Cynulliad Cenedlaethol Cymru
Pwyllgor Archwilio

The National Assembly for Wales
Audit Committee

Adeilad Newydd y Cynulliad
The New Assembly Building

Cwestiynau 1-153
Questions 1-153

Dydd Iau 19 Rhagfyr 2002
Thursday 19 December 2002

Aelodau o'r Cynulliad yn bresennol: Dafydd Wigley (Cadeirydd), Eleanor Burnham, Alun Cairns, Janet Davies, Jocelyn Davies, Janice Gregory, Alison Halford, Val Lloyd.

Swyddogion yn bresennol: Syr John Bourn, Archwilydd Cyffredinol Cymru; Gillian Body, Swyddfa Archwilio Genedlaethol Cymru; Lew Hughes, Swyddfa Archwilio Genedlaethol Cymru; David Powell, Swyddog Cydymffurfio Cynulliad Cenedlaethol Cymru.

Tystion: Syr Jon Shortridge, Ysgrifennydd Parhaol Cynulliad Cenedlaethol Cymru; David Richards, Prif Swyddog Cyllid Cynulliad Cenedlaethol Cymru; Richard Wilson, Prif Gyflenwr ar gyfer Prosiect Adeilad y Cynulliad, Cynulliad Cenedlaethol Cymru.

Assembly Members present: Dafydd Wigley (Chair), Eleanor Burnham, Alun Cairns, Janet Davies, Jocelyn Davies, Janice Gregory, Alison Halford, Val Lloyd.

Officials present: Sir John Bourn, Auditor General for Wales; Gillian Body, National Audit Office Wales; Lew Hughes, National Audit Office Wales; David Powell, National Assembly for Wales Compliance Officer.

Witnesses: Sir Jon Shortridge, Permanent Secretary, National Assembly for Wales; David Richards, Principal Finance Officer, National Assembly for Wales; Richard Wilson, Lead Supplier for Assembly Building Project, National Assembly for Wales.

Dechreuodd y cyfarfod am 9.18 a.m.
The meeting began at 9.18 a.m.

[1] **Dafydd Wigley:** Bore da, gyfeillion. Croesawaf y tystion, aelodau o'r cyhoedd ac aelodau'r Pwyllgor.

[1] **Dafydd Wigley:** Good morning, friends. I welcome witnesses, members of the public and Committee members.

Translation equipment is available for those who need it. Not only is an English translation of Welsh contributions provided through the headphones, but they also make it easier for those who are hard of hearing to hear the proceedings. However, this room is probably compact enough to prevent such difficulties, as you will have no doubt noticed.

Mae offer cyfieithu ar gael i'r rhai hynny sydd ei angen. Mae hwn nid yn unig yn darparu cyfieithiad Saesneg o gyfraniadau Cymraeg drwy'r clustffonau, ond mae hefyd yn cynorthwyo pobl trwm eu clyw i glywed y drafodaeth. Fodd bynnag, fel y gwelwch, mae'n debyg bod yr ystafell hon yn ddigon bach i osgoi anawsterau o'r fath.

Atgoffaf bawb i ddiffodd ffonau symudol, bipwyr ac unrhyw offer electronig neu dechnegol arall a allai amharu ar y system ddarlledu a chyfieithu. Mae Ann Jones yn ymddiheuro na all fod yn bresennol heddiw; nid oes eilydd yma ar ei rhan.

I remind everyone to switch off mobile phones, bleepers and any other electronic or technical equipment that could affect the broadcasting and translation system. Ann Jones apologises that she cannot be present today; no one is substituting for her.

Cyn symud ymlaen at y sesiwn cymryd tystiolaeth, dylwn hysbysu'r Pwyllgor o un mater. Mae'n bosibl dehongli bod gennyf ddiddordeb arbennig yn y mater gerbron, sef adeilad newydd y Cynulliad. Yr oedd Elinor, fy ngwraig, ar banel Callaghan, a oedd yn gyfrifol am ddyfarnu'r gystadleuaeth ddylunio yn 1998. Bûm innau ar bwyllgor

Before moving on to the evidence-taking session, I should inform the Committee of one issue. It is possible to interpret that I have a special interest in the matter before us, namely the new Assembly building. Elinor, my wife, was on the Callaghan panel, which was responsible for judging the design competition in 1998. Also, I was on the new

llywio'r adeilad newydd am gyfnod. Yr wyf wedi derbyn cyngor nad ydyw hynny'n amharu ar y ffaith mai fi fydd yn cadeirio'r sesiwn hon. Fodd bynnag, yr wyf yn teimlo y dylwn ddatgan y buddiant. Ni wn a yw aelodau'r Pwyllgor yn hapus imi barhau i gadeirio'r cyfarfod.

building steering committee for a while. I have received advice that that does not interfere with the fact that I will be chairing this session. However, I feel that I should declare that interest. I do not know whether the Committee members are happy for me to continue chairing the meeting.

[2] **Alun Cairns:** A gaf ddweud fy mod yn hapus â hynny, ac yr wyf yn siŵr bod aelodau eraill y Pwyllgor yn cytuno.

[2] **Alun Cairns:** May I say that I am happy with that, and I am sure that the other Committee members agree.

[3] **Dafydd Wigley:** Diolch yn fawr. Mae hynny felly wedi'i gofnodi.

[3] **Dafydd Wigley:** Thank you. That has therefore been placed on record.

[4] **Eleanor Burnham:** Yr wyf innau'n hapus â hynny hefyd.

[4] **Eleanor Burnham:** I am also happy with that.

[5] **Dafydd Wigley:** Diolch yn fawr. Symudwn ymlaen felly at y sesiwn cymryd tystiolaeth ar y sefyllfa ddiweddaraf ar adeilad newydd y Cynulliad Cenedlaethol. Yr ydym yn cymryd tystiolaeth ar adroddiad y Swyddfa Archwilio Genedlaethol ar ran Archwilydd Cyffredinol Cymru, 'Adeilad Newydd y Cynulliad: Adroddiad Diweddaru', a gyhoeddwyd ar 8 Tachwedd. Edrych yn ôl a wna'r adroddiad hwn i weld pa wersi sydd i'w dysgu o'r hyn a wnaed yn y gorffennol. Yr wyf yn siŵr y byddwn oll yn ofalus i beidio â rhagfarnu unrhyw benderfyniadau sydd i'w gwneud yn y dyfodol ar fater yr adeilad newydd, nac ychwaith ddylanwadu mewn unrhyw ffordd ar y broses gystadleuol sy'n mynd rhagddi o safbwynt y contract. Yr wyf yn ymwybodol y gallai rhai agweddau o'r hyn y byddwn yn ei drafod eto, yn dechnegol, godi yn y llysoedd. Rhaid inni felly fod yn ofalus o ran sut yr ydym yn ymdrin â'r mater hwn.

[5] **Dafydd Wigley:** Thank you. We therefore move on to the evidence-taking session on the latest situation in terms of the new Assembly building. We are taking evidence on the report of the National Audit Office on behalf of the Auditor General for Wales, 'The National Assembly's New Building: Update Report', which was published on 8 November. This report looks back to see what lessons can be learned from what has been done in the past. I am sure that we will all be careful not to prejudge any decisions that are to be made in future on the issue of the new building, or to influence in any way the competitive process that is currently ongoing in terms of the contract. I am aware that some aspects of what we will be discussing could, technically, yet be raised in court. We must therefore be careful in how we deal with this issue.

Croesawaf y tystion, sef Syr Jon Shortridge—unwaith eto—a'i gyfeillion. A wnewch gyflwyno eich hunain, os gwelwch yn dda?

I welcome the witnesses, namely Sir Jon Shortridge—once again—and colleagues. Will you please introduce yourselves?

Sir Jon Shortridge: I am Jon Shortridge, Permanent Secretary and principal accounting officer of the Assembly. On my left is David Richards, a familiar figure to you, who is the principal finance officer of the Assembly. On this occasion, he is also here in his role as the senior officer responsible for the work on the new building. On my right is Richard Wilson, who is—in

Syr Jon Shortridge: Fi yw Syr Jon Shortridge, yr Ysgrifennydd Parhaol a phrif swyddog cyfrifo'r Cynulliad. Ar y chwith i mi mae David Richards, sy'n wyneb cyfarwydd i chi, sef prif swyddog cyllid y Cynulliad. Heddiw mae yma hefyd yn rhinwedd ei swydd fel yr uwch swyddog sy'n gyfrifol am y gwaith ar yr adeilad newydd. Ar y dde i mi mae Richard Wilson, sef—yn

the technical terms of the new building—the senior supplier, so he has the main day-to-day responsibility for the procurement of the new building within the Assembly.

nhermau technegol yr adeilad newydd—yr uwch gyflenwr, felly ef sy'n bennaf gyfrifol o ddydd i ddydd am gaffael yr adeilad newydd o fewn y Cynulliad.

[6] **Dafydd Wigley:** Diolch yn fawr. Gyda llaw, yr ydym yn anelu at gael egwyl am 11 a.m., os na fydd y sesiwn cymryd tystiolaeth wedi dod i ben cyn hynny.

[6] **Dafydd Wigley:** Thank you. By the way, we aim to break at 11 a.m., if the evidence-taking session has not been completed by then.

Dyma'r cwestiwn cyntaf yr hoffwn ei ofyn ichi, Syr Jon. Hyd y gwelaf, hanfod yr holl fater, yn syml iawn, yw sut y bu'n bosibl i'r Cynulliad Cenedlaethol a'i ymgynghorwyr proffesiynol fod yn hyderus y gallasant fod wedi adennill swm sylwedol o arian oddi wrth Bartneriaeth Richard Rogers drwy'r dyfarniad, ac yna iddynt orfod talu £450,000? Mae'n sefyllfa anhygoel. Beth yw eich ymateb i hynny?

This is the first question that I would like to ask you, Sir Jon. As far as I can see, the nub of the matter is, very simply, this: how is it possible that the National Assembly and its professional advisers could have been confident of recovering a substantial sum of money from the Richard Rogers Partnership through the adjudication, and then end up having to pay £450,000? It is an incredible situation. What is your response to that?

Sir Jon Shortridge: Thank you, Chair. I wonder if you would allow me to provide a short introductory context to the answer to that question, because I think that it is quite important to get, as you say, the nub of this issue in the full context. I think that the first thing that I would like to say is that I do welcome this report. It helps to explain that the fundamental problem with which we have been faced throughout this project is that the original estimate submitted by the Richard Rogers Partnership in the design competition was too low and that, if the true costs had been known at the time, its entry would have been rejected from the competition as non-compliant. The story of the project has essentially been about our growing realisation that the building could not be built for the price that had been originally specified and our consequent attempts to get the design changed to bring it back within budget. When we finally lost confidence in the architects' capacity to meet our requirements on cost, we terminated the contract. That was, in the words of one of our professional advisers, a correct and brave decision. I might add that this is not the kind of brave decision that has been taken in the case of similar projects elsewhere. I noted in a newspaper report at the weekend that the estimated cost of the Parliament building in Edinburgh has risen to £325 million and may rise again. That is compared with an original estimate in that case of £50 million.

Syr Jon Shortridge: Diolch, Gadeirydd. A gaf i roi cyd-destun rhagarweiniol byr i ateb y cwestiwn hwnnw, gan y credaf ei bod yn bwysig iawn trafod, fel y dywedasoch, hanfod yr holl fater yn ei gyd-destun llawn. Credaf mai'r peth cyntaf yr wyf am ei ddweud yw fy mod yn croesawu'r adroddiad hwn. Mae'n help i egluro'r broblem sylfaenol sydd wedi'n hwynebu drwy gydol y prosiect hwn sef bod yr amcangyfrif gwreiddiol a gyflwynwyd gan Bartneriaeth Richard Rogers yn y gystadleuaeth gynllunio yn rhy isel a, phe bai'r costau gwirioneddol yn hysbys ar y pryd, ni fyddai ei gais wedi'i dderbyn yn y gystadleuaeth am nad oedd yn cydymffurfio. Mae hanes y prosiect yn ei hanfod wedi ymwneud â'n sylweddoliad cynyddol na ellid adeiladu'r adeilad am y pris a nodwyd yn wreiddiol a'n hymdrechion wedi hynny i newid y cynllun er mwyn ei ddwyn yn ôl o fewn y gyllideb. Pan gollwyd ffydd gennym yn y pen draw yng ngallu'r pensaer i fodloni ein gofynion o ran costau, terfynwyd y contract gennym. Yr oedd hynny, yng ngeiriau un o'n hymgynghorwyr proffesiynol, yn benderfyniad cywir a dewr. Hoffwn ychwanegu bod hwn yn benderfyniad dewr nad yw wedi'i wneud â phrosiectau tebyg mewn mannau eraill. Sylwais mewn erthygl bapur newydd dros y penwythnos bod amcan gost adeilad y Senedd yng Nghaeredin wedi codi i £325 miliwn ac y gallai godi eto. Mae hyn o'i gymharu ag amcangyfrif gwreiddiol o £50

miliwn yn yr achos hwnnw.

Having terminated the contract, we then used the fast-track adjudication route in an attempt to resolve the outstanding contractual disputes. We did not, as you have indicated, secure the outcome from that adjudication that we wanted and to which, upon the basis of all our professional advice, we considered that we were entitled. However, I am very pleased that the Auditor General's report has confirmed that we were justified on value-for-money grounds in choosing to contest the Richard Rogers Partnership claim and that we acted reasonably in putting our faith in the judgment of our legal advisers and in following their recommended course of action.

Ar ôl terfynu'r contract, defnyddiasom y llwybr dyfarnu carlam mewn ymdrech i ddatrys yr anghydfodau contract a oedd yn dal i fodoli. Ni wnaethom, fel yr ydych wedi nodi, sicrhau'r canlyniad yr oeddem am ei gael o'r dyfarniad hwnnw ac, ar sail ein holl gyngor proffesiynol, y canlyniad yr oeddem yn ystyried bod gennym yr hawl iddo. Fodd bynnag, yr wyf yn falch iawn bod adroddiad yr Archwilydd Cyffredinol wedi cadarnhau bod gennym achos ar sail gwerth am arian i ddewis herio hawliad Partneriaeth Richard Rogers a'n bod wedi gweithredu'n rhesymol wrth ymddiried ym marn ein hymgynghorwyr cyfreithiol a gweithredu yn ôl eu cyngor hwy.

So, with that as the context, you have asked me how it was that we could have gone into this adjudication confident that we could get the outcome that we wanted. I think that the basic point to make is that this all gets down to the interpretation of the contract. Clearly, the adjudicator took a different view of the contract to that which we took. So, to that extent, the report is right when it says that there was some lack of clarity. However, all I can do is say that, as a layperson and not a lawyer, I have looked at the contract and read all the associated material and it is very clear to me that this was a contract whereby the client, that is, the Assembly, was contracting with the consultant, that is, the architects, to provide us with the designs that we required for this new building. It was not a contract whereby we, as the client, undertook to provide a guaranteed revenue stream to the consultant irrespective of whether or not it had done the work required. It was on that basis that we felt, when we went into this adjudication, that we had a very strong case. These are not just my views: the Assembly's own lawyers share these views; Eversheds—a very large firm of solicitors—shares these views; and we took advice from the Queen's Counsel, which also shares these views. So, we went into that adjudication very confident that we would get the outcome that we were seeking. I think that if you read this report carefully, you will see that the Auditor General—who has seen all these papers and has reached the conclusion that, on value-for-money grounds, we were right to go into the

Felly, o ystyried y cyd-destun hwnnw, yr ydych wedi gofyn i mi sut yr oeddem yn gallu mynd i'r broses ddyfarnu hon yn hyderus o sicrhau'r canlyniad yr oeddem am ei gael. Credaf mai'r pwynt sylfaenol yma yw sut y dehonglir y contract. Yn amlwg, yr oedd gan y dyfarnwr a ninnau farn wahanol ar y contract. Felly, i ryw raddau, mae'r adroddiad yn gywir wrth nodi bod peth diffyg eglurder. Fodd bynnag, y cwbl y gallaf ei wneud yw dweud, fel lleygwr ac nid fel cyfreithiwr, fy mod wedi edrych ar y contract ac wedi darllen y deunydd cysylltiedig a'i bod yn amlwg iawn i mi bod hwn yn gontract lle'r oedd y cleient, sef y Cynulliad, dan gontract gyda'r ymgynghorwr, sef y penseiri, i ddarparu cynlluniau i ni a oedd yn ofynnol ar gyfer yr adeilad newydd hwn. Nid oedd yn gontract lle yr oeddem ni, fel y cleient, yn ymgymryd â darparu ffrwd gyllid warantedig i'r ymgynghorwr heb ystyried a oedd wedi cyflawni'r gwaith gofynnol ai peidio. Ar y sail honno, pan ddechreuasom y dyfarniad hwn, credem fod gennym achos cryf iawn. Nid fy marn i'n unig yw hyn: mae cyfreithwyr y Cynulliad yn rhannu'r farn hon; mae Eversheds—cwmni mawr iawn o gyfreithwyr—yn rhannu'r farn hon; a derbyniasom gyngor gan Gwnsler y Frenhines, sydd hefyd yn rhannu'r farn hon. Felly, pan ddechreuasom y dyfarniad hwnnw yr oeddem yn hyderus iawn y byddem yn cael y canlyniad yr oeddem am ei gael. Credaf pe baech yn darllen yr adroddiad hwn yn ofalus, y byddwch yn gweld bod yr Archwilydd Cyffredinol—sydd wedi gweld

adjudication in the way in which we did—I think, shares the view that we had a very strong case.

yr holl bapurau ac sydd wedi dod i'r penderfyniad, ar sail gwerth am arian, ein bod yn iawn i fynd i broses ddyfarnu fel y gwnaethom—yn rhannu'r farn bod gennym achos cryf iawn.

[7] **Dafydd Wigley:** I will press you a little further on that. You mentioned a number of people who had given you advice: Eversheds, barristers and so on. These are legal people. The adjudication process is one which, if I understand it correctly, was undertaken by an architect.

[7] **Dafydd Wigley:** Yr wyf am eich holi ymhellach am hynny. Yr ydych wedi crybwyll nifer o bobl a roddodd gyngor i chi: Eversheds, bargyfreithwyr ac ati. Pobl gyfreithiol yw'r rhain. Yr oedd y broses ddyfarnu, os y deallaf yn iawn, yn un a gyflawnwyd gan bensaer.

Sir Jon Shortridge: I think that in this case it was not an architect but a building professional of some kind.

Syr Jon Shortridge: Credaf yn yr achos hwn ei fod wedi'i gyflawni gan weithiwr adeiladu proffesiynol o ryw fath yn hytrach na phensaer.

[8] **Dafydd Wigley:** A building professional, not a lawyer?

[8] **Dafydd Wigley:** Gweithiwr adeiladu proffesiynol, nid cyfreithiwr?

Sir Jon Shortridge: Not a lawyer.

Syr Jon Shortridge: Nid cyfreithiwr.

[9] **Dafydd Wigley:** Do you feel, looking back, that taking advice just from lawyers may not have been the most appropriate method to decide the likely outcome of a decision that was being taken by a non-lawyer?

[9] **Dafydd Wigley:** O edrych yn ôl, a ydych yn credu mai cymryd cyngor gan gyfreithwyr yn unig fyddai'r dull mwyaf priodol o benderfynu canlyniad tebygol penderfyniad a oedd yn cael ei wneud gan rywun nad oedd yn gyfreithiwr?

Sir Jon Shortridge: Obviously, I think that the Committee would agree that in these circumstances we certainly do have to take legal advice, but we did not specifically take legal advice. As paragraph 9 of the report indicates, before the adjudication, we had commissioned and received the reports from Probyn Miers, architectural consultants and dispute resolution experts, and Gardiner and Theobald Fairway Ltd, which is an expert in dispute management in the construction industry. Having reached the views that I personally had reached on the interpretation of the contract in preparing myself for this session, I then read the Probyn Miers report, and it confirmed all my own views, and those views were ones that I had reached before reading its report. So, we took very thorough, comprehensive professional advice in advance of that adjudication.

Syr Jon Shortridge: Yn amlwg, credaf y byddai'r Pwyllgor yn cytuno bod yn rhaid i ni gymryd cyngor cyfreithiol dan yr amgylchiadau hyn, ond ni dderbyniwyd cyngor cyfreithiol uniongyrchol gennym. Fel y nodir ym mharagraff 9 yr adroddiad, cyn y dyfarniad, yr oeddem wedi comisiynu a derbyn yr adroddiadau gan Probyn Miers, ymgynghorwyr pensaernïol ac arbenigwyr datrys anghydfod, a Gardiner and Theobald Fairway Cyf, sydd yn arbenigwyr ar reoli anghydfod yn y diwydiant adeiladu. Ar ôl dod i'r farn yr oeddwn i'n bersonol wedi dod iddi ar ddehongli'r contract hwn wrth baratoi ar gyfer y sesiwn hwn, darllenais adroddiad Probyn Miers, a chadarnhaodd fy marn i, ac yr oedd hon yn farn a gymerais cyn darllen ei adroddiad. Felly, cymerasom gyngor proffesiynol trylwyr a chynhwysfawr cyn y dyfarniad hwnnw.

[10] **Dafydd Wigley:** Did you feel that the adjudication was perverse then?

[10] **Dafydd Wigley:** A oeddech yn credu bod y dyfarniad yn wrthnysig oherwydd hynny?

Sir Jon Shortridge: I really do not think that, in the present circumstances, partly for the reason you indicated at the outset, that I should be—

Syr Jon Shortridge: Nid wyf yn credu, dan yr amgylchiadau presennol, yn rhannol am y rheswm a nodwyd gennych ar y dechrau, y dylwn—

[11] **Dafydd Wigley:** Let me not tempt you to break my own guidelines.

[11] **Dafydd Wigley:** Peidiwch â gadael i mi eich temtio i dorri fy nghanllawiau fy hun.

Sir Jon Shortridge: What I have come prepared to do is to give you the clearest factual answers to your questions that I can.

Syr Jon Shortridge: Yr wyf yma i roi i chi'r atebion ffeithiol cliriaf i'ch cwestiynau ag y medraf.

[12] **Dafydd Wigley:** Fair enough. I will therefore move on. The report, and I am looking at paragraph 6, says that the main cause of the adjudication was a dispute, as you say, between the Assembly and the Richard Rogers Partnership, due to the lack of clarity in the contract about fees. Why did it take until this point in the project to discover this fundamental flaw in the contract when payments had been made on a monthly basis, I think, since the project had begun?

[12] **Dafydd Wigley:** Digon teg. Symudaf ymlaen felly. Mae'r adroddiad, ac yr wyf yn edrych ar baragraff 6, yn dweud mai prif achos y dyfarniad oedd anghydfod, fel y dywedasoch, rhwng y Cynulliad a Phartneriaeth Richard Rogers, oherwydd y diffyg eglurder yn y contract am ffioedd. Pam iddi gymryd tan nawr yn y prosiect i ddarganfod y diffyg sylfaenol hwn yn y contract er bod taliadau wedi'u gwneud yn fisol, yr wyf yn credu, ers i'r prosiect ddechrau?

