



Northern Ireland
Assembly

Public Accounts Committee

OFFICIAL REPORT (Hansard)

Inquiry into Major Capital Projects:
Construction Employers Federation

27 February 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr William Humphrey (Chairperson)
Mr Roy Beggs (Deputy Chairperson)
Mr Cathal Boylan
Ms Órlaithí Flynn
Mr Harry Harvey
Mr David Hilditch
Mr Maolíosa McHugh

Witnesses:

Mr Jonathan Caughey	Construction Employers Federation
Mr Mark Spence	Construction Employers Federation

The Chairperson (Mr Humphrey): I welcome Mr Mark Spence, assistant director, and Mr Jonathan Caughey, federation manager of the Construction Employers Federation (CEF). You are both very welcome, gentlemen. I will hand the floor over to you.

Mr Jonathan Caughey (Construction Employers Federation): Thank you very much. I will kick off. First, I thank you for your invitation to attend the Committee to represent the construction industry in Northern Ireland. According to published Northern Ireland Statistics and Research Agency (NISRA) figures, construction is the second largest economic sector in Northern Ireland, directly employing around 35,000 people and supporting jobs of many more beyond direct construction activity. It is estimated that every £1 spent on construction creates value close to £3 to the economy, as well as the many non-economic benefits of enhancing the built environment.

The Construction Employers Federation is the certified representative body for the construction industry in Northern Ireland and has been representing members' interests for 75 years. The CEF has over 800 member companies, ranging from microbusinesses employing a handful of people to the largest construction companies operating in Northern Ireland. In total, CEF member companies account for over 70% of construction output in Northern Ireland. As a membership organisation, a significant part of our role is to handle member concerns about procurement in general terms and in specific tendered opportunities. Due to members wishing to build and retain relationships with procuring bodies, they often prefer the CEF to raise concerns on their behalf so that they are non-attributable and the members avoid any sense of confrontation.

Mr Mark Spence (Construction Employers Federation): I will develop the role that the CEF performs. Although we do not take up individual member concerns that would give one construction company an advantage over another, we take up, on behalf of members, points of principle that they raise with us about tenders and procurement, and the outcomes of those then benefit all members

equally. As such, the CEF has invested considerable time and effort over the years, working in very good and close cooperation with Central Procurement Directorate (CPD) and the various procurement and statutory bodies towards improving procurement practice and outcomes. That engagement has generally been very positive, and it has produced better outcomes for all parties to date. However, there remain several fundamental themes upon which the CEF continues to support the case for reform in public procurement.

Those include a more streamlined and realistic planning process and assumptions. That tends to be — the Audit Office report highlighted this — the most frequent cause of delays in major capital procurement. We also support more transparent and robust budgeting, with a particular emphasis on deliverable and multi-year budgets. We support more appropriate risk transfer in construction contracts and the minimisation of the use of customised clauses in individual contracts. We seek consistency of procurement policy and practice across the entire public sector because that would enhance the confidence of local small and medium-sized (SME) businesses. We also look forward to a less adversarial approach to contracting, which we think can be achieved by earlier and more open engagement with the construction community.

The federation welcomes this opportunity to brief the Committee as it considers the Audit Office's report. In general terms, we are very supportive of that report's findings. We are very happy to take questions at this point, or we can go through the briefing paper that we had submitted — whatever suits the Committee best. We are available for questions.

The Chairperson (Mr Humphrey): How long will you take to go through the paper?

Mr Spence: I could be through the paper in about five minutes.

The Chairperson (Mr Humphrey): You carry on doing that.

Mr Spence: OK. We will carry on.

The federation met the Audit Office in January last year, and our comments, as covered by it in the report, raised a number of issues that we believe strongly affect the timing and delivery of major capital projects from the industry's point of view. Some are not exclusive to Northern Ireland. They can also be problems in other jurisdictions, but we believe that some are more acute here.

The first one that I want to discuss is budgetary issues. The practice to date of one-year capital budgets does not serve the construction industry or construction clients in terms of delivery. It does not facilitate transparency for medium- or long-term planning. It is very important that the Government highlight and prioritise flagship projects, but there needs to be a realisation that the focus on such projects in budgets puts significant pressure on clients to deliver the remainder of their infrastructure within a very limited capital expenditure budget. Added to that is the fact that less than a third of the overall capital budget went on construction. Other items included in capital budgets do not result in actual construction. Given the impact of construction inflation in recent years, we are probably running at a lower level of capital investment now than we were over 10 years ago.

On delivery timescales, a major criticism that we in construction have had is that of the substantial time lags. Schemes have to go through a procurement process, beginning with the outline business case, going forward to pre-qualification and then tendering. That can be a lengthy process, but the market is always alert to it and tracks these future opportunities. There can be substantial time lags even between a tender being awarded and the time to being on site. This causes problems for contractors who are planning to avail themselves of the opportunity to tender for these projects and are resourcing their employment and planned and financed resources towards the projects. There can be a variety of reasons for these time lags. We already touched on budgetary availability, which can be a reason for delay, but it is very unnerving for the confidence of the construction sector when projects that appear to have been awarded do not go ahead.

