

GLA Oversight Committee, 22 October 2015**Transcript of Item 8: Garden Bridge Internal Audit Review**

Len Duvall AM (Chair): We are now going to deal with our second collection of evidence around the Garden Bridge audit inquiry. We are very fortunate to have Clive Walker, the Director of Internal Audit for Transport for London (TfL). We are focusing on the audit report in relation to the procurement of the Garden Bridge. Thank you very much for coming today.

We have a range of questions focusing around the original audit report and the subsequent changes. Could you just explain to us the process of carrying out an internal audit review and the general purposes, from an audit point of view, of a review? Who would aid that in an organisation like TfL?

Clive Walker (Director of Internal Audit, TfL): The starting point for an internal audit is an engagement letter, which we would agree with and issue to the person designated as the principal auditee, who is the person in charge of the area that is being reviewed. The engagement letter's purpose really is to set out the high-level scope that we are covering, the scope areas and timeframes for the audit and the objective of it.

Once that is agreed, the auditors would then go into the audit fieldwork stage. That would involve interviews with key people, review of documentation. Depending on the nature of the audit, there might also be some testing of transactions on a sample basis, and they carry out a programme of audit fieldwork. At the end of that, they put together an audit report to set out the findings.

The main aim of the audit report is to highlight any issues that have been identified and then, most importantly, to make recommendations to management for actions that they should take to put those things right in the future. The report goes through various layers of management review within the internal audit department before we arrive at a draft, which then gets issued to the principal auditee and possibly others who would need to comment. It is sent to them both for their comments on the factual accuracy of the report, the tone of the report, matters of context and so forth and also so that they can start agreeing the actions that they are going to take in response to the issues found. Where they suggest changes to the report, we will consider those and, depending whether we think they are reasonable or not, we may or may not accept them.

The report can then go through a series of further iterations before we finally issue it. It is generally issued to the managing director in charge of the area under review and then a range of other people. For example, the Chief Finance Officer and General Counsel get copied with all audit reports we issue. Obviously, people responsible for action and people in the areas that we are reviewing will also get it. That will include a series of management actions generally, which at some stage later on we will follow up to make sure that those actions have been taken forward and addressed. We report on a quarterly basis to the Audit and Assurance Committee on the reports that we have issued and also progress with delivery against those actions.

Len Duvall AM (Chair): The initial audit inquiry, if I can call it that, was a consequence of an Assembly Member making a – ‘complaint’ may be too strong a word – asking TfL to look into the issues of procurement. That was to Sir Peter Hendy [former Commissioner, TfL]. Would your engagement letter necessarily be going back to Sir Peter Hendy and also to the interested parties setting up the terms of reference for how you are going to go about your business? Is that fair to say?

Clive Walker (Director of Internal Audit, TfL): Yes, certainly Peter would have seen it and it was addressed to Richard de Cani as the Managing Director, Planning.

Len Duvall AM (Chair): He was the principal person, not the individual but his department activities were going to be the focus of your inquiry. Was there any exchange with the engagement letter about the terms of reference that you set out?

Clive Walker (Director of Internal Audit, TfL): I do not think there were. As I say, it is a fairly high-level document and it set out the six key areas in respect of the procurement that we were planning to look at. I do not remember there being any particular discussion or issues over that, really.

Len Duvall AM (Chair): TfL has sent us a number of documents and of course for this meeting we have focused on a number. I just want to check. Do we have the engagement letter? Is that part of the documents? Can we have a copy of that engagement letter or in fact any correspondence to do with the engagement letter to see if there was any from your original sending-out, whether there was any exchange about your terms of reference and whether there were any queries on that? Thank you for that.

Just in terms of good practice because we are going to come back to this, but on the issue once you have done your initial report, that engagement issue, I have had in another life – and other Members around the table may have had another life – exchanges with internal audits. Is it best practice that usually it is about factual inaccuracies that are evidence-based? You say something to me and I say, “No, you do not quite have that right. Have a look at this”. I present you with some evidence and then you make some changes because it is your report, in reality, is it not? Is that how it works in best practice or does it not work like that?

Clive Walker (Director of Internal Audit, TfL): That is part of it but, for example, you can have situations where the facts may be correct but there is a context around it that would aid understanding of an issue that is being raised. That sort of thing is perfectly fine.

Len Duvall AM (Chair): Additional information?

Clive Walker (Director of Internal Audit, TfL): Yes, there can be additional information and we certainly consider matters of the tone of the report as well. Yes, all of things can be taken into account. You are absolutely right in saying that it is the internal audit team and ultimately my decision as the Director of Internal Audit which changes get made to that report.

Len Duvall AM (Chair): One of your findings in your report was that there was material that you could not locate or was missing. Do you have a list of that material? I can understand some of it from your report of what is missing. We have an interaction with potential tenderers; that documentation is missing. Have you done a list of what other areas or is that the main thrust of the missing material?

Clive Walker (Director of Internal Audit, TfL): Yes, the two things are that there was not any supporting documentation for the commercial scores in respect of the first of the tenders and then the individual scoring and notes for the technical scores for the second tender were missing. The totals were there but the notes of the individual scoring by the people doing that were the things that were not available.

Len Duvall AM (Chair): All right. Just in terms of internal audit reports and practice internally, this one is going to some body within TfL. That is standard practice; they will be reporting somewhere and that will give you some oversight. Is there a public body where that would go?

Clive Walker (Director of Internal Audit, TfL): We report a summary or usually the executive summary of all the reports issued to the Audit and Assurance Committee of TfL, which is a public body.

Len Duvall AM (Chair): The public would be able to access that material?

Clive Walker (Director of Internal Audit, TfL): Yes, they will.

Len Duvall AM (Chair): I suppose just in terms of who carried out the investigation and the draft of the internal report prior to 22 July, in terms of your remit, what was the team that did it and what was your role within that? Did you have a role or did you not have a role at that stage?

