

Committee for Social Development

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – Phase 3
Volume 2**

Together with the Minutes of Proceedings, Minutes of Evidence, Correspondence and Written Submissions relating to the Report

Ordered by the Committee for Social Development to be printed 16 April 2015

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**THE REPORT REMAINS EMBARGOED
UNTIL COMMENCEMENT OF THE DEBATE IN PLENARY**

Powers and Membership

The Committee for Social Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister for Social Development.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

- Mr Alex Maskey (Chairperson)
- Mr Mickey Brady (Deputy Chairperson)
- Mr Jim Allister ⁷
- Mr Roy Beggs ¹⁴
- Ms Paula Bradley ¹
- Mr Gregory Campbell ³
- vacant ^{8,12,13,15}
- Mr Stewart Dickson ¹¹
- Ms Dolores Kelly ¹⁰
- Mr Fra McCann
- Mr Sammy Wilson ^{2,4,5,6,9}

- 1 With effect from 20 February 2012 Ms Paula Bradley replaced Mr Gregory Campbell
- 2 With effect from 26 March 2012 Mr Alastair Ross replaced Mr Sammy Douglas
- 3 With effect from 01 October 2012 Mr Gregory Campbell replaced Mr Alex Easton
- 4 With effect from 01 October 2012 Mr Sammy Douglas replaced Mr Alastair Ross
- 5 With effect from 11 February 2013 Mr Sydney Anderson replaced Mr Sammy Douglas
- 6 With effect from 07 May 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
- 7 With effect from 09 September 2013 Mr Jim Allister replaced Mr David McClarty
- 8 With effect from 16 September 2013 Mr Trevor Clarke replaced Ms Pam Brown
- 9 With effect from 16 September 2013 Mr Sammy Wilson replaced Mr Sammy Douglas
- 10 With effect from 30 September 2013 Mrs Dolores Kelly replaced Mr Mark H Durkan
- 11 With effect from 01 October 2013 Mr Stewart Dickson replaced Mrs Judith Cochrane
- 12 With effect from 06 October 2014 Mr Sammy Douglas replaced Mr Trevor Clarke
- 13 With effect from 17 November 2014 Mr Maurice Devenney replaced Mr Sammy Douglas
- 14 With effect from 09 February 2015 Mr Roy Beggs replaced Mr Michael Copeland
- 15 Mr Maurice Devenney resigned as an MLA on 25 March 2015

List of Abbreviations Used in the Report

(The) Committee	Committee for Social Development
BBC NI	British Broadcasting Corporation Northern Ireland
CPD	Central Procurement Directorate
DFP	Department of Finance and Personnel
DSD / The Department	Department for Social Development
DUP	Democratic Unionist Party
MLA	Member of Legislative Assembly
MP	Member of Parliament
NDPB	Non Departmental Public Body
NIAO	Northern Ireland Audit Office
NIHE / The Housing Executive	Northern Ireland Housing Executive
QC	Queen's Counsel
RIU	Repairs Inspection Unit of the NIHE
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
UK PAC	UK Public Affairs Council

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Northern Ireland
Assembly

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Letter to Speaker 21.01.15



**Northern Ireland
Assembly**

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21 January 2015

Our Ref: CSD/022/2013/3/AM

The Speaker
Mr Mitchel McLaughlin MLA
Room 38
Parliament Buildings
BELFAST
BT4 3XX

Dear *Mitchell,*

The Committee for Social Development (the Committee) agreed at its meeting on 15 January 2015, that, pursuant to Section 44(1) of the Northern Ireland Act 1998 (1998 Act), and Standing Order 48(2) I should write to you requesting that you issue a notice under Section 44 (7) of the 1998 Act to the Minister for Social Development to provide a copy of a Fact-Finding Exercise relevant to the Committee's Inquiry.

Background

You will be aware of a BBC NI Spotlight programme, which aired on 3 July 2013, which made allegations of potential wrongful political interference in the Northern Ireland Housing Executive (NIHE), potential breaches of the Ministerial Code of Conduct and potential misleading of the Assembly and the Committee.

At its meeting of 3 October 2013, the Committee agreed the Terms of Reference for its Inquiry into Allegations arising from the BBC Spotlight Programme aired on 3 July 2013. The Committee is currently considering evidence in relation to Stand (i) of its Terms of Reference (phase 3 of the Inquiry):

- (i) *Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate*

The Spotlight Programme also made allegations regarding the former Minister's Special Adviser, Mr Stephen Brimstone. It was alleged that he called Cllr Jennie Palmer and told her to vote against the NIHE board's decision to terminate the RedSky contract.

As a result of this allegation the Permanent Secretary for the Department for Social Development (DSD) initiated a fact-finding exercise to determine whether there was a basis to take forward a formal investigation.

This was carried out by senior officials from the Department of Finance and Personnel.

Timeline of correspondence on Fact-Finding exercise

In response to an enquiry by the Committee Chair, DSD wrote to the Committee on 23 August 2013 (appendix 1) to confirm that the fact-finding exercise had been initiated.

On 25 September 2013 (in response to the Committee's letter of 17 September 2013 at appendix 2), DSD confirmed that the fact-finding exercise had commenced on 20 August 2013 and that it was now complete. DSD advised that once it had fully considered the report, a decision would be made on the appropriate next steps and the Committee would be updated at that point (see appendix 3).

On 26 February 2014 the Committee requested an update from DSD in relation to the outcome of the report (appendix 4). DSD responded on 11 April 2014 (appendix 5) stating that it was an internal departmental matter relating to a member of staff and therefore it would not be appropriate to provide a commentary at that time. However DSD went on to state that it was its intention to inform the Committee of any outcome, following the conclusion of the matter.

On 4 September 2014, staff advised the committee that they had received confirmation that Minister McCausland had received the fact-finding report.

The Committee wrote to Minister McCausland on 8 September (appendix 6) seeking inter alia, an update regarding the outcome of the fact-finding exercise.

On 18 September 2014 (appendix 7) Minister McCausland wrote to the Committee stating that, based on legal advice, it was clear that it was a matter that he should deal with personally and he had concluded that no further action needed to be taken. He stated that due to a long established principle he could not release the report to the Committee. It should be noted that the Committee had not requested a copy of the report at that point.

The Committee wrote to the Head of the Northern Ireland Civil Service (NICS) on 29 September 2014 (appendix 8) in relation to procedures and responsibilities as regards such fact-finding exercises into the conduct of Special Advisers. In his letter of 9 October (appendix 9) the Head of the NICS confirmed the generic process in the initiation of the fact-finding exercise and that the responsibility for the decision regarding any further action to be taken sat with the Minister as the appointing authority.

Following legal advice provided to it on 6 November 2014 and a subsequent vote on the issue, the Committee wrote to Minister Storey on 10 November 2014 (appendix 10), formally requesting a copy of the report and indicating that should the report not be released, the Committee would be minded to request the Speaker to issue a notice under section 44(7) of the 1998 Act to obtain its release.

Minister Storey replied on 26 November 2014 (appendix 11) stating that the report contained personal information, and asked the Committee to set out how the disclosure of the information was necessary for the Committee's task in relation to strand (i) of its terms of reference.

The Committee responded in some detail to this request on 2 December (appendix 12).

On 11 December 2014 Minister Storey wrote (appendix 13) stating that, for reasons outlined in his letter, he had been advised that the report does not meet the 'test of necessity' applied in discovery in the courts and so the Department would not be obliged to produce the document in proceedings in a court in Northern Ireland.

The Committee considered this letter at its meeting on 8 January 2015 (appendix 14) and agreed to take legal advice before moving forward.

Committee Decision

At its meeting of 15 January 2015 the Committee heard legal advice in relation to the Minister's letter of 11 December 2014. Following discussion on whether to seek to compel the release of the Fact-Finding Report a motion was proposed:

That the Committee for Social Development asks the Speaker to issue a section 44 notice compelling the Minister for Social Development to release the DFP fact-finding report into the alleged actions of the Minister's Special Adviser.

This motion was carried by a vote of 6-3

Reasons for compelling release of report

The Committee is very clear that the terms of reference for the fact-finding exercise and therefore the content of the report fall squarely within the terms of reference of the Committee's Inquiry Allegations Arising from the BBC Spotlight Programme aired on 3 July 2013, specifically strand (i)

Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate

The exercise in question was undertaken to establish facts about allegations made on the BBC Spotlight Programme on the conduct of the former Minister's Special Adviser. It is clear that the conduct of the Special Adviser cannot easily be separated from the conduct of the Minister given the nature of the relationship and the fact that the Special Adviser holds office at the behest of the Minister.

