



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Housing Executive Maintenance Contracts:
Payments to Contractors

20 June 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann

Witnesses:

Mr Donald Hoodless	Northern Ireland Housing Executive
Dr John McPeake	Northern Ireland Housing Executive

The Chairperson: I formally welcome Donald Hoodless and John McPeake to the meeting this morning. You are very welcome. I thank Donald and John for being here at quite short notice. Thank you for making yourselves available. I know that you have to go off soon to do other business today.

The key purpose of today's meeting is to have the opportunity to discuss directly with the chair and the chief executive the fairly contentious issues that have arisen in the past week or two around maintenance contracts. Obviously, it has caused everybody, including the Housing Executive, a lot of angst. Members have been particularly concerned about it, not least because of the public probity of the whole issue and the need to protect taxpayers' money. It is also an opportunity to bring the issue back down to constituency level, through the continuation of the maintenance contracts, the service to tenants and the plight of many of the workers in the companies affected.

Members have made the judgement that this will be an ongoing problem. That is the view of the Committee. It might be to do with the levels of profit margins involved. We cannot make any determinations yet, but there are a number of recurring themes that we are all very keen to address.

Without any further ado, I hand over to Donald and John to give the Committee as good an update as you possibly can. Thank you again.

Mr Donald Hoodless (Northern Ireland Housing Executive): Thank you for the invitation. I am very happy to talk about what we found. In some sense, as a relatively new chair of the Housing Executive, I am slightly embarrassed that I have to come to you to explain that we consider that we have overpaid contractors around £18 million for our planned maintenance work over five years.

My view is very straightforward: we need to get this out in the open. We have to be open and transparent about it, and it is important that we resolve it as quickly as possible. I asked for an independent review of what we were told in order to make absolutely certain that we have uncovered everything, and that the actions that we have taken are proportionate and cover all the ground that we need to cover to put matters right. That is where we are at. As you quite rightly said, we need to maintain a service to tenants, and we have a duty to manage public money wisely and well, because it is limited. Consequently, we are seeking to resolve the matter as quickly as possible. I think that we have given you a fairly detailed note about our thinking and the background to it. I will not go all the way through that, but I am happy to answer any questions that you may have about the actions that we are taking and the next steps.

The Chairperson: OK, Donald. Thanks very much for that introduction. I will open the meeting to members in a second. I think that the Minister stated in one of his announcements that the Department of Finance and Personnel's (DFP) performance and efficiency delivery unit (PEDU) will work on the contract management processes. I am interested to see what that will do and what relationship it might have with the review that has been announced and is underway into outstanding contracts.

Dr John McPeake (Northern Ireland Housing Executive): As you say, the Department for Social Development (DSD) has arranged for PEDU to do a specific piece of work on contracts. My understanding is that they will come to the Housing Executive to begin that work in September. We are waiting on the detail of the terms of reference for that but our understanding from conversations with colleagues in DSD is that PEDU will look at the full range of things around the way contracts were managed and will look for ways to improve matters.

The Chairperson: OK, John. Thank you.

Mr Brady: Thanks for the presentation. Do you think that it was fair to name four contractors? Your briefing paper states that £18 million was an estimate. That may or may not be the case. There are no specifics whatsoever in the paper. For all we know, it could be an arbitrary figure. You could have worked it out at x amount per house. We do not know because we have no specifics.

It seems that the contractors were put into a position where, apparently, there was no discussion and they were given no opportunity to put their side of the case. Yet the Minister was able to get up in the Assembly, presumably under privilege, and name four contractors. That has affected their reputation; there is no doubt about it. Yet, if you look at what happened with Mel Davison Construction (MDC), I think that PK Murphy Construction took on the contracts in Craigavon.

Looking at it logically; if the contractors were so terrible, why are they are still getting contracts? Look at what happened with the housing associations: Helm, the biggest housing association, was suspended. In my constituency, South Ulster Housing Association bought a number of houses and was unable to purchase the rest because it was suspended. Obviously, there was a cut-off there.

The contractors would say that they are owed a large sum of money in the Belfast area as well as in the west of the North. A lot of things probably need to be sorted out. I come back to my question: was it fair to name four contractors without specific details being given or why were they, in a sense, targeted?

I think that a report went to the board of the Housing Executive in May. Will you give us some detail about what happened then and about the content of the report and what effect it had? There was also the Moore McDonald report commissioned by the Housing Executive.

Mr Hoodless: The briefing that you have covers a lot of the ground of the May report. It was my concern that this had been rumbling around for quite some time and that we needed to bring it to a head and set down what we considered — and it is an estimate — of what we overpaid. That was done on a sample basis, but we are confident that the sample basis is reasonably realistic.

As for naming the contractors, the planned maintenance contracts ran for five years. They finished in January, technically, although work is proceeding under the contracts to completion. The contractors are known because they are doing the planned maintenance, but it was the Minister who made reference to them in the Assembly. I advised the Minister of the problems that we had and why I was

setting up the independent review. On the basis of that, he made the decision to make a statement to the Assembly.

