

DÁIL ÉIREANN

AN COMHCHOISTE UM SHLÁINTE

JOINT COMMITTEE ON HEALTH

Dé Céadaoin, 18 Samhain 2020

Wednesday, 18 November 2020

Tháinig an Comhchoiste le chéile ag 11.30 a.m.

The Joint Committee met at 11.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Colm Burke,	Lorraine Clifford-Lee,
Cathal Crowe,	Martin Conway,
David Cullinane,	Annie Hoey,
Bernard J. Durkan,	Seán Kyne.
Neasa Hourigan,	
John Lahart,	
Róisín Shortall.	

I láthair / In attendance: Senator Jerry Buttimer.

Teachta / Deputy Seán Crowe sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: Following our private meeting yesterday afternoon I asked the committee to confirm that the following are agreed: the minutes of the meeting of 11 November; the actions relating to the items of correspondence; the additions to the work programme; and the appointments of chairperson and membership of the new subcommittee on mental health. Is that agreed? Agreed. On behalf of the committee I congratulate Senator Frances Black who will chair this important subcommittee.

Is there any other business?

Deputy Colm Burke: My apologies for missing the meeting yesterday - I got caught up on another issue. An item of correspondence yesterday related to orthodontics. That has been going on for some time. Could we have this back on the agenda at the earliest possible date? It is most important.

Chairman: Yes. We agreed that we would stay in touch with the individual who wrote to us as well. The clerk has been in touch.

Deputy Colm Burke: I appreciate that.

Deputy John Lahart: I had texted the clerk about membership of the mental health subcommittee.

Clerk to the Committee: Yes.

Deputy John Lahart: I am on that subcommittee. I wish to raise two other things relating to the Irish Pharmacy Union and narcolepsy. The committee may have discussed this with the organisations. Are they on the agenda?

Chairman: They are still on the agenda.

Clerk to the Committee: That is right. They are still on the agenda. We are waiting for a reply from the Department on narcolepsy.

Deputy John Lahart: Can I add the Irish Pharmacy Union to the list?

Clerk to the Committee: Yes, we can.

Deputy John Lahart: What does that mean?

Chairman: What it means is we have the agenda filled up to December. After then we need to prioritise who we bring in. We are not ruling anyone out at this stage. We will be bringing the the IPU when we discuss supply and pricing of medicines.

Deputy John Lahart: We will be bringing in the Irish Pharmacy Union.

Deputy David Cullinane: I had asked a few weeks ago that we would do a session on Covid-19 vaccines. I think we had agreed on 16 December. That date is timely because it gives

the new chairperson and the members of the task force time to examine all the issues. I propose that Brian MacCraith, who is the chairperson of the task force, be invited in. We should also have in Colm Henry, the HSE lead, and Professor Butler from the Royal College of Physicians Ireland. She has been excellent.

The vaccine will be important and significant in the battle against Covid-19. There are many exciting developments in this area. This will pose a challenge in terms of distribution and it will be important to have the infrastructure in place. Let us consider the flu vaccine this year. We have 1.3 million doses. However, for Covid-19 we will need 3.3 million doses at least. There will be advance purchase agreements with several of these companies. This is the biggest number of doses of vaccine that will ever be administered in the history of the State. Given its scale, I imagine we will need pop-up centres for administration. I am unsure whether general practitioners and pharmacists have the ability to roll this out as quickly as it needs to be done. There may be a need to recruit staff and train up staff and so on. This is why it is timely for us to be dealing with it at that meeting.

It is important that we get this right so that, come December, the bones of a plan are in place when the task force representatives come before the committee. Can we give them a heads-up as quickly as we can about that session? These are the types of conversations we want to have with them.

Chairman: The clerk has already been in touch trying to get witnesses for that meeting. I imagine we all collectively agree that it has to be a priority. There are also the questions of uptake, prioritisation of medical assessment and plans for procurement and distribution.

Deputy David Cullinane: I have a second question. We got a submission from the Irish Association of Social Workers on adult safeguarding. It is an important issue because it relates to the ability of the association to examine cases in nursing homes. Several members of this committee who were members of the Covid-19 committee raised this issue previously. I thought it was an excellent submission. It is something we should look at in the new year because a Bill is already in existence. It was progressed through the Seanad and is in the legislative programme. The Government is looking at a different Bill or maybe it is the same Bill. Anyway, the submission called for adult safeguarding to be put on a statutory footing and the possibility of an independent statutory agency to deal with this to be considered.

This is a major issue and one that the Minister for Health could work with us on. I spoke to the Minister, Deputy Donnelly, directly on this. He is willing to work with the committee. It would be good for this committee to advance that issue for patient safety reasons.

Deputy Róisín Shortall: I wish to raise a point of order. Is this not the kind of stuff that should be discussed on a Tuesday? It is eating into time and we have witnesses coming in. I do not think it is good practice.

Chairman: It should be. I am trying to be as relaxed as possible with the members but I am conscious of it. In future, I will try to be stricter.

Deputy Róisín Shortall: Two hours is a short period for any session.

National Children's Hospital

Chairman: I would like to welcome our witnesses from Children's Health Ireland and from the National Paediatric Hospital Development Board. They will be presenting remotely to us this morning and will provide us with an update on the progress of the building of the new national children's hospital.

I welcome from the National Paediatric Hospital Development Board, Mr. David Gunning, chief officer, and Mr. Phelim Devine, project director and accounting officer. From Children's Health Ireland we have Ms Eilish Hardiman, chief executive, and Dr. Ciara Martin, clinical director and consultant in paediatric emergency medicine.

Before we hear opening statements I wish to point out to the witnesses that there is uncertainty over whether parliamentary privilege will apply to evidence given from a location outside the parliamentary precincts of Leinster House. Therefore, if you are directed by me to cease giving evidence on a particular matter you must respect that direction.

I call on Mr. Gunning to make some opening remarks. I believe the representatives are sharing the allotted five minutes. Please be conscious of the fact that we have ten minutes in each slot and this includes answers to questions as well.

Mr. David Gunning: Thank you, Chairman. I hope everyone can all hear me. My thanks to the committee for inviting us today via video link to provide an update on the construction progress of the children's hospital project.

I was appointed as chief officer in September 2019 and I am also the Accounting Officer for the National Paediatric Hospital Development Board. My colleague, Phelim Devine, is here. He was appointed project director in October 2019.

We already submitted an opening statement but in the interests of time I propose to simply share some of key points. Mr. Devine will deal with several photographs to give members a more tangible view of the progress being made on the site.

The first point to which I wish to draw people's attention relates to the programme timeline and project delays. The Tallaght outpatient and urgent care centre project is approximately seven months behind schedule. The current estimate for substantial completion is September 2021.

Approximately one year ago, the last time we were before the Joint Committee on Health, we advised the committee that the main contractor on the national children's hospital project at the St. James's campus was behind schedule on the construction works. In March this year, when the main contractor closed the site as a result of the Covid-19 restrictions, the delay on the national children's hospital project had increased to approximately six months. The Government's Covid-19 restrictions on construction lasted for a period of seven weeks. Construction work was permitted to recommence from 18 May. However, despite our ongoing efforts and the fact that the vast majority of construction sites throughout the country opened when restrictions were lifted, the contractor did not reopen the new children's hospital construction site until 13 July, leading to a further seven weeks of delay.

I wish to add that the contractor has not provided a valid works programme for the NCH project that is in line with its contractual obligations. The development board is dealing with this via the mechanisms allowed to us through the contract. The primary mechanism is that we are withholding 15% of moneys certified for payment every month to the contractor.

I will comment on costs and cost projections. While there has been a delay as regards execution, the contractor has been extremely assertive in terms of claims for additional payments. Where the contractor is entitled to costs under the contract, the development board has been paying and will continue to pay the contractor. However, where we believe there is no entitlement, we are using all mechanisms available in the contract to defend these claims and protect the public purse.

The National Paediatric Hospital Development Board executive is actively interrogating the programmes provided by the contractor and evaluating all current and potential cost pressures on the project. This work has been our highest priority in recent months and continues to be. The issues around the programme, timeline and claims have been highlighted on an ongoing basis to our stakeholders in the children's hospital project and the programme board, which oversees the project. Once this current review is completed it will be shared, first, with our board and then provided to the project oversight group. This morning, we will endeavour to answer all questions. However, members will understand some matters are before the court and some matters may be commercially sensitive, may prejudice our possibilities going forward or negatively impact our ability to defend the public purse in the future.

I will hand over to Mr. Phelim Devine who will talk the committee through a visual update on the project.

Mr. Phelim Devine: I want to share what is on my screen. Although at a slower pace than projected, the construction works have progressed since we addressed this committee in November 2019. This slide demonstrates that construction works are well advanced across the 12-acre site and illustrates the sheer scale of the development under way. The structural frame currently at its highest level, level five to the south, will reach level four across the whole site early in the new year, with topping out at level seven expected early in quarter 2 of 2021.

The next five slides illustrate the progress that has been made in the past year. This is the view from last year where we were at basement level for the Donnelly part to the north of the site. This is where we are now, topping out at level 4. To the centre of the site, last year we were at foundation level and now we are at level 3, with much of the steel work well progressed. To the south, last year we were at levels 2 and 4 and now we are level 5 with the atrium being infilled-over with steelwork, which will form the new fourth level garden.

The next slide is of the main concourse at lower ground and ground floor level. The concourse will be the heart of the building and will facilitate intuitive way-finding to all departments. To the left is one of the three features stair and lift cores that are going into the concourse. To the centre is the prefabricated M&E modules and partitions that are being installed as part of the fit-out works under way across the building. To the right is the joinery and manufacture that are the staff bases to be used at levels four and six in the wards and also wardrobes and cupboards for use in critical care.

The next slide shows many of the glazing types that are under way in the building. We are using high efficient glass across the hospital. This image illustrates that the insulation of the efficient, sustainable mechanical electrical plant is progressing well. This will provide specialist ventilation, for example, to theatres and critical care and lighting, heating, cooling and medical gasses across the hospital.

