to you having the opportunity to question me and see the report. That was the simple basis of it.

The Chairperson: In a minute or two, I will invite you to take members through the report, as you wish to do. I feel that it is a very damning report, but also that it is fundamentally flawed, in that the report itself says that the firm carrying out the investigation is:

"neither a legal firm, nor a forensic accountancy."

So I fail to see why it was asked to do the report, and I would like you to address that. I think that there are more unanswered questions than anything else. I want to draw people back to the Committee's view of this, as expressed at the Coleraine meeting, for example. This jumps out at me from the report: there was serious concern about the blaze of publicity in which four contractors were named. The report goes into some detail and actually says, right through the document, that it cannot

find one example of fraudulent behaviour or overcharging in any single property. However, throughout the document, it still says — and I think it grossly unfair — that it has not found one area of fraud and cannot identify one specific example of overcharging, yet it still believes, and I am paraphrasing the report, that those four contractors were overcharging. At the same time, it goes on to say that it did not get all the documentation requested from the Housing Executive and did not speak to a lot of the people who were involved in all this, and yet it does not impute any wrongdoing to anybody. I think that that is a gross imbalance, and the document is very flawed. Having said that, I leave it to you, Donald.

Mr Wilson: Before we move on to that, if the purpose of holding back this document was to allow the Committee to discuss it before it became public, maybe Mr Hoodless can tell us why it is now on the BBC website and we have not discussed it yet at all. It seems to me rather disingenuous to say that that was the reason for holding it back, while, at the same time, the purpose of holding it back has not been fulfilled anyway. I suspect that the real purpose in holding it back was because, from what I can read even of the summary, this is such an appalling story that the Housing Executive did not want there to be proper scrutiny of it this morning. I have to say that this is typical —

Mr Hoodless: Can I suggest that I introduce the report and say so? Because the assumption that has just been made is not correct.

The Chairperson: I was just going to ask you, Donald, to do so. It is for you now to produce the report and outline the reasons why —

Mr Clarke: Sorry, Chair, before we get into that, where is the assumption that it is not correct? Julian O'Neill had a statement on BBC this morning about the findings of the report. Therefore, where is the assumption that the suggestion that Sammy Wilson made is incorrect, in terms of the BBC having it, given that Mr Hoodless said that the purpose of this was to let the Committee see it first before it went into the public domain? Yet and all, we read it on the BBC this morning, before we came to the meeting. What part of the assumption is incorrect?

The Chairperson: Sorry. We will leave that now. I invite Donald Hoodless to produce the report and deal with some of that.

Mr Hoodless: As you recall, and as you reminded us, I attended the Committee with you in Coleraine. The Minister made his announcement to the Assembly about my report to him that our officers had disclosed to us, after a lot of effort to get the information from them, that they considered, on an estimate, that we had overpaid contractors by £18 million. The problem the board had was getting to the bottom of the story about those planned maintenance contracts, which is why we decided that we needed an independent report to go into whether the story being told by the officers was the full story and whether the information was correct. Therefore, that was the basis on which we proceeded.

I will go through the brief story of the report. It goes back to 2008 with the planned maintenance contracts, when partnering contracts were introduced. Partnering contracts are a very good system, and I have used them myself. However, the problem was that there was insufficient training of staff, and then there were two rounds of redundancies of technical staff with the qualifications to manage those contracts. Effectively, the management of the contracts was abrogated to the contractors. Problems were picked up internally in 2009, and at that time, reports to the audit committee were altered so that the audit committee and the board were not able to see, at that time, that overpayments were being suggested in those reports.

The next step was that that came to light to all senior management and the board in October 2010. The problem is that we are now in November 2013 and those issues have not been resolved. The report highlights very straightforwardly a dysfunctional organisation with inadequate leadership. Poor management overall and a failure to deal with those issues is what we are addressing. The report is for the Housing Executive board, it is about the Housing Executive, and it sets out what we need to do to put things right. It seems to me that there are three elements to that, and the first is to deal with the planned maintenance contracts. We are in negotiation with contractors and that will go on, because no quick resolution is likely. Therefore, we are going to set up a small team to deal with those issues separately from running the main business, and we will proceed to get on with the business of letting new planned maintenance contracts for the future.

The second issue is that the organisation needs better management. It needs changes in the management, and that is happening. Two senior directors have retired and the chief executive will

retire next March, and that gives us an opportunity, in a sense, to change the organisation and rid it of that dysfunctionality and restore its reputation. Many staff feel bloodied and bruised by all the allegations and problems that have arisen on the planned maintenance side, and that affects morale. We want a very effective Housing Executive that meets the needs of all communities.

The third thing is that it needs better focus on what it is doing. One of the issues that struck me when I arrived a year ago was that the Housing Executive had performance indicators that covered whole areas. I can give you more examples if you want, but, for example, in my view, there was not sufficient looking at what the landlord was doing. When I arrived, for example, the landlord was re-letting properties in 45 days — nine weeks. It is down to 26. It just was not a performance indicator. It costs you money to keep a property. You lose rent, you have to find a new tenant and you have to spend money on the property.

Another issue that I discovered, for example, because the landlord was not there, was that, if someone rings up about a rent repair, you take the repair, you check the rent account and talk to the tenant. The dysfunctionality in the organisation was that rents were done one way and accounts were done another. You could not see the two together. There is a lot of need for the Housing Executive to focus on its core functions better. I can give you other examples in Supporting People or what is now being described as the regional side. I will go on if you want me to, but at this point I am happy to stop and answer questions. However, I want to emphasise that it represents a failure of governance. The first thing is to recognise that, because unless we recognise and face up to it, we cannot put it right, and it is the intention of the board to put it right.

The Chairperson: OK, Donald, thank you for that. A number of members are very keen to get in, so I ask them to try to focus on questions.

Mr Brady: Thanks for the presentation. I have just a few questions. Obviously the names of those companies were published very publicly — in a blaze of publicity, it might be said. Will those companies get an apology in light of the report? That is the first question. I have a couple of other questions. Did Campbell Tickell try to interview former Housing Executive directors and staff who would have had a role in that?

Mr Hoodless: On the second question, I do not believe that they did. On the first question, we are in negotiation with the contractors, so, until we resolve that issue, nothing will be said. I have to say to you that I have not mentioned the contractors. The Housing Executive has not mentioned the contractors.

Mr Brady: The Minister mentioned them.

Mr Hoodless: Yes, but I am not the Minister. Let us be clear that, as I said to you when we were in Coleraine, I am not looking for a fight with contractors. Good client-contractor relationships are essential to get work done properly. I have made it quite clear that we want to resolve this through negotiation. That is still my position, and that is what we are seeking to do.

Mr Brady: I know that you are not the Minister, but I presume that he did not conjure up those names. Somebody had to brief him on them.

Mr Hoodless: We are a public body, and it is public knowledge who the contractors are. It is a public contract, so —

Mr Brady: It may be public knowledge who does contract work for the Housing Executive, but surely it was not necessarily public knowledge that those four contractors were being accused of being overpaid. The figure mentioned was £18 million. There was also talk of possible wilful fraud, etc in that statement in June. Presumably the Minister had to be briefed on that.

Mr Hoodless: The only briefing that I gave the Minister was to say that we had that report from our own officer. The board insisted that they crystallise what the issue was, and, from a very small sample of schemes, they made an estimate that up to £18 million was overpaid. That was all.

Mr Brady: Do you consider, based on the report, that those contractors should receive an apology?

Mr Hoodless: No, not until we have resolved it. The evidence we have is that there have been overpayments. Until we resolve that with the contractors, what am I apologising for?

Mr Brady: Can I ask you a couple of other questions? What documentation did Campbell Tickell not receive, including e-mails etc? Are there any other relevant reports that have a bearing on this?

Mr Hoodless: I think in the chronology here, it goes through all of the issues that it looked at. It is rather detailed. If you have not had that time, I appreciate that. It has gone through a whole chronology of it, and has been pretty thorough, I have to say. The issue is centred on planned maintenance, but do not misunderstand: this is an issue of poor governance. The Housing Executive has become a dysfunctional organisation that has not dealt with these things properly, and that is my concern. My concern, frankly, is to resolve the issue of the contractors and move on. That is the task that we have.

Mr Brady: On page 6 of the report, in the terms of reference section, it states:

"We have been told that reviews commissioned from Deloitte in around 2003 and 2005 gave the Board assurance on the organisation's preparedness for 'partnering'."

You have already mentioned that. It continues:

"Staff were not able to locate the reports for our review."

I presume that that refers to Housing Executive staff. Does Deloitte not keep copies of reports that it does?

