

**Public Accounts Committee**

# Report on DCAL: Management of Major Capital Projects

Together with the Minutes of Proceedings of the Committee  
Relating to the Report and the Minutes of Evidence

Ordered by The Public Accounts Committee to be printed 9 October 2013  
Report: NIA 136/11-15 Public Accounts Committee

**REPORT EMBARGOED UNTIL  
00:01 am on 13 November 2013**



# Public Accounts Committee

## Membership and Powers

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

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

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

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

Ms Michaela Boyle<sup>3</sup> (Chairperson)  
 Mr John Dallat<sup>5</sup> (Deputy Chairperson)  
 Mr Trevor Clarke<sup>8</sup>  
 Mr Michael Copeland  
 Mr Alex Easton<sup>12</sup>  
 Mr Paul Girvan  
 Mr Chris Hazzard<sup>10</sup>  
 Mr Ross Hussey  
 Mr Dathí McKay<sup>7</sup>  
 Mr Adrian McQuillan<sup>1</sup>  
 Mr Seán Rogers<sup>6</sup>

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- 1 With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew
  - 2 With effect from 23 January 2012 Mr Conor Murphy replaced Ms Jennifer McCann
  - 3 With effect from 02 July 2012 Ms Michaela Boyle replaced Mr Paul Maskey as Chairperson
  - 4 With effect from 02 July 2012 Mr Conor Murphy is no longer a Member
  - 5 With effect from 07 September 2012 Mr John Dallat replaced Mr Joe Byrne as Deputy Chairperson
  - 6 With effect from 10 September 2012 Mr Séan Rogers was appointed as a Member
  - 7 With effect from 10 September 2012 Mr Dathí McKay was appointed as a Member
  - 8 With effect from 01 October 2012 Mr Trevor Clarke replaced Mr Alex Easton
  - 9 With effect from 11 February 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
  - 10 With effect from 15 April 2013 Mr Chris Hazzard replaced Mr Mitchel McLaughlin
  - 11 With effect from 07 May 2013 Mr David McIlveen replaced Mr Sammy Douglas
  - 12 With effect from 16 September 2013 Mr Alex Easton replaced Mr David McIlveen
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# Table of Contents

List of abbreviations used in the Report	iv
<b>Report</b>	
Executive Summary	1
Summary of Recommendations	3
Introduction	5
Project Management and Ownership	7
Cost and Financial Governance	8
Technical Advice	10
Evaluation of the Lyric Theatre rebuild Procurement	11
<b>Appendix 1:</b>	
Minutes of Proceedings	15
<b>Appendix 2:</b>	
Minutes of Evidence	25
<b>Appendix 3:</b>	
Correspondence	61
<b>Appendix 4:</b>	
List of Witnesses	97

## List of Abbreviations Used in the Report

the Committee	Public Accounts Committee
C&AG	Comptroller and Auditor General
NIAO	Northern Ireland Audit Office
the Department	Department of Culture, Arts and Leisure
DFP	Department of Finance and Personnel
CPD	Central Procurement Directorate
CoPE	Centre of Procurement Expertise
SIB	Strategic Investment Board
PRONI	Public Record Office of Northern Ireland

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# Executive Summary

## Introduction

1. If delivered well, arts and leisure infrastructure can enhance the lives of, and services provided to, the public and improve the productivity of the region. If delivered poorly, potential benefits are not fully realised and significant additional cost can accrue to the taxpayer. In the period 2008-11 the Department of Culture, Arts and Leisure (the Department) had an unprecedented target to deliver £229 million capital investment in the Northern Ireland culture, arts and leisure infrastructure and this resulted in the delivery of a number of capital projects including:
  - the Grand Opera House;
  - the Ulster Museum;
  - the Crescent Arts Centre;
  - the Public Record Office of Northern Ireland;
  - Tollymore National Outdoor Centre;
  - the Lyric Theatre; and
  - the Metropolitan Arts Centre.
2. The projects have undoubtedly enhanced culture and arts provision in Belfast however this has come at a significant cost to the public purse. The projects cumulatively ended up costing £103.4 million, 32 per cent more than the original estimated cost of £78.5 million. The projects also encountered significant delays, the most substantial of which was a delay of 31 months in the delivery of the Crescent Arts Centre.
3. The Committee is concerned that despite the availability of extensive guidance, public bodies continue to make the same mistakes around planning, governance, project management and procurement that this Committee has observed and reported on over many years.
4. Approval for the projects was based upon business cases which were not robust and which were overly optimistic about what could be delivered. The Department acknowledged that projects were based on completely unrealistic cost estimates. This resulted in projects being re-scoped which contributed to the significant cost increases and time delays. Public bodies must ensure that robust project management arrangements are put in place so that projects can be delivered on time and within cost.
5. In total, £87.4 million (84 per cent) of the £103.4 million investment was provided by the public purse. Despite a lack of experience and expertise in delivering capital projects of this scale, the Department and the Arts Council NI failed to seek technical advice at the appropriate time and provided grant recipients with too much autonomy in making key decisions. This is clearly unacceptable: public bodies must ensure that they seek technical advice and that they use this to inform key decisions. All key decisions on projects of this scale should be authorised by the public body in consultation with technical advisors.
6. A number of completely unacceptable departures from long-established principles of good practice were made in awarding the Lyric Theatre rebuild contract.
  - A number of unexplained adjustments were made to the tender submissions, and the Department of Finance and Personnel's Central Procurement Directorate (CPD) confirmed that this is not normal practice;
  - Despite £413,000 being stripped out from one of the tenders, this cost was later paid in full;

- The private sector consultants who produced the tender evaluation report destroyed the tendering documentation very promptly after the tender evaluation meeting;
- Proper arrangements were not put in place for either the sponsoring bodies (the Department and the Arts Council) or their technical advisors (CPD) to attend the tender evaluation meeting;
- The Department, the Arts Council and CPD all received a copy of the tender evaluation report but failed to raise any concerns; and
- The preferred bidder provided a donation of £150,000 to the Lyric Theatre.

Taking all of the points in the round the Committee is left with a very strong impression that the outcome of the tender process was both rigged and manipulated.



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# Summary of Recommendations

**Recommendation 1**

The Department and the Arts Council NI need to be much more robust in their dealings with grant recipients on capital projects. The Committee recommends that procurement is controlled by an established Centre of Procurement Expertise (CoPE) such as CPD and not devolved to grant recipients and their choice of private sector consultants. All key decisions should be authorised by the public body in consultation with technical advisors such as CPD, and a clear audit trail in support of the decisions should be maintained in line with public sector practice.

**Recommendation 2**

Inaccurate cost estimates undermine effective appraisal and the achievement of value for money and public bodies must, therefore, do more to ensure that cost estimates are realistic. The Committee recommends that the Department undertakes a robust assessment of all business cases in order to satisfy itself that projects have been scoped correctly and that cost and time estimates are realistic. The Committee expects the Department to ensure that construction contracts of this nature are awarded on a fixed price basis and that contractors are held firmly to the fixed price.

**Recommendation 3**

CPD told the Committee that it advocates that cost estimates are prepared by the design team that will go on to design the building. This means that the design team must then live with whatever costs that it puts forward. The Committee recommends that the Department complies with this advice.

**Recommendation 4**

The Committee recommends that the Department considers adopting a formal reporting process to ensure that the Accounting Officer receives timely information about all major capital projects. Those experiencing difficulty need particularly to be flagged up. This would enable Senior Management to take corrective action as necessary.

**Recommendation 5**

The Committee recommends that the Department puts in place measures to ensure that it receives timely information about cost increases on capital projects and that the Department seeks appropriate approval — before spending — for all costs associated with its capital projects.

**Recommendation 6**

The Department has a wealth of technical advice available to it through CPD and the Strategic Investment Board (SIB). The Committee recommends that the Department takes advantage of this technical expertise by establishing formal and effective working relationships with technical advisors such as CPD and SIB. This, combined with better project management and oversight of capital projects, will improve the Department's ability to act as an informed partner in capital projects.

**Recommendation 7**

The Committee should not have to remind public bodies of the importance of retaining public records. It strongly recommends that DFP issues guidance to Departments that all public bodies include, as part of the terms and conditions of a contract, a requirement to provide the sponsor with ownership of all tendering documentation. The documentation should then be retained by the public body in line with public sector requirements. DFP should monitor compliance with this recommendation to ensure that it is applied rigorously.

**Recommendation 8**

It is unacceptable for public bodies to provide grant recipients and their choice of private sector consultants with the authority to award high value contracts without any consultation. The Committee recommends that public bodies should only agree to proceed to contract award once they have received appropriate technical advice and satisfied themselves that procurement guidelines have been met and that the contract represents value for money.

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# Introduction

1. The Public Accounts Committee met on 26 June 2013 to consider the Comptroller and Auditor General's (C&AG's) report: 'Department of Culture, Arts and Leisure: Management of Major Capital Projects'. The witnesses were:
  - **Mr Peter May**, Accounting Officer, Department of Culture, Arts and Leisure (the Department);
  - **Ms Deborah Brown**, Director of Finance and Corporate Services, Department of Culture, Arts and Leisure;
  - **Mr Arthur Scott**, Director of Culture, Department of Culture, Arts and Leisure;
  - **Ms Roisin McDonough**, Chief Executive, Arts Council of Northern Ireland (Arts Council NI);
  - **Mr Stewart Heaney**, Divisional Director, Central Procurement Directorate (CPD);
  - **Mr Kieran Donnelly**, Comptroller and Auditor General (C&AG), Northern Ireland Audit Office (NIAO);
  - **Ms Fiona Hamill**, Treasury Officer of Accounts, Department of Finance and Personnel (DFP).
2. As part of the 2008-11 Programme for Government, the Department of Culture, Arts and Leisure had a target to deliver £229 million capital investment in the Northern Ireland culture, arts and leisure infrastructure and this resulted in the delivery of a number of capital projects including:
  - the Grand Opera House;
  - the Ulster Museum;
  - the Crescent Arts Centre;
  - the Public Record Office of Northern Ireland;
  - Tollymore National Outdoor Centre;
  - the Lyric Theatre; and
  - the Metropolitan Arts Centre.
3. The original estimated cost of the seven projects was £78.5 million however the projects encountered a significant cost increase of £24.9 million (32 per cent). The projects also encountered substantial time overruns, the most significant of which was a 31 month delay in the delivery of the Crescent Arts Centre project.
4. These projects have undoubtedly improved the civic experience of accessing arts and culture in Belfast, however, in the Committee's view, the success of a capital project is when tangible benefits are realised in a cost effective way through the application of good governance and project management. The Committee is disappointed that these projects failed to deliver against time and cost targets and is deeply concerned that the Department and the Arts Council NI are unable to provide assurances on the proper use of public funds because they failed to ensure that key tendering documentation was retained in line with public sector requirements.
5. There are a number of issues that the Committee finds completely unacceptable:
  - by its own admission, the Department approved funding for major capital projects on the basis of business cases which were not robust and this resulted in substantial cost increases and created lengthy delays in project delivery;

- despite the level of public sector investment in these projects (£87.4 million) the Department and the Arts Council NI gave grant recipients virtually full control over key spending decisions;
  - the Department and the Arts Council NI did not have the expertise and capacity required to deliver capital projects of this scale. Both bodies failed to recognise these shortcomings and did not seek professional and technical advice from CPD at the start of the projects; and
  - the witnesses were unable to provide assurance to the Committee that the contract to construct the Lyric Theatre was awarded in a fair and equitable manner.
6. In taking evidence, the Committee focused on four areas:
- Project Management and Ownership;
  - Cost and Financial Governance;
  - Technical Advice; and
  - Evaluation of the Lyric.

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# Project Management and Ownership

7. The seven projects identified in paragraph 2 had a total final cost of £103.4 million, of this £87.4 million (84 per cent) was funded by the public purse. However, despite this substantial investment, the Department itself acknowledged that it delegated decisions to the grant recipients which should have been taken by the Department. The Department effectively subcontracted the role of authorising public expenditure without putting in place mechanisms to ensure that public procurement rules were applied and that value for money was achieved. In the Committee's view, it is wrong for grant recipients to be given a free rein on projects where the public sector is providing the lion's share of the funding. During the evidence session CPD agreed that the funded bodies should not have been given the autonomy to make key decisions and suggested that decisions should, in future, be made by the funding Department having received advice from CPD.

## **Recommendation 1**

8. **The Department and the Arts Council NI need to be much more robust in their dealings with grant recipients on capital projects. The Committee recommends that procurement is controlled by an established Centre of Procurement Expertise (CoPE) such as CPD and not devolved to grant recipients and their choice of private sector consultants. All key decisions should be authorised by the public body in consultation with technical advisors such as CPD, and a clear audit trail in support of the decisions should be maintained in line with public sector practice.**
9. Despite the lack of experience available within the Department in delivering capital projects of this scale, the Department chose not to seek technical advice or input from CPD at the appropriate time. On six out of seven of the projects, project management and cost management services were provided by private sector consultants and on three of the projects the consultants were employed directly by the grant recipients. Only in the case of the Public Record Office NI were the project management services provided directly by CPD.
10. Not only did the Department demonstrate a severe lack of capacity in dealing with projects of this magnitude, it failed to recognise this shortcoming and seek appropriate technical advice. The Department acknowledged that this was a mistake and that CPD should have been involved in the projects at the outset. In order to address these shortcomings the Accounting Officer confirmed that the Department now seeks technical advice from CPD at the start of projects and throughout the project lifecycle. It is disappointing however that it took so long for the Department to recognise that it lacked the experience and capacity to deliver these projects without technical advice.
11. CPD's role is to *"help NI Departments deliver their objectives by obtaining best value for money in all types of procurement and provide expert advice and professional services throughout the procurement lifecycle"*. Ultimately CPD is there to protect the Accounting Officer and, therefore, the Committee fails to understand why the Department did not make use of the technical expertise available to it.

## Cost and Financial Governance

12. The Department's capital investment has resulted in the provision of a number of very impressive theatres and facilities, and some of the projects have won prestigious awards; but this has come at a price. The seven projects identified in paragraph 2 were originally estimated to cost £78.5 million, but all of the projects experienced cost increases and overall the total final cost of the projects escalated to £103.4 million, an increase of 32 per cent. Individual cost increases ranged from three per cent on the Public Record Office NI to 91 per cent on the Metropolitan Arts Centre.

13. The Department indicated that there were three main reasons for the cost increases:

- changes made to the scope of the projects;
- construction cost inflation and insufficient allowances made for optimism bias in the business cases; and
- unforeseen costs.

The Accounting Officer acknowledged that some reasons for the cost increases were better than others and accepted that there is a lot of learning for the Department. The Committee is disappointed that this has come at such a significant cost to the public purse and is concerned that the public sector has ended up paying for the "gold standard" when a reduced specification would have delivered the same outcomes but would have saved the taxpayer millions of pounds.

14. By the Department's own admission, approval for the projects was based on completely unrealistic cost estimates as a result of limited technical input. The Committee is astounded by the level of complacency demonstrated by the Department in its appraisal of projects of this magnitude. It is a fundamental principle that project appraisals should be scoped correctly and based on accurate and realistic information. In the case of the Ulster Museum a number of enhancements were made to the original project costing, in total, more than £2 million. The enhancements included the provision of a restaurant, shop and lecture theatre. The Committee considers that these enhancements were, in fact, central to the project and should have been included in the original specification.

15. The Northern Ireland Guide to Expenditure Appraisal and Evaluation states that "*resources to be devoted to appraisal should be in proportion to the scale or importance of the objectives and resource consequences in view... those with major spending implications require significant resources to be devoted to appraisal*". It is clear to the Committee that the Department failed to devote the resources required to the appraisal of such a substantial investment of public funds.

16. During the evidence session CPD acknowledged that there is an inclination for grant recipients to be overly enthusiastic about what can be delivered and the time in which it can be delivered. The Committee agrees with this observation and considers that, as a result, there is a greater need for more independent scrutiny. The system needs to be alert to the possibility that project appraisals may be under-costed.

### **Recommendation 2**

17. **Inaccurate cost estimates undermine effective appraisal and the achievement of value for money and public bodies must, therefore, do more to ensure that cost estimates are realistic. The Committee recommends that the Department undertakes a robust assessment of all business cases in order to satisfy itself that projects have been scoped correctly and that cost and time estimates are realistic. The Committee expects the Department to ensure that construction contracts of this nature are awarded on a fixed price basis and that contractors are held firmly to the fixed price.**

**Recommendation 3**

18. **CPD told the Committee that it advocates that cost estimates are prepared by the design team that will go on to design the building. This means that the design team must then live with whatever costs that it puts forward. The Committee recommends that the Department complies with this advice.**

**Recommendation 4**

19. **The Committee recommends that the Department considers adopting a formal reporting process to ensure that the Accounting Officer receives timely information about all major capital projects. Those experiencing difficulty need particularly to be flagged up. This would enable Senior Management to take corrective action as necessary.**
20. The Grand Opera House extension/refurbishment was originally estimated to cost £8.4 million. However, costs escalated by £2.2 million (26.2 per cent) due to an increase in the tender price and client changes sought by the grant recipient. The grant recipient failed to keep the Department and the Arts Council NI informed of these changes, and the Department was not aware of the scale of the overrun until well after the build had been completed. As a result the Department sought, but failed to obtain, retrospective approval from the Department of Finance and Personnel (DFP) for its contribution of £1.7 million towards the cost overrun. The Department acknowledged that it did not make it sufficiently clear to the grant recipient that approval was required for these changes and admitted that there was insufficient oversight by the Department and the Arts Council NI.
21. This Committee has, in the past, made it clear that it finds the practice of seeking retrospective approval completely unacceptable<sup>1</sup>. It is appalled therefore that the Department incurred £1.7 million of irregular expenditure on the Grand Opera House and even more appalled that the Chief Executive of the Arts Council NI admitted that this claim would not have occurred had the governance arrangements been more rigorous.

**Recommendation 5**

22. **The Committee recommends that the Department puts in place measures to ensure that it receives timely information about cost increases on capital projects and that the Department seeks appropriate approval — before spending — for all costs associated with its capital projects.**

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1 PAC Report on Use of Consultants, 10 January 2008

## Technical Advice

23. Seeking technical advice can help to improve the outcome of a project. For example, only in the case of the Public Record Office of Northern Ireland (PRONI) was CPD directly responsible for providing project management services, and this project was the only project to be delivered within 5 per cent of the original estimated cost.
24. Despite the fact that the Department had an unprecedented target to deliver £229 million of capital investment in the culture, arts and leisure infrastructure of Northern Ireland and it was inexperienced in managing major capital projects, it appeared to be reluctant to engage with CPD and to seek technical advice. During the evidence session the Accounting Officer acknowledged that the Department did not appreciate the merits of using CPD. He confirmed that there had been some tension with CPD and that this was due to difficulties in understanding CPD's role. The Committee finds it unacceptable that, as a result of tensions between the Department and CPD, advice was not sought at the appropriate time or, in the case of the Metropolitan Arts Centre and the Lyric Theatre, was ignored.
25. The Department confirmed that it recognises the need for better engagement with CPD and it has developed a service level agreement with CPD which sets out the respective roles and responsibilities. It is disappointing however that the tension between the Department and CPD was not resolved much sooner and that the Department's concerns regarding the quality of the service provided by CPD were not addressed, as the Department acknowledged that this may have impacted on the outcomes of these significant capital projects.

### **Recommendation 6**

26. **The Department has a wealth of technical advice available to it through CPD and the Strategic Investment Board (SIB). The Committee recommends that the Department takes advantage of this technical expertise by establishing formal and effective working relationships with technical advisors such as CPD and SIB. This, combined with better project management and oversight of capital projects, will improve the Department's ability to act as an informed partner in capital projects.**



# Evaluation of the Lyric Theatre rebuild Procurement

27. The Lyric Theatre rebuild was originally estimated to cost £12.4 million, however the total final cost of the project increased by 42.4 per cent to £17.8 million. In total the Department provided £12.2 million of the funding for the project. Despite this substantial investment of public funding the Department acknowledged that errors and mistakes were made on the Lyric Theatre project, mistakes that the Committee considers to be totally unacceptable.
28. During the evidence session the Department confirmed that it is aware that tendering documentation should be retained for a minimum of seven years. However the Department and the Arts Council NI failed to either take ownership of the documentation or to advise the private sector consultants responsible for preparing the tender evaluation report that they should retain the original tender evaluation documentation in line with the public sector requirements. The Department acknowledged that this was an error. As a result the Department and the Arts Council NI have been unable to provide the Committee with any assurance that this contract was awarded in line with best practice.