The Committee therefore notes that there are clear implications that should Mrs Palmer's account of a telephone call be substantiated then this could indicate an attempt by Minister McCausland, via his Special Adviser, to exercise influence over contractual matters which he had been advised by senior DSD officials were the sole remit of the NIHE.

This would potentially call into question the Minister's action in relation to decision-making regarding the *'modification and cancellation of NIHE*

maintenance contracts' and whether the action of the Minister was 'appropriate'.

The Committee also notes that the evidence at times has been contradictory and sometimes unclear, particularly given the time that has elapsed since the events in question. The Committee believes that the fact-finding exercise may be able to provide clarification on a number of issues, particularly when it was conducted at a time when recollections may have been clearer.

You should note that Cllr Palmer voluntarily provided to the Committee her statement which she made to the fact-finding team.

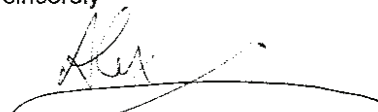
Given that the Committee believes that the report is potentially an important piece of evidence and the Committee has taken every step possible to seek voluntary release of the report, the Committee agreed that it would now seek to compel the document under section 44 of the 1998 Act..

The Committee notes the role of the Speaker in issuing a notice in writing to a natural or legal person under subsection 44(7) of the 1998 Act, and that such a notice must specify *"the documents, or types of documents which he is to produce, the date by which he is to produce them, and the particular matters to which they are to relate"*.

On behalf of the Committee, I request that you issue a notice under subsection 44(7) to the Minister for Social Development, Mr Mervyn Storey to compel production of the report "DSD Special Adviser – Fact-Finding Exercise".

The Committee would ask that the report is delivered to the Committee for Social Development Office, Room 114, Parliament Buildings, Belfast, BT4 3XX, within 7 working days of the date that the notice is issued.

Yours sincerely



Mr Alex Maskey MLA
Chairperson, Committee for Social Development

Appendix 1

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Dr Kevin Pelan
Social Development Committee Clerk Northern Ireland Assembly
Room 412, Parliament Buildings
Ballymiscaw, Stormont
Belfast BT4 3XX

23 August 2013

Dear Kevin

DSD Special Adviser – Fact-Finding Exercise

Thank you for your note of August 20th conveying the Chair's interest in the DSD fact-finding exercise that has been reported in the media in recent days. Conscious that the Committee has announced an inquiry into this and related matters with terms of reference yet to be agreed, the intention was to brief the Committee at an early opportunity.


In common with other special advisers, Mr Brimstone is a temporary civil servant, appointed under Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999. His terms and conditions require performance with the high standards expected of senior civil servants and also specify that any disciplinary matters which were to arise in relation to him should be dealt with in accordance with the disciplinary procedures set out in the HR Handbook. He is similarly bound by the NICS Code of Ethics.

Recent allegations about the Special Adviser's reported conduct made during a BBC Spotlight programme have led the Permanent Secretary to conclude the need for fact finding to be carried out independent of the Department. When allegations of serious misconduct have been made against an individual, when the individual denies the allegation and where there is a lack of hard evidence to underpin allegations, it is standard practice for line management to carry out a fact finding exercise to establish if there is any basis for proceeding with formal investigation.

In this instance the Permanent Secretary has agreed that the fact-finding interviews and resultant decision on whether there is a basis for proceeding with a formal investigation should be undertaken by someone outside the Department. To that end, Colin Lewis (Department of Finance and Personnel) Head of Corporate HR in the NICS, will carry out the fact-finding which will begin shortly. The outcome of this work will enable the Department to review whether formal investigation needs to be initiated taking account of the terms of reference for and progress on the Committee inquiry.

Terms of reference for the fact-finding exercise are appended for your information.

Yours Sincerely,



Billy Crawford

Fact Finding Exercise – Terms of Reference

In a BBC Spotlight programme broadcast on 3 July 2013, Mrs Jenny Palmer, a DUP councillor and NIHE board member, alleged that the DSD Special Adviser, Stephen Brimstone, pressured her to change her vote at a board meeting called in July 2011 to discuss the Housing Executive's contract with the Red Sky maintenance company. Mrs Palmer alleged that Mr Brimstone said that she should change her vote because the party came first and she should do what she was told.

If Mr Brimstone acted as alleged by Mrs Palmer, his behaviour could be regarded as in breach of certain parts of the Code of Conduct for Special Advisers and the general conduct provisions set out in the HR Handbook.

The allegation made by Mrs Palmer in relation to Mr Brimstone's conduct is therefore such as to require consideration to be given as to whether a formal disciplinary investigation should be carried out as a precursor to potential disciplinary proceedings. In cases where there is an insufficient factual basis to warrant embarking on a formal investigation, it is normal practice to carry out a fact-finding exercise.

In the absence of any undisputed facts, the Department is not at this point in time in a position to decide whether a formal disciplinary investigation is warranted.

The purpose of the fact finding exercise is therefore to establish whether there is any basis for proceeding with a formal disciplinary investigation into the allegations made by Mrs Palmer about Mr Brimstone.

To this end, the person carrying out the fact finding exercise should interview Mrs Palmer, Jim Brown, Brian Rowntree and Mr Brimstone in order to identify whether there might be substance to the allegations from the Spotlight programme.

Following these interviews, the person carrying out the fact-finding exercise should produce a report summarising the facts which have emerged from the interviews and making a recommendation, in light of those facts, on whether or not a formal disciplinary investigation would be warranted. This would involve additional interviews with any relevant person whose name emerges in the course of the original fact finding to corroborate the facts or to provide evidence against the allegations.

Appendix 2

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Our Ref: CSD/017/2011/SK

Mr Billy Crawford
Department for Social Development
Lighthouse Building
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Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

17 September 2013

Dear Billy,

The department recently wrote to the committee advising it of the 'fact-finding' exercise to establish whether there is any basis for proceeding with a formal disciplinary investigation into the allegations made by Mrs Jenny Palmer about Mr Brimstone in the Spotlight programme of 3 July 2013.

In advance of the committee initiating an inquiry into this and related allegations made in the same programme I would ask you to confirm when this fact-finding exercise commenced and when it is expected to conclude.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan
Clerk, Committee for Social Development

Appendix 3

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Dr Kevin Pelan
Social Development Committee Clerk Northern Ireland Assembly
Room 412
Parliament Buildings
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Stormont
Belfast BT4 3XX

Date: 25 September 2013

Dear Kevin

Thank you for your letter of 17 September 2013 about the fact finding exercise with regard to the allegations made in a recent Spotlight programme about the DSD Special Adviser.

I can confirm that the exercise commenced on 20 August 2013 and is now complete. The Department expects to receive the report of the exercise later this week. Once the Department has had the opportunity to fully consider the report, a decision will be made on the appropriate next steps and the Committee will be updated at that point.

Yours Sincerely,

Billy Crawford

Appendix 4

Committee for Social Development

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Our Ref:CSD/ 022/2013/CMcC

Mr Billy Crawford
Department for Social Development
Lighthouse Building
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26 February 2014

Dear Billy,

Committee Inquiry – Request for Information under Phase 3

At the Committee meeting of 13 February 2014, the Committee considered the evidence required under Phase 3 of the Inquiry into allegations arising from the Spotlight Programme.

The Committee agreed that it would write to the Department to request the following:

1. All correspondence between the former Minister for Social Development (Alex Attwood) and NIHE Senior Officials regarding the NIHE contract management regime. This should include but not be limited to correspondence relating to the Minister's decision to carry out a review into the NIHE in October 2010.
2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
 - the NIHE Board;
 - the Ministers for Social Development (former and present);
 - the Ministers' Special Advisers
 - senior DSD and NIHE officials;
3. Copy of all correspondence between the Minister, Mr Brimstone and DSD and NIHE Senior Housing Officials and Ms Jenny Palmer in respect of the decision by the NIHE Board to terminate the Red Sky contact.
4. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 28 April 2011. The meeting was to discuss Red Sky at the office of the Chairman of the NIHE. Those present included: Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA, Stewart Cuddy Acting Chief Executive, Dr John McPeake- Director of Housing & Regeneration and Acting Deputy Chief Executive
5. Copy of all documentation, including draft responses, accompanying submissions etc regarding the letter from Robin Newton MLA to the Minister on 17 May 2011 and the Minister's response dated 31 May 2011.

6. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 27 June 2011 - Meeting between representatives of Red Sky, Minister McCausland, Peter Robinson, Sammy Douglas, Robin Newton, Jim Wilkinson and Michael Sands.
7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.
8. Copy of the ASM Horwath investigation commissioned by the NIHE in 2009.
9. Copy of all correspondence regarding the outcome of the ASM Horwath and VB Evans investigation and the Repairs Inspection Unit Investigation. This should include correspondence between the following parties:
 - NIHE Officials
 - DSD Officials
 - The Ministers for Social Development (former and present)
 - Red Sky Ltd.
10. All correspondence between Red Sky's administrators and DSD and NIHE – particularly any correspondence in relation to the purchase of contracts
11. Agenda and all papers produced for the papers and minutes of the NIHE Board meeting on Tuesday 5 July 2011
12. All correspondence between Red Sky and the Minister and his Special Adviser from May 2011.
13. A copy of the dossier that the former Chairman of the Housing Executive, Mr Brian Rowntree, sent to the PSNI and the Serious Fraud Office in November 2011.
14. Copies of the letters from the BBC to Minister McCausland and Mr Brimstone in November 2012 in connection with the Spotlight investigation. These letters were referred to in the letters of 7 June 2013 from the BBC to Minister McCausland and Mr Brimstone.
15. The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts
16. Agenda and Minutes of the Performance Review meetings between Minister McCausland and the Chair of the NIHE Board from May 2011 and 2012. Including all correspondence between Minister McCausland and the NIHE as a result of these meetings.
17. All correspondence in respect of the outcome of the internal investigation in May 2013 which found that contract management weaknesses led up to £18m of overpayments. In particular correspondence between:
 - The NIHE and Senior DSD officials
 - Senior NIHE officials and the NIHE Board
 - Senior DSD and NIHE officials and the Minister
 - The Minister and the NIHE Board

18. All correspondence in respect of the decision by the NIHE Board to commission Campbell Tickell to review the organisation's planned maintenance contracts in June 2013: In particular correspondence between:

- The NIHE and Senior DSD officials
- Senior NIHE officials and the NIHE Board
- Senior DSD and NIHE officials and the Minister
- The Minister and the NIHE Board

The Committee also requested an update on the Department's Fact Finding exercise in respect of the Minister's Special Adviser Stephen Brimstone.

To assist the Committee with its Inquiry, we would appreciate if this information is provided to the Committee as soon as possible. To assist with the work of the Inquiry, we would appreciate if the information is forwarded to the Committee as soon as it is available, rather than information being delayed pending the collation of all documents.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan
Clerk, Committee for Social Development

Appendix 5

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Dr Kevin Pelan
Committee Clerk
Committee for Social Development
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Belfast BT4 3XX

11 April 2014

Dear Kevin

Social Development Committee Inquiry – Phase 3

Thank you for your letter dated 26 February 2014 in which you requested information from the Department and the Housing Executive in relation to Phase 3 of the Inquiry. I forwarded part of the information you requested on 14 March and 3 April and now attach further information.

Please find attached further documents and information in relation to the following:-

2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
 - the NIHE Board;
 - the Ministers for Social Development (former and present);
 - the Ministers' Special Advisers
 - senior DSD and NIHE officials;

In relation to your request for an update on the Department's Fact Finding exercise in respect of the Minister's Special Adviser Stephen Brimstone, this is an internal departmental matter relating to a member of staff. Therefore, it would not be appropriate at this time to provide a commentary on the matter. However, at the conclusion of the matter it is the Minister's intention to inform the Committee of any outcome.

I hope this information is helpful. There are further documents in relation to numbers 1, 2, 9 and 15 which I will forward to you as soon as possible.

Yours sincerely



Susan McCarty

Appendix 6



COMMITTEE FOR SOCIAL DEVELOPMENT

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8 September 2014

Our Ref: CSD/011/2011/KP

Mr Nelson McCausland MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
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Belfast BT7 2JB

Dear *Nelson*,

DSD Special Adviser – Fact-Finding Exercise

At its meeting of 4th September 2014, the Committee agreed to seek an update on the status of the fact-finding exercise into the DSD Special Adviser, Stephen Brimstone.

In a letter from the Department dated 23rd August 2013 the Committee was informed that a fact-finding exercise had been initiated into allegations made against the Special Adviser in the Spotlight Programme aired on 3rd July, that this fact-finding exercise would be conducted by the Head of Corporate HR of the NICS, and that it would enable the Department to determine whether any formal investigation should be initiated.

In a letter dated 25th September 2013 the Department provided an update on this matter, stating that the fact-finding exercise had been completed and that the Department expected to receive the report on the exercise later that week. It notes that, once the Department had had the opportunity to fully consider

the report, a decision would be made on the appropriate next steps and that the Committee would receive an update at this point.

The Committee was subsequently informed, in a letter dated 11th April 2014, that the Department is not in a position to provide commentary on the progress of the report into the fact-finding exercise, but that it is your intention to inform the Committee of any outcome, following the conclusion of the matter. Prior to the Committee meeting of 4th September 2014, Committee staff received confirmation that you have received the report on the fact-finding exercise.

I would be grateful if you could advise the Committee of the following:

- On what date you received a copy of the report on the fact-finding exercise into the DSD Special Adviser;
- Whether any decisions have been made on what the appropriate next steps are, based on the findings in the report on the fact-finding exercise;
- Whose responsibility it is to initiate any formal investigations arising from the outcomes of the fact-finding exercise and whether any have been initiated.

The progress of this fact-finding exercise may have implications for the Committee's Inquiry schedule and, as this matter has now been outstanding for some time, the Committee would welcome an update.

I would be grateful if you could provide an update, as outlined above, within 10 days of receipt of this letter.

Yours sincerely



Alex Maskey
Chairperson, Committee for Social Development

Appendix 7



From: The Minister

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Mr Alex Maskey MLA
Chairperson
Committee for Social Development
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Your ref:

Our ref: COR/530/2014

18 September 2014

Dear Alex

DSD Special Adviser – Fact-finding Exercise

Thank you for your letter of 8 September regarding the outcome of the report on this exercise.

I have taken legal advice in relation to how the matter should be taken forward. On this basis it is clear that it is a matter that I can and should deal with personally.

I have very carefully considered the report and every aspect of this matter and I have concluded that no further action needs to be taken.

Accordingly I take this opportunity to inform the Committee of the outcome of my consideration of the report.

I am aware that the Committee has asked the department for a copy of the report. In accordance with long established principle it would not be appropriate to disclose this report and so I cannot release it to the Committee.



Together, tackling disadvantage, building communities

Yours sincerely

Nelson McCausland

NELSON MCCAUSLAND
Minister for Social Development

Together, tackling disadvantage, building communities

Appendix 8



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

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29 September 2014

Our Ref: CSD/011/2011/SK

Dr Malcolm McKibbin
Head of Civil Service NI
Stormont Castle
Stormont Estate
Belfast
BT4 3TT

Dear *Malcolm*,

You will be aware that the Committee for Social Development is conducting an inquiry into allegations, made in a BBC Spotlight Programme, of impropriety or irregularity relating to decision-making in respect of Northern Ireland Housing Executive contracts.

In August 2013 the Committee was informed that a fact-finding exercise had been initiated into allegations made against the Special Adviser in the Spotlight Programme, that this fact-finding exercise would be conducted by the Head of Corporate HR of the NICS, and that it would enable the Department to determine whether any formal investigation should be initiated.

Subsequently in September 2013 the Department provided an update on this matter, stating that the fact-finding exercise had been completed and that the Department expected to receive the report on the exercise later that week. It noted that, once the Department had had the opportunity to fully consider the report, a decision would be made on the appropriate next steps.

In September 2014, the Minister informed the Committee that he had taken legal advice in relation to how the matter should be taken forward. On the basis of this advice he decided it was clear that it was a matter that he can and should deal with personally.

Having considered the Minister's response, the Committee has questioned who within government Departments has responsibility to initiate such a fact-finding exercise in relation to Special Advisers, and who subsequently has responsibility for the decision regarding any actions that should be taken based on the outcomes of the exercise, including whether a formal investigation should be initiated.

On behalf of the Committee, I would be grateful if you could clearly set out the following:

- A description of the investigatory and decision-making process where the behaviour of a Special Adviser could be regarded as having breached the Code of Conduct for Special Advisers.

In particular I would ask you to clarify:

- whose responsibility it is, within government Departments, to initiate a fact-finding exercise to establish if there is any basis for proceeding with a formal disciplinary investigation;
- whose responsibility it is, within government Departments, to decide whether a formal disciplinary investigation is required, based on the outcome of that exercise;
- what flexibility does the decision-maker have in deciding whether a formal disciplinary investigation is required i.e. must they adhere to the recommendation in the fact-finding exercise? If not, is it expected that the decision-maker would give a reason for the alternative course of action adopted?

The Committee also has a query regarding the status of Special Advisers as temporary civil servants. Specifically, the Committee would like to know how, if at all, this differs contractually from other temporary civil servants, particularly in relation to disciplinary matters.

On another matter, the Committee wished to determine whether there is a formal procedure to be followed when a Minister chooses to act against the advice of a Permanent Secretary and subsequently instructs the Permanent Secretary to follow a course of action with which the Permanent Secretary does not agree.