The final slide shows the physical mock-ups that are nearing completion, which will demonstrate to the key stakeholders the quality of the design that is being delivered for the patients,

their families and the staff of the hospital. We extend an invite to this committee to see these physical mock-ups and the site next year when, hopefully, the impacts of Covid-19 abate. That concludes our presentation.

Chairman: We hope to take the board up on that offer. I invite Ms Eilish Hardiman from Children's Health Ireland, who is very welcome to the committee, to make her opening statement.

Ms Eilish Hardiman: I thank the Chairman, Deputies and Senators for inviting representatives from CHI to attend this meeting of the committee. I am joined today by my colleague Dr. Ciara Martin, clinical director and consultant paediatric emergency medicine in CHI.

I welcome the opportunity to provide the committee with an update from the organisation's perspective on the new children's hospital project as requested in its invitation. CHI is client to the NPHDB for this capital project and my update to the committee is in accordance with this remit.

To give some background, CHI was established as a statutory entity in January 2019 to govern and manage acute paediatric services for the greater Dublin area as well as all national paediatric services, some of which are on an all-island basis. This resulted in the children's hospitals at Temple Street, Tallaght and Crumlin merging into CHI to deliver healthcare to Ireland's children in preparation for the move into new children's hospital. In July 2019, we also opened the first of our two paediatric outpatient and urgent care centres at Connolly Hospital, Blanchardstown.

Regarding our services in CHI, 334,500 children and adolescents were treated by our 3,614 staff in 2019. Despite this volume of activity, more timely and greater access to paediatric services remains our single greatest challenge as a health service provider. CHI has several infrastructure and workforce constraints contributing to our waiting list and access challenges, especially relating to theatres, radiology, critical care, laboratory and outpatients, and these are all addressed in the new children's hospital.

Covid-19 has hampered our ability to deliver the same or an increased level of activity in 2020. CHI has returned its activity levels to, on average, 90% of the 2019 month-on-month activity after an initial Covid-19 period of reduced activity earlier this year. This was achieved through putting up some prefabricated spaces and from repurposing spaces such as playrooms, family lounges and other communal spaces in our children's hospitals into clinical spaces to accommodate the beds displaced from our multiple occupancy rooms - those are rooms that have two to six beds - to meet infection prevention and control guidance of 2 m distancing between beds. We have seen a decrease in our emergency department presentations but an increase in our mental health presentations.

This pandemic has demonstrated more than ever the need for the children's hospital. CHI is currently assessing the impact on services for children and adolescents of any extension to the build programme.

The NPHDB have advised that they expect building of the second paediatric outpatient and urgent care centre based at Tallaght to be completed by September 2021. CHI is planning an eight-week operational commissioning period before opening services in this new building by the end of 2021.

Regarding Connolly and Tallaght hospitals, our experience of opening services in a brand

new spacious and child-friendly building in CHI at Connolly has given us a taste of what is to come at Tallaght and the new children's hospital. It has also demonstrated how a new building can facilitate services compliant with Covid-19 guidance. Our new facility at Connolly has allowed CHI to accelerate some of our plans to integrate and reform services during Covid-19 such as an integrated orthopaedic fracture clinic serving all patients in CHI.

The overwhelmingly positive feedback from children, adolescents and families that have availed of services in our new facility at Connolly is testament to the need for this investment and the benefits of implementing contemporary models in healthcare. We are already reaping the positive benefits of more efficient provision of care and an effective patient experience with 97% of our patients attending urgent care there being seen within 15 minutes. Since January 2020, we have treated 5,792 patients at our urgent care centre and have seen 9,217 patients at the outpatients department.

As client for the project, the crisis and challenges in healthcare created by the Covid-19 pandemic has only magnified the difficulties our patients, their families and our staff experience daily in delivering acute paediatric services to Ireland's sickest children in outdated facilities in our existing hospitals with their poor digital infrastructure and old equipment. I emphasise the criticality of these two new buildings, their digital infrastructure, modern equipment and enhanced workforce, which are at the very core of our plans to enhance clinical outcomes and develop services provided to Ireland sickest children and adolescents.

The new children's hospital will expand the physical capacity and type of facilities needed to increase activity and reduce waiting times in all paediatric services to help tackle current and future challenges in child health.

I wish to express my sincere appreciation to our staff for their continued dedication and support over the past number of months. We look forward to walking through the doors of the new hospital and delivering care there. In the meantime, we remain committed to reforming our services and prioritising investment to support improvements in the delivery of services and to addressing the challenges that exist within paediatric services. My colleague, Dr. Ciara Martin, and I are happy to take any questions the members may have.

Deputy Bernard J. Durkan: I welcome our witnesses. I thank them for the work that they have done in their various capacities and the work which they are about to do, as they say in all business.

Regarding the children's hospital, Mr. Gunning is probably best positioned to answer this question: how is the project progressing at the moment? I note there is a dispute management process in place and that the issue has ended up in the High Court. To what degree does he envisage the project being delayed by the failure to resolve disputes and the contractor being happy to go to court?

It is a year since we last met our guests. Have the costs remained in line with what was indicated then or have they accelerated? How many issues have been referred to the High Court and why were they referred? I presume it was because there was a failure to reach agreement and resolve the problems under the dispute management process. Can the witnesses also outline how the Blanchardstown special outreach department is operating? This matter has already been referred to. Is the unit operating as anticipated? Have there been any snags? Is the unit working efficiently and effectively and it is delivering services to the satisfaction of the witnesses? How do the staff feel about the unit? What is the difference from the point of view of

job satisfaction? How are the staff responding to the new situation?

Chairman: There were plenty of questions there. I ask the witnesses to respond.

Mr. David Gunning: I will deal with the other issues raised by Deputy Durkan, and then hand over to Ms Hardiman for the questions relating to Blanchardstown. Starting with the issue of progress, let me speak about Tallaght. We expect the substantial completion of the Tallaght facility in September 2021, which is seven months behind the contractual completion date of February next. Turning to the completion of the national children's hospital on the St. James's campus, the contract date for completion is August 2022. It is fair to say that we have no expectation at this time that that date will be met. In the absence of a compliant programme from the contractor, it is a challenge for the development board to state specifically when that facility will be completed. We are working closely with the contractor to identify and progress that issue. We have been working on this matter for more than a year, we have had significant engagement on it and we really need to move it forward. That element of the project is certainly clearly in delay and that message has been clearly communicated.

Turning to the issue of costs, the cost budget for the completion of the project, that is, the approved budget, is €1.433 billion. We are currently operating within that budgetary scope. However, it is fair to say that there are considerable pressures on that budget. Referring back to my point in respect of delays, time on any project tends to impact on costs and this project will not be an exception. In respect of other matters, we have a significant number of claims from the contractor for moneys additional to the agreed contract price. We are defending these claims. I reiterate that in circumstances where the contractor is entitled to additional payments, we are making and will continue to make such payments.

On the High Court, and in order to correct the perception, I must state that the development board has referred a particular issue to the High Court. This was done when the dispute mechanisms within the contract were exhausted and the issue had not been satisfactorily resolved. The matter in respect of which we have issued proceedings relates to the contractor's position that the instruction to commence the phase B works, namely, works above ground, was invalid. We cannot say a great deal about this. We obviously disagree with that position. The contractor is completing the works and we are paying the contractor for the completion of the works, so we would say that it is somewhat odd to consider that the instruction is invalid. However, that issue is before the High Court. Regarding the Deputy's question about whether there are other issues before the High Court, that is the only issue before the High Court now.

That is a summary of the key issues Deputy Durkan asked about. The unit in Blanchardstown has opened and I will hand over to Ms Hardiman to address how it is operating and the various questions from the Deputy in that regard, such as how the staff and others feel about it.

Ms Eilish Hardiman: I ask Dr. Martin, who is the clinical director and an executive over our services at Connolly Hospital Blanchardstown, to respond to these questions.

Dr. Ciara Martin: I am very happy to say that Connolly has probably exceeded some of our expectations in many of these areas. Last year, when we opened the paediatric outpatient and urgent care centre, we had set out to deliver the model of care, namely, to open an urgent care centre, to have a general paediatric clinic close to home, supported by psychology services, dieticians, multidisciplinary teams and also to have orthopaedic fracture clinics. Those were the core services which we were going to run in Connolly.

This year, because the infrastructure of the building is new and spacious and there are so many single rooms, we were able to develop many services within the CHI at the Connolly campus. We have been able to run additional clinics for which we had not planned but that have supported children's care across all of CHI in Dublin. We are delivering some of the cardiac clinics, pain services and allergy clinics. We have been able to use our radiology department to take some of the pressures off of GP referrals into radiology departments in Crumlin, Temple Street and Tallaght hospitals. All those children were able to come over to Connolly during the time of Covid. They come into our brand new building in a very safe way, have their X-rays and then leave. We are up to a situation where approximately 300 children come in every week for radiology services in Connolly. I think we have exceeded expectation there.

Our urgent care centre operates five days a week now, but our plan is to run it seven days a week. In respect of running it as an urgent care centre, we were hoping to see approximately 70 to 90 children a day. Last winter, before Covid happened, when we had busy accident and emergency departments across the city, within our opening hours of up to 8 p.m., we were already seeing 50 or 60 children a day. We are very happy with that situation. We have also been able to show that our model of care there is working. When children and their families come in the door, they are seen by a clinician and triaged within 15 minutes. Since the day we opened, more than 95% of our children have been seen within 15 minutes of arrival. Their length of stay with us has come down from about three hours to approximately one and a half.

Deputy Bernard J. Durkan: I am sorry to interrupt, but we are running out of time. Before we finish, what was the main reason for the delay in getting on site and bringing the Tallaght project up to speed more quickly? How has the guaranteed maximum price contract affected the cost of the project?