Sir Jon Shortridge: I think that there are probably two elements to that, and in one sense we would not discover part of the problem because the issue was the interaction between the fee payment mechanism which we had agreed and the arrangements associated with the termination of the contract and what the architects were entitled to on termination. So, by definition, we would not have discovered the full possibilities until we had terminated the contract. However, the basic point on fees, as I understand it, was that the architects had asked us, in order to assist their cash flow, whether we could agree to make regular payments to them as opposed to paying them after they had completed a batch of work. So what we put in place in the contract was that there would be a system of monthly payments, which we would pay on certification from our project manager and our client adviser up until the point when a milestone should have been reached, and the milestone was a key stage in the completion of the design work. We would only move onto to the next lot of monthly payments once that milestone had been reached to our satisfaction. That was what the contract was about and we did not have any reason to

Syr Jon Shortridge: Credaf yn ôl pob tebyg bod dwy elfen i hynny, ac ni fyddem ar un ystyr yn darganfod rhan o'r broblem oherwydd mai'r anghydfod oedd y rhyngweithiad rhwng y mecanwaith talu ffi y cytunasom arno a'r trefniadau a oedd yn gysylltiedig â therfynu'r contract a'r hyn yr oedd gan y penseiri yr hawl iddo wrth ei derfynu. Felly, drwy ddiffiniad, ni fyddem wedi darganfod y posibiliadau llawn tan i ni derfynu'r contract. Fodd bynnag, y pwynt sylfaenol o ran ffioedd, fel y deallaf, oedd bod y penseiri wedi gofyn i ni, er mwyn cynorthwyo'u llif arian, a fyddem yn cytuno i wneud taliadau rheolaidd iddynt yn hytrach na thalu ar ôl iddynt gwblhau llwyth o waith. Felly rhoddasom system daliadau misol yn y contract, a fyddai'n cael eu talu ar ôl iddynt gael eu hardystio gan ein rheolwr prosiect a'n cynghorwr cleient hyd at bwynt cyrraedd carreg filltir, ac yr oedd y garreg filltir yn gyfnod allweddol wrth gwblhau'r gwaith cynllunio. Dim ond ar ôl i ni gael ein bodloni fod y garreg filltir hon wedi ei chyrraedd y byddem yn symud ymlaen at y gyfres nesaf o daliadau misol. Dyna oedd hanfod y contract ac nid oedd gennym unrhyw reswm i gredu y byddai dehongliad gwahanol ohono tan i ni gyrraedd y pwynt lle y torrodd y berthynas.

believe that there was going to be a different interpretation of it until we reached the point of the breakdown in the relationship.

[13] **Dafydd Wigley:** Surely a company as large as the Richard Rogers Partnership, an international company like that, would not need to depend on us securing its cash flow? It is a relatively small sum in the overall turnover of a company like this. What I am concerned about to some extent is whether there is a systematic weakness here, and that other contracts that the Assembly has with the private sector might also have this weakness, which could lead to the difficulties we have had. Is this an exceptional provision that we made for Richard Rogers and, if so, why, or is it a normal provision and, if so, do we have this problem as a normal danger?

[13] **Dafydd Wigley:** Does bosib na fyddai cwmni mor fawr â Phartneriaeth Richard Rogers, cwmni rhyngwladol fel hynny, yn gorfod dibynnu arnom ni i ddiogelu ei lif arian? Y mae'n swm cymharol isel yn nhrosiant cyffredinol cwmni fel hwn. Yr wyf yn bryderus i ryw raddau ynglŷn ag a oedd gwendid systematig yma, a bod gan gontractau eraill sydd gan y Cynulliad gyda'r sector preifat y gwendid hwn hefyd efallai, a allai arwain at yr anawsterau yr ydym wedi'u hwynebu. A yw hon yn ddarpariaeth arbennig y gwnaethom ar gyfer Richard Rogers ac, os felly, pam, neu a yw hon yn ddarpariaeth arferol ac, os felly, a ydym yn wynebu'r broblem hon fel perygl arferol?

Sir Jon Shortridge: I have asked that question in preparing myself for this session. As I understand it, when you are employing an architect, you can agree the fee arrangements in basically one of two ways. You can agree an hourly rate, which is a very open-ended way of employing anyone, or you can pay on a monthly basis, which I am told is well precedented. Bearing in mind that this design work was going to be done over a period of perhaps some two years, I do not think that it is unreasonable—certainly, as I am told, not unprecedented—that you would have some arrangements for stage payments with architects.

Syr Jon Shortridge: Yr wyf wedi gofyn y cwestiwn hwnnw wrth baratoi fy hun ar gyfer y sesiwn hwn. Fel yr wyf i'n deall, pan fyddwch yn cyflogi pensaer, gellwch gytuno ar y trefniadau ffi mewn un o ddwy ffordd sylfaenol. Gellwch gytuno ar gyfradd fesul awr, sy'n ffordd benagored iawn o gyflogi rhywun, neu gellwch dalu'n fisol, sy'n ffordd â chynsail dda yn ôl pob sôn. Gan gofio bod y gwaith cynllunio'n mynd i gael ei gyflawni dros gyfnod o tua dwy flynedd, ni chredaf ei bod yn afresymol—yn sicr, yn ôl pob sôn, nid yw'n ddigynsail—y byddai gennych rywfaint o drefniadau ar gyfer talu penseiri fesul cam.

[14] **Dafydd Wigley:** But surely against work that has been completed? I am not arguing against staged payments; it is a question of whether the work has been done.

[14] **Dafydd Wigley:** Ond yn erbyn gwaith sydd wedi'i gwblhau does bosib? Nid wyf yn dadlau yn erbyn taliadau fesul cam; ond mae'n rhaid i'r gwaith fod wedi'i wneud yn gyntaf.

Sir Jon Shortridge: As I say, I am told that it is well precedented to have this sort of arrangement. Rogers had asked for it. Our whole approach to this contract was one where we were wanting to be seen to be working in partnership with our architect who had produced our design and we did not want there to be any unnecessarily adversarial element in the relationship. He had asked for that, our advisers indicated that this was an appropriate way forward and we built into the contract a payment mechanism that everyone

Syr Jon Shortridge: Fel y dywedais, yn ôl pob sôn mae cynsail dda dros gael trefniant o'r fath. Yr oedd Rogers wedi gofyn am y trefniant hwn. Ein hagwedd gyffredinol at y contract hwn oedd ein bod am gael ein gweld yn gweithio mewn partneriaeth gyda'n pensaer a oedd wedi cynhyrchu ein cynllun ac nid oeddem am weld unrhyw elfen niweidiol ddiangen yn y berthynas. Yr oedd wedi gofyn am hynny a dywedodd ein hymgynghorwyr mai hon oedd y ffordd briodol ymlaen ac ychwanegasom fecanwaith

thought was satisfactory.

talu i'r contract y credai pawb ei fod yn foddhaol.

[15] **Dafydd Wigley:** What about other contracts—do you use this in other contracts?

[15] **Dafydd Wigley:** Beth am gontractau eraill—a ydych yn defnyddio hyn mewn contractau eraill?

Sir Jon Shortridge: I would have to give you a note on whether we do. We do not have many contracts of this nature.

Syr Jon Shortridge: Byddai'n rhaid i mi roi nodyn i chi ynglŷn â hyn. Nid oes gennym lawer o gontractau o'r natur hon.

[16] **Dafydd Wigley:** No, perhaps mercifully.

[16] **Dafydd Wigley:** Na, drwy drugaredd, efallai.

Sir Jon Shortridge: I think that the closest comparison would be on road schemes and I will let you know what our arrangements are in relation to those.

Syr Jon Shortridge: Credaf mai'r gymhariaeth agosaf fyddai ar gynlluniau ffyrdd a rhoddaf wybod i chi beth yw'n trefniadau ynghylch y rhain.

[17] **Dafydd Wigley:** I would be very grateful for that.

[17] **Dafydd Wigley:** Byddwn yn gwerthfawrogi hynny'n fawr.

[18] **Alison Halford:** I am being very dense here, Sir Jon. What was the date of the contract that you terminated when one realised that there was a problem over the fees? Is there a date on that contract?

[18] **Alison Halford:** Yr wyf yn bod yn dwp iawn yma, Syr Jon. Beth oedd dyddiad y contract a derfynwyd gennych pan ddarganfuwyd bod problem ynghylch y ffioedd? A oes dyddiad ar y contract hwnnw?

Sir Jon Shortridge: I think, as the Committee knows, that we never formally signed that contract.

Syr Jon Shortridge: Credaf, fel y gŵyr y Pwyllgor, na lofnodwyd y contract hwnnw'n ffurfiol byth.

[19] **Alison Halford:** Yes, that is right. We do know that; that is why I am getting confused.

[19] **Alison Halford:** Ydi, mae hynny'n wir. Gwyddom hynny; dyna pam fy mod yn dechrau drysu.

Sir Jon Shortridge: The reason why we did not formally sign the contract was that the contract that was originally entered into, or the agreement that was originally entered into by the Welsh Office had not been signed at the time that the Assembly was established. We, and I think the Committee in turn, were very concerned about the level of fees—architectural and professional fees—built into that contract. We were seeking to renegotiate those fees in order to bring those costs down. Until we could complete that renegotiation, we could not formally sign off the contract. On the other hand, no-one has questioned that this was actually an extant contract and that both parties were acting on its terms. So, to that extent, whether it was signed or not I do not think is a material consideration.

Syr Jon Shortridge: Y rheswm na wnaethom lofnodi'r contract yn ffurfiol oedd nad oedd y contract y cytunwyd arno'n wreiddiol, neu'r cytundeb y cytunwyd arno'n wreiddiol gan y Swyddfa Gymreig wedi'i lofnodi pan sefydlwyd y Cynulliad. Yr oeddem ni, a chredaf y Pwyllgor yn ei dro, yn bryderus iawn ynglŷn â lefel y ffioedd—y ffioedd pensaerniol a phroffesiynol—a ychwanegwyd at y contract hwnnw. Yr oeddem yn ceisio ailnegodi'r ffioedd hynny er mwyn dod â'r costau hynny i lawr. Hyd nes i ni allu cwblhau'r ailnegodi hwnnw, nid oeddem yn gallu llofnodi'r contract yn ffurfiol. Ar y llaw arall, nid oes neb wedi cwestiynu bod y contract yn bodoli mewn gwirionedd a bod y ddwy ochr yn gweithredu ar ei delerau. Felly, i'r graddau hynny, nid yw a oedd wedi'i lofnodi ai peidio yn

ystyriaeth o bwys.

[20] **Dafydd Wigley:** We may come back to certain aspects of this. We will now move on with Alun's questions.

[20] **Dafydd Wigley:** Efallai y byddwn yn dod yn ôl at agweddau penodol ar hyn. Symudwn ymlaen yn awr â chwestiynau Alun.

[21] **Alun Cairns:** Sir Jon, thank you once again for coming in front of the Audit Committee, because I am sure that some of your Westminster colleagues are hardly in front of the Public Accounts Committee the same number of times that you find yourself in front of this Audit Committee.

[21] **Alun Cairns:** Syr Jon, diolch eto am ddod gerbron y Pwyllgor Archwilio, oherwydd yr wyf yn siŵr nad yw rhai o'ch cydweithwyr yn San Steffan yn dod gerbron y Pwyllgor Cyfrifon Cyhoeddus mor aml ag yr ydych chi o flaen y Pwyllgor Archwilio hwn.

[22] **Dafydd Wigley:** Christmas has come. [*Laughter.*]

[22] **Dafydd Wigley:** Mae'n Nadolig. [*Chwerthin.*]

[23] **Alun Cairns:** We are grateful for the time that you obviously have to put in to prepare for the Committee.

[23] **Alun Cairns:** Yr ydym yn ddiolchgar am yr amser y mae'n rhaid i chi ei roi i baratoi ar gyfer y Pwyllgor.

In your opening remarks, and this is building on the point that Alison Halford has just highlighted, you said that the contract had been terminated, whereas the report throughout says that Lord Rogers's employment was terminated. You also said that the termination of the contract, as is highlighted in the report, in one respect was a very brave decision. Given the way that you presented your opening remarks, I put it to you that the root cause of the whole issue in terms of cost escalation and weaknesses in management is that there was no written contract, as you have highlighted, and that that therefore left the Assembly exposed to a great degree.

Yn eich sylwadau agoriadol, ac mae hyn yn ychwanegu at y pwynt y mae Alison Halford newydd ei amlygu, dywedasoch fod y contract wedi'i derfynu, tra bod yr adroddiad yn nodi mai cyflogaeth yr Arglwydd Rogers a derfynwyd. Dywedasoch hefyd fod terfynu'r contract, fel a nodir yn yr adroddiad, yn benderfyniad dewr iawn i ryw raddau. O ystyried y ffordd y cyflwynasoch eich sylwadau agoriadol, credaf mai gwraidd yr holl fater o ran cynnydd costau a diffygion rheoli oedd nad oedd contract ysgrifenedig, fel yr ydych wedi nodi, a bod y Cynulliad felly yn ddiamddiffyn i raddau helaeth.

I will come back to my point on the brave decision. My specific question relates to paragraph 7, which says that after the termination of the employment of Richard Rogers, the Assembly sought advice from its solicitors. Can you take me back a step before that? What legal advice was taken before the termination of Lord Rogers's employment?

Dof yn ôl at fy mhwynt am y penderfyniad dewr. Mae fy nghwestiwn penodol yn ymwneud â pharagraff 7, sy'n dweud bod y Cynulliad wedi gofyn am gyngor gan ei gyfreithwyr ar ôl terfynu cyflogaeth Richard Rogers. A ellwch fynd gam yn ôl cyn hynny? Pa gyngor cyfreithiol a gymerwyd cyn terfynu cyflogaeth yr Arglwydd Rogers?

Sir Jon Shortridge: You have asked me a series of questions, and I am not quite sure in which order to take them. As far as I am concerned, the contract was between the Assembly and the Richard Rogers Partnership for the provision of services.

Syr Jon Shortridge: Yr ydych wedi gofyn cyfres o gwestiynau i mi ac nid wyf yn siŵr iawn ym mha drefn i'w hateb. O'm rhan i, yr oedd y cytundeb rhwng y Cynulliad a Phartneriaeth Richard Rogers ar gyfer darparu gwasanaethau. Pan derfynwyd y

When we terminated that contract we terminated our agreement for him to provide us with services. I hope that the difference is a semantic one and not a real one.

contract hwnnw gennym terfynwyd ein cytundeb iddo ddarparu gwasanaethau i ni. Gobeithio bod y gwahaniaeth yn un semantig ac nid yn un gwirioneddol.

I think that I have answered sufficiently the point about why there was no signed contract, and have conveyed the fact that I do not feel that, by the time we hit July 2000, the issue of whether or not the contract had been formally signed was a material consideration.

Credaf fy mod wedi ateb yn ddigonol y pwynt ynglŷn â pham nad oedd contract wedi'i lofnodi, ac yr wyf wedi cyfleu'r ffaith nad wyf yn credu, erbyn Gorffennaf 2000, bod y mater ynglŷn ag a oedd y contract wedi'i lofnodi'n ffurfiol ai peidio yn ystyriaeth o bwys.

In terms of what legal advice we took immediately before terminating the contract, we relied very largely, at that stage, on the advice of the Assembly's own lawyers in the Office of the Counsel General, some of whom are very experienced in contract law matters. I think that one has to remember that in June and early July 2000, events were moving very fast and decisions had to be taken; we could not allow the matter to drift. So this was not an occasion where it would have been practical to have delayed the process very significantly in order to have lots of further legal advice. We were certainly satisfied, and I am certainly satisfied, that we terminated the contract with adequate legal advice. In fact, I would go further and say that I would have personally felt that I was in a very difficult position if that contract had not been terminated when it was, for the sorts of reasons that I have outlined in my opening statement.

O ran pa gyngor cyfreithiol a gymerwyd gennym yn syth cyn terfynu'r contract, yr oeddem yn dibynnu'n bennaf, bryd hynny, ar gyngor cyfreithwyr y Cynulliad yn Swyddfa'r Cwnsler Cyffredinol ac mae rhai ohonynt yn brofiadol iawn mewn materion cyfraith contract. Credaf fod yn rhaid cofio y datblygodd pethau'n gyflym iawn ym mis Mehefin a dechrau Gorffennaf 2000, a bu'n rhaid gwneud penderfyniadau; ni allem adael i'r mater fynd yn ei flaen. Felly nid oedd hwn yn achlysur lle byddai wedi bod yn ymarferol oedi'r broses yn sylweddol er mwyn derbyn rhagor o gyngor cyfreithiol. Yr oeddem yn fodlon, ac yr wyf yn fodlon, ein bod wedi terfynu'r contract ar ôl derbyn cyngor cyfreithiol digonol. Yn wir, byddwn yn mynd gam ymhellach a dweud y byddwn yn bersonol wedi teimlo fy mod mewn sefyllfa anodd iawn pe na bai'r contract hwnnw wedi ei derfynu ar y pryd, am y rhesymau a amlinellais yn fy natganiad agoriadol.

[24] **Alun Cairns:** What you are saying, Sir Jon, is that no specialist legal advice was taken about the termination of Lord Rogers's employment in that respect. I therefore put it to you that in your opening remarks you highlighted and underlined for the Committee's attention the fact that the Graves report stated that it was a 'brave' decision. Is it fair to say that the report highlighted that it was a brave decision because no specialist legal advice was taken and that we were basically running on a wing and a prayer and opening ourselves up to claims from Lord Rogers, such as those which we subsequently faced?

[24] **Alun Cairns:** Yr hyn yr ydych yn ei ddweud, Syr Jon, yw na chymerwyd unrhyw gyngor cyfreithiol arbenigol ynglŷn â therfynu cyflogaeth yr Arglwydd Rogers yn hynny o beth. Credaf felly eich bod wedi amlygu a phwysleisio yn eich sylwadau agoriadol i'r Pwyllgor bod adroddiad Graves yn nodi bod hwn yn benderfyniad 'dewr'. A fyddai'n deg dweud bod yr adroddiad yn pwysleisio bod hwn yn benderfyniad dewr oherwydd ni chymerwyd cyngor cyfreithiol arbenigol a'n bod, mewn gwirionedd yn ddiamddiffyn ac yn agored i hawliadau gan yr Arglwydd Rogers, fel y rhai a wynebwyd wedi hynny?

Sir Jon Shortridge: No, that would be to totally misconstrue what was being said. That report was indicating very strongly that we

Syr Jon Shortridge: Na, byddai hynny'n camddehongli'r hyn a ddywedwyd yn llwyr. Yr oedd yr adroddiad hwnnw yn nodi'n gryf

were right—the word I quoted was that we were 'correct'—to take that decision. It was a brave decision because the Assembly, much to my regret, took a reputational hit because of it. The bravery has subsequently been confirmed in a further study that we undertook as part of the second-stage procurement, where we had a gateway review undertaken of that. That gateway review confirmed, in pretty much the same words, that this was a courageous and appropriate act that we took. If the implication of your question is that in some way it was a reckless decision, I would refute that entirely.

iawn ein bod yn iawn—y gair a ddyfynnais oedd ein bod yn 'gywir'—i ddod i'r penderfyniad hwn. Yr oedd yn benderfyniad dewr oherwydd bod enw da'r Cynulliad, er mawr ofid i mi, wedi dioddef oherwydd hynny. Mae'r dewrder wedi'i gadarnhau ers hynny mewn astudiaeth bellach a gynhaliwyd gennym fel rhan o'r caffael ail gyfnod, lle cynhaliwyd adolygiad porth o hynny gennym. Cadarnhaodd yr adolygiad porth hwn, yn yr union eiriau mwy neu lai, ein bod wedi cymryd camau dewr a phriodol. Os ydych yn ceisio awgrymu yn eich cwestiwn bod hwn yn benderfyniad byrbwyll, byddwn yn gwrthod hynny'n llwyr.

[25] **Eleanor Burnham:** As a lay person, I cannot quite understand: surely you were in difficulty because there was not a signed contract. I believe that you probably took a very brave decision, but had you had a clear and signed contract, surely some of those issues would not have arisen?

[25] **Eleanor Burnham:** Fel person lleyg, ni allaf ddeall yn iawn: mae'n rhaid eich bod mewn anhawster am nad oedd contract wedi'i lofnodi. Credaf eich bod, fwy na thebyg, wedi dod i benderfyniad dewr iawn, ond pe bai gennych gontract clir wedi'i lofnodi, a ydyw'n bosib na fyddai rhai o'r materion hynny wedi codi?

[26] **Dafydd Wigley:** The implication of what Sir Jon has already said is not that there was any dispute about the fact that there was a contractual relationship although not a signed contract—

[26] **Dafydd Wigley:** Ystyr yr hyn y mae Syr Jon wedi ei ddweud yn barod yw nid bod unrhyw anghydfod ynglŷn â'r ffaith bod perthynas gytundebol er nad contract wedi'i lofnodi—

[27] **Eleanor Burnham:** I am not talking about that, I am actually talking about the terms of the contract. They were not clear, were they? Therefore, you were in a very, very difficult position.

[27] **Eleanor Burnham:** Nid wyf yn siarad am hynny, yr wyf yn siarad am amodau'r contract. Nid oeddent yn glir, nag oeddent? Felly, yr oeddech mewn sefyllfa anodd iawn, iawn.

[28] **Dafydd Wigley:** Sir Jon, does that make a difference?

[28] **Dafydd Wigley:** Syr Jon, a yw hynny'n gwneud gwahaniaeth?

Sir Jon Shortridge: No. As far as I am concerned, the terms of the contract were certainly sufficiently clear for me and our lawyers. The adjudicator took a different interpretation of them, but whether or not the contract had been signed would not have altered that. If we could have reached an agreement with the Richard Rogers Partnership on fees, the contract, as it was at the time, would have been signed. So, to that extent, whether or not it was signed does not affect the terms of the contract. The only element of that contract that was in dispute and about which there therefore might be some doubt, was the overall quantum of the

Syr Jon Shortridge: Na. O'm rhan i, yr oedd amodau'r contract yn sicr yn ddigon clir i mi a'n cyfreithwyr. Fe'u dehonglwyd yn wahanol gan y dyfarnwr, ond ni fyddai a oedd y contract wedi'i lofnodi ai peidio wedi newid hynny. Pe baem wedi gallu dod i gytundeb â Phartneriaeth Richard Rogers ynglŷn â ffioedd, byddai'r contract, fel ag yr oedd ar y pryd, wedi'i lofnodi. Felly, i'r graddau hynny, nid yw a oedd wedi'i lofnodi ai peidio yn effeithio ar amodau'r contract. Yr unig elfen o'r contract hwnnw lle'r oedd anghydfod ac efallai amheuaeth oherwydd hynny, oedd cwantwm cyffredinol ffioedd Partneriaeth Richard Rogers, nid y

fees for the Richard Rogers Partnership, not the payment mechanism.

mecanwaith talu.

[29] **Alun Cairns:** I do not want to go over old ground, Sir Jon, but did the fact that you could not agree on something as fundamental as the architects' fees not highlight to you the possibility that that might well give way to discrepancies and differences further down the line? It would seem pretty fundamental, bearing in mind that it was a significant proportion of the cost.

[29] **Alun Cairns:** Nid wyf am drafod pethau sydd wedi'u trafod eisoes, Syr Jon, ond onid oedd y ffaith nad oeddech yn gallu cytuno ar rywbeth mor sylfaenol â ffioedd y penseiri yn amlygu'r posibilrwydd y gallai hynny arwain at anghysondebau a gwahaniaethau yn hwyrach? Mae'n ymddangos yn eithaf sylfaenol, o gofio ei fod yn gyfran sylweddol o'r gost.

Sir Jon Shortridge: I do not accept that. At no point, prior to termination, was there any serious discussion between the parties on the wording of the various clauses. We obviously, quite a while before termination, were seeking legal advice on whether or not the fact that the contract had not been signed materially affected the position. We were assured that it did not.

Syr Jon Shortridge: Nid wyf yn derbyn hynny. Cyn terfynu'r contract, ni chynhaliwyd trafodaeth o ddifrif rhwng y ddwy ochr ar eiriad y cymalau amrywiol ar unrhyw adeg. Yr oeddem yn amlwg, ymhell cyn terfynu'r contract, wedi gofyn am gyngor cyfreithiol ynglŷn ag a oedd y ffaith nad oedd y contract wedi'i lofnodi yn effeithio'n sylweddol ar y sefyllfa. Cawsom sicrwydd nad oedd.