Mr Brady: I know that you did not make the statement to the Assembly; the Minister did. However, is it fair to name people when you do not have specifics? We have not been given specifics. The figure was thrown out and, as I said, it could well be an arbitrary figure. We do not know how it was arrived at.

For instance, the contractors would say that they are owed approximately £661,000 in Belfast. There is no mention of that. In a sense, no balance was struck. We were told that contractors were overpaid. It is a huge sum of money. When that information goes into the public domain, people ask how it happened, and assume that those people must have been up to some nefarious activities, blah, blah, blah.

You are not the Minister but if you are going to do that, the question for yourself, from a subjective point of view, is whether it was fair to name contractors without presenting proof that those were the actual figures, this is how it happened, and that you can provide details. Red Sky was different, because the naming of Red Sky came at the end and not at the beginning. An investigation went on, and Red Sky was then named. That is my understanding. In this case, the contractors were named first, as if there was to be an investigation. Therein lies the problem.

Mr Hoodless: It is correct that we have not resolved the issue with the contractors, but the contractors are aware of our concerns.

Mr Brady: Were there any in-depth discussions with the contractors before this all came out in the Assembly?

Mr Hoodless: The issue is clear to us: under the contracts, we have the right to go to adjudication, as we did with one contractor. It failed because the contractor prevaricated and the adjudicator resigned. We are proceeding through that process with the other three contractors. I feel very strongly that we have a responsibility for public money, and if we consider that we have overpaid, we must resolve that issue. All that I will say today is that we wish to resolve the matter with the contractors. In my working life, I always say that there are two ways to do things; the easy way and the hard way. The easy way is to sit down at the table and sort things out, and the hard way is that we take legal action, they take legal action and we fight it out. It is a decision that both parties have to make. However, I am clearly saying that there is a problem. We recognise the problem and want to resolve it one way or the other. That is the clear message that I want to give you today.

Mr Brady: You have to accept that we all have a responsibility for public money, us probably more than anyone.

I have another question about the historical cost of kitchens. The figures we got show that, about six years ago, kitchens cost approximately £4,500 and that the cost is now down to about £2,500. How does that equate? You normally expect things to be more expensive now than six years ago.

Mr Hoodless: Our estimate is that we are paying about £4,500.

Mr Brady: You say an "estimate".

Mr Hoodless: You are asking me a team-type question. The average kitchen was reported to cost about £4,500, which is about £1,000 more than you pay in England.

Mr Brady: I will finish on this. We have an estimate of £18 million. Everything seems to be an estimate. Are there specifics? At what stage might you arrive at specific figures?

Mr Hoodless: There is a sample of projects from which the estimate is made, and we are quite satisfied that that sample will give us an accurate figure of what we have overpaid.

The Chairperson: In a way, there are two separate issues. This morning, we want to deal with the issue in which a number of companies have been named publicly. Personally, I think that it was inappropriate to do that given that there has not been an investigation, per se. The current problem is that a number of members of the MDC workforce might transfer to PK Murphy, which I understand has

been asked to take on some contract. Most workers are saying, "No, we are not going there." Right away, one company is having to face up to an issue of reputation. This highlights that there is a serious issue.

I would like to remind members that there are two issues. The first is the problem with the maintenance contracts and the review. For example, what is the nature of the review? How far does it extend? Who will be included in the review? What oversight mechanisms are there? Will Departments be included in the review? The other issue is the overall issue of the sustainability of maintenance contracts. A lot of us think that there is an issue with profit margins, for example. If they are too low, we will keep hitting more problems. There are two issues: one is the problem of the maintenance contracts and the efficacy of the review that has been announced; and the other is the wider concerns about maintenance contracts.

Dr McPeake: I want to come back on a point of clarification on MDC. The Housing Executive's position is that the operatives are going to transfer to the direct labour organisation (DLO), not to any other contractor. We are working through the due diligence process for that at the moment. PK Murphy has been asked to step in, temporarily, to do immediate call-out jobs only in support of the DLO in one of the four contract areas. We see that as a temporary arrangement. The DLO will be the contractor of record for the former MDC contracts.

The Chairperson: In previous examples, such as Garrivan and O'Rourke, the workforce was taken into the DLO and then divvied out to another contractor? Is that not the process?

Dr McPeake: We are actively proposing that the DLO will run the MDC contracts until their expiration. That is our view at the moment. It will be subject to the satisfactory completion of the due diligence process.

The Chairperson: OK, thanks. That is helpful.

Mr Durkan: Thank you, John and Donald. Like all Members, I was horrified and shocked when the Minister made his statement in the Assembly. The statement begged a lot of questions. Unfortunately, the report that we have received does not do that much to clarify or answer those questions. I appreciate that it is heavily censored due to commercial sensitivities but I do think that we need more detail.

The biggest issue, and Mickey said it, is where the figure of £18 million came from. In your briefing paper today, we are being told that it cannot be confirmed as being the actual level of overcharging. We have to wonder whether the Minister was guilty of premature condemnation when he came to the Assembly and threw around phrases such as "wilful corruption". Obviously, that has caused distress, to say the least, to the companies involved. It would not be the first time that the Minister has jumped the gun as regards a statement about the Housing Executive in the Assembly.