Linked to that, the industry has concerns about the validity of the procurement pipeline. Very often, the feedback from our members is that we present them with static pipelines that are not helpful. Unfortunately, the pipeline is not the problem. It reflects the state of procurement and budgetary constraints. It would be helpful if the pipeline could be aggregated for all budget holders in the public sector, not simply those under the investment strategy. That would give greater visibility and instil more confidence in the construction sector.

I move on to procurement and staffing issues. We concur that, as previously identified in the work of the Confederation of British Industry (CBI) and the Strategic Investment Board (SIB) in 2012 to 2014, subsequently in the Organisation for Economic Co-operation and Development (OECD) report and, most recently, in this Audit Office Report, there is a need for enhanced professionalisation and centralisation in public procurement in Northern Ireland. We recognise the duplication of procurement across several entities, and we believe that this is spreading what is a professional service too thinly. More value and effectiveness could be achieved by concentrating resources, professionalism and expertise in one body. A number of procurement failures and setbacks in recent years are highlighted in the Audit Office report. These reduce the confidence of local construction companies to tender for local works. We very much believe that centralisation, a reduction in duplication and a more consistent approach to procurement across all public-sector bodies would make the best use of limited resources. We recognise that the transfer of health projects under CPD was successful, but the SIB highlighted that other areas of public expenditure should also migrate to CPD. We regard this as an area to be reinvigorated and looked at again.

On risk transfer, when it comes to tender stage documents, contractors are often presented with documentation that is either incomplete or requires too great a transfer of risk to the contractor. This can lead to contractors withdrawing from procurements, and a CBI report out today recommends to contractors that where that transfer of risk is too great, "Don't contract. Find a different contract". That presents obvious problems for clients seeking to have a competitive tender. Our view is that the more that contracts can be standardised and the customisation of clauses reduced, the greater the consistency will be and, consequently, there will be a greater appetite to tender.

On legal challenges, members will be aware that Northern Ireland is noted to be particularly litigious on construction contracts. Our view is that the bar for taking legal challenge in Northern Ireland is, perhaps, rather too low. That might be subject to review, and we are aware that the Audit Office may be looking at that. It is fair, on the other hand, to say that not all legal challenges are vexatious in nature. Some are well founded and some are upheld, so it is too broad a sweep to say that construction is litigious for the wrong reasons. There are often good reasons, as has been upheld in a number of judgments. It is not an easy area for construction to resolve. We would look to the legal processes, perhaps, to assist in how this can be rationalised. We are very keen to work towards improving any adversarial relationships. We think that that can be done by early engagement with contractors.

The final point that we wish to make is a general one on planning. We understand that the Audit Office will look at this area in more detail, but major capital projects obviously require significant commitment from bidders to tender. Six-figure sums are far from unusual as the cost of bidding, and this will also impact the appetite of bidders for larger projects, if they perceive a risk that planning will not be achieved in a timescale that is professed or reasonable.

In building on the Audit Office's report on the work of the CBI and SIB, a number of issues can be addressed to improve confidence and delivery in construction: the introduction of robust multi-year budgets and greater clarity on pipelines; greater clarity and certainty in planning; centralisation of built environment procurement and delivery; appropriate sharing and transfer of risk within contracts to help to reduce challenge; and, possibly, looking at alternative models of funding and making use of, for example, financial transaction capital to leverage extra funding into certain areas of the public sector to allow greater delivery of the pipeline.

CEF has a good, longstanding relationship with government here to drive improvement and efficiency in the procurement and delivery of capital projects, and to ensure that maximum benefit is delivered from the public expenditure. We are keen to engage in the next phase of reform, which is essential to ensure the effective delivery for all end users in the public sector and beyond. We appreciate the opportunity today to add our voice to that of the Audit Office report in seeking vital reform in some of these areas.

The Chairperson (Mr Humphrey): Thank you both very much. We appreciate you taking the time to be here. It is very helpful. Are you asked to sit on the procurement board?

Mr Spence: We are not represented on the procurement board. One of our members is on that board, but she does not sit in that capacity.

Mr Hilditch: As a federation, are you not approached?

Mr Spence: No.

The Chairperson (Mr Humphrey): Would it be helpful if you were?

Mr Spence: Possibly. It is always good to have a voice around the table. There are already good voices around that table. I understand that, if the remit of a set committee is too large, there can be too many voices. However, if invited, we would certainly step up. We would be happy to join and have our voice there.

Mr Hilditch: Good afternoon, gentlemen. You are very welcome. On the section in your submission on procurement and risk areas, there is an indication that the risk level is too much to carry and that some people will not submit tenders for certain contracts. Will you give some examples of or ideas about what that entails, the type of risk that is being transferred and why it is too much?

Mr Spence: At a high level, the biggest risk to construction is the timescales and the deliverability of projects. The evaluation starts when the tender documents are released. Companies will evaluate the opportunities. If there is uncertainty surrounding the deliverability, question marks around the project, the support for it to go forward or the budgets being available, there will be a reluctance to commit significant resources to preparing bids and tenders.

Sometimes, there are issues with the change of scope. In the Audit Office report, that was the second- or third-highest reason for delays and extra costs in projects. We call it "scope creep" whereby, after pricing a job, the client makes repeated changes to their requirements throughout the project. Those could be regarded as additional work, but they invariably cost contractors money to deliver, and they incur a delay. If a contractor has a portfolio of projects, that will have knock-on impacts on their delivering other contracts, so it is not desirable for the scope to change throughout the project.