Mr Hoodless: I have not pursued Deloitte about that. I do not think that it does. We would be happy to do that.

Mr Brady: Would that not have been sensible? If you cannot get it from one source, would it not have been sensible to get it from the source that might have it?

Mr Hoodless: It is possible, but I do not think that having the Deloitte report would have altered the conclusions that are here.

Mr Brady: I am not saying whether it would or not. I am just saying that it seems a reasonable suggestion, if Housing Executive staff say that they do not have the report. Deloitte did the report and, presumably, got paid for doing it. You would assume that an organisation as big as it would keep records of reports.

Mr Hoodless: I am very happy to go back to it.

Mr Brady: Should you not have gone to it already, or should Campbell Tickell not have pursued that?

Mr Hoodless: I am not certain that having it would have made any difference to the conclusion.

Mr Brady: That is not the suggestion. I do not know what was in the report, and I am not suggesting whether it would or would not have made a difference. Surely, to give an informed report, you should have access to all of the relevant material. One of the questions asked was, "Are there any other relevant reports?". It seems to me that this would have been relevant to the overall picture. It was to do with partnering, and you mentioned earlier that one of the issues was that people were not geared up to carry through the partnering objectives, if you like.

Mr Hoodless: Yes, I accept that that is the case. My understanding from the presentation that you have from Campbell Tickell is that this was the only report that it could not find.

Mr Brady: It could have found it if it had gone to Deloitte.

Mr Hoodless: Indeed. It did not pursue it with Deloitte. I have not yet, and I am very happy to do so.

Mr Brady: It may be a bit late, now that the report is done.

The Chairperson: It is not too late for the Committee.

Mr Copeland: Good morning, Mr Hoodless. On the day that the Minister raised the £18 million figure in the Assembly, there appeared to be some confusion, and there still appears to be some confusion, over whether or not we are discussing overcharging or overpayments. In the introduction to this document, on page 2 of 121, paragraph 1.1.1, in the terms of reference section, it states:

"to bring to a conclusion the situation in relation to allegations of over-charging".

"Over-charging", in my view, implies that the responsibility lay with the contractors. However, at paragraph 1.1.2, it appears that the terms of reference included to:

"Assess whether the calculation of the estimated over-payment is reasonable and robust."

So, there is still a confusion and an attempt to apportion blame, because "over-payment" implies some failing on the part of Housing Executive and "over-charging" implies some shady dealings on the part of the contractors. "Over-charging" appears to be used much more frequently throughout the rest of the document, and I am still slightly confused about that. I share the Chair's concerns that the people carrying this out go to some great lengths to, as he has said, indicate that Campbell Tickell is neither a legal firm nor a forensic accountancy firm. Just a paragraph below, it uses the term "omitted", which does not exactly fill me with confidence. One paragraph below that, it states that it:

"did not interview or seek evidence from the contractors".

Those contractors appear to be inculcated in the blame game that is going on here. It then states that many of the records and documents were unavailable, without specifying what importance may or not be attached to those. Then, it uses the word "unavoidably", which is an interesting word:

"Unavoidably, there will be instances where we may have overlooked some particular minute or paragraph".

Is this the only investigation into this matter? I understand that another exercise was carried out in conjunction with the contractors themselves, and that that report indicated an amount of somewhere between £6 million and £8 million possibly owing to the contractors. There are two sets of papers, one of which you have brought to us and which is littered with excuses in the first two or three pages. It tells us all of the reasons why Campbell Tickell are not qualified to do the thing and how little information it had to reach the decision that it reached. On the other hand is a piece of paper that indicates that the actuality is that the contractors, who were named, may actually be owed money. Is the truth of it not a game of smoke and mirrors?

Mr Hoodless: The board has not received any reports that the contracts are owed £6 million to £8 million.

Mr Copeland: You have not seen that report?

Mr Hoodless: There is no report that I am aware of. This may be part of a negotiation that officers are having with contractors, but that is not a definitive position that has been agreed by the parties, as far as I am aware.

Mr Copeland: Has that report been released into the public domain in the same way as this one has?

Mr Hoodless: We have not got that report. It is not a report to the board. There has been no report to the board about £6 million to £8 million.

Mr Copeland: Who has it?

Mr Hoodless: I have no idea. As I have said before, we are seeking to negotiate with the contractors about this issue.

Mr Copeland: Can I ask that you acquaint yourself with any paperwork that you may have? I believe that the goalposts are being shifted in that report to alter the degree of liability between the two bodies by changing contract dates and assuming that some contractors — *[Inaudible.]*

Mr Hoodless: Yes. If the contractors felt that they were owed that amount of money, they would be through our door as quickly as they could to resolve it and get it done. That has not been the case.

Mr Copeland: It depends on whether the door is open or closed.

Mr Hoodless: It is always very open. I am putting the officers under a lot of pressure to seek to resolve this. It is in no one's interests that this goes on and on and on. We want to move on.

Mr Copeland: For clarification, you have no knowledge of any figures that indicate that the contractors may be owed money on the sample —

Mr Hoodless: No. I have heard those rumours; that is all they are.

Mr Copeland: And there is no paperwork in the Housing Executive.

Mr Hoodless: That I cannot say, but I am not aware of it. We will have a board meeting next week. I pursue them every month to get to the point of where they are in discussions with contractors. Let me just explain very simply, there are three things that we wanted. If there were overpayments, they agreed that they would repay them, and they did. The second is to agree a sample, because you cannot possibly ever know how much is overpaid or underpaid because there were 60,000 of them. You have to have a sample, so we need to get agreement on the sample. Then you have to agree how you move the sample to the total population in terms of money outstanding and how you deal with that if it becomes an overpayment. We have done point 1, and, as far as I am aware, we were discussing point 2 about the sample.

Mr Copeland: Do you personally consider that the figure of £18 million announced by the Minister — *[Inaudible.]*

Mr Hoodless: I do not have a view about how much it is. All I know is, as a board, we have been told that there are overpayments. They are estimates. The best thing that we can do is to seek that those are resolved between the officers and the contractors. Bear in mind that this is public money, and we will have to account to the Northern Ireland Audit Office for this. We need to make certain that we do that properly and accountably.

Mr Copeland: Lastly, Chair — I thank you for your forbearance — do you have any idea where the Minister got the £18 million figure from?

Mr Hoodless: It came from us. It was a report to the board. Let me be clear: what makes me angriest about this is that we knew that the problem existed in October 2010. It has not been resolved, and I have insisted that the issue is crystallised — that they turn around and say, "What is the scale of the problem?", and they estimated £18 million. It was probably not a sensible way to deal with it, in retrospect. It would be much more sensible to do it as a range, but, nonetheless, they were absolutely clear that they overpaid contractors.

When the board is told that we have overpaid contractors, we have to seek a resolution. My aim is to seek that resolution with the contractors so that we can move on with new contracts. As I said to you, for a huge amount of the staff, it is demoralising to have these allegations around. The Housing Executive has a proud record. Its reputation has been damaged, and we must restore it. That is what we are about. We all want to move on, but I can only move on by resolving it.

The Chairperson: OK. A number of members want to speak, and I will just list them. We have Fra, Jim, Dolores, Gregory and Sammy. That is the order in which members will speak.

Mr F McCann: I do not want to get into a debate and argument about morale levels in the Housing Executive. From talking to many staff, I know that they place the blame partially on what has happened, but also on the way in which the organisation is being run at the minute. However, that is a debate for another day.

I would just like to draw your attention to page 8 where, in paragraph 2.3.2, it states:

"The work by Moore MacDonald and internal reviews establish conclusive evidence of overcharging, although it is not possible to quantify the level without an inspection of a much higher proportion of properties. There may also have been undercharging in certain instances."

That is stated in a report that the Housing Executive has, but you are only after saying to Michael that that is not the case.

Mr Hoodless: We are not arguing that there could not be, on some projects, some undercharging. What we are saying is that we, the board, are being told that, overall, there was overcharging and overpayments. I can only deal with the information that we are given and then seek to resolve the conflict.

Mr F McCann: Have you read the Moore MacDonald report?

Mr Hoodless: I have not, no. The Moore MacDonald report is an inspection of certain projects that it remeasured. The issue here is that the sample was very small, but it led them to conclude that the contractors that it inspected had been overpaid.

Mr F McCann: My understanding after the Coleraine meeting was that we were very adamant that there had been an £18 million overpayment, but that does not seem to be the case now. There was an agreement by the Housing Executive, through John McPeake and some of the contractors, that each one would set up an independent review of what had happened, but those reports have now been rejected in favour of the Campbell —

Mr Hoodless: No, no. Let us be clear: the Campbell Tickell report tells the story of the mismanagement of those contracts by the Housing Executive. Let us be blunt about that. The separate issue is that we, as a board, have been told that we overpaid contractors as a consequence of that mismanagement. We have to deal with that, and that is what I am seeking to do.