Mr. David Gunning: I will deal with the guaranteed maximum price and then I will hand over to Mr. Devine to deal with the question on Tallaght. The guaranteed maximum price is an element that leads to the total of €1.433 billion. That is made up of several items. As I said, we are currently operating within that budget. The committee will be aware, probably from our discussion last year, that a significant number of exclusions are outside of that guaranteed maximum price. We discussed at some length last year the issue of inflation, which remains outside of that guaranteed maximum price. There are also other items such as the emerging changes or regulatory changes within the healthcare sector and the sectoral employment order and its implications, should that apply. The €1.433 billion is the number that has been approved by the Government. As I mentioned, we are operating within that currently. However, as I also mentioned, there is significant upward pressure on the budget given the potential delays within the project.

Chairman: Could Mr. Gunning give a written reply to the committee? It might give him a chance to expand on the questions Deputy Durkan asked. We have run out of time on this session. I am very interested in the Tallaght delay but perhaps someone else will come in with the same question.

Deputy David Cullinane: In his opening statement, Mr. Gunning says that the construction completion date was due to be August 2022. Obviously, that is not now going to happen. He said in response to the previous questioner that there is no expectation that this date would be met, but he cannot give an accurate date as to what the new completion date will be. He must have some estimate. This is the Joint Committee on Health. This is a big project, the source of many controversies through the years, so if it is not going to be August 2022, does Mr. Gunning expect it will be any time before the end of this year?

Mr. David Gunning: Could Deputy Cullinane clarify the last part of his question?

Deputy David Cullinane: Could Mr. Gunning clarify if the construction completion date will be some time before the end of this year?

Mr. David Gunning: Will we be able to clarify the construction delivery date by the end of this year?

Deputy David Cullinane: No, that is not what I asked. I have very limited time and I need Mr. Gunning to listen to the questions I put to him and for him to respond. I have ten minutes. This is a serious issue. Could he please listen to the question and then answer the question that has been put? What I said is that Mr. Gunning said in his opening statement that the construction completion date was to be August 2022 but, unfortunately, as there will be more delays he cannot tell us when the new completion date will be. Is the new completion date likely to be some time this year or are we looking at some time next year?

Mr. David Gunning: The completion date for the NCH was scheduled to be August 2022. That is clear. We know that date will not be hit, but at the moment, in the absence of a programme from the contractor, who sets out when it is believed that substantial completion will be achieved, we are not in a position to clarify.

Deputy David Cullinane: I understand all of that but Mr. Gunning must have some estimate. Is he saying that it might not be some time this year or it might not even be some time next year? In other words, that the board is not able to give this committee any date, that it has no idea when the completion date will be. Is that what Mr. Gunning is saying?

Mr. David Gunning: I will clarify that. We are currently engaged in a process that includes the contractor and other work streams that contribute to the completion of this project.

Deputy David Cullinane: Mr. Gunning cannot answer the question. I have asked him for even an estimate but he cannot give an answer.

Chairman: Deputy Cullinane should let the man answer.

Mr. David Gunning: I do not believe we will be able to give Deputy Cullinane the answer this year, but I expect we will be able to give him an answer to that question in the early part of 2021.

Deputy David Cullinane: That is unsatisfactory. The reason I am coming back in is that the question has not been answered. It is deeply unfortunate that Mr. Gunning is not in a position to give an estimate or even some indication as to when the completion date will be. He said that, "despite ongoing engagement with the main contractor, we are still without a valid works programme that is in line with its contractual obligations". Is Mr. Gunning saying that the developer is now in breach of the contract?

Mr. David Gunning: What we are saying is that on that particular issue the contractor is not complying with its obligation.

Deputy David Cullinane: Is that a breach of the contract?

Mr. David Gunning: One could call it a breach of the contract.

Deputy David Cullinane: It is a breach of the contract.

Mr. David Gunning: The remedy for the breach is the withholding of 15% of the payment, which the development board is applying.

Deputy David Cullinane: We have established so far that we do not have a revised completion date. We have also established that there is at least one breach of the contract and that there is a penalty in place in terms of the 15% of moneys invoiced every month. Mr. Gunning also says, “In response to the contractor’s reported delays and lack of compliant works programme, that...the executive are interrogating the programmes provided by the contractor and evaluating all current and potential cost pressures on the project”. In terms of those costs, Mr. Gunning goes on to say, “Since the commencement of this project there have been hundreds of claims for hundreds of millions of euro.” He must be a bit more specific than that. He cannot come before the committee and give us a range of hundreds of millions of euro. There has to be some estimation. Is it €200 million? Is it €400 million? Is it €600 million? Mr. Gunning must be much clearer with us in terms of the estimation of what those amounts are.

Mr. David Gunning: Let me answer that question very specifically. As of right now, we have over 600 claims for a total amount of money which is in excess of €200 million.

Deputy David Cullinane: So we have now established there are 600 claims and €200 million in dispute. Mr. Gunning also says that the dispute resolution process has been activated across a range of levels to deal with issues such as employers’ representative, project board, conciliation and adjudication. They have all been used. There is one case before the High Court. Mr. Gunning gave some indication earlier as to what that was about, which is that the instruction to commence phase B works is in dispute because the contractor claims it is invalid. Is that to do with design?

Mr. David Gunning: The contractor claims that the instruction issued by the employers’ representative to commence the phase B works is invalid. The position of the development board is that it clearly is not invalid and that all the necessary preconditions were in place in order to issue that instruction.

Deputy David Cullinane: But I specifically asked if it is to do with design?

Mr. David Gunning: From the development board’s point of view, the design does not have a bearing on this.

Deputy David Cullinane: But the contractor, BAM, in response to an article in *The Sunday Business Post*, which I assume Mr. Gunning saw, said that the National Paediatric Hospital Development Board has still not provided BAM with a fully completed, co-ordinated design. Does Mr. Gunning dispute that?

Mr. David Gunning: Yes, I do.

Deputy David Cullinane: That is the source of the dispute is it not, from BAM’s perspective?

Mr. David Gunning: To be absolutely clear, the High Court case is around the validity of the phase B instruction. The development board’s view is that it was validly issued and all the necessary preconditions were fulfilled in accordance with the contract.

Deputy David Cullinane: Mr. Gunning also says that the board was using all levers available to it to work through the contractual process. I wish to ask Mr. Gunning a very direct

question. I am putting this question for a specific purpose so I need him to answer the question very directly. Has the board ever considered pulling the plug on BAM and killing the contract? Has there ever been a discussion at board level about ending the contract with BAM, or even seeking advice on whether that was possible?

Mr. David Gunning: During the course of the discussions and while BAM was, shall we say, absent from the site or had failed to resume works, the development board reviewed all the options open to it, from engaging with the contractor right through to the termination option.

Deputy David Cullinane: I want to be very clear with Mr. Gunning about the termination option, to be fair to him as well. That is why I asked this question. Is he saying that there was discussion at board level on potentially terminating the contract with BAM, as one of the options that the board was looking at?

Mr. David Gunning: I would say there was discussion of the option of referring this particular matter to the conciliator. That is the step within the contract which was considered as one of a range of options that was considered by the board-----

Deputy David Cullinane: I take that is a “Yes”.

Mr. David Gunning: -----in response to BAM’s failure to resume work on the site.

Deputy David Cullinane: Mr. Gunning says in his opening statement that this is a complex project and the contract is unique. I think he could go an awful lot further and say that it is a mess. It is bogged down in delays, controversy and escalating costs. The board is not in a position today to give us a revised timeframe. It is not in a position today to give us the total costs. We were told before that it would be €1.7 billion. I would expect that it would be far north of that. The project is now bogged down in a High Court case. We are being told the case will commence in December. We do not know how long it will take. It is a very messy situation where it seems that relationships have completely broken down between the contractor and the board to the point where the board was even considering terminating the contract. This is deeply unsatisfactory. The people we need to be conscious of are the children. This is about providing a hospital for children, yet we have no idea when it will be completed. With the construction delay, it may even be 2024 before we see any patients treated in the hospital. It is a complete and absolute mess from start to finish. Everything I have heard today compounds that. The witnesses are not able to give us basic information or any idea as to when the project will be built or an estimate of the costs. The National Paediatric Hospital Development Board is in the High Court and every single facet of the dispute-resolution process that could be used is being used. It is unsatisfactory. The witnesses will have to come back here in the new year with much more information for this committee.

Deputy John Lahart: Maybe the committee could agree to receiving a detailed written account on the Tallaght satellite hospital rather than waste time here. I seek some details on when the project will be completed. We are very excited about the development, which is in Dublin South-West. I am particularly pleased to hear about it. I commend those concerned on achieving 90% service capacity in Blanchardstown, which is some achievement in the context. I ask the delegates to express our appreciation.

My questions are for the chief executive, who has been silent. The other officials have been fielding the questions. The opening statement really made no reference to the delay in the principal project, the national children’s hospital. It was silent on anything to do with that. I

accept it cannot be said when the hospital will be completed, given the conundrum the board is in. Could I come at it from another angle, however? How far behind is the contractor?

Chairman: Who is taking that question?

Deputy John Lahart: It is for the chief executive.

Ms Eilish Hardiman: Is that being addressed to Mr. Gunning or to me?

Deputy John Lahart: Ms Hardiman.

Ms Eilish Hardiman: Children's Health Ireland is responsible for the services and it is client to the development board, but the development board is a separate board with the specific remit to plan, design, equip and furnish the children's hospital. The contractor, contract and programme are therefore with the development board. From our perspective, as a board, we have been disappointed with the delay. We have articulated that. The Deputy will note from my statement that we are currently undertaking an assessment of the impact of any delay in the project on services. That is not completed. Regarding the question as to when the building will be completed, we appreciate and understand there is a desire to know the impact of any delay. In the meantime, we are trying to optimise as much as we can within our existing facilities.

Deputy John Lahart: I am sorry to rush Ms Hardiman because I have only seven and a half minutes left.

