



Northern Ireland
Assembly

Public Accounts Committee

OFFICIAL REPORT (Hansard)

Inquiry into Department of Culture, Arts and
Leisure Management of Major Capital
Projects

26 June 2013

NORTHERN IRELAND ASSEMBLY

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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 Sean Rogers

Witnesses:

Ms Roisín McDonough	Arts Council of Northern Ireland
Ms Deborah Brown	Department of Culture, Arts and Leisure
Mr Peter May	Department of Culture, Arts and Leisure
Mr Arthur Scott	Department of Culture, Arts and Leisure
Mr Stewart Heaney	Department of Finance and Personnel

In attendance:

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

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.

Mr May, would you like to introduce your team?

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).

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?

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.

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.

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.

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?

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.

Mr Clarke: We should discuss good practice shortly. That will be interesting

The Chairperson: We will now move to the main area of questions: cost and financial governance.

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."

To what extent does the Department feel that that contributed to the staggering cost increases experienced in those projects?

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.

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.

Mr Hazzard: Would you like to run through the scope for changes that you mentioned.

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.

Other changes in scope included an increase in the size of Tollymore National Outdoor Centre in the Mournes. 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.

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.

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."

Do you agree that once a project has commenced, it can be very difficult not to agree to such increases?

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.

Mr Hazzard: Why do you think that was?

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.

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.

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?

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.

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.

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?

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.

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?

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.

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.

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.

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.

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.

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?

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.

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?

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.

I appreciate that I have asked quite a number of questions.

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.

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.

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.

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."

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.

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.

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.

Mr May: *[Inaudible.]*

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.

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.

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 —

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.

Mr May: I have already accepted that, in the initial period, there was a lack of capacity. That was put right.

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.

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.

Roisín, do you want to say something —

The Chairperson: Sorry, Mr May, before you bring in Roisín, I think that Mr Clarke wants to ask a supplementary.

Mr Clarke: My one supplementary has just expanded to a few, Chairperson.

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.

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?

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.

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.

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?

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?

Mr Clarke: Yes.

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.

Mr Clarke: Is that the way forward or how it was in the past?

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.

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.

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.

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?

Mr May: The position now is that CPD is our centre of procurement expertise (COPE), and we rely on it for —

Mr Clarke: That is not always the case.

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 —

Mr Clarke: Do you think that that outweighs CPD's advice?

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.

Mr Clarke: On most occasions?

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.

Mr Clarke: What did that relate to?

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.

Mr Clarke: Yes, someone else signed that off, but what was their expertise in procurement? You said that you sought other advice?

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.

Mr Clarke: Do you still think that the decision you made on that occasion was right?

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.

Mr Clarke: So you are suggesting that CPD's advice was more toxic than your own path?

Mr Scott: I took the advice of CPD in most areas. There were one or two areas — I cannot remember the exact detail —

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?

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.

Mr Clarke: That sounds like a suggestion that, if you had followed CPD's advice, we would have been in a worse position.

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.

Mr May: These are judgement calls, I think, it is —

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.

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.

Mr McQuillan: Arthur, did you raise the concerns of CPD with the Department, or what way did that work?

Mr Scott: Sorry, in terms of the —

Mr McQuillan: When you got the advice from CPD, which you did not take, did you raise those concerns with the Department?

Mr Scott: In relation to the contamination matter or the project generally?

Mr McQuillan: In answer to Trevor, you said that you took advice from CPD.

Mr Scott: Yes, I shared that with senior colleagues and the accounting officer.

Mr McQuillan: Did you then raise it with the Department?

Mr Scott: I made it clear to the accounting officer, yes.

Mr McQuillan: Is that recorded anywhere?

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.

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?

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.

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.

Mr McQuillan: In your view, Stewart, did not taking your advice have an impact on the final outcome of the whole project?

Mr Heaney: On the Lyric contamination?

Mr McQuillan: I am talking more about the MAC.

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.

Mr McQuillan: Do you think that the cost had risen so much because of the decision that was taken back then?

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 —

Mr McQuillan: Did you have any queries about that?

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.

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.

Was there a post-project evaluation of all those projects?

Mr May: Post-project evaluations have been completed on four of the projects.

Mr McQuillan: Am I stepping on anybody else's toes here?

Mr Dallat: Do not worry; you are doing a good job.

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.

Mr McQuillan: Will we get, or have we got, sight of those? I do not think that we have; I never saw them anyway.

Mr May: Sorry; I did not quite catch the question.

Mr McQuillan: Will we get sight of those post-project evaluations?

Mr May: I do not have a problem sharing those with the Committee if it wishes to see them.