Donald, you were chatting about legal action, and the briefing says that you have authorised appropriate legal action. Could you expand on that a wee bit? I know that Michael planned to ask this question on the morning that Minister gave his statement; but, what do you mean by "overpayment"? Is it work that was not done, or is it work that cost more than was quoted for originally? Could it have been done to a higher specification, or might there have been additional work added on? It is very important that we know that.

Some contractors are still being engaged until December this year. Does that create an opportunity to recoup some of the money where there has been overpayment, and could that have been done without all this hullabaloo? I would be interested to know how much the report cost.

Dr McPeake: I will deal with the overpayment issue. We have 469 schemes, carried out in the five years, involving kitchens, external cyclical maintenance, and what we call local area priorities (LAPS), or window, schemes. Just under 20% of them have been subject to some level of scrutiny — a combination of re-inspection and re-measurement of the work, and a desk-based exercise looking at all of the measurement documentation around the schemes. About 11,000 properties have been examined with respect to the documentary evidence, and about 100 properties have had detailed physical re-inspections. Most of those have been done by an independent quantity surveying firm on our behalf on what we call test cases, which is where we have good, solid data.

The sorts of overpayment issues identified are variations on a theme, but they are things such as the project price list, which is a version of a bill of quantities, which indicates that the properties will have x, y and z done to them. On re-inspection, you will find that only x and y have been done on some properties. Issues of other types have arisen, Measurements will say that a kitchen with x number of units has been put in, only to find, on going there, it is found to have fewer than x units. There may be so many square metres of tiling in the bill, but, when you go there, there is less than that on the site. Those are the sorts of issues.

We accept that variations happen in the course of any normal scheme. NECs are often referred to as compensation events. On occasion, we would add extra work by agreement. For example, when a contractor is in the property and finds a particular problem, we can authorise him to do additional works to sort that out. Therefore, we are not talking about that legitimate expense.

Mr Durkan: Is that reflected in this?

Dr McPeake: That is legitimate expense. It is approved additional expenditure, not an overpayment. That is the nature of the overpayment issue.

On the sample issues that you referred to, we have been clear all along that it is a sample and that we need to refine it as we move. However, we have good-quality data for the test schemes, and that was the basis on which we approached the adjudication process. We had hoped that that non-confrontational process would have resulted in a resolution. We are still hopeful that we can resolve this in a non-confrontational way. We have had detailed engagement with contractors for some time in an effort to resolve it, and it has not been resolved. We intend to signal strongly our desire to get this resolved and sort out the issues, and to be non-confrontational if we can, but we must reserve the right to take the necessary actions to recover public money, if we can, where we feel that it has not been properly spent.

The Chairperson: May I tease that out a wee bit? Had your testing determined, for example, that less work had been done on property A than the schedule of work stated should have been completed, but the initial costing was approved or paid for, would you or somebody else have gone to the company involved and said, "You charged us for that, but less than that was done, so give us back the money."?

Dr McPeake: Yes, that is essentially right. That was the process that we were following through adjudication. We have also made clear that that estimate needs to be refined with the benefit of contractor input. However, it has been very difficult to get contractor input to resolve it. On the issue of variation in compensation events, we have accepted and strongly signalled that we are willing to consider whatever evidence contractors have to help us refine the estimate and make it as good as possible, but, to date, we have not been able to get that information. There was an effort made with the failed adjudication, but the information came through very late, which left the adjudicator no time to validate it. That is principally what has brought us to this position.

The Chairperson: Donald, you referred to having brought in an independent consultant to look at this. Was that after this adjudication process was proven to be perhaps —

Mr Hoodless: Yes. The report to the board in May stated that the adjudication process in the first case had failed. The independent review is not to look at the adjudication but at what we as a board had been told by the management, on all this work, whether the estimate is absolutely accurate and realistic, and whether the actions taken by management to put it right are sufficient. That is what the independent review is about. I feel strongly that we need to test whether we have got to the bottom of it and are taking the right and appropriate action. That is why I asked for the independent review. It has nothing to do with the process of adjudication. That process is part of the actions that management are taking and will continue with. However, it requires contractors to co-operate, which we did not have in the first case. Therefore, should it fail, we are left with the option of taking legal action, and that is the position. I reinforce what John said that we wish to sit down and resolve this. We consider that to be a better way in which to deal with it than going down the route of legal action. I am always reluctant to improve the wealth of lawyers.

The Chairperson: OK, thank you for that.

Mr Durkan: My last question was on the cost of the ASM report.

Dr McPeake: The report by ASM has nothing to do with this at all. That was a follow-up report that was commissioned by DSD following the Red Sky contract termination. It relates to response maintenance. I am not in a position to offer a position on that, Mr Durkan. It is a DSD document, and it commissioned and paid for that report. It has nothing to do with planned maintenance.

