

Chairperson, members of the committee; we would like to thank you for your invitation and the opportunity to present our concerns here today. With me today are Niall Reynolds, ?????, and ?????, who have also been instrumental in bringing these issues to wider attention.

Unfortunately the forum today does not permit all the subcontractors be here, so we would also like to take the opportunity to thank all those involved for their work and support to date.

As you are aware, the collapse of Carillion, who were joint partners in the Inspired Spaces consortium delivering PPP Bundle 5 Schools, and the subsequent liquidation of the builder, Sammon Contracting Ireland ['Sammon'], has ensured that these building works will now be completed by a new main building contractor.

Our group represents a number of specialist subcontractors who were engaged by Sammon to deliver the buildings. We began meeting quite informally to share information when it became clear that there were growing financial issues with both Carillion and Sammon.

We have been invited today to give evidence with regards to irregularities in the certification processes for the school projects. We hope to outline the context and scope of these concerns and the potential implications for the delivery of the schools. Further to this, we will also address more wide ranging issues regarding Public Private Partnership (PPP) and the remit of the National Development Finance Agency, on which the committee has previously heard evidence.

It has become clear that for several or all of these projects the Assigned Certifier intends to certify large portions of works undertaken by specialist subcontractors without providing relevant documentary evidence, as has become routine, using the BCAR certification system. This approach has become accepted practice due to Building Control Guidance and project precedent. These precedents include all previous PPP schemes.

We strongly question the ability of any certifier to ensure that all relevant Building Regulations have been met, that the works have carried as designed, and that all building products are compliant without the support of ancillary certification from the specialist subcontractors who carried out the works.

In essence, the certifiers intent is to move well outside the established precedent of evidenced submissions and ancillary certification. This has wide ranging potential for implications to the health and safety of the eventual occupants, who in these specific cases will be mostly children and young adults.

It is important to note that the the current Building Control Management Systems were, introduced after several high profile failures. These problems were eventually recognised to be partly due to systemic failures, which the current system was designed to address. One high

profile example would be the evacuation of the Priory Hall Apartments in Donaghmede in 2011 due to the dangers presented by substandard works and inspections.

The current system relies on an evidence based approach, ensuring that there is a clear record of works being completed to the required standards, and to meet the design specification. It becomes a risk management strategy, overseen by the assigned certifier who assumes the legal responsibility to collate this information.

It is clearly stated in the Code of Practice for Certifiers '[the] role of assigned certifier does not include responsibility for the supervision of any builder'. This is why the BCAR system is relied upon, and begs the question: if this ancillary certification from specialist subcontractors was a requirement for the original contract with Sammon and building control approval, what has changed?

This proposed approach would be very similar to the historical laissez faire attitude to building control compliance, something that the current systems and legislation were specifically put in place to avoid.

Committee members will no doubt be aware of 'headline' issues such as structure, fire safety and environmental performance being regulated by Building Control legislation. This regulation extends to virtually all building works.

Our group comprises of contractors specialising in many different areas. We are able and willing to demonstrate in detail numerous building elements where it is extremely difficult to see how certification can be achieved without our support. Most of these arguments are technical in nature, relating to specifications and performance issues. With regards to some issues, such as CE marking of structural steel elements, or various elements of floor covering systems, it is impossible for any third party to provide certification.

As we have said, these issues with the certification of the building could also have knock on effects on the contractual arrangements between the State / NDFA and delivery consortium. Perhaps more importantly, these risks will have real world effects on the students who use the facilities should they be unavailable, which could affect the value delivered by the projects considerably.

The potential for delay in Building Control certification could lead to the current, temporary, arrangements for the affected schools having to continue for an unknown timescale. Should there be challenges to the final certification of the schools occupation and use of the buildings could be further delayed. Ultimately, should certification be granted and subsequently removed, the buildings occupants would have to leave, and services re-sited.

In these circumstances it has been made clear by the NDFA that the financial risk falls to the PPP Co. rather than the State. This is true in that the facilities would be unavailable and thus penalties applied, but it appears that the actual consequences have been somewhat overlooked.

In this case, it would mean that facilities are not available to students. It is difficult to argue that risk transfer and value for money are working as intended if students are not in their places of study. This is especially true should there be any widespread failure of building elements or systems due to inappropriate certification leading to longer periods of 'unavailability', especially considering that the sites have been fallow for several months.

The PPP contracts allow for deductions in payments should facilities or services not be available. This seems reasonable in smaller instances, e.g. a classroom not being available for an afternoon or even several days due to a leaking pipe. It does not seem to be designed to allow for the loss of an entire school, which considering current proposals, and our concerns with regards to certification, is a distinct possibility.

As we have no contractual arrangements directly with the NDFA, we would also hope to use this forum to get clarification with regards to several points. The first is that we enquire whether this type potential large scale failure of service and facilities has been examined in any risk analysis of the projects?

We would also question the ability of the PPP Co. and certifier to demonstrate that the original building specification has been met. Design and construction changes at all stages had to be shown by subcontractors to meet specifications. There are again numerous examples that can be provided by where changes to design elements have occurred. We would argue that without the support of the subcontractors and manufacturers that these changes cannot be reliably shown to meet specification.

In previous evidence to this committee the NDFA have also referred to independent advice with regards to building control and specification issues. Could they confirm if this advice is also provided by the assigned certifier? While we do not intend to question the professional integrity of any persons, it would seem counterintuitive that a party employed by the PPP Co. could be seen to offer independent advice to the client, i.e the NDFA.

While the NDFA have been clear that they do not have responsibility regarding payments to subcontractors, it does seem that meeting building specification falls under their remit. We would ask for further detail how they intend to ensure that the full specification is met?

Another issue we would like to raise in regards the collapse of Sammon is that of retention monies. Many subcontractors have completed works on previous Sammon publicly financed projects and met all necessary standards and agreed final accounts for their work. They have been paid as per contract, except that they have not been paid in full.

A portion of the final contract sum is retained during the liabilities and defects period. In some cases these sums are substantial. These monies are now due and we believe are held by the State. As Sammon now do not exist the contracts cannot be finally completed, leaving contractors yet again out of pocket.

To our knowledge, no contractual arrangements exist to recover these payments, which are plainly and obviously owed to contractors. Can the NDFA make any comment about this or is this again outside of their remit?

Considering all the issues which we have raised we are also forced to question the PPP model more generally. A main stated aim is the transfer of risk to the 'private sector'. We would point out that in this case the risks have been transferred back to Irish citizens and business through a series of holding companies and funds. It is they who have suffered considerable financial damage and personal stress due to the collapse, again bringing the real world implications of risk transfer into sharp focus.

There is a huge issue of fairness which seems to have been overlooked when designing the PPP contracts. The NDFA have oversight of finances until the point where it truly matters, when paying those who actually carry out works. We are in a situation where students will be using buildings and equipment that has not been paid for. We do not believe that this is in any way morally acceptable.

There has also been some evidence that there is cherry picking occurring, in that certain specialities will be paid to provide certification. This is again morally wrong. Some contractors do not have the option of withholding certification, and it would be reprehensible should they not also be paid for work carried out.

As a group we are ready and willing to engage constructively to resolve all these issues.

The NDFA have produced a detailed briefing paper regarding payments to Sammon subcontractors for this committee. We would ask the committee to ensure that the issues raised today are clarified in a similar manner.