I would be grateful if you provide this information within 10 working days of receipt of this letter.

Yours sincerely

A handwritten signature in black ink that reads "Alex Maskey". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Mr Alex Maskey MLA
Chairperson, Committee for Social Development

Appendix 9

Dr Malcolm McKibbin BSc MBA DPhil CEng FICE
Head of the Northern Ireland Civil Service
Head of the Office of the First Minister & Deputy First Minister
Stormont Castle
Stormont
Belfast
BT4 3TT
Tel: 028 90378133 Fax 028 90378205
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HCS-579-14

Alex Maskey MLA
Chairperson
Committee for Social Development
Northern Ireland Assembly

Our Ref: COR/58/14

9 October 2014

Dear Alex

Thank you for your letter of 29 September 2014, on which I have consulted officials within the Department of Finance and Personnel, who have policy responsibility for the Code of Conduct for Special Advisers. Within the context of the allegations made in a BBC Spotlight Programme against a former Special Adviser in the Department for Social Development, you have asked some questions concerning the fact-finding exercise carried out in this case and the process for disciplining Special Advisers generally. I will respond to your queries in the order you made them.

Who within government departments has the responsibility to initiate such a fact-finding exercise in relation to Special Advisers?

A fact-finding exercise was commissioned by the Permanent Secretary in DSD through the Department's HR Director following separate discussions with the DSD Minister and me. Where such an exercise was contemplated, this is the generic process which would be followed.

Who subsequently has responsibility for the decision regarding any actions that should be taken based on the outcomes of the exercise, including whether a formal investigation should be initiated?

This is the responsibility of the Minister, as the appointing authority.

Description of the investigatory process

I attach a link and would refer you to section 5 of this part of the NICS HR Handbook.

<http://www.dfpni.gov.uk/6.03-discipline.pdf>



Who is responsible for initiating a fact-finding exercise; for deciding whether a formal disciplinary investigation is required; and what flexibility does the decision-maker have in deciding whether a formal disciplinary investigation is required?

All aspects of the disciplinary process are the responsibility of the Minister and any actions are at the discretion of the Minister.

How, if at all, does the status of Special Advisers differ contractually from other temporary civil servants, particularly in relation to disciplinary matters?

The contractual arrangements of Special Advisers differ from those of other temporary civil servants to the extent set out in the model contract (which includes the Code of Conduct for Special Advisers) appended to the Code Governing the Appointment of Special Advisers, available at:

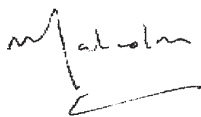
<http://www.dfpni.gov.uk/spad-act-13-code-of-practice-governing-the-appointment-of-spads.pdf>

The discipline policy as set out in the NICS HR Handbook applies to Special Advisers as it does to all other civil servants, permanent and temporary. However unlike temporary and permanent civil servants, the Minister is the appointing authority and the disciplinary authority. For temporary civil servants, other than Special Advisers, and for permanent civil servants the ultimate authority would be the Permanent Head of Department.

Is there a formal procedure to be followed when a Minister chooses to act against the advice of a Permanent Secretary and subsequently instructs the Permanent Secretary to follow a course of action with which the Permanent Secretary disagrees?

Managing Public Money NI sets out in paragraphs 3.4.1 to 3.4.6 a procedure which should be followed where a Minister decides to continue with a course which the Permanent Secretary as accounting officer has advised against. This process arises where the decision has financial implications.

I hope that you and the Committee find this information helpful.



MALCOLM McKIBBIN
Head of the Northern Ireland Civil Service

Appendix 10



**Northern Ireland
Assembly**

COMMITTEE FOR SOCIAL DEVELOPMENT

Room 284
Parliament Buildings
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BT4 3XX
Email: kevin.pelan@niassembly.gov.uk
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10 November 2014

Our Ref: CSD/011/2011/KP

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

Dear *Mervyn*,

DSD Special Adviser – Fact-Finding Exercise

I refer to my letter of 8 September 2014 to the former Minister for Social Development regarding the outcome of the report on the fact-finding exercise into the DSD Special Adviser.

In his response of 18 September, the Minister stated that he was aware that the committee asked the department for a copy of the report but, in accordance with long established principle, he could not release it to the committee. It should be noted that at that time the committee had not requested a copy of the report.

At its meeting of 6 November 2014, the committee discussed the former Minister's response and agreed that I should write to you formally requesting you to release the report to the committee.

You will be aware of section 44 powers enabling statutory committees to compel the release of papers. While the committee hopes that you will assent

to its request and release the report I would advise you that, should the report not be received within the next 7 days, the committee is minded to request the Speaker to issue a section 44 notice in order to obtain its release.

I would be grateful, therefore, if you could provide a copy of the report to the committee clerk within the next 7 days.

Yours sincerely

A handwritten signature in black ink that reads "Alex". The signature is written in a cursive style and is positioned above a long, horizontal, slightly wavy line that spans across the width of the signature area.

Alex Maskey
Chairperson, Committee for Social Development

Thursday 6 November 2014

Room 29, Parliament Buildings

Present: Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Stewart Dickson MLA
Mr Fra McCann MLA
Mr Sammy Wilson MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)
Mr Richard Reid (Clerical Officer)

Apologies: Mr Alex Maskey MLA (Chairperson)
Mr Michael Copeland MLA
Mr Sammy Douglas MLA

10.06am The meeting began in closed session.

The Committee discussed issues relating to the attendance of witnesses to give oral evidence and the release of relevant documents to the Committee.

Agreed: The Committee agreed to write to Brian Rowntree regarding his decision not to give oral evidence to the Committee.

The Committee discussed the former Minister's decision not to release the fact-finding report into the DSD Minister's Special Adviser.

The motion was proposed: That the Committee write to the current Minister for Social Development requesting that he provides the Committee with the fact-finding report into the DSD Special Adviser.

Ayes 3;
Noes 4;
Abstentions; 0

AYES:

Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Sammy Wilson MLA

NOES:

Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Stewart Dickson MLA
Mr Fra McCann MLA

The motion fell.

The motion was proposed: That the Committee write to the Minister for Social Development requesting that he provides the Committee with the fact-finding report into the DSD Special Adviser and advising the Minister that should he not release the report the Committee is minded to obtain its release by issuing of a section 44 notice.

Ayes 4;

Noes 1;

Abstentions 0.

AYES:

Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLAMr Stewart Dickson MLA
Mr Fra McCann MLA

NOES:

Mr Sammy Wilson MLA

The motion was carried.

Agreed: The Committee agreed to write to the Minister for Social Development as per the agreed motion.

[EXCERPT]

Appendix 11



Department for
**Social
Development**

www.dsdni.gov.uk

From: The Minister

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Gasworks Business Park
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Mr Alex Maskey MLA
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

Our Ref: COR/645/2014
Your Ref: CSD/011/2011/KP

26 November 2014

Dear Alex

DSD Special Adviser – Fact-Finding Exercise

Thank you for your letter of 10th November in which you seek production of the report of the fact finding exercise into the DSD Special Adviser. I note that you have stated that should the report not be received by 19 November, the Committee is minded to request the Speaker issue a notice under section 44 of the Northern Ireland Act 1998. Accordingly, the Committee is seeking the voluntary disclosure of the report and compulsory power is not being exercised.

Although your letter does not explicitly state this, I assume that the report is sought in connection with the Committee's inquiry and in particular the first part of the terms of reference:

decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any irregularity or impropriety and, in particular, whether the actions of Ministers were appropriate.

You will appreciate that this report contains personal information and it is for me as Minister to be satisfied that the disclosure of the information is necessary for the exercise of functions conferred on the Assembly.

I should therefore be grateful if you would set out for me how this report is necessary for the Committee's task in relation to the first part of its terms of reference.

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INVESTOR IN PEOPLE

I look forward to hearing from you by return.

Yours sincerely



MERVYN STOREY MLA
Minister for Social Development

Together, tackling disadvantage, building communities



Appendix 12



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

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2 December 2014

Our Ref: CSD/022/2013/3/KP

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

Dear *Mervyn,*

DSD Special Adviser – Fact-Finding Exercise

Thank you for your letter of 26 November 2014 in relation to a report on a fact-finding exercise into the DSD Special Adviser.

I can confirm that the Committee is seeking the voluntary disclosure of the report in relation to strand (i) of the Terms of Reference of the Committee's Inquiry:

decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any irregularity or impropriety and, in particular, whether the actions of Ministers were appropriate.

In order that you can be satisfied that the disclosure of the report is necessary for the exercise of functions conferred on the Assembly, you have asked me to set out how this report is necessary for the Committee's task in relation to strand (i) of its terms of reference.