Mr Hoodless: I wonder whether there is something else that I can say, Chairman. One of the things that struck me when I first took up this post was that response maintenance was dealt with by one department in the Housing Executive and planned maintenance by another. That is the position that we have, and it is not sensible.

We are restructuring. We have advertised for a director of asset management, who will run all the maintenance programmes. In my view, we have internal dysfunctionality around how those programmes are managed. Another change that we are making to improve things for the future is to have all maintenance work under one departmental head.

The Chairperson: OK, Donald. Thank you.

Mr Campbell: Thanks for the presentation. A couple of things strike me. The first one is something that members of the public will find it a bit difficult to work out. A number of companies are at the centre of this issue — let us not name them, but their names are in the public domain. For the reasons that you have given, one of those companies will continue to do work for the Housing Executive over the next few months. Under what guidelines? How does that work?

Dr McPeake: We have taken what we believe to be a proportionate approach. I do not want to name the contractors, but the board's decision was that the four contractors that are involved in planned maintenance would not get any new procured contracts, but they have —

Mr Hoodless: Until the situation is satisfactorily resolved.

Dr McPeake: Yes, and our intention is to resolve it satisfactorily. Some of those contractors have work under the framework that has expired, and that is legally theirs to complete. We will continue to supervise that closely. A number of the contractors also have work under different contracts that are not affected by this issue. Our position is that there is no legal basis to do anything about that and that it would be a disproportionate reaction if we were to end those contracts.

We will continue to look at the situation. I am thinking in particular about response maintenance. One of the contractors that you mentioned has a number of response maintenance contracts with us, and I have to say that it is doing a good job. However, these are different types of work, and the problems that we identified have arisen in a very specific area. In my view, and that of others who have considered it, it would be disproportionate to take work off those contractors under other contracts. However, until the overpayment issue on planned maintenance is satisfactorily resolved, the board does not want to award any new or additional work in those areas.

Mr Campbell: Does that mean that the contractor is not doing work under a new contract?

Dr McPeake: Yes. It is legally on the response maintenance framework already and has a legal right to be considered. What happened in the specific case that you mentioned —

Mr Campbell: Sorry, can just get this clear? That contractor is one of the contractors that was affected by the original issue. Is the work that that contractor is doing over the next few months under a new contract or not?

Dr McPeake: No.

Mr Hoodless: It is an existing contract.

Dr McPeake: It is an existing contract.

Mr Campbell: OK. That is fair enough. I presume that that will be monitored.

Dr McPeake: Yes. We continue to monitor our contractors closely. As you might imagine, there is a requirement to do that, not because of the current issues but generally from the point of view of contract supervision.

Mr Hoodless: I just want to add something and put the question back to you. If you thought that you have overpaid someone for work, would you give that person any new work? That is the position that we start from. As I said, that is why it is important that the situation is resolved quickly. Those contractors are doing other work for us and, presumably, will wish to do work for us in the future.

The Chairperson: I appreciate the question, Donald, and I will bring Gregory back in again. You put the question back to us, and if I thought that I had overpaid someone, I would ask that person first and prove it one way or the other before naming publicly. That is what I would do. I certainly would not name anyone publicly if I did not know.

Mr Hoodless: We are seeking to do that through the adjudication process. We are clear that —

The Chairperson: Fair enough. I also appreciate that it was not you who named the contractors.

Mr Campbell: You turned the question around, and that is fair enough: if you employed people, and your view was that they had been overpaid, would you give them any new work? Most people would want to know what the extent of the overpayment was and would want their money back. Is there an implication, in your response, that the work that is being done, and other works that may or may not come about, will be done in the context of ensuring, in so far as it is possible, that the overpayments, to whatever degree they can be verified, are drawn back into the public purse?

Dr McPeake: That would certainly be an option, but we have not made a decision of that sort. Our plan is to seek the active engagement of the contractors to reach a satisfactory resolution. That is our plan.

Mr Hoodless: That issue will be discussed by the board at its meeting next week.

Mr Campbell: I have a final, catch-all question. We do not want to exacerbate problems further, but this issue is at the centre of your presentation. Is it correct that this is a four- or five-year issue, from its gestation until resolution? That is, if we can call what we have at the moment a resolution.

Mr Hoodless: Yes. It is a contract that started in 2008. It is a five-year contract.

Mr Campbell: At what stage in the last months did the scale of the problem become clear?

Dr McPeake: The problem first arose in 2011, on foot of internal assurance work that raised questions about whether contractors had been overpaid on schemes. As a result of that coming to the attention of the organisation, follow-up work was done, initially focusing on kitchen schemes. The view was taken that we needed to get external independent advice to examine a sample of those schemes to satisfy us that the assurance work was correct. As part of the process of considering the findings of Moore MacDonald, we took a view that those contractors had done other types of work, and it would be quite reasonable, if we had identified potential overpayments in one area, to satisfy ourselves that those problems did not exist elsewhere. Therefore, we extended it to other types of work that they have done under the contract. Only in the past several months have we felt that we have sufficient information to produce an estimate. We have said all along that it is an estimate and that it needed refining, but it is based on objective assessment of both the documentary evidence and physical re-inspection of a sample of properties.