Mr F McCann: I have to say that we all know that there has been mismanagement of contracts. What we are trying to get to is where that figure of £18 million came from in the first place.

Mr Hoodless: Well —

Mr F McCann: Please, let me finish.

Mr Hoodless: Sorry.

Mr F McCann: You mentioned October 2010. My understanding is that the Department for Social Development also knew that there were serious problems with contracts. Have you asked it why it did not deal with that then? If the Housing Executive had approached the Department and asked for assistance, that should have been forthcoming.

Mr Hoodless: I have not, because I was not here in October 2010. I have only been here —

Mr F McCann: But in your earlier submission, you referred to October 2010.

Mr Hoodless: I did so because that was known to the board and the senior management at that time. So, no one can say that the board or the senior management did not know at that time. That is the issue. To my mind, it is not really acceptable that a problem that goes back to October 2010 is still live in November 2013, is it?

Mr F McCann: Alec raised this at the start of the meeting: if Campbell Tickell was not qualified legally or forensically to deal with this, why was a qualified company not brought in to do it?

Mr Hoodless: I think that we need to get to the basis of what we were asking. We, as a board, had difficulty dealing with the officers who were coming to tell us exactly what they had discovered and how they were going to deal with those planned maintenance contracts. My concern was that, given the rather anodyne reports that we had had and the difficulty that we had in bottoming this out, we needed someone independent to verify what we had been told. That does not require forensic accounting or legal work. The company had to go through and check the documentation and the story

to make sure that it was the story being told. Broadly, it is the story being told, except that Campbell Tickell is quite clear about the dysfunctionality and the poor management, whereas the reports that we had got from officers rather passed that point by.

Mr F McCann: Who appointed Campbell Tickell?

Mr Hoodless: I did. Let me just explain what happened. I meet the Minister monthly, and the board meeting was on the Wednesday. I met the Minister on Wednesday afternoon. We had agreed at the board meeting to set up an independent inquiry. The Minister decided that he would speak to the Assembly on the following Monday morning, and it seemed to me that it would be rather foolish if the Housing Executive did not have its independent inquiry team in team. I discussed that with the permanent secretary, and we agreed terms of reference. I know from my previous experience as a board member of both the Housing Corporation and the Tenant Services Authority that Campbell Tickell did these sorts of investigations on behalf of organisations. The responsibility for the appointment is mine. The reason that it was done on Friday 7 June was simply because the Minister was due to speak in the Assembly on the following Monday.

Mr F McCann: What is the relationship between Campbell Tickell and the Housing Executive board member Greg Lomax?

Mr Hoodless: He is an associate. He occasionally does projects for Campbell Tickell. For example, he was the interim director of Helm Housing, the housing association here. I think that Campbell Tickell placed him there.

Mr F McCann: Do you not see that as a conflict of interest?

Mr Hoodless: No. He had nothing to do with it, anyway. I was the one who did it. I have no dealings with Campbell Tickell, except my experience of having seen them used by the non-departmental public bodies (NDPBs) that I have served on in England.

Mr F McCann: The report mentions the presentation that was given in June. You spoke about requiring contractors to cooperate and if that failed, you would look at the options, although you would be left with no other option than legal action. Is that still the case?

Mr Hoodless: It will be the case. Let us be quite clear: what we were being told as a board was that public money was being overpaid to contractors. That is the bottom line. That is public money, and our accounts will be qualified. We will have to determine with the Northern Ireland Audit Office how that is dealt with, and we will have to satisfy it that we have taken all steps possible to recover any moneys that are found to be overpaid, if they are overpaid.

Mr Clarke: Which you cannot quantify.

Mr Hoodless: Well, yes —

The Chairperson: I do not want to take questions across other questions, because the issue is so important. Members will have the opportunity to ask their own questions.

Mr Allister: Mr Hoodless, how many drafts of this report were there?

Mr Hoodless: There was one draft that was sent for checking for accuracy.

Mr Allister: Who did the checking?

Mr Hoodless: It was passed to the senior management team.

Mr Allister: The very people who are heavily criticised in the report.

Mr Hoodless: Let us be quite clear that Campbell Tickell also named rather than blamed people in the draft report.

Mr Allister: The senior management team individuals who were named in the draft were then given the privilege of editing the report and took out the naming of individuals. Is that right?

Mr Hoodless: The view was taken that it was not sensible to name individuals.

Mr Allister: Is this right: they took out the names?

Mr Hoodless: No.

Mr Allister: Who took out the names?

Mr Hoodless: Campbell Tickell.

Mr Allister: Was Campbell Tickell at the editing meeting?

Mr Hoodless: No, it asked us, the Housing Executive, whether there were any issues of accuracy.

Mr Allister: Mr Hoodless, it sent you a draft report that named names and made serious allegations against individuals. Those individuals on the senior management team were then given the report to edit and to make representations about, and they spent five hours doing it. Is that not right?

Mr Hoodless: They spent a long time going through it, but they did not edit it. The editing was done by Campbell Tickell.

Mr Allister: A key feature of that editing was taking out names —

Mr Hoodless: It was not editing.

Mr Allister: — of individuals after that five-hour meeting, at which the senior management team was able to pore over the report. A product of that meeting was to take the names out. Technically, that may have been done by Campbell Tickell, but the instigation for that came from the people who had been named.

Mr Hoodless: No.

Mr Allister: You think not.

Mr Hoodless: Most of the people who were named were not senior directors.

Mr Allister: Were any content changes made?

Mr Hoodless: The only content changes were to some of the discussions with the contractors. We did not think — I did not think — that it was appropriate to include those, as it might compromise our discussions.

Mr Allister: Campbell Tickell had had no discussion with the contractors. That is one of the amazing features of this report, is it not?

Mr Hoodless: No. The terms of reference did not ask it to do that.

Mr Allister: Yes, and it did not.

Mr Hoodless: Yes, because it was not asked to.

Mr Allister: Let us talk a little bit about the format of the report and how it was done. We have established that Campbell Tickell is not a company of lawyers or forensic accountants — in fact, it is not a company of accountants at all. Is that right?

Paragraph 1.2.4 of the report states:

"In terms of 'rules of evidence', we operate for such assignments a 'reasonable person' test".

What burden of proof did Campbell Tickell apply in this examination?

Mr Hoodless: I think that you would have to ask it.

Mr Allister: Did you not think to ask?

Mr Hoodless: Why?

Mr Allister: It is your report.

Mr Hoodless: Yes. However, a reasonable test is how you or I would view something that we see in writing or hear in discussion.

Mr Allister: If you are investigating where the rights and wrongs lie, is it not a key determination to decide where the burden of proof lies? Was there no consideration of that?

Mr Hoodless: Of course there was.

Mr Allister: Where does the burden of proof lie?

Mr Hoodless: The burden of proof lies in the story that it tells.

Mr Allister: No. Where does it lie? Do the contractors have to prove their innocence or does the Housing Executive have to prove the contractors' guilt?

Mr Hoodless: The issue of the report was nothing to do with the contractors —

Mr Allister: It was everything to do with the £18 million.

Mr Hoodless: It was. It arose out of the £18 million.

Mr Allister: Was the burden to prove that the £18 million had been overcharged?

Mr Hoodless: The burden of proof was to tell the board whether the report that we had received from the officers was accurate about the story and how it had been —

Mr Allister: What was the standard of proof?

Mr Hoodless: The standard of proof of what?

Mr Allister: The allegations that you were investigating.

Mr Hoodless: We were not investigating allegations in the report, were we?

Mr Allister: Were you not?

Mr Hoodless: No.

Mr Allister: You and the Minister made an allegation about the £18 million. We have a report that the man the street would think is investigating that allegation, yet you tell us that you were not investigating it.

Mr Hoodless: Read the report.

Mr Allister: I have.

Mr Hoodless: Well, then, you know perfectly well what is in it.

Mr Allister: Yes, I do.

The Chairperson: Donald, the member is asking a question that a number of people have asked. To be frank, after reading the report, I was very tempted to ask the Committee not to take the report and to convene a special meeting to consider all the reports together and perhaps to be facilitated to do that. This is such a shabby piece of work.

The point that Jim is making is that, at the core of this, four contractors were named, and there was an £18 million overpayment of public money. That was a concern for each and every one of us, and I understand that that is one of your frustrations. Nobody wants to gloss over the fact that an allegation was made that £18 million was overspent.