You will be aware that the Committee's inquiry was initiated as a result of certain allegations made in the Spotlight programme which aired on 3 July 2013. In this programme it was alleged that Minister McCausland sought to influence the NIHE board to extend the response maintenance contract of Red Sky despite the board having taken the decision to terminate the contract in April 2011.

It was also alleged that Minister McCausland's Special Adviser exerted pressure on Cllr Jenny Palmer, a member of the NIHE board, to try to influence her vote at the meeting of 1 July 2011 to support the Minister's position. Evidence provided to the Committee by Mr Brimstone and Minister McCausland makes it clear that they discussed phoning Mrs Palmer to ensure that the Minister's views were provided to the NIHE board. It is therefore clear that the subsequent phone call made by Mr Brimstone was made with the implicit authority of the Minister.

The Committee has been provided with evidence which also makes clear that Minister McCausland was advised by senior DSD officials that contractual matters were the sole responsibility of the NIHE.

Therefore in reply to your query regarding how the report is necessary for the Committee's task in respect to the first part of its terms of reference, there are clear implications that should Mrs Palmer's account of the phonecall be substantiated then this could indicate an attempt by Minister McCausland to exercise influence over contractual matters which were outwith his remit. This would potentially call into question the Minister's action in relation to decision making relating to the *'modification and cancellation of NIHE maintenance contracts'* and whether the action of the Minister was *'appropriate'*.

Also evidence has at times been contradictory and sometimes unclear, particularly given the time that has elapsed since the events in question. The Committee believes that the fact-finding exercise may be able to provide clarification on a number of points of evidence which the Committee has heard, particularly as the fact-finding exercise was conducted over a year ago when recollections may have been clearer. I have highlighted evidence in Appendix 1 which the Committee has heard and which is relevant to this issue, for your consideration.

I would remind you that the Committee is minded to request the Speaker to issue a notice under section 44 of the Northern Ireland Act 1998 should the fact-finding report not be voluntarily released. I would therefore ask you to reply to this letter and the Committee's request for the report by 11 December 2014.

Yours sincerely


Alex Maskey
Chairperson, Committee for Social Development

Appendix 1 – Relevant evidence

1. The Committee has received evidence which indicates that the phone call was made with the implicit authority of the Minister.

1(i). Excerpt of Official Report (16 October 2014)

Stephen Brimstone: *The Minister became aware that a party councillor was one of the four political appointees on the Housing Executive Board, and that was Councillor Palmer. It was discussed and the Minister felt that it would be useful for me to contact Councillor Palmer to ensure that she was fully aware of his concerns, ahead of the special board meeting on 5 July, and that she could ensure that his concerns were accurately reflected to the wider board at the meeting on the following Tuesday. I undertook to contact Councillor Palmer.*

2. Key to informing the Committee's consideration of the decision-making relating to the modification and cancellation of the Red Sky contract is the phone call made by Mr Brimstone to Mrs Palmer on 1 July 2011. However, the Committee has received conflicting evidence regarding the nature and content of that conversation.

2(i). Excerpt of Official Report (Evidence session 16 October 2014)

Mr Allister: *Did he say whether he was ringing at anyone's request or on anyone's behalf?*

Ms Palmer: *Not really. In the conversation, after he had introduced himself and said that we should meet, that we had not had time to meet and that maybe we should have done, he basically said, "But I need you to go into the boardroom on Tuesday, go against the decision of the board to terminate the contract and ask for an extension to the contract". I asked him then, because I was a bit shocked and taken aback by it, to repeat that, and he repeated it. I was unaware of a board meeting being tabled for Tuesday, and I said, "The board does not meet on a Tuesday", and he said, "It will this Tuesday, and we need you to do this". I said, "I am sorry, I don't think that I can do this".*

2(ii). Excerpt of Official Report (Evidence session 16 October 2014)

Ms Palmer: *His tone. His voice changed from the moment that I said that I did not think that I could do what he had asked me to do. He became more aggressive, and that is when he said, "Look, there is no point in you being on the board of the Housing Executive unless you are prepared to do what we need you to do. The party comes first in this instance, and you have to go into the boardroom on Tuesday, go against the decision of the board to terminate Red Sky and ask for the extension".*

2(iii). Excerpt of Official Report (Evidence session 16 October 2014)

Stephen Brimstone: *Councillor Palmer, from my recollection, became very defensive regarding the then chairman and strongly contested any suggestion that he was not carrying out his duties appropriately. Councillor Palmer went on to tell me about her role on the board's audit subcommittee and said that, in her view, all of the fault lay with Red Sky, the issues were solely limited to Red Sky and the management of the Northern Ireland Housing Executive was appropriately managing the response maintenance contract.*

I responded by asking about Leeway Maintain, another response maintenance contractor in Belfast about which the Housing Executive internal audit department was raising concerns regarding overcharging etc — the same issues as with Red Sky. Councillor Palmer refused to accept that. I again asked that she reflect the Minister's concerns to the board. She said she could not do that.

The Committee believes that the fact-finding exercise may be able to clarify what Mr Brimstone and Mrs Palmer discussed during the phone call.

3. The phone call is also relevant given that Mrs Palmer has stated that at an internal party meeting to discuss the phone call she recounted the conversation to party colleagues (including Mr Brimstone) and Mr Brimstone, at that time, agreed with her account. Mr Brimstone subsequently refuted this in his evidence to the Committee.

3(i). Excerpt of Official Report (Evidence session 9 October 2014)

Mrs Palmer: *He (Stephen Brimstone) said, "It's two years now since that conversation, and I can't really recall that conversation". I said, "Let me remind you, Stephen", and I gave it to him verbatim. Peter (Robinson) looked at him and said to him, "Stephen, what have you to say?". Well, he agreed then that my account was practically right. He agreed that it was very much what happened.*

The fact-finding exercise may be able to provide insight into the discussions surrounding the proposed apology from Mr Brimstone to Mrs Palmer and whether he acknowledged in the report that Mrs Palmer's recollection was accurate.

4. Mrs Palmer has also given evidence to the Committee about her statement to the fact-finding exercise, telling the committee that she had told the DFP interviewers of a conversation she had with Mr Michael Sands regarding an email sent by him, following a conversation with Mr Brimstone, to the chair of the NIHE on the day of the board meeting to discuss the Red Sky termination. She indicated to the Committee that she thought the fact-finding report was 'contaminated'.

4(i). Excerpt of Official Report (Evidence session 9 October 2014)

Ms Palmer: *Yes. I chair the Housing Council's housing and regeneration committee. On the Thursday prior to signing off the document, the committee met. At that meeting, DSD was in attendance, and at the lunch afterwards a DSD official approached me and asked me whether he could ask me a personal question. I said, "Yes, fire away". He said, "Jenny, do you know anything about an email that was sent to the chairman of the board of the Housing Executive on the morning of the Tuesday that the Red Sky contract was terminated by the board?". I said, "Yes, sure it was your office that sent it on behalf of Mr Brimstone". He said, "You know, he is going mad in the Department trying to find it". I asked, "Who's going mad?", and he said, "Mr Brimstone's wanting to find out where that email is, and he wants to view it". I said, "Well, it was a DSD email, so you should have it within your system".*

I had never spoken to anyone about that email — ever — until that DFP report and investigation. I assumed that Mr Brimstone had been interviewed by the same two people, that they had used some of my evidence to tease out his interview, had told him about that and that he had panicked and gone into the Department to look for it and had caused a stir. So I knew then, and I told him that the report had been contaminated and that I did not trust it to go anywhere.

5. The email referred to in 4(i) was sent by Michael Sands to the Chair of the NIHE board and includes the SpAd's belief that the 6 month extension, to the Red Sky contract, was too long and that it should be 4 months. Evidence received by the Committee from Mr Sands indicates that he had a conversation with Mr Brimstone about the content of the email and while Mr Brimstone acknowledges that he did communicate with Mr Sands about this email he is unable to recall his specific involvement.

5(i). Excerpt of Official Report (Evidence session 13 November 2014)

Mr Allister: *Tell us what your involvement was in the genesis of that email.*

Mr Brimstone: *Just so that I am clear, I thought that I had already answered that. I do not recall.*

Mr Allister: *Indulge me by answering it again.*

Mr Brimstone: *I do not recall.*

Mr Allister: *You do not recall. Therefore, we have an email that, on the face of it, appears to involve an instruction from you, and you cannot help the Committee, because you cannot recall how it came about. Is that it, Mr Brimstone?*

Mr Brimstone: *I am not sure how else I can answer that.*

The Chairperson (Mr Maskey): *Maybe I can come in. You are being asked about an email that was sent at 7.40 am. Michael Sands said that he sent that email at your behest.*

Mr Brimstone: *Yes.*

The Chairperson (Mr Maskey): *You were asked at what time you were in the office, and you said that you could not recall. You were then asked whether*

you were in the office, and you said that you could not recall. Can you give us any information about how you engaged with Michael Sands to elicit that email?