Clive Walker (Director of Internal Audit, TfL): As the Director of the department, I ultimately agree the issue of reports, but there was an auditor involved, an audit manager and a senior audit manager, who are the chain. The process would have been that the auditor would have drafted the report first and put it through to the audit manager for review, who would have commented on it, maybe some changes made. When they were happy with it, it would have gone to the senior audit manager for his review and then, when he was happy with it, it would have come up to me for my review.

Len Duvall AM (Chair): At what stage would your report be shared? Sorry, 22 July comes to mind, but I have so many dates in my head on this process. Is it 22 July when it really goes not public but within the wider TfL and it then comes out of your area and you share with your colleagues your findings? Is that the date of when it leaves you?

Clive Walker (Director of Internal Audit, TfL): Yes. That was the first time it was shared outside of our department. We sent a copy to Richard de Cani as the principal auditee and a day or two after that we also shared it with some of the commercial staff, who obviously had an interest in it as well. It was not shared before 22 July.

Len Duvall AM (Chair): I suppose in the preparation of a report like this, you have lots of meetings with people in various bits of the organisation when you ask various questions. Good, effective managers almost know where that goes, if you understand what I mean. Were there any other meetings prior to 26 July with members of Mr de Cani's department or him before you did the final drafting?

Clive Walker (Director of Internal Audit, TfL): There would have been meetings, yes, with people who were involved in the procurement process two years ago. Yes, there certainly were meetings as part of the audit fieldwork, with him and with members of his team, to discuss how the procurement was carried out.

Len Duvall AM (Chair): I presume there would be a volume of correspondence in that, not just in verbal exchanges and by telephone, but there will be meetings where not necessarily there would be follow-up emails for those meetings?

Clive Walker (Director of Internal Audit, TfL): Yes. Where there are meetings held, there will normally be a file note kept of at least the key points discussed at the meeting.

Len Duvall AM (Chair): Excellent; there will be a file note kept. Has that information been passed to us and do we have that information prior to 22 July?

Ian O'Sullivan (Project Officer): To a degree, there are emails and notes attached to the information that TfL has sent to us, which do describe some of the discussions between TfL employees.

Len Duvall AM (Chair): OK. Do we have the file note? I presume there is a central file note of some of those exchanges. Is it a full audit that we have or are there any gaps?

Ian O'Sullivan (Project Officer): It is difficult to determine whether it is the full audit, but there are email chains and there are pages with comments attached to them.

Len Duvall AM (Chair): We have had this for a short period of time and we just want to get to the bottom of some issues. We might want to come back and if you have a central file note, just cross-reference your central file note with the information that we have. That would be the best way forward on that. Shall we move on, colleagues, to the next set of questions?

Caroline Pidgeon MBE AM: First of all, what I want to ask is how it can be good practice that if a Member such as myself requests a review and the Commissioner [for Transport] absolutely agrees to this review of this procurement process, the engagement letter is sent to the head of the department under investigation for part of this, who has been very involved in the process? Would you not have a different department that is engaged in this or a different senior manager so that there is some independence in this process?

Clive Walker (Director of Internal Audit, TfL): We tried with this audit to follow exactly the normal audit process we have. It is internal audit and so it would be absolutely normal for the addressee of the engagement letter and ultimately of the report to be that principal auditee, who in this case was Richard de Cani. It was just following the normal process that we have.

Caroline Pidgeon MBE AM: Is it normal if you knew that it was Richard de Cani, who was very involved in this process, for him to be engaged in it? I wondered whether it was the Commissioner and that he would be the one signing off the engagement letter as to what is being looked at because he does not have any conflict of interest.

Clive Walker (Director of Internal Audit, TfL): No, we agreed it with Richard de Cani and we just followed our normal process.

Caroline Pidgeon MBE AM: That is normal process?

Clive Walker (Director of Internal Audit, TfL): Yes.

Caroline Pidgeon MBE AM: It just seems slightly strange to me that, if it is an area under investigation, it would be that person who gets to decide the remit, as it were, of your audit. It does not seem quite right.

Clive Walker (Director of Internal Audit, TfL): It is the word 'investigation', really. We are auditing the process that was followed and trying to highlight any issues in that and to raise recommendations and so that is almost, by necessity, addressed to the people who were responsible for the area in the first instance.

Caroline Pidgeon MBE AM: Just following up from Len [Duvall AM], obviously you have highlighted that the engagement letter was not in the 500 pages of correspondence that we were sent hard copy, which is going back to how TfL used to operate with us. I thought we had moved on to things being electronic. Within that, can you assure us that every file note and every single bit of correspondence relating to this project has been included?

Clive Walker (Director of Internal Audit, TfL): What was asked for was everything to do with all the drafts and all the correspondence to do with all the drafts of the report, so yes.

Caroline Pidgeon MBE AM: If we asked for any other correspondence and materials relating to this, we may get some additional information?

Clive Walker (Director of Internal Audit, TfL): There may be other things that were not related specifically to the report. There would be audit work papers and so forth, for example, from the actual fieldwork.

Caroline Pidgeon MBE AM: Maybe we might want to ask for that. Thank you. It is really helpful clarifying that.

I wanted to move on to the reports and we have various versions which we helpfully now have in the public domain. What I want to know is how the decision was made to change the focus of the audit's conclusions from looking at openness and objectivity, which is the original scope, to suddenly turning to value for money in the final published version.

Clive Walker (Director of Internal Audit, TfL): I do not think we did really change the focus of the report. The actual issues that are raised are all around matters of transparency and openness, issues like the fact that there was contact with one of the bidders to ask them to drop their price when others were not contacted and so forth. The main issues that are in the report are about issues of transparency and openness. There is a sentence in there around value for money, but I do not think that changes the overall focus of the report.

Caroline Pidgeon MBE AM: In your conclusions of the report, your original version highlighted a number of problems: no procurement strategy; informal contacts with bidders; lack of clear segregation of duties; no evaluation of tender documentation; the procurement being files incomplete. You said:

"Taken together, these adversely impact on the openness and objectivity of the procurement."