We were assured by you and the Minister that that figure was probably conservative. However, you have acknowledged this morning that, between the Thursday and Friday, you commissioned Campbell Tickell to do a report. I find that absolutely flabbergasting. You got Campbell Tickell to do a report into the allegation of an overpayment of £18 million, and, although it said that it was not really qualified to do the report, it said that the figure of £18 million was nowhere near robust. In fact, it brought the figure down to anywhere between £8 million and £12 million. When you read the report paragraph by paragraph, it is almost as though you should take from it what you like. It is a very unsatisfactory report. In my view, it is still basically flawed, in that it states that no allegations of fraud could be stood over and that there was:

"no evidence of fraud or corruption"

and "no merit in pursuing" a legal avenue, because there was no evidence of any fraud. However, the report states that the contractors were still overpaid. It outlines — I will repeat what I said earlier — that Campbell Tickell did not get documentation or e-mails from the Housing Executive, that it did not speak to key people in the executive and that it did not speak to the contractors at all. It comes up with a whole series of conclusions that no wrongdoing could be inferred from there but that wrongdoing could be inferred from elsewhere. It is a grossly unjust piece of work that, in my view, compounds the outlining of this publicly in June this year.

I was sorely tempted to come to the Committee and ask it to convene in special session to take in all the reports, and not to take this report on its own, because I think it is, as I said, a very shabby piece of work. I want to make it very clear that members are not happy. We see this as an investigation. That is what it was described as, but we are now being told that it was not. Members will make their own judgement —

Mr Campbell: Just before you —

The Chairperson: — and I want to make it very clear that we are very concerned about any possible loss of public moneys. As we said in Coleraine, investigations need to be done in a way that is fair to everybody. In my opinion, this report compounds —

Mr Campbell: Just before you engaged on that, Chairman, you said that —

The Chairperson: I want to bring Jim back in.

Mr Campbell: — you wanted all members to contribute. That was before that three or four-minute assessment by you as Chairperson, before everyone else has made a contribution.

The Chairperson: I am trying to draw it back to the discussion. We were going off at a tangent, because we were being told that it was not an investigation.

Mr Campbell: It would not be the first time that we have done that.

The Chairperson: OK. Fair enough.

Mr Allister: Mr Hoodless, you were very outspoken on 10 June. You gave a BBC interview in which you talked about "scandal" and "embarrassment". Do you recall that? The Housing Executive issued a statement on that date, in which it advised that you, as chairman, had advised the Minister:

"an internal investigation has indicated an estimated £18m has been overpaid".

That set off the blaze of publicity about the £18 million and the naming of the four contractors. However, in fact, the £18 million that had been talked about to you came with a very significant health warning — a caveat — that you never saw fit to mention in public. Is that not right?

Mr Hoodless: By the time that I made that statement, the £18 million had become a figure. We were quite clear, in any discussion, that that was based on a small sample.

Mr Allister: Look at paragraph 2.3.1 of the report, which states:

"A 'broad brush' estimate of £18m was reported to the Board in May ... In reporting the estimate, the Chief Executive noted that the figure was in need of refinement 'as more evidence is generated'."

However, you rushed to a public statement on 10 June, and the Minister, who will answer for himself, did likewise, without ever mentioning that the advice actually given was that this was a figure in need of refinement and that it was a broad-brush figure. It was put out there as a figure that could be relied on when it was quite clear that it came with a very severe caveat attached to it. Is that not right?

Mr Hoodless: Yes.

Mr Allister: Why did you do that?

Mr Hoodless: Because I made it clear that it was an estimate.

Mr Allister: Did that meet the "reasonable man" test?

Mr Hoodless: I think so, yes.

Mr Allister: Oh, you think it did. What about the duty of care to the contractors? Did you ever give any thought to that?

Mr Hoodless: As I said to you earlier, I have made no comment about the contractors.

Mr Allister: Yes. Did you ever think that the Housing Executive had any duty of care to them?

Mr Hoodless: We have a duty of care to all those with whom we work.

Mr Allister: Did you think that you might have a duty of care not to see them lambasted over something which, in the words of your chief executive, was a broad-brush figure that needed refinement?

Mr Hoodless: All that I can say to you is that the officers produced this information, and I informed the Minister of what we had been told.

Mr Allister: Look at paragraph 10.1.6 of the report. This is what Campbell and Tickell find:

"It would have been far better to have presented the potential over-charging as a range, but the decision was made to produce 'a figure', albeit with the caveat that it was in need of refinement. That problem was then exacerbated when that figure of £18m was put in the public domain, with no reference to the caveat."

Do you accept that criticism?

Mr Hoodless: I do not, actually.

Mr Allister: You do not accept it. Therefore, that is a paragraph of the report that you do not accept?

Mr Hoodless: It is Campbell Tickell's report.

Mr Allister: Yes. I thought that you had come to tell us that you have accepted the report. You have not, then?

Mr Hoodless: We have, but I mean, you know, you accept —

Mr Allister: What other paragraphs have you not accepted?

Mr Hoodless: The issue is not my acceptance of the report or otherwise. We have accepted the report because it deals with the mismanagement by the Housing Executive of those contracts, which is what we were after.

Mr Allister: Mr Hoodless, either the board has accepted this report or it has not.

Mr Hoodless: It has.

Mr Allister: If it has accepted this report, it has accepted paragraph 10.1.6.

Mr Hoodless: All right, it has accepted paragraph 10.

Mr Allister: It has accepted the criticism that the figure should not been put out without reference to the caveat.

Mr Hoodless: Yes.

Mr Allister: And it was you who put it out.

Mr Hoodless: I put it out with the caveat. I —

Mr Allister: You did not put it out with the caveat.

Mr Hoodless: I am a trained consultant —

Mr Allister: Read your own statement.

Mr Hoodless: You said it was an estimate.

Mr Allister: There is no reference to the caveat. The caveat is that it is a

"'broad brush' estimate ... in need of refinement".

There is no reference to it.

Mr Hoodless: That is your caveat. My caveat —

Mr Allister: No. Sorry. That is the caveat that Campbell Tickell has identified.

Mr Hoodless: Well, that is Campbell Tickell. I am quite happy with the report, because it deals with the issues of our management and what we need to do to recover it.

Mr Allister: Who decided to put out the figure of £18 million?

Mr Hoodless: That was an officer.

Mr Allister: Sorry?

Mr Hoodless: It was an officer: the director of property services.

Mr Allister: The director of property services decided that it would be publicised?

Mr Hoodless: No. The publicising of it was done by the Minister.

Mr Allister: But you gave him the figure?

Mr Hoodless: Of course.

Mr Allister: Yes.

Mr Hoodless: Because it is my responsibility. I report to the Minister.

Mr Allister: Did you advise that it should be publicised?

Mr Hoodless: No.

Mr Allister: Did you advise that it should not be?

Mr Hoodless: I did not advise anything. I have just told you —

Mr Allister: You knew that he was going to put it out.

Mr Hoodless: No.

Mr Allister: You did not? It came as a surprise to you.

Mr Hoodless: Yes.

Mr Allister: That on 10 June, in the Assembly, the Minister stood up —

Mr Hoodless: I was told on the Thursday that he was going to do it, which, as I explained, is why I appointed Campbell Tickell in the two days —

Mr Allister: Were you told that he was going to name the figure of £18 million?

Mr Hoodless: No.

Mr Allister: That came as a surprise to you.

Mr Hoodless: Yes.

Mr Allister: Did it? And was that done against your advice?

Mr Hoodless: I did not give any advice.

Mr Allister: Do you not think that you should have?

Mr Hoodless: It is not my job to advise the Minister.

Mr Allister: It is not?

Mr Hoodless: On what he says to the Assembly?

Mr Allister: On issues that touch on what the Housing Executive has or has not found. Surely no one is better placed than the chairman of the Housing Executive to advise the Minister about what the Housing Executive has found.

Mr Hoodless: Well, I did advise him of what we had found.

Mr Allister: And did you say to him, "I do not think that you should publish it, because it needs refinement"?

Mr Hoodless: No, I did not say that.

Mr Allister: You could have said that.

Mr Hoodless: It is possible.

Mr Campbell: Chairman, come on. This is ridiculous. This is not a court of law. Absurdities.

The Chairperson: As you say yourself, Jim, the Minister will have to respond as to why he made the comment.

Mr Allister: Yes. May I ask you about one other thing at this point, Mr Hoodless? You talk about the report and the £18 million, and you seem to plead ignorance of any other findings on figures, but you know that, in parallel, your appointees, Moore MacDonald, have been negotiating with the contractors, and each has provided samples to be examined from all the contracts. You do know that, yes?