Mr Hilditch: Does that type of issue get fed back through the various strands of procurement here in Northern Ireland?

Mr Spence: Certainly, that will be fed back in real time to the procuring authorities, and it will be fed back in our interactions with them.

Mr Hilditch: They are very much aware of that concern.

Mr Spence: They are. At the same time, we have to appreciate that, as time passes, particularly when working in sensitive areas such as health, there are constantly changing requirements. Twenty years ago, we were building hospitals with wards for eight or 10 patients; today, the move is towards single rooms with en suite facilities. There can be legitimate reasons for change, and construction has to be amenable to amending according to those changes, while being aware that they will, invariably, add cost and delay. There is no doubt about that. The more a project can be defined before it is on-site, the better.

Mr Hilditch: The risk level comes down, then.

Mr Spence: Other generic risk elements are, for example, taking ground risks.

Mr Hilditch: Sorry, what was that?

Mr Spence: Taking ground risks. You are expected to build on a site, and you may or may not be provided with complete information on, for example, contamination. If those reports are not complete, the bidder will have to make an assumption of risk on what might be found on the site. They may price that risk high, in which case it is not good value for the public purse, or they will have a go at pricing it low because they want to be competitive in order to win the bid. That can, equally, produce problems down the line if a large cost occurs that they have not covered off in the contract, and that puts them at risk. We would not like to see that. We would rather see comprehensive information provided with the tender documents, but, on occasions, that is not always possible or available to the bidders.

Mr Hilditch: I understand the point about contamination. I have dealt with a few of those cases. Historic sites can lead to delay as well. Is that right?

Mr Spence: Yes. Archaeological finds and so on can also be risks.

Mr Hilditch: Can they knock things back?

Mr Spence: Yes. There are two routes for the public sector. It can either do all the reports itself and self-indemnify that it has not found something, or it can ask the bidders to do those same reports. In our view, that is poor value for money because six or more bidders would all incur the same expenditure to get the same reports. Although those are costs incurred by the contractor, naturally they will have to recoup them at some stage in another way in other contracts. Ultimately, therefore, it will come out of the value for money.

Mr Hilditch: That is interesting. The CBI report that came out today supported those views.

Mr Spence: Yes. I had a quick read of it this morning, and it resonates very much on risk transfer. Its recommendation is that, if there is too much risk transfer, bidders should walk away. That sits well if you are in GB or Dublin. We do not have a sufficient number of contracts in this jurisdiction. Bidders have the choice, and they want to keep their workforces busy locally. They feel obliged to tender locally and will sometimes take a risk to win the work.

Mr Hilditch: It is a bidder's market. As was said earlier, that has been a risk for contractors to carry. What can be done overall to improve that situation?

Mr Spence: Much of it comes down to the standardisation of approach. The level and detail of information provided depend on which client you procure with. Various contracts have what we call "carve-out clauses", which are risk transfers. We had an example recently where there was an attempt to remove a risk that would have absolved bidders from a change in law. That is a normal clause to have in a contract because, if the Government's change of law has a financial impact, that has not been within the control of a bidder. The bidder should not, therefore, be out of pocket as a result. In the year when Brexit is being negotiated and we do not know the outworkings of that or the impact that it could have on contractors, is it fair for contractors to carry that risk, which has arisen through a change in legislation over which they have had no control or visibility of? The CPD, quite rightly, reinstated that change of law clause, and we appreciate it doing so. That is indicative of the type of risk transfer about which bidders came to us confidentially, as members, saying, "We cannot bid for that contract if that clause is removed, because that would be asking us to take on a risk too far".

There is a balance of risk, and contractors do take risks. They take the full risk of managing their own sites, health and safety on sites, vandalism and all the usual things over which you would expect them to have control and have experience of controlling. However, when you start asking them to take on risks over which they have no control, they have a choice: either price it very high in case it happens or go in without cover. Should it happen, they may find themselves in difficulty, and, ultimately, the project could be in difficulty.

Mr Hilditch: I want to ask a more controversial question on risk: what about paramilitary or criminal-type involvement on sites?

Mr Spence: That does not feature in our conversations with bidders. It does not seem to be a present concern. I cannot say more than that. It does not reach our table as a members' concern.

Mr Boylan: Thank you very much, gentlemen, for your presentations. I declare an interest. A number of my brothers have been in the construction industry for years, and I feel their pain at times.

I want to pick up on some issues that I have dealt with, as a public representative, on the planning side. It can be seriously problematic for all. Hopefully, at the end of this process, we might try to address some of those issues. You talked about additional guarantees on speeding up planning. Will you expand on that? Can you suggest better practices in Ireland or across the UK that would speed up the process?

Mr Spence: To be fair, we have not benchmarked against other available processes. We can simply reflect members' frustrations with the current planning processes. We hold up the question of whether it is possible to give guarantees. We know that it is not. It is never possible to give ultimate guarantees. One of the federation's current concerns is the devolution of planning to local councils. Our members report that different councils have different processes in place and different speeds of

process. They are now in the early stages of developing individual sets of guidance notes. That concerns us, simply from the point of view that we are creating massive duplication and variation in the planning system. In the past, there was one Planning Service, and, if you were a developer interested in construction, you knew how that worked. However, we are now looking at potential variation among councils and in their policies and guidance notes. It will take developers to have a very wide view to understand the nuances and differences. They will have to become acquainted with them at some cost to themselves. It seems to us not to be a very efficient development in planning.