## Recommendation 7

29. **The Committee should not have to remind public bodies of the importance of retaining public records. It strongly recommends that DFP issues guidance to Departments that all public bodies include, as part of the terms and conditions of a contract, a requirement to provide the sponsor with ownership of all tendering documentation. The documentation should then be retained by the public body in line with public sector requirements. DFP should monitor compliance with this recommendation to ensure that it is applied rigorously.**
30. Although the original tender submissions are unavailable the tender evaluation report indicates that three adjustments were made to the tender submissions for the Lyric Theatre project.
- scaffolding costs ranging from £84,807 to £413,000 were stripped out from the five tender submissions;
  - a further £347,915 was stripped out from the winning tender; and
  - £113,000 was added to the cost of another tender.

The adjustments resulted in the most costly tender submission becoming the most economically advantageous tender, and the contractor was selected as the preferred bidder on that basis. Despite stripping out £413,000 from the successful tender, the Department was unable to provide any reason why this amount was later paid in full.

31. CPD acknowledged that to strip out costs from a tender would not be normal practice and confirmed that costs should only be removed from a tender if the client specification had not been clear or if further clarification of the tender prices was required. However CPD also told the Committee that it was unable to provide an opinion on the adjustments that were made in the tender evaluation report as a result of the missing tender submissions.
32. Despite being appointed by the Department to provide advice on the Lyric Theatre project, CPD did not attend the tender evaluation meeting. The Committee finds it unacceptable that CPD did not consider it appropriate to put arrangements in place to ensure that it was represented at the tender evaluation meeting of such a high value and significant capital project in order to protect the public sector interest.

## Recommendation 8

33. **It is unacceptable for public bodies to provide grant recipients and their choice of private sector consultants with the authority to award high value contracts without any consultation. The Committee recommends that public bodies should only agree to proceed to contract award once they have received appropriate technical advice and satisfied**

**themselves that procurement guidelines have been met and that the contract represents value for money.**

34. CPD claims that, despite requesting the tender evaluation report on a number of occasions, it did not receive the report on a timely basis. The Committee is disappointed therefore that CPD did not take the opportunity to raise concerns about the unavailability of the report at a steering group meeting but chose instead to go on record noting the significant milestone of the preferred bidder stage being reached and congratulating the Lyric on its achievement.
35. CPD is employed to protect the public sector interest, and in this case, despite being commissioned to provide advice, it did not attend the tender evaluation meeting for the award of an £11 million contract. Following the meeting it failed to ensure that it received the appropriate documentation that would have enabled it to provide assurance that the tender evaluation process had been managed appropriately. As a result, CPD failed to provide any oversight of the tender evaluation process, and in view of the scale and value of this project, the Committee believes that CPD was totally negligent.
36. A copy of the tender evaluation report was made available to the Department, the Arts Council NI and CPD at a later stage. The Department confirmed that all three bodies read and reviewed the report; however they all failed to raise any concerns. Either officials failed to recognise the issues that it presented, or they understood the issues but chose to turn a blind eye. Whatever the reason, this Committee considers that the Department, the Arts Council NI and CPD were all negligent in the discharge of their duty to ensure the proper use of public funds.
37. At the same meeting at which the Project Board approved the fixed price contract with the preferred bidder, it was agreed that the preferred bidder would become patrons of the Lyric Theatre with a donation of £150,000. This effectively means that the Lyric's fundraising team was pursuing patronage from the preferred bidder at the same time that contract negotiations were ongoing. The Committee agrees with the Department's observation that conflict of interest arrangements were not adequate in this case and that a better conflict of interest process should have been in place in a third-party organisation in receipt of government money.
38. In summary, a number of completely unacceptable departures from long-established principles of good practice were made in awarding the Lyric Theatre rebuild contract.
- A number of unexplained adjustments were made to the tender submissions, and CPD confirmed that this is not normal practice;
  - Despite £413,000 being stripped out from one of the tenders, this cost was later paid in full;
  - The private sector consultants who produced the tender evaluation report destroyed the tendering documentation very promptly after the tender evaluation meeting;
  - Proper arrangements were not put in place for either the sponsoring bodies (the Department and the Arts Council) or their technical advisors (CPD) to attend the tender evaluation meeting;
  - The Department, the Arts Council NI and CPD all received a copy of the tender evaluation report but failed to raise any concerns; and
  - The preferred bidder provided a donation of £150,000 to the Lyric Theatre.
- Taking all of the points in the round the Committee is left with a very strong impression that the outcome of the tender process was both rigged and manipulated.
39. The Committee is astounded by the catalogue of failings in the oversight and management of such a substantial capital project and is appalled by the level of complacency shown by the Department, the Arts Council NI and CPD. During the evidence session the Department, the Arts Council NI and CPD all provided assurances to the Committee that lessons had been learned. The Committee sincerely hopes that this is the case and that the same mistakes will not be repeated in the delivery of the Department's current capital investment of £158 million.



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings of the Committee Relating to the Report



## Wednesday, 12 June 2013

### 3rd Floor Management Suite, Northland Campus, North West Regional College

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr Ross Hussey  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr David McIlveen  
Mr Daithí McKay  
Mr Adrian McQuillan

**2:23pm** The meeting opened in public session.

**3:05pm** Paul Girvan left the meeting.

**3:50pm** John Dallat left the meeting.

**3.55pm** Michael Copeland left the meeting.

**3:58pm** John Dallat re-entered the meeting.

**3.59pm** Paul Girvan re-entered the meeting

**4:01pm** Chris Hazzard left the meeting.

**4:20pm** Chris Hazzard re-entered the meeting.

**4:20pm** Seán Rogers left the meeting.

**4:40pm** Ross Hussey left the meeting.

**4:51pm** Ross Hussey re-entered the meeting.

**5:02pm** The meeting moved to closed session.

#### **5. Introduction to the NI Audit Office inquiry into 'DCAL – Management of Major Capital Projects'**

**5:07pm** John Dallat left the meeting.

Mr Kieran Donnelly Comptroller and Auditor General; Suzanne Walsh, Audit Manager; Joan McClelland, Senior Auditor; and Joe Campbell, Audit Manager came to the table.

**5:12pm** John Dallat entered the meeting.

Members discussed a briefing paper by the NI Audit Office in respect of major capital projects in the Department for Culture, Arts and Leisure.

**[EXTRACT]**

## Wednesday, 19 June 2013

### Rooms 54 and 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr Ross Hussey  
Mr David McIlveen  
Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mrs Hilary Bogle (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** None

**1:00pm** The meeting opened in closed session in Room 54.

#### **5. Inquiry into DCAL capital projects**

Members discussed core areas to prioritise in the Audit Office report and prepared for the evidence session on the Department of Culture, Arts and Leisure capital projects.

**1:42pm** Audit Office officials joined the meeting

The Clerk highlighted the core areas and invited the Comptroller and Auditor General (C&AG) and Ms Suzanne Walsh, NIAO to address questions from the Committee on the Audit Office report on capital projects.

**2:03pm** Mr McIlveen left the meeting.

**2:05pm** The meeting was adjourned to re-convene in Room 29.

**2:12pm** The meeting re-convened in public session in Room 29.

**[EXTRACT]**

## Wednesday, 26 June 2013

### Room 115 and The Senate Chamber, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr Mr Daithí McKay  
Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mrs Roisin Donnelly (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Jonathan Watson (Clerical Officer)

**Apologies:** Mr David McIlveen  
Mr Ross Hussey

**1:18pm** The Deputy Chairperson opened the meeting in closed session in Room 115.

**1:56pm** Mr Copeland entered the meeting.

**1:56pm** the meeting was adjourned to reconvene in the Senate Chamber.

**2:07pm** the Chairperson reconvened the meeting in public session in the Senate Chamber.

#### **5. Inquiry into Department of Culture, Arts and Leisure: Management of Major Capital Projects**

The Committee took oral evidence on the above inquiry from:

- Mr Peter May, Accounting Officer, Department of Culture, Arts and Leisure;
- Ms Deborah Brown, Finance Director, Department of Culture, Arts and Leisure;
- Mr Arthur Scott, Culture Director, Department of Culture, Arts and Leisure;
- Ms Roisin McDonagh, Chief Executive, Arts Council NI;
- Stewart Heaney, Divisional Director, Central Procurement Directorate.

The witnesses answered a number of questions put by the Committee.

**2:39pm** Mr Hazzard left the meeting.

**2:24pm** Mr Girvan left the meeting.

**3:45pm** Mr Dallat left the meeting.

**4:09pm** Mr Hazzard rejoined the meeting.

**4:23pm** Mr Copeland left the meeting.

**4:31pm** Mr McQuillan left the meeting.

**4:32pm** The meeting moved to closed session

Members discussed the oral evidence with Northern Ireland Audit Office Officials.

**4:38pm** Mr McKay joined the meeting.

*Agreed:* The Committee agreed to request further information from the witnesses.

**[EXTRACT]**



## Wednesday, 3 July 2013

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Paul Girvan  
Mr Chris Hazzard  
Mr David McIlveen  
Mr Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Ross Hussey

**2:03pm** The meeting opened in public session in Room 29.

**2:06pm** Mr McQuillan joined the meeting

**2:18pm** the meeting moved into closed session.

#### 6. **Inquiry into DCAL: Management of Major Capital Projects**

Members noted an issues paper summarising the matters raised at a previous evidence session on the inquiry into the Department of Culture, Arts and Leisure: Management of Major Capital Projects.

The C&AG briefed the Committee on the issues raised in the paper.

*Agreed:* The Committee agreed to write to the Chief Executive of the Lyric Theatre seeking further information in relation to the audit of the refurbishment of the Theatre; and to ascertain what actions had been taken by CPD, Arts Council and departmental officials in response to a tender evaluation report received.

**2:41pm** Mr McQuillan left the meeting

**[EXTRACT]**

## Wednesday, 2 October 2013

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** Mr Chris Hazzard  
Mr Ross Hussey  
Mr Adrian McQuillan  
Mr Seán Rogers

**2:04pm** The meeting opened in public session

**3:23pm** Mr Girvan left the meeting

**3:26pm** Mr Copeland left the meeting

**3:27pm** the meeting was suspended

**3:32pm** the meeting resumed in closed session with the following members present:

- Ms Michaela Boyle (Chairperson)
- Mr John Dallat (Deputy Chairperson)
- Mr Trevor Clarke
- Mr Michael Copeland
- Mr Alex Easton
- Mr Paul Girvan

#### **6. Inquiry into DCAL: Management of Major Capital Projects – Correspondence**

**3:33pm** Mr Clarke left the meeting

**3:36pm** Mr Dallat left the meeting

**3:36pm** Mr Clarke re-joined the meeting

*Agreed:* Members noted correspondence in relation to the above inquiry and agreed to include it in the Committee's report. The Committee also agreed to write to the Chief Executive of the Lyric Theatre in respect of the departmental internal audit which had been initiated as a result of the NI Audit Office Report.

**3:46pm** Mr Dallat re-joined the meeting

**[EXTRACT]**

## Wednesday, 9 October 2013

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Alex Easton  
Mr Paul Girvan  
Mr Daithí McKay  
Mr Adrian McQuillan  
Mr Seán Rogers

**In Attendance:** Miss Aoibhinn Treanor (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)  
Miss Clare Rice (Bursary Student)

**Apologies:** Mr Chris Hazzard  
Mr Ross Hussey

**2.05pm** The meeting opened in public session

**2.10pm** Mr Girvan joined the meeting

**2.11pm** the meeting moved to closed session

**2.42pm** Mr Clarke left the meeting

**2.45pm** Mr Clarke re-joined the meeting

**2.56pm** Mr Copeland left the meeting

**3.01pm** Mr Copeland re-joined the meeting

**3.18pm** Mr Rogers left the meeting

**3.23pm** Mr Girvan left the meeting

**3.26pm** Mr Rogers re-joined the meeting

**3.30pm** Mr Clarke left the meeting

**3.31pm** Mr Clarke re-joined the meeting

**3.36pm** Mr Girvan re-joined the meeting

**3.46pm** Mr Clarke left the meeting

**3.50pm** Mr Girvan left the meeting

**3.54pm** Mr McKay joined the meeting

**6. Inquiry into DCAL: Management of Major Capital Projects – Consideration of Draft Report**

**3.58pm** Mr Clarke and Mr Girvan re-joined the meeting

**4.00pm** Mr Easton left the meeting

Members noted correspondence relating to the above inquiry.

Members considered the Committee's draft report.

Paragraphs 1 – 7 read and agreed

Paragraph 8 read, amended and agreed

Paragraph 9 – 16 read and agreed

*Agreed:* The Committee agreed to amend Paragraph 12 and defined the terms of an additional recommendation after Paragraph 13.

Paragraph 17 read, amended and agreed

Paragraph 18 - 19 read and agreed

Paragraph 20 - 21 read, amended and agreed

**4.24pm** Mr Rogers left the meeting

Paragraph 22 – 27 read and agreed

**4.33pm** Mr Copeland left the meeting

Paragraph 28 – 30 read and agreed

Paragraph 31 – 32 read, amended and agreed

*Agreed:* The Committee agreed the terms of an additional recommendation.

Paragraphs 33 – 34 read and agreed

**4.39pm** Mr Copeland re-joined the meeting

**4.42pm** Mr Clarke left the meeting

Paragraph 35 read and agreed

**4.44pm** Mr Clarke re-joined the meeting

Paragraph 36 read, amended and agreed

Paragraph 37 read and agreed.

Consideration of the Executive Summary

The Executive Summary was agreed as per the main report.

*Agreed:* The Committee agreed the correspondence to be included within the report; and to sideline an exchange of correspondence from the report.

*Agreed:* The Committee ordered the report to be printed.

**[EXTRACT]**



Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence



## 26 June 2013

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

Ms Michaela Boyle (Chairperson)  
 Mr John Dallat (Deputy Chairperson)  
 Mr Trevor Clarke  
 Mr Michael Copeland  
 Mr Paul Girvan  
 Mr Chris Hazzard  
 Mr David McIlveen  
 Mr Adrian McQuillan  
 Mr Seán Rogers

### Witnesses:

Ms Roisín McDonough	<i>Arts Council of Northern Ireland</i>
Ms Deborah Brown	<i>Department of Culture, Arts and Leisure</i>
Mr Peter May	<i>Culture, Arts and Leisure</i>
Mr Arthur Scott	<i>Leisure</i>
Mr Stewart Heaney	

### In attendance:

Mr Kieran Donnelly	<i>Comptroller and Auditor General</i>
Ms Fiona Hamill	<i>Treasury Officer of Accounts</i>

1. **The Chairperson:** Today, from the Department of Culture, Arts and Leisure (DCAL), we have Peter May, the accounting officer, Deborah Brown, the finance and corporate services director, and Arthur Scott, the culture director. Roisín McDonough is the chief executive of the Arts Council, and Stewart Heaney is the divisional director of the Central Procurement Directorate (CPD). You are all very welcome, as are Kieran Donnelly and his team and Fiona Hamill.
2. Mr May, would you like to introduce your team?
3. **Mr Peter May (Department of Culture, Arts and Leisure):** With me today from DCAL are Deborah Brown, the director of finance and corporate services, and Arthur Scott, the director of culture. Roisín McDonough is the chief executive

of the Arts Council of Northern Ireland. Also with me, at the Committee's request, is Stewart Heaney, who is representing the Central Procurement Directorate of the Department of Finance and Personnel (DFP).

4. **The Chairperson:** Thank you. Members will go into the details of cost increases and time overruns in the projects with you and your team. I have a question for you. The Department has £158 million for capital spending between 2011 and 2015. What lessons have been learned from the projects that the report covers to make sure that the new money is spent in time and to budget?
5. **Mr May:** Thank you very much for the question. The Department welcomes the report, which sets out some lessons that need to be learned not only by the Department but by its arm's-length bodies. The Department has accepted all nine recommendations. Six of them are fully implemented, and three are well on the way to being implemented.
6. You asked specifically about lessons that we had learned. The Department has gone through a process of learning lessons at different stages of the process. As far back as 2006, a series of steps was put in place to improve the management of capital programmes through the capital project management board, the appointment of a capital projects manager in the Department and the Arts Council, and the adoption of the Achieving Excellence in Construction guidance, which is Office of Government Commerce (OGC) guidance and best practice.
7. In 2010, following the Grand Opera House review on lessons learned, a series of recommendations was made. Again, the Department has taken those on board and implemented them. We have also taken account of previous reports issued by the Public Accounts Committee (PAC), including a generic

- report about capital management in 2011. The combination of those steps and the implementation of the recommendations specific to this report are, I hope, evidence of the steps that have been taken. The main capital area of spend facing the Department at the moment is the three sports stadia. That accounts for around three quarters of the capital budget for this period. We have put in place a project team and project management arrangements that accord with best practice as we understand it today.
8. **The Chairperson:** At the outset, I must highlight the Lyric Theatre project before we go any further. Do you accept that the mistakes made by the Department in the running of the project were unacceptable?
9. **Mr May:** I accept that errors and mistakes were made in the project — absolutely. It is always unfortunate when that happens. A key factor about the Lyric Theatre that is a disappointment to the Department is the fact that the tender documentation is not available for review, which leaves uncertainty. There are, however, circumstantial factors that point to evidence of good practice about the tender. I am very happy to go into the detail of that if you would like me to.
10. **Mr Clarke:** We should discuss good practice shortly. That will be interesting
11. **The Chairperson:** We will now move to the main area of questions: cost and financial governance.
12. **Mr Hazzard:** There are a few interesting figures in the report. As is highlighted by figure 4, seven projects were originally estimated to cost £78.5 million. Overall, however, the projects encountered a cost increase of almost £25 million — a 32% increase. By the Department's own admission, paragraph 2.4 states:
- “the scope, objectives and benefits of many of the capital projects were not clearly defined and articulated.”*
13. To what extent does the Department feel that that contributed to the staggering
- cost increases experienced in those projects?
14. **Mr May:** I thank the member for the question. There was a substantial rise in the cost of the projects compared with the very early outline business cases. The outline business case for the Grand Opera House was produced in 2002, and most of the other business cases were produced in 2005. There was a significant rise in the final cost. A number of factors led to that. First, there were some significant changes in the scope of a number of the projects. I am happy to go into the detail of the reasons for those changes in scope, some of which, I think, are very good reasons. Secondly, during that period, there was quite substantial construction cost inflation. One of the key learning points is that insufficient optimism bias was built in at the outline business case (OBC) stage of those processes. The third contributory factor was that some unforeseen costs came into the projects.
15. Against that, however, I should draw out that, in each case, when an additional cost was identified — with the exception of the Grand Opera House — changes were made to the business case, and a proper review was undertaken about whether affordability and value for money were still met before decisions were made to proceed to tender and the awarding of contracts. I think that some of the later figures in the report — particularly the figure on page 28 demonstrating the performance of projects against cost and time from the point of a contract being awarded — are evidence that, once the contracts were awarded, the projects proceeded pretty much to time and to budget, with relatively minor exceptions. I hope that that answers your question.
16. **Mr Hazzard:** Would you like to run through the scope for changes that you mentioned.
17. **Mr May:** Yes. The biggest single case in which there was a change in scope was the Metropolitan Arts Centre (MAC), when, pretty much at the same time as the business case was produced at the



- end of 2005, Deloitte also produced a feasibility report about the desirability of a contemporary art gallery in Northern Ireland. A decision was made that it would make best sense to merge the two projects and essentially to change the scope of the MAC project quite radically, which was previously a very small arts centre, to make it a much bigger space that would be capable of hosting significant art events. Roisín might want to say a little more about that in a moment.
18. Other changes in scope included an increase in the size of Tollymore National Outdoor Centre in the Mourne. Again, that was rigorously and fully assessed against affordability and value for money. Additional floor space of 581 square metres was included in the Lyric Theatre at a cost of £1 million. That was the result of a desire to try to make that facility as good as it could possibly be as the process went forward. Those are examples of changes in scope. I do not know whether you want to say something more about the MAC in particular, Roisín.
19. **Ms Roisín McDonough (Arts Council of Northern Ireland):** Yes. I thank the member for his question. We commissioned Deloitte to undertake a feasibility study looking at contemporary art gallery provision in the city because we were conscious that there was a need that had not been met. That stated that the then provision, which was at the Ormeau Baths Gallery, did not have, for example, climate control and was therefore unable to take international visiting art exhibitions, and that that need would be best met by locating such an arts centre in the Metropolitan Arts Centre, thereby, we believe, enhancing value for money. We believed that it was a one-off opportunity that needed to be seized.
20. **Mr Hazzard:** I am bearing in mind two points. The report highlights that £22 million of the cost increases were covered by business case addenda, and the Department states:
- “Numerous addenda to business cases, which loses credibility for the project, the organisation/Non-Departmental Body and the Sponsor Department, in this case the Department of Culture, Arts and Leisure.”*
21. Do you agree that once a project has commenced, it can be very difficult not to agree to such increases?
22. **Mr May:** I agree that, once a contract has been let, it is very difficult. If, however, you are before the stage at which you go out to tender, it is more straightforward to adjust it. There is undoubtedly some learning here in that the Department did not get its process with its outline business cases as right as it should have done in the first place. I think that we accept that as an area of weakness.
23. **Mr Hazzard:** Why do you think that was?
24. **Mr May:** Stewart might want to comment on this, but in some cases, an outline business case is produced before a detailed design has been developed. When a design is developed and more is known, that can lead to a change in the estimated costs. It is not unusual for that to be the process, because there is a chicken-and-egg situation in which you need an outline business case to be agreed in order to be able to spend the money doing the extra work rather than pre-funding.
25. **Mr Stewart Heaney (Department of Finance and Personnel):** That is right. It is a common problem that is well recorded and reported on in GB as well as in Northern Ireland. At the outset, the client — the grant recipient, if you like — will be anxious about putting together as good a facility as possible. No design is completed at that stage. It is aspirational about what will be required. If it is an existing building that is going to be refurbished, detailed surveys will not have been completed to ensure the extent of the work that would be required, so it is very early stages. Therefore, at that point, additional optimism bias needs to be included to allow for the elements that are not known about at that stage.