Mr Brimstone: *No, I cannot.*

The Committee believes the fact-finding report may shed some light on the importance of this email, whether Mr Brimstone was aware of it at the time or whether he was made aware of it by the DFP interviewers during their evidence gathering; and indeed whether, and how, he had been instrumental in its origin.

Appendix 13



From: The Minister

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Mr Alex Maskey MLA
Chairperson
Committee for Social Development
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BELFAST
BT4 3XX

Our Ref: COR/685/2014
Your Ref: CSD/022/2013/3/KP

11 December 2014

DSD SPECIAL ADVISER – FACT-FINDING EXERCISE

Thank you for your letter of 2nd December.

I note that the report is sought under Strand (i) of the Terms of Reference of the Committee's Inquiry.

You refer to evidence from the former Minister, Nelson McCausland and from Stephen Brimstone which "makes it clear that they discussed phoning Mrs. Palmer to ensure that the Minister's views were provided to the NIHE board." You then state that the subsequent phone call was made with the implicit authority of the Minister. However neither the former Minister nor Mr. Brimstone gave evidence that Mr. Brimstone was to tell her to "*go against the decision of the board to terminate the contract and ask for an extension to the contract*", which is Mrs. Palmer's account of the conversation.

Accordingly the Committee have no evidence that the Minister endorsed the action that Mrs. Palmer says Mr. Brimstone took. If Mrs. Palmer's account of the conversation were accepted, the Committee could not on this basis conclude that the Minister's actions were not appropriate. The inquiry is into the appropriateness of Minister's actions and not into the appropriateness of the actions of a special adviser.

On this basis I have been advised that the report does not meet the test of necessity applied in discovery in the courts and so the Department would not be obliged to produce the document in proceedings in a court in Northern Ireland.

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I should be grateful for your comments.

Yours sincerely



MERVYN STOREY MLA
Minister for Social Development

Together, tackling disadvantage, building communities



Appendix 14

Committee for Social Development

Room 284
Parliament Buildings
BELFAST BT4 3XX

Email: kevin.pelan@niassembly.gov.uk
Tel: 028 9052 1864
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Our Ref: CSD/022/2013/3/SK

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

15 December 2014

Dear

DSD Special Adviser – Fact-Finding Exercise

Thank you for your letter of 11 December 2014. The Committee will consider this at its next meeting on 8 January 2015.

Yours sincerely

Alex Maskey

Chairperson, Committee for Social Development

Letter from the Speaker 28.01.15

The Speaker



Northern Ireland
Assembly

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Mr Alex Maskey
Chairperson, Committee for Social Development
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28 January 2015

Dear Alex,

Notice to the Minister for Social Development requiring the production of documents required by the Committee for Social Development

Further to your letter of 21 January 2015, I can confirm that earlier today I issued a notice to the Minister for Social Development under subsection 44(7) of the Northern Ireland Act 1998, requiring the production to the Committee for Social Development, on or before 4 February 2015, of a copy of the report "DSD Special Adviser- Fact Finding Exercise".

Yours sincerely,

MITCHEL MCLAUGHLIN MLA

SP025_15

Letters from Speaker and Minister – re Section 44 Notice 3.01.05 & 4.01.15

The Speaker



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Mr Alex Maskey
Chairperson, Committee for Social Development
Room 412
Parliament Buildings
Stormont
BT4 3XX

4 February 2015

Dear Alex,

**Notice to the Minister for Social Development requiring the production of documents
required by the Committee for Social Development**

As you know, pursuant to the Committee's exercise of the power under section 44 of the Northern Ireland Act 1998, and at its request, I issued to the Minister for Social Development a notice in accordance with my duty under s44(7).

The Minister has written to me, but as this matter relates to the decision of the Committee to exercise the power, I have invited him to continue to direct his representations to you.

As the Committee does not meet until 5 February, I was content to extend the date for compliance to 1700 on 5 February so as to allow the Committee to consider the Minister's correspondence. I would be happy to respond to a request from the Committee for any further extension but it is for the Committee to consider that.

I attach the Minister's letter, and my reply.

Yours sincerely,



MITCHEL MCLAUGHLIN MLA

SP025_15



Department for
**Social
Development**

From: The Minister

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e-mail: private.office@dadni.gov.uk

Tel: (028) 9082 9034

Our ref: COR/67/2015

Mr Mitchel McLaughlin MLA
Office of the Speaker
Room 39
Parliament Buildings
BELFAST
BT4 3XX

3 February 2015

Dear Speaker

Thank you for your letter of 28th January requiring production of the report of the fact finding exercise to the Social Development Committee. As you will be aware my Department has declined to produce the report to the Committee and has asked how the report is necessary for it to carry out its inquiry under the terms of reference agreed by the Committee.

In addition I have concerns as to whether, even if relevant, disclosure of the report would be in the public interest having regard to the essential nature of the disciplinary process and its confidentiality.

The process by which you issue a notice does not, so far as I am aware, permit representations to be made before a notice is issued and no opportunity was given to the Department to make such representations to you.

I am advised that the High Court has a similar process in relation to issuing witness summonses. However, the High Court permits a witness in receipt of a summons to produce documents to apply to have the summons set aside.

I write to enquire whether you are prepared to consider representations by the Department with a view to this order being set aside. I note that the order requires compliance by 4th February and I should be grateful if you would extend the period for compliance so that the issue I have raised can be addressed.

Yours sincerely

MERVYN STOREY
Minister for Social Development



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The Speaker



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**Mr Mervyn Storey MLA
Minister for Social Development
Lighthouse Building
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BT7 2JB**

4 February 2015

For the Urgent Attention of the Minister for Social Development

RE: Notice under Section 44 of the Northern Ireland Act 1998

Dear Minister,

I refer to your letter of 3 February.

As explained in the notice of 28 January, the Social Development Committee exercised its power under section 44 of the Northern Ireland Act 1998, and I therefore issued the notice in accordance with my duty under section 44(7).

Since it is the Committee that has exercised the power, any representations that you wish to make about the matter should therefore continue to be directed to the Committee.

As the Committee does not meet until the morning of 5 February, I am content to extend the date for compliance to 17.00 on the 5 February to allow the Committee to consider your correspondence and whether it wishes to request any further extension. I suggest that you use the time available to you to make your representations to the Committee for consideration at their meeting on 5 February.

Yours sincerely,

MITCHEL MCLAUGHLIN MLA

SP037_15

Letter from the Speaker to the Minister 05.02.14

The Speaker



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**Mr Mervyn Storey MLA
Minister for Social Development
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BT7 2JB**

5 February 2015

For the Urgent Attention of the Minister for Social Development

Notice under Section 44 of the Northern Ireland Act 1998

Dear Minister,

Further to my letter dated 4 February 2015 in relation to the above matter.

The Social Development Committee at its meeting this morning considered your request to extend the deadline for receipt of the report "DSD Special Adviser – Fact-Finding Exercise". The report relates to the fact finding exercise conducted by officials from the Department of Finance and Personnel into the alleged actions of the Special Adviser, Mr Stephen Brimstone. Following its consideration, the Committee agreed to an extension of the deadline.

In accordance with subsection 44(7) of the Northern Ireland Act 1998 I therefore give notice that a copy of the report should be delivered to the Social Development Committee Office, Room 114, Parliament Buildings, Stormont, Belfast, BT4 3XX on or before 5pm on 12 February 2015.

Any further representations on this issue should be directed to the Committee.

A failure to comply with this notice may constitute a criminal offence.

Yours sincerely,



MITCHEL MCLAUGHLIN MLA

SP039_15

Letter from the Chairperson to the Minister – 05.02.15



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

Room 284
Parliament Buildings
BELFAST
BT4 3XX

Email: kevin.pelan@niassembly.gov.uk
Tel: 028 9052 1864
Fax: 028 9052 1667

5 February 2015

Our Ref: CSD/022/2013/3/AM

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

Dear *Mervyn*

DSD Special Adviser – Fact-Finding Exercise

Thank you for your letter of 5 February 2015 in which you advise that you are seeking a further extension for compliance with the notice issued to you by the Speaker on 28 January 2015.

The Committee considered your correspondence at its meeting today and has written to the Speaker and advised him that it is content with an extension for the production of the report until 5pm on Thursday 12 February 2015.

The Committee is prepared to consider any written representation that you would wish to make at its meeting on Thursday 12 February 2015 at 10 am. The Committee requires your written representation to be delivered before 2pm on Wednesday 11 February 2015.

I would be grateful if you would indicate if you and/or your officials will attend the Committee meeting on 12 February 2015 to make a presentation on this issue.