When planning for major capital projects, it is always difficult to anticipate objectors. There are valid objections to planning. That is why the process is there, and we appreciate that. From a contractor's point of view, we would prefer either to be involved early in projects, maybe assisting the authorities to allay the fears of those raising concerns about developments, or, equally, that when the projects are brought to market, they are at a highly advanced stage of planning, and there is little further risk of objection that could delay them. At the moment, we seem to become engaged at the point where objections appear whilst we are engaged as bidders. That means cost and delay. On occasions, you find that bidders have to take a commercial opportunity elsewhere to keep their business going. When the planning is finally approved on the original project, they are no longer available to do it and may withdraw their interest, which is detrimental to the authority as well.

Mr Boylan: I want to develop that further. Let us take the example of a major contract. You say that, at some stage in the conversation or application, you find out that objectors are holding up the whole process. You are at the front line and know what is going on. At times, when I am discussing or supporting an application, I find that people on the ground can bring some ideas to the fore.

Yesterday, we had a briefing from the Planning Service. We can bring those issues to them. All I am saying is that we are learning from your experience. I am giving you the opportunity to think about whether you would consider, as a federation, putting stuff on paper. Do you know what I mean?

Mr Spence: Yes. It is a very urgent topic for many of our members, and they bring it up, but we note that the Audit Office is preparing to carry out a review as well.

Mr Boylan: That was major contracts. However, I want to go back to the councils. There is a pre-application and discussion (PAD) process. Are you saying that you know that some of those work OK?

Mr Spence: Yes.

Mr Boylan: Once you sit down, there are no guarantees.

Mr Spence: No.

Mr Boylan: Given your experience of dealing with PADs, and the experience of the federation, do you want to say anything else?

Mr Spence: The experience of members is simply that there are variable timescales in different areas.

Mr Boylan: There is no consistency across the 11 councils.

Mr Spence: More than anything else, it might be a matter of resources. We do not know. Members are able to say, "I will be achieve that much more quickly in this area than in that area". In some cases, that might skew where they choose to develop.

Mr Boylan: I appreciate that. As you know, I deal with planning applications nearly every week.

I have a wee question about quite an interesting case. Construction work was being done on a road in Fermanagh when the famous Drumclay crannog was found. Not many people know about that. This is just for consideration. I am sure that there is a map somewhere that identifies archaeological sites, not just buildings. Maybe that question should be asked as part of the conversation. It is a different scenario when a road is dug up and something is found underneath. Sites will have been identified and records kept. Maybe there should be conversations about that, given the serious delays when there has to be an archaeological dig. I would ask the various Departments about historical sites.

I have one final question on planning. This came up when discussing the Planning Act in 2011. Are you in favour of fast-track planning for some major projects?

Mr Spence: It is probably not our view to have a view, if you like, on the actual process. From our members' point of view, the important thing is to have a clear and transparent process with more certain timescales. It is not that the question of whether it is a long or short process does not matter to construction, but the important thing for us is the reliability of the process and the certainty of an outcome. If it is fast-tracked and proper, and if all of the correct opinions are sought and all of the correct representations made, it certainly would be attractive to bring projects to the market more quickly, provided that it was a robust outcome.

Mr Boylan: I ask in the context of it having to be properly done and processed. As part of your experience through the federation, you learn every day and with every contract. I appreciate that. Thank you very much.

Mr Harvey: You say that the bar for taking a legal challenge in Northern Ireland is quite low. Why do you think that that is the case, and how does it compare with other jurisdictions?

Mr Spence: The sheer number of challenges raised suggests to us that it is perhaps too easy a route for a disenchanted bidder to take. We find that the relative paucity of opportunities for construction means that bidders are highly competitive, and the need for work drives their approach. The loss of a contract, which cannot readily be replaced by another contract because we do not have that many opportunities, can drive them to challenge. That is simply on the basis that, if it is a relatively low cost to them to raise the challenge, it is worth a go if it overturns a result and gives them another opportunity. It is not an avenue that bidders go down lightly. Nevertheless, on occasions, it is rather too easily triggered.

Mr Beggs: I want to go back to the procurement issue that Mr Hilditch raised. Do you think that public-sector procurement staff lack particular skills and experience? If they had those skills and experience, would that be advantageous to everybody because there would be a successful procurement process? You talked earlier about knowing the ground conditions, for example. On some occasions, do certain conditions that are included pose unnecessary risks that result in higher costs?

Mr Spence: Thank you for that. There are two points. The first is that, in our experience across the full public sector, there is great professionalism and experience in public procurement bodies. However, it is spread rather thinly. Some will have expertise in some areas; some will have expertise in other areas. We see no reason why they could not all be combined for the greater good by pooling all of that experience and professionalism in one body. We find bodies that are stronger in some areas and less strong in others. Members almost choose their sectors by how easy it is to procure work in them. Some sectors struggle, on occasions, to find enough interested bidders, and that can be a reflection of contractors' experience in those sectors.