26. **Mr Hazzard:** Given what has been said, what steps has the Department taken to make sure that this does not happen again? I am thinking about the three stadia projects that are in the pipeline. Are you confident that they will be delivered without massive increases in costs?
27. **Mr May:** As you will know, the three stadia are at different stages. The contract for Ravenhill has been let, and there is good progress there. We are close to being able to let the contract at Windsor Park, but there is an outstanding judicial review. We are seeking planning permission for Casement Park. It is our view that the budget of £110 million will be sufficient to build those three stadia. The Department has made a commitment that that is the cap on the money to be spent on the three stadia. We have put in place rigorous project management arrangements, and in the Department, we have a skilled project team that is delivering that. CPD is fully engaged at the various stages as we go forward.
28. **Mr Heaney:** That is correct. We have been working very closely with the project director and the sporting bodies on the procurement processes, the contract that has been awarded for Ravenhill and in the ongoing procurement exercises for the other projects.
29. **Mr Hazzard:** Can you be specific about particular step changes or differences in attitudes from projects that we have looked at previously that will help to bring these stadia projects in within budget?
30. **Mr Heaney:** The key point is that we are bringing in an external view, which is one of the advantages that CPD can add to a project. The costs and projects will be prepared by private consultants. CPD is external and independent to that, so we can take an unbiased view of costs at various key stages. We are also very familiar with procurement and construction best practice, so our experienced engineers and architects can provide advice to DCAL. That, combined with the experience of the programme director, is crucial in making a step change in the approach to the stadia projects.
31. **Mr Hazzard:** I am sure that you are aware that the Committee has in the past expressed concern about the practice of seeking retrospective approval. Why did the Department fail to seek approval at the appropriate time for the £1.7 million of additional costs on the Grand Opera House?
32. **Mr May:** The Grand Opera House was the first of these projects and the subject of the weakest performance by the Department and the Arts Council, if I can speak on behalf of the Arts Council in that respect, in that there was not sufficient understanding of the complexity of dealing with major construction projects when neither the Department nor its arm's-length body was in direct drive. A third-party arts organisation was in the lead. There was not sufficient project oversight by the Department and the Arts Council.
33. That was not helped by the fact that the cost overrun that you describe was not made known to the Arts Council or the Department until well after the build was completed, so there was no opportunity to seek to regularise during the build. There were two main factors for the cost overrun. First, tender costs increased, so the Opera House would have been aware of that. Secondly, there were client changes, which the Opera House sought but did not seek the Arts Council's or the Department's approval for.
34. To be fair, the Department did not make it sufficiently clear that that approval was needed. However, it was needed and should have been sought. It was very late in the process and well after the build was completed when we were made aware of the scale of the total overrun, which was around £2.2 million. The Opera House sought, through development donations, to put that right, but in the event was able to raise between £400,000 and £450,000 to offset that, which is why the outstanding bill for the Department was £1.7 million.

35. Careful consideration was given to whether it was appropriate for the accounting officer to agree to that spend. It was decided appropriate for three reasons: health and safety issues needed to be addressed; the strategic importance of the Grand Opera House to the national and international reputation of Northern Ireland; and the risk that the Opera House would be left trading in an insolvent position should the funding not be secured.
36. **Mr Girvan:** I want to touch on governance issues on a major spend. I will not pick out any one project because every project had its problems. The business cases were made for those projects on a projected timeline, and they were supposed to finish within a certain time. In some cases, a timeline was not only extended but doubled. In addition, projects did not come in anywhere near the cost figures projected in the original business cases.
37. You referred to a couple of major overruns, one of which was the MAC. How much autonomy is given to arm's-length bodies? Obviously, they were not being kept on a tight rein with such major projects. The projects were awarded but they were spending without necessarily having approval. That is a serious issue. Who was given that authority? Was a design team or local management team in charge of the project, taking decisions without having full approval and appreciating that they were dealing with public money as well as funding from other groups?
38. As far as we are concerned, any project that attracts a large percentage of public money should have a totally open and transparent process. It appears that there was no governance control on at least three projects. Feedback down the line was not working, and proper approvals were not necessarily there at the right times.
39. I appreciate that prices can change, although that does not happen so much at the moment. When letters of offer for the projects were issued, some people may have priced competitively and others, who may have had plenty of work elsewhere, may have priced fairly high. Did that happen?
40. Members may ask questions about the links between contractors and certain projects to which they contributed financially. That is very serious. If people are doing that, should it not be dealt with as a governance issue in an organisation? Such people should declare an interest at an early stage in a project. There should have been no conflicts of interest between people who were tendering for contracts and those who were designing the projects or had some involvement. There was gross oversight in a number of areas.
41. I appreciate that I have asked quite a number of questions.
42. **Mr May:** You covered quite a lot of ground, and I will do my best to respond. If I miss any points, do come back to me.
43. What I am trying to do today is to explain my understanding, and the Department's understanding, of how this came about. We are not trying to excuse the weaknesses and errors. It is important to understand the context. When the Department was set up in 1999, it had a tiny capital spend each year that was in single figure millions. For the Budget period 2003-07, the capital spend for the Department was £111 million, and for 2008-2011, it was £228 million, so the demands on the Department were ramped up significantly. It is fair to say that initially the Department was not sufficiently well equipped to meet those demands. That is why it was necessary to take a series of steps to improve the ability of the Department and its arm's-length bodies to cope with a massive investment in the cultural infrastructure of Northern Ireland. There have been great benefits for Northern Ireland, but I realise that the Committee's focus is on cost issues.
44. You specifically mentioned approvals and the risk that money was being spent without the right approvals being in place. To be clear: my understanding and, I believe, the report's understanding

is that that was the case with the Grand Opera House and the £2.2 million to which Mr Hazzard referred. That was the final piece of expenditure on the Opera House, but it was not true for the other builds. As I sought to explain earlier, when it became clear in each case that the projection was wrong, there was a full review — an addenda — of the business case. That is in line with DFP best practice about how these things should be done. When the variance was greater than 10%, as it was in most of the cases, departmental and DFP approval was sought and given for the addenda. With the Opera House, £1.7 million was spent without approval being in place. That is not to minimise it as a shortcoming but simply to offer an explanation.

45. You also asked about any conflict of interest that might arise when a developer makes a contribution to a build on which they had won a contract. The report has a specific recommendation — recommendation 9 — which the Department has absolutely accepted and acted on. I will explain. It is important to recognise that the Department and the Arts Council had asked the Lyric Theatre to make the biggest possible contribution to the new building through private funding. A very substantial amount was raised through private sources; I think that it was the largest amount ever raised for an arts project in Northern Ireland. The stage 1 process — a decision on the preferred bidder — was in March 2008, which is well before any engagement with the contractor about a donation. After that, our internal audit did a deep dive review, and it concluded:

*“In light of the circumstances and timing, internal audit considers it highly unlikely that sponsorship donation influenced the award of the design-and-build stage of the contract.”*

46. I realise that that does not cut across the need for better conflict-of-interest procedures, which we have since put in place, but I offer it as some assurance, at least, that may assist the Committee.

47. **Mr Girvan:** I appreciate that most of the contracts that we are dealing with involved what are deemed to be arm’s-length bodies, such as the Opera House and the Lyric. Everyone sees them as being arm’s length bodies. Members may have different views on arm’s-length bodies. Arm’s length is a great way of passing on responsibility, and, unfortunately, that is what happened. We are, however, all in this together, irrespective of how arm’s length a body is. I do not care what the cocktail of funding is or where it comes from: the public purse should not have to make up the variances when someone decides, halfway through a project, that they need to do make certain design changes or that a building would look better with, for example, marble floors that cost an additional £50,000. The attitude seems to be, “ Don’t worry, we’re already under way; they’ll not stop the project now that we’re so far into it. Let’s go ahead.” Even if there is a £2 million overrun, the attitude is, “To pot with it.” I am being honest. That is the impression, and the public see that.

48. If these people were building their own house, they would not spend the extra money. They would have a budget to work to; they would work to that budget; and they would not keep adding to it. That is where we need clarification. Grandiose ideas are one thing, but you cannot keep throwing money into a project. My difficulty with this is that people were supposed to be overseeing this, but they did not ensure that it stayed on budget and that it was delivered according to the timescale provided in the business case. Not one of them came in on time — the time stated in their business case.

49. **Mr May:** [Inaudible.]

50. **Mr Girvan:** Yes, they did, but that was further through the project, when it went out to tender. Those who had been involved in the tender stated their completion date. That was fine. All seemed to come in fairly close to that, but not when the business case was being made in the initial stages.



51. **Mr May:** You are right to highlight weaknesses in the outline business cases, both in their completeness and the timing issues. As a result, steps were taken in the Department and the Arts Council to try to put that right for the future.
52. You specifically mentioned the four arts builds in which a third-party arts organisation was in the lead. We have discussed the Opera House in a little detail, but, in the other three, we sought to apply fully the ‘Achieving Excellence in Construction’ guidance, which is the OGC guidance, from 2006-07 onwards. That envisages a structure in which there is a senior responsible owner (SRO), who, normally, would be within the arts organisation. An investment decision-maker (IDM) sits over the senior responsible owner, and he or she gets very much involved in all of the key decision points for the exact purpose of managing the risk that you identified. In a moment, I will ask Roisín and, possibly, Arthur to say something about their experience of playing that role, but I think —
53. **Mr Girvan:** I apologise, but, before moving on to that, I would like to make a point. The business case is the hook, and it depends what bait is put on that hook. If the business case comes across well, and it looks as though a project can be done at a certain cost and delivered within 30 weeks, folk will say, “Fantastic. Let’s go with that.” However, when it turns out to bear no resemblance to the original, the bait that has to be swallowed is very different from what was put forward originally. That is where I have extreme difficulty. I genuinely think that some people say, “Make it as palatable as possible. It looks easy. Once we have the Department on a hook and it is committed to the project, we can feed in all the additional.” That is our perception, and it demonstrates to me that there was a severe lack of capacity in the Department to deal with projects of this magnitude.
54. **Mr May:** I have already accepted that, in the initial period, there was a lack of capacity. That was put right.
55. One of our learning points was that ‘Achieving Excellence in Construction’ was really designed for builds being run by government organisations rather than third-party organisations. In light of our experience, we have sought to develop that guidance and put in place clearer arrangements to ensure that key decisions are always subject to departmental or Arts Council, as it may be in this case, oversight.
56. You are right in saying that some of the business cases changed quite significantly. In my experience, when they change that significantly, they are subject to all the more scrutiny. It is not as though it was a small change that was easy to swallow. I have rehearsed some of the reasons why, in the case of the MAC, there was such a big increase. I am not, in any sense, seeking to run away from the fact that there are important lessons to be learned by the Department. It is important to stress that.
57. Roisín, do you want to say something —
58. **The Chairperson:** Sorry, Mr May, before you bring in Roisín, I think that Mr Clarke wants to ask a supplementary.
59. **Mr Clarke:** My one supplementary has just expanded to a few, Chairperson.
60. Mr May, I get the sense that everyone seems to be very comfortable with what happened and that we are talking about the past as though it is not really that important. We are talking about the future and about how wonderful CPD and the Department have been. The bare fact is that there was a multimillion pound overspend, not an overspend of thousands of pounds. I would be more impressed if your attitude to the questioning was different. You said that your projection was wrong. According to the report, the projections were not necessarily wrong. There is clear evidence that scaffolding was stripped out and then added to at a later date. That is nothing to do with a wrong projection. Someone clearly manipulated

- a contract to enable someone else to get a particular contract.
61. I appreciate that you are relatively new to the Department. At the time, what was the oversight role of your predecessor of CPD and the arm's-length bodies when CPD had given advice? You said earlier that some of these were outside contracts not controlled through CPD. Why did the Department ever let itself get into that position?
62. **Mr May:** You raise a number of points. First, if, in any sense, I am giving the impression that this is not a significant issue for the Department, I apologise. It absolutely is very significant. It has been the subject of sustained effort on the part of the Department to try to improve its processes and procedures over a significant period. I am not, in any sense, seeking to minimise the impact of this report on the work of the Department as we go forward. As I said at the beginning of the meeting, I am trying to explain, not excuse. That is very much what I am trying to achieve.
63. You mentioned specifically the role of CPD. It is clear that, in the early stages, particularly during the production of all the outline business cases (OBCs) for the seven projects concerned, CPD was not fully involved. That was an error, a weakness or however one might like to describe it.
64. **Mr Clarke:** Can we look at that weakness? How can that continually happen? I accept that it can happen once or possibly twice, but it happened numerous times. What has the Department done to prevent that happening in the future?
65. **Mr May:** The Department has made sure that CPD is engaged at every stage of major projects as we go forward. A significant change was made in 2007. I think that the Department had not fully appreciated the importance of engaging CPD from the very earliest stage, but that was put right. Does that answer your question?
66. **Mr Clarke:** Yes.
67. **Mr May:** You asked about what happens when CPD offers advice and what the impact of that advice is on a third-party organisation. The role of the investment decision-maker — it may be that Roisín and Arthur can add something to this — is very much the way in which the Department, and the Arts Council in these cases, retains responsibility for key decision-making points in the process. They seek CPD advice at the key decision-making points. There may well be some challenge to that advice. We do not automatically take the advice given. There may be some debate and discussion. In the event that the CPD advice is not taken, that would be clearly documented, and there would be a proper audit trail to demonstrate the rationale for not following that advice. So there would be a presumption to take the advice, save for situations in which it is documented why that is not the case.
68. **Mr Clarke:** Is that the way forward or how it was in the past?
69. **Mr Arthur Scott (Department of Culture, Arts and Leisure):** In late 2009, I was appointed as IDM to the arts projects in the MAC, Lyric and Crescent. On taking up my position, I made it clear that, as the joint IDM with Roisín McDonough from the Arts Council, CPD was the default position. The project team, therefore, had to address any concerns, issues or queries raised by CPD and follow its advice.
70. On project governance, a project steering group met monthly to look at the absolute detail of the project: the project plan, the global cost plan, the approved business case, the risks, issues and how the project was progressing generally. That provided an opportunity for CPD to delve into and probe the detail of the project's progress and how the contractor was delivering against the contract. In advance of a project board meeting, jointly chaired by the two IDMs, there was a pre-meeting with the CPD adviser, who then briefed both IDMs on what it considered to be the main issues and any causes for concern. That briefing provided an opportunity for IDMs to probe and

- question the SRO and the project team about variances from the timescale and any issues of cost or risk.
71. In a case in which CPD was not satisfied, the parties were instructed to bring the issue to the project board and state briefly what the issue was and the options for addressing it. The IDMs would then reflect on that. We would very rarely not have supported fully the CPD position. In fact, in some cases, I directly intervened for Roisín on CPD's behalf with either the SRO or the project team to get information or to clarify the nature of the advice: some advice was mandatory and had to be followed because it represented public investment and had to be implemented; other advice that CPD gave was from the benefit of its experience in this type of project over many years. In response to your question, I am trying to demonstrate the level of control and the engagement with CPD, certainly from late 2009, to ensure that the public investment was delivered as it was set out in the approved business case.
72. **Mr Clarke:** Mr May, given your role in the Department and that of Roisín in the Arts Council, why or how do you decide that you have more expertise than the Department that is supposed to oversee procurement? How did you decide in the past not to involve CPD, ignore its advice or look for your own third-party consultants?
73. **Mr May:** The position now is that CPD is our centre of procurement expertise (COPE), and we rely on it for —
74. **Mr Clarke:** That is not always the case.
75. **Mr Scott:** Sorry, that was not always the case with the Grand Opera House. The Department was not directly involved in that project; it was delegated to the Arts Council. So the Department, as the permanent secretary said, had lessons to learn about its oversight in that scenario. That approach was not repeated. We used the achieving excellence guidance, in which staff received training, and there was an on-the-job learning experience. I had experience of rating reform from when I was chief executive of the Rate Collection Agency and the SRO for a major reform programme. I was familiar with the gateway review process. It was a capital procurement —
76. **Mr Clarke:** Do you think that that outweighs CPD's advice?
77. **Mr Scott:** Absolutely not. When I said that CPD was the default position, I intended to convey that the project team, or the design team, had to satisfy CPD, and, if CPD was not satisfied, it would be an issue. CPD would come to me and give me its advice, which I would take. On most occasions, I followed, to the letter of the law, the CPD advice.
78. **Mr Clarke:** On most occasions?
79. **Mr Scott:** On only one occasion during the project did I not follow CPD's advice. That was documented and put to the departmental accounting officer, who considered it and approved the course of action.
80. **Mr Clarke:** What did that relate to?
81. **Mr Scott:** It was advice on some additional costs that had arisen during the Lyric project and concerned additional fees required following a contamination issue that developed early in the project. The question was about how some of those additional services had been procured. CPD gave a recommendation, and I took a different position to bring the matter to a close and bring everyone's focus back to the delivery of the project. The accounting officer considered that and signed it off.
82. **Mr Clarke:** Yes, someone else signed that off, but what was their expertise in procurement? You said that you sought other advice?
83. **Mr Scott:** Sorry, the issue of cost related to other advice that had been sought by the Lyric as part of dealing with this issue. It was about how that advice had been procured and whether it represented value for the public money that was going to be used to make them

- an offer towards those costs that had been incurred.
84. **Mr Clarke:** Do you still think that the decision you made on that occasion was right?
85. **Mr Scott:** Having carefully considered the advice from CPD and taken the wider view that the issue was becoming corrosive to the delivery of the project, and that, in fact, there could have been additional costs had it gone to legal proceedings, I believe that it was the right decision.
86. **Mr Clarke:** So you are suggesting that CPD's advice was more toxic than your own path?
87. **Mr Scott:** I took the advice of CPD in most areas. There were one or two areas — I cannot remember the exact detail —
88. **Mr Clarke:** I am referring to the area in which you did not take CPD's advice. Do you believe that its advice was more toxic than the path that you took?
89. **Mr Scott:** I think that taking the advice to reduce the amount paid would, perhaps, have prompted litigation, which ultimately would have cost the Department much more.
90. **Mr Clarke:** That sounds like a suggestion that, if you had followed CPD's advice, we would have been in a worse position.
91. **Mr Scott:** Yes, what I am saying is that I believe that, if we had gone down the route of reducing what we were going to pay, we would have ended up in litigation, which would inevitably have cost the public purse more.
92. **Mr May:** These are judgement calls, I think, it is —
93. **Mr Clarke:** No, this is fact. We just heard Arthur saying that it would have been worse, so I will let Stewart give his view on this.
94. **Mr Heaney:** Our advice to DCAL related to how the Lyric had procured advice on ground contamination. We had concerns about whether it had been procured on a best-value basis and, therefore, whether it should be eligible for grant funding. It was not that there was anything wrong with the advice; it was just how it had been procured and whether it was eligible for grant funding.
95. **Mr McQuillan:** Arthur, did you raise the concerns of CPD with the Department, or what way did that work?
96. **Mr Scott:** Sorry, in terms of the —
97. **Mr McQuillan:** When you got the advice from CPD, which you did not take, did you raise those concerns with the Department?
98. **Mr Scott:** In relation to the contamination matter or the project generally?
99. **Mr McQuillan:** In answer to Trevor, you said that you took advice from CPD.
100. **Mr Scott:** Yes, I shared that with senior colleagues and the accounting officer.
101. **Mr McQuillan:** Did you then raise it with the Department?
102. **Mr Scott:** I made it clear to the accounting officer, yes.
103. **Mr McQuillan:** Is that recorded anywhere?
104. **Mr Scott:** Yes, there was a full submission to the accounting officer documenting this, and it included a recommendation to the accounting officer, who considered the matter and then agreed with my recommendation.
105. **Mr McQuillan:** If DCAL had concerns about the quality of service provided by CPD, why did it provide a positive response to its customer satisfaction survey?
106. **Mr May:** I think that that was an issue relating to the judgement made about one particular piece of advice. I would not say that the Department was more broadly unhappy with CPD. That is why the response was as it was.
107. At that time, as I have explained, we were going through a period of trying to