Ms Eilish Hardiman: No problem.

Deputy John Lahart: It is just the nature of it. Does Ms Hardiman envisage an expansion of the use of the satellite buildings in Tallaght and Blanchardstown in the event of a delay in the completion?

Ms Eilish Hardiman: We have been working with the HSE in respect of the funding for 2021 to see where we can extend facilities. Our greatest capacity challenges currently lie with theatres, radiology and some of our outpatient services. We have already secured funding, through the winter plan, to increase some of those services. That is what Dr. Martin was referring to. We are optimising the facilities and using them better. We are sweating the new assets a little more. We are fortunate because they are able to facilitate the Covid-19 guidance.

Deputy John Lahart: Ms Hardiman might include that in any further material in respect of Tallaght.

Ms Eilish Hardiman: Certainly.

I accept Mr. Gunning cannot give us a completion date but can he give us an idea as to how far behind the contract is? In other words, before Covid where did the board anticipate it would be by November 2020?

Mr. David Gunning: I believe we summarised it very roughly in the report. Before Covid, in March of this year, the project was approximately six months behind schedule. Then there were further delays, including the seven weeks of the Covid period and a further seven weeks after the date for the reopening of construction sites, 18 May, when the contractor failed to return to work, adding further to the delay. Those two periods, added to the accumulated delay in March, would give a clear indication as to where the project was and is currently in terms of the accumulated delay.

Deputy John Lahart: It would not be inaccurate to say it is at least a year behind.

Mr. David Gunning: The Deputy should understand I am reluctant to give dates. We need to go through a process here. We have a detailed process under way and it would not be appropriate for me to comment on whether it would be at least a year and put out another date. I indicated in earlier questions that I anticipate that we would have a new date available. We would like to have that date available but I cannot and do not want to offer another date right here right now because my concern is that it does not have the appropriate rigour behind it, which it will have when announced.

Deputy John Lahart: Mr. Gunning has given a figure for the anticipated cost of the hospital. How much was spent to the end of September 2020 by comparison with what was expected to have been spent by then?

Mr. David Gunning: I can give an even more up-to-date figure, for October 2020. Regarding the GMP programme, the contractual programme, to the end of October 2020 the GMP projected payments would have amounted to €545 million. The actual payment was €308 million, which indicates a variance of €237 million. Therefore the actual payments to the contractor are 43% below the projected amount, which indicates in financial terms how far we are currently behind schedule.

Deputy John Lahart: I thank Mr. Gunning for that. I visited the site at various times during the Covid period. I was taken aback by how few workmen were on site. Mr. Gunning has my sympathies regarding BAM. I wonder whether there is a role for the Construction Industry Federation but obviously we also have a duty to taxpayers. I acknowledge that Mr. Gunning absolutely appreciates the frustration. I am not gunning for him this morning — pardon the pun; I am just trying to get some answers. How many BAM employees, contractors or subcontractors are working on site now by comparison with the number the board expected, in the last valid work plan, to be working on site at this time?

Mr. David Gunning: Mr. Devine, the project director dealing with these matters daily, shall respond to that question.

Mr. Phelim Devine: As of last week, BAM had circa 1,000 resources on the site, of whom about 100 are in the compound or offices. Therefore, there are 900 operatives on the site. Going back to what Mr. Gunning said about the GMP, or the contract programme, if BAM were operating according to the contract programme, it would have from 1,600 to 1,900 staff at this juncture. We expect that the figure of 1,000 staff will rise in the new year to a much higher level, up towards 1,200 or 1,400 and up to a peak of about 1,950 on site in the middle of next year.

Deputy John Lahart: We are beginning to build a picture.

Has BAM presented to the board an additional bill for demobilisation and remobilisation as a result of Covid-19? If so, how much was it for? Has it been agreed or is it still under negotiation?

Mr. David Gunning: May I respond to that? During the seven-week closure period and the period that followed, when BAM remained off site, we received a number of what BAM regarded as offers or requests for additional payment to cover Covid costs and other costs. We have not acceded to the payment of any of those additional costs. However, this now finds its way through the dispute resolution process. There are various claims in that in respect of Covid-19 and that process is very much active and under way but we have not acceded to any

additional payments in respect of Covid.

Deputy John Lahart: This may seem like an unusual question to the board but what can this Joint Committee on Health do? This project is in trouble. The board is tied up in complexities. Everybody's ambition and objective is to complete it. We could make comments about BAM but because we are in committee we do not want to get anybody, or ourselves, into trouble. What can this committee, or any committee of the Oireachtas, do to help to expedite this project?

Mr. David Gunning: It is an excellent question. The position we are in is regrettable. There are challenges but at times like this we all reconnect with the purpose. Our job is to design, build, commission and hand over this building but our purpose is not to have a building. Our purpose is to provide the highest standards of health care to the children of Ireland. I am extremely proud of the staff we have working both directly for us on the NPHDB team and the people who work indirectly for us, including the design team, our specialist advisers and others, and the passion and the professionalism they show in the face of significant challenge in dealing with trying to progress this project. One thing we would very much appreciate would be for the entire committee to come to our site and to see up close and personal what is happening, the challenges we are dealing with and the progress being made. There is still progress being made but not the progress we would like to see. That would be my single request to the Deputy and to his colleagues on the committee.

Chairman: We have come to the end of this session. Mr. Gunning might think about other things the committee might be able to do. I have a question. Did the board suggest to BAM that it should apply for the Government Covid-19 support payment? Was that ever discussed with the contractor?

Mr. David Gunning: The Office of Government Procurement set out various schemes regarding Covid payments for construction works and public projects. Given the nature of the children's hospital project and the nature of the contract, this particular contract is outside of the scope for those particular arrangements. Nonetheless, we have left the door open for the contractor to make submissions to us. We have assured the contractor that if they were to make realistic and reasonable submissions we would certainly share those with the Government, assuming the development board was in a position to get behind or feel comfortable with those particular proposals. We have not yet had any particular specific requests from the contractor at this time.

Chairman: That is helpful.

Deputy Róisín Shortall: I thank all our guests. I was a little surprised when Mr. Gunning, in reply to an earlier question, said that the most helpful thing the committee could do would be to visit the site. I am sure that would be an interesting visit but we are much more interested in getting up close and personal in respect to the fundamentals of this entire project. We would like some rigour on that. It is disappointing when we have the phrase in an opening statement that there have been hundreds of claims for hundreds of millions of euro. That kind of sweeping, throwaway statement is not acceptable. We should not have to dig down into these things to get proper answers. Mr. Gunning talked about rigour. We would welcome some rigour in respect of this project. Can he tell us what is the working assumption now in respect of the estimated completion date and the estimated total cost?

Mr. David Gunning: With regard to the claims, I have provided some guidance on that. On

the programme issues, I can say for certain, if we look at the various phases of the programme - design, build, equip, commission - that we have absolute-----

Deputy Róisín Shortall: I am sorry to interrupt Mr. Gunning but I am under huge pressure for time here. I only have seven minutes. Could he answer the two questions on the working assumptions in respect of the estimated completion date and the total cost for this project?

Mr. David Gunning: I have indicated the position with regard to the programme. We are working with the contractor and we would anticipate that by early next year we will be in a position to provide an update to stakeholders on when we believe the project-----

Deputy Róisín Shortall: I take it the board has a working assumption in regard to this.

Mr. David Gunning: The working assumption currently and the guidance we give to everybody is that we are working to the contract timelines until such a time as we change the contract timelines-----

Deputy Róisín Shortall: Come on-----

Mr. David Gunning: -----so we are still working-----

Deputy Róisín Shortall: Mr. Gunning has just accepted that more than nine months have been lost this year alone, and who knows what else will hold up the project. Will he level with us? What now is his working assumption with regard to the completion date?

Mr. David Gunning: I am sorry but I will just repeat that. Our working assumption and our guidance to Children's Health Ireland, CHI, and others is that we continue to work towards the contract timelines until such a time as we change that programme. We are working through a process to do that and I anticipate we will be working with the contractor in providing updated guidance to stakeholders on schedule early next year. That is the position.

Deputy Róisín Shortall: That tells me that the board is delusional and it is deluding the members of this committee, and the taxpayer. It is not acceptable, given the evidence that is available at the moment, which Mr. Gunning has outlined, to talk about working to the original date.

On the other aspect of this, what is Mr. Gunning's working assumption on the estimated total cost of this project?

Mr. David Gunning: We are currently operating within the €1.433 billion budget for the project. As I have mentioned, there are considerable pressures on that budget and the biggest pressure is related to the extended timeline.

Deputy Róisín Shortall: Just give me the figure, please.

Mr. David Gunning: We are reporting and monitoring progress relative to the €1.433 billion budget. We anticipate that as we arrive at that schedule we will have an updated project budget or cost projection at the same time as we provide stakeholders with the updated schedule. These are all related and part of the same picture, so to speak.

Deputy Róisín Shortall: When does Mr. Gunning expect that will be?

Mr. David Gunning: We would expect that to be in the first quarter of 2021.

Deputy Róisín Shortall: It is highly unsatisfactory that Mr. Gunning cannot answer any of our questions here today. This is not an acceptable way for a public body to operate. We are wasting our time here. I completely agree with the proposal that we invite the board in again in January, I believe, with preset questions that list the information we want and to which the public and the taxpayer should be entitled. I will leave that at this point and we will talk later about having the witnesses in again at an early date in the new year.

Mr. Gunning spoke about the agreed contract price and said that where the developer is entitled to additional payments the board will pay. As of now, is it the case that the board has not made any additional payments? Will he answer that question? What currently are the estimated additional payments the board will be required to make?

Mr. David Gunning: I can provide the Deputy with the detail on that. I do not have it on the tips of my fingers. It is a relatively small amount of money. In the overall scheme of things currently, we have made some additional-----

Deputy Róisín Shortall: I am sorry but if Mr. Gunning is coming in here supposedly to talk to us about the costs and to account for the work of the board, it is reasonable that he should be able to tell us the additional payments that have been made to BAM at this stage.