Mr Hoodless: Well, you have not got it quite correct.

Mr Allister: OK. Correct me.

Mr Hoodless: What we are doing is this: we employed Moore MacDonald as our experts to look at a sample and agree it, and we are seeking to agree, as I have explained, a sample in procedure with the contractors.

Mr Allister: And you have agreed and signed off those samples through Moore MacDonald.

Mr Hoodless: We have not signed off anything. This is a process of negotiation.

Mr Allister: Sorry. Moore MacDonald has signed off documents on all the samples, has it not?

Mr Hoodless: What documents? I do not understand what you are driving at.

Mr Allister: I am driving at documents such as these, signed off by Moore MacDonald, about various statements of agreement of audited accounts of all the samples.

Mr Hoodless: I have not seen that document. It will come to the board as a report eventually.

Mr Allister: I suggest, as Mr Copeland suggested to you, that, when you see those documents, they will indicate that there is underpayment, not overpayment.

Mr Hoodless: Would that not solve all our problems?

Mr Allister: Perhaps.

The Chairperson: Donald, you are saying that you have not seen that report. No doubt you will get it in due course.

Mr Allister: If there is time, I would like to come back to that later.

The Chairperson: Fair enough. I want to get around all the members.

Mrs D Kelly: I find it quite incredible that the terms of reference for such an important investigation were cobbled together in a day and a half so that the Minister could include them in his statement on the Monday. According to a paper that I have, when the Minister made his statement, he suggested that the overpayments were due to "incredible incompetence" by the Northern Ireland Housing Executive or "wilful corruption" by contractors. We have now learnt, according to paragraph 2.4.1 of the report, that there was:

"no evidence of fraud or corruption".

I think that I am also right in saying, as other members have deduced, that there is no legal basis on which any suggested overpayment can be retrieved. I am also aware of further investigations by independent experts — I think that Jim was referring to them in his latter remarks — that show an underpayment position. I do not know how, in the absence of having the full reports and the conflicting evidence, we can do justice to trying to get to the truth of the matter.

I am interested in hearing from Mr Hoodless why he believes there is such a disparity of views between independent experts and the report that he has presented to the Committee today.

Mr Hoodless: I do not know that there is. The issue, as I have said time and again, is that we would have sent the officers away to negotiate with the contractors to draw the issue to a conclusion. My understanding is that there are differences of opinion on what the sample should be and how it is constructed. We have not yet reached agreement on that.

Mrs D Kelly: You have not reached agreement on the samples, but surely something has been overpaid or it has not, or it has been double-paid. Surely that should be fairly simple —

Mr Hoodless: Let me say this one thing: although only a small matter, one of the better things is that, at least in this past year, there are unlikely to have been any overpayments. If you were a contractor looking for a sample, you would go for year 5, because there are not any overpayments.

Mrs D Kelly: Does that not form part of the concerns that were raised by the alternative report, which claims to be independent on behalf of the contractors? It states that the terms of reference and the guidance were deliberately set at a point in time that would show overpayments and that was outside of the contractual agreements.

Mr Hoodless: No. The issue is that it is taken over five years. If you were looking to see whether there were overpayments, you would take a sample from each of the years.

Mrs D Kelly: The basis is whether kitchen replacements were completed. There were either overpayments or not over the contractual period. Are you saying that the contractors deliberately undercharged in year 5 to —

Mr Hoodless: No. They did not overcharge. They were paid for the work that they had done properly. There are no overpayments or underpayments, but there were still payments outstanding because the process was not yet completed.

Mrs D Kelly: I am getting more and more confused. How can there be allegations of overpayment on work that is not yet complete and then, when the work is complete, there may well be underpayment.

Mr Hoodless: In year 5, which is the current year, there is unlikely to be any overpayments or underpayments, because the work was measured at the time of the invoice. We are reasonably confident now that, in the past year, we have not overpaid or, indeed, underpaid. However, as work is still ongoing, some work has yet to be paid for because it is not yet complete.

Mrs D Kelly: I believe that we are going to come back to a wider debate on that matter, but I have just one final point to make. The stoppage of routine maintenance contracts obviously had a detrimental impact on tenants, never mind on the people who depended on the work. Has that work now been scheduled and contracts recommenced?

Mr Hoodless: I am very hopeful that we will go to the board next week. I have said that we need to be satisfied that the controls for new planned maintenance contracts will not lead to any problems of underpayment or overpayment. If that is the case, we will let the planned maintenance contracts proceed.

Mrs D Kelly: I urge that those control measures be put in place to get work under way again.

Mr Hoodless: I need the directors to sign up and be absolutely clear that they have the controls in place so that this does not happen again.

Mr Campbell: I want to get the chronology correct. You met the Minister — this is going back to June. Either at that meeting or just before it, the Minister had been advised of the scale of the problem.

Mr Hoodless: Yes. We had a board meeting in the morning. I saw the Minister in the afternoon. The issue was that I had been trying since I arrived to bottom out the problem on planned maintenance. It was, in a sense, because of insisting that they actually come back and tell us what the scale of the problem that they saw was that the £18 million figure arose.

Mr Campbell: Right. As a result of that meeting, the Minister indicated to you that he intended to make a statement —

Mr Hoodless: No. He did not say anything to me at that time. It was only later when he made the decision. I think that it was on the Thursday, but I am not absolutely certain about that. However, certainly on Wednesday when I was with him, he did not say that he was off to the Assembly to make a statement. That is not correct.

Mr Campbell: Right. However, you met him on Wednesday and the statement by the Minister was made the following Monday. Is that correct?

Mr Hoodless: It was.

Mr Campbell: In between times, you decided that the report —

Mr Hoodless: What we had agreed at the board meeting was that, given the difficulty that we had had in getting information on what had happened with the planned maintenance contract, we would have the independent report. Therefore, the board's decision was to have an independent report done.

Mr Campbell: Yes, but Campbell Tickell had not been commissioned until after that, obviously.

Mr Hoodless: No. Obviously, we made the decision. In many senses, I expected to go back to the board the next month with some suggestions and options.

Mr Campbell: But the scale of the problem emerged and then the Campbell Tickell report was commissioned.

Mr Hoodless: Yes, because —

Mr Campbell: One could be confused, if one had been listening to some of the questions here, into thinking that that was not the case.

Mr Hoodless: The issue was that the board felt it to be important that it checked that the story that it had been told about the management of the contract was accurate, and if not, what else there was to learn. That was the basis of having the independent report.

Mr Campbell: OK. At the start of the report, there is a chronology of events. There has been some concentration on other aspects of the report. Page 17 outlines events in 2009. It states that on 8 June:

"CXBC withdraws a paper headed 'Achieving Excellence in Construction - Kitchens' from the June Audit Committee whilst Internal Audit reviews the wording."

Is that the reference that you made at the start, when you said that wording was changed? It just says "reviews" here.

Mr Hoodless: Yes. The wording was reviewed, but it was changed. It was changed to be more ambiguous in the sense that the original wording talked about overpayment.

Mr Campbell: Right, and that was in June 2009.

Mr Hoodless: It was.

Mr Campbell: When did you come into office?

Mr Hoodless: Just one year ago, at the beginning of November 2012. I have been here just one year and three weeks.

Mr Campbell: It would appear from the chronology of events, which I have not heard anyone challenge, that, three and half years before you came into office, the internal audit reviewed and, in your words, changed the wording.

Mr Hoodless: Yes.

Mr Campbell: Right. What was the current board's view of that changed wording from four years ago?

Mr Hoodless: When I arrived, with Professor Peter Roberts as vice-chair, we were introduced to the committee in October 2012. At that meeting, we were asked to stay and were told that there would be an investigation into the issue, carried out independently, to look at whether officers withheld information from the audit committee.

Mr Campbell: That would have been after June.

Mr Hoodless: I think that that was in 2010, but the issue was quite clear: an external consultant was appointed to look at the issues around changing audit committee reports. The consultant recommended that no action should be taken against the named staff, and we had to accept that recommendation. Personally, for someone who chaired audit and risk committees of two non-departmental bodies, it is quite unacceptable that any audit report is changed by anyone.

Mr Campbell: In the chronology, we come to October 2009, which states:

" 'Project Management — AEC Kitchen Replacement — Belfast' audit report is considered by Audit Committee. Audit Manager reports that 'while various checks and balances are in place for this type of work Programme Managers appeared to apply a lighter touch than prescribed.'"

What is that code for?

Mr Hoodless: I think that they were checking the quality of work but not the quantity, if you see what I mean.