That was in your original draft. You are talking there very clearly about openness and objectivity. That was deleted by the time we got to the final report, which just talked about value for money. That seems to me a very big change in the emphasis on this report.

Clive Walker (Director of Internal Audit, TfL): The actual phrase 'openness and objectivity' was not in the final version, but I did not think it was a terribly helpful conclusion because all it was really doing with those bullet points was repeating the issues that had been raised earlier on in the report. What we tried to do was to just provide a more balanced conclusion, but it still talks about the fact that there were instances where TfL policy and procedure with regard to communication with bidders and tender evaluation was not complied with. It still brings out those points but, yes, sure, it does not actually use those particular words.

Caroline Pidgeon MBE AM: The language has changed and it is a bit softer, rather than the initial report, which is perhaps more hard-hitting?

Clive Walker (Director of Internal Audit, TfL): Yes, but I am still happy that the report brings out quite clearly the issues that we found, which, as I said, is the real focus of what we are trying to do here.

Len Duvall AM (Chair): From your email to Richard de Cani of 15 September 2015 and the executive summary that you have included in that, you would not really know that the original scope was about fairness by this executive summary. In terms of the contribution you just made, it would not be apparent from the words you use. I realise you might not have this in front of you, but this was 15 September. It is the executive summary of the final report, but you would not, certainly from your executive summary, come to that conclusion on what you have just said to the Member. It is the word 'fairness' I am concentrating on because that was what you used.

Clive Walker (Director of Internal Audit, TfL): Going back a stage, there were six areas under the scope that we said we would cover and, in fact, that is what you will see in the letter of engagement when you see that. They are the underlined headings in the findings section of the report and so they were the six areas that we said we would cover in that scope.

Len Duvall AM (Chair): OK. We might come back to that.

Clive Walker (Director of Internal Audit, TfL): What the first four bullets do is point out that under four of those headings there were not any issues found and then the next paragraph basically deals with the fact that under the other two headings we did find some issues.

Len Duvall AM (Chair): Sorry to interrupt. I just wanted to clarify that.

Caroline Pidgeon MBE AM: No, that is helpful. In terms of your work as an auditor, you have a duty to highlight possible consequences of not following procedure. Is that correct?

Clive Walker (Director of Internal Audit, TfL): I am not sure that we have a duty to do that. The duty is to highlight the issues that we find and to ensure that actions to put them right are agreed.

Caroline Pidgeon MBE AM: Would you not in that think it is right that you should highlight possible consequences of the action or lack of action that has been taken or inappropriate action?

Clive Walker (Director of Internal Audit, TfL): Yes. It would be reasonable to do that, yes.

Caroline Pidgeon MBE AM: Then why was the reference to the possibility of legal challenge removed after the first draft from the audit review? That clearly is a very serious consequence of the actions taken by officers. Why was that removed in the final draft?

Clive Walker (Director of Internal Audit, TfL): I am not a lawyer and so I thought in that instance it was better to stick with reporting the issues that we had found and leave the drawing of conclusions about the potential legal ramifications to other people.

Caroline Pidgeon MBE AM: Were you asked by TfL Legal to remove this?

Clive Walker (Director of Internal Audit, TfL): No. In fact, it was actually removed from the report before it even got to me to review and so it was one of the managers in the chain who did that. I stand by it. It was the right decision for the reason I have just stated, but it certainly was not because of anything that anybody in the legal department said to us, no.

Caroline Pidgeon MBE AM: Len [Duvall AM] has already touched on this, but how much input do you really think senior managers who are the subject of an internal audit should have in terms of determining its findings? There is one thing about factual inaccuracies. The Chilcot [Iraq] Inquiry is still bogged down in terms of people confirming factual accuracy or not. How much involvement should they really have?

Clive Walker (Director of Internal Audit, TfL): It is right that they should be allowed to comment. Ultimately the decision as to which of those changes to accept lies with me. In fact, if you follow the chain through, you will see that there were various changes requested, some of which we accepted and some of which we did not accept. That is a perfectly reasonable process.

Caroline Pidgeon MBE AM: It was interesting what you said when I asked you about the possibility of legal challenge. You said that that was your move before you even saw it. You were not ever in a position where you were given, "This was the original version and this is what we have been asked to do and therefore this is what we are proposing". You were not in a position to compare the original draft by one of your team, who are very experienced in this field, but they have written quite a damning report and by the time it comes to you it is already considerably watered down.

Clive Walker (Director of Internal Audit, TfL): That is what you have a chain of management for.

Caroline Pidgeon MBE AM: To water reports down?

Clive Walker (Director of Internal Audit, TfL): No, to review them and to get them into a shape that they think is right for issue and then they send it through to me.

Caroline Pidgeon MBE AM: To get it into shape so that management is more comfortable with it? I am not quite sure of your role because it seems to me if quite serious things are found in a process - and there were serious failings in this process - that they should be highlighted in a strong way with clear recommendations so that it does not happen again.

Clive Walker (Director of Internal Audit, TfL): The failings are highlighted. One of the striking things is that if you compare the first draft that went to Richard De Cani and the final issue draft, the issues in that report are, basically, the same. There are no new issues in that first draft that did not make it through to the final version. Sure, some of the words have changed and I am not denying that, but the issues were all there.

Caroline Pidgeon MBE AM: The words have changed but also the tone is so considerably different. Richard [De Cani] was able to quote stuff as though it was praising the process at the last meeting, quite frankly. Let me just point out another issue:

"In judging the rates provided by the bidders the original audit stated the rates were different yet they all received the same evaluation score. We would not expect that each bidder would receive the same score under such circumstances."

This does not appear in the final version, yet this is one of the initial things that Sir Peter Hendy asked you to look into.