We recognise the good, very valuable experience in the public sector. It has done much in the last few years to bring in many professional staff who are highly qualified and experienced, and we welcome that. However, we would like that to be progressed beyond the point that it reached a number of years ago. The Department of Health moved its procurement to CPD. We welcomed that at the time, and the outworkings have been positive, in the main, for the large part of procurement there. We would very much like to see other bodies moving their procurement divisions under the same umbrella and sharing the expertise. It would also lead to greater standardisation and consistency, which helps the market to understand contracts. It would mean that you did not, as happens now, have to read every line of every contract that you lift because you know that it will contain variations. More standardisation would make bidding a more straightforward process, reduce the costs of bidding and, ultimately, result in better value for money.

That leads on to your other point about risk. The standardisation of contracts reduces the perception of risk for contractors. The problem arises when authorities start "wordsmith-ing" their contracts by adding dozens of bespoke clauses, all of which a sensible bidder will have to take to a legal adviser to ensure that he is interpreting them correctly, because he will be held to them. That is all additional time and cost, and, frankly, it is a deterrent to bidding on occasions. We would welcome centralisation of the individuals into one body where best practice could be shared and standardised. If contractual approaches could equally be standardised, we believe that that would be a good mitigation of risk, which would reduce costs and, potentially, legal challenge.

Mr Beggs: You seem to be indicating that the transfer of the Health projects to CPD is being perceived as being positive and has been successful. What makes you think that so far, and what are the features that make you think that what has happened there is good?

Mr Spence: I am not blind to the fact that a number of Health projects have been mentioned in the Audit Office report.

Mr Beggs: Some of them are very dated, of course.

Mr Spence: There are a number of reasons for each of those projects, and they are well-documented there. In general terms, with the Department of Health falling under CPD, for projects of a smaller scale than this, the procurement process has been refined and has become very efficient. In the construction sector, Health projects are now the most popular to go after. The procurement process is standardised, it is straightforward, and it works well, and there are, to my knowledge, relatively few challenges against any of the outcomes procured. Those were very large-scale capital projects; I appreciate that. That is the focus of this Audit Office report, and there are other circumstances in there beyond procurement that caused issues of time and delay. We recognise, however, that in other scales of project, the transition of Health into CPD has been a very positive move. We believe that that could be replicated to other sectors.

Mr Beggs: You mentioned that the process has been standardised. Does that mean that they are more competitive? Are there more people bidding because the process is not overly complicated?

Mr Spence: That is exactly right. The threshold for entry is still high, so you are assured of a good quality panel of contractors, but there are many more contractors who, having entered onto the panel, are called upon to bid, and the bidding process is very straightforward at that point going forward, and it is very popular. It is much more straightforward and very transparent.

The Education Authority has adopted a parallel process now. It was heading off in a different direction, but after consultation with our members, it has adopted the model that CPD is doing with Health, and that is very much welcomed as well. It is a good model. For still very much larger projects, we understand that, yes, there have been issues, but we recognise that there are multiple issues with each of the projects highlighted in the report; they are not all down purely to procurement. Indeed, budgets seem to be the common factor, at least to all of them, but other factors are added on top as well.

Ms Flynn: Thank you, Mark and Jonathan, for the presentation. I want to ask a question about timescales. I know that there is probably a lot of overlap in your answers, but can you give an example of the substantial time lags between schemes being pre-qualified, tendered and going on site? I know that this is a big question as well, but I wanted to ask why you think that those delays are happening and how they could be minimised. There are probably 100 different answers to that, but is there anything overarching or in the immediate term that would help with that?

Mr Spence: Yes, timescales are as variable as the number of projects. In general terms, the market becomes aware of a significant project through what is called a prior information notice (PIN), which is published in the European journal. That is simply to flag up to interested parties that a project is in development. The next stage, then, is pre-qualification, where interested parties are required to put forward, in general terms, their experience, capability and suitability for the project, and they will be shortlisted down to, typically, six bidders who will then be invited to tender for the job — in other terms, to price the job and probably to produce a submission of quality alongside the price to demonstrate why they would be the right choice.

In general terms, you would probably allow the bidders anywhere between a month and six weeks to complete a pre-qualification questionnaire (PQQ). The authority might then take anywhere between one and two months to assess those PQQs before shortlisting and sending out the tender documents. Depending on the scale of the project, bidders might be allowed between two weeks to two months, say, to price and submit their documents. What happens from that point to selecting the preferred bidder will be down to the evaluation panel, but typically a month would be sufficient time.

Our problem in this sector is that a lot of projects have got to the PQQ stage. Bidders have been invited to tender, and maybe the tender documents do not appear. What happens then is that six months later when the tender documents are finally ready, but maybe for some reason they were not,

you find that of the panel of six you had shortlisted, four are no longer interested, and you maybe do not have a competitive panel.

Ms Flynn: What would be the reason for that delay with the tender documents, or is there — ?

Mr Spence: Bidders may have taken up other opportunities in the meantime. There is not such a wealth of opportunity locally, so a contractor will, typically, bid for anything that he is suitable for. That can go one of two ways. He might win all of them and may then need to make the difficult decision that he cannot do all of them, or he may win none of them. However, he will bid for all of them because he needs the work.