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.

Mr Dallat: Chairperson, I am sort of confused at this stage. Peter, did I pick up that you are new to this job?

Mr May: That is correct; yes.

Mr Dallat: Who was your predecessor?

Mr May: Rosalie Flanagan.

Mr Dallat: These projects were largely to provide entertainment and pantomimes. Why have they become the pantomimes themselves?

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.

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?

Mr May: I can certainly explain to you why there were changes in the level of cost.

Mr Dallat: I would much prefer to hear why action was not taken to ensure that there were no increases.

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.

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.

Mr Dallat: Who advised you in the first place about the space in the Lyric? Who were the consultants?

Mr May: A team of project consultants was employed on the Lyric.

Mr Dallat: Who were they?

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.

Mr Dallat: Did you say anything to them about this?

Mr May: There would have been regular meetings. Roisín might want to say something —

Mr Dallat: Were their fees cut? What did you say to Rider Levett Bucknall (RLB)? It did not even keep records afterwards?

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.

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.

Mr May: You will understand that the payment was not for losing the records, but the total —

Mr Dallat: Sorry, the payment was for keeping the records.

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.

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.

Mr Dallat: Chairperson, I do not imagine that he will get a knighthood for that work.

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 —

Mr Dallat: Would you recommend it?

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.

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.

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.

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?

Mr May: I am not aware that it is common practice.

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.

Mr May: The other —

Mr Dallat: I have no more questions at the minute, Chairperson.

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?

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."

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 —

Mr Rogers: Is that the only evidence that you have?

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.

Mr Rogers: So, are you happy with the Northern Ireland Audit Office's (NIAO) assessment that it did not get sufficient assurance on that?

Mr May: I recognise that the conflict of interest arrangements are not adequate in this case.

The Chairperson: Trevor, you want in, but is your question relevant?

The Committee Clerk: We will come back to discuss the CPD after Michael's questions.

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".

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.

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.

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?

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.

Mr Copeland: How much of it?

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.

Mr Copeland: Would that have cost more money?

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.

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?

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.

Mr Copeland: Was there a variance between the actual and the projected?

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.

Mr Copeland: Were they adjudicated to be satisfactory for the purposes for which they were intended?

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.

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.

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.

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?

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.

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?

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.

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.

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.

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.

Mr Copeland: Were the contracts fixed-cost contracts with variables built in, or were they materials-plus?

Mr May: A series of different sorts of contracts was entered into.

Mr Copeland: Was that on the same project or separate projects?

Mr Heaney: There was a range of different contracts, but the contracts were largely lump-sum contracts.

Mr Copeland: Does that mean "lump sum" as a fixed cost?

Mr Heaney: Yes.

Mr Copeland: With variables?

Mr Heaney: Mechanisms are included in any contract for variations.

Mr Copeland: I hope that the Minister for Social Development noted that.

Mr McQuillan: Peter, why did the Department not engage CPD for services at the Grand Opera House?

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.

Ms McDonough: Yes, the permanent secretary's observation is absolutely correct. We have learned a lot from the Grand Opera House.

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.

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.

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 —

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.

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.

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.

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."

Can you explain some of those issues to us?

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.

Mr McQuillan: Is that happening now or was that in the past?

Mr May: That clarity about the roles and responsibilities is established now. There were some issues about understanding those roles and responsibilities.

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.

Mr Clarke: Sorry; it may a third-party asset, but it is public funding that is paying for it.

Ms D Brown: Absolutely.

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.

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.

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.

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?

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 —

Mr Copeland: What was it called?

Mr Heaney: It did not have any particular name; it was a traditional approach to procurement that was used for years.

Mr Copeland: Were these problems evident for years before that, within the same tolerances and expectations?

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.

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?

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?

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.

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.

Mr May: As has been explained, I was not around at that time. However, there was a lot going on —

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?

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.

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.

Mr Clarke: I think that there is more to this, Stewart, after reading the Audit Office report. I am sure that you drive.

Mr Heaney: Yes.

Mr Clarke: Would you go to the garage where you get your car serviced and pay for a service that you did not get?

Mr Heaney: No; I would not.

Mr Clarke: Why did the Department pay your Department for a service that it did not receive or want?

Mr Heaney: It did not pay for a service; it paid only for the service that it received.

Mr Clarke: Sorry; do you accept the Audit Office report?

Mr Heaney: Yes.

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.

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.

Mr Clarke: Were you involved in the whole process for the Lyric?

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.

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?