Clive Walker (Director of Internal Audit, TfL): Yes, but on further exploration of that, we found more information that set it into context, which is what is in the final version. The tenders were assessed on the basis of the day rates and the day rates were very similar to each other. It was just when you looked at the fixed costs, which they also put into the equation, that there was the wide variation. Therefore, when we looked at it, it was not surprising that the commercial scores were similar. That was just a misunderstanding of the initial part of the audit that was cleared up later on.

Caroline Pidgeon MBE AM: In your audit reports - and you would expect them to be factual - you are stating the facts and then your analysis of those facts. Is that right?

Clive Walker (Director of Internal Audit, TfL): Yes.

Caroline Pidgeon MBE AM: Then why does the revised conclusion in some ways seem to offer possible reasons or excuses as to why the procedure was not followed, rather than stating, "This is what happened: the

procedure was not followed”, and then recommendations going forward? Why are you providing, as it were, the excuse or scene-setting on this?

Clive Walker (Director of Internal Audit, TfL): The context is quite important. It is clear that there was a lot of uncertainty at the start of this as to exactly what TfL’s role was. I do not see any particular harm in stating that.

Caroline Pidgeon MBE AM: Would it be generally considered acceptable for the Chair of TfL to host a private meeting with an architect who was then a few days later sent by TfL an invitation to tender on such a project? Would that be seen as appropriate?

Clive Walker (Director of Internal Audit, TfL): I do not have any views on that.

Caroline Pidgeon MBE AM: This is a meeting that did not appear even in the Mayor’s diary. It is only through a Freedom of Information Act request (FOI) that this meeting has emerged. Do you think that is appropriate and good practice?

Clive Walker (Director of Internal Audit, TfL): I am not prepared to comment on that. It is outside of my remit.

Len Duvall AM (Chair): It was in your original report and then was deleted.

Caroline Pidgeon MBE AM: Yes.

Clive Walker (Director of Internal Audit, TfL): No, it is still in there. In the second paragraph on page 2:

“The Commissioner and Managing Director of Planning for TfL met with the Mayor following a presentation the Mayor had received from Thomas Heatherwick Studio.”

It is described as a ‘presentation’ here where it was described as ‘representations’ in the earlier draft, but it is the same meeting that is being referred to.

Caroline Pidgeon MBE AM: Finally, you must produce an awful lot of these reports in your team looking at different areas. Has this report taken more time than most and have you felt under pressure to get the wording right on this report perhaps more than you would on any other?

Clive Walker (Director of Internal Audit, TfL): It is fair to say that because of the subject matter and the fact that there was clearly going to be a lot of interest in the report, it has had more people and more senior people looking at it than would be normal or usual. It is not unique, but it is certainly rare that so many senior people are looking at it.

As to whether I felt under pressure, no, I did not. I considered comments that were fed to me as I always do in an audit. I accepted some of them – as the change shows – and I did not accept others. I am very comfortable with the report we ended up with.

Caroline Pidgeon MBE AM: Okay. Thank you.

Joanne McCartney AM: I just want to return to one of Caroline’s [Pidgeon MBE AM] points about whether it is a duty of an internal audit to set out the consequences of various actions. You said not necessarily.

However, those consequences also highlight risks of an association. It is not your duty to highlight where there might be a risk to the organisation and did these not fall within that?

Clive Walker (Director of Internal Audit, TfL): The fact they are being raised as issues with actions being agreed to try to prevent them from happening again does clearly show that we think that they are risks to the organisation.

Joanne McCartney AM: What have you done about them since? Have you asked for a further risk audit to be done so that a review of TfL procurement procedures can take place with regards to that risk to the organisation?

Clive Walker (Director of Internal Audit, TfL): We have not yet because we have not long since finished this audit. Clearly there is a number of things that the commercial department have undertaken to do to tighten up the briefing of people who are involved in procurement, to make sure that they know what is expected of them, to try to ensure there is more consistency about bid evaluations and so forth for the whole programme of work that they are taking forward.

What I would plan to do is to include an audit in our plan for next year that we would go and make sure that is actually being considered and being built into processes going forward. Yes, we are not just going to leave it here. We certainly want to follow up and make sure that there is action taken as agreed.

Joanne McCartney AM: Is it fair to say that there has been sufficient irregularity or risks associated with this procurement that have led you to have to do a further review?

Clive Walker (Director of Internal Audit, TfL): Yes. The fact that there were actions coming out of the audit - so things that management need to do to address those issues - shows that there is action that needs to be taken. We intend to go back and ensure that those actions are followed through and applied to other procurements going forward.

Joanne McCartney AM: Chair, you should follow that up when that takes place.

Len Duvall AM (Chair): Also, there are additions that come up in terms of interactions. There are changes that completely switch the emphasis of your report. There may well be things contained in it. In your original report I do not think there is an emphasis on value for money and we get to the final draft and there is a new substantial area, which is more than tone, around value for money. Explain to me the background to that exchange in terms of the drafting between officer colleagues in getting to this report.

Clive Walker (Director of Internal Audit, TfL): I was asked whether it was possible to draw any conclusion about value for money and so I included a statement that I felt comfortable making.

Len Duvall AM (Chair): That is your statement, not someone else drafting the statement?

Clive Walker (Director of Internal Audit, TfL): Yes. It was a statement that I felt comfortable making because I had been asked whether I could say anything about overall value for money within the report.

Len Duvall AM (Chair): Who requested that statement?

Clive Walker (Director of Internal Audit, TfL): Richard De Cani said it would be useful and Howard Carter [General Counsel, TfL] asked whether it would be possible to say something along those lines because he thought it would help the report.

Len Duvall AM (Chair): OK. Why would it be useful, just for the record?

Clive Walker (Director of Internal Audit, TfL): When you are considering a procurement, it would be normal to think about whether that procurement is giving value for money or not.