I know that there have been PQQs that have never resulted in ITTs, which is frustrating because of the time that is spent on a PQQ. That is nothing to the frustration felt when ITTs sometimes do not result in contract awards. There is a significant time investment spent in pricing a contract and writing a qualification. There have been instances of that in the recent past.

A contractor would be very wary of that in future from the same authority and could think, "Well, we spent a lot of time and money on you last time, and you didn't award a contract. We are not sure we are going there again." That damages reputations, so we are very keen to avoid that type of thing.

You mentioned overarching issues. Undoubtedly, budgetary constraints, and we appreciate there are severe budgetary constraints, are part of the problem, as is the fact that we run in annual cycles rather than multi-year budgets. Multi-year budgets are vital for construction. Even the procurement process that we just discussed takes the majority of a year. That is before contractors are on the ground to build a project, which will typically take one, two, three or four years, depending on its scale.

You can see why there is sometimes little confidence in bidding for larger projects at those times when we do not have confidence that the budget has been secured and is not visible.

Mr McHugh: Tá fáilte romhaibh anseo inniu. You are very welcome. We are fully aware of many of the issues you identified, and we hope in the passage of time to address them. In addition to the issues in your statement, do you feel that exiting Europe is likely to have advantages for the construction industry, or is it likely to impose impediments to its development and to tendering here on the island of Ireland or even in Britain?

Mr Spence: A complex range of issues arise from that discussion. In the immediate term, from our perspective, the impact of Brexit to date has been primarily on material costs. Much of the material in construction is sourced from outside the UK, and the exchange rate variation that happened shortly after the referendum had a significant impact on input costs, particularly for some materials. A large part of those costs had to be absorbed by the industry because contracts did not allow their pass-through.

That has been absorbed and understood. Looking forward, our members have some concerns about increases in material costs arising from any tariffs and borders issues, and those are far from clear at the moment. It is very hard to work out what those would be, but we are very wary of those input costs rising again.

I know that migrant labour is very significant for some sectors. It is not insignificant in construction, but it is not a pressing issue at the moment. As an industry, we are relatively optimistic that, with the return of the Assembly and more assurance of pipeline of work, the level of construction may increase locally. At that point, we are cognisant that, given the paucity of work over the last number of years, a lot of skilled workers have left the region and are working elsewhere. They may not return, and we could have a shortfall in labour and skilled labour. There may be a requirement to backfill with migrant labour, and, at that point, this could become an acute issue. To say that it is not an issue today does not mean that it would not be an issue in 12 months' time, and we need to be conscious of the impact of that. Among the other issues that may or may not arise is that all our procurement law is currently aligned to EU directives. Again, we wait to see the outworkings of the Brexit situation, but, presumably, in the future we will not necessarily have to be aligned to EU directives, and there may be discussion around those points. We will be very keen to be involved at that stage in those discussions. We have a concern that Northern Ireland is a very small market for a lot of bidders, and to make this market more bespoke, more unique and slightly less easy to understand than another market while diverging from standards will probably only add cost and reduce value for money. We have some concerns about divergences from standard practice, which works well. Equally, there may be niche

opportunities for refining processes in procurement and making things rather more streamlined. We just need to be very conscious that we do not, as we sometimes do in this part of the world, make things too bespoke for local requirements, which could be a detrimental change.

Sitting here today, I can say that there is very little clarity on any of those options. For the construction industry, the three main areas are procurement rules, labour and material cost. We will be keeping an eye on those and will wish to be involved in discussions on them.

Mr McHugh: I often hear, where other industries and so on are concerned, that one of the advantages of Brexit — this is cited as an advantage, but I am not too sure that it is — is that there will be a deregulation, almost; that is, less need for regulation. I am thinking specifically about employee rights, health and safety and issues of that nature. Do you think that that is likely to impact on the construction industry?

Mr Spence: Certainly, in health and safety, it is only in the interests of construction companies to have the highest standards. In Northern Ireland, we pride ourselves on those, and we are well regarded in the European context on health and safety. I do not think that it is in the interests of the industry to deregulate or dumb down rules that are to the benefit of employees. The industry is struggling to attract employees. We have a skills deficit and an ageing workforce. We are very keen to attract young people and others into the industry, so we will be doing everything that we can to improve conditions. It is certainly not in our interests to take what might be regarded as an opportunity to downgrade any of those aspects. That would be very detrimental, I believe, to our industry.

The Chairperson (Mr Humphrey): What is the Employers' Federation doing proactively with, for example, the Department for the Economy, councils and so on to try to attract young people into the construction industry?

Mr Spence: A particular issue that we would like to raise, and we have meetings to arrange with the Department for the Economy, is the apprenticeship levy, which is still an ongoing concern for our members. It is a direct tax that leaves their business and does not get returned to them in any shape, form or fashion. That has had a very detrimental impact. I know it has been discussed in this place before, but it is still a live issue.

A lot of our members are very proactive in engagement. Very good work is done with education colleges and universities in apprenticeships and training. We are actively engaged at the moment with the buy social programme with CPD whereby social clauses are attached to public-sector contracts to bring in apprentices and trainees. We believe that that is a very good initiative and that we can refine it and make it stronger, better and more broad-ranging. We find that the very large contractors are very good at engaging with communities and their environments.