Mr Campbell: Right.

Mr Hoodless: It was my point about abrogating responsibility for invoicing effectively to the contractors.

Mr Campbell: However, given that you are in place for a year now, and those two issues that I drew to your attention emerged in 2009, what evidence do you have, with a paper trail or whatever, about the action that followed what look like, on the face of it, fairly startling revelations?

Mr Hoodless: They are. Let us be clear: I have described it, I think correctly, as a dysfunctional organisation. That should never have happened, but it did. There was an issue about pursuing disciplinary procedures. How on earth it was set up so that it was somehow found that there was not sufficient evidence, I do not know. However, once the external report was done, there was nothing more that the board could do but accept the recommendations.

Mr Campbell: A reference on page 100, dated 17 September 2009, states:

"DPS Management Team meeting. The minutes record: '[Director DPS] expressed concern about the latest audit report and asked [Assistant Director (Operations)] to monitor the situation'."

That is around the same time as those other two issues I referred to.

Mr Hoodless: Yes.

Mr Campbell: That was all happening between June and October.

Mr Hoodless: It was during that period, as I understand it from the discussions that I have had, that that information was kept from the board. To be fair to the board at the time, it had sought information about this, but it was not forthcoming.

Mr Campbell: From whom?

Mr Hoodless: The officers.

Mr Campbell: Officers of the Housing Executive?

Mr Hoodless: Yes.

Mr Campbell: How would you describe that?

Mr Hoodless: Unacceptable.

Mr Campbell: Right. So we have a series of events from four years ago, which you describe as unacceptable. I have not heard them challenged as yet. If you had then been in the position that you are in now, what would you have done?

Mr Hoodless: I would have taken action against those who were responsible.

Mr Campbell: Those officers?

Mr Hoodless: Yes. The issue is that withholding information from the board is a serious offence. Changing audit reports is a serious offence. Those would have to be dealt with under disciplinary procedures. It is just not acceptable behaviour. This is a public body. I suggest that it would not be acceptable anywhere.

Mr Campbell: I come to the infamous £18 million again. I think that the Minister has referred to it as "up to £18 million" — but however. Given the information that you have from Campbell Tickell and from being in office for a year, are you satisfied that, all things being equal, there was an overpayment and, if so, to what extent? We now have figures of £9 million and £13 million, and originally the figure was £18 million. If you were pushed to try to give a reasonable guesstimate of what the overcharge was, what would be your estimate?

Mr Hoodless: I could not give you one, to be perfectly honest. They are all estimates based on different methodologies on samples. My telling you a figure would be of no more use as it would not be accurate. There will never be an accurate figure, which is part of the problem. All that I can say is that the story that we have is that there were overpayments, and I seek to resolve it.

Mr Campbell: Are you content that there have been overpayments?

Mr Hoodless: That is my information. I have to work on that principle.

Mr Campbell: Are they of the order of millions of pounds, whether £9 million, £13 million or £18 million?

Mr Hoodless: We have had two different estimates: one is £9 million to £13.9 million, and one is £18 million. It is a significant amount of public money. Frankly, it would be helpful if it did not exist, which is the point that was made about underpayments. I have no evidence that underpayments will deal with the issue of overpayments. Perhaps they will — it would make life much simpler if they did — but I do not believe that that is likely.

Mr Campbell: That is the point that I was coming to. These figures are all as a result of samples. At an earlier meeting, a sample that appeared from somewhere was thrown across the table.

Mr Hoodless: It would cost almost millions to go out and remeasure all the work.

Mr Campbell: However, is it your understanding that the figure of £9 million to £13.9 million or whatever is a net figure taking account of any —

Mr Hoodless: No, it is the estimate of overpayments; it is not a net figure. We have not sought to net anything. The board has had information only on overpayments.

Mr Campbell: My final point concerns another report, or reports, that have been referred to. I see that there is a press release out today that appears to be from some of the contractors. You are saying that you are not aware of that report. You have had no sight of the report.

Mr Hoodless: I was somewhat surprised to see that the press release vindicated the contractors. I suspect that this is an argument around the sampling. If the contractors had this information, I am surprised that they have not been through our door rushing to get agreement.

Mr Campbell: You are not aware of a report — that is what you said.

Mr Hoodless: No. Next week, the board will have an update about the point that has been reached with the discussions with the contractors.

Mr Wilson: At least from some of the words that you used today, Mr Hoodless, we are getting a picture of the Housing Executive that has never been painted here before. It is an honest picture, but maybe you cannot really escape that when you have a report such as this in front of you.

Chapter 2 states that, despite the fact that people had certain skills that were required, they were allowed to leave under redundancy. HR must have had some responsibility there. We are also told that there was a report from, I assume, consultants who assured the board that the Housing Executive was in a state of preparedness to handle these contracts. Conveniently, that report has now been lost. In light of that, I wonder whether you would use Deloitte again. There was also distrust between the board and senior management, resistance in complying with directives and changes were made to reports to the audit committee, which you said was totally unacceptable. Why was no disciplinary action ever taken, and what possibility is there of disciplinary action yet being taken?

Mr Hoodless: You ask a very relevant question. It is difficult for me to answer that, other than to say that a lot of players who were there at the time have disappeared. They have retired or have gone from the organisation.

The most striking case was the altering of the audit reports. An external investigation was undertaken into that and not enough evidence was found. What I have discovered is a profound lack of people who are willing to take responsibility. That makes it very difficult to pin things down.

To be open with you, when I arrived, our board papers could run to 600 pages. They were dispatched at weekends, you were asked to make a huge number of decisions, and you never saw the wood for the trees. Effectively, the board was a rubber stamp that enabled everyone else to say, "The board has agreed this; it is its responsibility". That was completely wrong. I have changed that and made it quite clear that we have altered the scheme of delegation so that the board determines policy within the remits that are set by the Department, has the strategies to deliver that policy, measure performance and hold officers to account. That is new and will take time to bed in. It will also take time to change the management at senior levels to create an organisation that works effectively together.

Mr Wilson: The amendment of the audit reports allowed this to go on for some time. You said that not enough evidence was found of that. Was it that not enough evidence was found that the reports were amended?

Mr Hoodless: No, they were amended, but there was some story that they had some right to do so.

Mr Wilson: Well —

Mr Hoodless: Do not shoot the messenger. I find it difficult to —

Mr Wilson: You said that that was unacceptable, and I assume that that would be deemed unacceptable in any organisation, especially given the consequences. Have those who amended the reports been identified?

Mr Hoodless: Yes.

Mr Wilson: Are they still in the organisation?

Mr Hoodless: Yes.

Mr Wilson: However, no disciplinary action has been taken against them.

Mr Hoodless: As I said, an external investigation was carried out, which recommended that there was insufficient evidence to do that.

Mr Wilson: If we know that reports were amended and suspect that that resulted in millions of pounds being overpaid to contractors — we will come to that in a minute or two — and the people are still with the organisation and have been identified, how can there be no evidence? You said that that would be totally unacceptable — those are your words — in any organisation.

Mr Hoodless: Absolutely.

Mr Wilson: How can those people not be disciplined?

Do you know something? I have not had a chance to read through the report — I berated you for that at the start — but, from the bits that I have read through, it strikes me that the Housing Executive identified not only dysfunctionality and gross misconduct but every effort is being made to shelter those who were responsible. If we believe what is in the report, the public purse has suffered millions of pounds of loss to date as a result of that.

Mr Hoodless: I do not think that there was any attempt to shelter those people. As I mentioned, the first thing that I, as the new chair, and the new vice-chair were told was that the investigation had been set up to look at that issue. It was carried out externally by a consultant from the Labour Relations Agency's approved list, and the consultant recommended that no action should be taken against the named staff. That left us, as a board, in the position that we could do nothing but accept the recommendation. I think that my vice-chair will tell you that the issue was not proven rather than not guilty.

Mr Wilson: However, you have gone even further, because I assume that some of the people were some of the senior staff who had a chance to read through this report, and you have allowed them to escape being identified in it. I heard you explain that they had a chance to read through the report, and they did not take their names out; the report's authors did that. However, they hardly sat and did that just by themselves; they must have had some instruction or guidance. You are saying that there was gross misconduct, people were identified and their actions were known, but they are still with the organisation and have not been disciplined, and we do not even get them named in the report. Can you understand why people would say that this is a cover-up by the Housing Executive or at least a sheltering of people who are responsible for losing millions of pounds and had no action taken against them?