Mr Hoodless: Let me add that I felt, as chairman, that this was taking too long. That is why I have been keen to bring it to a conclusion — to a head — and resolve it properly and quickly.

Mr Campbell: If the genesis of this was in 2008, and, Dr McPeake, you said it was 2011 before problems became obvious, to the layperson it looks as though there was a three-year period when there were problems that were not identified.

Dr McPeake: That is a fair conclusion to draw. We admit openly that we have made a mistakes, as you will see in your briefing note. We got a number of things wrong, but once it became apparent that

there was a suspected overpayment issue, we tried to identify it, scale it and take action appropriately. However, that does not take away from the fact that we made mistakes in the way in which the contracts were established in the first place and managed, and we made mistakes over the sorts of skills that people had, the knowledge that they had of the contracts and how they operated. Therefore, there are certainly faults on our side, and there is no doubt about that. We have a programme of action in hand to address that. As the chairman indicated, part of the review that he and the board have initiated is to look at whether the approach that we have taken in identifying and addressing those things has been satisfactory.

Mr Campbell: Who was responsible between 2008 and 2011, when the problems began, were ongoing and had not been investigated?

Dr McPeake: Under contract law, the contractors are responsible for invoicing only for work that they have done. That fact is inescapable. However, we have a responsibility to ensure that things are properly checked, but we did not have that approach established, because of a belief that, with this type of contract, we could simply allow the contractor to do the work and invoice us on a trust basis. That was a naive mistake to make. It was not a malicious attempt on our part to try to get the thing wrong. There was a belief at the time in the organisation that that was the appropriate way forward. Clearly, it has not been the way forward. Responsibility for contracts and the delivery of works always rests with the contractor, but we do have obligations ourselves.

Mr Hoodless: The question that you have just asked is one that has exercised the board, and we do not think that we have had an entirely satisfactory answer. I suspect that it would be difficult to get an entirely satisfactory answer. Part of my independent review will seek to see whether we can.

Mr Campbell: It strikes me that naivety does not begin to describe it. Obviously, Mr Hoodless was not in place at the time. The Housing Executive between 2008 and 2011 simply had contractual arrangements with individual private sector contractors, got an invoice and paid it. I do not know of any other area in the private or public sector in which people would say that they got an invoice and paid it. It is almost as if the Housing Executive did not think to check.

Dr McPeake: I understand that point fully. The way in which the contract inspection process operated was that the inspectors checked the quality of the work that was being done but did not check the financial value of it. That was clearly a mistake, because they should have done. They did, however, check the quality of work.

Mr Campbell: Whose responsibility was it in the Housing Executive during those three years to ensure that what was not being done should have been done? That is the key question. Who was responsible?

Dr McPeake: Yes, and that is precisely the issue that the chairman has mentioned will be covered in the independent review.

Mr Campbell: I assume that the independent review will come back to the Housing Executive board, and then, I presume, the report will go to the Minister, and the Committee will see somebody somewhere saying "The buck stops here", wherever "here" is.

Dr McPeake: Yes.

Mr F McCann: I want to pick up on some of what Gregory asked about where the responsibility lay in the Housing Executive to ensure that such things did not happen. It is crucial that we get to the bottom of the issue and determine who were the people who were overseeing the responsibility. It is vital that this Committee, the Assembly and everyone else knows where the level of incompetence lay.

Has the Housing Executive taken any legal action against any of the contractors on the back of the Moore MacDonald report?

Dr McPeake: No, not at this stage.

Mr Hoodless: It is going to.

Dr McPeake: Yes, it is on our radar to do that. Our intention had been to adjudicate and try to reach a resolution. The board has authorised us now to take legal action in the Belfast case, where the adjudication failed.

Mr F McCann: How long has the Moore MacDonald report been with us?

Dr McPeake: We have been going through a sequence of those. The Belfast ones were the first, so —

Mr F McCann: But how long has the report been with us?

Dr McPeake: I am not sure of the precise date of that report, but it was the first one to be produced. The most recent one has just finished.

Mr F McCann: The initial report — the Moore MacDonald report — highlighted the fact that there were problems. Surely if problems were identified, the people looking at the report should have taken action. If they did not, that must cast some doubt about the validity of the report.

Dr McPeake: The Moore MacDonald report was established to help us take the adjudication process forward. I do not have the precise dates, but I can get them for you. The sequence of adjudication was to start in Belfast and go through each of the other contract areas so that all five contract areas would go through the adjudication process. As the chairman mentioned, the Belfast adjudication, which did start and was expected to finish in May, failed because the adjudicator felt that he was unable to complete the necessary work in the time available.

Adjudication is a very specific process. There are 28 days available from its initiation to resolution. The body calling the adjudication can extend it by two weeks, which we did. Extensions beyond that require both parties' agreement, and we were unable to do that with the Belfast test cases. That brought us to the point at which we had to look again at what options we have, because we have the sample-based evidence that we feel is sufficient to be able to reach a resolution on those specific test cases and also to form the principles on which a wider agreement can be reached. That has been the approach that we have attempted to take.