- seek greater clarity and certainty about the respective roles and responsibilities, and the Department was, essentially, still coming to terms with the role that CPD could most usefully play. I think that, although all organisations have times when they can do things better, by and large, we were content with the arrangements with CPD.
108. **Mr McQuillan:** In your view, Stewart, did not taking your advice have an impact on the final outcome of the whole project?
109. **Mr Heaney:** On the Lyric contamination?
110. **Mr McQuillan:** I am talking more about the MAC.
111. **Mr Heaney:** I think that the difference with the MAC was the form of contract. Some of the issues with CPD's advice were really driven by the view coming from the grant recipient and, in particular, their consultants. The consulting industry at that time would not have been particularly comfortable with Achieving Excellence, because it was about moving greater design responsibility to contractors and taking responsibility away from, for example, architects. That generally led to tension in projects where CPD was advocating the Achieving Excellence view, and the grant recipients' advisers were maybe not particularly comfortable with that. The issue with the MAC was really the form of contract. We believe that NEC3 is a proactive form of contract for managing projects. The form of contract is one thing, but the key issue is how well it is managed thereafter.
112. **Mr McQuillan:** Do you think that the cost had risen so much because of the decision that was taken back then?
113. **Mr Heaney:** I do not think that you can say that. I think that the form of contract is important, but the more important thing is how the contract was managed going forward. Certainly, the other reason —
114. **Mr McQuillan:** Did you have any queries about that?
115. **Mr Heaney:** The JCT form of contract was used as a more traditional form of contract. It does not proactively manage risk in the way that the NEC3 does. That is why we advised using NEC3. Government have adopted NEC as the general form of contract. That was also for consistency with the industry. The construction industry was seeking government to adopt one form of contract so that it did not have to deal with one form with one party in the morning and a different form of contract in a different meeting with another party in the afternoon.
116. **Mr McQuillan:** I just find it wild strange that we have an expert body connected to the Government but the Department did not take its advice. I just think that that is very strange. I do not know who makes that decision; it is probably you, Peter, given your position — or your predecessor. I think that it is strange.
117. Was there a post-project evaluation of all those projects?
118. **Mr May:** Post-project evaluations have been completed on four of the projects.
119. **Mr McQuillan:** Am I stepping on anybody else's toes here?
120. **Mr Dallat:** Do not worry; you are doing a good job.
121. **Mr May:** A fifth post-project evaluation is nearing completion, and two others are due in the next year or two. The dates that were set for the post-project evaluations have not yet been met.
122. **Mr McQuillan:** Will we get, or have we got, sight of those? I do not think that we have; I never saw them anyway.
123. **Mr May:** Sorry; I did not quite catch the question.
124. **Mr McQuillan:** Will we get sight of those post-project evaluations?
125. **Mr May:** I do not have a problem sharing those with the Committee if it wishes to see them.
126. **The Chairperson:** I think that that is Michael's line of questioning, but

- there are a number of supplementary questions still to get through before then.
127. **Mr Dallat:** Chairperson, I am sort of confused at this stage. Peter, did I pick up that you are new to this job?
128. **Mr May:** That is correct; yes.
129. **Mr Dallat:** Who was your predecessor?
130. **Mr May:** Rosalie Flanagan.
131. **Mr Dallat:** These projects were largely to provide entertainment and pantomimes. Why have they become the pantomimes themselves?
132. **Mr May:** They provide a wide range of different services to the community. I think that the buildings themselves and the services that are provided in them are well recognised. However, I understand that there are shortcomings in the report, and we have sought to address and, I believe, are addressing, them as we go forward.
133. **Mr Dallat:** I am sorry, Chair, but I have not heard anything to date that would make me comfortable with the suggestion that anything has changed. There was a £5.4 million overspend on the Lyric, which is a fine project. That is five and a half times the amount that was stolen in the great train robbery, which some people spent 30 years in jail for. Is there anything that you have to say to the Committee about that?
134. **Mr May:** I can certainly explain to you why there were changes in the level of cost.
135. **Mr Dallat:** I would much prefer to hear why action was not taken to ensure that there were no increases.
136. **Mr May:** There are three broad reasons why costs increased. The first was construction cost inflation, which was a factor at the time. However, as one of your fellow members recognised, that is not such a feature today. Significant pressure was placed on the Lyric to secure private funding, and it took longer than originally expected to assemble that private funding.
- That meant that the construction cost inflation rose during that period.
137. The second main factor concerned changes to scope. That was not purely a one-way process. I know that significant challenge was exerted on the Lyric's needs; at one point, it identified a need for a restaurant and an underground car park. Those were both challenged and taken out of the scheme. However, the case for additional space in the Lyric was justified and accepted both by the Department and ultimately by DFP.
138. **Mr Dallat:** Who advised you in the first place about the space in the Lyric? Who were the consultants?
139. **Mr May:** A team of project consultants was employed on the Lyric.
140. **Mr Dallat:** Who were they?
141. **Mr May:** The project director was from RW International Arts, the project manager was from EC Harris LLP and the contractor was Gilbert-Ash NI Limited.
142. **Mr Dallat:** Did you say anything to them about this?
143. **Mr May:** There would have been regular meetings. Roisín might want to say something —
144. **Mr Dallat:** Were their fees cut? What did you say to Rider Levett Bucknall (RLB)? It did not even keep records afterwards?
145. **Mr May:** I think that it is fair to say that the issue with keeping records came to light well after the tender process had been completed and after the payments had been made.
146. **Mr Dallat:** Peter, you are in the public service; you know that that is not how public money is spent. Records are kept for a very considerable time. Somebody must have told you that there was an organisation in this Building called the Public Accounts Committee that might want to inquire into this overspend. How can you provide a decent explanation about why those records went missing because of a firm of consultants? You may not have the information with you, but I would be interested to know

- how much you paid them for losing the records.
147. **Mr May:** You will understand that the payment was not for losing the records, but the total —
148. **Mr Dallat:** Sorry, the payment was for keeping the records.
149. **Mr May:** The payment to RLB was £296,000, as I recall. No requirement was placed on the tender company to hold the records and to follow the normal public sector practice of holding the records for seven years. That was an error on the part of the Department. The consultants followed the normal private sector practice, which is not to retain the records after the tender process is complete and the contract awarded. I have explained that it is a source of great disappointment to me and to the Department that we are not in a position to provide that paperwork to the Committee. I want to be clear about that. Stewart may want to say something about the nature of the tender process, in which, that issue apart, I believe there is evidence that it was professionally run.
150. **Mr Heaney:** The tender was assessed on the basis of quality and price, so a panel assessed a series of responses to a series of quality questions. That panel was made up of the architect, the structural engineer, the mechanical and electrical engineers, EC Harris, which was the consultants who provided the project management role, and representatives from the Lyric. After that quality submission was completed, those quality records and scores would have been signed off and RLB would have then taken forward the price assessment. RLB did that from its London office; a senior quantity surveyor and a partner from its London office undertook the price assessment and prepared the tender report on that basis. The price and quality were then combined to decide who would be awarded the contract.
151. **Mr Dallat:** Chairperson, I do not imagine that he will get a knighthood for that work.
152. **Mr Heaney:** Given that we do not have the tender report, we cannot get to the bottom of the detail that is in the tender report. You really need the tenders to do that, but it was an experienced and well-renowned practice, and —
153. **Mr Dallat:** Would you recommend it?
154. **Mr Heaney:** As I say, without the tender report, I do not know why it made the decisions that it did on this particular project. If we had the tenders, we could certainly take a view on that.
155. **Mr Dallat:** Chairperson, I am conscious that other members have not had an opportunity to speak yet, but I just want to put one question to Peter that is running through my mind. I know hundreds of decent and good small organisations that have made applications for funding for culture, arts and leisure that were turned down because there was no money. Surely you cannot feel good that all those projects went over their limit. At the end of the day, the victims were the people who did not get a slice of the cake.
156. **Mr May:** I certainly do not feel good that the outline business cases were not carried through for the price that was set. However, I am assured by the fact that affordability and value for money for each of these projects was independently and properly assessed by the Department and by DFP, and that, save from the Grand Opera House, all the expenditure was done on a proper basis going forward. Costs increase for a variety of reasons, some of them better than others, and I accept that, overall, there is a lot of learning here for this Department. It is learning that I believe that we are and have been taking forward.
157. **Mr Dallat:** There is surely a culture among consultants when they get their hands on a piece of real cake such as this to automatically step up the costs. That is because they know fine well that, at the end of the day, the paymaster, which is the Assembly, will pay up. Is that not common practice?

158. **Mr May:** I am not aware that it is common practice.
159. **Mr Dallat:** You should be, because anybody who is involved in any contract knows fine well that they gilt-edge their projects because they are paid on a commission basis.
160. **Mr May:** The other —
161. **Mr Dallat:** I have no more questions at the minute, Chairperson.
162. **Mr Rogers:** I have a quick supplementary question for Paul. What was the basis of your assessment when you said that it is highly unlikely that there were conflicts of interest?
163. **Mr May:** I think that I quoted from an internal audit report. It said:
- “In light of the circumstances and timing, internal audit considers it highly unlikely that sponsorship donation influenced the award of the design-and-build stage of the contract.”*
164. That was the assessment that the internal auditors reached when they reviewed the conflict of interest after the event. That was the quotation that I gave, and that was where I was —
165. **Mr Rogers:** Is that the only evidence that you have?
166. **Mr May:** I explained that the award of the stage 1 contract for preferred bidder was in March 2008, which was well before any approach was made to Gilbert Ash about a donation to the Lyric. That donation was made in October 2008, so there was a separation there. There are other reasons for making that separation. I am aware that other contractors also made donations to the Lyric. It is clear to me that a better conflict of interest tracking and process should have been in place in a third-party organisation where receipt of government money is concerned. I am not walking away from the importance of that. That is one of the recommendations in this report that we have already taken forward. Those are mitigating factors that do not completely explain the issue, as I see it.
167. **Mr Rogers:** So, are you happy with the Northern Ireland Audit Office’s (NIAO) assessment that it did not get sufficient assurance on that?
168. **Mr May:** I recognise that the conflict of interest arrangements are not adequate in this case.
169. **The Chairperson:** Trevor, you want in, but is your question relevant?
170. **The Committee Clerk:** We will come back to discuss the CPD after Michael’s questions.
171. **Mr Copeland:** Thanks Chair. Welcome Peter, Stewart, Roisín, Deborah and Arthur. I have been to all these facilities recently — the Crescent, Lyric, Grand Opera House and the MAC, which was very impressive. They are fabulous, but could they have been equally so with less expenditure? In many ways, the longer that I sit on this Committee, the more inclined I am to the view that certain Departments think that public money does not actually exist. I know that the £1 coin that I am holding is real because it is mine. I also know that should I spend it, I will be looking for as many pennies in change as I can get. Yet, we deal in figures of £87.4 million, and time after time, there seems to be an admission from you and others in similar positions who sit where you are at the Table saying, “We didn’t quite get it right”, or, “We could have done better”.
172. I accept that you are all professionals who do not deliberately go out to spend more than is necessary, at the other end of the scale, as John said. However, I can think of the 22-year-old girl in my constituency who is mentally ill and who failed to turn up for a Steps to Work programme. She failed to turn up, because she did not know that she had to turn up; they did not send her a letter. It arrived four days after the meeting was supposed to take place. Of the four telephone numbers on that letter for the Department concerned, not one of them connected to anyone who spoke. They were all disconnected or discontinued lines. Her sanction was to be deprived

totally of the £56 a week that she gets to live off. There was a 100% withdrawal of income. She was cooking on a candle. Although I understand the difficulties that you guys face, they are nothing compared with the difficulties at the other end of the scale that people who may not be as qualified or as valued are facing. It makes it difficult for me sometimes, having some knowledge of contract law and of the value of money, to understand some of these mistakes, which appear to be so obvious. For example, the Department provided 84% of the funding for capital projects at a cost of £87.4 million. Despite that amazing amount of public money, which, in my view, produced four good-quality projects, grant recipients were given the authority to appoint private sector consultants to provide project management and cost management services in three out of the seven projects. Those three projects had cost increases of between 41.2% in the case of the Crescent Arts Centre, and 93.1% in the case of the Metropolitan Arts Centre. That is the equivalent of going to buy a suit, paying the money and the guy telling you that the sleeves are extra. To me, those variations are incredible. They would certainly be incredible to someone cooking toast on a candle two miles from here. At some stage, there will have to be some realisation that the way to solve problems is to do so before they occur. That comes by understanding that that money is real.

173. In the public service, you never see money; you see numbers and balance sheets. We had the Department of Agriculture and Rural Development (DARD) here to explain an awful scenario involving £45 million with a plus sign in front of it instead of a minus, and that gave a £90 million variance in the budget. That, to me, is a fairly serious issue. Without being belligerent or nasty, it falls to us to say that some of the answers that we are getting, although not specifically from your team, Peter, are less than we could reasonably be expected to expect. We are not here to understand; we are here to challenge. We are here on behalf of those who

have nothing. If we exercised a little better judgement in other places, they might just have more so that they could have two candles.

174. Why did the Department not exercise more control over the appointment of project management and cost management services in three of the projects? How sure are you about the way in which the project management and cost management services were procured? It could have been the cousin's uncle's brother's sister of someone who was in a position to award them. Northern Ireland is a very small place. How do you know that the money is properly spent?
175. **Mr May:** You made a number of different points. Let me start by drawing out one particular case. You mentioned the MAC and the very significant change between the business case and the final cost. I explained that part of the reason for that was the decision to include a contemporary art gallery in the MAC that was not part of the original plan. To be fair to the MAC, that was not its idea; it was a report that the Arts Council commissioned. When that report was received, which was shortly after the outline business case, the Arts Council and the Department reached the view that it would be better to put that contemporary art gallery into the MAC. Indeed, I think that the MAC was not keen to have that contemporary art gallery there in the first place. So, a substantial chunk of the overrun was incurred on its behalf by the Department and the Arts Council.
176. **Mr Copeland:** How much of it?
177. **Mr May:** I think that the gallery was £3.5 million. There was also an increase in the overall floor space in the MAC so that more people could enjoy it. I have some figures for the number of visitors to the MAC. The MAC has said that it received 320,000 visitors in 2012-13. The space was very small prior to that; I think that it had around 10,000 visitors in the year before the build began. So, that was the last comparable year. That shows that it is just a very



- different build. There is an argument that we should perhaps have stopped the project, re-started it and made it a different project because of the extent of the changes that were being made.
178. **Mr Copeland:** Would that have cost more money?
179. **Mr May:** It could have, in the sense that you may have had to consider whether to lay off the project teams that you had already engaged and procure new project teams. I think that it is understandable why that decision was taken and why the opportunity, based on expert advice, was taken, because, at that time, Belfast did not have a space that was used for contemporary art.
180. You mentioned specifically the procurement of project teams. I am not sure that I am in a position to answer specifically how they were procured. Stewart, can you offer some guidance?
181. **Mr Heaney:** CPD provided advice on the procurement of the professional teams. I am content that those teams were properly procured. However, I think that the issue is that the teams that ultimately carried out the design were not those who prepared the costs for the business cases. Others prepared the business case costs, and I think that they inherited those costs.
182. **Mr Copeland:** Was there a variance between the actual and the projected?
183. **Mr Heaney:** When the design teams were appointed, they started to carry out a survey of the buildings, and they realised that the scope of the original outline business case was not adequate to deliver what was intended. That goes back to the earlier point that, when the outline business cases were prepared, very limited technical input was put into the costs.
184. **Mr Copeland:** Were they adjudicated to be satisfactory for the purposes for which they were intended?
185. **Mr Heaney:** As was pointed out, CPD was not involved in the outline business cases, so I am not sure what diligence was paid to them.
186. **Mr Copeland:** Do you think that the costs might have been different if CPD had been involved? As I said, three out of the seven seem to account for the massive overruns.
187. **Mr Heaney:** I think that they probably would have been, because there is an inclination for grant recipients to be overly enthusiastic about what can be delivered and the time in which it can be delivered. Almost certainly, we would have taken a view that the costs were not adequate and that, in particular, the optimism bias was not adequate, given that there had been no design work.
188. **Mr Copeland:** Given the previous conversation with Mr Dallat, do you agree that that enthusiasm, combined with the notion that somebody is going to pay anyway, is a fairly difficult recipe to keep in the tin?
189. **Mr Heaney:** It is. One of the key points, and one that we certainly advocate, is that the initial costs are prepared by the design team that will go on to design the building, if it is, ultimately, approved. Under that mechanism, the design team realises that it will be living with whatever cost that it puts forward, because they are its costs and it will be tied to them later. Here, however, once grant funding was involved, there was a separation between the initial cost that others provided and the new appointment. New teams were appointed, and they did not have ownership of the previous costs.
190. **Mr Copeland:** It was a bit of a recipe for disaster in many ways. Does the Department accept that, if it had exercised more direct control over the project management of those particular three projects and not delegated or allowed the responsibility to go to the grant recipients, the cost increases might not have been as significant as they turned out to be?
191. **Mr May:** I absolutely agree that if the Department and the Arts Council had exercised greater oversight in the case

- of the Opera House, it would have made a material difference. I think that the key point is that the arrangements that were in place as the outline business cases were being produced in 2005 and 2006 were not adequate. That applied pretty much across all seven projects, with the exception of the Public Record Office of Northern Ireland (PRONI). That, rather than the level of oversight over the project teams that were being employed, was the critical issue, because some of the errors applied. All those business cases were being produced in parallel, and some of the same issues on optimism bias and unforeseen costs arising emerged through all those processes. Although, as I said, a proper and rigorous process was undertaken thereafter, in my view, that was really the point at which the key weakness emerged.
192. **Mr Copeland:** Delays are also an interesting and common factor in some of this. Six of the seven projects encountered significant delays when the final outcome was compared against the business case estimates. The comparison with the business case estimate is one thing, but how were they in comparison with the contracts? It appears that, in the case of the Lyric, the business case did not estimate a completion date. I presume that the contract estimated a completion date.
193. **Mr May:** Yes. When one looks at the performance against award of contract to completion, one sees that one was completed ahead of schedule, one on time and four with a 10% overrun or less. The issue with the Lyric was that the need to raise a very substantial amount of private finance — over £5 million — meant that the Lyric did not feel able to assess when it would have completed that exercise.
194. The other factor to bear in mind with the time overrun is absolutely linked to the point that I just made about the outline business case. It is about both cost and time. When you have to go through a process of preparing addenda to business cases, seeking approvals and so on, all that builds time into a process that was not part of the original projected estimate. That in itself leads to a delay. So, it does not explain all of it, but it is part of the reason and is all linked into the same underlying problem.
195. **Mr Copeland:** Were the contracts fixed-cost contracts with variables built in, or were they materials-plus?
196. **Mr May:** A series of different sorts of contracts was entered into.
197. **Mr Copeland:** Was that on the same project or separate projects?
198. **Mr Heaney:** There was a range of different contracts, but the contracts were largely lump-sum contracts.
199. **Mr Copeland:** Does that mean “lump sum” as a fixed cost?
200. **Mr Heaney:** Yes.
201. **Mr Copeland:** With variables?
202. **Mr Heaney:** Mechanisms are included in any contract for variations.
203. **Mr Copeland:** I hope that the Minister for Social Development noted that.
204. **Mr McQuillan:** Peter, why did the Department not engage CPD for services at the Grand Opera House?
205. **Mr May:** The Grand Opera House was operating well ahead of the others. The business case was produced in 2002, and I will ask Roisín to say a little more about it. At that time, the Department took too distant an approach to its role on the Grand Opera House, and, I think that, more generally, there was not an appreciation of the merits and advantages of using CPD.
206. **Ms McDonough:** Yes, the permanent secretary's observation is absolutely correct. We have learned a lot from the Grand Opera House.
207. **Mr McQuillan:** You did not learn that much, because you did not take its advice later on the MAC. So, you did not really learn anything.
208. **Ms McDonough:** By way of explanation, no IDMs were involved in this project in the way in which we have now under