Mr Hoodless: I have some sympathy with what you say. However, the changing of the audit reports did not in itself lead to the continued overpayments. That was due to the fact that remeasuring ongoing contracts did not start when this was brought to senior management and the board in October 2010. They let the thing run and run. We would not have had a significant problem at all if, in October 2010, they had tackled it and just remeasured.

Mr Wilson: Yes, but if the reports had not been amended to remove the potential for overpayment and so on to the contractors, action might have been taken, and there would have been knowledge earlier of when remeasurement could have taken place.

Mr Hoodless: I agree. What disturbs me most is that — how can I say it — feeble efforts over three years were made to resolve this problem. If they had taken decisive action from October 2010 onwards, we would not be here discussing this.

Mr Wilson: You are basically telling us today that those responsible for that catalogue —

Mr Hoodless: Only two or three people, we are not talking about a huge number —

Mr Wilson: OK, but whether it is one, two, 10 or whatever, those responsible have got away in the smoke.

Mr Hoodless: Given how employment law works and the fact that the investigation was done externally, which said that there were no grounds for taking action, what else can we do? It is not satisfactory but —

Mr Wilson: To come to the overpayment: if contractors have got money that they should not have, we must do our best to get it back from them. However, if it has been unfair or been done in a shabby way, they should not be identified in the way that they have. The report still leaves that hanging. I have not seen the news on this, but I imagine that the headline will be that contractors still took between £9 million and £12 million that they should not have got from the public purse. Here is what the report states:

"In our opinion the exact figure will never be known".

It continues:

"This is based on a rough and ready approach [which] does not claim to be ... 'scientific'".

You would have thought that you would have learned from the £18 million. If it is as tenuous as that, why is the figure being thrown into the public domain again?

I have some sympathy with the Minister. I will tell you one thing: if I were the Minister, I would not be accepting any more advice from anybody in the Housing Executive if they gave me the kind of advice that he got in the past. Once again, we have this figure that you cannot measure; it is "rough and ready" and "not ... 'scientific'", but that still leaves a kind of smell about the contractors, which your report indicates may or may not be the case. Why did you feel that you had to put a figure in if it is based on that kind of very rough estimate?

Mr Hoodless: As I explained, you would have to measure 60,000 kitchens to find out what actual work was done in all cases. That is unrealistic, so a sample was taken. The sample needs to be increased to get a more accurate figure, but, as I said, it will always be an estimate. That is why I have continued to argue that sitting down and resolving this with the contractors is the best way forward. I do not have a view that it is £9 million, £13 million or £18 million. I just have evidence that we have been presented with suggesting that we have overpaid, so we have a responsibility as a board to deal with that and to do so in a way that will eventually satisfy the Northern Ireland Audit Office.

Mr Wilson: So you should. A contractor who works in my area contacted me and made the point that, when a figure such as that is thrown out, there is a stigma attached to it. It is thought that, somehow or other, a contractor has fraudulently claimed that money and, furthermore, as you would expect, efforts will be made to claw that money back. That puts him in a very tenuous position with his suppliers. His workers will be wondering whether he is going to go bankrupt when he has to pay that money back. When it comes to future work, who is going to take on a contractor who has that hanging over him? He is in the middle of a job, they suddenly decide that they are going to go after the money that he owes, and he goes bankrupt. That is the impact on a contractor. If it is based on what you have said here, it is rough and ready, not scientific and the exact figure will never be known, why continue to put that stigma on it?

Mr Hoodless: We have to deal with the issue that we were presented with about overpayments. That is why I said that we need to resolve it with the contractors and come to a conclusion. I entirely accept your point that the idea that we could agree an overpayment figure and say, "Write a cheque" is unrealistic. The nature of contractors and their cash flow means that we would place them in serious

difficulty if we did that. All I want to do is to find a reasonable way forward to resolve the issue and move on.

Mr Wilson: What is a reasonable way forward? I would imagine that, if a contractor went to court against the Housing Executive with that kind of report, the judge would start to ask a lot of questions about whether or not that poor man owed you any money at all. Are you saying that, given the fact that you cannot measure, and you have already admitted that it is rough and ready, you are probably not going to get any money back from the contractors anyway?

Mr Hoodless: We can measure. That is some of the other work that has been done. The sample is measuring the work. I go back to the point that it can only ever be done on a sample. You can increase the sample. It would need to be done over the period of the whole contract, which is five years, and come to a view. I said that I have got the board to agree that compensation events, which are possible underpayments in previous years that are now time-bound under the contract, will be introduced if we can agree the sample. It is in everyone's interest to resolve the issue, for the reputation of both the Housing Executive and the contractors. We have a mutual interest in resolving it, in my view, which is what I wish to pursue.

Mr Wilson: May I ask one last question? If it cannot be mutually resolved, and a contractor who is faced with that ambiguity about how the figures were reached decides to sit it out, is the comment in paragraph 14.4.2 the Housing Executive's ultimate threat for contractors? "We don't know how much you owe us, but if you don't pay us, you will not get any more contracts from us".

Mr Hoodless: We could go to court and seek money from the ones that we know. Let me be clear: I am not seeking to go down that route, but it is an option that we have to keep in mind. Bear in mind that the Housing Executive will have to have an agreement with the Audit Office about how it pursues and resolves the issue in a way that will satisfy the auditors. It would be easy for us to say, "Oh dear, we made a complete mess of this: just write it all off". That is not practical, is it?

Mr Wilson: No, but the report is telling us that Housing Executive staff made grave errors, and nothing has been done about it; there may have been overpayments to contractors, but we do not know by how much; and, by the way, those contractors may not have to pay but will have this hanging over them for some time and also the possibility that they might be excluded from future Housing Executive work. That appears to me, Mr Hoodless, to be the very unfair outcome of this sorry saga, which started because people were not doing their job properly.

Mr Hoodless: I agree. Ideally, I would not wish to have inherited this position, but we have. To go back to my earlier point: I want us to come to an agreement that satisfies both parties and ends in a way that is mutually advantageous. Can I get there? I do not know. It depends on how we get on with the contractors, but it has been a bit up and down.

Mr Dickson: Mr Hoodless, in answering Mr Wilson's questions, you said that you did not have a view on the size or accuracy of the figure, but you did have a view because you gave the Minister a definitive figure of £18 million.

Mr Hoodless: That was the figure that was reported to the board.

Mr Dickson: You stood over that figure.

Mr Hoodless: What else could I do? It was portrayed as an estimate, but if we are informed by officers that that is their view —

Mr Dickson: Were you satisfied, on the basis of the extensive board papers — you told us about the extent of the board papers — that, on that day, that was a figure that you could stand over?

Mr Hoodless: Yes.

Mr Dickson: Given that that is now in so much doubt, and it is not practical to assess the scale, how do you reflect back on giving the Minister that information that day?

Mr Hoodless: I gave the information that was given to the board. It was an estimate, and we made it clear that it was done on a small sample.

Mr Dickson: What is the view of your other board members?

Mr Hoodless: It is the same. We agreed that. We were trying to bring matters to a head so that we understood the scale of the problem, could resolve it and move on. This issue has been kicked down the road for three years.

Mr Dickson: With the scale of the problem, the Minister identified, strongly and robustly, four contractors who are at the heart of this matter through billing, charging and costs. How did he know who those people were? Did you tell him that? Obviously, there must have been a lot of discussion.

Mr Hoodless: I cannot recall that. As far as I —

Mr Dickson: Were they mentioned at the board meeting?

Mr Hoodless: We knew at the board meeting, yes.

Mr Dickson: So it was common currency in the discussion on that day.

Mr Hoodless: Yes.

Mr Dickson: So it is quite likely that you did tell the Minister who the four contractors were?

Mr Hoodless: It is possible, but, as I said, I have made no public comment about the contractors.

Mr Dickson: I appreciate that you have made no public comment, but did you make a private comment to the Minister?

Mr Hoodless: To be perfectly honest, I cannot remember whether we mentioned that, in practice, those were the four contractors. As far as I am aware, this is a matter of public record. We are a public corporation; the contracts we offer and give must be part of the public record and known to everyone who wants to know.

Mr Dickson: I understand, and any one of us could go to our computers now and get the information if we wanted to drill down and find it. It was obviously common currency in the discussion of that day at the board meeting.

Mr Hoodless: Of course we know who our contractors are.