Mr. David Gunning: I can do that, and I can provide more detail. We have made payments of the order of €2 million of additional over and above but they in turn have been offset by savings and opportunities on other aspects of the project. At the moment, we are tracking below the budgetary number. That is the position. I can provide more detail but that is the current net position.

Deputy Róisín Shortall: An additional €200 million has been paid over and above the contract price. In addition-----

Mr. David Gunning: Could the Deputy repeat that number?

Deputy Róisín Shortall: It was €200 million.

Mr. David Gunning: No, it was €2 million.

Deputy Róisín Shortall: I beg your pardon. It is €2 million. I misheard that.

Mr. David Gunning: We have not necessarily paid that. In terms of the cost projection, elements of that will be paid when those costs become due.

Deputy Róisín Shortall: As of now, the board has agreed with BAM that there is an outstanding €2 million that needs to be paid.

When Mr. Gunning refers to hundreds of claims, that equates to substantial additional legal costs. What level of legal fees were pre-approved in the figure of €1.43 billion? What is the extent of the additional fees incurred this year? How much has been pre-approved for additional legal fees?

Mr. David Gunning: In face of the significant number of claims, the development board has put in place a number of teams of specialists which include legal personnel and other specialists on programme and quantum, as it is called in the quantity surveying world. We put all of these into a bucket of costs required to be increased in order to allow us to fight these claims. In terms of the claims defence-----

Deputy Róisín Shortall: What is that figure that the board is estimating to cover that bucket of fees?

Mr. David Gunning: The additional fees will be in the order of €15 million from now to August 2022.

Deputy Róisín Shortall: Has that figure been approved by the Government?

Mr. David Gunning: That figure has been discussed but not formally approved.

Deputy Róisín Shortall: What period does that figure of €15 million cover? We know from the Comptroller and Auditor General the level of legal costs up to 2019.

Mr. David Gunning: It covers the period, which is the GMP period, from the start of 2020 through to the middle of 2022. That is the estimate of those costs in that period.

Deputy Róisín Shortall: Is that under discussion?

Mr. David Gunning: That is correct.

Deputy Róisín Shortall: Has the board revised those figures which the Comptroller and Auditor General produced for the previous three years in terms of legal fees?

Mr. David Gunning: In terms of looking backwards, no, we have not. As we look forward at our currently active budget for 2021 and 2022 and the extension of the project beyond 2022, this is a considerably higher number than we would have expected when the project was initiated.

Deputy Róisín Shortall: Were there any legal fees pre-approved in the €1.43 billion figure?

Mr. David Gunning: There would have been.

Deputy Róisín Shortall: What is the figure?

Mr. David Gunning: I cannot give the actual breakdown. I can give it year by year and we would be happy to provide that. I do not have the total legal figure at the tip of my fingers.

Deputy Róisín Shortall: It would be good if the board could provide that figure.

Deputy Neasa Hourigan: Mr. Gunning stated that he considered the conciliation option at one stage. How far did the board go down that road? Did it engage a conciliation service or receive legal advice on the issue?

Mr. David Gunning: On this project, a standing conciliator was appointed to deal with all issues. The conciliator was appointed before I arrived on the scene about a year ago. It is a standing conciliator service to us. He has a particular responsibility under the contract.

Deputy Neasa Hourigan: Was there work done to explore the option of conciliation and to end the contract?

Mr. David Gunning: Within the contract, there are several steps of the stairs relating to dispute management procedure, starting from the employer representative determinations project board, conciliation and then the High Court. All options have been evaluated on these particular matters. The steps of the stairs have been exercised, not just on that but across a large number of----

Deputy Neasa Hourigan: Has that conciliation to end the contract occurred in past six months?

Mr. David Gunning: Conciliation is an ongoing activity.

Deputy Neasa Hourigan: Does that mean there has been no specific moment over the past year where that option was particularly explored?

Mr. David Gunning: Maybe I am not making myself clear. We are constantly-----

Deputy Neasa Hourigan: I understand that the board is constantly negotiating with the contractor. I am asking about the particular option of ending the contract. Was there a moment this year where that was considered?

Mr. David Gunning: Yes, it was considered but it was not triggered. We did not refer it to-----

Deputy Neasa Hourigan: Did the board take legal advice on that?

Mr. David Gunning: We did certainly.

Deputy Neasa Hourigan: Would the contractor be aware of that?

Mr. David Gunning: Yes, the contractor would certainly be aware of that.

Deputy Neasa Hourigan: Mr. Gunning stated earlier that additional costs would fall into the arena of national construction inflation, healthcare policy change, statutory changes and employment orders.

On the additional legal fees from 2020 to 2022 which Mr. Gunning discussed with Deputy Shortall, No. 185 of the 2016 regulations on procurement guidelines for goods and services states:

A contract may be modified irrespective of its monetary value and without a new procurement procedure where the modifications have been provided for in the initial procurement documents by way of clear, precise and unequivocal review clauses, which may include price revision clauses or options.

[...]

Where additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of contractor (i) cannot be made for economic or technical reasons ... The modification in question shall not exceed 50% of the value ...

My question relates to the contractor, additional legal fees or any service involved. Is Mr. Gunning satisfied that the contract currently operating is in line with that statutory constraint? If it is not, why is that the case? Has consideration been given to retendering for distinct aspects of the services programme where it would seem the 2016 guidelines give the board that latitude?

Mr. David Gunning: I am absolutely confident that the services we are using have all been publicly tendered for and we are not in any sense required to look for any derogations or anything of the sort regarding those particular matters.

Deputy Neasa Hourigan: Is Mr. Gunning satisfied that none of the services for which the board invited tenders have exceeded the 150% constraint?

Mr. David Gunning: I am absolutely confident of that.

Deputy Neasa Hourigan: I take Mr. Gunning's points to other Deputies that he cannot give us a completion date. However, are we talking about substantial completion or does that include the commissioning process?

Mr. David Gunning: When I speak of substantial completion, I am speaking of the building phase of the project. I am not including the service activation, which is the responsibility of CHI, supported by us and the operating company. I am not including that.

Deputy Neasa Hourigan: For a building of this complexity and considering the requirement of evidence-based design in the commissioning, that could be a considerable period. Does Mr. Gunning have a timeframe for that, given that he cannot give a date? Is it eight weeks or six months?

Mr. David Gunning: There is a certain amount of commissioning that happens prior to substantial completion. I would like to recognise and acknowledge the co-operation between ourselves and CHI. We have a strong partnership and are working closely together. The idea is that we will front-end as much of the commissioning activity as we can. We will then hand over to CHI. Ms Hardiman will address its process with regard to those matters.

Ms Eilish Hardiman: There are more than 5,100 rooms in the new children's hospital. It is a highly technical and digital hospital and we have undertaken advice and guidance from similar projects internationally. We call it an operational commissioning where we get the building open for services. It requires our staff to become familiar with the building and it is estimated that is an eight to nine month process once the development board hands it over to us

Deputy Neasa Hourigan: When we come back in January and, perhaps, get a date for completion, we will add ten months onto that date. I wanted to get that clear. I want to get one question in before my time is up.

Ms Eilish Hardiman: Nine months is our estimate at the moment.

Deputy Neasa Hourigan: Okay, nine months. I want to get one question in before my time is up. As I just pointed out, healthcare systems require a large interaction with proprietary systems and commissioning, more so than most projects, both in building components and that evidence-based design piece where one needs medical professionals to come in and interact with things. Significant delays will be quite likely to have an impact because one is dealing with proprietary aspects of building components which must be stored. Are they being stored on site? Significant delays in the project system, and the fact the contractor is not giving the board a compliant work programme, will have huge impacts down the line in terms of dealing with building components on site or securing them. These are large building components that must be delivered at particular times. What kind of an impact is that having on the work programme? What is the contractor telling the witnesses in terms of those proprietary systems? Is there a financial impact to those delays as they knock on to the next contractor?

Mr. Phelim Devine: I might come in on that question. Many of the key components of the building are part of the overall construction contract, that is, the big mechanical and electrical plant, specialist systems such as ventilation systems, boilers and all that sort of stuff which are

part of the technical commissioning. Perhaps, what the Deputy is indicating here is the specialist equipment that is put in as part of the construction contract. The development board, working with the CHI, controls that and we are working closely with the contractor on the procurement of those elements so they dovetail in at the exact right time in terms of protecting the critical path and completion of the project.

Deputy Neasa Hourigan: How can we do that when no work programme has been agreed to?

Mr. Phelim Devine: What we have is a dynamic programme whereby the latest construction programme we give to the contractor is fed into our master schedule and that triggers all the key dates by which we must have all this equipment procured and ready to go into the building. We are fairly advanced in terms of our equipping programme and we are in a good position in terms of meeting all those dates.

Ms Eilish Hardiman: I might be able to add to that. Children's Health Ireland has released some of its key staff to be seconded to the development board to work on the equipping. It is really important that element of it has close working because of the interdependencies between our staff, the equipment and our patients in the building. We are, therefore, releasing staff to work and lead on some of that equipping programme and we will have a commissioning plan which will identify those significant interdependencies, which are quite a large element of the work that will take place just prior to substantial completion and, obviously, operational commissioning.

Senator Martin Conway: I will start by going back to an answer to a question asked by Deputy Cullinane in which Mr. Gunning said the position was "regrettable". Would he not agree that, so far, this has been a mess?

Mr. David Gunning: I certainly cannot use words like that. I know a thousand people turn up from BAM and all its subcontractors on the site every day and go in there with the purpose of doing a good job. There is no doubt about that. I know there are committed people in CHI and in our own area who are working hard to deliver this project. I believe, however, it is fair to say the contractor has been under-performing as regards project execution and has clearly been assertive regarding claims. That is what is regrettable, in my opinion.