- the Achieving Excellence framework. No project board had been separately established to ensure scrutiny. CPD was not involved at that point in the Grand Opera House. There was no particular senior responsible owner of the project, because, as I said, Achieving Excellence had not been introduced. We fully accept that the surprise claim that came in on the Grand Opera House from the contractor, which surprised the Grand Opera House, us and the Department, would not have occurred had more rigorous governance arrangements been applied, such as Achieving Excellence and involvement in realistic costings from the outset.
209. **Mr May:** You mentioned the MAC specifically. CPD advice should always be considered seriously, and the Department has a presumption in favour of taking that advice. However, I do not believe that we should be tied to always taking that advice. There may well be wider reasons in specific cases, and provided that we are clear about —
210. **Mr McQuillan:** That is fine, if you can bring the project in on budget. Given the way that the project ran, you left yourselves wide open to criticism by not taking its advice.
211. **Mr May:** I am not clear that it was the nature of the contract that led to any of the issues with the overrun, because I explained that, when you look at the time from award of contract to delivery, that was not the area of problem. The problem was earlier in the process at the time when the outline business case was produced. I do not know whether you want to comment on that, Stewart.
212. **Mr Heaney:** I do not think that the form of contract, NEC versus JCT, would have made any particular difference to the time delay. As Peter said, it was more to do with the time before even getting into contracts.
213. **Mr McQuillan:** By not taking CPD's advice, the Department has left itself open for criticism. That is what I am saying. The last sentence of paragraph 2.17 of the report states:
- "The Department indicated that it had issues with the quality of service provided by CPD."*
214. Can you explain some of those issues to us?
215. **Mr May:** I said earlier that I think that, in retrospect, this overstates the concerns. Although no organisation is perfect in the advice it offers, I think that CPD has provided satisfactory advice. There were issues about understanding roles and responsibilities at that time, and we have entered a service-level agreement with CPD that sets out very clearly what our respective roles and responsibilities are, going forward. We are very clear about how we engage them and how we take their advice in that context. I do not know whether there is something that you want to add, Deborah.
216. **Mr McQuillan:** Is that happening now or was that in the past?
217. **Mr May:** That clarity about the roles and responsibilities is established now. There were some issues about understanding those roles and responsibilities.
218. **Ms Deborah Brown (Department of Culture, Arts and Leisure):** I think it has been said earlier that the nature of this third-party asset being removed both from the Department and the arm's-length body is an element of complexity that the Department did not fully understand. When Achieving Excellence was originally written, it was not in that sort of context. We now absolutely and fully understand the need to have CPD involvement at the key decision points, and we also recognise with this third-party relationship that there is a need now to look more carefully at risk assessments.
219. **Mr Clarke:** Sorry; it may a third-party asset, but it is public funding that is paying for it.
220. **Ms D Brown:** Absolutely.
221. **Mr Clarke:** I think that it is a very weak defence to say that the Department misunderstood third-party assets. This third-party asset has cost millions



- of pounds to the public purse and taxpayers, so if that is being said by way of an excuse for the failing of the Department, it is a very poor one.
222. **Ms D Brown:** I did not mean it as an excuse. What we are saying is that we recognise the need for possibly additional closer scrutiny. As the report sets out, we are taking on board a number of recommendations. In addition, when we carried out a risk assessment in the majority of these cases, it came back as low-risk and therefore only gateway health checks were done. I think that, in light of this report, we will look more closely at that and establish full gateway reviews at key decision points. We have also recognised that we had delegated some decisions to the SRO in some of these projects, which, with hindsight, should have been taken by the investment decision-makers. I appreciate that it is an expensive lesson to learn, but those are the things that we are looking at now very closely.
223. **Mr McQuillan:** I think that it has been an expensive lesson, but at least further thought has been given to it. To be fair to you, Deborah, you have come across clearest among the whole panel in explaining your case.
224. **Mr Copeland:** I heard a bugle calling over the horizon a couple of times there in the mention of Achieving Excellence. Did Achieving Excellence replace some other guidelines and, if so, what were they called?
225. **Mr Heaney:** Achieving Excellence was an initiative introduced by the Office of Government Commerce. It is an initiative to improve project management on construction projects, and it replaced a more traditional approach where —
226. **Mr Copeland:** What was it called?
227. **Mr Heaney:** It did not have any particular name; it was a traditional approach to procurement that was used for years.
228. **Mr Copeland:** Were these problems evident for years before that, within the same tolerances and expectations?
229. **Mr Heaney:** That is why the Achieving Excellence initiative was introduced. There had been difficulties with cost overrun nationally. The Office of Government Commerce brought in the initiative to try to counter those difficulties. It was about proactive project management from the outset.
230. **Mr Clarke:** Peter, it is probably not fair to ask you this, because you are relatively new to the Department, but how do you feel communication directly between your Department and CPD has been in the past? Are there tensions or problems there?
231. **Mr May:** Historically, there probably have been some tensions in that relationship. I am clear that that is not the case now. There are proper arrangements in place. Deborah, is there anything that you want to add?
232. **Ms D Brown:** We recognise the need for better engagement with CPD. That has been the focus of our attention over the past 18 months. We have developed a service-level agreement that better sets out the respective roles and responsibilities. We and CPD have already organised regular liaison on a quarterly basis so that we are not just waiting for an issue to come up; rather, we are able to address upcoming issues.
233. **Mr Clarke:** I appreciate your honesty, but I am trying to find out the reason for the tension between CPD and your Department in the first instance. You admitted that there has been tension, so what was the reason for those tensions? To be fair, that question is probably more for you, Peter.
234. **Mr May:** As has been explained, I was not around at that time. However, there was a lot going on —
235. **Mr Clarke:** You are new. However, there have been problems. You have done your homework for today, so have you grasped what the problems were between people in your Department and CPD previously?

236. **Mr May:** As I tried to explain, the problems were around understanding what the right role for CPD should be and the extent to which it should be engaged fully from the very outset of the process. I think that it took some time for the Department to recognise the importance of engaging CPD in that way. There was a series of major projects being delivered at the same time, and, as issues arose, I think that being clear about precisely what the CPD advice meant and how that was going to be taken forward did, on occasion, mean that there was an institutional tension. That type of tension is not necessarily a bad thing, but it does exist from time to time.
237. **Mr Heaney:** Perhaps I can add to that. The whole Achieving Excellence initiative meant that things or projects were delivered in a different way. It meant changes for the industry and particularly changes for consultants and designers. The industry was very resistant to that.
238. **Mr Clarke:** I think that there is more to this, Stewart, after reading the Audit Office report. I am sure that you drive.
239. **Mr Heaney:** Yes.
240. **Mr Clarke:** Would you go to the garage where you get your car serviced and pay for a service that you did not get?
241. **Mr Heaney:** No; I would not.
242. **Mr Clarke:** Why did the Department pay your Department for a service that it did not receive or want?
243. **Mr Heaney:** It did not pay for a service; it paid only for the service that it received.
244. **Mr Clarke:** Sorry; do you accept the Audit Office report?
245. **Mr Heaney:** Yes.
246. **Mr Clarke:** Do you accept, then, that the Audit Office report suggests that your Department was paid to do a particular piece of work, but that you did not do a tender evaluation, which is part of your role? Basically, you got paid for something that you did not do.
247. **Mr Heaney:** No. We charged only for the hours that we attended. We did not attend the tender evaluation meeting because the date for that was changed. The individual who was to attend was not available because of the change in date. The Department was charged only for the hours that we actually incurred on the project.
248. **Mr Clarke:** Were you involved in the whole process for the Lyric?
249. **Mr Heaney:** We were involved in appointing the design team, but we were not involved in the outline business case. We were then assisted and advised on the procurement of the design team. We advised on the procurement strategy for the contractor, but we were not involved in the tender assessment process.
250. **Mr Clarke:** Why do you think you were excluded from the tender process? Would that have had anything to do with the tensions between you and the Department?
251. **Mr Heaney:** No, I do not think so. As Deborah said, the SRO had sufficient autonomy to go ahead and carry that out without —
252. **Mr Clarke:** Do you still believe that they had the autonomy to do that, based on what we are reading today?
253. **Mr Heaney:** I do not think that they should have had that, but they had it at that time.
254. **Mr Clarke:** Do you believe that they should have the autonomy do that in future, given how this contract has been handled?
255. **Mr Heaney:** No, I do not think so. I think that those key decisions should be made by the funding Department, having had advice from us.
256. **Mr Clarke:** In your earlier response — I think that it was to John — you talked about how things can be changed. I get that. There can be additions and things can be specced up as the tender opens. However, would it be normal, if we look again at the Lyric, to strip out of

- the tender aspects that are absolutely necessary to the contract?
257. **Mr Heaney:** That would not be normal. Contractors, even large ones, occasionally make errors in their tender process. We would —
258. **Mr Clarke:** I appreciate that people can make an error, and there is always an opportunity for them to correct that error, but, given the size and scale of this particular job, would it be normal for contractors to strip out, after submitting the tender, anything from £186,000 to £413,000 for scaffolding?
259. **Mr Heaney:** Scaffolding would be required to do the project. Absolutely. You would remove something from a tender only if you felt that the client specification for that had not been clear or there was some doubt about it, and therefore you needed to seek clarification on those tender prices. The aim is always to get as comprehensive a tender price as possible.
260. **Mr Dallat:** Is that not a well-known way of rigging a tender so that your favoured contractor wins?
261. **Mr Heaney:** I am not sure that you can say that. Without having all the tender reports, I cannot form an opinion as to why they took scaffolding out.
262. **Mr Dallat:** Stewart, you are an intelligent man and you know why I am asking the question.
263. **Mr Heaney:** Yes.
264. **Mr Dallat:** There was a £5.4 million increase in the cost of the Lyric project. I add to and acknowledge what Michael said earlier when he described the project as brilliant. However, what about the contractors who tendered for that and did their figures accurately and honestly, with no mistakes, and did not get the job? How do they feel?
265. **Mr Heaney:** I am sure that if they —
266. **Mr Dallat:** They would be sick, would they not?
267. **Mr Heaney:** I am sure that if they thought that there was a problem, yes, they would be, but the total increase in the Lyric is not all down to construction costs. Roisín may have some detail of other costs there that are not part of the construction works contract.
268. **Ms McDonough:** Yes.
269. **Mr Dallat:** My primary function today is to satisfy myself that all those lofty people called consultants, and so on, did their work and did it honestly, and that the public, including the disappointed contractors, feel that the playing field was level. This smacks of anything but that. Today was an opportunity to clarify matters and restore some confidence so that, in future, contractors will feel it worthwhile to tender for public contracts, and not be suspicious that the decision about who gets the contract has already been made. Anyone who reads that report will immediately pick that up. Apart from the overspend, that is probably the most damning element in this. Among the first promises that the Assembly made was that it would reach out to local contractors and encourage them to participate in public projects. However, we have a whole list of projects that all overran, and none of which stuck to the original tenders. That is the damning thing about this.
270. **Mr Heaney:** Certainly, on the procurements that CPD manages, it seeks full clarification and transparency. We seek to confirm tender prices with all the contractors. That is managed through an electronic portal. All of that is recorded and is fully auditable. We put a lot of effort into making sure that that process is transparent and robust.
271. **Mr Dallat:** Are the consultants who let you down aware that they should have kept their records in the first place? Are they aware, now, of the embarrassment that they have caused?
272. **Mr Heaney:** Roisín may need to answer that question in respect of the Lyric, but I understand that that was their standard procedure. I am sure that they

- recognise that it would have been much more beneficial to have retained the records.
273. **Mr Dallat:** Have you employed any of them since?
274. **Mr Heaney:** CPD has not employed them since. No.
275. **Mr Dallat:** That is at least some comfort.
276. **Mr Clarke:** Stewart, to go back to the Lyric, you said that you had no involvement in that at all.
277. **Mr Heaney:** In the Lyric?
278. **Mr Clarke:** Yes.
279. **Mr Heaney:** We were involved in the Lyric, but not in the tender assessment process.
280. **Mr Clarke:** Did you state any opinion on that at all?
281. **Mr Heaney:** We advised that they should seek a tender report. The Lyric team promised on two or three occasions that it would provide a tender report.
282. **Mr May:** Also, immediately before the —
283. **Mr Clarke:** Sorry, Peter. The report states:
- “despite numerous prompts by CPD, the Integrated Project Team did not provide CPD with the required information in a timely manner that would have allowed CPD to provide advice on the tender award decision.”*
284. However, the minutes of the steering project group meeting on 4 April reflect that CPD noted the significant milestone of the preferred bidder stage being reached and congratulated the Lyric on its achievement. What do you have to say about that?
285. **Mr Heaney:** That is right. In the same minutes, we also asked for the tender report again.
286. **Mr Clarke:** I recognise that you did not get them. I hope that you recognise the fact that your Department acknowledged the significant milestone of the preferred bidder stage being reached, and it congratulated the Lyric on its achievement. How can you be in the recorded minutes congratulating it on its achievement and yet you were concerned that you were not involved in the tender evaluation process?
287. **Mr Heaney:** The congratulation point was on having gone through the procurement process without there having been any legal challenge.
288. **Mr Clarke:** It was just a pat on the back?
289. **Mr Heaney:** It was not a pat on the back. It was about making sure that there had been no legal challenge, which —
290. **Mr Clarke:** Would it not have been useful on that occasion to have it recorded in the minutes that you were disappointed that you were not involved in the tender evaluation?
291. **Mr Heaney:** In hindsight, it would. Yes.
292. **Mr Clarke:** Why did you not raise any concerns at that meeting about the lack of documentation?
293. **Mr Heaney:** By 4 April, the contract had already been awarded.
294. **Mr Clarke:** Do you agree that it was still an opportunity to raise concerns?
295. **Mr Heaney:** Yes.
296. **Mr Clarke:** You did not take that opportunity.
297. **Mr Heaney:** No, we did not raise concerns about it. We had already asked for the tender —
298. **Mr Clarke:** Do you not think that that was the place to raise the concerns?
299. **Mr Heaney:** Yes —
300. **Mr Clarke:** There was no documentation. I am sure that, at that stage, you all knew that the tenders were going to be disposed of, the preferred bidder was getting the job and everybody else was away to lick their wounds, but nobody knows how well they fared in that process. There was an opportunity for you to record your

- disappointment at not being involved, but you did not take that opportunity.
301. **Mr Heaney:** We did not take that opportunity. We felt that the tender report had been asked for. At that stage, the contract had been awarded. As we said before, the SRO had the authority at that time to award the contract. By that stage, to have changed anything would have meant a legal termination of the contract to Gilbert-Ash and the recommencement of a procurement process, which would probably have taken nine to 12 months.
302. **Mr Clarke:** That may have been the case, but there would also have been an opportunity for CPD to cover itself for the future, given the involvement and the tensions between the two Departments. You were not actually involved in the tender process. You are supposed to be the experts. My opinion of CPD may be different. That aside, given that you are supposed to be experts on procurement, you should have been involved. You should have noted that at that time, given that you knew that you were excluded and that the documents for the rest were lost.
303. **Mr Heaney:** We did not know that the documents were going to be destroyed by the consultants. That was not evident at that time. However, I absolutely accept that we should have flagged up the need for the tender report.
304. **Mr May:** I do not believe that CPD was excluded from the tender process. It was invited to the panel meeting, but it was unable to attend. It was an issue of access to not the tender evaluation report but the tenders.
305. **Mr Clarke:** Are you saying that it excluded itself?
306. **Mr May:** It was unable to attend because there was a change in the date of the meeting of the tender assessment panel.
307. **Mr Clarke:** How many people would have been eligible to go to that meeting?
308. **Mr Heaney:** The key client adviser for the project would have been the person designated to attend.
309. **Mr Clarke:** Given the size of the contract, would it not have been worth CPD sending someone else? We are talking about a process of opening tenders and making sure that the process has been conducted and carried out correctly. Are you suggesting that there was only one person eligible and fit for purpose to go to that meeting?
310. **Mr Heaney:** No. There was a team of people, but, on that day, they were all committed to other procurement activities on other projects.
311. **Mr Clarke:** I am sure that that is well documented.
312. **Mr Heaney:** I would have to go back and look at the diaries of the folk involved.
313. **Mr Clarke:** Chair, that would be useful for this inquiry. Although it is useful for CPD to hide behind the fact that it had no one else available, it would be useful if that could be documented and some evidence could be shown of what other documents or tenders they were going to evaluate on that day to explain why people were not present or could not be sent to be present. Although we can be critical of the Lyric and the Department, we should be critical of CPD because it did not have an oversight role, given that it is supposed to be the expert in this field.
314. **The Chairperson:** Can we get that information, Mr Heaney?
315. **Mr Heaney:** I will see whether information from diaries is available.
316. **Mr Copeland:** The documents that were destroyed by consultants detail the methodology by which they adjudicated who was the best company or bidder to fulfil this contract. Is that correct?
317. **Mr Heaney:** No. They are the actual tenders provided by other companies. The tender report, which is available, shows the process that the consultants went through, but, with the original tenders, you can get back to the basics



- and see how they worked through the whole process.
318. **Mr Copeland:** Is it just the tenders, or are there annotations? I would have thought that anyone who sends out a tender would have a copy of what was sent and possibly a copy for themselves to remind them of what they sent. Is that accurate?
319. **Mr Heaney:** I am not sure what companies do if they are unsuccessful in a project. I guess that they do not retain those particular tender applications.
320. **Mr Copeland:** My experience is that they do retain them to make sure that they are not unsuccessful next time.
321. **Mr Heaney:** Possibly; yes.
322. **Mr Copeland:** I want to come back to the issue about scaffolding. I am still unclear about this. At the time at which the final contract was accepted, the scaffolding costings must have been moved. They disappeared.
323. **Mr Heaney:** That is right.
324. **Mr Copeland:** How could you give a contract to any company that was proposing to build a project the size of the Lyric without scaffolding?
325. **Mr Heaney:** That is partly down to the form of the contract. At this first stage, the contractors were bidding on their overheads and profits and costs against a cost plan provided by the consultants. The second stage was then to work through that design with the contractor and, having tendered specialist subcontract packages, put the whole cost together. Because we do not have the tenders, I do not understand why the consultants chose to take the scaffolding out, other than because they intended they intended to then —
326. **Mr Copeland:** Reduce the price by half a million pounds or so.
327. **Mr Heaney:** I think that they intended to take that forward as a subcontract package.
328. **Mr Copeland:** Has any effort been made to contact the other companies that did tender to see whether they still have copies of the tenders that they sent in?
329. **Mr Heaney:** CPD has not contacted them but, as I understand it, as part of the audit report, contact was made with the other contractors to see whether the tender reports were available. By that, I mean, the internal audit.
330. **Mr Kieran Donnelly (Comptroller and Auditor General):** We are not clear as to whether the original —
331. **Mr Copeland:** I will tell you it straight. If I had tendered for that and seen that outcome, I would have had my copy of that tender in my briefcase and gone to my lawyer before the sun set on that day. That is my opinion. It might be useful to see whether those documents still exist, because it could give us some indication as to —
332. **Mr Heaney:** If the tender applications were available, we could certainly take a much more detailed view of the tender assessment process.
333. **Mr Copeland:** Chair, can we try to establish that?
334. **The Chairperson:** Yes, we can.
335. **Mr Copeland:** I believe that they will prove or disprove.
336. **The Chairperson:** We can ascertain that. Mr Rogers, it is your turn.
337. **Mr Rogers:** Thanks. Trevor has done quite a bit of work on that area, so it is easier for me. Going back to the tender valuation process, how can you get it so far wrong that there is a 100% rise in the cost per square metre in the business case? You have talked about construction costs, and so on, but, to me, it seems phenomenal to go from £1,600 a square metre to almost £3,000 a square metre.
338. **Mr May,** you also said that, when there is a such a large increase, there is extra scrutiny, but when the Audit Office looks for evidence of that, it cannot find

- anything to give it any assurance. How do you explain that?
339. **Mr May:** The first point was around the increase in cost per square metre. The industry expectation is that a bill for the nature of something such as the Lyric would come in within the region that it did. It is within the bounds of what would be considered normal, at just under £3,000 per square metre. I have tried to explain the problems that arose in relation to the original business case. Construction cost inflation was one of the factors. Changes to scope is a second factor. Then there was what would have been unforeseen costs. There has been some discussion about the contamination issue, for example. We can provide the Committee with a list that breaks down the reasons for the cost increase in the case of the Lyric. I will not read out all of the aspects, but we can certainly provide that.
340. **Mr Rogers:** That would be useful, because earlier you talked about some things being stripped out of the —
341. **Mr May:** I said that the Lyric had originally wanted to include a restaurant and an underground car park. That was resisted and not proceeded with as part of the project. So, it was not a one-way street. It was not that no challenge was being applied. I recognise that there are issues, but I want to be clear that significant work was being done. I do not know whether Roisín wants to add to that.
342. **Ms McDonough:** As you say, the Lyric request to the IDMs for additional floor space, for example, was challenged. We asked it to furnish us with the proper case and the reasons why they needed additional floor space. Given the complexity of buildings of that nature and the tight site constraints, they needed more circulation space so that would have been added back in subsequently. However, as I said, we challenged, at every stage, all of the requests that the Lyric made to us. We carefully considered requests that were reasonable to deliver the quality of the building and its core purpose.
343. **Mr Rogers:** Surely an increase in floor space would not necessarily mean a 100% increase in the cost per square metre?
344. **Mr May:** It is only one of the factors. It accounts for around £1 million of the difference.
345. **Mr Rogers:** Just one or two more questions on the CPD issue. You mentioned, Stewart, the change of date, and so on. I just find that hard to believe. It is like me saying that I had a dental check-up I did not go to and that not going did not matter. If there had been enough pain, I would have gone. There was enough pain for CPD to ensure that it was at that meeting.
346. **Mr Heaney:** There was nobody else available on that day. However, the key point is that the tender decision was not made that day. It was made some weeks later. On that day, the tenders were opened and the quality assessment would have taken place, but RLB's assessment of price would have happened over subsequent weeks. No tender decision was made on that day. The tender decision was made weeks later.
347. **Mr Rogers:** Then what was the basis of the assessment that CPD had good confidence that the Lyric would manage the event in a professional manner?
348. **Mr Heaney:** That is simply around the fact that RLB was an experienced team of consultants familiar with public procurement and tender processes, so we would have expected it to have carried out a proper tender process.
349. **Mr Rogers:** Your assessment today would not be that, would it?
350. **Mr Heaney:** As I have said, without the tenders, I cannot say why they have made the decisions and the adjustments that they have. If we can get the tender report, we can take a view on that.
351. **Mr Rogers:** I just find it incredible. The fact that there is no tender report seems to be a terrible excuse.