Caroline Pidgeon MBE AM: There are just a couple of other things I just wanted to clarify with you. In the audit it refers to the TfL legal opinions. I am not sure whether we have had all of those in the 500 pages, but if not could you make sure we have copies? Could we have copies of your legal advice that was given, please? That would be very helpful.

The tender submission within it requires that any conflict of interest should be declared in the proposal. Did you look at this, particularly given that one party had effectively pre-market engagement and on several occasions? Would you agree this may constitute a conflict of interest?

Clive Walker (Director of Internal Audit, TfL): I am not sure that I understand the question, sorry.

Caroline Pidgeon MBE AM: In the tender submission documentation – and I am told it is item 5 on page 5 – it requires that any conflict of interest should be declared. If someone is bidding, they have to declare if they have any conflict of interest. Given that one party – as we know, the winning architect’s firm – had pre-market engagement, had at least one meeting with the Mayor and had other dialogue, would you not agree that that would constitute a conflict of interest and is this something you looked at as part of this process?

Clive Walker (Director of Internal Audit, TfL): I am not sure whether it would constitute a conflict of interest or not. It is not my area of expertise and so I do not know. Whether we looked at it, I think we would have. I am slightly guessing here because we would need to go back and look at the audit work papers, but I would imagine that we would look to see whether there had been consideration of conflicts of interest, not necessarily whether we would have gone too much into challenging whether there were any that were undeclared or not. However, I am slightly guessing, I am afraid.

Caroline Pidgeon MBE AM: Perhaps in further correspondence we could clarify that and also clarify whether you think both procurements are in accordance with the various European Union (EU) public works directives and on public contracts regulations and so on to make sure that we feel that you have checked and have felt that they were proper and in accordance with all the rules.

Clive Walker (Director of Internal Audit, TfL): The latter point is probably more something that TfL’s legal people should be --

Caroline Pidgeon MBE AM: Maybe that was in their legal advice and we will see that, but it would be useful to have clarity on that.

Darren Johnson AM: You have acknowledged that there are several changes from the original version produced on 22 July and the final published version and that in all of the cases it has tended to reduce or soften the criticism. How was this decided upon?

Clive Walker (Director of Internal Audit, TfL): How were the changes decided upon?

Darren Johnson AM: Yes.

Clive Walker (Director of Internal Audit, TfL): Each time there were some proposed changes or comments coming, back they were considered by me and my team as to whether they were reasonable things that we could accept or whether they were not.

Darren Johnson AM: Who had the ultimate approval, then, of the final published draft on 16 September? Was that you or were others involved?

Clive Walker (Director of Internal Audit, TfL): No, it was me.

Darren Johnson AM: It was a decision purely by you?

Clive Walker (Director of Internal Audit, TfL): It was absolutely me, yes.

Darren Johnson AM: In the process between July and September when various people were making representations to you, Richard De Cani was one of those people. Did he make all the requests for changes or were other people involved in making other requests?

Clive Walker (Director of Internal Audit, TfL): There were some other people involved. Some of the people in the commercial team made comments and gave suggestions and so forth. As I said, Howard Carter commented on the report; he did not propose very much. There are a few people on a smaller scale. Richard was the main person we were dealing with.

Darren Johnson AM: Obviously, you accepted some of his suggestions. Were there others that you challenged, rejected and did not include in the work?

Clive Walker (Director of Internal Audit, TfL): Yes, there were.

Darren Johnson AM: Is there a record of those?

Clive Walker (Director of Internal Audit, TfL): It is all there in the trail. There are various versions of the reports where he has marked suggested tracked changes on reports and then we can see what went through and what did not. There is a clear trail in the file that you have been provided with.

Darren Johnson AM: Then the final decision on each of the changes was your decision and yours alone?

Clive Walker (Director of Internal Audit, TfL): Yes, absolutely.

Navin Shah AM: Very clearly, there are serious flaws seen by various stakeholders, legal practitioners and professionals. I do not have the privilege of mentioning any names, but we have a report from one of the stakeholders that says:

"Something is starting to smell rotten around the Garden Bridge project. To the general public it will seem that funds provided with the personal connection to the Mayor. One can tout a pet project. My first policy is strategy, my first proper procurement process in excess of a large amount of public funding for you and your mates in the pursuit of your project."

This is a damning verdict on how the whole project has been managed. There are serious issues about the procurement process. What do you have to say about this? Are you proud? Are you entirely behind the audit that we have been talking about?

Clive Walker (Director of Internal Audit, TfL): The comments that you are referring to are based on the findings of the audit report for the most part. That is where those statements have come from.

Navin Shah AM: Look, you have a situation here where right from the beginning you have not followed good practices and you have not had any input or even consultation with some of the bodies that would have assisted you in better procurement process, better design and evaluation. You ignored all of that. You have a report that was prepared, which has not only been watered down but actually omitted serious criticism and recommendations that were there.

Clive Walker (Director of Internal Audit, TfL): No, all of the issues are in the report and it is those issues that effectively you are quoting from when you are stating the criticisms to the procurement process.

Navin Shah AM: These were the deletions. They have already been pointed out and it is worth once again going back to those. The deletion from the earlier version says:

“There was no procurement strategy to manage and deliver each procurement. There were informal contacts with individual bidders in each procurement. There was a lack of clear segregation of duties. No evaluation documentation has been retained by TfL commercial for the tender [etc].”

Clive Walker (Director of Internal Audit, TfL): They are all in the final version of the report.

Navin Shah AM: No. Very clearly, what it shows here is that TfL has failed in terms of its procurement policy and not even following the rules of the Official Journal of the European Union (OJEU) guidance for procurement. At every level it has gone wrong and you are still sitting here trying to defend it. This is something that is indefensible.

Clive Walker (Director of Internal Audit, TfL): I am not trying to defend anything. My report highlighted all of those points which you just read out.

Navin Shah AM: No, that is --

Len Duvall AM (Chair): Let us be helpful. Why do we not ask you? They are in the report, as you say, in the sections you are referring to. Can you tell us if this is true, then, in terms of the report?