Senator Martin Conway: I would describe it as a mess and I would not put a tooth in it because, at the end of the day, this is taxpayers' money. Taxpayers' money is funding all this. What was the reason for the delay in going into the site from 18 May until 13 July? What was the reason for the seven-week delay?

Mr. David Gunning: Let me clarify the position. The Government obviously closed the site on 31 March and then said sites could reopen on 18 May.

Senator Martin Conway: That is correct.

Mr. David Gunning: During the week commencing 18 May, our team and the employer's representative sought to arrange a meeting with BAM for the purpose of looking at the practical details of site reopening and planning the restart. BAM was slow to engage in that process.

Senator Martin Conway: I can understand that might delay it by a week or two. We are talking about seven weeks.

Mr. David Gunning: Let me just clarify the position here. During that period, BAM made several requests for additional payments. It was really only on 10 July that the contractor indicated it would restart the construction works but was extremely reluctant to do so, and again, requested an additional payment. It is a credit to the team and development board that they successfully withstood all this pressure for additional payments, which were clearly outside of what was allowed for within the contract.

Senator Martin Conway: Essentially, then, there was a stand-off. The contractor refused to go on site until it got the money. Is that what happened?

Mr. David Gunning: It did not get the money, to be clear. I have already confirmed no additional payments were made.

Senator Martin Conway: Was there a stand-off for a period of seven weeks where the contractor refused to go on site until it got the money and then, eventually, caved in after seven weeks?

Mr. David Gunning: I have described the various things. I would not necessarily use those terms to label it with one name or another. I have tried to describe the activity.

Senator Martin Conway: It is clear to me the contractor was not on site and was looking for money. Mr. Gunning can dress it up whatever way he likes but that appears to be the reality, which is a shocking state of affairs in terms of the board's relationship with the contractor. It seems to continue. In his opening statement, Mr. Gunning referred to hundreds of claims for hundreds of millions of euro and said he had to significantly beef up his own staff and support structure. Did that significant beefing up include hiring outside consultants at extra cost to the taxpayer?

Mr. David Gunning: Could I wind the clock back a bit to the PwC Ireland report, which I believe was discussed in this committee the last time I was here? That report set out nine recommendations that applied to the development board. It had 47 specific actions the development was required to take including beefing up, becoming more commercial, taking on appropriate expertise, enhancing project execution, etc.

Senator Martin Conway: What is the total cost of that?

Mr. David Gunning: I am glad to confirm that all those actions have been completed. That has required us to take on specialists with knowledge and capability of large, complex health-care projects who are working with us to assist us in the successful delivery of the project.

Senator Martin Conway: All that has happened and we are still in a situation where there are significant delays and hundreds of claims for hundreds of millions of euro. It does not, therefore, seem to have worked. Colleagues here have tried to pin Mr. Gunning down in terms of a date as to when the building will be completed and when the board will be in a position to hand it over to Children's Health Ireland. I will put it to him another way. Does he expect the board will be in a position to hand over the building in 2023?

Mr. David Gunning: If the Senator will forgive me, we expect to be in a position to provide guidance to stakeholders on this particular matter early in 2021. That is the best position and the way we would like to respond to the Senator's question.

Senator Martin Conway: With any development, a person has an indicative date. It

should not be a situation that the board will be able to give us that indicative date in quarter 1 of 2021. In Mr. Gunning's view, what is the worst case scenario?

Mr. David Gunning: If I could just respond.

Senator Martin Conway: Please do.

Mr. David Gunning: We are attempting to move this project along. In the absence of a compliant programme from the contractor, it is extremely difficult to provide the committee with the level of detail it requires and that we ourselves require.

Senator Martin Conway: The taxpayer requires it.

Mr. David Gunning: I completely understand that. I am a public servant, as are my colleagues. We are here to serve the public. We are here to deliver on the purpose of this organisation, which is to provide the hospital. We are keen-----

Senator Martin Conway: What worries me-----

Mr. David Gunning: Could I just respond? We will provide a schedule. We know where we are with our design programme. As Mr. Devine has said, we know where we are with our equipping programme. We can tell the committee exactly when we will purchase every individual chair, all the way up to MRI scanners, imaging equipment etc.

Senator Martin Conway: That is how it should be.

Mr. David Gunning: We also can tell the committee how we will commission the hospital in detail.

Senator Martin Conway: I have one more question.

Mr. David Gunning: However, we cannot tell the committee what the contractor plans to do because I do not have a programme from the contractor.

Senator Martin Conway: In spite-----

Mr. David Gunning: I have indicated I intend to address that issue early in quarter 1. On the claims, we cannot stop the contractor putting in claims. Our responsibility is to defend those claims and we are doing that robustly and, I would comment, quite effectively.

Senator Martin Conway: Good. This will be my last question because my time is running out. Mr. Gunning has indicated that he expects the project to go beyond the €1.433 billion. I put a worse-case scenario to him. Does he expect we will have much change out of €2 billion when this is done and dusted?

Mr. David Gunning: The Senator is quite right in saying that there is cost pressure. The most significant element of that cost pressure is the elongation or delays on the project. That is problematic. We expect to be in a position to answer that question in more detail, as I have mentioned, early in the new year.

Senator Martin Conway: That is fine.

Senator Annie Hoey: Not having the project for the contractors is a bit of a wild state of affairs given that this hospital is set to be one of the most expensive in the world. It is quite

concerning to hear that. Last year the Labour Party leader asked if the design was fully complete and he never got a straight answer on that. I again ask that question. Is the full design now complete?

Mr. David Gunning: I thank the Senator for her question. I cannot see her, so I apologise for not recognising her by name. I am happy to confirm that the design is complete. All the issued-for-construction drawings and details for construction have been issued and are available to the contractor. That is the clear position.

Senator Annie Hoey: How many individual design drawings have been issued since 1 January 2019?

Mr. David Gunning: I will need to have our project director answer the details on this. I ask Mr. Devine to give a sense of that.

Mr. Phelim Devine: I want to make a quick point of clarity before I answer that question. The design was complete for the purpose of agreeing the guaranteed maximum price in March and August 2018. Once the phase B works commenced on site, what Mr. Gunning described as issued-for-construction information was completed quite recently. That is the finalisation of the design in terms of its final dimensioning, which absolutely relies on the input of the contractor-supply chain. Somewhere between 5,000 and 10,000 issued-for-construction drawings have been issued. I do not have the exact figure, but I can come back and clarify it.

Senator Annie Hoey: I ask Mr. Devine to provide the number issued to the committee secretariat by the end of the week.

Mr. Phelim Devine: We will be happy to confirm the number of drawings.

Senator Annie Hoey: Will Mr. Gunning say without contradiction that his board has complied with all its contractual obligations? That would be a “Yes” or a “No” answer.

Mr. David Gunning: When the Senator refers to our board, does she mean the National Paediatric Hospital Development Board, the entity that I represent?

Senator Annie Hoey: Yes.

Mr. David Gunning: If that is her question, I am happy to confirm that. Yes.

Senator Annie Hoey: How many contractual cases have been taken by the board against BAM and the subcontractors? I know he said it is hundreds, but does he have a figure? Can that figure be provided to the committee?

Mr. David Gunning: There is just one case in the High Court. There are more than 600 individual contractor claims. I hope that provides the information the Senator requires.

Senator Annie Hoey: I know Mr. Gunning has given an estimate of legal fees, which will be €15 million up to 2022. How much has been spent in 2020 so far on legal fees?

Mr. David Gunning: I know we provided this information, or an update, to the committee and the Committee of Public Accounts not that long ago. We can update that with the details line by line and provide written input on that in the very near future.

Senator Annie Hoey: I thank Mr. Gunning for that. We keep going around the end point and when the hospital will be opened. As has been mentioned previously in the committee, this

is taxpayers' money and the public has a vested interest in when the hospital will open. I think the public may be coming to the end of its tether hearing about the extraordinary cost of this with no end point in sight. Mr. Gunning has said that because he does not have the programme from the contractor, he is not exactly sure when the end point will be. What actions will he take to rectify this situation? I understand the complexity of building a project of this scale and that it is somewhat of a moveable feast. What actions will he take with the contractor to get to this end point? What will he do so that when he comes back here in January, we are not all grilling him again over when it will be done? What actions will he take to try to get this project to completion?

Mr. David Gunning: We are absolutely committed to delivering on our purpose, which is to design, build and equip this hospital and hand it over to Children's Health Ireland, CHI, so it can provide services to the sick children of Ireland. We have a contract with the contractor. The actions we can take are prescribed and set out in that. It is critical that we get this compliant programme from the contractor. We are deploying the mechanism within the contract to do that, which is the withholding of 15% of all payments. In parallel with that we are engaged in dialogue with the contractor, bringing the contract issue towards a conclusion. That is a crucial point. Once we get that clarified, we will be in a position to make some significant progress in arriving at a much better picture of the projected cost outturn. Obviously, cost and time are very closely tied on any project, but even more so on this project.

Defending the claims is really important. As I mentioned, there is more than €200 million in claims. We have put a significant amount of effort into this area. In the time I have been on the job, which is just over a year, we have really turned up and I think we are doing quite a good job in that area. However, I cannot give any absolute guarantees that we will not face some challenges there because I am sure we will. These are the primary issues we are progressing. At the same time one of my jobs is to work closely with stakeholders to ensure that stakeholders, like Eilish Hardiman and the team at CHI, are fully up to speed on where we are with the project and ensuring we have high levels of co-operation on the areas that are interdependent, which are around commissioning and service activation and moving forward. Those are the issues on my action list.

Senator Annie Hoey: I ask Mr. Gunning to give me a "Yes" or a "No" answer. Does he believe withholding 15% payment is a sufficient tool to get the contractor to uphold its commitments? Do the witnesses consider the tool to be efficient and to have worked out?

Mr. David Gunning: Whether it is efficient or sufficient, it is what the contract allows.