352. **Mr May:** There is a tender report.
353. **Mr Heaney:** What is required is the tenders themselves to substantiate the figures in the tender report.
354. **Mr Rogers:** You talked about the 4 April meeting. Although the preferred bidder had been notified by that stage and the bid awarded, would it not have been useful to get a copy of that complete tender valuation?
355. **Mr Heaney:** Yes, and we asked for that tender report. It was requested again at that meeting, but because the SRO had the authority to award the contract, the contract was in place from March. The contract had already been awarded to Gilbert-Ash at that stage.
356. **Mr Rogers:** And it did not provide you with it?
357. **Mr Heaney:** No, the tender report was provided, but not the tenders in support of it.
358. **Mr Rogers:** OK. That takes me to page 44, the summary of the tender evaluation process. Is it normal practice for adjustments like this to be made to tender submissions?
359. **Mr Heaney:** It is not normal practice, unless some error has been made by the client's team when putting the tender together that leads to uncertainty for the bidders, so they are unclear. If those issues do materialise, you would expect them to be dealt with. You would expect the contractors to seek clarification during the tender process. That said, contractors do make errors from time to time. They do misinterpret things, so clarifications are a necessary part of the process. The key thing is that all contractors are treated equally and that you get confirmation from them on the figures and why they are the way they have been submitted.
360. **Mr Rogers:** Did the alarm bells not start ringing when you saw that the scaffolding costs were five times the lowest tender? That would scaffold Stormont.
361. **Mr Heaney:** That is right, and we need to see why the other tenderers' scaffolding was low, or whatever. Without the tenders, we do not understand why the figures are the way that they are or why RLB made those decisions. It was a senior quantity surveyor and a partner who made those decisions. They were experienced individuals, and I am sure that they had good reason for doing that.
362. **Mr May:** If it is helpful to the member, I know that the internal audit report referred to a direct quote from the consultant's cost manager. He said that it became apparent that the inclusions for scaffolding were significantly at variance, due to different interpretations put by all parties on the need for general scaffold and adaptations required for the project. It was on that basis that it was considered appropriate to exclude those costs from the tender analysis at that stage. I appreciate that that does not answer all of the questions, but it helps to explain the rationale for it. If the Committee wishes to see that internal audit report, we can make it available to you.
363. **Mr Rogers:** So, in my language, that is saying that the tender for the scaffolding was so vague that one five times the other was OK.
364. **Mr May:** I think they were saying that it was not OK. That is why they decided as they did. People had taken such radically different views as to what was required, because the tender was not sufficiently specific, that they decided to take the costs out. That is my interpretation of what has been said.
365. **Mr Rogers:** Gilbert Ash had tender adjustments of £348,000. Was any similar analysis undertaken of other tenders?
366. **Mr May:** So far as we can judge from the table on page 44, no adjustments were made to other tenders.
367. **Mr Rogers:** Why do you think there was a need for such a discrepancy of £348,000?



368. **Mr Heaney:** We cannot say why that is without seeing the other tenders. RLB must have had some view as to why it needed to make those adjustments.
369. **Mr Clarke:** So that they could win the contract.
370. **Mr Heaney:** Without the tender report, we do not know why they made the adjustments.
371. **Mr Clarke:** It is obvious. Sorry, Sean. In his response, Peter said that internal audit had an excuse for stripping out the scaffolding. The same could be said for the contractors, who misunderstood the contract, if that is the sort of language that we want to use. It is pretty plain to see if you look at everything here. We have no tender documents to look at; the one who turns out to get the contract has had another £349,000 stripped out of the contract to put him into pole position. If you took this to someone in primary school, they could work out what is going on. I would love to know whether internal audit did any sort of review into how this whole thing was managed. Or is everyone covering everyone within the Department?
372. **Mr May:** The first thing to be clear about is that our internal audit services are provided by another Department. I understand the reason for the concern that you are raising. The absence of the tender documents —
373. **Mr Clarke:** Is suspicious.
374. **Mr May:** The absence of the tender documents means that we cannot provide the sort of evidence that we would like to be able to provide to the Committee. I can tell you that the £347,000 of other adjustments was made up of design development costs, incorrect programming costs, bonds and a PC fee. There is some circumstantial evidence that suggests that proper process was followed. That is partly around the broadly-based nature of the assessment panel, with a very wide range of individuals and professional skills on it; the fact that the CPD assessment before the procurement process had confidence in the tender process; the fact that the internal audit report found the overall approach methodology was in line with best practice; and the gateway review, a health check that is conducted immediately after the tendering process. It said that it found a robust tendering process. It had reviewed the tendering report. I recognise that that does not give all of the answers that the Committee is looking for, because we do not have access to the tenders.
375. **Mr Clarke:** Did it have access to the tenders?
376. **Mr May:** It had access to the tender report.
377. **Mr Clarke:** Did it have access to the actual tenders?
378. **Mr May:** Not to my knowledge.
379. **Mr Clarke:** So, how could it come to any decision based on what we are seeing here, all the information? That is like taking someone into a room blindfolded and asking them to count the number of tiles on the ceiling.
380. **Mr May:** What it would have done is it would have conducted a series of interviews as well as looked at the report, but I accept that I do not believe it had access to the tenders. There was a gateway health check on the progress of the Lyric overall, rather than a specific gateway health check looking at procurement.
381. **Mr Clarke:** Procurement is the problem here.
382. **Mr May:** I am just mentioning the fact that that is something that it referred to in its report and therefore I think it is relevant to mention it.
383. **Mr Copeland:** You mentioned RLB. Who is that? What is it? How did it become involved? Does it have a relationship with your Department? Has it ever worked for your Department?
384. **Mr Heaney:** No, it has not.
385. **Mr Copeland:** Has anybody known to you to be employed by it every worked in your Department?
386. **Mr Heaney:** No.

387. **Mr Copeland:** Is there a known relationship between it and the people who took the decision on its work? Was it asked to declare an interest?
388. **Mr Heaney:** RLB was appointed following a procurement competition. As far as I know, there —
389. **Mr Copeland:** Appointed by whom?
390. **Mr Heaney:** It was appointed by the Lyric.
391. **Mr Copeland:** Is it a UK-based company?
392. **Mr Heaney:** Yes, it is a multinational.
393. **Mr Copeland:** Does it do much work in Northern Ireland?
394. **Mr Heaney:** I am not sure that it does. It certainly has not worked for CPD before.
395. **Mr Copeland:** So, the Lyric tendered for its services.
396. **Mr Heaney:** We provided advice to DCAL on that procurement process. We are content that that was a proper, well-managed procurement process to appoint RLB.
397. **Mr Rogers:** Do we have sight of these internal audit reports?
398. **Mr Copeland:** I would like to see those.
399. **The Chairperson:** You would like to see them? We can get them.
400. **Mr Rogers:** They are quoted in a number of cases, including the highly unlikely one earlier. Why was contractor C the only one to have a post-tender adjustment made?
401. **Mr Heaney:** Again, we are not sure, but my understanding or my analysis is that contractor C was potentially going to be the winning contractor, but he then had a meeting with RLB and the team. At that point, the contractor identified that he had omitted certain items from the tender around the offloading of subcontract materials. He voluntarily identified the fact that he needed additional sums in order to fulfil the tender requirement.
402. **Mr Rogers:** To the layperson, that looks as though he was in an economically advantageous position and it had to be adjusted. Why then did the other contractors not go through a similar process; contractors A, B or D?
403. **Mr Heaney:** I do not know why RLB did not. It would be normal practice to either seek clarifications in writing or have a meeting with contractors to get to the bottom of clarifications if that was necessary. I do not know why it did not have meetings with other contractors as necessary.
404. **Mr Rogers:** Just one or two other wee things, Chair. I beg your indulgence.
405. Paragraph 4.23 in the report indicates that the project manager had previously worked with Gilbert Ash on the Grand Opera House. Did any other members of the project board have any relationship with Gilbert Ash?
406. **Mr May:** The answer to the substantive question is: not to my knowledge. Just to be clear so that there is no ambiguity, it is not that they worked for Gilbert Ash; they had been a project manager working for a separate firm when Gilbert Ash was awarded the contract on the Grand Opera House. I think that for that kind of project manager to contract a relationship in a construction industry the size of Northern Ireland, it is fairly commonplace that they probably would have worked with many of the contractors who bid for the Lyric in one form or another. So, just to be clear, it is not that they worked for Gilbert Ash; they worked alongside it as part of an integrated project scheme on the Grand Opera House.
407. **Mr Rogers:** Finally, to summarise, when you look at the tender prices for the five contractors there, you see that Gilbert Ash was number five on the list. After three tender adjustments, Gilbert Ash was number one on the list. It really is difficult to reach any conclusion other than that this tender evaluation process was deliberately manipulated to achieve a particular result. What assurance can the Department or the Arts Council

- provide the Committee to satisfy us that that was not the case?
408. **Mr May:** The first thing to note is that the fifth ranking was initially in relation to price. A quality ranking was brought in that was relevant as well, as we went through that process.
409. **Mr Clarke:** Sorry; how is quality measured?
410. **Mr May:** It is measured by, as I understand it, the tender evaluation panel.
411. **Mr Clarke:** Who were they?
412. **Mr May:** By the tender assessment panel.
413. **Mr Clarke:** Who are they? RLB?
414. **Mr May:** No. RLB would have supported that exercise. There were seven members of the panel. They included a member of the Lyric board, a member of the Lyric executive team, the project director, the project manager, architects, consulting engineers and design engineers. So, it was a broadly based assessment panel
415. **Mr Clarke:** Would you agree or disagree — sorry, Sean.
416. **Mr Rogers:** It is OK.
417. **Mr Clarke:** Would you agree or disagree that the weighting for quality is very subjective and that there is no basis for it?
418. **Mr May:** Given that Stewart is an expert on it, I think that he would be better placed to comment.
419. **Mr Clarke:** He would have been, Peter. You are on the money here: he would have been, but he was not included. We have senior management in the Lyric who have absolutely no experience in managing contracts like this, and yet they decided that Gilbert Ash should score the highest in terms of quality. You are on the money: CPD should have been there, or someone with expertise over a contract such as this, but that was not the case. It is clear from the outcome of this document that this thing has been rigged from day one until the completion of the job and until it was handed over.
420. **Mr May:** I do not believe that there is evidence to support the fact that it had been rigged.
421. **Mr Clarke:** You are naive as well if you do not believe that.
422. **Mr Scott:** In the preliminary work to establish the approach to the methodology, the adviser from CPD engaged with the project team to discuss the methodology. There was an exchange of correspondence with and discussion and advice from CPD, which was accepted, over the weighting between the price and the quality. So that advice was taken on board by the tender evaluation panel. It is true to say that CPD was not at the actual event, but there were various discussions and engagements, and I think that that is what led CPD to have a degree of confidence in the professionalism of the Lyric in the way that it would approach the selection process.
423. **Mr Clarke:** You will have documentation, then, on the five contracts. Are you telling us that CPD was involved in the quality aspect of that? Is that what you are saying?
424. **Mr Scott:** No; what I am saying is —
425. **Mr Clarke:** You are making an assertion that that is the case.
426. **Mr Scott:** No; I am saying that CPD gave specific advice to the Lyric on how to approach the tender selection process and gave particular advice on the weighting between price and quality. There is documentary evidence that reflects that level of engagement and the exchange of advice between CPD and the tender panel. It is quite correct that CPD did not actually attend the outworking of that in its application.
427. **Mr Clarke:** Conveniently.
428. **Mr Rogers:** It did not attend. How, then, did it give the panel advice?
429. **Mr Scott:** This was in the run-up. In the process before, there were various engagements between the CPD adviser and the Lyric team in terms of how they

- would approach it to satisfy the funders that it had been a justifiable approach.
430. **Mr Rogers:** Thanks, Chair.
431. **The Chairperson:** Michael, are you finished as well?
432. **Mr Clarke:** I am not.
433. **The Chairperson:** I want to put a question to you, Mr May. At the same meeting in which the project board agreed the fixed price for the contract with Gilbert Ash, it was agreed that Gilbert Ash would become patrons of the Lyric Theatre, with a donation of £150,000. The Lyric's fundraising team had been pursuing that patronage while contract negotiations were going on. You can understand why there is a very strong perception, out there and in here, of corruption. Why did the Department and the Arts Council fail to recognise that as a conflict of interest?
434. **Mr May:** Is that a question you are asking of me?
435. **The Chairperson:** Yes.
436. **Mr May:** I think it is clear that the right conflict of interest procedures were not in place in that case, and it ought to have been managed very differently. We have put in place arrangements now so that conflicts of interest are dealt with very differently. Very clear guidance is given to all third-party organisations that are in receipt of government funding around how they should manage conflicts of interest going forward. I know that the Lyric had a separate fundraising team from the team that was looking at the capital projects. They have stressed that there was no cross-fertilisation between those two teams and that they were being pursued entirely separately. They also successfully pursued other contractors for donations.
437. The one thing that I take some assurance from is that, in order for the project to proceed, the Lyric needed to have 95% of its private financing raised, and prior to Gilbert Ash's donation it had already achieved that figure, so there was no question that it needed that money from Gilbert Ash in order to get to the point of starting the build. That is one aspect that I take some assurance from, but I absolutely accept that the conflict of interest arrangements were not adequate in that case.
438. **The Chairperson:** And everyone failed at the time to recognise it.
439. **Mr May:** That is right.
440. **Mr Copeland:** The Lyric had a contribution to make itself, and that was a percentage of the total cost, is that correct? It had 95% of that?
441. **Mr May:** Yes.
442. **Mr Copeland:** The percentage that it had to have was a percentage of what? The cost envisaged by the business plan, the actual cost or the contract cost? In other words, how much was their percentage of the final cost?
443. **Mr May:** It was raising £5.6 million out of the total spend of £17.8 million, so that is just under a third. I do not have the figures in my head, but it is 95% of that £5.6 million that it had to raise.
444. **Mr Copeland:** At what stage was that established? Was that based on the final contract price, the price according to the business plan or the expected price?
445. **Mr May:** I would need to write to you on that. I do not have that point of detail to hand.
446. **Mr Clarke:** Peter, I want to take you back to when you were answering Sean — I am referring back to figure 11 again — and you read a document or a note from your internal audit in relation to the stripping of the scaffolding costs. Will you read that quotation again to me?
447. **Mr May:** The internal audit was quoting the consultant cost manager, who said:
- "Further, it became apparent that the inclusions for scaffolding were significantly at variance due to the different interpretations put by all parties on the need for general scaffolding and adaptations required for the project."*

448. **Mr Clarke:** Given that Gilbert Ash was fifth at that stage, and the removal of that put it into third, was there any note from the internal audit when the contract was finished that the same contractor added in £413,000 for scaffolding? What did the internal auditor say in relation to that?
449. **Mr May:** This was an internal audit report done after the tender had been completed. It was a deep-dive review, trying to establish the facts behind the adjustments. They were trying to draw out relevant evidence. I was just quoting it as an explanation —
450. **Mr Clarke:** Can I draw it from you, then? That contractor was fifth. There was an adjustment to bring it to third. We have some mysterious scoring system that put it second. Contractor C was moved from first to third, putting Gilbert Ash into first, and the contract was awarded to Gilbert Ash. When the job was finished and the invoices came in, the £413,000 that was stripped came back in after the job was finished. What conclusion would you draw from that? Can I get you to come to the same conclusion as, I think, most of the members round this table have come to, or can you give me a rationale for it?
451. **Mr May:** I cannot give you an explanation of what lay behind it, for the reasons that Stewart explained; not all the documentation exists.
452. **Mr Copeland:** The invoices do, Peter.
453. **Mr May:** We know that the £413,000 was put back in to the total price that was paid. It is recorded in this report. Internal audit was not able to demonstrate, nor am I seeking to demonstrate, that it was able to satisfy itself about the process. It was not able to get access to the relevant documentation.
454. **Mr Clarke:** Well, it was trying to defend it.
455. **Mr May:** I do not wish to suggest that. I was merely quoting something from the consultant cost manager in the internal audit report to explain the rationale they had given for excluding the costs. I was trying to be helpful to the Committee. I was not trying to say that internal audit was supporting that position.
456. **Mr Clarke:** I would not suggest that you have not tried to be helpful. Will you go back and ask it what it thinks about the inclusion of the £413,000 after the job was finished, given that it defended the £413,000 being stripped out to put Gilbert Ash in a better position to win the contract? I would like to seek the opinion of your internal audit in relation to that.
457. **Mr May:** It was not able to obtain any information that indicates that there was a further evaluation of scaffolding requirements to confirm the most appropriate costs. I think that that is a quote from its report. We will furnish the Committee with that report.
458. **Mr Rogers:** Was any inquiry carried out to see what happened to the tender documentation?
459. **Mr May:** The internal audit was such an inquiry, trying to find out what happened and precisely what the position was. That is my understanding. I do not know whether there is anything else that you want to add to that, Deborah.
460. **Ms D Brown:** The purpose of the review was to evaluate the system of risk management control and governance to ensure that the contract for the rebuild for the Lyric Theatre was awarded in line with best practice and that the donations made to the Lyric Theatre capital project were transparent and did not influence the award of the design and build contract.
461. **Mr Rogers:** Where did the tender documentation go?
462. **Mr May:** It would have been held by the consultants — RLB in this case — as the managers of the process.
463. **Mr Rogers:** And the consultants do not have that documentation?
464. **Mr May:** It destroyed it.
465. **Mr Rogers:** So, was it just in written form? Was it not on computer?