Mr F McCann: Tell me this — somewhere in here it probably tells me what I want to know, but it is very difficult to pick that out — during this whole process, has anybody sat down with any of the contractors and said, "We have noticed an overpayment there, and we want it back", and then explained exactly what procedures the Housing Executive will use to recover it?

Dr McPeake: Yes. There have been meetings to discuss the overpayment issues with the contractors, during which we indicated what evidence we had and sought their engagement in order to get their evidence, but we have been unable to get that level of engagement.

Mr F McCann: A number of contractors are saying that that did not take place.

Dr McPeake: I am advised that there have been quite a lot of meetings with contractors.

Mr F McCann: John, you are the chief executive of the Housing Executive; you have been "advised" that that has taken place. In the midst of all this, surely it is your responsibility to go out and make sure that all avenues have been gone down to try to get to the bottom of this. In the Assembly last week, a sensationalist statement was made that talked about an £18 million overspend. That came on the back of two monitoring rounds in which there was a total underspend of £25 million. That certainly makes for grim reading.

That statement talked about corruption or incompetence, and it led to the suspension of a number of things. Regardless of whether it comes out at the end of the day that it may not have been as bad as previously stated, the character of those companies is finished. There could be hundreds of people out of work on the back of this. Surely it would have been better to get to the bottom of this before statements were released by Donald and the Minister in order to ensure that those were based on hard, firm evidence?

Dr McPeake: I repeat the point: our approach, which we agreed with the contractors, was to go down the adjudication route in an effort to resolve this. So, we believe that we honoured that agreement.

We made available to the contractors all the information that we had on the test cases. We then sought their views on that and any evidence that they had that might have countered it. As I say, the first adjudication was not able to bring that to a resolution, but we are continuing with the other four. We are keen to see that engagement progress.

Mr F McCann: Do you not agree that, as a result of naming of the contractors, there is a black mark against them, that it will be difficult for them to get contracts elsewhere, and that it will have a major impact on their future?

Dr McPeake: I am not sure that I can agree with that.

Mr F McCann: Why?

Dr McPeake: First off, in public procurement law, you have to have a proven reason for not allowing a contractor to proceed. So, with a procurement issue, they have to meet the criteria of the contract, and there need to be decisions around that. At this stage, we have a suspicion that is based on strong evidence, and we want to see that resolved. Our desire is to see it resolved as quickly as possible for the very reasons you mentioned. We are conscious that there are a number of contractors involved, but we are also conscious that we have tenants who need this work done.

Mr F McCann: Would you buy into the idea from the Minister that there is corruption?

Mr Hoodless: We have not made any suggestion —

Mr F McCann: I did not say that. I said that, in the statement, the Minister mentioned incompetence and corruption and then, in the same breath, went on to mention a number of companies. What I am saying is that he obviously got that in a report from somewhere. I am trying to find out where that originated from and whether you buy into the idea.

Dr McPeake: None of the information we have provided indicated that, so I cannot answer your question, Mr McCann. We did not make that comment.

Mr Copeland: I apologise for being late; I got lost.

The Chairperson: Refer your questions to what you have heard, not what you think you might have heard had you been here.

Mr Copeland: The words "overcharge", "overspend" and "overpayment" are being bandied about here. Those are all entirely different words, and they mean entirely different things. As Mark said, I asked the Minister for clarification in the Chamber, but the answer that I got did not indicate to me that the Minister actually understood the difference between some of those things. As I understand it, these are planned maintenance contracts. With any contract of that scale and that value in that situation, it is very difficult to know what it will cost. There are always variables built in to allow for things that are not foreseen at the time. If you have a fixed cost — I presume there is a fixed cost element to some of those contracts — and you had anticipated spending x million pounds on that particular project, and that is what you have committed in your financial planning, how do you then end up with a figure that is actually more, if it is outwith the contract? Are any of those amounts paid in excess of what was anticipated? Were they foreseen when the contracts were actually drawn up? Were there variants, as it were, exercised or used appropriately or inappropriately? How do you pay money that you have not apportioned for a contract?

Dr McPeake: It is not as straightforward as you might imply. A scheme starts with a certain number of properties in it, those properties are surveyed and a works plan is drawn up — what we call a project price list — for the work that we intend to do. In the course of planned maintenance work we have quite a lot of drop-outs. The original approval scheme value would be set on the basis of the initial survey and the project price list for the scheme. That scheme might have 200 houses on it, let us say. As the scheme goes on-site, what happens increasingly is that tenants refuse the work for various reasons — perhaps they do not want the disruption, it does not suit them at that particular time, or whatever — so the value of that comes out of the scheme.