[30] **Alun Cairns:** Paragraph 7 reports some of the advice from the Assembly's solicitors. They believed that the Assembly had very good grounds to claim breach of contract since the Richard Rogers Partnership had not discharged its duties with reasonable skill, care and diligence. Can we infer that, prior to this point in time, the Assembly did not think that there was merit in seeking a claim for damages and thought that Lord Rogers's partnership was carrying out its duties with reasonable skill, care and diligence?

[30] **Alun Cairns:** Mae paragraff 7 yn nodi rhywfaint o'r cyngor gan gyfreithwyr y Cynulliad. Yr oeddent yn credu bod rhesymau da iawn i hawlio tor-contract gan nad oedd Partneriaeth Richard Rogers wedi cyflawni'i ddyletswyddau â'r sgil, gofal a diwydrwydd rhesymol. A allwn gasglu nad oedd y Cynulliad yn credu, cyn hynny, bod gwerth mewn ceisio hawlio iawndal a'i fod o'r farn bod partneriaeth yr Arglwydd Rogers yn cyflawni ei dyletswyddau gyda sgil, gofal a diwydrwydd rhesymol?

Sir Jon Shortridge: I think that, as I have hinted, or indicated, the story of this project was one in which we were becoming increasingly concerned about the way in which the Richard Rogers Partnership was undertaking its responsibilities under the contract. What we sought to do, following the termination, was to make what we regarded, under all the circumstances, as a full and final offer of payment to draw a clean line under all of this so that we could move on without any further risk of litigation or further expense. It was really for that reason that we made this offer of £175,000.

Syr Jon Shortridge: Credaf, fel yr wyf wedi'i awgrymu, neu ei nodi, mai hanes y prosiect hwn oedd ein bod yn dod yn gynyddol bryderus ynglŷn â'r ffordd yr oedd Partneriaeth Richard Rogers yn cyflawni ei ddyletswyddau dan y contract. Yr hyn yr oeddem yn ceisio'i wneud, ar ôl terfynu'r contract, oedd cynnig yr hyn yr oeddem yn ei ystyried, o dan yr holl amgylchiadau, i fod yn daliad llawn a therfynol i roi diwedd ar hyn oll er mwyn i ni allu symud ymlaen heb unrhyw berygl o gamau cyfreithiol neu gostau pellach. Dyna pam y gwnaethom y cynnig hwn o £175,000.

[31] **Alun Cairns:** Given the legal advice provided by the Assembly's solicitors, who I assume are specialists in this matter, why did

[31] **Alun Cairns:** O ystyried y cyngor cyfreithiol a ddarparwyd gan gyfreithwyr y Cynulliad, y tybiaf eu bod yn arbenigwyr yn

the Assembly not seek to take legal action against Richard Rogers and sue him for breach of contract at that point?

y maes hwn, pam na cheisiodd y Cynulliad fynd â Richard Rogers i gyfraith a'i erlyn am dor-contract bryd hynny?

Sir Jon Shortridge: Very shortly after the termination, we undertook a whole series of reviews, two of which are referred to in paragraph 9. We also contracted with Eversheds to provide us with further advice. So we certainly had it in mind that we might want to go further with Rogers if we had to, but we really wanted to be able to close down any outstanding contractual matter.

Syr Jon Shortridge: Yn fuan iawn ar ôl y terfyniad, cyflawnasom gyfres gyfan o adolygiadau, a chyfeirir at ddau o'r rhain ym mharagraff 9. Yn ogystal, contractwyd Eversheds gennym i ddarparu cyngor pellach. Felly yr oeddem heb os yn ystyried y byddem efallai am fynd ymhellach â Rogers os oedd yn rhaid, ond mewn gwirionedd yr oeddem am gau pen y mwdwl ar unrhyw fater cytundebol oedd heb ei benderfynu.

[32] **Alun Cairns:** You mentioned Paragraph 9, which is a pretty damning indictment of the actions of the Richard Rogers Partnership, although the adjudicator clearly did not agree. Why did you not seek this sort of report before you terminated the employment of the Richard Rogers Partnership?

[32] **Alun Cairns:** Yr oeddech yn sôn am Baragraff 9, sy'n gyhuddiad eithaf damniol o weithredoedd Partneriaeth Richard Rogers, er nad oedd y dyfarnwr yn amlwg yn cytuno. Pam na wnaethoch ofyn am adroddiad o'r fath cyn i chi derfynu cyflogaeth Partneriaeth Richard Rogers?

Sir Jon Shortridge: I think, from memory, that the work we commissioned probably took about three months from the point that we decided we wanted to commission it. You then procure the person to do it and they do the work. In the situation we were in in May, June and July 2000, we did not have that sort of time and, as I say, we acted, in my judgment, absolutely rightly on sufficient legal advice, which we had at the time. I might just say, reverting to your earlier question, that our offer of £175,000 was explicitly without prejudice to any further action we might want to take.

Syr Jon Shortridge: Credaf, o'r hyn y gallaf ei gofio, bod y gwaith a gomisiynwyd gennym wedi cymryd tua thri mis o'r adeg y penderfynasom ein bod am ei gomisiynu. Yr ydych yn caffael y person i'w wneud ac maent yn gwneud y gwaith. Yn y sefyllfa yr oeddem ynddi ym Mai, Mehefin a Gorffennaf 2000, nid oedd gennym ddigon o amser ac, fel y dywedais, bu inni weithredu, yn fy marn i, yn hollol gywir gyda chyngor cyfreithiol digonol, a oedd gennym ar y pryd. Hoffwn ychwanegu, gan gyfeirio'n ôl at eich cwestiwn blaenorol, bod ein cynnig o £175,000 yn benodol heb ymrwymiad i unrhyw gamau pellach y gallem ddewis eu cymryd.

[33] **Dafydd Wigley:** Eleanor, did you want to come in on this?

[33] **Dafydd Wigley:** Eleanor, a oeddech am gyfrannu yma?

[34] **Alun Cairns:** Could I beg your indulgence to ask one further question, Chair? Paragraph 23 highlights that an independent quantity surveyor was not appointed until December 2000 but, bearing in mind that the First Secretary at the time had reviewed the project in March 2000, should you not have sought the advice highlighted in paragraph 9 at that time?

[34] **Alun Cairns:** A gaf i erfyn am eich goddefgarwch i ofyn un cwestiwn pellach, Gadeirydd? Mae paragraff 23 yn amlygu na phenodwyd maintfesurydd annibynnol tan Ragfyr 2000 ond, gan gofio bod y Prif Ysgrifennydd ar y pryd wedi adolygu'r prosiect ym mis Mawrth 2000, oni ddylech fod wedi gofyn am y cyngor a nodir ym mharagraff 9 ar y pryd?

Sir Jon Shortridge: I think that the advice

Syr Jon Shortridge: Nid wyf yn credu mai

highlighted in paragraph 9 was not directly cost consultant advice, although costs were obviously reviewed. I do not think that you should make quite that connection. It certainly was the case—and this Committee had concerns about this matter when it looked at it just over two years ago—that there was an issue as to whether or not we should have been employing our own independent cost consultants at that stage. As this report acknowledges, we did appoint an independent quantity surveyor in December 2000. The Turner Townsend report, which, from memory, was completed in around June—that is certainly when we restarted the project, I think—confirmed, on the basis of the very much outline design that existed at that stage, that the costs that we were working to at that stage were reasonable. So, at that point I felt I had assurance on cost. The way the contract was working, I felt that the main need for independent cost advice would be following the completion of the scheme design, which was submitted to us in November, and as the consultants got into the detailed design work. I felt that once they got into the detailed design work then there would be a basis for testing the costings much more closely, and, at that point, we had our independent quantity surveyor.

cyngor ymgynghorol am gost uniongyrchol oedd y cyngor a nodwyd ym mharagraff 9, er yn amlwg yr adolygwyd costau. Nid wyf yn credu y dylech wneud yr union gysylltiad hwnnw. Yr oedd yn sicr yn wir—ac yr oedd gan y Pwyllgor hwn bryderon ynghylch y mater hwn pan drafodwyd ef ychydig dros ddwy flynedd yn ôl—y bu'n bwnc trafod a ddylem fod wedi cyflogi ein hymgynghorwyr cost annibynnol bryd hynny. Fel y mae'r adroddiad hwn yn ei gydnabod, penodwyd maintfesurydd annibynnol gennym ym mis Rhagfyr 2000. Yr oedd adroddiad Turner Townsend, a gwblhawyd, o'r hyn a gofiaf, tua mis Mehefin—credaf mai dyna'n sicr yr adeg yr ailddechreuasom y prosiect—yn cadarnhau, ar sail y cynllun bras iawn a fodolai bryd hynny, bod y costau yr oeddem yn gweithio iddynt bryd hynny'n rhesymol. Felly, bryd hynny, yr oeddwn yn credu fod gennyf sicrwydd o ran costau. O ystyried y ffordd yr oedd y contract yn gweithio, teimlais y byddai'r angen mwyaf am gyngor annibynnol ar gostau yn dilyn cwblhau dyluniad y cynllun, a gyflwynwyd i ni ym mis Tachwedd, ac wrth i'r ymgynghorwyr ganolbwyntio ar y gwaith dylunio manwl. Credais y byddai sail i brofi'r costau yn llawer mwy trylwyr ar ôl iddynt ddechrau ar y gwaith dylunio manwl, ac yr oedd gennym, ar yr adeg honno, ein maintfesurydd annibynnol.

[35] **Dafydd Wigley:** We need to return to that point later.

[35] **Dafydd Wigley:** Mae angen i ni ddychwelyd at y pwynt hwnnw yn ddiweddarach.

[36] **Eleanor Burnham:** Moving on to the dispute about the ownership of the copyright of the designs, and other related documents, why was there a dispute as indicated in paragraph 8?

[36] **Eleanor Burnham:** Gan symud ymlaen at yr anghydfod ynglŷn â pherchnogaeth hawlfraint y dyluniadau, a dogfennau cysylltiedig eraill, pam fod anghydfod fel a nodir ym mharagraff 8?

Sir Jon Shortridge: I have to say that I cannot begin to imagine why there was a dispute. The contract was very clear that we had Crown copyright. One of the first things that happened after we terminated the contract was that the Richard Rogers Partnership, as I think this report indicates, wrote to us and asked, as it had discovered that we were seeking to continue using its design, for the return of all its designs and drawings. One of the things about the adjudication was that, on the one hand, the

Syr Jon Shortridge: Mae'n rhaid i mi ddweud na allaf ddechrau dirnad pam y bu anghydfod. Yr oedd y contract yn glir iawn bod gennym hawlfraint y Goron. Un o'r pethau cyntaf a ddigwyddodd ar ôl i ni derfynu'r contract oedd bod Partneriaeth Richard Rogers, fel a gredaf y nodir yn yr adroddiad hwn, wedi ysgrifennu atom a gofyn, gan ei fod wedi darganfod ein bod yn gobeithio parhau i ddefnyddio ei gynllun, i ni ddychwelyd ei holl gynlluniau a'i ddyluniadau. Un o'r pethau am y dyfarniad

Richard Rogers Partnership was asking for what it regarded to be the full payment for the design work that it felt that it was contractually entitled to—although it was acknowledged that it had not done all the work—and on the other hand, it was, in effect, saying that we should not have any of the value of that design work, because it wanted it all back.

oedd bod Partneriaeth Richard Rogers, ar un llaw, yn gofyn am yr hyn yr oedd yn ei ystyried yn daliad llawn am y gwaith cynllunio yr oedd o'r farn bod ganddo hawl cytundebol iddo—er y cydnabuwyd nad oedd wedi cwblhau'r gwaith ac ar y llaw arall, yr oedd, i bob diben, yn dweud na ddylem gael unrhyw werth o'r gwaith cynllunio hwnnw, am ei fod am gael y cwbl yn ôl.

[37] **Eleanor Burnham:** Is it not such a basic matter that it should have been so clear that the adjudicator did not need to confirm that the Assembly was the owner?

[37] **Eleanor Burnham:** Onid yw'n fater mor syml ag y dylai fod wedi bod mor amlwg fel na fyddai wedi bod angen i'r dyfarnwr gadarnhau mai'r Cynulliad oedd y perchennog?

Sir Jon Shortridge: One would like to think so. However, there was a dispute because the Richard Rogers Partnership was saying that it would not give up the design work that it was still holding, and for which we had paid, because it was disputing the fact that we had the copyright. The contract was quite clear, and on this matter the adjudicator found in our favour. However, if you have a party who is refusing to give you something, however much you regret that, and are surprised by it, you have a dispute and it has to be resolved.

Syr Jon Shortridge: Da fyddai credu hynny. Fodd bynnag, yr oedd anghydfod oherwydd fod Partneriaeth Richard Rogers yn dweud na fyddai'n ildio'r gwaith cynllunio oedd yn ei feddiant o hyd, gwaith yr oeddem wedi talu amdano, oherwydd ei fod yn herio'r ffaith mai gennym ni oedd yr hawlfraint. Yr oedd y contract yn ddigon clir, a phenderfynodd y dyfarnwr o'n plaid ar y mater hwn. Fodd bynnag, os oes un ochr yn gwrthod rhoi rhywbeth i chi, waeth faint mae hynny'n ofid calon i chi ac yn eich syfrdanu, mae gennych anghydfod ac mae'n rhaid ei ddatrys.

[38] **Eleanor Burnham:** Was a precedent set in this case or is this the usual way that things work?

[38] **Eleanor Burnham:** A osodwyd cynsail yn yr achos hwn neu ai dyma'r ffordd y mae pethau'n digwydd fel arfer?

Sir Jon Shortridge: I really cannot comment on that. I imagine that there are circumstances in which signature architects like Richard Rogers feel that their design is personal to them. In this case, the contract did not support that view.

Syr Jon Shortridge: Ni allaf roi sylwadau ar hynny mewn gwirionedd. Dychmygaf fod amgylchiadau lle mae penseiri adnabyddus fel Richard Rogers o'r farn bod eu cynllun yn bersonol iddynt hwy. Yn yr achos hwn, nid oedd y contract yn ategu'r farn honno.

[39] **Janice Gregory:** Given that the adjudicator found in the Assembly's favour, can you tell us whether or not it has now handed over the designs?

[39] **Janice Gregory:** O ystyried bod y dyfarnwr wedi penderfynu o blaid y Cynulliad, a allwch ddweud wrthym a ydyw wedi trosglwyddo'r cynlluniau bellach?

Sir Jon Shortridge: We have received a lot of material. As I understand it, shortly after the adjudication, we were sent some material in the form of disks and so on, but that was in a read-only format or, at least, a lot of it was in a read-only format, so, in effect, it was not particularly usable. We have been in quite prolonged dialogue with the Richard Rogers Partnership on these matters. In October this

Syr Jon Shortridge: Yr ydym wedi derbyn llawer o ddeunydd. O'r hyn a ddeallaf, yn fuan ar ôl y dyfarniad, anfonwyd deunydd atom ar ffurf disgiau ac ati, ond yr oedd ar ffurf y gellid ei ddarllen neu, o leiaf, yr oedd llawer ohono ar ffurf y gellid ei ddarllen, felly, o ganlyniad nid oedd yn arbennig o ddefnyddiol. Yr ydym wedi cynnal trafodaethau maith â Phartneriaeth Richard

year we received substantial additional and helpful material. What I cannot know is whether it is still holding things to which we are entitled.

Rogers ynglŷn â'r materion hyn. Ym mis Hydref eleni derbyniasom ddeunydd ychwanegol a defnyddiol sylweddol. Yr hyn na allaf ei wybod yw a ydyw'n parhau i fod yn meddu ar ddeunydd y mae gennym hawl iddo.

[40] **Dafydd Wigley:** The adjudication is quite clear, though, that we are entitled to them.

[40] **Dafydd Wigley:** Ond mae'r dyfarniad yn glir iawn bod gennym yr hawl iddynt.

Sir Jon Shortridge: Absolutely.

Syr Jon Shortridge: Yn hollol.

[41] **Jocelyn Davies:** I would like to go back to this issue of whether the adjudication process was the right procedure for us, because there appear now to be quite complex legal issues involved, including copyright. It seems to me that the case appears to hinge on matters relating to contract law, with both sides having a completely different view of what that contract consisted of, whether it was signed or not. Why did you not just sue for breach of contract?

[41] **Jocelyn Davies:** Hoffwn gyfeirio'n ôl at y mater ai'r broses ddyfarnu oedd y weithdrefn gywir i ni, oherwydd mae'n ymddangos bellach bod materion cyfreithiol cymhleth iawn ynghlwm wrth y broses hon, gan gynnwys hawlfraint. Ymddengys i mi fod yr achos yn dibynnu ar faterion sy'n ymwneud â chyfraith contract, gyda'r ddwy ochr o farn cwbl wahanol ar beth oedd cynnwys y contract hwnnw, ac a oedd wedi'i lofnodi ai peidio. Pam na wnaethoch eu herlid am dor-contract?

Sir Jon Shortridge: Under the terms of the contract, a form of redress, which is available to both parties, is this adjudication procedure. If one party invokes that procedure, the other party is obliged to defend it. What happened was that Rogers invoked the adjudication in respect of what it considered to be non-payment of fees. So we had to respond to that—or we could have just paid it the money. I am sorry, when I say 'Rogers', I mean the Richard Rogers Partnership.

Syr Jon Shortridge: Dan amodau'r contract, ffurf o unioni, sydd ar gael i'r ddwy ochr, yw'r broses ddyfarnu hon. Os yw un ochr yn galw ar y weithdrefn honno, mae'r ochr arall yn gorfod ei hamddiffyn. Yr hyn a ddigwyddodd oedd i Rogers ofyn am ddyfarniad ynghylch yr hyn a ystyriai yn ffioedd heb eu talu. Felly yr oedd yn rhaid i ni ymateb i hynny—neu gallasem fod wedi talu'r arian yn syth. Mae'n ddrwg gennyf, wrth sôn am 'Rogers', golygaf Bartnerniaeth Richard Rogers.

[42] **Jocelyn Davies:** I took that as read.

[42] **Jocelyn Davies:** Deallaf hynny.

Sir Jon Shortridge: So we had to respond to it. However, we took the judgment that, given that we were going to have an engagement through the adjudication proceedings, it would be in the Assembly's best interest that we sought to counterclaim through that adjudication. We thought that that provided us with the best possible hope of getting the sort of redress and compensation to which we felt we were entitled. I think, in effect, that the Auditor General's report confirms that, because he says that we took appropriate advice and that, in terms of value for money, this was the appropriate course of action to

Syr Jon Shortridge: Felly, yr oedd yn rhaid i ni ymateb. Fodd bynnag, ein barn ni oedd, o ystyried ein bod yn cael cysylltiad drwy'r gweithrediadau dyfarnu, y byddai er lles i'r Cynulliad geisio gwrth-hawliad drwy'r dyfarniad hwnnw. Yr oeddwn yn meddwl y byddai hynny'n cynnig y cyfle gorau posibl i ni gael y math o unioni a'r iawndal y credem yr oedd gennym yr hawl iddynt. Credaf, mewn gwirionedd, fod adroddiad yr Archwilydd Cyffredinol yn cadarnhau hynny, oherwydd ei fod yn dweud ein bod wedi cymryd cyngor priodol ac, o ran gwerth am arian, mai dyma'r camau priodol i'w cymryd.

take. I should say that going down the adjudication route does not prevent either party from taking the matter further in a more formally legal way, if they think it appropriate.

Dylwn nodi nad yw dilyn y llwybr dyfarnu yn atal y naill ochr na'r llall rhag mynd â'r mater ymhellach mewn ffordd gyfreithiol fwy ffurfiol, os credant fod hynny'n briodol.

[43] **Jocelyn Davies:** It just appears to me that the Richard Rogers Partnership, in construction matters, is obviously a repeat player, and the construction expert who acted as the adjudicator would have a lot of knowledge, presumably, in construction matters, and agreed with the Richard Rogers Partnership's interpretation of the contract. Now, sometimes you call it a contract, and sometimes you call it an agreement. What is the difference between an agreement, which in previous reports had a capital 'A', and a contract? Also, in previous discussions that we have had, you have referred to this as a partial agreement.

[43] **Jocelyn Davies:** Ond mae'n ymddangos i mi fod Partneriaeth Richard Rogers, o ran materion adeiladu, yn amlwg yn brofiadol iawn, a byddai gan yr arbenigwr adeiladu a weithredodd fel dyfarnwr lawer o wybodaeth, mae'n debyg, mewn materion adeiladu, a chytunodd â dehongliad Partneriaeth Richard Rogers o'r contract. Nawr, o bryd i'w gilydd yr ydych yn cyfeirio ato fel contract ac weithiau fel cytundeb. Beth yw'r gwahaniaeth rhwng cytundeb, a nodwyd ag 'C' fawr mewn adroddiadau blaenorol, a chontract? Hefyd, mewn trafodaethau blaenorol gennym, yr ydych wedi cyfeirio at hyn fel cytundeb rhannol.

Sir Jon Shortridge: Sorry, what was that you said?

Syr Jon Shortridge: Mae'n ddrwg gennyf, beth ddywedasoch chi?

[44] **Jocelyn Davies:** A partial agreement—as if the agreement was not completed. So when did that then become a contract?

[44] **Jocelyn Davies:** Cytundeb rhannol—fel pe na bai'r cytundeb wedi ei gwblhau. Felly pryd y datblygodd hwnnw'n gontract?

Sir Jon Shortridge: On the distinction between an agreement and a contract, I think that I will just have to plead that I am not a lawyer and that I am using these terms loosely, and please do not read anything of significance into them. I am relating my remarks to the terms of the unsigned contract, which was the basis upon which we were employing the Richard Rogers Partnership and the contract that we terminated. I am not trying to—

Syr Jon Shortridge: Ynglŷn â'r gwahaniaeth rhwng cytundeb a chontract, credaf y bydd yn rhaid i mi bledio nad wyf yn gyfreithiwr a fy mod yn defnyddio'r termau hyn yn llac, a pheidiwch â'u dehongli fel mater o bwys, da chi. Mae fy sylwadau'n ymwneud â thelerau'r contract na lofnodwyd, a oedd yn gweithio fel sail i gyflogi Partneriaeth Richard Rogers a'r contract a derfynwyd gennym. Nid wyf yn ceisio—

[45] **Jocelyn Davies:** So there is no difference between an agreement and a contract?

[45] **Jocelyn Davies:** Felly nid oes gwahaniaeth rhwng cytundeb a chontract?

Sir Jon Shortridge: Not in my terms. Sorry, what was the main thrust of your point again?

Syr Jon Shortridge: Nid yn fy nhelerau i. Mae'n ddrwg gennyf, beth oedd prif bwyslais eich pwynt eto?

[46] **Jocelyn Davies:** It just appears to me that Richard Rogers is a repeat player in construction terms and is probably well-versed in the adjudication process, and you used a construction expert to decide on these matters, which, it appears to me, would have

[46] **Jocelyn Davies:** Mae'n ymddangos i mi fod Richard Rogers yn hen law o ran materion adeiladu ac, mae'n debyg, yn gyfarwydd iawn â'r broses ddyfarnu, a'ch bod wedi defnyddio arbenigwr adeiladu i benderfynu ar faterion a fyddai, yn fy marn i,

been better served being looked at by the courts.

wedi cael gwell sylw yn y llysoedd.