466. **Mr May:** I am afraid that I do not know what form it was provided in.
467. **Mr Heaney:** I am guessing, by the time frame, that it would have been hard copy at that stage.
468. **Mr Rogers:** Is it normal practice to destroy tenders?
469. **Mr Heaney:** We retain tenders for about 10 years.
470. **Mr May:** But the private sector would not necessarily. Part of the problem is that the Department did not place a requirement on the contractor, as we should have done, to insist that it retains the information.
471. **Mr Clarke:** What are you doing about that for the future?
472. **Mr May:** That has been rectified. CPD's advice about holding it for seven years is the advice that you would formally offer, although you would hold your own tenders for 10 —
473. **Mr Clarke:** Are you taking its advice on that one? You do not always.
474. **Mr May:** We have implemented that already. That is in place for all our capital projects.
475. **Mr Clarke:** In terms of lessons learnt from CPD's point of view from this contract, have you shared those with any of the other Departments?
476. **Mr Heaney:** The whole process around tender evaluation is covered by a guidance note that sets out best practice. It sets out the retention of records, what information needs to be —
477. **Mr Clarke:** Most of us are familiar with guidance notes. The problem that we find with them is that Departments do not necessarily have to accept them. What have you done with your Minister to tell him about the lessons that you have learnt as a Department from working with DCAL in this case? There will be concern that similar things could happen with other Departments, given that it is only a guidance note.
478. **Mr Heaney:** The procurement guidance notes are signed off by the procurement board, which is chaired by the Minister. Centres of procurement expertise are required to comply with those guidance notes or to document where they do not. So, it is a fairly robust process, and there are guidance notes covering the tender evaluation process in detail and the retention of records and information.
479. **Mr McQuillan:** How, then, do you describe how the procurement for this tender matches those guidance notes?
480. **Mr Heaney:** It does not, in so far as the level of detail that we retain and our policy on the retention of records does not match that. As Peter has said, that requirement to retain the records was not, as I understand it, placed on RLB.
481. **Mr Clarke:** Roisín, you have got off reasonably lightly today. You are chief executive of an organisation that should be celebrating its success with the Lyric Theatre. It has actually turned out to be a very large embarrassment for the Assembly and my colleagues in the Assembly over the lessons. As chief executive, what have you to say? Peter is here today taking up the mantle for someone else. You were residing, I think, during the tenure of most of this, so what have you to say in relation to it all?
482. **Ms McDonough:** First, it is a source of deep regret that the shine has been taken off the achievement of the buildings that we now have and which add substantially to the civic experience of accessing arts and culture in Belfast. I want to place that on record. We fully accept the shortcomings and the lessons learnt, and members have been very gracious in their comments of praise around the quality and design of these buildings and what they have delivered to the general public. I fully accept the shortcomings and the lessons learnt. One of the principal difficulties is that, when you are dealing with third-party organisations, you put on them an unfair burden of responsibility as the senior responsible owner of the project when, ideally, we would

- consider that that should be a person with CPD advice, who would not take the decisions. Rather, it would rest with the IDMs as to whether to proceed to award a contract or a tender in this particular instance. We need to recognise that in the future.
483. **Mr Clarke:** It was said that two people from your organisation were involved in the tender process. Who were they?
484. **Ms McDonough:** On the tender process —
485. **Mr Clarke:** The evaluation of the tenders.
486. **Ms McDonough:** There was not anyone from the Arts Council. They were from the Lyric itself.
487. **Mr Clarke:** In terms of the future for you and your own experience, do you think that, as the person heading up the organisation, you will insist that things are done differently?
488. **Ms McDonough:** Absolutely. Having learned the very important lessons from the Grand Opera House, we need to be absolutely focused on accepting the Achieving Excellence framework. On our part, because we are a small public body, we employed a capital project manager to assist us. She is a civil engineer, and trained in PRINCE 2. We also trained our arts organisations in Achieving Excellence. We sent them on training courses and to conferences to instil in them a sense of the importance of value for money and being accountable for these public funds. We also put a big burden on them by asking them to raise money themselves, so these were not 100% funded projects. In fact, the Lyric raised £1 million — the biggest single donation ever given to an arts organisation.
489. **Mr Clarke:** How did it raise that?
490. **Ms McDonough:** It raised it through philanthropy.
491. **Mr Clarke:** We have to acknowledge the money that the Lyric, itself, raised, but, regardless of where those funds come from, do you think that if we get into another similar project, the funders, whether public funding or not, would be impressed with how it conducted itself on this one?
492. **Ms McDonough:** In terms of the Lyric specifically, we were assured, and we believe, that the very senior people who were involved in the fundraising team and in the capital project working group were people with the requisite skills and experience and, indeed, were of the highest integrity.
493. **Mr Clarke:** That was not my question. It is not necessarily always public money in other fields. As you have identified, you got money from other sources. Given that this has been so badly handled from your organisation's point of view, do you think that those who committed some of their funds into your organisation will be impressed by the waste that there has been in relation to this project, and how this contract has been handled?
494. **Ms McDonough:** I think that we would accept that there have been shortcomings, which the permanent secretary referred to. We would not demur from that.
495. **The Chairperson:** There are no further questions. The Committee will now consider the evidence that has been produced here today for the report in due course. We may wish to write to you for further information. I know that some action points have been actioned here in relation to some information. The Clerks will write for that information.
496. Mr May, Ms McDonough, Ms Brown, Mr Scott and Mr Heaney, thank you very much for your contribution today. I also thank Hansard, Mr Donnelly and his team and Fiona for their contribution.







Northern Ireland  
Assembly

Appendix 3

# Correspondence



# Chairperson's Letter of 27 June 2013 to Mr Peter May

**Public Accounts Committee**

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Mr Peter May  
Accounting Officer  
Department of Culture, Arts and Leisure  
Causeway Exchange  
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BT1 7FB

27 June 2013

Dear Peter,

**PAC inquiry into 'DCAL: Capital Projects'**

Thank you for your participation in yesterday's meeting of the Committee.

At the meeting the Committee asked you to clarify/confirm certain details in writing. Please provide, in confidence if necessary, the following information:

- Central Procurement Directorate's reason for failing to have representation at the tender evaluation meeting for the Lyric contract in 2008? Please provide
- a. Diaries of officers in a sufficiently senior role to fulfil this representative role; and
- b. Details of other tenders of this order of spend which justify the non-attendance at the Lyric meeting;
  - A copy of the internal audit report into the Lyric tender procurement process;
  - Confirmation that the internal audit was not sighted on the fact that Gilbert Ash reinstated scaffolding costs, which had earlier been stripped from the Gilbert Ash tender, and these were paid; and your assessment of the financial governance risk to which this exposed the Department;
  - Specification of whether the scaffolding provided by Gilbert Ash was hired or bought for the Lyric project;
  - Details of the Directors of Gilbert Ash;
  - Documentary evidence of agreement of cost adjustments with all tenders;
  - Copies of all original tenders retained by bidders and all documentation provided to and from bidders in respect of adjustments made by the tender evaluation panel; and
  - A list which breaks down the reasons for the cost increase for the Lyric including construction costs inflation; changes to scope; and unforeseen costs.

I should be grateful if you could provide this information by 11 July 2013.

Yours sincerely,

A handwritten signature in black ink that reads "Michaela Boyle". The signature is written in a cursive style with a large initial 'M' and a distinct 'B'.

**Michaela Boyle**

Chairperson  
Public Accounts Committee

## Correspondence of 10 July 2013 from Mr Peter May



Department of  
**Culture, Arts  
and Leisure**

www.dcalni.gov.uk

AN ROINN  
**Cultúir, Ealaíon  
agus Fóillíochta**

MÁNNYSTRIE O  
**Fowkgates, Airts  
an Aisedom**

Date: 10 July 2013  
Our Ref: SECCOR153/2013

Ms Michaela Boyle, MLA  
Public Accounts Committee  
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Dear *Michaela*

**PUBLIC ACCOUNTS COMMITTEE INQUIRY INTO "DCAL CAPITAL PROJECTS"**

Thank you for your letter of 27<sup>th</sup> June asking for clarification/confirmation of certain details. You have requested:

1. *Central Procurement Directorate's reason for failing to have representation at the tender evaluation meeting for the Lyric contract in 2008? Please provide:*
  - a. *Diaries of officers in a sufficiently senior role to fulfil this representative role; and*
  - b. *Details of other tenders of this order of spend which justify the non-attendance at the Lyric meeting.*

Details of CPD official's diaries and details of other tenders are attached at **Annex A**.

2. *A copy of the internal audit report into the Lyric tender procurement process.*

A copy of the internal audit report is attached at **Annex B**.

3. *Confirmation that the internal audit was not sighted on the fact that Gilbert Ash reinstated scaffolding costs, which had earlier been stripped from Gilbert Ash tender, and these were paid; and your assessment of the financial governance risk to which this exposed the Department.*



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I can confirm that internal audit commented on the scaffolding costs within the report, at paragraph 2.6. It was noted as one of the areas where adjustments had been made. This was then expanded on at paragraphs 2.8 and 2.9. Within paragraph 2.9 internal audit stated:

*'The Gilbert Ash costs which were accepted at Stage 2 appear to be the full scaffolding costs contained in their tender submission. However, Internal Audit notes that the Gilbert Ash scaffolding costs were the highest submitted (over 30% higher than the next highest costs). Internal Audit were not able to obtain any information which indicates that there had been further evaluation of scaffolding requirements to confirm the most appropriate costs.'*

This highlighted that the scaffolding costs were taken forward to the final stage 2 costs. Internal audit were looking at this in the context of the assessment of the tender and had noted this as the most significant area of variance. RLB explained that:

*'due to the outline nature of the scheme at the first stage and the difficulty in determining the accurate scope of scaffolding requirements it was considered appropriate to exclude these costs from the tender analysis at this stage'.*

Rider Levett Bucknall (RLB) is a multinational company with over 3,000 staff in more than 100 offices across the world. It is a leading independent firm providing property and construction advice. E-mails are attached which provide evidence that each contractor was asked by RLB to confirm the scaffolding adjustments. This confirmation was received from each contractor which provides assurance that there was full visibility and agreement on these adjustments. Therefore the financial governance risk to DCAL is considered low.

*4. Specification of whether the scaffolding provided by Gilbert Ash was hired or bought for the Lyric project.*

The Department has confirmed that the scaffolding provided by Gilbert Ash was hired for the Lyric project.

*5. Details of the Directors of Gilbert Ash.*

Details of Gilbert Ash Directors are attached at **Annex C**.

*6. Documentary evidence of agreement of cost adjustments with all tenders.*

E-mails of agreement of cost adjustments with all tenders are attached at **Annex D**.

*7. Copies of all original tenders retained by bidders and all documentation provided to and from bidders in respect of adjustments made by the tender evaluation panel.*



The Department contacted all of the bidders involved in the Lyric tender process and in one case the administrator to request copies of all original tenders and supporting tender documents. We have received the following response from Grahams Construction:

*"This project was tendered some 5-6 years ago and with the significant passing of time all tender documents relating to our unsuccessful bid have been shredded and securely disposed off."*

Gilbert Ash has undertaken to provide a copy of the original tender to the Department by 29 July 2013. Upon receipt I will forward this to you.

Despite reminders we await a response from the remaining contractors and administrator and will provide an update when they respond to the department.

8. *A list which breaks down the reasons for the cost increases for the Lyric including construction costs inflation; changes to scope; and unforeseen costs.*

A list which breaks down the cost increases for the Lyric is attached at **Annex E**.

If you require any further information please do not hesitate to contact me.

Yours sincerely



**PETER MAY**  
Interim Permanent Secretary



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## ANNEX A

Central Procurement Directorate's reason for failing to have representation at the tender evaluation meeting for the Lyric contract in 2008? Please provide

- a. diaries of officers in a sufficiently senior role to fulfil this representative role; and
- b. Details of other tenders of this order of spend which justify the non-attendance at the Lyric meeting.

### RESPONSE

The Client Adviser assigned, by Central Procurement Directorate (CPD), to provide DCAL with advice in relation to the Lyric project was unable to attend the tender evaluation meeting on 24 January 2008 as he was out of the country on annual leave which had been booked weeks in advance.

The tender evaluation meeting had originally been scheduled for 15 January 2008 and the Client Adviser had confirmed that he would attend. However, the tenderers requested more time to complete their tenders and the Lyric subsequently decided to move the tender return date back to the 21 January 2008.

As a consequence of this change, the Lyric advised CPD that the date of the tender evaluation meeting would have to be changed to 24 January 2008. CPD's Client Adviser informed the Lyric, that he could not attend on Thursday 24 January 2008 and he offered Monday 28 January 2008 as an alternative.

The CPD Client Adviser had three members of staff in his team, but none were available to attend the meeting on 24 January 2008. One of the team was also on annual leave, but it has not been possible to determine the specific projects that the other two team members were involved with on 24 January 2008. One individual retired in 2009 and, since the electronic diary system used by DFP does not retain records as far back 2008, the other individual's diary details are not available.

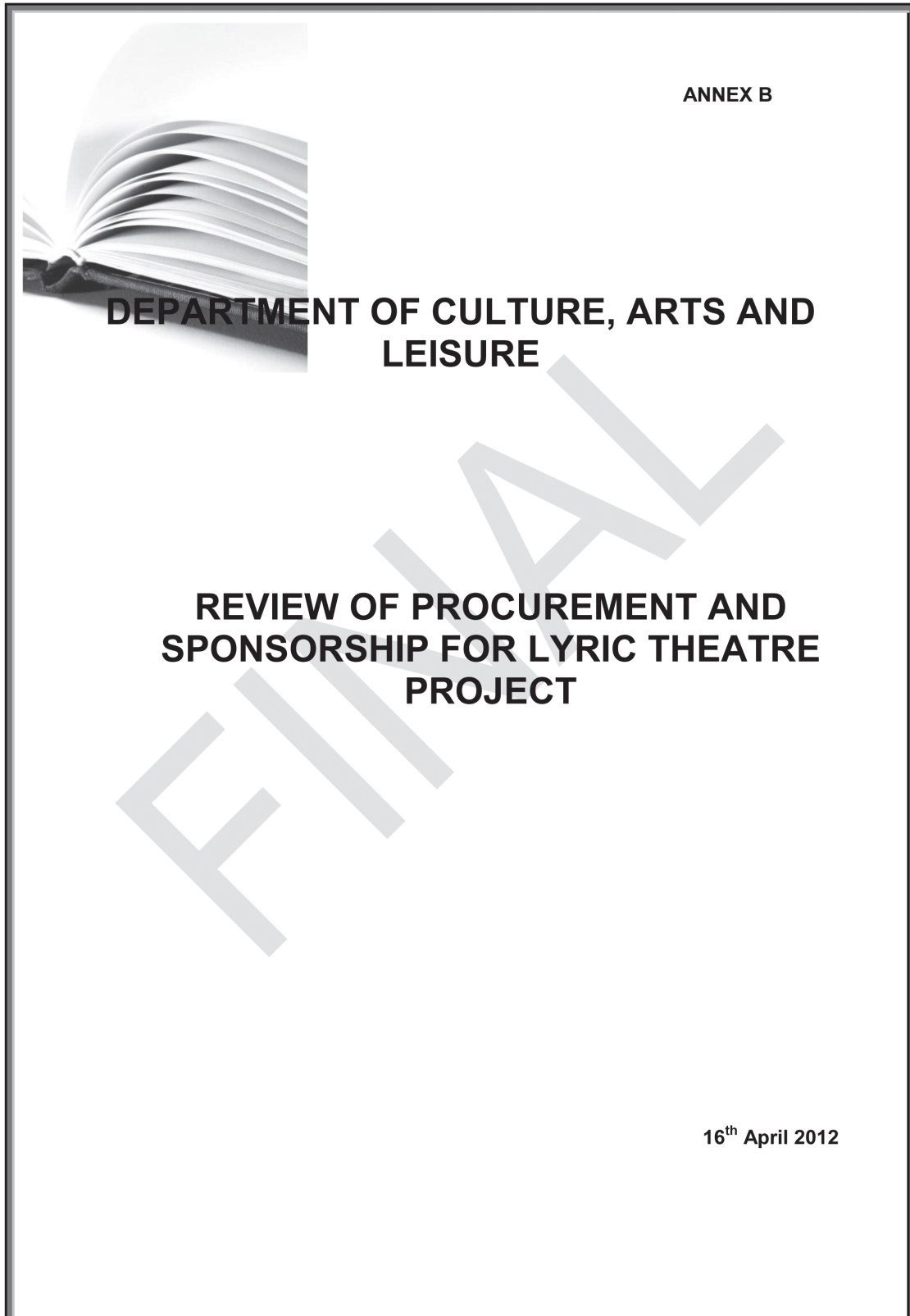
However, although the precise details of these two staff cannot be confirmed, in and around that period they were working on a number of other major projects including the £17.6m Metropolitan Arts Centre, the £5.5m Tollymore Mountain Centre, a £16.6m Belfast Metropolitan College at Springvale and a £10m Regional College building in Newtownabbey.

The Lyric tenders were assessed on the basis of both quality and price and therefore the decision to award the contract to Gilbert Ash Ltd was not made on the 24 January 2008. Although the quality assessment was undertaken on that date, the price assessment was not completed until much later. Accordingly, CPD's attendance at the meeting would have had no impact on the price assessment. The adjustments that were subsequently made by two members of RLB's staff (a Senior Quantity Surveyor and a Partner - both of



whom were based in RLB's London Office) were made during February and March 2008.

CPD would only have been able to meaningfully comment on RLB's tender report if it had been provided with it in full (complete with all the tenders as submitted), as promised by the Lyric, before the result of the tender process was announced to all tenderers on 11 March 2008 and the subsequent standstill period ended on 28 March 2008.



**TABLE OF CONTENTS**

<b>Section</b>	<b>Contents</b>	<b>Page Number</b>
<b>1</b>	Introduction	<b>3</b>
<b>2</b>	Award of Contract	<b>5</b>
<b>3</b>	Sponsorship	<b>9</b>
<b>Appendix 1</b>	Additional Actions Schedule	<b>11</b>

## **1. INTRODUCTION**

- 1.1 In light of concerns highlighted by the NIAO in relation to the arrangements for sponsorship of the Lyric Theatre by Gilbert Ash, Internal Audit was tasked by the Department's Permanent Secretary with carrying out a review of the procurement and sponsorship arrangements.
- 1.2 The purpose of this review was to evaluate the system of risk management, control and governance operating to ensure that:
- The contract for the re-build of the Lyric Theatre was awarded in line with best practice; and
  - Donations made to the Lyric Theatre capital project were transparent and did not influence the award of the design and build stage contract.

### **Background Information**

- 1.3 The re-build of the Lyric theatre was procured using a two stage design and build approach. Following the award of the first stage contract, in March 2008 to Gilbert Ash, the contractor and design team worked together to agree a build cost based on the design and the available budget. The project was funded via a combination of grant funding and fundraising secured by the Lyric from a variety of patrons, including sponsorship from the business community.
- 1.4 DCAL and the Arts Council Northern Ireland (ACNI) provided a significant proportion of the funding for the project and as joint funders used the Project Board to provide accountability. The funders were supported by Central Procurement Directorate (CPD) who provided advice and guidance during the procurement and build process.

- 1.5 The Lyric Theatre appointed a number of consultants to develop and manage the project through its various stages. These included Rider Levett Bucknall (RLB) to provide services in respect of cost management including assessment of the financial element of tenders received and EC Harris who acted as Project Managers for the actual build element of the project.

**Report Approach**

- 1.6 Sections 2 and 3 of this report outline Internal Audit's findings under each of the specific audit objectives. Internal Audit would normally include a priority rating for individual recommendations however the recommendations from this review should be viewed as lessons learned and immediately integrated into current and future Governance arrangements for grant aided projects.

## 2. AWARD OF CONTRACT

### Objective

- 2.1 To ensure that the contract for the re-build of the Lyric Theatre capital project was awarded in line with best practice.

### Key Findings and Recommendations

#### Source Documentation

- 2.2 A significant constraint experienced by Internal Audit in carrying out this review was the absence of source documentation. Internal Audit rigorously and unsuccessfully pursued any source documentation which could have informed our consideration of the tendering process.
- 2.3 RLB has advised that the documentation was not retained due to their company policy and the passage of time. However, this is not in line with expectations regarding document retention within the public sector. CPD have suggested a minimum of 10 years retention within the public sector (and sometimes longer if the circumstances require). The Letter of Offer to the Arts Council in relation to this project is silent on the issue of document retention.
- 2.4 **Internal Audit recommends** that document ownership and retention requirements are specifically stated in respect of future capital projects. Where a private sector company is responsible for managing part of the process, it is particularly important that this issue is highlighted and appropriate action taken to secure documentation from the company.

#### Final Tender Evaluation Report

- 2.5 In the absence of the original tender submissions and tender evaluation documents, the only record of the tender evaluation process is the Final Tender Evaluation Report (the Report).

2.6 The Report highlights that a number of adjustments were made to the costs outlined in the tender submissions. The purpose of the adjustments was to ensure a consistent evaluation of costs, however, there is insufficient detail contained within the Report to fully explain how all the revised figures were calculated. The items affected are:

- Reduction to correct Gilbert Ash costs from 89 weeks to 86 weeks;
- Small unexplained reduction in measured work costs for Patton; and
- Scaffolding reductions.

2.7 In the absence of more detailed information we are unable conclude on the appropriateness and accuracy of the adjustments made.

#### Scaffolding

2.8 One of the key adjustments to the tender costs in the Stage 1 assessment was in relation to scaffolding. RLB's Cost Manager stated that, *'due to the outline nature of the scheme at the first stage and the difficulty in determining the accurate scope of scaffolding requirements it was considered appropriate to exclude these costs from the tender analysis at this stage'*.

2.9 While the explanation for this exclusion from Stage 1 costs appears reasonable, there was a vast difference between the bidders in relation to scaffolding costs (from £85k - £413k). Because these costs were not included in the Stage 1 financial assessment, they were not tested for value for money. The Gilbert Ash costs which were accepted at Stage 2 appear to be the full scaffolding costs contained in their tender submission. However, Internal Audit notes that the Gilbert Ash scaffolding costs were the highest submitted (over 30% higher than the next highest costs). Internal Audit were not able to obtain any information which indicates that there had been further evaluation of scaffolding requirements to confirm the most appropriate costs.