We have to recognise that a lot of our members are self-employed businessmen and tradespeople. They do not have the resources, and they may not have the experience. They are maybe less confident about engagement in their communities in trying to improve the process. With buy social, we are discussing how to improve that outreach and make sure that everybody in the construction industry has access to information about how to attract new people into their businesses and improve them.

There is a job of work to be done, frankly, with the perception of construction as a viable career given the lack of local construction work. Schools and parents are probably wary of their children joining the construction industry and may think that the only work that they will get is overseas. We believe that, if we had a stronger more viable and more visible pipeline of work locally, that would greatly enhance the perception of us as a viable career path.

The Chairperson (Mr Humphrey): We have just heard that, from the 11 projects that we have been looking at in the last number of weeks, inquiries into which have started, up to £700 million — I do not have the exact figure — could have been lost to the economy in the sense that it has been overspent or projects have been delayed. I listened very closely to what you said about planning, legal challenges and judicial reviews, but there is a perception out there in Northern Ireland that we are incapable of delivering major projects on time and on budget. Why is that?

Mr Spence: It is not a situation that is unique to Northern Ireland. The problem in Northern Ireland is possibly that we have relatively few large projects — in fact, what we call a large project in Northern Ireland would not be regarded as a large project in other markets — and because there have been

issues with those few, that represents performance disproportionately locally. Certainly, there is not a lack of professionalism or expertise in the procurement arena. I will go back to the point that we feel that it just needs to be concentrated under one umbrella with a very clear focus put on projects and the prioritisation of projects, but it is a multi-stakeholder issue. It involves planning right from the outset, and it involves delivery. Project management is also a key aspect in this for managing clients on sites. There is a range of stakeholders involved in fixing the situation. It may appear slightly unfair to Northern Ireland construction and Northern Ireland clients, and again, that might be a reflection of the relatively low number of projects but the high incidence of issues with those projects. However, when you look at the Audit Office's report, you see that it has a nice matrix with ticks against each of the factors and budget is the top factor. That goes back to the three of years of a lack of an Assembly and, up to this point, never having had a multi-year budget to provide that surety.

The Chairperson (Mr Humphrey): You mentioned multi-year budgets. Can you expand for the Committee on how you feel that multi-year-budgets would help to address some of the problems facing the local construction industry?

Mr Spence: At the minute, when we get annual budgets, there is a temptation — we see this, and our clients definitely feel it — towards the end of a calendar year when there are three months to go in the financial year, to have an outpouring of projects that must be done, must be committed and must be spent because, "We are at the end of the budget, and we do not know what budget we will get the next year". That is typical behaviour in any environment where you are given a short window of opportunity. If that were a three to five-year budget and a project slipped by six months, the budget would be adjusted and another project that could be efficiently delivered in the space could be inserted. Single-year budgets do not allow that flexibility. What you find is that, if a significant project cannot be started in the year, it is abandoned and you wait for the next year's budget to be released to see whether it can be reintegrated, and in the meantime, multiple, perhaps inefficient, projects will be commissioned simply to spend the budget.

Mr McHugh: Chair, you raised apprenticeships and so on, which stimulated my thoughts. I know it has been mooted that all apprenticeships and so forth could be delivered through FE colleges in conjunction with industry and that other providers are resisting that because they feel that many young people might not attend an FE college and would prefer to go through workshops or directly into the industry of their choice. Do you have an opinion on how an apprenticeship programme should be delivered?

Mr Spence: Again, it is about choice, but it about information as well. We do not believe that careers services in schools have presented construction as a viable alternative. There is an inbuilt bias to retaining children in the education system, which, if you were in the education system, would make complete sense, because it is about numbers and delivering education, but construction is a viable alternative career that can start at 16. It does not require children to go to further education. There is good work being done in higher-level apprenticeships in professional construction careers.

We also need to see an invigoration of trades careers, and there is some fantastic work being done by various bodies. In the last week or two, we engaged with Women's TEC, which is very proactive in getting female representation into traditionally male trades. I was very caught by one of pieces of information that they share with schools and parents. That shows the relative earnings of a young person who might go into what might be called a typically female career, such as hairdressing or beautician work, and it sets it against what they might earn as a plumber, a joiner or a bricklayer, which are not traditional trades but should not be ruled out. I think images like that are very powerful, and they create alternative opportunities and double the potential pool for the construction workforce. If we are looking at only half the pool, we will not get the numbers that we need.

Construction is ready to embrace the diversity agenda, and a lot of our members are already doing great work on that. The resistance to it comes from home. I have also heard of other instances where young people who have availed themselves of an apprenticeship opportunity and are making some money of their own for the first time in their life find that, through the benefits system, the benefit recipient in the house, which may be the mother or father, gets the same amount reduced from the family income. That then puts pressures on the family home about whether the young person is allowed to continue with the apprenticeship. That is anecdotal, but I believe it happens. Again, young people are perhaps not getting support from their home environment to even search out a career, but they will maybe not regard construction as an attractive career.