Sir Jon Shortridge: Having the fast-track adjudication procedure is now pretty much common practice. I think that it can be in the interests of both parties that you should have the facility to use the adjudication. I personally found it quite attractive for these reasons: it is quick, it is comparatively cheap—although I draw your attention to figure 2 when I talk about comparative cheapness—and it does not have absolute finality. So, you are able to take the matter further to the courts if you want to. So, it seemed to me, and it still seems to me, that it was appropriate to have that facility available to both parties. The Richard Rogers Partnership sought to invoke it, so we had no choice but to respond to it in some way.

Syr Jon Shortridge: Mae defnyddio gweithdrefn ddyfarnu dull carlam yn arfer eithaf gyffredin bellach. Credaf y gall fod yn fuddiol i'r ddwy ochr bod cyfle i ddefnyddio'r dyfarniad. Yr oedd yn apelio ataf yn bersonol oherwydd y rhesymau hyn: mae'n gyflym, mae'n gymharol rhad—er y tynnaf eich sylw at ffigur 2 wrth sôn am radrwydd cymharol—ac nid yw'n hollol derfynol. Felly, gallech fynd â'r mater ymhellach i'r llysoedd os mai dyna'ch dymuniad. Felly, yr oedd yn ymddangos i mi, ac mae'n parhau i ymddangos i mi felly, ei bod yn briodol sicrhau bod y cyfleuster hwnnw ar gael i'r ddwy ochr. Gwnaeth Partneriaeth Richard Rogers gais i'w ddefnyddio, felly nid oedd gennym ddewis ond ymateb iddo mewn rhyw ffordd.

[47] **Jocelyn Davies:** When you lose and when it costs £450,000, it is not a very attractive option. Are you telling us now that we could still, if we chose to do so, take legal action?

[47] **Jocelyn Davies:** Pan yr ydych yn colli, a phan fo hynny'n gostio £450,000, nid yw'n opsiwn atyniadol iawn. A ydych yn dweud wrthym nawr y gallem gymryd camau cyfreithiol pe baem yn dewis gwneud hynny?

Sir Jon Shortridge: The report indicates that and I think that the Chair in his opening remarks indicated that that could be a possibility. It certainly is a possibility and it is for that reason that I am being, and will continue to be, quite careful in the way in which I answer some questions.

Syr Jon Shortridge: Mae'r adroddiad yn nodi hynny a chredaf fod y Cadeirydd yn ei sylwadau agoriadol wedi nodi y gallai hynny fod yn bosibilrwydd. Nid oes amheuaeth ei fod yn bosibilrwydd a dyma pam fy mod, ac y byddaf yn parhau i fod, yn eithaf gofalus yn y ffordd y byddaf yn ateb rhai cwestiynau.

[48] **Jocelyn Davies:** The adjudication process started and then the Assembly served its notice just days following the partnership serving its notice. Was the preparation of that case rushed?

[48] **Jocelyn Davies:** Dechreuodd y broses ddyfarnu a chyflwynodd y Cynulliad ei rybudd ddyddiau'n unig ar ôl i'r bartneriaeth gyflwyno'i rhybudd. A frysiwyd i baratoi'r achos hwnnw?

Sir Jon Shortridge: Sorry, I think that I missed that. Are you saying that we responded very quickly to the Richard Rogers Partnership's adjudication claim with our own counter claim?

Syr Jon Shortridge: Mae'n ddrwg gennyf, credaf fy mod wedi colli hynny. A ydych yn dweud ein bod wedi ymateb yn gyflym iawn i gais am ddyfarniad gan Bartneriaeth Richard Rogers gyda'n gwrth-hawliad?

[49] **Jocelyn Davies:** Yes.

[49] **Jocelyn Davies:** Ydw.

Sir Jon Shortridge: No, it was not rushed because what we had done, pretty much immediately after the termination of the contract, was, as paragraph 9 of the report indicates, to commission two reports, which

Syr Jon Shortridge: Na, ni frysiwyd oherwydd yr hyn a wnaethom, yn syth ar ôl terfynu'r contract, fel a nodir ym mharagraff 9 yr adroddiad, oedd comisiynu dau adroddiad, a oedd yn ein galluogi mewn

were essentially enabling us to have independent advice on whether or not we had conducted ourselves properly up to that point and the extent to which we might have a claim over the architects. We had received both those reports shortly before—I think it was shortly before as opposed to shortly after—the claim put in by Richard Rogers. So, we were in a very good and strong position to put in our counter claim because of the prudent work that we had put in place.

gwirionedd i dderbyn cyngor annibynnol ynglŷn ag a oeddem wedi ymddwyn yn briodol hyd hynny ac i ba raddau yr oedd gennym hawliad yn erbyn y penseiri. Yr oeddem wedi derbyn y ddau adroddiad hyn ychydig cyn—credaf mai ychydig cyn ac nid ychydig ar ôl yr ydoedd—i Richard Rogers gyflwyno'r hawliad. Felly, yr oeddem mewn sefyllfa dda iawn a chadarn i gyflwyno'n gwrth-hawliad oherwydd y gwaith doeth a sicrhawyd gennym.

[50] **Jocelyn Davies:** Thank you. I will leave it there, Dafydd.

[50] **Jocelyn Davies:** Diolch. Nid af ar ôl y mater ymhellach, Dafydd.

[51] **Alun Cairns:** I refer to paragraph 15, Sir Jon, which highlights that the claim made by the Assembly was £6.85 million against an originally estimated fee of £13 million, although obviously there was a lower figure at the outset. Bearing in mind that this is quite a large figure and a large proportion of what the building should have been constructed with, did it ever strike you that that was a reasonable claim to make, or an unreasonable claim to make?

[51] **Alun Cairns:** Cyfeiriaf at baragraff 15, Syr Jon, sy'n amlygu bod yr hawliad a wnaed gan y Cynulliad yn £6.85 miliwn yn erbyn ffi o £13 miliwn a amcangyfrifwyd yn wreiddiol, er yn amlwg bod ffigur is ar y dechrau. Gan gofio bod hwn yn ffigur cymharol fawr ac yn gyfran fawr o'r arian a ddylai fod wedi'i ddefnyddio ar gyfer adeiladu'r adeilad, a groesodd eich meddwl bod hwnnw yn hawliad rhesymol i'w wneud, neu'n hawliad afresymol i'w wneud?

Sir Jon Shortridge: This was a claim that we made on the basis of the advice that we had received from one of our consultants in their reports, referred to in paragraph 9. It was a claim really based on the fact that, having committed to the Richard Rogers Partnership design, we, in effect, had to start again with that design because, from the outset, that design, in our judgment, could not have been built for the original competition price. So, these are all the costings that we felt were associated with the fact that we had had to commit to a design that did not meet the financial requirements.

Syr Jon Shortridge: Yr oedd hwn yn hawliad a wnaethom ar sail y cyngor a dderbyniwyd gennym gan un o'n hymgynghorwyr yn eu hadroddiadau, y cyfeirir ato ym mharagraff 9. Yr oedd yn hawliad a oedd yn seiliedig mewn gwirionedd ar y ffaith ein bod, o ystyried ein bod wedi ymrwymo i gynllun Partneriaeth Richard Rogers, yn gorfod, i bob pwrpas, ddechrau o'r newydd gyda'r cynllun hwnnw, oherwydd, o'r cychwyn cyntaf, ni ellid bodwedi adeiladu'r cynllun hwnnw am y pris cystadleuaeth gwreiddiol yn ein barn ni. Felly, dyna'r costau i gyd, yn ein barn ni, a oedd yn gysylltiedig â'r ffaith ein bod wedi'n hymrwymo i gynllun nad oedd yn bodloni'r gofynion ariannol.

[52] **Alun Cairns:** Is it not indicative of how the whole project has been managed that we are seeking to claim almost £7 million for a contract that should be £13 million and all that is left is a hole in the ground to show for it? Does it not seem a little bit unreasonable that we are seeking to claim £7 million? How confident were you that we would have received the £7 million?

[52] **Alun Cairns:** Onid yw'n arwydd o sut y mae'r holl brosiect wedi'i reoli ein bod yn ceisio hawlio bron i £7 miliwn am gontract a ddylai fod yn £13 miliwn ac mai'r cwbl sy'n weddill ohono yw twll yn y tir? Onid yw'n ymddangos ychydig yn afresymol ein bod yn ceisio hawlio £7 miliwn? Pa mor hyderus oeddech y byddem wedi derbyn y £7 miliwn?

Sir Jon Shortridge: This was an adjudication. We put in our claim on the basis of the independent advice that we had received, which produced that figure. I think that if we had not done that, I would have then been exposed to a question from you as to why, if we had this advice, did we go in for a different figure.

Syr Jon Shortridge: Dyfarniad oedd hwn. Cyflwynasom ein hawliad ar sail y cyngor annibynnol a dderbyniasom, a gynhyrchodd y ffigur hwnnw. Credaf pe na baem wedi gwneud hynny, y byddwn yn agored i gwestiwn gennych ynglŷn â pham, os oeddem wedi derbyn y cyngor hwn, ein bod wedi mynd am ffigur gwahanol.

[53] **Alun Cairns:** Previous to the specialist advice that you had received, had the Assembly made any rough calculations of how much it should claim for?

[53] **Alun Cairns:** Cyn ichi dderbyn y cyngor arbenigol, a oedd y Cynulliad wedi gwneud unrhyw gyfrifiadau bras ynglŷn â'r swm y dylid ei hawlio?

Sir Jon Shortridge: No, because that is why we sought the specialist advice.

Syr Jon Shortridge: Na, a dyna pam i ni ofyn am gyngor arbenigol.

[54] **Alun Cairns:** With the greatest respect, Sir Jon, you mentioned earlier, in terms of legal advice in relation to another question, that you did not see any point in receiving specialist advice because you felt that you had sufficient expertise for that specific issue within the Assembly.

[54] **Alun Cairns:** Gyda phob parch, Syr Jon, dywedasoch ynghynt, o ran cyngor cyfreithiol ynghylch cwestiwn arall, nad oeddech yn gweld unrhyw bwynt mewn derbyn cyngor arbenigol oherwydd eich bod yn credu fod gennych arbenigrwydd digonol ar y mater penodol hwnnw o fewn y Cynulliad.

Sir Jon Shortridge: I think that you are transposing two points.

Syr Jon Shortridge: Credaf eich bod yn trawsosod dau bwynt.

[55] **Dafydd Wigley:** Yes, those are two separate issues, I think. We will move on.

[55] **Dafydd Wigley:** Ie, mae'r ddau fater hyn yn faterion ar wahân, yn fy marn i. Symudwn ymlaen.

[56] **Janice Gregory:** Sir Jon, paragraph 27 states that you intend that the contractor will develop the existing design—and that was partly the reason for my question about whether or not you had received any records from the Richard Rogers Partnership. The £6.85 million claimed for costs incurred or losses includes over £2 million in fees for the same design that the Assembly, apparently, has every intention of using. Why is this?

[56] **Janice Gregory:** Syr Jon, mae paragraff 27 yn nodi eich bod yn bwriadu i'r contractwr ddatblygu'r cynllun cyfredol—a dyma'n rhannol oedd wrth wraidd fy nghwestiwn ynglŷn ag a oeddech wedi derbyn unrhyw gofnodion gan Bartneriaeth Richard Rogers. Mae'r £6.85 miliwn a hawliwyd am gostau a gafwyd neu golledion yn cynnwys dros £2 miliwn mewn ffioedd am yr un cynllun y mae'r Cynulliad, yn ôl pob sôn, yn bwriadu ei ddefnyddio. Pam felly?

Sir Jon Shortridge: I am not sure whether I have necessarily understood the question, but the point about it is that there are a number of reasons why the Assembly is proceeding with the same design. Part of that, I think, is down to Members having quite a strong attachment to the design.

Syr Jon Shortridge: Nid wyf yn siŵr a wyf wedi deall y cwestiwn, ond y pwynt yw bod nifer o resymau pam fod y Cynulliad yn parhau gyda'r un cynllun. Credaf fod hynny yn rhannol oherwydd bod Aelodau wedi ymrwymo'n gryf i'r cynllun.

[57] **Dafydd Wigley:** I do not think that that

[57] **Dafydd Wigley:** Nid wyf yn credu mai

is the point of the question. If I can just intervene—and correct me if I have this wrong, Janice—the question is, if we are intending to use the design anyway and we have the right to it, how is it that we claimed that compensation?

dyna bwynt y cwestiwn. Os caf i ymyrryd—a chywirwch fi os wyf yn anghywir, Janice—y cwestiwn yw, os ydym yn bwriadu defnyddio'r cynllun beth bynnag a bod gennym yr hawl i wneud hynny, sut ein bod wedi hawlio'r iawndal hwnnw?

Sir Jon Shortridge: Well, I think that the point that I am making is that the underlying thinking was that we would not have been proceeding with that design in the first place, because it was not a design that was compliant with the competition. We had got ourselves into this position because the design that had won the competition could not be built for the competition price. All the financial consequences that we have found ourselves facing have flowed from that point. That was part of the underlying thinking in the claim that we were making.

Syr Jon Shortridge: Wel, credaf mai'r pwynt yr wyf yn ei wneud yw mai'r meddwl a oedd yn sail i hyn oedd na fyddem wedi mynd yn ei blaen â'r cynllun hwnnw yn y lle cyntaf, oherwydd nad oedd yn gynllun a oedd yn cydymffurfio â'r gystadleuaeth. Yr oeddem yn y sefyllfa hon oherwydd na ellid adeiladu'r cynllun a oedd wedi ennill y gystadleuaeth am bris y gystadleuaeth. Mae'r holl ganlyniadau ariannol yr ydym wedi'u hwynebu wedi deillio o'r pwynt hwn. Yr oedd hyn yn rhan o'r meddwl wrth wraidd yr hawliad yr oeddem yn ei geisio.

[58] **Dafydd Wigley:** Janice, do you want to come in on that?

[58] **Dafydd Wigley:** Janice, a ydych chi am gyfrannu yma?

[59] **Janice Gregory:** I am sorry, I know that it is coming up to Christmas, but I am absolutely confused now.

[59] **Janice Gregory:** Mae'n ddrwg gennyf, yr wyf yn sylweddoli bod y Nadolig yn agosáu, ond yr wyf wedi drysu'n lân bellach.

[60] **Dafydd Wigley:** So am I.

[60] **Dafydd Wigley:** A minnau.

[61] **Janice Gregory:** If I may put it in simpler terms, as I see it, we are discussing using the existing design and I assume that we are going to develop that. Throughout the report it states that we are going to develop the existing design, which we have already paid for. Is that true?

[61] **Janice Gregory:** A gaf i roi hyn yn symlach, fel y gwelaf i bethau, yr ydym yn trafod defnyddio'r cynllun cyfredol a thybiaf ein bod am ddatblygu hwnnw. Drwy gydol yr adroddiad mae'n nodi ein bod am ddatblygu'r cynllun cyfredol yr ydym wedi talu amdano eisoes. A yw hynny'n wir?

Sir Jon Shortridge: Yes.

Syr Jon Shortridge: Ydyw.

[62] **Janice Gregory:** And we have paid £2 million for that?

[62] **Janice Gregory:** Ac yr ydym wedi talu £2 miliwn am hynny?

Sir Jon Shortridge: Yes.

Syr Jon Shortridge: Ydym.

[63] **Alison Halford:** And we do not like it.

[63] **Alison Halford:** Ac nid ydym yn ei hoffi.

[64] **Janice Gregory:** Well, whether or not we like it is quite immaterial, really. So we have paid for that. How does that compare with other projects in terms of the design fees? I have never been involved in designs of this nature. How does it compare in terms of design fees for other projects?

[64] **Janice Gregory:** Wel, nid yw a ydym yn hoffi'r cynllun ai peidio'n berthnasol, mewn gwirionedd. Felly, yr ydym wedi talu am y cynllun. Sut mae hynny yn cymharu â phrosiectau eraill o ran y ffioedd cynllun? Ni fûm ynghlwm wrth gynlluniau fel hyn erioed. Sut mae'n cymharu o ran ffioedd cynllunio

prosiectau eraill?

Sir Jon Shortridge: I am not an expert either, but it is the case that, as part of the competition, the other five competitors had to submit design fees. The Richard Rogers Partnership design fee was, from memory, the highest of the six, although not substantially higher. So I think the answer is that it is probably on the high side, but not unrecognisable in terms of what a signature architect of the quality of Richard Rogers would be seeking.

Syr Jon Shortridge: Nid wyf innau'n arbenigwr ychwaith, ond y mater yw, fel rhan o'r gystadleuaeth yr oedd yn rhaid i'r pum cystadleuydd arall gyflwyno ffioedd cynllun. O'r hyn a gofiaf, ffi cynllun Partneriaeth Richard Rogers oedd yr uchaf o'r chwech, er nad oedd llawer yn uwch. Felly tybiaf mai'r ateb yw ei fod yn eithaf uchel, ond nid yn afresymol o ran beth fyddai pensaer adnabyddus o safon Richard Rogers yn gofyn amdano.

[65] **Dafydd Wigley:** Janet, do you want to come in on this?

[65] **Dafydd Wigley:** Janet, a ydych chi am gyfrannu yma?

[66] **Janet Davies:** Just briefly, Chair. Sir Jon, are you saying then that the Assembly would have preferred to get the money back rather than the designs, so that it could have started again? Because, if you are, whatever happened you would still have to build on the plot as it is at the moment.

[66] **Janet Davies:** Yn fyr, Gadeirydd. Syr Jon, a ydych yn dweud felly y byddai'r Cynulliad wedi ffafrio cael yr arian yn ôl yn hytrach na'r cynlluniau, er mwyn gallu dechrau eto? Oherwydd, os ydych, beth bynnag fyddai'n digwydd byddai'n rhaid i chi adeiladu ar y plot fel ag y mae ar hyn o bryd.

Sir Jon Shortridge: No, I do not think that you should come to that conclusion. This was a claim, or counterclaim, that we were making as part of an adjudication where we were seeking to maximise the benefit, or minimise the potential loss, to the Assembly, given the circumstances it had found itself in. The judgment that our professional advisers had reached was that we, in effect, were left with a design that was not a compliant design in terms of the original competition. Therefore we thought that the architects needed to take some responsibility for that and we were seeking to claim accordingly. It is also worth remembering that at this point, when we made that claim, we had paid all these design fees but we still did not have access to the design.

Syr Jon Shortridge: Na, ni chredaf y dylech gasglu hynny. Hawliad oedd hwn, neu wrth-hawliad, a gyflwynwyd gennym fel rhan o ddyfarniad i geisio uchafu'r elw, neu leihau'r golled bosibl, i'r Cynulliad, o ystyried ei amgylchiadau ar y pryd. Yr oedd ein hymgynghorwyr proffesiynol o'r farn, mewn gwirionedd, fod gennym gynllun nad oedd yn cydymffurfio â'r gystadleuaeth wreiddiol. Felly, penderfynasom fod angen i'r penseiri gymryd peth o'r cyfrifoldeb am hynny a dyna pam ein bod yn gwneud hawliad. Mae hefyd yn werth cofio ein bod bryd hynny, pan gyflwynasom yr hawliad hwnnw, wedi talu'r holl ffioedd cynllunio hyn ond heb gael gafael ar y cynllun.

[67] **Dafydd Wigley:** I understand what you are saying, but I think that there is a certain amount of contradiction there. May I suggest that if you feel that you have anything further to add on this aspect that you put it in a note to us?

[67] **Dafydd Wigley:** Deallaf yr hyn a ddywedwch, ond credaf fod elfen o wrth-ddweud yma. A gaf i awgrymu eich bod yn ysgrifennu nodyn i ni yn cynnwys unrhyw sylwadau pellach sydd gennych ar y mater hwn?

Mr Richards, did you want to come in on this?

Mr Richards, a ydych chi am gyfrannu yma?

Mr Richards: Could I just say that one cannot disassociate the design from the cost. We were not saying that this design does not work, but that it does not work for the budget that we understood the Richard Rogers Partnership was working to.

Mr Richards: A gaf i ddweud na ellir datgysylltu'r cynllun o'r gost. Nid oeddem yn dweud nad oedd y cynllun hwn yn gweithio, dim ond nad oedd yn gweithio o fewn y gyllideb yr oedd Partneriaeth Richard Rogers yn gweithio iddi.

[68] **Dafydd Wigley:** So, you said, 'Yes, we insist that we have the design, but we will also have £2 million in compensation for it'—or at least that was your opening bid.

[68] **Dafydd Wigley:** Felly, dywedasoch, 'Ydym, yr ydym yn mynnu ein bod yn cael y cynllun, ond fe gymerwn £2 miliwn hefyd mewn iawndal amdano'—neu o leiaf dyna oedd eich cynnig cyntaf.

[69] **Janice Gregory:** Could I take this a little further? We are, presumably, going to work on the existing design—because we seem to have taken emotional ownership of it, apparently. But there is—

[69] **Janice Gregory:** A gaf i fynd â hyn gam ymhellach? Yr ydym, fe gymeraf, yn mynd i weithio gyda'r cynllun cyfredol—oherwydd mae'n ymddangos ein bod wedi cymryd perchnogaeth emosiynol ohono, i bob pwrpas. Ond mae—

[70] **Dafydd Wigley:** Tread carefully.

[70] **Dafydd Wigley:** Byddwch yn ofalus.

[71] **Janice Gregory:** Yes, very carefully. If we are going to do that there will obviously, undoubtedly, have to be some considerable design work to make the existing design—albeit amended—fit into the plot that we have and have the amenities that we expect the new debating chamber to have. Can I ask whether you have any idea where we are? If documents arrived in October 2002, which is just some weeks ago—and presumably there were some design documents among them and not just read-only ones—and, in my view, substantial work still needs to be done, do you have any idea how much and when it will be commenced?

[71] **Janice Gregory:** Ie, gofalus iawn. Os ydym am wneud hynny mae'n amlwg y bydd angen, heb os, waith cynllunio sylweddol i sicrhau bod y cynllun cyfredol—er wedi'i ddiwygio—ffitio'r plot sydd gennym ac yn cynnwys yr amwynderau sydd i'w disgwyl yn y siambr ddadlau. A gaf i ofyn a oes gennych unrhyw syniad lle'r ydym? Os cyrhaeddodd dogfennau yn Hydref 2002, rai wythnosau'n ôl bellach—ac yn ôl pob tebyg yr oedd rhai o ddogfennau'r cynllun yn eu plith ac nid rhai y gellid eu darllen yn unig—ac, yn fy marn i, mae cryn waith angen ei wneud o hyd, a oes gennych unrhyw syniad faint a phryd y bydd yn dechrau?

[72] **Dafydd Wigley:** May I direct that question to emphasise whether we had the designs in good time to be able to do that, rather than to start speculating about the nature of the new building, which I think we want to keep clear of.

[72] **Dafydd Wigley:** A gaf i gyfeirio'r cwestiwn hwnnw i bwysleisio a dderbyniasom y cynlluniau mewn da bryd i allu gwneud hynny, yn hytrach na dechrau dyfalu natur yr adeilad newydd, oherwydd tybiaf ein bod am osgoi hynny.

Sir Jon Shortridge: I may ask Richard to supplement what I have to say. We obviously took a view as to whether or not we had sufficient material available to proceed with the new procurement arrangements in a way that would give best value for money to the Assembly. We took advice from our quantity surveyors and project managers on that matter—very careful advice. They satisfied us that, given that what we are now procuring

Syr Jon Shortridge: Efallai y gofynnaf i Richard ategu'r hyn sydd gennyf i'w ddweud. Yn amlwg yr oedd yn rhaid i ni benderfynu a oedd gennym ddigon o ddeunydd ar gael i fwrw ymlaen â'r trefniadau caffael newydd mewn ffordd a fyddai'n rhoi gwerth gorau am arian i'r Cynulliad. Derbyniasom gyngor gan ein maintfesurwyr a rheolwyr prosiect ar y mater hwnnw—cyngor gofalus iawn. Cawsom ein bodloni ganddynt, o ystyried ein

is—if I can put it this way—a complete-the-design-and-build contract, we had sufficient material available and that it would not represent good value for money to delay the procurement still further against the possibility that we might or might not get a little bit more material.

bod yn caffael erbyn hyn—os caf ei roi fel hyn—contract cwblhau'r-cynllun-ac-adeiladu, bod gennym ddigon o ddeunydd ar gael ac na fyddai'n oedi'r caffael ymhellach rhag ofn y byddem yn cael neu ddim yn cael ychydig yn rhagor o ddeunydd yn werth da am arian.