“There was no procurement strategy to manage and deliver each procurement.”

Is that true?

Clive Walker (Director of Internal Audit, TfL): Yes, the report says that.

Len Duvall AM (Chair): It does not say it in the conclusions, where it originally was. If the report says it, I am going to take you through this because this is quite important.

“There were informal bidders with individual bodies in each procurement.”

Is that true?

Clive Walker (Director of Internal Audit, TfL): Yes.

Len Duvall AM (Chair): That is wrong, is it not, in the TfL process?

Clive Walker (Director of Internal Audit, TfL): Yes, that is why we highlighted that as an issue.

Len Duvall AM (Chair): OK.

"There was a lack of clear segregation of duties in the evaluation of TfL 90711 design services."

Is that true?

Clive Walker (Director of Internal Audit, TfL): Yes, it is, yes.

Len Duvall AM (Chair):

"No evaluation documentation has been retained by TfL commercial for tender of TfL 90001 task 112."

Yes?

Clive Walker (Director of Internal Audit, TfL): Yes. Again, that is the point about the fact that when we came to look for the documentation it wasn't available.

Len Duvall AM (Chair):

"The tender documentation held within TfL 90001 task 112 procurement file is incomplete."

Clive Walker (Director of Internal Audit, TfL): Yes.

Len Duvall AM (Chair): Taking together all those points, then, these adversely impact on the openness and objectivity of the procurement. Is that true?

Clive Walker (Director of Internal Audit, TfL): Those are a bunch of issues with the procurement.

Len Duvall AM (Chair): Is that true? Taken in the context of those issues, because they were your words, is that true? Is that what took place?

Clive Walker (Director of Internal Audit, TfL): There are certainly a range of issues of things that we found in respect of the procurement that should not be the case. We raised them as issues and we are trying to get action taken --

Len Duvall AM (Chair): Sorry. I am asking if it is true. It is a yes or no. Is it true? Is it true in your professional view as a chief auditor about what took place within this process? Was that true? Do you stand by those issues? You are telling me it is in the report. I am quoting to you where it was clearer in the report and I am quoting that back at you. Is it true?

Clive Walker (Director of Internal Audit, TfL): It is true. Yes, you are right: it is true.

Len Duvall AM (Chair): All right. I now want to go back and ask about the language we are using here because I am not sure what language TfL was using. From everything I have said, everything you looked at and all the information you have provided, would you say that what took place - not all, but some aspects of it - was a contravention of TfL procedures?

Clive Walker (Director of Internal Audit, TfL): Yes.

Len Duvall AM (Chair): Thank you. When I see the words in the final published document which replaced those words of “inconsistency”, or “inconsistent with those procedure” I should be reading and thinking it was a contravention of TfL procedures.

Clive Walker (Director of Internal Audit, TfL): That is fine.

Len Duvall AM (Chair): In TfL’s audit speak that means the same?

Clive Walker (Director of Internal Audit, TfL): Yes.

Len Duvall AM (Chair): OK, all right. You understand what some Members think of the tone and the watering down – and I can understand why the public might perceive that – because I am not sure if “in contravention” is the same as “inconsistent”.

Caroline Pidgeon MBE AM: Absolutely.

Clive Walker (Director of Internal Audit, TfL): I think is.

Len Duvall AM (Chair): You think it is?

Clive Walker (Director of Internal Audit, TfL): Yes.

Len Duvall AM (Chair): In that sense the report that you offered up – even in the final version – is a pretty hard-hitting report about a process which could have been handled much better.

Clive Walker (Director of Internal Audit, TfL): It raises some significant issues.

Len Duvall AM (Chair): Significant matters.

Clive Walker (Director of Internal Audit, TfL): Yes, things that should not have happened.

Len Duvall AM (Chair): All right. Sorry to interrupt.

Navin Shah AM: No, that is a very helpful intervention. The Chair has read out the hard-hitting recommendations and findings. In the final conclusion – which was there before – all you say, and I quote, is,

“Audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.”

When you compare the original conclusions, which condemned pretty much everything, to what you have in these conclusions: surely this is not acceptable. This is completely bland, completely watered down and actually takes away the very fundamental issues which were raised in the original audit.

Clive Walker (Director of Internal Audit, TfL): I do not agree with that. The report brings out all the issues which have just been gone through and states those issues.

Navin Shah AM: No, the conclusions basically say everything was fine and there were no issues.

Clive Walker (Director of Internal Audit, TfL): I do not think it does say that. The conclusion certainly states the fact that there were instances where the policy and procedure were not complied with.

Navin Shah AM: To me it is important that every single recommendation and every single criticism that came through in the original document should have been reflected. You have not got here evidence that at every hurdle - right from inception to the final acceptance of tender and award - you saw practices which were very questionable and open to legal challenge. That does not come through in the conclusions in your final audit report.

Caroline Pidgeon MBE AM: It is something from earlier: I have been thinking through the answers we had.

When Len asked who carried out the initial investigation you just talked generally about a team. Are we able to actually get some names of who carried out the investigation and drafted the first review, and whether they are still employed by TfL?

Clive Walker (Director of Internal Audit, TfL): If you are referring to the fact that the auditor is no longer employed by TfL then I am not sure whether I should be giving his name or not.

Len Duvall AM (Chair): That might not be appropriate. However, the current employment status and the manner of it may have some bearing on this conversation.

Caroline Pidgeon MBE AM: Yes.

Len Duvall AM (Chair): We do not need the name.

Clive Walker (Director of Internal Audit, TfL): The auditor who carried out the field work handed in his notice very early in July when the audit work was still ongoing and before any draft of the report had even been prepared. He did that because he had found himself a new, more senior, job in a different organisation. He worked his full month's notice. He left in early August to take up that role. It is actually quite outrageous that there keeps being this insinuation that in some way he was let go.