Yours sincerely

A handwritten signature in black ink that reads "Alex" followed by a flourish.

Alex Maskey
Chairperson, Committee for Social Development

Letter from the Chairperson to the Speaker – 05.02.15



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

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5 February 2015

Our Ref: CSD/022/2013/3/AM

The Speaker
Mr Mitchel McLaughlin MLA
Room 38
Parliament Buildings
BELFAST
BT4 3XX

Dear *Mitchel*,

Notice to the Minister for Social Development requiring the production of documents required by the Committee for Social Development

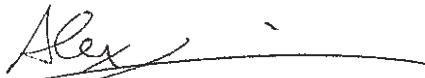
I refer to your correspondence of 4 February 2015 which the Committee considered at its meeting today.

The Committee is aware that the Minister for Social Development will be in breach of the notice issued by you on 28 January 2015, compelling a report under Section 44 (7) of the 1998 Act, if he does not produce the required report by 5 pm today.

The Committee for Social Development agreed at its meeting today, that I should write to advise you that the Committee agreed that the deadline for producing the report should be extended until 5pm on 12 February 2015.

The Committee would ask that the report is delivered to the Committee for Social Development Office, Room 114, Parliament Buildings, Belfast, BT4 3XX.

Yours sincerely

A handwritten signature in black ink that reads "Alex" followed by a long horizontal flourish.

Mr Alex Maskey MLA
Chairperson, Committee for Social Development

Letter from the Minister to the Chairperson – 11.02.15



Department for
**Social
Development**

www.dsdni.gov.uk

From: The Minister

**5th Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
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e-mail: private.office@dsdni.gov.uk

Tel: (028) 9082 9034

Mr Alex Maskey MLA
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

Our Ref: COR/67/2015
Your Ref:

11 February 2015

Dear Alex,

Thank you for your letter of 5th February. Please accept my apologies in the delay replying. This was due to the Consideration Stage of the Welfare Reform Bill progressing through the Assembly.

My position is that I am not obliged under section 44(a) of the Northern Ireland Act 1998 to produce the report. However, I am anxious to maintain good relationships with the Committee and accordingly in a spirit of compromise, I am minded to release statements made by the parties in the fact finding process to you but you will understand I am obliged to consult the individuals who made those statements before coming to a final conclusion. I believe that this will fully meet the needs of the Committee as set out in your letter of 2 December. I will be in a position to reply substantively in the very near future.

Yours sincerely

**MERVYN STOREY MLA
Minister for Social Development**

Together, tackling disadvantage, building communities



INVESTOR IN PEOPLE

Letter from the Chairperson to the Minister – 12.02.15



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

Room 284
Parliament Buildings
BELFAST
BT4 3XX

Email: kevin.pelan@niassembly.gov.uk
Tel: 028 9052 1864
Fax: 028 9052 1667

12 February 2015

Our Ref: CSD/022/2013/3/AM

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

Dear *Mervyn*

DSD Special Adviser – Fact-Finding Exercise

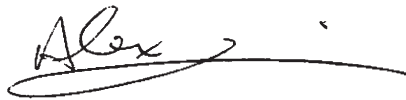
Thank you for your letter of 11 February 2015 in which you indicated that you do not believe that you are obliged to release the fact finding report under section 44 of the Northern Ireland Act and are minded to release statements made by the parties interviewed in the course of the fact finding process.

The Committee considered your position carefully at its meeting today. It agreed that the statements in isolation would not sufficiently meet its requirements in relation to the Committee's Inquiry. There are significant contradictions in the evidence provided to the Committee on key allegations made in the Spotlight Programme aired on 3 July 2013 and therefore the findings of fact within the Report fall squarely within the terms of reference for the Inquiry.

The Committee is very mindful of the time pressure you and your Department have been under with the Consideration Stage of the Welfare Reform Bill. It has therefore agreed to write to the Speaker to request that the deadline for

the release of the report be extended until 5 PM on Wednesday 18 February 2015.

Further, the Committee agreed that, should the report not be provided, the Clerk to the Committee should initiate the relevant section 44 enforcement procedures.

A handwritten signature in black ink, appearing to read 'Alex', with a long horizontal flourish extending to the right.

Yours sincerely

Alex Maskey
Chairperson, Committee for Social Development

Letter from the Chairperson to the Speaker – 12.02.15



COMMITTEE FOR SOCIAL DEVELOPMENT

Room 284
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12 February 2015

Our Ref: CSD/022/2013/3/AM

The Speaker
Mr Mitchel McLaughlin MLA
Room 38
Parliament Buildings
BELFAST
BT4 3XX

Dear *Mitchel*

Notice to the Minister for Social Development requiring the production of documents required by the Committee for Social Development

As you are aware the Minister for Social Development will be in breach of the notice issued by you on 28 January 2015, compelling a report under Section 44 (7) of the 1998 Act, if he does not produce the required report by 5 pm today.

The Committee has considered further correspondence from the Minister at its meeting today which I have enclosed for your information.

The Committee considered the Minister's position carefully at its meeting today and agreed that the statements in isolation would not sufficiently meet its requirements in relation to its Inquiry. There are significant contradictions in the evidence provided to the Committee on key allegations made in the

Spotlight Programme aired on 3 July 2013 and therefore the findings of fact within the Report fall squarely within the terms of reference for the Inquiry.

The Committee for Social Development agreed that I should write to advise you that the Committee agreed that the deadline for producing the report should be extended again, until 5pm on Wednesday 18 February 2015.

Further, the Committee agreed that, should the report not be provided, the Clerk to the Committee should initiate the relevant section 44 enforcement procedures.

The Committee would ask that the report is delivered to the Committee for Social Development Office, Room 114, Parliament Buildings, Belfast, BT4 3XX.

A handwritten signature in cursive script that reads "Alex". The signature is written in black ink and is positioned above a horizontal line that extends across the width of the signature.

Yours sincerely

Mr Alex Maskey MLA
Chairperson, Committee for Social Development

Letter from the Speaker to the Chairperson – 12.02.15

The Speaker



Northern Ireland
Assembly

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Ballymiscaw, Stormont
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email: speaker@niassembly.gov.uk

Mr Alex Maskey
Chairperson, Committee for Social Development
Room 412
Parliament Buildings
Stormont
BT4 3XX

12 February 2015

Dear Alex,

**Notice to the Minister for Social Development requiring the production of documents
required by the Committee for Social Development**

Further to your letter of 12 February 2015, I can confirm that I have issued a notice to the Minister for Social Development under subsection 44(7) of the Northern Ireland Act 1998, requiring the production to the Committee for Social Development, on or before 18 February 2015, of a copy of the report "DSD Special Adviser- Fact Finding Exercise".

I attach a copy of the letter that I have issued today to the Minister.

Yours sincerely,

MITCHEL MCLAUGHLIN MLA

SP049_15

Letter from the Speaker to the Minister – 12.02.15

The Speaker



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**Mr Mervyn Storey MLA
Minister for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB**

12 February 2015

For the Urgent Attention of the Minister for Social Development

Notice under Section 44 of the Northern Ireland Act 1998

Dear Minister,

Following today's meeting of the Social Development Committee, I have received correspondence from the Chairman, on behalf of the Committee, requesting that I write to you to advise that the Committee, following consideration of your letter dated 11 February 2015, has agreed that the deadline for producing the report "DSD Special Adviser – Fact-Finding Exercise" should be extended again.

In accordance with subsection 44(7) of the Northern Ireland Act 1998 I therefore give notice that a copy of the report should be delivered to the Social Development Committee Office, Room 114, Parliament Buildings, Stormont, Belfast, BT4 3XX on or before 5pm on 18 February 2015.

I have been further advised by the Chairperson that the Committee has agreed that, should the report not be provided, the Clerk to the Committee should initiate the relevant section 44 enforcement procedures.

Yours sincerely,



MITCHEL MCLAUGHLIN MLA

SP048_15

Letter from the Minister to the Chairperson – 18.02.15



From: The Minister

**5th Floor
Lighthouse Building
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BT7 2JB**

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Tel: (028) 9082 9034

Mr Alex Maskey
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

18 February 2015

Dear Alex

DSD SPECIAL ADVISER - FACT FINDING EXERCISE

Thank you for your letter of 12th February. I am disappointed that the Committee is not prepared to accept an honest attempt to find a suitable compromise which will fully meet the Committee's needs. It is difficult to understand how the Committee can decide that the statements would not sufficiently meet the Inquiry's requirements when it has not seen them and I would respectfully urge the Committee to reconsider its decisions. In any event I have had those interviewed in the fact finding process consulted and they have not objected to the record of their interviews as annexed to the Report being provided by to the Committee.