[73] **Eleanor Burnham:** We will move on from that. May I just clarify this matter? You said that the design fee was the highest in the competition. Are you also saying that the total cost, and therefore the build cost, was higher for the Richard Rogers Partnership design than for the other designs? That is puzzling me.

[73] **Eleanor Burnham:** Symudwn ymlaen o hynny. A gaf i egluro'r mater hwn? Dywedasoch mai'r ffi cynllunio oedd yr uchaf yn y gystadleuaeth. A ydych hefyd yn dweud bod cyfanswm y gost, ac felly'r costau adeiladu, yn uwch am gynllun Partneriaeth Richard Rogers nag am y cynlluniau eraill? Mae hynny yn ddryswch i mi.

Sir Jon Shortridge: Of the original—this is from memory now, but I am fairly confident that I am right—six competitors, the estimated building cost associated with the Richard Rogers Partnership design was the cheapest. It was the cheapest design, but the highest fee rate.

Syr Jon Shortridge: O'r chwe chystadleuydd gwreiddiol—hyd y cofiaf, ond yr wyf yn eithaf hyderus fy mod yn gywir—y gost adeiladu a amcangyfrifwyd yn gysylltiedig â chynllun Partneriaeth Richard Rogers oedd y rhataf. Hwn oedd y cynllun rhataf, ond gyda'r ffi uchaf.

[74] **Eleanor Burnham:** So in totality then, how did it compare to the others?

[74] **Eleanor Burnham:** Felly yn ei gyfanrwydd, sut oedd yn cymharu â'r lleill?

Sir Jon Shortridge: I would have to give you a note on that, but from memory, in totality it was either the cheapest or nearly the cheapest, but I would need to confirm that.

Syr Jon Shortridge: Byddai'n rhaid i mi baratoi nodyn i chi ar hynny, ond hyd y cofiaf, yn ei gyfanrwydd yr oedd naill ai'r rhataf neu'n agos i fod y rhataf, ond byddai angen i mi gadarnhau hynny.

[75] **Dafydd Wigley:** Can we have a note on that?

[75] **Dafydd Wigley:** A gawn ni nodyn ar hynny?

[76] **Eleanor Burnham:** Yes, because previously I understood you to have said that, had you known that its costs were not real, so to speak, you would not possibly have—is that right?

[76] **Eleanor Burnham:** Ie, oherwydd deallais i chi ddweud yn flaenorol, pe baech yn gwybod nad oedd ei gostau'n real, fel petai, na fyddech wedi—a yw hynny'n gywir?

Sir Jon Shortridge: The distinction is that at the time of the design competition, the decisions were taken on the basis of the cost estimates which the competitors themselves had contributed. There was some independent appraisal of those costs, but the nature of the competition was such that this was not, and was never intended to be, a detailed and thorough testing and examination of what, in any case, were design concepts at that stage. As far as the decision-makers in the design competition were concerned, Richard Rogers

Syr Jon Shortridge: Ar adeg y gystadleuaeth gynllunio, y gwahaniaeth yw i'r penderfyniadau gael eu gwneud ar sail yr amcangyfrifon costau a gyfrannwyd gan y cystadleuwyr eu hunain. Er bod peth gwerthuso annibynnol o'r costau hynny, golygai natur y gystadleuaeth nad oedd hwn, ac nad oedd bwriad iddo fod, yn brawf ac yn archwiliad trylwyr o beth oedd, beth bynnag, yn gysyniadau cynllunio ar y pryd. O ran y sawl a oedd yn gwneud y penderfyniadau yn y gystadleuaeth gynllunio, Partneriaeth

Partnership's was the cheapest design—

Richard Rogers oedd y cynllun rhataf—

[77] **Eleanor Burnham:** This is very interesting, Chair. May I just pursue this very briefly—

[77] **Eleanor Burnham:** Mae hyn yn ddiddorol iawn, Gadeirydd. A gaf i drafod hyn yn gryno iawn—

[78] **Dafydd Wigley:** Not too much because we are working to this report not the previous report.

[78] **Dafydd Wigley:** Ddim yn rhy faith gan ein bod yn gweithio ar yr adroddiad hwn ac nid ar yr un blaenorol.

[79] **Eleanor Burnham:** This surely is one of the main weaknesses, is it not? The fact was that was such a gap between the design concept and the—

[79] **Eleanor Burnham:** Mae'n rhaid mai dyma un o'r prif wendidau? Yr oedd bwlch enfawr rhwng cysyniad y cynllun a—

[80] **Dafydd Wigley:** I think that Sir Jon has said that.

[80] **Dafydd Wigley:** Credaf fod Syr Jon wedi dweud hynny.

[81] **Eleanor Burnham:** Right, to move on then, to claim £6.85 million losses and to come away with less than nothing suggests that perhaps the expert legal and construction advice given to the Assembly might have been optimistic. How do you answer that, Sir Jon?

[81] **Eleanor Burnham:** Iawn, i symud ymlaen, mae hawlio £6.85 miliwn mewn colledion gan ddiweddu gyda llai na dim yn awgrymu y gallasai'r cyngor cyfreithiol ac adeiladu arbenigol a roddwyd i'r Cynulliad fod yn optimistaidd efallai. Sut y byddech yn ateb hynny, Syr Jon?

Sir Jon Shortridge: Well, I think that I have answered it so far as I can for today. I have read all the material, from both legal and construction professionals, and I have found it all very persuasive. The impression I think that this report gives is that the National Audit Office has found it pretty persuasive as well and, to repeat, we did not come away with nothing, we came away with confirmation that we could use the design and that, actually, was a fundamentally important outcome.

Syr Jon Shortridge: Wel, credaf fy mod wedi ateb hynny hyd eithaf fy ngallu am heddiw. Yr wyf wedi darllen yr holl ddeunydd, gan weithwyr proffesiynol cyfreithiol ac adeiladu, ac maent i gyd yn ymddangos yn argyhoeddiadol iawn i mi. Credaf mai'r argraff y mae'r adroddiad hwn yn ei roi yw bod y Swyddfa Archwilio Gyffredinol o'r farn ei fod yn argyhoeddiadol iawn hefyd ac, i ailadrodd, ni wnaethom ddiweddu â dim, cawsom gadarnhad y gellid defnyddio'r cynllun ac yr oedd hynny, mewn gwirionedd, yn ganlyniad pwysig yn y bôn.

[82] **Eleanor Burnham:** Okay. What sort of risk analysis did you carry out then, before the Assembly served notice of the adjudication, as to the potential outcome of the adjudication? Bearing in mind what we discussed in our last meeting about the OSIRIS contract, there may be concerns about inadequate risk analysis.

[82] **Eleanor Burnham:** Iawn. Pa fath o ddadansoddiad risg a wnaethoch cyn i'r Cynulliad gyflwyno'i rybudd o'r dyfarniad, ynglŷn â chanlyniad posibl y dyfarniad? O gofio beth a drafodwyd gennym yn ein cyfarfod diwethaf am gontract OSIRIS, efallai fod pryderon am ddadansoddi risg annigonol.

Sir Jon Shortridge: I do not think that risk analysis is an issue in this particular context. Under the terms of adjudication, once a claim has been put in, the clock starts running and it is a very fast-track arrangement, and we had literally, I think, weeks, perhaps three weeks,

Syr Jon Shortridge: Nid wyf yn credu bod dadansoddi risg yn bwnc trafod yn y cyd-destun penodol hwn. Dan delerau'r dyfarniad, ar ôl cyflwyno hawliad, mae'r cloc yn dechrau tician ac mae'n drefniant carlam iawn, a dim ond ychydig wythnosau, efallai

in which to get our counter-claim in, so—

tair wythnos yn llythrennol, a oedd gennym i gyflwyno ein gwrth-hawliad, felly—

[83] **Dafydd Wigley:** Sir Jon, if I can cut across there, in deciding to use this fast-track process there was therefore a risk associated with it—

[83] **Dafydd Wigley:** Syr Jon, os caf i dorri ar eich traws yma, wrth benderfynu defnyddio'r broses garlam hon yr oedd, o ganlyniad, berygl o wneud hynny—

Sir Jon Shortridge: No, we did not decide to use the fast-track method. Richard Rogers Partnership decided to use the fast-track method, but we had to respond to the claim that it was making on us.

Syr Jon Shortridge: Na, ni phenderfynasom ddefnyddio'r dull carlam. Partneriaeth Richard Rogers a benderfynodd ddefnyddio'r dull carlam, ond yr oedd yn rhaid i ni ymateb i'r hawliad yr oedd yn ei wneud yn ein herbyn.

[84] **Eleanor Burnham:** I beg to differ though about your answer about risk assessment. I believe that the Auditor General shows some concern about inadequate risk analysis, particularly, as I say, when you consider the contract for OSIRIS. They do bear a relationship, do they not?

[84] **Eleanor Burnham:** Rhaid i mi anghytuno gyda'ch ateb am asesu risg. Credaf fod yr Archwilydd Cyffredinol yn mynegi rhywfaint o bryder am ddadansoddiad risg annigonol, yn arbennig, fel y dywedais, wrth i chi ystyried y contract am OSIRIS. Maent yn gydberthynol onid ydynt?

Sir Jon Shortridge: Well all I can say is that in paragraph 31 of his report, the Auditor General says that the Assembly was justified on value-for-money grounds in choosing to contest the Richard Rogers Partnership claim.

Syr Jon Shortridge: Wel, yr unig beth y gallaf ei ddweud yw ym mharagraff 31 ei adroddiad, mae'r Archwilydd Cyffredinol yn dweud bod gan y Cynulliad achos gwerth am arian dros ddewis herio hawliad Partneriaeth Richard Rogers.

[85] **Dafydd Wigley:** I am sorry, let me be absolutely clear on this, because I may be getting confused now. At the point when the Richard Rogers Partnership intended to use the fast-track process, you could have gone to court.

[85] **Dafydd Wigley:** Mae'n ddrwg gennyf, gadewch i mi fod yn hollol glir ar hyn, oherwydd efallai fy mod yn drysu. Pan ddatganodd Partneriaeth Richard Rogers ei fwriad i ddefnyddio'r broses garlam, gallech fod wedi mynd i'r llys.

Sir Jon Shortridge: No, I do not think that we could have done. If I can refer you to paragraph 11, he had invoked it, and we could have done either A, B or C in paragraph 11. If we had done A and not defended, we could subsequently have gone to court, but, actually, the view that I strongly took was that—

Syr Jon Shortridge: Na, nid wyf yn credu y gallem fod wedi gwneud hynny. Os caf gyfeirio at baragraff 11, yr oedd wedi gofyn amdano, a gallem fod wedi gwneud naill ai A, B neu C ym mharagraff 11. Pe baem wedi gwneud A a heb amddiffyn, byddem wedi gallu mynd i'r llys wedi hynny, ond, mewn gwirionedd, yr oeddwn yn arddel yn gryf y farn—

[86] **Dafydd Wigley:** I appreciate that you took a decision, but what I was coming back to, and the point that Eleanor is making, is that there was a risk associated, and you took the decision—and no doubt, considered what risk there was—of going down that track, as opposed to going to court.

[86] **Dafydd Wigley:** Yr wyf yn gwerthfawrogi i chi wneud penderfyniad, ond yr hyn yr oeddwn yn cyfeirio'n ôl ato, a'r pwynt y mae Eleanor yn ei wneud, yw bod risg gysylltiedig, a'ch bod wedi gwneud y penderfyniad—a heb os, wedi ystyried pa risg oedd yn bodoli—o ddilyn y llwybr

hwnnw, yn hytrach na mynd i'r llys.

Sir Jon Shortridge: The risk was not that great in the sense that we were not closing off any options.

Syr Jon Shortridge: Nid oedd y risg mor fawr â hynny gan nad oeddem yn cau allan unrhyw opsiwn.

[87] **Dafydd Wigley:** That is fair enough. I accept that, and there are some options that, of course, are still available. Perhaps we had better move on rather than pursue that point.

[87] **Dafydd Wigley:** Mae hynny'n ddigon teg. Yr wyf yn derbyn hynny, ac mae rhai opsiynau, wrth gwrs, ar gael o hyd. Efallai y byddai'n well i ni symud ymlaen yn hytrach na pharhau i drafod y pwynt hwnnw.

Mr Richards: May I comment on this, Chair? I will check—and correct me if I am wrong—but my understanding of the adjudication procedure is that even if, at the time, we had decided that we wanted to respond by going to court, we would still have had to go through the adjudication process. In the meantime, we would also have had to pay over any moneys that the adjudicator had found upon.

Mr Richards: A gaf i roi sylwadau ar hyn, Gadeirydd? Bydd yn rhaid i mi gadarnhau—a chywirwch fi os wyf yn anghywir—ond yr wyf i ar ddeall bod y broses ddyfarnu, hyd yn oed ar y pryd, pe baem wedi penderfynu ein bod am ymateb drwy fynd i'r llys, y byddem wedi gorfod mynd drwy'r broses ddyfarnu. Yn y cyfamser, byddem hefyd wedi gorfod talu unrhyw arian y byddai'r dyfarnwr wedi'i ddyfarnu.

[88] **Jocelyn Davies:** So, the option of going to court at that point was undermined by the fact that the Richard Rogers Partnership had chosen to go to adjudication?

[88] **Jocelyn Davies:** Felly, yr oedd yr opsiwn o fynd i'r llys bryd hynny'n cael ei danseilio gan y ffaith bod Partneriaeth Richard Rogers wedi dewis mynd i ddyfarniad?

Sir Jon Shortridge: I do not think that I could agree with the word 'undermined' because the option of going to court has always remained, and will remain. There is a six-year limitation on the time within which you can go to court.

Syr Jon Shortridge: Nid wyf yn credu fy mod yn cytuno â'r gair 'tanseilio' oherwydd bod yr opsiwn i fynd i lys yn bodoli o hyd, a bydd yn parhau. Mae cyfyngiad chwe blynedd ar yr amser y gellwch fynd i lys.

[89] **Jocelyn Davies:** It was certainly put to one side—

[89] **Jocelyn Davies:** Yn sicr fe'i rhoddwyd i un ochr—

[90] **Dafydd Wigley:** You said yourself a moment ago that the option of going to court was not there, if I understood correctly.

[90] **Dafydd Wigley:** Dywedasoch eich hun funud yn ôl nad oedd opsiwn i fynd i lys, os deallais yn iawn.

[91] **Jocelyn Davies:** You said that you had to go through the adjudication process first.

[91] **Jocelyn Davies:** Dywedasoch y bu'n rhaid i chi fynd drwy'r broses ddyfarnu yn gyntaf.

Mr Richards: We could have done both at the same time, obviously. We could have started court proceedings immediately, but the origin of the adjudication procedure, to a great extent, is to provide quick responses to contractual disputes, often in cases where there are small contractors who cannot actually afford to spend years going to court.

Mr Richards: Gallem fod wedi gwneud y ddau ar yr un pryd, yn amlwg. Gallem fod wedi dechrau achos llys yn syth, ond tarddiad y weithdrefn ddyfarnu, i raddau helaeth, yw darparu ymatebion cyflym i anghydfodau contract, yn aml mewn achosion lle ceir contractwyr bach nad ydynt yn gallu fforddio mewn gwirionedd dreulio blynyddoedd yn mynd i'r llys.

[92] **Jocelyn Davies:** I do not think that this was a small contract.

[92] **Jocelyn Davies:** Ni chredaf fod hwn yn gontract bach.

Mr Richards: No, but the reason why the adjudication procedures are set up as they are is for that purpose. So, we would have had to go to adjudication even if, at the same time, we were commencing a court action.

Mr Richards: Na, ond i'r diben hwn y sefydlir y gweithdrefnau dyfarnu yn y modd hwnnw. Felly, byddem wedi gorfod wynebu dyfarniad hyd yn oed pe bai achos llys wedi'i ddechrau ar yr un pryd.

[93] **Dafydd Wigley:** Yes, so no doubt you will bear in mind in future contracts the appropriateness or otherwise of writing in adjudications, given that it can have this effect.

[93] **Dafydd Wigley:** Ie, felly mae'n debyg wrth lunio contractau yn y dyfodol byddwch yn cofio'r priodoldeb neu fel arall o gynnwys dyfarniadau ynddynt, o ystyried y gall gael yr effaith hon.

Mr Richards: I do not think that we have a choice, Chair. It is a statutory basis.

Mr Richards: Ni chredaf fod gennym ddewis, Gadeirydd. Mae'n sylfaen statudol.

[94] **Alison Halford:** My question has already been covered, Chair, so I will launch out in another direction, if that is okay with you.

[94] **Alison Halford:** Mae fy nghwestiwn wedi'i drafod yn barod, Gadeirydd, felly yr wyf am newid cyfeiriad, os yw hynny'n iawn gennych.

[95] **Dafydd Wigley:** You are not overlapping any questions that are to come, are you?

[95] **Dafydd Wigley:** Gobeithio nad ydych am orgyffwrdd unrhyw gwestiynau sydd i ddod?

[96] **Alison Halford:** No, I do not think so. You must be fairly fed up with this, Sir Jon. You have talked about a reputational hit. Whose reputation do you think has been hit the hardest?

[96] **Alison Halford:** Na, nid wyf yn credu hynny. Mae'n siŵr eich bod wedi diflasu braidd gyda hyn, Syr Jon. Yr ydych wedi siarad am niwed i enw da. Enw da pwy sydd wedi dioddef fwyaf yn eich barn chi?

Sir Jon Shortridge: Well, I feel very strongly about the reputation of the Assembly, so that, I think, has been the most damaging thing about all of this. I feel particularly sad about it because, as I hope I have been able to give the impression to the Committee this morning, a lot of the damage, I think, is unjustified under the circumstances. These are matters that we have had to be responding to, which were not altogether within our control. I make two points. One, we are in this position because the building could not be built for the—

Syr Jon Shortridge: Wel, mae gennyf deimladau cryf iawn am enw da'r Cynulliad, felly, credaf mai hynny yw'r peth gwaethaf am hyn oll. Teimlaf yn arbennig o drist am hyn oherwydd, fel y gobeithiaf fy mod wedi llwyddo i'w gyfleu i'r Pwyllgor y bore yma, ni chredaf y gellir cyfiawnhau llawer o'r niwed dan yr amgylchiadau. Mae'r rhain yn faterion yr ydym wedi gorfod ymateb iddynt, ac nid oeddent i gyd dan ein rheolaeth. Gwnaf ddau bwynt. Un, yr ydym yn y sefyllfa hon am na ellid adeiladu'r adeilad am y—

[97] **Alison Halford:** When was that determined? At what date, or when did you realise that the building was just not going to stand up to the cost that the Richard Rogers Partnership had prophesised?

[97] **Alison Halford:** Pryd y penderfynwyd ar hynny? Pryd y sylweddoloch na ellid adeiladu'r adeilad am y gost y rhagwelodd Partneriaeth Richard Rogers?

Sir Jon Shortridge: This was a process that

Syr Jon Shortridge: Yr oedd hon yn broses

began in about December 2000 or January 2001 and fed through until we had the three-day workshop at the end of May. That was a story of our continuously testing the architects on price. You always hope—you know, you are dealing with a very—

a ddechreuodd tua Rhagfyr 2000 neu Ionawr 2001 ac a barhaodd tan y gweithdy tridiau ddiwedd Mai. Yr oedd hynny oherwydd ein bod yn profi'r penseiri ar bris yn barhaus. Yr ydych yn gobeithio bob tro—fel y gwyddoch yr ydych yn delio â—

[98] **Alison Halford:** You were almost hoping for a miracle to happen.

[98] **Alison Halford:** Bron eich bod yn gobeithio am wyrth.

Sir Jon Shortridge: Not a miracle. The expectation is that, having had a landmark architect tell you that the building can be built for a certain price, you will, through negotiation, be able to get the savings out of the design in order to deliver on price expectation.

Syr Jon Shortridge: Nid gwyrth. Mae disgwyl, ar ôl i bensaer o bwys ddweud wrthych y gellid adeiladu'r adeilad am bris penodol, y byddwch, drwy negodi, yn gallu sicrhau'r cynilion o'r cynllun er mwyn cadw o fewn y pris disgwyliedig.

[99] **Alison Halford:** But he had had two cracks at it, had he not, Sir Jon? I remember, in 1999, he had to go back and redesign because it was not suitable for disabled people, and there was not a crèche—things that had been promised in, I understand, 1998. So, there was a major refit of his original design. Is my memory right or wrong on that count?

[99] **Alison Halford:** Ond oni chafodd ddau gynnig arni, Syr Jon? Yr wyf yn cofio, ym 1999, iddo orfod mynd yn ôl ac ailgynllunio oherwydd nad oedd yn addas ar gyfer pobl anabl, ac nid oedd meithrinfa—pethau a addawyd, deallaf, yn 1998. Felly, newidiwyd ei gynllun gwreiddiol yn sylweddol. A wyf yn cofio'n gywir neu'n anghywir ynglŷn â hynny?

Sir Jon Shortridge: I think that some of the work that was being done at that stage—not all of it, but some of it—was in response to the Assembly wanting to add to the specification, and quite understandably so, because—

Syr Jon Shortridge: Credaf fod rhywfaint o'r gwaith a oedd yn cael ei wneud bryd hynny—nid y gwaith i gyd, ond rhywfaint ohono—mewn ymateb i gais gan y Cynulliad i ychwanegu at y fanyleb, sy'n ddealladwy, oherwydd—

[100] **Alison Halford:** Disability? With a Disability Act on the horizon?

[100] **Alison Halford:** Anabledd? Gyda Deddf Anabledd ar y gweill?

Sir Jon Shortridge: I do not want to specify whether it was the disability or not in that connection. I think, in fairness to the Richard Rogers Partnership, I must say that some of the additional design work that Richard Rogers was asked to do was outside the original specification.

Syr Jon Shortridge: Nid wyf am fanylu ai'r anabledd ai peidio oedd y rheswm yn y cyswllt hwnnw. Credaf, er tegwch i Bartneriaeth Richard Rogers, bod yn rhaid i mi ddweud bod peth o'r gwaith cynllunio ychwanegol y gofynnwyd i Richard Rogers ei wneud y tu hwnt i'r fanyleb wreiddiol.

[101] **Alison Halford:** Outside the size of the plot.

[101] **Alison Halford:** Y tu hwnt i faint y plot.

Sir Jon Shortridge: Well, not that, but I think that it is a consideration that the Committee needs to bear in mind that—

Syr Jon Shortridge: Wel, nid hynny, ond credaf ei bod yn ystyriaeth y mae angen i'r Pwyllgor ei hystyried bod—

[102] **Dafydd Wigley:** We are going to come to some of these points a little later. Janet,

[102] **Dafydd Wigley:** Byddwn yn trafod rhai o'r pwyntiau hyn ychydig yn

would you like to come in on this now?

[103] **Janet Davies:** Yes, on this point, do you feel, Sir Jon, that perhaps there is some confusion about the roles of architects on one hand, and engineers and surveyors on the other—that architects are more on the conceptual side, while engineers and surveyors are more on the practical side? Perhaps there was some confusion of understanding by the Assembly on that.

Sir Jon Shortridge: No, I do not agree with that.