Deputy Cathal Crowe: Earlier this morning at the meeting of the Joint Committee on Transport and Communications Networks, we heard from representatives of National Broadband Ireland that they anticipate its contract with the State will not only come in on time but below cost. That information should frame what I want to say in the next few moments.

Mr. Gunning said in his contribution that the board last appeared before this committee last November and stated at the time that there was a four-month lag with the project. After Covid and the coming months, what is the completion date for the hospital? Will he give us an indicative timeframe for completion? Will completion be on a phased basis or will the project open and be able to function as an entire hospital at a certain point?

Mr. David Gunning: Perhaps I might deal with the first part. As we said earlier in this discussion, we expect to clarify and give further guidance to the committee and other stake-

holders on the projected substantial completion date, which is the day when building work is completed. We hope to be in a position to provide that early in the new year, assuming that we get some input about the contractor's programme, which is currently missing.

The commissioning and other aspects of the hospital are the responsibility of Eilish Hardiman and the folks in Children's Health Ireland. Perhaps she wants to deal with that particular question.

Ms Eilish Hardiman: Yes.

Deputy Cathal Crowe: Surely the weekly dialogue is what works are completed, where costs are at and where completion is at. That goes for any building project, whether it is a home extension, a new build house or the biggest hospital in Ireland. Surely that is part of weekly discourse. I again ask: when will the project be completed? I do not think it is a detail that Mr. Gunning would need to search too much for. I am not digging deep into figures; I am asking for a simple completion date.

Mr. David Gunning: I understand the simplicity of the Deputy's question. However, as I have explained earlier, we have absolute clarity on a number of the work streams. What we do not have clarity on is the build programme, which is the responsibility of the contractor. The reason we do not have clarity on that is because the contractor has failed to provide us with a compliant programme that sets out its responsibilities, activities, works and its substantial completion date. That piece of information is absent. I really do not want to put further dates into the public domain based on guesswork and speculation without having that information. There is too much at stake in terms of this project for me to add to that and I certainly have no plans to do so. Our intention is to be able to address that question early in 2021.

Deputy Cathal Crowe: I hope that it is a very hammered-down timeframe at that point because the whole country waits with bated breath.

Mr. Gunning in his statement said that, since the commencement of this project, there have been hundreds of claims for hundreds of millions of euro. Will he give us a few examples of what kind of claims BAM comes to the board with? What kind of dialogue is there? Who is the direct contact person day on day on site, wearing the hard and engaging with BAM people? How does it get to the point that BAM comes before the board with costs that run into the hundreds of millions of euro? How have costs spiralled? People really want to know that because the figure seems to change by the day.

Mr. David Gunning: I commented earlier that we cannot stop the contractor submitting claims. It is not something we can control. All we can control is how we respond to those and how we defend the public purse.

As the Deputy has mentioned, and I answered earlier, there are in excess of 600 individual claims with more than €200 million. I would characterise that there are some quite large claims of the tens of millions of euro and a large number of smaller ones for less trivial items. We are focused on, and some of the larger items are going through, the conciliation process and I guess we are in the middle. That is where things currently stand.

Deputy Cathal Crowe: Will Mr. Gunning tell this committee of an example of one claim that was not accepted?

Mr. David Gunning: It is not a question of acceptance. Once claims are submitted and sub-

stantiated, there is a process that must be gone through. That is how the process works. It works through the various steps from the determination by the employers' representative. If a claim is not accepted by the contractor or by either party at that point, it goes to the project board, which is a formal meeting of representatives from both organisations under the chairmanship of the standing conciliator currently. If it is not accepted there, it is referred to conciliation. If it is not accepted in conciliation, the next step is the High Court. That is the process set out in the contract. We have many conciliations, many claims currently going through that process.

Deputy Cathal Crowe: What presence has the board on site every day in terms of monitoring this project and ensuring public moneys are being well spent? How often are there meetings with BAM and what is the nature of them to ensure that things are on course in terms of timescale and expenditure?

Mr. David Gunning: There is an array of interface points across the project. Walking past or driving past on the Luas, an array of portakabins can be seen where there are offices with BAM staff and a number of our design teams located at the site. On the site we have a quantity surveyor, QS, team, the architecture team, the structural engineering team, and the mechanical and electrical design team. Each of the teams has its own resident architects or engineers who are supervising the works. I will ask my colleague, Phelim Devine, to give some more detail as he is responsible for the day-to-day activities on the site and can answer that more completely.

Mr. Phelim Devine: There are different levels of interfaces, starting at the top with a principals meeting with the contractor every month, and then there is an employers' representative, ER, meeting. The contract is administered through an employer's representative, so she holds meetings fortnightly with the development board, the contractor and the design team. Site progress meetings happen fortnightly. There are myriad weekly meetings for direct engagement across myriad work streams that happen on the site. There is huge engagement on this project involving hundreds of people.

In terms of overseeing the works, we have our own internal team that oversees what our design team does on our behalf. There is circa 15 quality inspector teams on the site looking at the quality of the project in association with our own people on our own team.

Chairman: Will the witnesses give an example of a claim that went through the process, the evaluation of the claim, the assessment by the board and the outcome of conciliation from the original sum or percentage? I know that we are drifting into Committee of Public Accounts stuff here, but people at home would be interested in knowing how successful the claims have been. Will the witnesses give the committee some sense of where that is at?

Mr. David Gunning: I have an issue with that, Chairman, insofar as the conciliation process is a confidential process, and the step onward from there, as I have mentioned, is the High Court. What I can say is that there are a number of large conciliations currently active and going to go through the process. I am afraid that I cannot say an awful lot about them. Smaller conciliations concern, for example, disagreements around costs for a piece of equipment, a structural issue, the specification of a wall finish or a piece of joinery. The discussion in those cases tends to be around whether the costs should be borne by the contractor or the employer. Our view is clear on that, depending on the situation. The difference between the parties could be a few thousand euro or less. Nonetheless, we are conscious that this is public money and our responsibility in these matters is to defend the public purse in every sense.

I hope this has given the committee a flavour without-----

Chairman: Mr. Gunning has given us a sense of what the claims are about. I call Deputy Burke.

Deputy Colm Burke: I thank the members of the board for their work. As someone who has acted in arbitration cases in a legal capacity, I am familiar with the dispute resolution processes with which the board is dealing.

People might not like me saying this, but I have engaged with the developers of a children's hospital in Ontario that is costing \$3.8 billion in Canadian currency, or €2.6 billion. The hospital is a similar-sized development. It would be worth people's time to consider that development in light of the scale of our children's hospital.

The previous Oireachtas health committee was invited to visit the Dublin site. If I am correct, the then Chairman, former Deputy Michael Harty, and I were the only two who did so. I am open to correction on that, as there may have been other members present, but that is my recollection. I would look forward to visiting again.

I wish to address the 600 or so claims, which the board says amount to €200 million. I am concerned about that figure. My understanding is that there was to be a bill of quantities provided for the tendering process. This was certainly to be the case for the contract's second phase. Is it now the case that the bill of quantities was not adequate for the tendering process and the contract and, as a result, disputes are arising?

If the more than 600 claims amount to €200 million, some claims must be for well in excess of €50,000. Perhaps Mr. Gunning will outline the types of claim in that regard. How many of the 600 claims have been resolved? How many can be resolved before the end of the year? How many will remain unresolved and go to a more detailed litigation process? If we are talking about €200 million extra, these 600 claims are not €1,000 each. Some of them must be substantial sums. Therefore, there must be a significant variation between what the builders are being asked to do and what they claim they were required to do under the plan and design stage and the bill of quantities. Mr. Gunning might provide us some details.

Mr. David Gunning: I will start with the Deputy's final comment. There are a small number of large claims for tens of millions of euro going through the conciliation process. Then there are a large number of claims in the thousands of euro. We are making a renewed effort with the contractor to try to resolve the ones towards the smaller end and move on.

Deputy Colm Burke: How many of those have been resolved to date?

Mr. David Gunning: A handful have been resolved. Not many. Purely on a value for money basis, we are trying to make an effort to resolve some of them. Dealing with them-----

Deputy Colm Burke: My question on the substantial claims relates to how the builders quoted on the basis of the design and the bill of quantities. What substantial change occurred that now allows the builders to claim over €50,000? It must have been a substantial variation.

Mr. David Gunning: Our view is that the design on which the builders made their quotations and tendered was complete and was accepted as such. There have been a significant number of claims and we will not successfully defend all of them, but we argue that there has not been any significant change in the scope of the project and what we are expecting to build during the course of the project from pre-phase B to the building phase. That is the position.

Deputy Colm Burke: If a situation arose where an engineer on site decided that a change was required, what would be the process to have that sanctioned? It would be a variation in the original design.

Mr. David Gunning: That is an excellent question. A significant issue that arose in the PwC report was the need to put in place a robust change management system. We have put that in place in respect of signing off on, for example, design changes. This does not just involve changes that are driving the prices up, though. We are also focused on opportunities to reduce costs to try to take cost out of the equation, so to speak. We have a robust sign-off process in place.

Deputy Colm Burke: Has anything occurred in the past 12 months that has given rise to a need to make further variations to the original design? It could be something simple, for example, the equipment being installed has changed or been updated. Have substantial changes needed to be made to the design in order to accommodate the change in what is available?

Mr. David Gunning: I understand the question. The answer is “No”. The design has been remarkably stable in terms of major issues and changes. There have not been many changes. There have been some changes in respect of smaller issues such as improvements and enhancements, but not in respect of major issues.

Deputy Colm Burke: Turning to Connolly and Tallaght hospitals, what was the variation between the initial contract price and the final cost in the case of the former?

Mr. David Gunning: I will summarise. We can provide the information, but the final account was the subject of a conciliation and there is a difference of opinion between the development board and the contractor. I must check to see if I am allowed to release that information to the committee. If I am, I will provide it.

Deputy Colm Burke: Are we talking 10% or 15%?

Mr. David Gunning: We are talking about hundreds of thousands of euro in the difference.