Mr Dickson: Can we move to the point about the verification of the work that was actually done? This matter all hinges on whether the work was done and on whether it was done to an appropriate standard. I appreciate the complexities of the construction industry and how these things are done. Where this issue is concerned, you installed some 60,000 kitchens. However, do you have an understanding that you have 60,000 amazingly good commentators on that and that they are the people who had the kitchens installed for them? I refer you to paragraph 11.1.6, which describes how a scheme inspection officer gave a report on an inspection in the south-east area — Ballyhalbert and Ballywalter — that gave him cause for concern. His draft report gave only a "limited" assurance. Presumably the 60,000 tenants who received kitchens got some information about the fact that somebody was going to put a new kitchen in their house, so did nobody come up with the suggestion or the idea that, prior to receiving their kitchen, those people could have got an appropriate checklist so that they knew what to expect and that, when they did or did not get it, they had a mechanism of reporting back to the Housing Executive? That would be a wonderful way to check the work. In fact, it is probably the way that you could still check some of the work.

Mr Hoodless: It is possible. I am not certain about the detail of what any tenant knew. The issue about the overpayments is —

Mr Dickson: Why would you not know what a tenant knew? This is about 60,000 kitchens. Does somebody not take you through the process, if you do not know it yourself?

Mr Hoodless: No. I have not gone through the process of how we measured every kitchen?

Mr Dickson: Were you taken through the process and the description of what the work might look like in a perfect kitchen.

Mr Hoodless: They do that. However, before you came back to me, I was just about to say that the issue is not what was done, but how much was done. So, if there was an overpayment, it would be for more units than were actually installed.

Mr Dickson: Yes. OK. That is a simple counting exercise.

Mr Hoodless: Yes.

Mr Dickson: Have you visited any tenant's home to see what one of those kitchens looks like?

Mr Hoodless: No.

The Chairperson: Three members indicated that they want to come back in again: Jim, Michael and Mickey. However, I want to check with all the members, because I want to make sure. Mickey, I see that you just declined again. Members made the point, and rightly so, that we need to make sure that it is fair and that everybody has the right opportunity to press this issue. It is certainly my view that the Committee will have to reflect on this discussion. Hopefully, that can be scheduled for next week, given the importance of the matter. At this moment, Jim, you want to come back in. Michael is out of the room.

Mr Campbell: I am under severe time pressure, and I wanted to raise the issue that I alluded to under AOB.

The Chairperson: I appreciate that we need to move into the inquiry issue.

Mr Allister: I will be very quick. I want to follow on from what Mr Wilson asked you about the people who had no disciplinary action taken against them. We have a report that talks about the main reason for overcharging being inadequate management and gives lots of criticisms about management. So, far from being disciplined, have any of those people who were culpable for that mismanagement been promoted?

Mr Hoodless: Yes. However, not in my time, I have to say.

Mr Allister: Were they promoted to a very senior position?

Mr Hoodless: Yes.

Mr Allister: They had oversight as a director.

Mr Hoodless: As director of property services in 2010. That was John McPeake, who is the current chief executive.

Mr Allister: Do you anticipate any repercussions as a result of the report?

Mr Hoodless: He has decided to retire.

Mr Allister: Is that connected with this?

Mr Hoodless: No. It is connected to the fact that he has recognised and would say himself that he knows that there needs to be significant transformation of the management at the Housing Executive to meet the requirements not only of the Housing Executive but of the social housing reform programme and he does not have the skills to do that.

Mr Allister: But that cannot be divorced from these sorts of findings.

Mr Hoodless: Not entirely, no. There are not sufficient grounds for disciplinary action.

Mr Allister: So, is he retiring by mutual arrangement?

Mr Hoodless: He asked to retire. He has a right to retire, and the board accepted that.

The Chairperson: OK, but do you take the import of the —

Mr Wilson: Is that regarded as early retirement?

Mr Hoodless: Yes.

Mr Wilson: Will there be financial consequences as a result of that?

Mr Hoodless: No. He is not receiving any additional payment of any description.

Mr Allister: He is not being penalised in any way.

Mr Hoodless: No. You are probably more familiar with employment regulations, but he has a right to early retirement. He has, I think, a reduced pension as a result. That is all that there is to it, as far as I am aware.

The Chairperson: Are members content that we adjourn this session and return to the discussion next week? Donald, I think that you are getting a very clear message from the Committee that it is extremely unhappy with the way in which this has unfolded. I certainly take the view that there remains a slight over the contractors. Although the report talks about resistance and so on and so forth, there has been no suggestion or indication of any impropriety by the Housing Executive. I think that that is a gross imbalance and is very unfair. The Committee is going to return to this matter next week, and I would appreciate it, Donald, if you could be on standby, because members still want to ask further questions about it.

Mr Hoodless: OK.

The Chairperson: Thank you very much.

We will return to it next week. Are members content that we schedule this as a formal substantive item for discussion next week?

Members indicated assent.

Mrs D Kelly: Chair, are we also going to hear from the office on the other reports?

The Chairperson: I think that next week we should seek any further reports that are available. I think that next week will give the Committee an opportunity to discuss the matter in detail and to decide, on reflection, what it wants to do. I very much understand members' argument that they did not have enough time to read the report. So, in fairness, members are labouring with not having had an opportunity to read it. Hopefully, this discussion has given us an awful lot of food for thought, so we will return to it next week.

Mr F McCann: Given what Dolores said, will we be given the opportunity to summon contractors to the Committee?

Mr Allister: I must say that I think that we should hear from them.

The Chairperson: I think so. Obviously, the contractors will have their say. I suggest that we schedule this for a full discussion next week, when we will determine fully what we want to do. Can we put on notice that we want to have access to any other reports that are available? That includes speaking to and hearing from the contractors. Bear in mind, however, that that might not happen next week, because we have a hefty enough agenda. However, I think that we need to go into the report in some substantive detail.

We have a representative of the Glass and Glazing Federation here at the moment, and we will start the inquiry session in a few minutes. Gregory, you wanted to ask a question. I know that you might need to leave, and I want to adjourn for no more than five minutes for a comfort break.

Mr Campbell: This is about the inquiry, Chairman. It is really about the letter from the BBC. Obviously, the Committee has been working on the inquiry and will work its way through whatever difficulties might be presented to it. This is a great cause for concern for me and my party. The inquiry was set up as a result of one media outlet. Had there been no BBC 'Spotlight' programme, we would not be having an inquiry. That is the sum and substance of it. As a result of that programme, an inquiry is now under way. I made it clear on the BBC and in Committee that we expect the people who are the genesis of the inquiry to come before us. There are caveats in the letter, which we would expect from the BBC litigation department. The letter states:

"Regrettably, the letter sent to the BBC on 14 October 2013 does not comply with the requirements of section 44(7) and is therefore invalid. Accordingly, the BBC is not in a position to respond to the request at this time."

It goes on to elaborate on future circumstances that may or may not pertain. So, the people who started this and who created a significant amount of public interest are now away in the smoke, saying, "We are not going to come to you". That is effectively what they are saying. To compound matters, the first substantive week of the inquiry was last week, and, on Thursday night, the same media outlet gave a completely and utterly partisan impression of how the Committee's investigation was being conducted. It was totally partisan. We, as a party, have lodged an official complaint about the way in which that was presented.

There is not much that we can do about the BBC, but it calls into question the BBC's participation, involvement, lack of transparency and continuing involvement in the coverage of this report, which it instigated because of its programme. I treat that with the utmost seriousness, Chairman. We are going to have to review, on an ongoing basis, on how we handle, first, the inquiry and, secondly, the BBC. That is how serious this is.

The Chairperson: Members have a copy of the letter. I already discussed the initial response from the BBC with the Assembly legal team and advised members of that. We now have a letter back from the BBC. So, on that basis, we need the Assembly legal advisers to come to the Committee to discuss that, because there are further implications, as this letter goes a bit further.

Mr Allister: Gregory says that they are "away in the smoke". I hope that they are not, because I agree that they should be here. I think that they have distorted the request to interpret it as though it were a request under section 44, when it was not. It was a request asking, "Would you like to cooperate?", to be followed by the mandatory provisions of section 44. Maybe we just need to move to the section 44 provisions.

The Chairperson: Are members happy that we take the legal advice? We have already agreed the terms of reference, and we have agreed the way in which the Committee will operate with procedural fairness. That means fairness to everybody, including the Minister and everybody else who is involved. The BBC is a key component and aspect of the inquiry, as Gregory rightly said. I think that we are very keen to have access to all those people and to remind them that, as we know, this is a statutorily based inquiry. Members know that it is a very sensitive matter. It may be uncomfortable, but there is the serious matter of public confidence to consider. The Committee has said very clearly that it is determined to get to the bottom of the issue to restore public confidence and to hold people to account.

Are members content that we ask the Assembly legal team to address that matter with us?

Mr Allister: We need it done expeditiously, because we are losing time.

The Chairperson: Absolutely. Are members content?

Members indicated assent.