[104] **Dafydd Wigley:** Alun, do you have some questions to ask, if there is something that has not been covered yet?

[105] **Alun Cairns:** I would like to return to the adjudication, Sir Jon. We all now know that the adjudication was lost by the Assembly.

Sir Jon Shortridge: Partially lost.

[106] **Alun Cairns:** Largely lost—to compromise—in spite of legal advice, which supported the Assembly. With the benefit of hindsight, how confident are you that the Assembly received the best possible legal advice and, if the same situation were to arise again, what further legal advice would you seek?

Sir Jon Shortridge: I am very satisfied with the quality of our legal advice. On the substance of the contractual matters in dispute, I do not think that we would need substantially more legal advice. Clearly, we would need advice on handling any further action that may be contemplated. I think I should say that that is not a matter upon which I have reached a concluded view, and neither do I think that the Assembly should do that at this stage. I think it would be premature to be getting into considerations of that.

[107] **Alun Cairns:** The report makes it clear that Eversheds were the Assembly's solicitors, and it refers to the barristers who also offered advice in relation to the adjudication. Who gave us the legal advice to enter the contract at the outset, or the non-contract as it may be?

ddiweddarach. Janet, a ydych am gyfrannu ar hyn yn awr?

[103] **Janet Davies:** Ydw, ar y pwynt hwn, a ydych yn teimlo, Syr Jon, bod peth dryswch efallai ynglŷn â swyddogaethau penseiri ar un llaw, a pheirianwyr a syrfewyr ar y llaw arall—bod penseiri yn fwy ar yr ochr gysyniadol, tra bod peirianwyr a syrfewyr yn fwy ar yr ochr ymarferol? Efallai fod dryswch gan y Cynulliad o ran hynny.

Syr Jon Shortridge: Na, ni chytunaf â hynny.

[104] **Dafydd Wigley:** Alun, a oes gennych gwestiynau i'w gofyn, os nad oes rhywbeth na drafodwyd hyd yn hyn?

[105] **Alun Cairns:** Hoffwn ddychwelyd at y dyfarniad, Syr Jon. Yr ydym oll yn gwybod bod y Cynulliad wedi colli'r dyfarniad.

Syr Jon Shortridge: Colli rhan ohono.

[106] **Alun Cairns:** Colli rhan fawr ohono—i gyfaddawdu—er gwaethaf cyngor cyfreithiol, a oedd yn cefnogi'r Cynulliad. O allu edrych yn ôl, pa mor hyderus ydych fod y Cynulliad wedi derbyn y cyngor cyfreithiol gorau posibl a, phe bai'r un sefyllfa'n codi eto, pa gyngor cyfreithiol pellach fyddech yn gofyn amdano?

Syr Jon Shortridge: Yr wyf yn fodlon iawn gydag ansawdd ein cyngor cyfreithiol. O ran sylwedd y materion cytundebol yr anghytunwyd yn eu cylch, ni chredaf y byddem angen llawer mwy o gyngor cyfreithiol. Yn amlwg, byddem angen cyngor ar drafod unrhyw gamau pellach y gellid eu disgwyl. Credaf y dylwn ddweud nad wyf wedi llunio barn derfynol ar y mater hwnnw eto, ac ni chredaf y dylai'r Cynulliad wneud hynny ar hyn o bryd. Credaf y byddai'n rhy gynnar i ystyried hynny.

[107] **Alun Cairns:** Mae'r adroddiad yn nodi'n glir mai Eversheds oedd cyfreithwyr y Cynulliad, ac mae'n cyfeirio at y bargyfreithwyr a gynigiodd gyngor hefyd ar y dyfarniad. Pwy roddodd y cyngor cyfreithiol i ni ymrwymo i'r contract ar y

dechrau, neu'r diffyg contract fel y mae efallai?

Sir Jon Shortridge: The unsigned contract was drawn up, I think, by a combination of Symonds, which was acting for us, PACE—Property Advisers to the Civil Estate—our client adviser, which has subsequently been subsumed into the Office of Government Commerce, and the in-house lawyers of the Welsh Office and subsequently the Assembly. The contract was based upon a standard contract, and then it was adapted to meet the particular circumstances of the case.

Syr Jon Shortridge: Credaf i'r contract heb ei lofnodi gael ei lunio gan gyfuniad o Symonds, a oedd yn gweithredu ar ein rhan, PACE—Ymgynghorwyr Eiddo'r Ystâd Sifil—ein hymgynghorwr cleient, sydd wedi'I gynnwys yn Swyddfa Masnach y Llywodraeth ers hynny, a chyfreithwyr mewnol y Swyddfa Gymreig a'r Cynulliad wedi hynny. Yr oedd y contract yn seiliedig ar gontract safonol, ac wedyn fe'i addaswyd i fodloni amgylchiadau penodol yr achos.

[108] **Dafydd Wigley:** Eleanor, do you want to come in now?

[108] **Dafydd Wigley:** Eleanor, a ydych am gyfrannu yn awr?

[109] **Eleanor Burnham:** I would like to move on to refer to the temporary finality that you have mentioned. There is a box on page 3 of the report that explains it all. This means that the issue remains open for either side to pursue it further through the courts, as you have said. If you think that I am asking something that you have already answered, please stop me. Has the Assembly decided whether to avail itself of this option and challenge the decision of the adjudicator in the courts and, if not, what factors are you taking into account and when are you likely to make a decision either way?

[109] **Eleanor Burnham:** Hoffwn symud ymlaen a chyfeirio at y terfynoldeb dros dro a grybwyllwyd gennych. Mae blwch ar dudalen 3 yr adroddiad sy'n egluro popeth. Golyga hyn bod y mater yn parhau'n agored i'r naill ochr a'r llall fynd ymlaen â'r achos drwy'r llysoedd, fel y dywedasoch. Os y credwch fy mod yn gofyn cwestiwn sydd wedi'i ateb eisoes, dywedwch wrthyf. A yw'r Cynulliad wedi penderfynu manteisio ar yr opsiwn hwn a herio penderfyniad y dyfarnwr yn y llysoedd ac, os nad yw am wneud hynny, pa ffactorau ydych yn eu hystyried a phryd ydych yn debygol o wneud penderfyniad naill ffordd neu'r llall?

Sir Jon Shortridge: As I indicated just now, I personally have not reached a concluded view on that. I do not think that it would be in the Assembly's interest to reach a concluded view just at the moment. I think the priority is to complete the procurement on the new building. Once that process has been completed, I think that we will have a much better understanding of the nature and extent of any liabilities that may still exist. We can then take a view on value-for-money grounds as to whether it is in the public interest to pursue this matter further.

Syr Jon Shortridge: Fel y soniais funud yn ôl, nid wyf yn bersonol wedi llunio barn eto ynglŷn â hynny. Ni chredaf y byddai'n fanteisiol i'r Cynulliad lunio barn derfynol ar hyn o bryd. Credaf mai'r flaenoriaeth yw cwblhau'r caffaeliad ar yr adeilad newydd. Ar ôl cwblhau'r broses honno, credaf y bydd gennym well dealltwriaeth o natur a maint unrhyw rwymedigaethau a allai fodoli o hyd. Wedi hynny, gallwn lunio barn ar sail gwerth am arian o ran a fyddai'n fuddiol i'r cyhoedd drafod y mater hwn ymhellach.

[110] **Eleanor Burnham:** So this boils down to what has been mentioned previously, namely that, in future, we should use an architect that is in such seamless accord with a building or a builder that we do not experience these difficulties again.

[110] **Eleanor Burnham:** Felly hanfod hyn yw yr hyn a nodwyd eisoes, sef y dylem ddefnyddio pensaer yn y dyfodol sydd â'r fath gydsyniad di-dor ag adeilad neu adeiladwr fel na fyddwn yn wynebu'r anawsterau hyn eto.

[111] **Dafydd Wigley:** That would be ideal, would it not?

Sir Jon Shortridge: My answer to that is this: the Welsh Office and the Assembly, for reasons I think we can all well understand, decided to go down the management contractor route for the procurement of this building. If you go down the management contractor route, what you are doing is trading time against cost and saying that the most important thing is that you want the building completed by a particular time. In those circumstances the design and the construction phase tend not to go in sequence, but to come together. That means that you can end up in a situation where work is being sub-contracted to be done when it has not been sufficiently fully designed, and that is when you start getting cost overruns. I imagine that that is at least one problem that they have with the new Scottish Parliament building.

[112] **Dafydd Wigley:** Yes, indeed.

[113] **Eleanor Burnham:** Thank you for that explanation, Sir Jon.

[114] **Val Lloyd:** If I could go back to Eleanor's last but one question, and turn it on its head, in effect, do you expect any further legal action against the Assembly by the Richard Rogers Partnership and, if you do, will you contest any future actions as vigorously as you did this one?

Sir Jon Shortridge: I have no reason to expect that there could be further legal action by the Richard Rogers Partnership. However, that will always remain a logical possibility. If there were to be, then obviously, depending upon the nature of the action, there would have to be a proper value-for-money assessment as to whether we should contest it or not.

[115] **Val Lloyd:** I think that Alun touched on my next question to some extent, but I will just perhaps expand on it. The Assembly spent nearly £250,000 on different types of legal and expert advice, and saved public funds of about £80,000. I hardly like to ask, but do you think that the legal and expert fees incurred in

[111] **Dafydd Wigley:** Byddai hynny'n ddelfrydol, oni fyddai?

Syr Jon Shortridge: Dyma fy ateb i hynny: penderfynodd y Swyddfa Gymreig a'r Cynulliad, am resymau y gallwn i gyd eu deall yn dda, ddefnyddio contractwr rheoli ar gyfer caffael yr adeilad hwn. Wrth ddefnyddio contractwr rheoli, yr ydych yn dewis amser ar draul costau ac yn dweud mai'r peth pwysicaf yw eich bod am i'r adeilad gael ei gwblhau erbyn amser penodol. Dan yr amgylchiadau hynny nid yw'r cyfnod cynllunio ac adeiladu yn tueddu i ddilyn mewn trefn, ond yn dod gyda'i gilydd. Golyga hynny y gellwch fod mewn sefyllfa yn y pen draw lle y bydd gwaith yn cael ei is-gontractio i gael ei wneud heb iddo gael ei gynllunio'n ddigonol, a dyna pryd y bydd eich costau'n dechrau mynd allan o reolaeth. Dychmygaf fod honno yn un broblem sy'n wynebu adeilad newydd Senedd yr Alban.

[112] **Dafydd Wigley:** Ie, yn wir.

[113] **Eleanor Burnham:** Diolch am yr esboniad hwnnw, Syr Jon.

[114] **Val Lloyd:** Os caf fynd yn ôl at gwestiwn olaf ond un Eleanor, a'i droi ar ei ben, mewn gwirionedd, a ydych yn disgwyl unrhyw gamau cyfreithiol pellach yn erbyn y Cynulliad gan Bartneriaeth Richard Rogers ac, os ydych, a fyddwch yn herio unrhyw gamau yn y dyfodol mor ffyrnig ag y gwnaethoch y tro hwn?

Syr Jon Shortridge: Nid oes gennyf reswm i ddisgwyl camau cyfreithiol pellach gan Bartneriaeth Richard Rogers. Fodd bynnag, bydd hyn yn parhau'n bosibilrwydd rhesymegol. Pe cymerir camau pellach, yna'n amlwg, yn dibynnu ar natur y camau, byddai'n rhaid cynnal asesiad gwerth am arian trylwyr ynglŷn ag a ddylem ei herio ai peidio.

[115] **Val Lloyd:** Credaf fod Alun wedi trafod y cwestiwn nesaf i ryw raddau, ond efallai y gallaf ymhelaethu arno. Gwariodd y Cynulliad bron i £250,000 ar fathau gwahanol o gyngor cyfreithiol ac arbenigol, gan arbed cronfeydd cyhoeddus o tua £80,000. Yr wyf yn gresynu i ofyn, ond a

connection with the adjudication process represent value for money?

gredwch bod y ffioedd cyfreithiol ac arbenigol a gafwyd mewn cysylltiad â'r dyfarniad yn cynrychioli gwerth am arian?

Sir Jon Shortridge: As I say, paragraph 31 quotes the Auditor General as saying that we were justified on value-for-money grounds in choosing to contest the Richard Rogers Partnership's claim. In order to contest this, we certainly needed to have the necessary factual and, I think, independent assessment, because you can get quite emotionally involved in disputes of this nature. It is a lot of money. I think that there are two points here. First, if we had gone straight to a High Court action, it would have been a lot, lot more money. The second thing is, without this adjudication we would not have the design. So we got significant value out of the adjudication. It is a matter of regret to me that we had to go to the adjudication to get that determination on the design, but we had no alternative.

Syr Jon Shortridge: Fel y dywedais, mae paragraff 31 yn dyfynnu'r Archwilydd Cyffredinol yn dweud bod gennym achos cyfiawn ar sail gwerth am arian wrth ddewis herio hawliad Partneriaeth Richard Rogers. Er mwyn herio hyn, yr oeddem angen y ffeithiau cywir yn sicr a, chredaf, asesiad annibynnol, oherwydd gellir mynd ynghlwm yn emosiynol wrth anghydfodau o'r natur hwn. Mae'n llawer o arian. Credaf fod dau bwynt yma. Yn gyntaf, pe baem wedi mynd â'r achos yn syth i Uchel Lys, byddai wedi bod yn llawer, llawer mwy o arian. Yn ail, heb y dyfarniad hwn ni fyddai'r cynllun gennym. Felly cawsom werth sylweddol o'r dyfarniad. Gresynaf ein bod wedi gorfod mynd i'r dyfarniad i gael y penderfyniad ar y cynllun, ond nid oedd dewis arall gennym.

[116] **Val Lloyd:** Could I ask just one supplementary question to that, Chair? The Assembly uses the legal firm, Eversheds. When you took its advice into account, did you base that on its previous record of advising the Assembly on other issues?

[116] **Val Lloyd:** A gaf i ofyn un cwestiwn arall ynglŷn â hynny, Gadeirydd? Mae'r Cynulliad yn defnyddio'r cwmni cyfreithiol, Eversheds. Wrth i chi ystyried ei gyngor, a wnaethoch seilio hynny ar ei hanes blaenorol o gynghori'r Cynulliad ar faterion eraill?

Sir Jon Shortridge: We do make substantial use of Eversheds. We have a separate contract with it for employment law matters, which we outsource. It has an important office in Cardiff, so it is very accessible to us, and it is one of the largest firms of solicitors in the country. So I can well understand why the Office of the Counsel General has sought to take advice from it.

Syr Jon Shortridge: Yr ydym yn gwneud defnydd helaeth o Eversheds. Mae gennym gontract ar wahân gydag ef ar gyfer materion cyfraith cyflogaeth, yr ydym yn eu his-gontractio. Mae ganddo swyddfa bwysig yng Nghaerdydd, felly mae o fewn cyrraedd hawdd i ni, ac mae'n un o'r cwmnïau cyfreithwyr mwyaf yn y wlad. Felly gallaf ddeall yn hawdd pam fod Swyddfa'r Cwnsler Cyffredinol yn derbyn cyngor ganddo.

[117] **Janet Davies:** I would like to turn, Sir Jon, to the project's progress and go back to some of the issues that arose from the report provided by the Auditor General last year. It is included in this report at annex 1. I would like to refer to paragraphs 6, 7, 10, 11 and 13 to 18. We did not have a chance to take evidence from you on this at that point. We have talked quite a lot this morning about why the Assembly terminated the employment of the Richard Rogers Partnership. The costs were higher than thought, and they rose. To what extent were those cost rises attributable to

[117] **Janet Davies:** Hoffwn roi sylw, Syr Jon, i gynnydd y prosiect a mynd yn ôl at rai o'r materion a gododd o'r adroddiad a ddarparwyd gan yr Archwilydd Cyffredinol y llynedd. Mae wedi'i gynnwys yn yr adroddiad hwn yn atodiad 1. Hoffwn gyfeirio at baragraffau 6, 7, 10, 11 a 13 i 18. Ni chawsom gyfle i gymryd tystiolaeth gennych ar y pwynt hwnnw. Yr ydym wedi siarad cryn dipyn y bore yma ynglŷn â pham bod y Cynulliad wedi terfynu cyflogaeth Partneriaeth Richard Rogers. Yr oedd y costau yn uwch na'r disgwyl, ac yn parhau i

changes in specification, as opposed to being totally unforeseen?

godi. I ba raddau yr oedd y cynnydd hwnnw mewn costau yn ymwneud â newidiadau i'r fanyleb, yn hytrach na bod yn hollol annisgwyl.

Sir Jon Shortridge: The general answer to that is that the changes in specification requested by the Assembly were a small part of those increasing costs. If I may refer you back to the main report—it is the second indented point of paragraph 9—the £13.1 million cost plan, dated January 2001, built in some of the additional specification that the Assembly asked for. We should bear in mind that, at the time of the competition, the Assembly as a client did not actually exist, and it was understandable, I think, that Members wanted to take fuller ownership of this design and introduce some things into it. So some additions were built into that £13.1 million. My understanding is that the £18.6 million, which is a figure that our cost consultants came up with as part of their analysis, compares directly with the £13.1 million and, therefore, does not include any design additions requested by the Assembly.

Syr Jon Shortridge: Yr ateb cyffredinol i hynny yw bod y newidiadau yn y fanyleb oedd yn ofynnol gan y Cynulliad yn rhan fach o'r costau cynyddol hynny. Os caf eich cyfeirio'n ôl at y prif adroddiad—sef yr ail bwynt wedi'i fewnoli ym mharagraff 9—yr oedd y cynllun cost £13.1 miliwn, dyddiedig Ionawr 2001, yn cynnwys rhai o'r manylion ychwanegol yr oedd y Cynulliad wedi gofyn amdanynt. Dylem gofio nad oedd y Cynulliad fel cleient yn bodoli mewn gwirionedd pan gynhaliwyd y gystadleuaeth, a chredaf ei bod yn ddealladwy bod Aelodau am gymryd perchnogaeth lawnach o'r cynllun hwn ac ychwanegu rhai elfennau ato. Felly ychwanegwyd rhai pethau at yr £13.1 miliwn hwnnw. Yr wyf ar ddeall bod yr £18.6 miliwn, sy'n ffigur a gyfrifwyd gan ein hymgynghorwyr costau fel rhan o'u dadansoddiad, yn cymharu'n uniongyrchol â'r £13.1 miliwn ac, felly, nid yw'n cynnwys unrhyw ychwanegiadau i'r cynllun a oedd yn ofynnol gan y Cynulliad.

[118] **Janet Davies:** Thank you. At what point did the stipulation about the use of indigenous materials come in?

[118] **Janet Davies:** Diolch. Pryd y cyflwynwyd yr amod ynglŷn â defnyddio deunyddiau cynhenid?

Sir Jon Shortridge: The use of indigenous materials was a requirement, or it was indicated in the original competition that we would want—I am paraphrasing, this is probably not the exact terminology—substantial or maximum possible use of indigenous materials. So, as far as we were concerned, there was an expectation that the design would facilitate very substantial use of that, subject to the requirements of the European procurement directives and so on, so that you could not be restricting unreasonably.

Syr Jon Shortridge: Yr oedd yn ofynnol defnyddio deunyddiau cynhenid, neu nodwyd yn y gystadleuaeth wreiddiol y byddem yn dymuno—yr wyf yn aralleirio, mae'n debyg mai nid dyma'r union derminoleg—gwneud y defnydd sylweddol neu fwyaf posibl o ddeunyddiau cynhenid. Felly, hyd y gwyddom ni, yr oedd disgwyl i'r cynllun hwyluso defnydd helaeth iawn o hynny, yn amodol ar ofynion cyfarwyddebau caffael Ewrop ac ati, fel na allech gyfyngu yn afresymol.

[119] **Janet Davies:** Thank you. May I just refer to the change in the OSIRIS contract and the replacement, Merlin, that is coming in? Have you looked to ensure that the specifications of the new building take account of the likely requirements of the Merlin system? There might be a little bit of room for saving money, provided it all gets planned in together.

[119] **Janet Davies:** Diolch. A gaf gyfeirio at y newid yng nghontract OSIRIS a'r rhaglen newydd, Merlin, sy'n dod yn ei le. A ydych wedi ceisio sicrhau bod manyleb yr adeilad newydd yn ystyried gofynion tebygol system Merlin? Efallai fod modd arbed arian, a bwrw bod hyn i gyd yn cael ei gynllunio gyda'i gilydd.

Sir Jon Shortridge: Certainly, part of the procurement of the new building is the need to meet the IT requirements that it will have and so there is read-across between the two. Richard may want to comment specifically on that.

Syr Jon Shortridge: Yn sicr, rhan o gaffael yr adeilad newydd yw'r angen i fodloni'r gofynion TG y bydd ganddo ac felly mae'r ddau yn gorgyffwrdd. Efallai y bydd Richard am roi sylwadau penodol ar hynny.

Mr Wilson: Yes, as part of developing the design, we are looking very closely at the IT requirements for the building and, as you will see from the table in the report on the future arrangements of the project, there is an IT project board—it is on page 8. You will see there that there is an IT project board, which reports to the main project board on these issues.

Mr Wilson: Ie, fel rhan o'r broses o ddatblygu'r cynllun, yr ydym yn edrych yn ofalus iawn ar y gofynion TG ar gyfer yr adeilad ac, fel y gwelwch o'r tabl yn yr adroddiad ar drefniadau'r prosiect yn y dyfodol, ceir bwrdd prosiect TG—mae ar dudalen 8. Byddwch yn gweld bod bwrdd prosiect TG, sy'n adrodd i'r prif fwrdd prosiect ar y materion hyn.

[120] **Janet Davies:** Right. Thank you.

[120] **Janet Davies:** Iawn. Diolch.

[121] **Dafydd Wigley:** Do you want to come in on this, Alison?

[121] **Dafydd Wigley:** A ydych am gyfrannu yma, Alison?

[122] **Alison Halford:** I have one question, which goes back to the fees business again, if that is okay with you. Would you not agree that it was the Auditor General's report of November 2000 that indicated that the fees structure was unhelpful to the taxpayer—in other words it was costing a great deal of money—and would you not agree that the Auditor General recommended that you should renegotiate the fees structure? If that was the case, why was it that, in January 2001, the Finance Minister was able to tell the Plenary session that we were on course to deliver a building on time, and within the total budget provision? Who would have advised her about that? I know that she felt that the intellectual property of the building was within the gift of the Assembly.

[122] **Alison Halford:** Mae gennyf un cwestiwn, sy'n mynd yn ôl at y busnes ffioedd eto, os yw hynny'n iawn gennych chi. Oni fyddech yn cytuno mai adroddiad yr Archwilydd Cyffredinol ym mis Tachwedd 2000 a nododd nad oedd y sdrwythur ffioedd yn ddefnyddiol i'r trethdalwr—mewn geiriau eraill yr oedd yn costio llawer o arian—ac oni fyddech yn cytuno bod yr Archwilydd Cyffredinol wedi argymell y dylech ailnegodi'r sdrwythur ffioedd? Os mai dyna'r sefyllfa, pam, yn Ionawr 2001, bod y Gweinidog Cyllid yn gallu dweud wrth y Cyfarfod Llawn ein bod ar y trywydd iawn i ddarparu adeilad ar amser, ac o fewn y gofynion cyfanswm cyllideb? Pwy fyddai wedi'i chynghori ynglŷn â hynny? Gwn ei bod yn credu bod eiddo deallusol yr adeilad yn eiddo i'r Cynulliad.