That is how you can end up in a situation where the final expenditure of a scheme may be less than the original approved value of the scheme, but there is still overpayment within it, because when you

take out the people who have refused, there is other work that gets added in, or there is work that is in the project price list that is not done. I am not sure whether you were here when I answered Mark Durkan's question. He asked me for examples of the sorts of things we were talking about, and the example I gave was where the project price list said that we need to do x, y and z on a property, but when we look at it in retrospect, we find that it is only x and y, or it says that there will be a certain amount of something done, such as tiling or plastering, and there is less than indicated, and the price lists have not been adjusted at the end of the contract to take account of the work actually done. That is where the overpayment then occurs.

Mr Copeland: The responsibility for those adjustments lies with the contractor, the inspector or both?

Dr McPeake: The contractor is always required to invoice only for what he does. At the end of the day, the failure has been that we did not re-measure the work at the end of the scheme because the contract inspectors were instructed to focus on the quality of the work. The contractors were trusted to get the pricing right, and the invoices were handled on that basis.

Mr Copeland: How were things like sheet flooring or tiling, for example, accommodated? Let us say, for example, you needed 9.5 square metres, but, because of the rolls or the cuts, the only way you could acquire it was by getting 10 square metres. That would give you a variance in the amount required to be purchased compared to what was laid on the floor. Was that allowed for at the quantity surveyor stage or the contract-awarding stage, or would that have been an underestimate on behalf of those who submitted the tender?

Dr McPeake: I do not know how to answer that question. I am not involved in the detailed contract management. The essence of the scheme is that the contractor invoices for the work he has done, and if he is putting 9 square metres down on the floor, that is what we would expect. I can have that specific question examined by the people who manage the contracts.

Mr Copeland: It applies to flooring particularly, and wall tiles as well.

Dr McPeake: I honestly do not know the answer to that.

Mr Copeland: Any sheet materials.

The Chairperson: We have one other member to speak, and that will be Sammy, because I know that Donald has got to get back into Belfast to meet the Minister at a pre-arranged meeting, and we started late.

Mr Douglas: Thank you Chair; I have a few questions. The first question is in relation to Red Sky, because it is mentioned in the report. At the time, Red Sky put its hands up and said that it was guilty of serious default, but it also said that other contractors were experiencing the same thing and it was no different. At the time, its contract was terminated, and it subsequently went into administration. One of my concerns at the time was that there were over 400 employees, and, although we went down the process of TUPE, many of those people lost their jobs. It was not just people from east Belfast. People from west Belfast lost their jobs as well. What is the difference between the investigation that was carried out in 2010, when a company had its contract terminated, and what has happened now?

Dr McPeake: Again, they are two different areas of work, and they are different contractually. For example, in the case of Red Sky, the contracts were live. The internal unit, which used to be called the repairs inspection unit and is now the corporate assurance unit, conducted, as part of its routine assurance activities, a report on Red Sky's work in one particular district. That led to a series of concerns, which ultimately led to a series of other reports being done and coming to a view about resolving it.

In this particular case, we have come to an understanding that there is a problem on the planned maintenance side late in the life of the contract; the contract, in fact, expired on 27 January 2013. The investigatory work that has been done to date has been led internally, supported by an external quantity surveyor. We have sought to share that information with the contractors as we have gone along. So, the approach has been similar, but the nature of the examples is somewhat different. The approach is similar in the sense that we identify a problem and seek to quantify it, provide the

evidence and present that as an attempt to resolve the issues. In the Red Sky case, termination was an issue because the contract was still live. In this case, the contracts are not live.

Mr Douglas: So, are you saying that, at that stage, when we were assured by the chairman and others, other contractors were not defaulting along the same lines as Red Sky?

Dr McPeake: I think that the query was around response maintenance. On that side, the Red Sky evidence that we had showed a level of non-compliance greater than a level that we had identified with any other response maintenance contractor. The Minister asked for confirmation of that around other contractors. That is the origin of the ASM report that Mr Durkan mentioned earlier. When you look at the detail and our assessment of it, you will see that our position remains the same; even though there had been issues with those other contractors, in our assessment, it is not at the same quantum.

Mr Douglas: I refer you to the report that you sent us, which was actually quite helpful. In it, you said:

"In the past year Board members and/or members of the senior team have visited every office at least once and reinforced the need for good governance and the importance of behaving responsibly."

That should say "responsibly". What do you mean by every office?

Dr McPeake: We have been out to all the district offices of the Housing Executive, and we have been round the area offices. It is all the offices that relate to the maintenance function. We have made an attempt to talk to all the staff involved about the issues of good governance, the principles of public life, the failings that we identified arising from the Red Sky case, the failings that are emerging here, and the issues around what the values of the organisation are and how we address those weaknesses.

Mr Douglas: There is no inference then that those local offices have caused major problems and are at fault?

Dr McPeake: No.

Mr Douglas: I want to put on record that my experience of working with the local office is that it does a fabulous job. As you know, in my constituency, the Housing Executive was awarded the freedom of the borough of Castlereagh — the first time that has ever happened in Northern Ireland — for the outstanding work it is doing. I would not want there to be any inference about the local staff. They are doing an excellent job, I think we would all agree, across Northern Ireland.