Caroline Pidgeon MBE AM: No, it is helpful to clarify that because there was a lot of rumour. He did the field work, he did the draft report and then he moved on to his new role. That is fine.

Clive Walker (Director of Internal Audit, TfL): Yes. He was a very good auditor. We were sorry to see him go and actually we are still in good social contact with him.

Caroline Pidgeon MBE AM: No, that is fine. I am really pleased we got that clarified. There are a lot of murky rumours going around so I am pleased that is on record. Thank you.

Jennette Arnold OBE AM: Clive, thank you for your answers so far. There are just a couple of questions that I have in this last section.

You talked about a change that had been made. You referred to us to paragraph 2 of the final published version where we were saying words had been changed. You said originally it had been stated it was a "representation". In your final document you talked about "presentation". If you were not in the room, how would you know whether it was representation or presentation? Those two words have two totally different meanings, do they not?

Clive Walker (Director of Internal Audit, TfL): I do not know because I was not in the room. This is by way of background and I have been told that was the proper sort of explanation of what happened.

Jennette Arnold OBE AM: It is reasonable for us to then go with the first draft, based on what we are hearing, that it was a representation that was made by this individual. Then that individual went on to receive the contract to stay central to the project he had represented to the Mayor.

Clive Walker (Director of Internal Audit, TfL): As you have already pointed out, I was not there so I do not know exactly what format that meeting took.

Jennette Arnold OBE AM: Why did you change and then use --

Clive Walker (Director of Internal Audit, TfL): It was explained to us that that was what it was. To be honest, I am not sure it makes a great deal of difference. If that was a more accurate statement of it I was happy to accept that. It does not seem like a big deal to me.

Jennette Arnold OBE AM: It does make a difference to me. If you were then told by someone who was trying to, if you like, shift the emphasis away from somebody owning something and making a representation to someone just presenting then that is important, from my reading.

Clive Walker (Director of Internal Audit, TfL): Not to mine.

Jennette Arnold OBE AM: Not to yours, yes. In terms of reports, would you say this is one of the most critical that you have had? Can you give that sort of range? We are taking it that it is a really serious matter. However, we have challenged you and say your final report is dampened down. Where would you put this report in the scale of serious challenges to policy and procedures and TfL's activities?

Clive Walker (Director of Internal Audit, TfL): I am not sure I would even know how to answer that question really. We do 200 audits a year. They come up with a range of issues. Some we find nothing wrong at all. Others we find some reasonably serious things wrong. There were clearly some issues here that should not have happened and action needs to be taken to address them. I would not even know how to describe where it fitted on the spectrum particularly.

Jennette Arnold OBE AM: That is fine. We are just trying to understand what the standard processes are. Were there any substantial changes that were asked of you or your team that you did not accept?

Clive Walker (Director of Internal Audit, TfL): There were some things, yes. They are in the trail within the file. I would have to dig through and find them but I can do it if you would like me to.

Jennette Arnold OBE AM: Would they be minor or substantial?

Clive Walker (Director of Internal Audit, TfL): One of the things that we were asked to say - which, again, is in the file - was that the *ad hoc* contact with bidders was not unusual. We took the view that we could not say it was not unusual. That is one example.

Jennette Arnold OBE AM: You said you could not accept that because clearly it was the reverse, it was unusual.

Clive Walker (Director of Internal Audit, TfL): It is not something we come across that in our work typically, no.

Jennette Arnold OBE AM: Again, was this the only occasion that you had met that sort of *ad hoc* contact and you reached a situation where those who lost out could see that contact as being favourable to the organisation that won the bid?

Clive Walker (Director of Internal Audit, TfL): I do not know whether it is the only time or not. It probably is not over all the time we have been doing audits. As I say, we do 200 audits a year. We probably do ten audits specifically of procurements and lots of others which touch on procurements. I could not say whether it is the only case or not.

Jennette Arnold OBE AM: I am left thinking that it is standard process in TfL for there to be an internal audit review, and then for managers to send back an annotated version saying, "Delete this, delete this" and that is how it is.

Clive Walker (Director of Internal Audit, TfL): As I said, it is standard practice to share a draft report for comment and to consider the comments that come back from management. You will find that is standard practice in pretty much any internal audit function in any organisation anywhere.

Jennette Arnold OBE AM: You are not in a position to say whether or not the scale of changes that we see across this project is extreme or every day?

Clive Walker (Director of Internal Audit, TfL): It varies an awful lot. The fact is I do not even necessarily see it all the time. Quite often a lot of changes go on before the report gets to me. Some reports change quite a bit when they go through the discussion process, others change hardly at all. There is a spectrum.

Jennette Arnold OBE AM: As a monitoring body we should really be concerned at not only TfL's behaviour but at the internal audit review. If you are agreeing with TfL - which states that this review has been through the standard process - then we have reason to be concerned with both TfL and the internal audit review.

Clive Walker (Director of Internal Audit, TfL): I do not think you do. We carried out a forensic review. The internal audit department of TfL has all the governance around it to give it to independence. I have a direct line to the Commissioner. I have a dotted line to Keith Williams who is the Chair of the Audit and Assurance Committee. We have an internal audit charter which is approved by the Audit and Assurance Committee and which gives us rights of access to any person and any document that we want to in the course of our work. I am in a position where I can only be dismissed by the full TfL Board. We have a lot of independence. We have a highly skilled team of people doing our audits. I do not think that is a fair thing to say at all.

Jennette Arnold OBE AM: As confirmation for me, this is going to be seen at TfL's Audit and Assurance Committee in December and you will be presenting the document?

Clive Walker (Director of Internal Audit, TfL): I always present a quarterly report to the Committee on the work we have done during the quarter. This will be covered as part of that, yes.

Jennette Arnold OBE AM: I am being in no way facetious because this is really important stuff. Joanne [McCartney AM], I and many of us have spent many years around the Metropolitan Police Authority's audit work. When you present will you be presenting all the documentation? We have documentation that was shared to us, and then there was a leaked document but we had to seek assurance that it was an authentic document. Will that Committee see all the documentation so they will then understand - like we have today -

that the standard process within their organisation is to take all these annotations and changes to an initial draft document?