Construction has come a long way. There are a lot of careers in construction now that do not require you to be outside all day doing all those types of things. It has a lot of technical skills, IT skills and professional skills, but, equally, it is a very good career. There are very few people in construction in Northern Ireland who are unemployed. A lot of them may be on planes and may be travelling, but they are occupied, well-paid and enjoy their work. We need to get these messages out to the education sector and into children's homes, frankly, to reinvigorate the image of the industry, and part of our purpose in CEF is to help to do that.

Mr Boylan: Fair play to you, Mark, for standing up for the industry. You are right, there are jobs out there. I do not want to get too deeply into it, but I feel very strongly about it. There is a career out there, and we need to get away from language that uses words like "semi-skilled". People are working and building away, and some days we just drive past and not make any remarks. That is the wee rant about the building game is over.

I am not making a political point about Brexit, but delay means money, whether it happens in the Planning Service or anywhere else, for your industry and all these jobs. The labour force is a key element in this, and there may be changes to the regulations and everything else. Maybe it is something the federation needs to look at, because that will be part of the delay. If we do not have the skill set — I should not use the word "skill" — we will not have the people to work on these sites or do these jobs. I know for a fact that, in my own town and area, most of those tradespeople, and there are still good tradespeople, are gone. We are very close to losing a generation of tradespeople, and some members may not have had experience of this, but in the constituency that I represent has a trade deficit in those skills.

I want to finish on my other point, Chair. I saw in part of one of the reports that innovation is also a big opportunity. It has gone from the building game to the construction industry, as we used to call it, but it has moved on a lot. I agree with my colleague about this: a new FE campus is now being built in Armagh, and I hope that it will seriously look at having a new skill set, for want of a better word, for your trades.

The Chairperson (Mr Humphrey): In your presentation you mentioned CPD a number of times. Some of us have a mixed view of that. We were discussing that earlier in that at times it costs the public purse money because you have to go to an approved contractor in the CPD system. Is that a frustration for your members?

Mr Spence: It is probably less for us than for the authorities. From the perception of our members, as happens in a large part with public-sector work, they await the tenders, track the tenders when they come out and respond to the tenders to the extent that they are familiar with doing that in the CPD manner. It is comfortable for them to bid in that way. When they receive bids from other authorities that are bespoke and change constantly, that requires more effort and diligence and involves more cost.

I am sure that CPD, like every organisation, is not perfect, and it will know that and there will be areas for improvement. We meet it regularly and discuss the improvements that we would all like to see. In general, there is a principle in having a centralised body that pulls together as many strands as possible. I recognise in the Audit Office report that Infrastructure would be regarded as perhaps more competent across its capabilities and may not be included in that overarching body, but there are certainly other areas that we believe would benefit.

The Chairperson (Mr Humphrey): You and some members mentioned the CBI report. Take, for example, maintenance contracts. I am aware in my constituency that, for the Housing Executive, competitive tendering means that a contractor will put in a quote to secure the business, but it is not deliverable, so when it comes to doing the work, they cannot afford to do it.

I will not name the area, but on one occasion over a two-year period the Housing Executive had about three contractors doing the work and all the staff had to be TUPE'd across. That is concerning for the people who work there and does not provide security of employment. In fact, a friend of mine who secured one of those contracts was one of the people who had to walk away from it because he just could not make it pay.

Is that an example of a public body driving down the costs in the competitive process so much that it delivers, if "delivers" is the right word, a poor service to people, who, in this case, were Housing Executive tenants?

Mr Spence: There are a number of ways of looking at that. In general terms, from the construction perspective, the initial threshold, and I am not talking in specifics about that example, for entry to the tender process needs to be robust.

We discussed potentially bringing six bidders forward, and those six bidders need to be subject to proper due diligence to make sure that they are viable and capable of delivering the service. That is one of the areas where there is variation, let us say, between public bodies in the level of diligence that is applied at that stage. We support very strong due diligence at that stage to make sure that the field of competitors is worthy.

The other point is that a contract like that — there are many like it — is long-term. For that contractor to miss an opportunity for that client means they are out in the cold for three, four or five years before that opportunity comes round again. It is important to them to secure that work, and they will take a commercial decision to secure it. On occasion, they will price it where it is —.

The Chairperson (Mr Humphrey): I have to say that, having worked in the private sector for 16 years, I know that, if some contractors or subcontractors work for those who secure contracts from government operated the same way in the private sector, which you will know well, they would not get a contract for the second year, never mind in the longer term.

Mr Spence: That brings me to the main point about any of these contracts where project management and contract management are concerned. Most of these contracts contain KPIs. Bidders will be aware of the KPIs and the achievement of certain standards throughout the contract, and they should price accordingly. If they cannot deliver to that standard, it is a contract management issue to seek improvement or remove at the opportunity in the contract.

We would not uphold people going in at low prices and delivering low quality because it brings everybody into disrepute. There are two aspects to that. The bar needs to be realistic but high enough to make sure that you have a good, robust range of bidders in the first place who price it, but, having priced it, they need to be under contract management.

The Chairperson (Mr Humphrey): I think, to be fair, those companies' quotes are driven down because of their competitive nature. One of the outcomes can be that substandard products are used, service is not good and people are brought in who are alleged to have a trade but do not. You simply cannot afford to pay for a tradesman, so a labourer gets the job.

Thank you both very much for your time. I really appreciate it, and you have been very helpful.