Dr McPeake: I appreciate that. We are simply saying that we have gone throughout the organisation to emphasise the importance of those issues. You will see in the note that we talk also about the 2,500 people, throughout the organisation, who have been through the governance training in an attempt at a root-and-branch review. We are trying to change to the new normal: to stop cutting corners; pay particular attention to the rules; make sure that we get the job done and done right; and make sure we pay only for the work that is actually done.

Mr Douglas: In procurement, is it the case that you always have to go for the lowest tender?

Dr McPeake: No; in fact, we do not do that at all. We use the MEAT criteria — the most economically advantageous tender. We follow the CPD's guidance on that, with a small number of exceptions. We use a combination of quality and price scoring. Contractors must first meet the quality threshold before their price bids are opened. If they do not meet the quality threshold, we do not even look at the price, regardless of how good it might be.

Mr Douglas: I ask that because I picked up that contractors are saying that they were putting in such low prices and were cutting corners. The reality is that we want the best job at the best price.

Dr McPeake: I agree with that completely. The new response contracts have been in operation for almost a year. We are going to conduct what we call a post-project evaluation. We are appointing a

member of the original gateway health-check team that helped us to set up those contracts back in early 2011 to see whether the pendulum has swung too far to one side.

We all accept that things were too lax in earlier days. All contractors who are involved in response maintenance work now are in no doubt about our commitment to get this right. There is a view emerging that, perhaps, the pendulum has swung too far the other way.

The post-project review will look at that aspect and at how the KPIs are structured. It will look at how we are applying low-performance damages. We will see whether, in light of what comes out of that, further changes are required. That will help to inform what we do about the next round of response maintenance procurement. If there is a view that we need to make further and more radical changes in the way in which we manage response maintenance, we will consider the possibility that we would re-tender the work that is live. However, that is a matter for the board of the organisation to consider once the post-project evaluation is done.

Mr Douglas: Can you reassure us that you will make every effort to make sure that there is no backlog? I know that that caused you some problems with the company that went into administration recently, but you moved very quickly. It would be good to keep us up to date, because that is one of the major questions that is asked in our constituency offices from time to time by people who are getting repairs or maintenance done.

Mr Hoodless: We are committed to providing a good service to tenants. For most tenants, that is the maintenance service, so we need to be on top of it, and we will do our best to ensure that it is run properly and efficiently for them. There will be a transition period while we sort things out.

The Chairperson: I know that Donald and John have to leave, so I will try to sum things up. First, just to clear things up in our own minds, we do not have specific terms of reference for the review. Could you elaborate on that, although not necessarily this morning?

Mr Hoodless: You can have the terms of reference that we have given to the independent review. It is quite open. I am sorry that we have not included them. We will be looking at what we have done, as the Housing Executive board, to see whether we have got to the bottom of things and got them right.

The Chairperson: I was not suggesting that you were withholding them. Is there a specific time frame for the completion of that review?

Mr Hoodless: It is scheduled for early September. The consultants will come to our board meeting at the end of August to give a presentation of what they have found, and we hope that they will be able to complete the report soon after.

We would like to resolve this matter as quickly as possible. There is the risk that this issue will run and run. It is not an easy one to resolve, but we will do our best, because it is much better that we have a good working relationship with all our contractors. That is what we want to reach. We want to provide to tenants the service that we are here to provide.

The Chairperson: OK. Thank you for that reassurance, Donald. The Committee is very anxious, as are you and the Department and others, to make sure that we are protecting public money, because we have to oversee that. We also need to provide a good service for the tenants and protect the integrity of the companies and their workforces. It is good news to hear that you are going to consolidate.

I might be proven wrong, but I would imagine that it would be a good thing to consolidate the work around the estate management and the overall oversight of contracts. We have identified some of the issues this morning, and, as Members, we have to deal with complaints, criticisms and concerns across the spectrum from poor performance — let us be honest, as representatives we have all had to complain, from time to time, about poor workmanship and poor service to tenants — through to the sustainability of contracts where profit margins have been driven far too low. That seems to be one of the key emerging lessons from all this.

There is a wide spectrum of concerns to deal with, and we look forward to having a very good examination of the outcome of the review as soon as we can in early September. As you say yourself, this issue is going to run and run. We are all anxious to stop it running on by dealing with the core

issues — everything from the delivery of good services to tenants through to making sure that contracts are sustainable and have integrity in their own right.

Mr F McCann: I just want to make one more point. I am sorry for prolonging the meeting, but there have been reviews in the past and there is an inquiry going on. While the review takes place, is there any role for this Committee in having its own inquiry into this whole sorry mess?

There are a number of people who would seriously challenge what the Housing Executive and the Minister are saying. Is it possible that this Committee could have an inquiry that would allow all elements involved to have their say?

The Chairperson: I do not think that we need to decide that this morning. The Committee does and will have a role. I have just reiterated that we will look forward to the outcome of the review, and we will deal with it at that point.

Donald and John, thank you for being here this morning and dealing with these issues. Good luck.