Mr Heaney: No, I do not think so. As Deborah said, the SRO had sufficient autonomy to go ahead and carry that out without —

Mr Clarke: Do you still believe that they had the autonomy to do that, based on what we are reading today?

Mr Heaney: I do not think that they should have had that, but they had it at that time.

Mr Clarke: Do you believe that they should have the autonomy do that in future, given how this contract has been handled?

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.

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?

Mr Heaney: That would not be normal. Contractors, even large ones, occasionally make errors in their tender process. We would —

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?

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.

Mr Dallat: Is that not a well-known way of rigging a tender so that your favoured contractor wins?

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.

Mr Dallat: Stewart, you are an intelligent man and you know why I am asking the question.

Mr Heaney: Yes.

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?

Mr Heaney: I am sure that if they —

Mr Dallat: They would be sick, would they not?

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.

Ms McDonough: Yes.

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.

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.

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?

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.

Mr Dallat: Have you employed any of them since?

Mr Heaney: CPD has not employed them since. No.

Mr Dallat: That is at least some comfort.

Mr Clarke: Stewart, to go back to the Lyric, you said that you had no involvement in that at all.

Mr Heaney: In the Lyric?

Mr Clarke: Yes.

Mr Heaney: We were involved in the Lyric, but not in the tender assessment process.

Mr Clarke: Did you state any opinion on that at all?

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.

Mr May: Also, immediately before the —

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."

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?

Mr Heaney: That is right. In the same minutes, we also asked for the tender report again.

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?

Mr Heaney: The congratulation point was on having gone through the procurement process without there having been any legal challenge.

Mr Clarke: It was just a pat on the back?

Mr Heaney: It was not a pat on the back. It was about making sure that there had been no legal challenge, which —

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?

Mr Heaney: In hindsight, it would. Yes.

Mr Clarke: Why did you not raise any concerns at that meeting about the lack of documentation?

Mr Heaney: By 4 April, the contract had already been awarded.

Mr Clarke: Do you agree that it was still an opportunity to raise concerns?

Mr Heaney: Yes.

Mr Clarke: You did not take that opportunity.

Mr Heaney: No, we did not raise concerns about it. We had already asked for the tender —

Mr Clarke: Do you not think that that was the place to raise the concerns?

Mr Heaney: Yes —

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.

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.

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.

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.

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.

Mr Clarke: Are you saying that it excluded itself?

Mr May: It was unable to attend because there was a change in the date of the meeting of the tender assessment panel.

Mr Clarke: How many people would have been eligible to go to that meeting?

Mr Heaney: The key client adviser for the project would have been the person designated to attend.

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?

Mr Heaney: No. There was a team of people, but, on that day, they were all committed to other procurement activities on other projects.

Mr Clarke: I am sure that that is well documented.

Mr Heaney: I would have to go back and look at the diaries of the folk involved.

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.

The Chairperson: Can we get that information, Mr Heaney?

Mr Heaney: I will see whether information from diaries is available.

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?

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.

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?

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.

Mr Copeland: My experience is that they do retain them to make sure that they are not unsuccessful next time.

Mr Heaney: Possibly; yes.

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.

Mr Heaney: That is right.

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?

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 —

Mr Copeland: Reduce the price by half a million pounds or so.

Mr Heaney: I think that they intended to take that forward as a subcontract package.

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?

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.

Mr Kieran Donnelly (Comptroller and Auditor General): We are not clear as to whether the original —

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 —

Mr Heaney: If the tender applications were available, we could certainly take a much more detailed view of the tender assessment process.

Mr Copeland: Chair, can we try to establish that?

The Chairperson: Yes, we can.

Mr Copeland: I believe that they will prove or disprove.

The Chairperson: We can ascertain that. Mr Rogers, it is your turn.

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.

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?

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.

Mr Rogers: That would be useful, because earlier you talked about some things being stripped out of the —

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.

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.

Mr Rogers: Surely an increase in floor space would not necessarily mean a 100% increase in the cost per square metre?

Mr May: It is only one of the factors. It accounts for around £1 million of the difference.

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.

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.

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?

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.

Mr Rogers: Your assessment today would not be that, would it?

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.

Mr Rogers: I just find it incredible. The fact that there is no tender report seems to be a terrible excuse.

Mr May: There is a tender report.

Mr Heaney: What is required is the tenders themselves to substantiate the figures in the tender report.

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?

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.

Mr Rogers: And it did not provide you with it?

Mr Heaney: No, the tender report was provided, but not the tenders in support of it.

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?

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.

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.

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.

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.

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.

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.

Mr Rogers: Gilbert Ash had tender adjustments of £348,000. Was any similar analysis undertaken of other tenders?