Potential Errors in the Final Tender Evaluation Report

- 2.10 In reperforming the calculations in the Report, and based on other information contained within the Report, Internal Audit has identified what could potentially be a range of arithmetic or transcription errors
- 2.11 Without the original tender submissions we cannot be definitive about whether there are actually errors. Even in a case where it looks likely that an error has occurred, we cannot be sure what exactly the error is. In addition, we cannot be sure that all potential errors have been identified.
- 2.12 CPD acted as Client Advisers to the Joint Funders (DCAL and ACNI). Their role was to provide advice and guidance on Government Procurement Policy to the Joint Funders and to assist the Grant Recipient in the application of the policy including best practice in respect of conditions of grant including assisting in appointment of the Project Manager's Team and Contractor appointments. Internal Audit identified evidence of acceptance of CPD's advice and guidance by the Funders, the Lyric and its advisers.
- 2.13 In relation to the tender evaluation, CPD did not attend the tender evaluation meeting, nor did a representative from the Department. Acting on the advice of CPD the IDM's requested a copy of the tender evaluation report at the Project Steering Group meeting on the 2<sup>nd</sup> April 2008. A copy of the tender report was provided at the Project Board meeting of the 4<sup>th</sup> April 2008. The report was incomplete and did not contain stated appendices. CPD advised that they requested a copy of the full and complete report at the meeting and continued to request the report informally however it was never received. Therefore, the decision to award the Stage 1 contract to Gilbert Ash was taken by the Project Board without the benefit of CPD advice on the effective operation of the tender evaluation.
- 2.14 **Internal Audit recommends** that, for future projects, key decisions are only taken after advice from professional advisors is received. It is therefore

important that the Project Board ensure their professional advisors receive the information they require on a timely basis, to prevent delays in the project.

**Evaluation**

- 2.15 While Internal Audit are satisfied that the overall approach and methodology to be employed in the Lyric Project were in line with best practice, in the absence of the original tender submissions and tender evaluation documentation, we cannot provide assurance that the Lyric Theatre re-build contract was awarded in line with best practice.
- 2.16 There are a number of issues highlighted during the review which we are unable to resolve, however, the recommendations above should help prevent similar issues occurring in future projects.

### **3. SPONSORSHIP**

#### **Objective**

- 3.1 To ensure that donations made to the Lyric Theatre capital project were transparent and did not influence the award of the design and build stage contract.

#### **Key Findings**

- 3.2 The first stage contract was awarded to Gilbert Ash in March 2008 after which negotiations commenced to agree a fixed price for the contract. After extensive value engineering the price was agreed in September 2008 and the Lyric sought formal approval from the Project Board to sign the contract at a Project Board meeting of the 27<sup>th</sup> October 2008. (The contract was not signed until March 2009 as the costs had increased from the original business case and further approval was required from DFP.)
- 3.3 Internal Audit has been advised that two Lyric Board members met with Gilbert Ash on the 24<sup>th</sup> October 2008 to try and secure sponsorship. The announcement that Gilbert Ash sponsorship had been secured was also made at the Project Board meeting of 27<sup>th</sup> October 2008. These Board members were not involved in the procurement or contract negotiations for the build process.
- 3.4 Internal Audit notes that a number of other construction related firms were also sponsoring the Lyric. One of these firms, Pattons, had been a sponsor prior to the commencement of the Lyric Project tendering exercise and was one of the unsuccessful bidders in that exercise.
- 3.5 Internal Audit considered whether it was likely that Gilbert Ash had been 'influenced' into providing sponsorship to enable the project to progress as the second stage of the contract could not be awarded until the Lyric had secured 95% of the required funding.

- 3.6 Internal Audit identified that ACNI carried out a verification of the total funding received after the Gilbert Ash sponsorship had been pledged but before the monies were received. The verification exercise confirmed that 95.1% of the required funding had actually been received and when pledges made but not received were added, this figure rose to 97.1%.

#### **Evaluation**

- 3.7 In light of the circumstances and timing, Internal Audit considers that it is highly unlikely that sponsorship donations influenced the award of the design and build stage of the contract. However, the potential for a perceived conflict of interest does not appear to have been identified by the Project Board and therefore action was not taken to fully consider and record events and decisions regarding the Gilbert Ash sponsorship.
- 3.8 **Internal Audit recommends** that for future projects, it is emphasised to Project Board members that they need to be alert to the possibility of both perceived and actual conflicts of interest, specifically including areas such as sponsorship. This is an issue which may be of particular relevance to DCAL given the significant potential for philanthropy and corporate sponsorship which the Department's funding activities can help encourage.
- 3.9 **Internal Audit recommends** that, where an actual or perceived conflict of interest is identified, a full record of the Project Board's decision and rationale is maintained to provide an open and transparent trail in the event of a challenge.

Report Ref.	Area Identified for Improvement	Priority	Management Response	Target Date	Responsible Officer
2.4	<b>Internal Audit recommends</b> that document ownership and retention requirements are specifically stated in respect of future capital projects. Where a private sector company is responsible for managing part of the process, it is particularly important that this issue is highlighted and appropriate action taken to secure documentation.		DCAL will ensure that it communicates across the Dept and its ALBs the need to ensure that document ownership and retention requirements are specifically stated in respect of future capital projects.	30 <sup>th</sup> April 2012	D Brown
2.14	<b>Internal Audit recommends</b> that, for future projects, key decisions are only taken after advice from professional advisors is received. It is therefore important that the Project Board ensure their professional advisors receive the information they require on a timely basis, to prevent delays in the project.		This is normal practice in DCAL however this issue will also be communicated across the Dept and its ALBs.	30 <sup>th</sup> April 2012	D Brown
3.8	<b>Internal Audit recommends</b> that for future projects, it is emphasised to Project Board members that they need to be alert to the possibility of both perceived and actual conflicts		This will be communicated across the Dept and its ALBs.	30 <sup>th</sup> April 2012	D Brown

Report Ref.	Area Identified for Improvement	Priority	Management Response	Target Date	Responsible Officer
	of interest, specifically including areas such as sponsorship. This is an issue which may be of particular relevance to DCAL given the significant potential for philanthropy and corporate sponsorship which the Department's funding activities can help encourage.				
3.9	<b>Internal Audit recommends</b> that, where an actual or perceived conflict of interest is identified, a full record of the Project Board's decision and rationale is maintained to provide an open and transparent trail in the event of a challenge.		This will be communicated across the Dept and its ALBs.	30 <sup>th</sup> April 2012	D Brown

## ANNEX C

### Gilbert Ash Directors

#### Current

Mr Ray Hutchinson	Dec 2003 – present
Mr Gerard Charles Hughes	Aug 2003 – present
Mr Raymond Gilroy	April 2005 – present
Mr Mark John Nutt	May 2008 – present

#### Previous

Mr Edwin Gerard O'Neill	Dec 1999 – Sep 2012
Mr John Hart	Mar 2001 – Aug 2012
Mr John Wilson	Dec 1999 – March 2011
Mr Anthony Arthur Reynolds	Dec 1999 – Dec 2007



ANNEX D

---

**From:** Burgess, John (London)  
**Sent:** 01 February 2008 16:29  
**To:**  
**Cc:** Clarke, John (London)  
**Subject:** Lyric Belfast Preliminaries Queries

Dear Sir

Please note due to the substantially different interpretations made by all Contractors with regard to scaffolding and alterations thereto we have decided that this element of the financial return will be excluded from the analysis. Will you please by return advise how much should be omitted from your preliminaries plus profit and overheads adjustment due to this amendment. Please note this should also omit the allowance for Scaffold alterations as well.

Regards

**John Burgess**

Partner

**Rider Levett Bucknall UK Limited**

Cutlers Court, 115 Houndsditch

London, EC3A 7BR

Phone: +44 (0)20 7398 8308

Fax: +44 (0)20 7623 0466

Mobile: +44 (0)7764 285949

Email:

Web: [www.rlb.com](http://www.rlb.com)

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---

**From:**  
**Sent:** 05 February 2008 13:36  
**To:** Burgess, John (London)  
**Cc:** John (London)  
**Subject:** RE: Lyric Belfast Preliminaries Queries  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Sir  
Apologies for the delay as I am only back in the office today.  
To exclude our allowance for scaffolding (including alterations to same) would give an omission of £186,463.00 from our tender.  
Regards

Derek Cowan  
Senior Estimator

Patton Construction  
Greenmount House  
Woodside Road Industrial Estate  
Ballymena  
BT42 4PT

Tel: +44 (0)28 2564 2141  
Fax: +44 (0)28 2565 8584

Web: [www.patton.co.uk](http://www.patton.co.uk)

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David Patton & Sons (NI) Ltd, NI 50897 Registered Office: Greenmount House, Woodside Road Industrial Estate, Woodside Road, Ballymena, Co Antrim, Northern Ireland, BT42 4PT, VAT Number GB 843 4974 96-----Original Message-----

**From:**  
**Sent:** 01 February 2008 16:29  
**To:** Derek Cowan (Patton Construction)  
**Cc:**  
**Subject:** Lyric Belfast Preliminaries Queries

Dear Sir

FW: Lyric Theatre Revised Prelims- Enterprise Vault Archived Item

Page 1 of 2

**From** Burgess, John (London) **Date** 04 February 2008 12:47:00  
**To** Phillippo, Greg (London)  
**Cc**  
**Subject** FW: Lyric Theatre Revised Prelims  
**X** **Revised Preliminaries Lyric 080204.xls** (18 KB [HTML](#))

Greg  
Can you factor this in

**John Burgess**  
Partner  
**Rider Levett Bucknall UK Limited**  
Cutlers Court, 115 Houndsditch  
London, EC3A 7BR  
Phone: +44 (0)20 7398 8308  
Fax: +44 (0)20 7623 0466  
Mobile: +44 (0)7764 285949  
Email:  
Web: [www.rlb.com](http://www.rlb.com)

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**From:**  
**Sent:** 04 February 2008 10:34  
**To:** Burgess, John (London)  
**Subject:** FW: Lyric Theatre Revised Prelims  
**Importance:** High

John

Please find attached revised prelims.

Kind Regards

Jamie Mone  
Project Co-ordinator

Farrans (Construction) Ltd  
99 Kingsway  
Dunmurry  
Belfast  
BT17 9NU

T: 028 9055 1317  
M: 078 6752 1255  
E:

***Please consider the environment - Do you really need to print this email?***

FW: Lyric Theatre Revised Prelims- Enterprise Vault Archived Item

Page 2 of 2

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**From:**  
**Sent:** 04 February 2008 10:15am  
**To:** Jamie Mone  
**Cc:** Raymond Millar (Building)  
**Subject:** Lyric Theatre Revised Prelims  
**Importance:** High

Jamie  
As Requested  
Revised Prelims  
Regards  
Noel  
<<Revised Preliminaries Lyric 080204.xls>>

Noel McKee  
Farrans Construction Limited  
99 Kingsway  
Dunmurry  
Belfast BT17 9NU  
Phone 028 9055 1221  
Fax 028 9030 0035

email:

Web - [www.farrans.com](http://www.farrans.com);

Attention:  
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Lyric Theatre - Belfast Omission of Scaffolding Costs from Tender		
Original Preliminary Figure		£1,619,003.00
Omit Scaffolding Hire Cost	£50,000.00	
Omit Scaffolding Labour Cost ( as Sub Contract Quotation)	£242,000.00	
Revised Preliminary Figure		£1,327,003.00
Revised Profit and Overheads on Preliminaries ( 2.25%)		£29,858.00
Notional Net Cost of Measured Works ( Provisional Sum )		£9,505,299.00
Profit and Overheads on Notional Net Cost of Measured Works ( 2.25%)		£213,869.00
Revised Total Cost of Works		£11,076,029.00

292,000

6,570298,570

\* OHP of original Prelims figure of 1,619,003  $\Rightarrow$  36,427.58.

Revised OHP on revised Prelims 1,327,003  $\Rightarrow$  (29,858.)

6,569.58  $\therefore$  6,570

---

**From:** Burgess, John (London)  
**Sent:** 05 February 2008 08:08  
**To:** Phillippo, Greg (London)  
**Subject:** FW: Lyric BelfastPreliminaries amendments  
**Attachments:** @

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**John Burgess**  
Partner  
**Rider Levett Bucknall UK Limited**  
Cutlers Court, 115 Houndsditch  
London, EC3A 7BR  
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---

**From:** John Wilson  
**Sent:** 01 February 2008 16:32  
**To:** Burgess, John (London)  
**Cc:** David McCrea  
**Subject:** RE: Lyric BelfastPreliminaries amendments

John,

In the revised (86 weeks) prelims our allocation for all Scaffolding is £400,000.00

With the 3.25% mark up for o,h&p, this would equate to a £413,000.00 adjustment.

Regards

John Wilson

---

**From:** Burgess, John (London)  
**Sent:** 05 February 2008 08:08  
**To:** Phillippo, Greg (London)  
**Subject:** FW: Lyric Belfast Preliminaries Queries

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**John Burgess**  
Partner  
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**From:** Kevin Kennedy  
**Sent:** 01 February 2008 17:06  
**To:** Burgess, John (London)  
**Subject:** RE: Lyric Belfast Preliminaries Queries  
**Importance:** High

John

Please omit the amount of £81,000.00 for scaffolding, together with £3,807.00 contribution towards OH&P i.e. total £84,807.00.

Any queries don't hesitate to contact me.

Regards

Kevin



# GRAHAM

Head Office  
Lagan Mills  
Dromore County Down  
BT25 1AS

Telephone +44 (0) 28 9269 2291  
Facsimile +44 (0) 28 9269 3412  
Website www.graham.co.uk

Our Ref: AFMcC/tt

05 March 2008

Rider Levett Bucknall UK Ltd  
Cutlers Court  
115 Houndsditch  
London  
EC3A 7BR

For the attention of Mr John Burgess

Dear Sir,

Lyric Theatre Belfast

Further to your request at our recent Financial Clarification meeting on Monday 3 March 2008, we have reviewed our proposed attendances and now consider that the following additional attendances are needed:

- |    |   |         |
|----|---|---------|
| 1. | Craneage - specialist hoisting and craneage including extended retention for 12 weeks of tower crane and 14 nr additional mobile crane visit to provide lifting for steelwork roof structure, roof coverings, curtain walling and windows, M&E major plant and louvres. | £30,800 |
| 2. | "Bird Cage" Scaffolding requirements to open void areas in the Studio, Rehearsal Auditorium and Stage Zone areas.   | £49,700 |
| 3. | Additional Scaffolding including extended retention of main scaffolding, specialist adjustments and "hop-ups".  | £29,600 |
| 4. | Specialist Protection of Furniture, Equipment and finishes.   | £12,000 |
| 5. | Additional supervision resources  | £70,600 |

Please note that the above requirements and associated costs are based on our present understanding of the specific specialist attendances likely to be required. These are subject to review at the next stage and costs may need to be refined or adjusted in light of changes or more detailed requirements.

We trust this meets with your approval but we would be pleased to discuss any of these items with you.

Yours faithfully  
for John Graham (Dromore) Limited

*Adrian McCormick*  
A McCormick  
Bid Manager  
Email:

	192,800
	(49,700)
	(29,600)
<i>Graham post-tender adjustments</i>	113,500



---

**From:**  
**Sent:** 04 February 2008 08:11  
**To:** Burgess, John (London)  
**Cc:** Phillippo, Greg (London); Derek Martin  
**Subject:** RE: Lyric Belfast Preliminaries Queries/HJ Martin 4 Feb 2008

John.

As per your email of Friday 1st Feb 2008, we are pleased to confirm the figure to be omitted as a consequence of the removal of the costs directly associated with Scaffolding is:

£209,927

We trust this is acceptable and await your response.

Regards  
Patrick McDonald

**Patrick F McDonald, MSc., MCIQB**  
Business Development Director  
H&J Martin Limited | 163 Ormeau Road | Belfast | BT7 1SP  
Mob: ++ 44 (0) 7919 017034

---

**From:**  
**Sent:** 01 February 2008 16:23  
**To:** Patrick McDonald  
**Cc:**  
**Subject:** RE: Lyric Belfast Preliminaries Queries

Dear Sirs

Please note due to the substantially different interpretations made by all Contractors with regard to scaffolding and alterations thereto we have decided that this element of the financial return will be excluded from the analysis. Will you please by return advise how much should be omitted from your preliminaries plus profit and overheads adjustment due to this amendment. Please note this should also omit the allowance for Scaffold alterations as well.

Regards

**John Burgess**  
Partner  
**Rider Levett Bucknall UK Limited**  
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**ANNEX E**

**Lyric Overruns**

Scope Changes

Additional 581sq mtrs	£1m
-----------------------	-----

Inflation

Inflation to 2006*	£1.4m
--------------------	-------

Inflation 2006 to 2008*	£1.3m
-------------------------	-------

\*Inflation was calculated using the Building Cost Information Service and agreed with CPD

Unforeseen

Geothermal pump	£150k
-----------------	-------

Project director	£150k
------------------	-------

Delays in construction	£500k
------------------------	-------

Building regulation changes	£100k
-----------------------------	-------

Prof fees including design	£400k
----------------------------	-------

Additional contingency	£400k (ringfenced by DCAL)
------------------------	----------------------------

<b>Total</b>	<b>£5.4m</b>
--------------	--------------

---

# Chairperson's Letter of 22 August 2013 to Mr Peter May

**Public Accounts Committee**

Room 371  
Parliament Buildings  
Ballymiscaw  
BELFAST  
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: [pac.committee@niassembly.gov.uk](mailto:pac.committee@niassembly.gov.uk)

[aoibhinn.treanor@niassembly.gov.uk](mailto:aoibhinn.treanor@niassembly.gov.uk)

Peter May  
Accounting Officer  
Department of Culture, Arts and Leisure

22 August 2013

Dear Peter,

**PAC inquiry into Department of Culture, Arts and Leisure Management of  
Major Capital Projects**

As you will have noted at the PAC evidence session with you in June, the Committee was at a loss to understand what was done with the tender evaluation report for the Lyric rebuild before NIAO acted upon it.

Specifically, as DCAL, CPD and the Arts Council were all in possession of the report, the Committee would like to establish for each body whether they opened it; whether they read it; if so whether they took any action about it; and what that consisted of.

I should be grateful if you could provide this information by 5 September 2013.

Yours sincerely,



**Michaela Boyle**

Chairperson  
Public Accounts Committee

# Correspondence of 10 4 September 2013 from Mr Peter May



Department of  
**Culture, Arts  
and Leisure**

[www.dcalni.gov.uk](http://www.dcalni.gov.uk)

AN ROINN  
**Cultúir, Ealaíon  
agus Fóillíochta**

MÁNNYSTRIE O  
**Fowkgates, Airts  
an Aisedom**

**Date:** 4 September 2013  
**Our Ref:** SECCOR153/2013

Michaela Boyle, MLA  
Public Accounts Committee  
Room 371  
Parliament Buildings  
Ballymiscaw  
BELFAST  
BT4 3XX

Causeway Exchange  
1-7 Bedford Street  
Belfast BT2 7EG  
Tel: +44 (0) 28 9025 8825  
Text phone: (0) 28 9052 7668  
email: [dcalni@dcalni.gov.uk](mailto:dcalni@dcalni.gov.uk)

*Dear Michaela*

## **PUBLIC ACCOUNTS COMMITTEE INQUIRY INTO “DCAL CAPITAL PROJECTS”**

Thank you for your letter of 22 August asking for clarification around the Lyric tender report.

The tender evaluation report is a document produced by the consultancy firm RLB, who were managing the process of appointment of contractors for the Lyric project. RLB are a leading independent firm providing property and construction advice.

DCAL, CPD and the Arts Council received the report on 3<sup>rd</sup> April 2008 without appendices. The tenders themselves were not provided to any of the organisations as this is not normal practice. All three organisations read and reviewed the report prepared by RLB. The outcome from the tender process was reported to the Project Board on 4<sup>th</sup> April, at which all three organisations were represented. At this stage the decision to award the contract had already been taken. Under the procedures set down at that time the decision to appoint a contractor was a matter for the SRO, based on the recommendations of the consultants RLB.

In retrospect the Department acknowledges that the complete tender report should have been brought to the project board meeting for discussion, and CPD's advice sought, before the contract was awarded. While the approach taken was in line with best practice guidance at that time, part of the learning from this case is that this decision should not have been made and



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implemented without approval from the Departmental and ACNI Investment Decision Makers.

We recognise that in a 3<sup>rd</sup> party project such as the Lyric, this decision should not have been delegated to the SRO as per the achieving excellence guidance. As a result the Department is currently finalising revised procedures.

If you require any further information please do not hesitate to contact me.

*Yours sincerely*



**PETER MAY**  
Interim Permanent Secretary



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Appendix 4

# List of Witnesses who Gave Oral Evidence to the Committee



## List of Witnesses Who Gave Oral Evidence to the Committee

- 1) Mr Peter May, Accounting Officer, DCAL
- 2) Ms Deborah Brown, Director of Finance & Corporate Services, DCAL
- 3) Mr Arthur Scott, Director of Culture, DCAL
- 4) Ms Roisin McDonough, Chief Executive, Arts Council NI
- 5) Mr Stewart Heaney, Divisional Director, Central Procurement Director
- 6) Mr Kieran Donnelly, Comptroller and Auditor General; and
- 7) Ms Fiona Hamill, Treasury Officer of Accounts, Department of Finance and Personnel.







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