Sir Jon Shortridge: On the Finance Minister's statement, I am absolutely satisfied that what she told the Assembly was correct. I do not think that there is a link between anything in her statement and the issue about the fees structure. The point, as I recall from the hearing back in November 2000 about the fees structure, was a concern about the overall quantum—how much it was costing, as opposed to what was the payment mechanism for it. Those were concerns that we shared at the time and, as a result of that, we entered

Syr Jon Shortridge: O ran datganiad y Gweinidog Cyllid, yr wyf yn hollol fodlon bod yr hyn a ddywedodd yn gywir. Ni chredaf fod cysylltiad rhwng unrhyw beth yn ei datganiad a'r mater am y sdrwythur ffioedd. Y pwynt, o'r hyn a gofiaf o'r gwrandawiad yn ôl yn Nhachwedd 2000 am y sdrwythur ffioedd, oedd pryder ynglŷn â'r cwantwm cyffredinol—faint yr oedd yn ei gostio, yn hytrach na beth oedd y mecanwaith talu ar ei gyfer. Yr oedd y rhain yn bryderon a rannwyd gennym ar y pryd ac,

into further lengthy negotiations with the Richard Rogers Partnership to get the fees capped. We got very close, before the contract was terminated, to getting an agreement with them on a lower level of fees. There was an outstanding issue which, as I recall, related to the extent to which the cap would apply to the cost associated with using indigenous materials.

o ganlyniad i hynny, cynhaliwyd proses ailnegodi hirfaith gyda Phartneriaeth Richard Rogers i gapio'r ffioedd. Yr oeddem wedi dod yn agos iawn, cyn y terfynwyd y contract, i ddod i gytundeb gyda hwy ar lefel ffioedd is. Yr oedd mater pwysig a oedd, fel y'i cofiaf, yn ymwneud â'r graddau y byddai'r cap yn gymwys i'r gost a oedd yn gysylltiedig â defnyddio deunyddiau cynhenid.

[123] **Alison Halford:** Would you consider—

[123] **Alison Halford:** A fyddech yn ystyried—

Sir Jon Shortridge: May I just complete the point? It was because we were pursuing that requirement from the Audit Committee—or concern of the Audit Committee—that we were not in a position formally to finalise and sign the contract.

Syr Jon Shortridge: A gaf i gwblhau'r pwynt? Yr oedd hyn oherwydd ein bod yn cydymffurfio â gofynion y Pwyllgor Archwilio—neu bryderon y Pwyllgor Archwilio—nad oeddem mewn sefyllfa ffurfiol i derfynu a llofnodi'r contract.

[124] **Alison Halford:** But the whole problem has been the cost of the fees, and everything else that has gone wrong, and yet the Minister is sent out to tell us that everything is going to be delivered and that, by 2003, we should be sitting in the new building. You said yourself in response to an earlier question, when I asked you on what date you began losing confidence in the architect, that you were also losing confidence in the fact that the original design could be built on budget. All that was going on at the time that she made this statement. That was, I would suggest, frankly misleading of somebody, Sir Jon.

[124] **Alison Halford:** Ond y broblem ei hun fu cost y ffioedd, a phopeth arall sydd wedi mynd o'i le, ac eto anfonir y Gweinidog i ddweud wrthym y caiff popeth ei ddarparu, ac erbyn 2003, y dylem fod yn eistedd yn yr adeilad newydd. Dywedasoch eich hun mewn ymateb i gwestiwn cynharach, pan ofynnais i chi pryd y dechreuasoch golli ffydd yn y pensaer, eich bod hefyd yn colli ffydd yn y ffaith y gellid adeiladu'r cynllun gwreiddiol o fewn y gyllideb. Yr oedd hynny i gyd yn digwydd pan wnaeth hi'r datganiad hwnnw. Awgrymaf fod rhywun yn camarwain, Syr Jon.

Sir Jon Shortridge: I think that if a Member wants to allege that a Minister was being misleading, that point should be put to the Minister and not to me.

Syr Jon Shortridge: Credaf os yw Aelod am honni bod Gweinidog wedi bod yn gamarweiniol, y dylid trafod hynny gyda'r Gweinidog ac nid gyda mi.

[125] **Alison Halford:** I was suggesting that whoever advised her might have been being misleading, Sir Jon.

[125] **Alison Halford:** Yr oeddwn yn awgrymu y gall pwy bynnag a roddodd gyngor iddi fod wedi ei chamarwain, Syr Jon.

Sir Jon Shortridge: What I have said is that I am absolutely satisfied that what she told the Assembly was fully correct and justified at the time and I think that this report reinforces that. Paragraph 1 states that:

Syr Jon Shortridge: Yr hyn yr wyf wedi'i ddweud yw fy mod yn hollol fodlon bod yr hyn a ddywedodd wrth y Cynulliad yn hollol gywir a chyfiawn ar y pryd a chredaf fod yr adroddiad hwn yn cadarnhau hynny. Mae paragraff 1 yn nodi:

'Following the adjudicator's decision, the Minister for Finance, Local Government and Communities wrote to me requesting that I

'Yn dilyn penderfyniad y dyfarnwr, ysgrifennodd y Gweinidog dros Gyllid, Llywodraeth Leol a Chymunedau ataf i ofyn

satisfy myself that she acted prudently and on the basis of appropriate legal advice in regard to the decision to go to adjudication.'

i mi fodloni fy hun ei bod wedi ymddwyn yn ddoeth ac ar sail cyngor cyfreithiol priodol o ran y penderfyniad i gyflwyno achos gerbron dyfarnwr.'

This report confirms that she did.

Mae'r adroddiad yn cadarnhau iddi wneud hynny.

[126] **Dafydd Wigley:** I think that we will leave that at this point.

[126] **Dafydd Wigley:** Credaf ein bod am adael hynny yma.

[127] **Janet Davies:** There is reference in the report to a Richard Rogers Partnership suggestion of an independent review on costs and mediation. There is mention of Paul Hyatt, the president of the Royal Institute of British Architects. Why did you not take that up, rather than finish up with the adjudication process? Would it not have been less costly?

[127] **Janet Davies:** Mae cyfeiriad yn yr adroddiad at awgrym gan Bartneriaeth Richard Rogers am adolygiad annibynnol ar gostau a chyfryngiad. Crybwyllir Paul Hyatt, llywydd Sefydliad Brenhinol Penseiri Prydain. Pam na ddilynasoch yr awgrym hwnnw, yn hytrach na gorfod wynebu'r broses ddyfarnu? Oni fyddai hyn wedi bod yn rhatach?

Sir Jon Shortridge: Obviously these matters were considered very carefully but, ultimately, all this hinged on the fact that those of us in the Assembly who had responsibility for this project had lost confidence in the Richard Rogers Partnership, and we did not think that that was going to be a productive way through.

Syr Jon Shortridge: Yn amlwg, ystyriwyd y materion hyn yn ofalus iawn ond, yn y pen draw, yr oedd hyn i gyd yn dibynnu ar y ffaith bod y rhai ohonom yn y Cynulliad â chyfrifoldeb am y prosiect hwn wedi colli ffydd ym Mhartneriaeth Richard Rogers, ac nid oeddem yn credu y byddai hynny yn ffordd adeiladol o fynd ati.

[128] **Janet Davies:** So it would not have mattered if it had been somebody different from Mr Paul Hyatt? You still would not have had confidence?

[128] **Janet Davies:** Felly ni fyddai gwahaniaeth pe bai wedi bod yn rhywun gwahanol i Mr Paul Hyatt? Byddech wedi parhau'n ddi-hyder beth bynnag?

Sir Jon Shortridge: I am not aware that such alternatives were put to us.

Syr Jon Shortridge: Nid wyf yn ymwybodol i opsiynau gwahanol gael eu cyflwyno i ni.

[129] **Janet Davies:** Right, thank you. The Auditor General told us when we considered the report last year that the problems experienced by the Assembly were complicated but not unique, so what is the Assembly doing to learn lessons from other projects?

[129] **Janet Davies:** Iawn, diolch. Dywedodd yr Archwilydd Cyffredinol wrthym pan oeddem yn ystyried yr adroddiad y llynedd bod y problemau a wynebodd y Cynulliad yn gymhleth ond nid yn unigryw, felly beth mae'r Cynulliad yn ei wneud i ddysgu gwersi o brosiectau eraill?

Sir Jon Shortridge: We have been observing other projects and I have referred to one or two of them. However, I think that the main way in which we are addressing that is that we have appointed a completely new set of advisers to assist us in the management and procurement of the new building. These are people who are very experienced in these matters, who do know the lessons and where

Syr Jon Shortridge: Yr ydym wedi bod yn arsylwi prosiectau eraill ac yr wyf wedi cyfeirio at un neu ddau ohonynt. Credaf, fodd bynnag, mai'r brif ffordd o ateb hyn yw ein bod wedi penodi grŵp newydd sbon o ymgynghorwyr i'n cynorthwyo i reoli a chaffael yr adeilad newydd. Mae'r rhain yn bobl sy'n brofiadol iawn yn y materion hyn, sy'n ymwybodol o'r gwersi a sut gall pethau

things can go wrong, and in whose advice and judgment I have considerable confidence. If you wish, Richard may be able to provide you with further information about them.

fynd o'i le, ac mae gennyf gryn hyder yn eu cyngor a'u barn. Os dymunwch, gall Richard ddarparu gwybodaeth bellach amdanynt.

Mr Wilson: Yes. In terms of the design advice we have, the Assembly appointed Schal project management earlier this year to undertake the project management role. It brought with it an entire design audit team, which has been extremely useful in undertaking the design audit of what we currently have, and in establishing what further design work we need to do in order to develop the design to the point of going forward to a contract. We understand that we need more clarity in the role and line of communication and responsibility, and that, you will see, is indicated in figure 3 on page 8, where we have the project manager reporting directly to the project board—a small board, which makes executive decisions—and that project board reports to the Finance Minister. Feeding into that project board, you will see the information technology project board, which I referred to earlier, and the Presiding Office's project board, which deals with issues about the operational aspects of the new building.

Mr Wilson: Gallaf. O ran y cyngor cynllunio sydd gennym, penododd y Cynulliad reolwyr prosiect Schal yn gynharach eleni i ymgymryd â'r rôl o reoli'r prosiect. Daeth â thîm archwilio cynllun cyfan, sydd wedi bod yn ddefnyddiol iawn wrth gynnal archwiliad o'r cynllun sydd gennym ar hyn o bryd, ac wrth bennu pa waith cynllunio pellach sydd ei angen i ddatblygu'r cynllun er mwyn gallu mynd ymlaen i gontract. Deallwn ein bod angen rhagor o eglurder yn y rôl a'r llinellau cyfathrebu a chyfrifoldeb a nodir hyn, fel y gwelwch, yn ffigur 3 ar dudalen 8, lle mae'r rheolwr prosiect yn adrodd yn uniongyrchol i'r bwrdd prosiect—bwrdd bach, sy'n gwneud penderfyniadau gweithredol—ac mae'r bwrdd prosiect hwnnw yn adrodd yn uniongyrchol i'r Gweinidog Cyllid. Mae'r bwrdd prosiect technoleg gwybodaeth, y cyfeiriais ato'n gynharach, a bwrdd prosiect Swyddfa'r Llywydd, sy'n delio â materion am agweddau gweithredol yr adeilad newydd, yn cyfrannu at y bwrdd prosiect hwn.

Below the project manager, when we award the contract, will be the design and build contractor. So there will be a very simple and clear line of responsibility from the project board down through the project manager and to the contractor.

O dan y rheolwr prosiect, pan fyddwn yn dyfarnu'r contract, mae'r contractwr cynllunio ac adeiladu. Felly bydd llinell gyfrifoldeb syml a chlir iawn o'r bwrdd prosiect i lawr drwy'r rheolwr prosiect ac i'r contractwr.

[130] **Janice Gregory:** Just to expand further on that, Sir Jon—and thank you Richard for that explanation—paragraph 23 states that the Graves report found a number of weaknesses in the project management at that time. The paragraph goes on to state that no review was carried out until well into the life of the project. Why was that, do you think? Why did it take so long for that to happen?

[130] **Janice Gregory:** I ymhelaethu ymhellach ar hynny, Syr Jon—a diolch, Richard, am yr eglurhad hwnnw—mae paragraff 23 yn nodi bod adroddiad Graves wedi canfod nifer o wendidau yn rheolaeth y prosiect bryd hynny. Mae'r paragraff yn mynd ymlaen i nodi na chynhaliwyd adolygiad tan ymhell i mewn i oes y prosiect. Beth oedd y rheswm am hyn yn eich barn chi? Pam ei bod wedi cymryd cymaint o amser i hynny ddigwydd?

Let me take it a bit further. Are you happy now that, given the new structure of the project management board, this is all completely sound and will not need changing again at some point in the future?

Gadewch i mi drafod y mater ymhellach. A ydych yn hapus yn awr, o ystyried sdrwythur newydd y bwrdd rheoli prosiect, fod popeth mewn trefn ac na fydd angen newid pethau eto yn y dyfodol?

Sir Jon Shortridge: In the case of the review, I am a great believer that when things go wrong, or when things do not go as you expect them to go, and you have some public accountability, you go to an independent person who will review what you have done, and you can then be reasonably satisfied as to where the fault lay. The Graves report was commissioned following the termination of the contract. So, okay, it did not come to life until well into the project, but that was because it was not until it was well into the life of the project that we had the problem that needed to be addressed.

In terms of whether I am absolutely satisfied about the project structure, this project structure has been drawn up on advice and is one which, as I understand it, Schal, who is, I think, our main adviser on this matter, is satisfied with. We will clearly have to monitor and test it as we go through this process, so it may need some refinement. I think that the only comment that I would make is that in some respects, the Assembly is a complex organisation, where you have people with executive responsibility and you have elected Members with a strong personal and democratic responsibility. So creating a project structure that properly takes account of those two sets of very important, but very different interests, means that it is going to be more complicated than if I were Marks and Spencer building a new supermarket. We all have to recognise and acknowledge that.

[131] **Janice Gregory:** It is obvious to me from Sir Jon's reply that the eye will be kept quite firmly on the ball now that the Graves report has been published and you have taken account of what they have said. As long as you can confirm that there will be regular reviews of the project, I will be happy to accept that.

[132] **Dafydd Wigley:** Eleanor, did you want to briefly come in on that?

[133] **Eleanor Burnham:** I wonder if we could have a note, if it is not possible to tell us about the complexity of figure 3 now. I am still querying who is actually on the project board and in the policy steering group and who the professional construction advisers are and so on. I do not expect that information

Syr Jon Shortridge: Yn achos yr adolygiad, yr wyf yn gredwr mawr mewn mynd at berson annibynnol pan fo pethau'n mynd o chwith, neu pan na fo pethau'n digwydd fel y disgwyl, a phan fo gennych beth atebolrwydd cyhoeddus, a fydd yn adolygu'r hyn yr ydych wedi'i wneud, a gellwch fod yn gymharol fodlon wedyn ynglŷn â gwraidd y diffyg. Comisiynwyd adroddiad Graves yn dilyn terfynu'r contract. Felly, iawn, nid oedd mewn bodolaeth tan ymhell ar ôl i'r prosiect ddechrau, ond yr oedd hyn oherwydd na chawsom y broblem a oedd angen ei thrafod tan ymhell i mewn i oes y prosiect.

O ran a wyf yn hollol fodlon gyda sdrwythur y prosiect, mae sdrwythur y prosiect wedi'i lunio ar sail cyngor y mae Schal, fel y deallaf, sef ein prif ymgynghorwr ar y mater hwn, yn fodlon gydag ef. Byddwn heb os yn gorfod ei fonitro a'i brofi yn ystod y broses, felly efallai y bydd angen rhywfaint o fireinio. Credaf mai'r unig sylw yr wyf am ei wneud yw bod y Cynulliad, i ryw raddau, yn sefydliad cymhleth lle ceir pobl â chyfrifoldeb gweithredol ac Aelodau etholedig â chyfrifoldeb personol a democrataidd cryf. Felly mae creu sdrwythur prosiect sy'n rhoi ystyriaeth deilwng i'r ddwy gyfres hyn o fuddiannau pwysig iawn, ond hollol wahanol, yn golygu y bydd hyn yn fwy dyrys na phe bai Marks and Spencer yn adeiladu archfarchnad newydd. Mae'n rhaid i ni gyd gydnabod hynny.

[131] **Janice Gregory:** Mae'n amlwg i mi o ymateb Syr Jon y bydd yn rhaid cadw llygad barcud ar ddatblygiadau yn awr ar ôl cyhoeddi adroddiad Graves a'ch bod wedi ystyried yr hyn a ddywedwyd. Cyn belled â'ch bod yn gallu cadarnhau y bydd adolygiadau rheolaidd ar y prosiect, byddaf yn hapus i dderbyn hynny.

[132] **Dafydd Wigley:** Eleanor, a ydych am gyfrannu'n gryno yma?

[133] **Eleanor Burnham:** Tybed a fyddai modd i ni gael nodyn, os nad yw'n bosibl dweud wrthym am gymhlethdod ffigur 3 yn awr. Yr wyf yn parhau i gwestiynu pwy mewn gwirionedd sydd ar y bwrdd prosiect ac yn y grŵp llywio polisi a phwy yw'r ymgynghorwyr adeiladu proffesiynol ac ati.

now, but could we have a note on that?

Nid wyf yn disgwyl y wybodaeth honno yn awr, ond a fyddai modd cael nodyn ar hynny?

[134] **Dafydd Wigley:** There are possibly other avenues, because this is exploring things that will happen in the future to a large extent. It is down here in the report in terms of mechanisms that we learn from, but I think that your own party leader may possibly be in a position to clarify a little bit on that. We will move on.

[134] **Dafydd Wigley:** Mae llwybrau eraill i'w dilyn o bosibl, oherwydd mae hyn yn archwilio pethau a fydd yn digwydd yn y dyfodol i raddau helaeth. Nodir yn yr adroddiad o ran y mecanweithiau yr ydym yn dysgu ganddynt, ond credaf y gall arweinydd eich plaid eich hun fod mewn gwell sefyllfa o bosibl i egluro hynny. Symudwn ymlaen.

[135] **Janice Gregory:** Sir Jon, at the very beginning you mentioned the Scottish Parliament building and the huge increases in the cost of the project. May I take you back to a very important point for all of us—the susceptibility of any project to cost overruns? The Auditor General's letter of last November reported that the Assembly's estimated total forecast was £37 million to £47 million against the original budget of £26.7 million. It is a difficult question to answer, perhaps, but what is your latest forecast of the total cost of the new building? In addition, and bearing in mind the experience in Scotland and what has happened up to now on this project, what assurances can you give that the costs will not continue to rise?

[135] **Janice Gregory:** Syr Jon, yn y dechrau crybwyllasoch adeilad Senedd yr Alban a'r cynnydd enfawr yng nghostau'r prosiect. A gaf i fynd yn ôl at bwynt pwysig iawn i bawb—tueddiad unrhyw brosiect i fynd y tu hwnt i gostau? Nododd llythyr yr Archwilydd Cyffredinol fis Tachwedd y llynedd bod y Cynulliad yn amcangyfrif cyfanswm costau o £37 miliwn i £47 miliwn yn erbyn y gyllideb wreiddiol o £26.7 miliwn. Mae'n gwestiwn anodd i'w ateb, o bosibl, ond beth yw eich amcangyfrif diweddaraf ar gyfanswm costau'r adeilad newydd? Yn ogystal â hyn, a chan gofio profiadau yn yr Alban a beth sydd wedi digwydd hyd yma ar y prosiect hwn, pa sicrwydd ellwch ei roi na fydd y costau yn parhau i godi?

Sir Jon Shortridge: I am not able to give the Committee a forecast. Even if I had one to hand, given the nature of the delicate position of the present tendering process, putting a figure in the public domain would not make any sense at all. It is the case that the Finance Minister said that she or her successor, bearing in mind that we are talking about after the election, will be coming to the Assembly in July with a proposal based on the outcome of the procurement process so that the Assembly will have the full facts at that time and will be able to take its own decision on whether to proceed with the building at that stage.

Syr Jon Shortridge: Ni allaf broffwydo hyn i'r Pwyllgor. Hyd yn oed pe bai gennyf amcangyfrif, o ystyried natur sefyllfa fregus y broses dendro bresennol, ni fyddai unrhyw synnwyr mewn cyhoeddi ffigur. Dywedodd y Gweinidog Cyllid y byddai hi neu ei holynydd, gan gofio ein bod yn siarad am ar ôl yr etholiad, yn dod i'r Cynulliad fis Gorffennaf gyda chynnig ar sail canlyniad y broses gaffael i'r Cynulliad gael y ffeithiau llawn ar y pryd a bydd yn gallu gwneud ei benderfyniad ei hun ynglŷn â mynd ymlaen â'r adeilad ai peidio bryd hynny.

In terms of assurances, I am learning that there can be no absolute assurance on price. The procurement approach that we have adopted is one that is designed to transfer as much risk as we reasonably can to the contractor. However, if the Assembly was subsequently to decide that it wanted to make further changes to the design, there might be issues in the contract that would allow the contractor to come in

O ran sicrwydd, yr wyf yn deall na ellir cael sicrwydd pendant ar bris. Mae'r dull caffael a fabwysiadwyd gennym yn un sydd wedi'i gynllunio i drosglwyddo cymaint o risg ag sy'n rhesymol bosibl i'r contractwr. Fodd bynnag, pe bai'r Cynulliad yn penderfynu wedi hynny ei fod am wneud newidiadau pellach i'r cynllun, efallai y byddai materion yn y contract a fyddai'n caniatáu i'r

with claims. You cannot absolutely remove all the risk. However, the approach that we are taking is designed to minimise the risk and will mean that we are in a substantially different position in future from the one that we were in when we took this brave decision in July to terminate the contract.

contractwr gyflwyno hawliadau. Ni ellir cael gwared ar y risg hon yn llwyr. Fodd bynnag, mae'r dull yr ydym yn ei ddefnyddio wedi'i gynllunio i leihau'r risg a bydd yn golygu ein bod mewn sefyllfa wahanol iawn yn y dyfodol i'r un yr oeddem ynddi pan wnaethom y penderfyniad dewr hwn ym mis Gorffennaf i derfynu'r contract.

[136] **Alun Cairns:** A couple of points have been made that concern me somewhat. In the first instance, comparisons have been made to the Scottish Parliament and the way that costs have overrun there. It is worth reminding ourselves that the project in Scotland is very different to the project here in Cardiff bay in that it also includes offices and many other facilities rather than just a debating chamber. I would hope that we are not going to become complacent by comparing the project in Cardiff to the one in Scotland.

[136] **Alun Cairns:** Mae ambell bwynt wedi'i wneud sy'n achos pryder i mi. Y cyntaf yw bod cymariaethau wedi'u gwneud â Senedd yr Alban a'r ffordd yr aed dros gostau yno. Mae'n werth atgoffa ein hunain bod y prosiect yn yr Alban yn wahanol iawn i'r prosiect yma ym mae Caerdydd gan ei fod hefyd yn cynnwys swyddfeydd a llawer mwy o gyfleusterau yn hytrach na siambr ddadlau yn unig. Gobeithiaf na fyddwn yn hunanfodlon drwy gymharu'r prosiect yng Nghaerdydd gyda'r un yn yr Alban.

In addition, the point was made that almost all public buildings are subject to financial overrun, perhaps including those that are unique in nature, such as the Chamber. I wholly reject that because not all public buildings or public projects of unique characteristics have overrun in this way. The one that we can obviously highlight, which possibly had higher degrees of risk, was the Cardiff bay barrage project, which came in very close to the original allocation of expenditure. So I hope that we as a Committee are not becoming complacent.