Deputy Colm Burke: Is it a substantial percentage difference?

Mr. David Gunning: I am trying to work out the percentage of the total cost now. It is not a large percentage of the contract price.

Deputy Colm Burke: What is the board’s expectation in respect of Tallaght?

Mr. David Gunning: A number of significant claims and conciliations are active in respect of Tallaght, one of which is for a considerable amount. Since it is in a conciliation process, I am not in a position to share the details on it, but we are trending above the contract price in Tallaght.

Deputy Colm Burke: When we were on site, the people we met expected up to 4,000 people to be working there when the project was in full operation. Have the Covid restrictions forced the contractor to reduce the workforce or are there other reasons for the reduction? The plan was to have 4,000 at peak but that is now not physically possible because of the risks with Covid. Have the contractors engaged with the witnesses in respect of the Covid restrictions and how they are hindering the progress of the project?

Mr. David Gunning: I thank the Deputy for the question. The figure of 4,000 was never

part of the plan. The plan was to get to approximately 2,000. The maximum number of people on site would be 1,900 or 1,950 from the contractor and all of the subcontractors. At present, as Mr. Devine mentioned earlier, we are up to approximately 1,900 to 2,000 people on the site, so we are a little bit short.

It is fair to say, and I acknowledge, that BAM has done a very good job in terms of implementing its Covid protocols on entry onto the site. It is constructing mess or hygiene facilities and other services to look after staff members. I acknowledge the very good work it has done on this. Now that these facilities are in place, the capacity of the site to take on more workers and allow more people into the site becomes realistic.

I would also like to say that from the board's perspective, the health and safety of all people on site, whether with regard to Covid or the safety of construction sites issues, are of critical importance and we would never want the contractor to take any risks that would in any way impair the health and safety of anyone, from Covid or otherwise.

Deputy Colm Burke: Was there any case of Covid on site?

Mr. David Gunning: Mr. Devine has the most up-to-date information on this and I will ask him to comment quickly on it.

Mr. Phelim Devine: There have been 19 Covid cases on the site since the restart, of which two are active. As Mr. Gunning said, BAM is following all of the HSE protocols in dealing with these cases. The site has not closed down as a result and BAM has handled the situation, including all of the welfare facilities, very well. There have been two cases in Tallaght and I do not think any of them are active at present.

Senator Seán Kyne: I thank the witnesses for their presentations. I was listening to them in my office and I heard most of the deliberations. There has been a long history and saga with this project but it is heartening to see the photographic evidence the witnesses have presented on the progress where we can see the physical size of the project and the progress over the past year with the heights of the various parts of the project. It is heartening to see this, notwithstanding the delays or the inability to give a concluding timescale for the project. I understand the Covid delays, and every construction site was closed down and there were knock-on effects. Are the witnesses concerned that BAM has been prioritising other projects and, therefore, not bringing work people onto this site? They mentioned the figure of 900 work operatives on site and it was planned there would be 1,600.

This time last year, there was a four-month delay which was a six-month delay by the time the Covid lockdown started. What was the reason for this? Obviously there were no Covid delays at that stage. Why exactly was there a delay at that stage? Has that been ironed out? It was a four-month delay and by the time the lockdown started it was a six-month delay.

Mr. David Gunning: I thank the Senator. I will start and work backwards. The main contributor, in our opinion, to the delays that were accumulated were really down to resourcing and resource levels and not hitting the progress targets that were required. At this time, as of right now, if we were complying with the guaranteed maximum price programme, the concrete and steel frame should be 100% complete, the facade should be approximately 75% complete and the fit-out with the internal partitioning should be almost half complete at this time. We are not complete with any of these individual items. The delay in our estimation is down to the challenge the contractors faced in terms of providing resources to the project.

The Senator's initial question was whether it favours other sites as opposed to this one. I cannot get into speculation and formulate an opinion on this. I am determined that in this project we stick to the facts. I do not have information to give an answer one way or the other on this and I hope the Senator will appreciate the frankness of my response on this particular issue.

Chairman: What time does the work start in the morning? The reason I ask is I am conscious there are a lot of residents surrounding the site and one of the complaints that many residents associations in the area have is that the site is worked on early. I presume it is the contractor trying to make up time. Do the witnesses have any idea what is the official start time?

Mr. David Gunning: I will ask Mr. Devine to answer this. It is very important that we maintain good relations with all our neighbours in these matters and I will ask Mr. Devine to answer this more specifically.

Mr. Phelim Devine: According to the planning application the working hours for business during the week is from 7 a.m. to 7 p.m., but BAM, through consultation with Dublin City Council and its project monitoring committee with local representation for residents, has extended these hours or has sought derogations from Dublin City Council for specific activities on the site, such as large concrete pours. It has started slightly earlier in some cases and worked beyond 7 p.m. on the strength of these derogations, but it has done this in a consultative manner.

Chairman: It was said earlier that prior to Covid there seemed to be a delay in the roll-out of the project itself. This was my sense because I travelled in and out of St. James's Hospital for about 38 days and there did not seem to be a huge amount of activity on the site. This is just anecdotal evidence. There was a lot of concern in the media at that time. Was that helpful? There was a "Prime Time" programme on the slowness of the actual building on the site. Quite a lot of cranes seemed to appear then and we could see floors going up. Do the witnesses believe that media interest in the site, and perhaps the interest of politicians and taxpayers, has been helpful in moving the building onwards?

Mr. David Gunning: It is an interesting question. The programme for this is complex. There is, of course, a lot of media interest and we want to reassure people we are fully committed to our purpose of designing, building, equipping and handing over the project to Children's Health Ireland, which will operate it for many years to come. There is a lot of commentary, much of which is uninformed. There is a lot of commentary that has some validity. We want to reach out to make ourselves available to engage with people who want to come and visit, see the project and see exactly what is happening. We are more than happy to do this. We would welcome the visits of members of the committee and others who want to do this. Informed commentary is always welcome.

Chairman: It would be helpful for the committee to go to the site at some stage. Again, we are still at a loss - I certainly am and I do not know about other members - about what exactly is causing the delay. There seemed to be a delay before Covid. We understand delays during Covid. Are there delays because of subcontractors not being paid by the main contractor? Is this causing some difficulty or disruption on the site? I know there are changes now post Covid-19. There are many lorries going through the Davitt Road entrance. Some lorry drivers maintain there is a delay because of that. That may be down to health and safety - I do not know. Anyway, we are not getting a sense of the reason or the main reasons for the delays. Mr. Gunning said the board is not getting a compliant programme and this is missing from the contractors, but I do not believe we, as a committee, are not getting a sense today of what the problems are and what has caused these problems.

Mr. David Gunning: Forgive me, Chairman, if that is not coming across clearly. I answered this question earlier. Our view is really around the resourcing of the project. There was an earlier question about what it would be today if the contractor was complying with the guaranteed maximum price, GMP, programme. We would expect the project to be building up soon to 1,900 people on the site. We have approximately half of that. I suggest that is a clear metric. We have also said that we would have expected by now to have the frame, concrete, steel, facade and various other things moved on. They are nowhere near the level of completion that we would expect.

One further point relates to the payments to the contractor. We would expect under the GMP project, or contract, that at this stage we would have paid the contractor €545 million. Instead, we have actually paid €308 million of the total of €900 million. Instead of being halfway through the project, we are one third of the way through the project. These are the clear metrics indicating where the challenge lies. The project will have to be resourced to make significant progress. That is the challenge.

Deputy John Lahart: Did the development board inform the Government or the Minister for Health of its deliberations around the possible termination of BAM as the contractor? That is a “Yes” or “No” question really.

Mr. David Gunning: I did not inform the Minister. Do we inform, shall we say, the oversight group in terms of where we are? The answer to that is “Yes”.

Deputy John Lahart: What was the response?

Mr. David Gunning: We informed the group that we had an intention or that this was one of the issues we considered but that action was not taken subsequently. I have mentioned that we considered referring to conciliation but we do not actually do it. That is what happened.

Deputy John Lahart: Mr. Gunning used the word “intention”. That is a strong word. It was the intention of the development board to terminate the contract. Is that right?

Mr. David Gunning: No. I said it was our intention to refer the question of termination to conciliation. I am saying that to be absolutely clear.

Deputy John Lahart: I get that and I am happy to clarify that the board had that intention. What stopped the board from doing that?

Mr. David Gunning: The primary reason was that the contractor returned to site.

Deputy John Lahart: I have a second question. This begs the question - perhaps Mr. Gunning cannot answer this - as to how a contractor like BAM, which to me has suffered significant reputational damage, got the contract in the first place given the company’s inability to provide the necessary human resources. That was before Mr. Gunning’s watch, as it were. Mr. Gunning has pointed to that. Does Mr. Gunning believe BAM has the capacity to complete the contract?

Mr. David Gunning: BAM Ireland is a division of or part of an international tier 1 construction company. I have no doubt that within the BAM group, they have experience. We know that BAM Germany and BAM UK have experience of building hospitals and completing large-scale projects. In that sense, we are absolutely sure that BAM has the potential to take on and complete this project. There is no doubt about it: that skill and capability is within the BAM group.

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Deputy John Lahart: Does Mr. Gunning believe that BAM will be able to ramp up to the full human resource personnel requirement necessary?

Mr. David Gunning: I think we are getting into the challenge of providing us with a compliant programme. Certainly, we are hopeful that the contractor, which has several times committed to us its intention and commitment to the project, will attempt to find the necessary resources to complete the project.

Chairman: We will finish on that. My thanks to all the witnesses for their helpful engagement with us this morning. I know some of the questions have been difficult and so on but it was really helpful. We will take up the board on the possible visit, perhaps in the new year.

At our next meeting we will meet representatives of the National Public Health Emergency Team to get an update on the effectiveness of the restrictions to suppress the Covid-19 virus.

The joint committee adjourned at 1.35 p.m. until 11.30 am. on Wednesday, 25 November 2020.