Mr May: So far as we can judge from the table on page 44, no adjustments were made to other tenders.

Mr Rogers: Why do you think there was a need for such a discrepancy of £348,000?

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.

Mr Clarke: So that they could win the contract.

Mr Heaney: Without the tender report, we do not know why they made the adjustments.

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?

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 —

Mr Clarke: Is suspicious.

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.

Mr Clarke: Did it have access to the tenders?

Mr May: It had access to the tender report.

Mr Clarke: Did it have access to the actual tenders?

Mr May: Not to my knowledge.

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.

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.

Mr Clarke: Procurement is the problem here.

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.

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?

Mr Heaney: No, it has not.

Mr Copeland: Has anybody known to you to be employed by it every worked in your Department?

Mr Heaney: No.

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?

Mr Heaney: RLB was appointed following a procurement competition. As far as I know, there —

Mr Copeland: Appointed by whom?

Mr Heaney: It was appointed by the Lyric.

Mr Copeland: Is it a UK-based company?

Mr Heaney: Yes, it is a multinational.

Mr Copeland: Does it do much work in Northern Ireland?

Mr Heaney: I am not sure that it does. It certainly has not worked for CPD before.

Mr Copeland: So, the Lyric tendered for its services.

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.

Mr Rogers: Do we have sight of these internal audit reports?

Mr Copeland: I would like to see those.

The Chairperson: You would like to see them? We can get them.

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?

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.

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?

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.

Mr Rogers: Just one or two other wee things, Chair. I beg your indulgence.

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?

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.

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?

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.

Mr Clarke: Sorry; how is quality measured?

Mr May: It is measured by, as I understand it, the tender evaluation panel.

Mr Clarke: Who were they?

Mr May: By the tender assessment panel.

Mr Clarke: Who are they? RLB?

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

Mr Clarke: Would you agree or disagree — sorry, Sean.

Mr Rogers: It is OK.

Mr Clarke: Would you agree or disagree that the weighting for quality is very subjective and that there is no basis for it?

Mr May: Given that Stewart is an expert on it, I think that he would be better placed to comment.

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.

Mr May: I do not believe that there is evidence to support the fact that it had been rigged.

Mr Clarke: You are naive as well if you do not believe that.

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.

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?

Mr Scott: No; what I am saying is —

Mr Clarke: You are making an assertion that that is the case.

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.

Mr Clarke: Conveniently.

Mr Rogers: It did not attend. How, then, did it give the panel advice?

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.

Mr Rogers: Thanks, Chair.

The Chairperson: Michael, are you finished as well?

Mr Clarke: I am not.

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?

Mr May: Is that a question you are asking of me?

The Chairperson: Yes.

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.

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.

The Chairperson: And everyone failed at the time to recognise it.

Mr May: That is right.

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?

Mr May: Yes.

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?

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.

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?

Mr May: I would need to write to you on that. I do not have that point of detail to hand.

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?

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."

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?

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 —

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?

Mr May: I cannot give you an explanation of what lay behind it, for the reasons that Stewart explained; not all the documentation exists.

Mr Copeland: The invoices do, Peter.

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.

Mr Clarke: Well, it was trying to defend it.

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.

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.

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.

Mr Rogers: Was any inquiry carried out to see what happened to the tender documentation?

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.

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.

Mr Rogers: Where did the tender documentation go?

Mr May: It would have been held by the consultants — RLB in this case — as the managers of the process.

Mr Rogers: And the consultants do not have that documentation?

Mr May: It destroyed it.

Mr Rogers: So, was it just in written form? Was it not on computer?

Mr May: I am afraid that I do not know what form it was provided in.

Mr Heaney: I am guessing, by the time frame, that it would have been hard copy at that stage.

Mr Rogers: Is it normal practice to destroy tenders?

Mr Heaney: We retain tenders for about 10 years.

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.

Mr Clarke: What are you doing about that for the future?

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 —

Mr Clarke: Are you taking its advice on that one? You do not always.

Mr May: We have implemented that already. That is in place for all our capital projects.

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?

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 —

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.

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.

Mr McQuillan: How, then, do you describe how the procurement for this tender matches those guidance notes?

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.

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?

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.

Mr Clarke: It was said that two people from your organisation were involved in the tender process. Who were they?

Ms McDonough: On the tender process —

Mr Clarke: The evaluation of the tenders.

Ms McDonough: There was not anyone from the Arts Council. They were from the Lyric itself.

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?

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.

Mr Clarke: How did it raise that?

Ms McDonough: It raised it through philanthropy.

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?

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.

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?

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.

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.

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.