Clive Walker (Director of Internal Audit, TfL): I would expect that they understand that quite well already. It certainly was not the intention to send them that full pack of documents. However, if they want to see it they are welcome to it.

Jennette Arnold OBE AM: We have now brought it into the public domain. Would it not be strange if they only got half the documentation?

Clive Walker (Director of Internal Audit, TfL): Yes. I am just thinking it is an awful lot of reading for them but they are very welcome to see it.

Jennette Arnold OBE AM: We have had to do it so we think they could do it as well.

Clive Walker (Director of Internal Audit, TfL): That is certainly for them. If they wish to ask for it they are welcome to it.

Caroline Pidgeon MBE AM: I wonder whether, Chair, we should write to the Chair and Members and submit the various versions of the audit and some of our concerns so they can look into it?

Len Duvall AM (Chair): We may well consider that following this meeting.

Len Duvall AM (Chair): In terms of the information we spoke about earlier – Jennette Arnold has raised it as well – exactly what would go into the public domain? Is it the executive summary? Is it the executive summary – the shortened version, without the background and information – that may well be presented to the Committee?

Clive Walker (Director of Internal Audit, TfL): Because of the number of reports that we issue we provide basically lists of the audits that have been done, the conclusions that have been drawn and a summary of the findings for each one of those. It is then open to the Committee to ask if they wish to see more detail on any of those. We also send, on a periodic basis, details to them each period on the reports that have been issued and so forth. Any report where the conclusion says, “Poorly controlled” will be sent to them. They have access to all of that.

Len Duvall AM (Chair): If I read the executive summary and I did not have the knowledge of our exchanges earlier on I would think everything was fine. I do not think that is your intention because you have stood by some very key points about what happened during that process. In fact, if I did not know that it goes out of its way to take away from the points you have raised. Is that fair in the sense of your professional work and the outcome of what you want to put across in terms of good practice, following procedures and processes?

Clive Walker (Director of Internal Audit, TfL): That is not correct. You need to read the whole report. That clearly brings out some issues and also some recommendations and actions to be taken forward by management.

Len Duvall AM (Chair): In the second paragraph,

“The audit identified no issues in,

- *procurement or with regard to selection of bidders,*
- *development of tenders and associated contract documentation [that is a bit iffy],*

- *the procedures used when awarding the contract providing unsuccessful bidders with an opportunity for feedback,*
- *and the procedures used by TfL to manage the project and contracts following award.”*

That could probably stand up post-award but that is not what the issues were. If I am a member of the public wading through all your reports I would not get the flavour of the exchange when I asked you was it truly in force. That would not come fully through to me in that sense.

Why are the bullet points done in that way and the very important points that you found in your document is in a rather overlarge paragraph? Why have you presented it in that way? Why have you done it in that way to give a different impression of what you found within this process?

Clive Walker (Director of Internal Audit, TfL): As I say, the bullets there are the key headings from the scope of the report that we looked at. When you work through the body of the report that mirrors what is said under those four headings.

Len Duvall AM (Chair): You do that for all of the reports? It is a consistency of formatting issue, is it?

Clive Walker (Director of Internal Audit, TfL): No, it is not.

Len Duvall AM (Chair): Let us go back to an earlier point. On the legal challenge issue, who removed that from the document? Can you recall that?

Clive Walker (Director of Internal Audit, TfL): It was my senior audit manager.

Len Duvall AM (Chair): No doubt we can follow that through and evidence that.

In regard to who is responsible for the things that you found - not following the TfL policy on procurement or taking decisions to do something that was not a part of policy - it does not come through in the documents about whether that was because they were unaware of the policy, or whether they deliberately chose to do it because of time and pressure in work practices and they had to get on with this project. Where can you point me to that weighing up and deliberation before you come to the conclusion that the contravention of TfL's procurement policies were not individual but departmental failings?

Clive Walker (Director of Internal Audit, TfL): The whole point of the audit is to highlight where TfL, as an organisation, failed. It is not particularly pushing it at individuals.

Len Duvall AM (Chair): Sometimes audits are, are they not? I could take actions that could be gross misconduct if I worked for your organisation. You would not pull any punches if you thought I had done something terribly wrong and contravened practices that I should be following and I wilfully ignored them. I would be disciplined for it. I have seen audit reports that point the finger at people. In another life I have been involved in audit reports that point to people. You do that. That is part of your job.

I can understand the organisational bit. However, where do your workings and deliberations show a departmental, organisational or individual failure, or individuals taking decisions that say, "We are going to go down that path and not follow that path"? Was it because they ignored it or was it wilful? Did you consider that in terms of the scoping issues? Clearly the scoping issues allowed you to consider that. I did not get that flavour.

Clive Walker (Director of Internal Audit, TfL): It is not really possible to come to a conclusion on that. Ultimately, of course, the responsibility to get the procurement right rests with the person who is leading the procurement. However, they are relying on advice from other areas of the business. Therefore it has to be viewed as an organisational failure.

Len Duvall AM (Chair): In your report it does not tell us that anyone else was offering advice, and that they took the decision not to go down the OJEU route in line with TfL policies but to take a different route in terms of those issues.

Clive Walker (Director of Internal Audit, TfL): Yes, the report tries to make clear that that advice was at an early stage when it was thought actually TfL might be taking forward the whole Garden Bridge project. That view changed and the decisions on how to do the procurement changed as a result of that. That is why some of that context was added in there.

Len Duvall AM (Chair): We might return to this. Are there any other questions from the Committee? Thank you very much for the way you have answered those questions. We will obviously write to you and follow up on information we need. I would ask TfL - I know it is difficult and there is the day job - if we could have some of this information fairly quickly because, to be honest, we want to deal with this very quickly. Thank you very much.