Yn ogystal â hyn, gwnaethpwyd y pwynt bod posibilrwydd i'r rhan fwyaf o adeiladau cyhoeddus fynd y tu hwnt i gostau, gan gynnwys o bosibl y rhai hynny sy'n unigryw o ran natur, fel y Siambr. Yr wyf yn gwrthod hynny'n llwyr oherwydd nid yw pob adeilad cyhoeddus neu brosiect cyhoeddus sydd â nodweddion unigryw wedi mynd y tu hwnt i gostau fel hyn. Yr un y gellir ei ddefnyddio fel enghraifft, a oedd yn cynnwys mwy o risg o bosibl, oedd prosiect morglawdd bae Caerdydd, a gyflawnwyd yn agos iawn i'r gwariant a nodwyd yn wreiddiol. Felly gobeithiaf nad ydym fel Pwyllgor yn llaesu dwylo.

Bearing in mind that the latest estimated forecast is £37 million to £47 million, and that the budget line, including the contingency fund, is £26.7 million, from which budget line can we expect the funding to come bearing in mind that reserves have been reduced significantly for the next financial year?

Gan gofio mai'r amcangyfrif diweddaraf yw £37 miliwn i £47 miliwn, a bod y llinell gyllideb, gan gynnwys y gronfa wrth gefn, yn £26.7 miliwn, o ba gyllideb y gallwn ddisgwyl i'r cyllid ddod o gofio bod cronfeydd wrth gefn wedi'u gostwng yn sylweddol am y flwyddyn ariannol nesaf?

Sir Jon Shortridge: I hope that I have not said anything that could mislead the Committee. In the references that I have made to Scotland, the point that I was making was in relation to increasing costs. I was not seeking to make a comparison as to the absolute costs, because I acknowledge that we are not comparing like with like in terms of what is being procured. I hope that I have not given

Syr Jon Shortridge: Gobeithio nad wyf wedi dweud unrhyw beth a allai fod wedi camarwain y Pwyllgor. Yr oedd y pwynt yr oeddwn yn ei wneud yn fy nghyfeiriadau at yr Alban yn ymwneud â chostau cynyddol. Nid oeddwn yn ceisio llunio cymhariaeth ynglŷn â'r gost absoliwt, oherwydd yr wyf yn cydnabod nad ydym yn cymharu tebyg â thebyg o ran yr hyn sy'n cael ei gaffael.

the impression that cost overruns are an inevitability in relation to public buildings. I abhor cost overruns and will do all that I can to avoid them. I do commend, and have commended in the past, Cardiff Bay Development Corporation for bringing a very complicated and innovative piece of engineering such as the barrage in within about 10 per cent, I think, of the estimated budget. The only point that I would make on overruns is that if you take the management contracting route, you are taking a significant risk that there will be cost overruns. In terms of where the money will come from, that will be a matter for the Finance Minister to determine at the time.

Gobeithiaf nad wyf wedi rhoi'r argraff bod mynd y tu hwnt i gostau yn digwydd yn anochel gydag adeiladau cyhoeddus. Yr wyf yn casáu mynd y tu hwnt i gostau a byddaf yn gwneud popeth o fewn fy ngallu i osgoi hynny. Yr wyf yn cymeradwyo, ac wedi cymeradwyo yn y gorffennol, Corfforaeth Datblygu Bae Caerdydd am gwblhau darn o waith peirianyddol mor gymhleth ac arloesol â'r morglawdd o fewn 10 y cant, yr wyf yn credu, o'r gyllideb a amcangyfrifwyd. Yr unig bwynt a wnaf o ran mynd y tu hwnt i gostau yw os ydych yn dilyn y llwybr contractio rheoli, yr ydych yn cymryd risg sylweddol o fynd y tu hwnt i gostau. O ran o ble y byddwn yn dod o hyd i'r arian, penderfyniad i'w wneud ar y pryd gan y Gweinidog Cyllid fydd hynny.

[137] **Dafydd Wigley:** I suspected that that would be the answer. We will move on.

[137] **Dafydd Wigley:** Yr oeddwn yn amau mai hynny fyddai'r ateb. Symudwn ymlaen.

[138] **Alison Halford:** We all know that other companies are bidding for the contract. What action, Sir Jon, will you be taking to ensure that you will be able to work effectively with your preferred private sector partner to avoid the sorts of problems that have dogged us so far?

[138] **Alison Halford:** Yr ydym i gyd yn gwybod bod cwmnïau eraill yn cynnig am y contract. Pa gamau, Syr Jon, y byddwch yn eu cymryd i sicrhau y byddwch yn gallu gweithio'n effeithiol gyda'r partner sector preifat sydd orau gennych i osgoi y mathau o broblemau sydd wedi'n hwynebu hyd yma?

Sir Jon Shortridge: Richard may want to comment further but I think that, partly, this gets back to figure 3 and the nature of the project structure that we have. However, also, I think that because this is going to be such a different type of contract, where you are separating out the design from the build much more than you can do in the case of the management contractor approach, and you have transferred a very significant amount of risk, the occasions for and opportunities for the sorts of disputes that we had in the case of the Richard Rogers Partnership contract will be much reduced. I would also say, as much as I would like to do so, I do not think that I could claim that these could ever be totally eradicated.

Syr Jon Shortridge: Efallai y bydd Richard am wneud sylwadau pellach ond credaf, yn rhannol, bod hyn yn mynd yn ôl at ffigur 3 a natur y sdrwythur prosiect sydd gennym. Fodd bynnag, hefyd, credaf oherwydd bod hwn yn mynd i fod yn gontract mor wahanol, lle'r ydych yn gwahanu'r cynllun o'r adeilad yn llawer mwy nag yn achos y dull contractwr rheoli, a'ch bod wedi trosglwyddo swm sylweddol iawn o risg, bydd gostyngiad mawr yn yr achlysuron a'r cyfleoedd am y math o anghydfodau a gawsom yn achos contract Partneriaeth Richard Rogers. Er cymaint y byddwn yn hoffi gwneud hynny, ni chredaf y gallwn honni y gellid byth ddileu'r rhain yn llwyr.

[139] **Alison Halford:** Do you feel that we are going to have a signed contract this time, before we kick off, and that the fees structure is properly embedded in it?

[139] **Alison Halford:** A ydych o'r farn y byddwn yn cael contract wedi'i lofnodi y tro hwn, cyn cychwyn, a bod y sdrwythur ffioedd wedi'i gynnwys yn iawn ynddo?

Sir Jon Shortridge: One of my personal requirements will be that we have a signed

Syr Jon Shortridge: Un o'm gofynion personol fydd ein bod yn cael contract wedi'i

contract at a sufficiently early stage.

[140] **Jocelyn Davies:** May I just come in on that point? You have made the point several times that it made no material difference that the contract was unsigned. So having this one signed will not make any difference unless it is a clear contract, and we have the same understanding of it as the people with whom we enter into the contract. Is that not the most important aspect?

Sir Jon Shortridge: The issue about a signed contract is that you then know that you have agreement on all the terms. What we did not have, in the case of the Richard Rogers Partnership contract, was full agreement on the overall quantum of the fees that it was going to be paid.

[141] **Dafydd Wigley:** I think that the point is made.

[142] **Val Lloyd:** The advertisement for the design and build contract was placed in the relevant journal in September 2001. There does not seem to have been a lot of progress made, or am I being too eager? Perhaps you could comment on progress so far. Are you confident that whoever wins the contract will be able to put right the elements of the original design that led to the cost rises as outlined in the Auditor General's report last year?

Sir Jon Shortridge: Richard may want to comment further but, essentially, in terms of figure 4, we are operating in accordance with the timetable that is implicit in figure 4, so we are currently en route for an award of works contract in July 2003. I am sorry, what was the second part of your question?

[143] **Val Lloyd:** Are you confident that whoever wins the contract will be able to put right the elements of the design that led to the cost rises, which was the subject of the Auditor General's report last year, and is at annex 1 to our current report?

Sir Jon Shortridge: One of the reasons for the amount of time that it has taken to get to the award of works contract, was to enable, initially, the two shortlisted, and then, the final

lofnodi yn ddigon cynnar yn y trafodaethau.

[140] **Jocelyn Davies:** A gaf i gyfrannu yma? Yr ydych wedi nodi sawl gwaith nad oedd y ffaith bod y contract heb ei lofnodi wedi gwneud gwahaniaeth o bwys. Felly ni fydd llofnodi'r contract hwn yn gwneud unrhyw wahaniaeth os nad yw'n gontract clir, a bod gennym yr un ddealltwriaeth ohono â'r bobl y byddwn yn llunio'r contract â hwy. Ai honno yw'r agwedd bwysicaf?

Syr Jon Shortridge: Gyda chontract wedi'i lofnodi yr ydych yn gwybod eich bod yn cytuno ar yr holl delerau. Yr hyn nad oedd gennym, yn achos contract Partneriaeth Richard Rogers, oedd cytundeb llawn ar gwantwm cyffredinol y ffioedd a fyddai'n cael eu talu iddi.

[141] **Dafydd Wigley:** Credaf fod y pwynt wedi'i wneud.

[142] **Val Lloyd:** Gosodwyd yr hysbyseb am y contract cynllunio ac adeiladu yn y cyfnodolyn perthnasol ym mis Medi 2001. Ymddengys nad oes llawer o gynnydd wedi'i wneud, neu a wyf yn bod yn orawyddus? Efallai y gellwch roi sylwadau ar gynnydd hyd yma. A ydych yn hyderus y bydd pwy bynnag a fydd yn ennill y contract yn gallu cywiro elfennau'r cynllun gwreiddiol a arweiniodd at gynnydd mewn costau fel yr amlinellir yn adroddiad yr Archwilydd Cyffredinol y llynedd?

Syr Jon Shortridge: Efallai y bydd Richard am wneud sylwadau pellach ond, yn y bôn, o ran ffigur 4, yr ydym yn gweithredu yn unol â'r amserlen a welir yn ffigur 4, felly'r ydym ar y ffordd at osod y contract gwaith ym mis Gorffennaf 2003. Mae'n ddrwg gennyf, beth oedd ail ran eich cwestiwn?

[143] **Val Lloyd:** A ydych yn hyderus y bydd pwy bynnag a fydd yn ennill y contract yn gallu cywiro elfennau'r cynllun a arweiniodd at gynnydd mewn costau, sef pwnc adroddiad yr Archwilydd Cyffredinol y llynedd, ac sydd yn atodiad 1 ein hadroddiad cyfredol?

Syr Jon Shortridge: Un o'r rhesymau dros yr amser y mae wedi'i gymryd i ni osod y contract gwaith, oedd i alluogi, yn y lle cyntaf, i'r ddau ar y rhestr fer, ac yna, y

selected contractor, to do a lot of work in advance, in order to provide a significant degree of cost certainty. Richard may want to amplify that.

contractwr a ddetholwyd yn y pen draw, i wneud llawer o'r gwaith ymlaen llaw, er mwyn rhoi graddau sylweddol o sicrwydd cost. Efallai y bydd Richard am ymhelaethu yma.

Mr Wilson: It may appear as if nothing much is happening. I can assure the Committee that the project team within the Assembly is working extremely hard on this. We started, as I said earlier, with the appointment of the project manager, Schal International Management Ltd and its design audit team. The first thing that needed to be done was to conduct a thorough design audit. The Permanent Secretary has referred earlier to some of the problems that we had in securing manipulable documents, as opposed to read-only documents. We conducted a design audit, and we went out to tender. We invited tenderers to submit their preliminary tenders, based on a number of the packages within the project itself, but, also, to demonstrate the methodology that they would use to solve other problems, which you say are the design issues.

Mr Wilson: Efallai ei bod yn ymddangos nad oes llawer yn digwydd. Gallaf sicrhau'r Pwyllgor bod y tîm prosiect yn y Cynulliad yn gweithio'n galed iawn ar hyn. Dechreuasom, fel y dywedais yn gynharach, drwy benodi'r rheolwr prosiect, Schal International Management Cyf a'i dîm archwilio cynllun. Y peth cyntaf oedd angen ei wneud oedd cynnal archwiliad trylwyr o'r cynllun. Mae'r Ysgrifennydd Parhaol wedi cyfeirio ynghynt at rai o'r problemau a wynebwyd gennym wrth sicrhau dogfennau hydrin, yn hytrach na dogfennau y gellid eu darllen yn unig. Bu inni gynnal archwiliad cynllun a dechreuasom ar y tendro. Bu inni wahodd tendrwyr i gyflwyno eu tendrau cychwynnol, yn seiliedig ar nifer o'r pecynnau o fewn y prosiect ei hun, ond, hefyd, i arddangos y fethodoleg y byddent yn ei defnyddio i ddatrys problemau eraill, sef yr hyn yr ydych yn ei alw'n faterion cynllunio.

We are currently reviewing that information and so, while it may be very frustrating—and I know that it is very frustrating for the Ministers—that there does not seem to be an awful lot going on, a huge amount of design audit work has been undertaken. We have gone out with the invitation-to-tender documentation, which took a very significant effort, and we are currently looking to evaluate that information over the Christmas period. I am confident that we will comply with the timetable set out in figure 4.

Ar hyn o bryd, yr ydym yn adolygu'r wybodaeth honno ac felly, er y gall hyn achosi rhwystredigaeth—ac yr wyf yn gwybod ei bod yn gryn rwystredigaeth i'r Gweinidogion—nad yw'n ymddangos bod llawer yn cael ei wneud, mae llawer o waith archwilio cynllun wedi'i gyflawni. Yr ydym wedi anfon y ddogfennaeth gwahoddiad-i-dendro, a fu'n ymdrech sylweddol, ac ar hyn o bryd yr ydym yn bwriadu gwerthuso'r wybodaeth honno dros gyfnod y Nadolig. Yr wyf yn hyderus y byddwn yn cydymffurfio â'r amserlen a nodir yn ffigur 4.

[144] **Val Lloyd:** Thank you; that is reassuring.

[144] **Val Lloyd:** Diolch; mae hynny'n galonogol.

[145] **Janice Gregory:** Very briefly, it has occurred to me that the invitation to tender went out in October 2002, the very month that you received certain documents from the Richard Rogers Partnership. Is there a connection, or is it just pure coincidence?

[145] **Janice Gregory:** Yn gryno iawn, mae'n fy nharo i fod y gwahoddiad i dendro wedi'i anfon ym mis Hydref 2002, yr union fis y derbyniasoch ddogfennau penodol gan Bartneriaeth Richard Rogers. A oes cysylltiad, neu ai cyd-ddigwyddiad yw hyn?

Sir Jon Shortridge: As we knew of the timetable, we made further, and perhaps more urgent requests, of the Richard Rogers

Syr Jon Shortridge: Wrth inni ddysgu am yr amserlen, gwnaethom geisiadau pellach, ac efallai ar fwy o frys, i Bartneriaeth Richard

Partnership, for certain material that we then did receive.

Rogers, am ddeunydd penodol a dderbyniasom wedi hynny.

[146] **Janice Gregory:** If I may ask a small supplementary to that, the decision of the Richard Rogers Partnership to withhold that information has also caused us a time delay?

[146] **Janice Gregory:** A gaf i ofyn cwestiwn bach yn ychwanegol at hynny, sef a yw penderfyniad Partneriaeth Richard Rogers i ddal ei gafael ar y wybodaeth hefyd wedi achosi oedi?

Sir Jon Shortridge: No—

Syr Jon Shortridge: Na—

[147] **Janice Gregory:** I stand corrected.

[147] **Janice Gregory:** Yr ydych wedi fy nghywiro.

Sir Jon Shortridge: I mean, it might have done, if we had taken the view that it was more important to try to get more information, than to proceed with the tendering. In the event, we were satisfied that we had sufficient information to proceed with the tendering.

Syr Jon Shortridge: Gallai hynny fod wedi bod yn wir, pe baem wedi ystyried ei bod yn bwysicach ceisio cael rhagor o wybodaeth na mynd ymlaen â'r tendro. Fel y bu hi, yr oeddem yn fodlon bod gennym ddigon o wybodaeth i fynd ymlaen â'r tendro.

[148] **Dafydd Wigley:** It is useful to have that on the record. Jocelyn has some questions to ask.

[148] **Dafydd Wigley:** Mae'n ddefnyddiol cael hynny ar ddu a gwyn. Mae gan Jocelyn rai cwestiynau i'w gofyn.

[149] **Jocelyn Davies:** The planned completion date for the building is now the summer of 2005—that is four years later than the original target date. How confident are you, in the light of the previous delays, that the building will be completed by then, and does this new timetable include any contingency for further problems that may arise?

[149] **Jocelyn Davies:** Y dyddiad cwblhau arfaethedig ar gyfer yr adeilad yn awr yw haf 2005—bedair blynedd yn hwyrach na'r dyddiad targed gwreiddiol. Pa mor hyderus ydych, yng ngoleuni'r oedi blaenorol, y bydd yr adeilad yn cael ei gwblhau erbyn hynny, ac a yw'r amserlen newydd yn cynnwys unrhyw gynlluniau wrth gefn ar gyfer problemau pellach a all godi?

Sir Jon Shortridge: The substantive answer must come from Richard. This is a timetable that has been put together on advice, and it reflects the fact that what we are looking for is as much cost certainty as possible. Therefore, we have built sufficient time into the timetable for the various stages to be completed in an orderly way, and if there is sufficient time you have enough design time to design out any unexpected problems. I think that I must ask Richard to amplify that, but I cannot say with absolute assurance that this timetable will be met, as we operate in an uncertain world. However, this is a much more realistic timetable than the one we originally had.

Syr Jon Shortridge: Bydd yn rhaid i Richard roi'r ateb pendant. Mae hon yn amserlen sydd wedi'i llunio ar sail cyngor, ac mae'n adlewyrchu'r ffaith ein bod yn chwilio am gymaint o sicrwydd costau â phosibl. Felly, yr ydym wedi rhoi digon o amser yn yr amserlen ar gyfer cwblhau'r gwahanol gyfnodau mewn ffordd drefnus, ac os y bydd digon o amser bydd gennych ddigon o amser cynllunio i wneud cynlluniau ar gyfer unrhyw broblemau annisgwyl. Credaf y bydd yn rhaid i mi ofyn i Richard ymhelaethu ar hynny, ond ni allaf ddweud yn hollol sicr a fyddwn yn gallu cadw at yr amserlen, gan ein bod yn gweithio mewn byd ansicr. Fodd bynnag, mae hon yn amserlen lawer mwy realistig na'r un wreiddiol.

[150] **Dafydd Wigley:** Do you want to add to that, Richard?

[150] **Dafydd Wigley:** A ydych am ychwanegu at hynny, Richard?

Mr Wilson: Yes, if I can amplify the Permanent Secretary's remarks, we did take very careful advice on how long the project should take, and obviously that includes building in time for contingency. At this stage, of course, we have indicated to the tenderers our target dates—they are very clear on these target dates—and we are evaluating their responses. At this stage I have no concerns that there are problems in terms of delivery. One point on which I can give assurance to the Committee is that, before we sign a contract, we will of course, because this is a design-and-build contract, enter into an agreement and a contract, which will stipulate a completion date. This is a different sort of contract to the management contracting route. Therefore, we will know at the outset how long it will take to build. Clearly, as the Permanent Secretary said, there are no guarantees in life; things sometimes overrun. Those are dealt with usually in contracts by the form of liquidated damages, which is a penalty payment for delays to the completion of the project, and of course there is always the issue of variations, which are introduced into the design by the client. So, subject to those two caveats, I think that—well, I am confident that—when we sign the contract, we will know what the completion date will be.

Mr Wilson: Ydw, os caf i ymhelaethu ar sylwadau'r Ysgrifennydd Parhaol, cymerasom gyngor gofalus iawn ar faint ddylai'r prosiect ei gymryd, ac yn amlwg yr oedd hynny'n cynnwys amser ar gyfer digwyddiadau annisgwyl. Ar hyn o bryd, wrth gwrs, yr ydym wedi nodi'r dyddiadau targed wrth y tendrwyr—maent yn glir iawn ynghylch y dyddiadau targed hyn—ac yr ydym yn gwerthuso eu hymatebion. Ar hyn o bryd nid oes gennyf bryderon bod problemau o ran cwblhau. Un pwynt y gallaf roi sicrwydd arno i'r Pwyllgor yw y byddwn, yn amlwg, cyn i ni lofnodi''r contract, gan mai contract cynllunio-ac-adeiladu yw hwn, yn dod i gytundeb a chontract a fydd yn amodi dyddiad cwblhau. Mae hwn yn fath gwahanol o gontract i'r dull contractio rheoli. Felly, byddwn yn gwybod o'r cychwyn faint fydd yn ei gymryd i'w adeiladu. Yn amlwg, fel y dywedodd yr Ysgrifennydd Parhaol, nid oes sicrwydd mewn bywyd; mae pethau'n gor-redeg o bryd i'w gilydd. Trafodir y rhain fel arfer mewn contractau ar ffurf iawndal penodedig, sef taliad cosb am oedi wrth gwblhau'r prosiect, ac wrth gwrs byddwn wastad yn wynebu amrywiadau, a gyflwynir i'r cynllun gan y cleient. Felly, yn amodol ar y ddau gafeat hyn, credaf—wel, yr wyf yn hyderus—y byddwn yn gwybod beth fydd y dyddiad cwblhau wrth lofnodi'r contract.

[151] **Dafydd Wigley:** Thank you very much indeed for answering our questions. I think that we look forward—given that there is now an extended period of time in which to firm up the figures and the costs to be that much better understood—to the fact that the cost of the project will not, in fact, go up against the upper limits of the cost range that has been mentioned, and that we can come in with a reasonable figure. I hope that that is understood by all those who are considering these matters henceforward. Thank you very much indeed for your evidence. As you know, a draft transcript will be submitted to you for correction on factual matters before it is published. It will also be included as an annex to the Committee's report. I thank you very much indeed for being with us today and I thank the audit team, who have done a lot of hard work on this matter.

[151] **Dafydd Wigley:** Diolch yn fawr iawn am ateb ein cwestiynau. Credaf ein bod yn edrych ymlaen—o ystyried bod cyfnod estynedig yn awr i gadarnhau'r ffigurau a'r costau er mwyn gallu eu deall yn well—at y ffaith na fydd costau'r prosiect yn codi yn erbyn terfynau uchaf yr ystod costau a grybwyllwyd, ac y gallwn gyrraedd ffigur rhesymol. Gobeithiaf fod pawb sy'n ystyried y materion hyn o hyn allan yn deall hynny. Diolch yn fawr iawn am eich tystiolaeth. Fel y gwyddoch, byddwn yn cyflwyno trawsysgrif drafft i chi er mwyn cywiro materion ffeithiol cyn ei gyhoeddi. Bydd hefyd yn cael ei gynnwys fel atodiad i adroddiad y Pwyllgor. Diolch yn fawr iawn i chi am fod yma heddiw a diolch i'r tîm archwilio, sydd wedi gwneud llawer o waith caled ar y mater hwn.

[152] **Alison Halford:** Do you think that we

[152] **Alison Halford:** A ydych yn credu y

can be invited back in 2005 to see the new building, bearing in mind who will be in the Chair?

gallwn gael ein gwahodd yn ôl yn 2005 i weld yr adeilad newydd, o gofio pwy fydd y Cadeirydd?

[153] **Dafydd Wigley:** I thought that you were going to volunteer to come to the Committee, perhaps as a witness, Alison, at that stage. My successor as Chair will no doubt bear that in mind. Thank you very much indeed.

153] **Dafydd Wigley:** Yr oeddwn yn credu eich bod am wirfoddoli i ddod i'r Pwyllgor, efallai fel tyst, Alison, bryd hynny. Yr wyf yn siŵr y bydd fy olynydd fel Cadeirydd yn cadw hynny mewn cof. Diolch yn fawr iawn i chi.

Daeth y sesiwn cymryd tystiolaeth i ben am 11.06 a.m.
The evidence-taking session ended at 11.06 a.m.