Accordingly the interview records from Mrs Palmer, Mr Brimstone and Mr Ewart are attached. For the avoidance of any doubt these are the statements I referred to in my letter of 11th February and they are the only interviews conducted in the course of the process. Accordingly they are the factual element of the report as they provide the accounts of events which the only witnesses interviewed gave. I do so to assist the Committee and not as a result of any compulsion. I am also prepared to release sections of the report of a factual nature provided the Committee agrees to respect the confidentiality of the report and not to refer to it in public or in its report without my agreement. My view is that the rest of the report falls within the exception to the power of the Committee to require production of a document set out in section 44 (9) of the Northern Ireland Act 1998. My reasons for coming to this view are twofold: firstly, on the basis of the information supplied to me to date by the Committee, I do not consider the remainder of the report to be relevant to the terms of reference of the Committee and



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even if it were relevant, its production is not necessary for the Committee to complete its task. Secondly, there is a strong public interest in maintaining the confidentiality of the disciplinary process within the civil service and on this ground also I consider that the remainder of the report falls within the exceptions set out in section 44 (9). I will provide further representations on these points, and indeed wider legal issues, in the event that the Committee does not accede to my request to reconsider its decision and revoke the requirement to produce the report in its entirety.

Your letter refers to significant contradictions in the evidence provided to the Committee on key allegations made in the Spotlight Programme aired on 3th July 2013. You do not set out in your letter what those contradictions are nor how they relate to the terms of reference of the Inquiry. I should be grateful if you would provide me with details.

You also state that if the report is not provided the Clerk should initiate the relevant Section 44 enforcement procedures. I should be grateful if you would provide me with details of those procedures.

I trust this issue which appears to me to be peripheral to the work of the Inquiry can be amicably resolved.

Yours sincerely



MERVYN STOREY MLA
Minister for Social Development

Letter to the Chairperson from the Minister – 19.02.15



Department for
**Social
Development**
www.dsdni.gov.uk

From: The Minister

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Lighthouse Building
1 Cromac Place
Gasworks Business Park
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BT7 2JB

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Tel: (028) 9082 9034

Mr Alex Maskey MLA
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

Our Ref:
Your Ref:

19 February 2015

Dear Alex

Further to my letter yesterday I note that the BBC reported today details of the report. In my letter I asked that the Committee agree to respect its confidentiality and not to refer to it in public without my agreement. There was no indication from you that this approach was not acceptable. However it would appear that the confidentiality of the report has not been respected and I assume that you will now conduct an investigation to ensure that this information was not disclosed by the Committee and in due course provide me with the results.

I have to say that I am extremely disappointed by this occurrence and look to you to provide reassurance that the Committee has not breached confidentiality in this matter and will not do so in the future.

Yours sincerely

MERVYN STOREY MLA
Minister for Social Development

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INVESTOR IN PEOPLE

Letter from the Chairperson to the Minister – 19.02.15



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

Room 284
Parliament Buildings
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BT4 3XX
Email: kevin.pelan@niassembly.gov.uk
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19 February 2015

Our Ref: CSD/022/2013/3/AM

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

Dear 

DSD Special Adviser – Fact-Finding Exercise

Thank you for your letters of 18 and 19 February 2015 which the Committee considered in closed session today.

The Committee shares your disappointment that details of the Special Adviser Fact-Finding Report were referred to in the media today and agreed that the report should be treated confidentially until discussions on the matter have concluded.

The Committee thanks you for the information you have provided to date and notes that the report has been partially redacted.

However the Committee also notes that you are

'also prepared to release sections of the report of a factual nature provided the Committee agrees to respect the confidentiality of the report and not to refer to it in public or in its report without my agreement'

The Committee agreed that it is willing to receive a written submission from you in relation to these further sections of a factual nature for consideration at its next meeting on 26 February 2015. I would be grateful therefore if this submission was provided to the Committee Office by 4pm on Wednesday 25 February 2015.

In light of this the Committee also agreed that I write to the Speaker to advise that the Committee is content that the deadline for the release of the full report under section 44 (7) of the 1998 Act be extended until 5 pm on Thursday 26 February 2015.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex', with a long horizontal flourish extending to the right.

Alex Maskey
Chairperson, Committee for Social Development

Letter from the Chairperson to the Speaker – 19.02.15



Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

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19 February 2015

Our Ref: CSD/022/2013/3/AM

The Speaker
Mr Mitchel McLaughlin MLA
Room 38
Parliament Buildings
BELFAST
BT4 3XX

Dear *Mitchel*

Notice to the Minister for Social Development requiring the production of documents required by the Committee for Social Development

As you are aware the Minister for Social Development was required in a notice issued by you on 28 January 2015, to produce a report under Section 44 (7) of the 1998 Act by 5 pm on 18 February 2015.

The Committee received a redacted copy of the report shortly after the deadline which it considered in closed session in its meeting today.

The Committee also considered the Minister's accompanying correspondence which stated that he is:

*'also prepared to release sections of the report of a factual nature
provided the Committee agrees to respect the confidentiality of the*

report and not to refer to it in public or in its report without my agreement'

The Committee has written to the Minister to inform him that it is willing to receive a written submission in relation to these further sections of a factual nature for consideration at its next meeting on 26 February 2015.

The Committee for Social Development agreed that I should write to advise you that the Committee agreed that the deadline for producing the full report under Section 44 (7) should be extended again, until 5pm on Thursday 26 February 2015.

The Committee would ask that the report is delivered to the Committee for Social Development Office, Room 114, Parliament Buildings, Belfast, BT4 3XX.

Yours sincerely



Mr Alex Maskey MLA
Chairperson, Committee for Social Development

Letter from the Speaker to the Chairperson – 23.02.15

The Speaker



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Mr Alex Maskey
Chairperson, Committee for Social Development
Room 412
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Stormont
BT4 3XX

23 February 2015

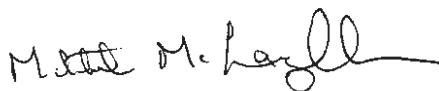
Dear Alex,

**Notice to the Minister for Social Development requiring the production of documents
required by the Committee for Social Development**

Further to your letter of 19 February 2015, I can confirm that I have issued a notice to the Minister for Social Development under subsection 44(7) of the Northern Ireland Act 1998, requiring the production to the Committee for Social Development, on or before 26 February 2015, of a copy of the report "DSD Special Adviser- Fact Finding Exercise".

I attach a copy of the letter that I have issued today to the Minister.

Yours sincerely,



MITCHEL MCLAUGHLIN MLA

SP057_15

Letter from the Speaker to the Minister – 23.02.15

The Speaker



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Assembly

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**Mr Mervyn Storey MLA
Minister for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
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Belfast
BT7 2JB**

23 February 2015

For the Urgent Attention of the Minister for Social Development

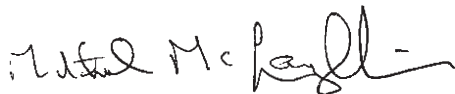
Notice under Section 44 of the Northern Ireland Act 1998

Dear Minister,

Following the meeting of the Social Development Committee on 19 February 2015, I have received correspondence from the Chairman, on behalf of the Committee, indicating that the Committee have agreed that the deadline for producing the full report previously requested under Section 44 (7) should be extended until 5pm on Thursday 26 February 2015.

In accordance with subsection 44(7) of the Northern Ireland Act 1998 I therefore give notice that a copy of the full report should be delivered to the Social Development Committee Office, Room 114, Parliament Buildings, Stormont, Belfast, BT4 3XX on or before 5pm on 26 February 2015.

Yours sincerely,



MITCHEL MCLAUGHLIN MLA

SP056_15

Letter from Minister to Chairperson – 25.02.15



Department for
**Social
Development**
www.dsdni.gov.uk

From: The Minister

**5th Floor
Lighthouse Building
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Gasworks Business Park
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Mr Alex Maskey MLA
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

Our Ref: COR/67/2015

25 February 2015

Dear Alex

DSD SPECIAL ADVISER - FACT FINDING EXERCISE

Thank you for your letter of 19 February. To clarify, I have already placed at the Committee's disposal all the evidence that I consider to be of a factual nature. There is nothing further to be added and I apologise if you have gained the impression that more material was to follow. The material which was referenced in my letter of 18 February was that which was submitted on that date.

Yours sincerely

MERVYN STOREY
Minister for Social Development



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Letter from Chairperson to Speaker – 26.02.15

Committee For Social Development
Room 284
Parliament Buildings
Belfast
BT4 3XX

Email: kevin.pelan@niassembly.gov.uk
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26 February 2015

Our Ref: CSD/022/2013/3/AM

The Speaker
Mr Mitchel McLaughlin MLA
Room 38
Parliament Buildings
Belfast
BT4 3XX

Dear

Notice to the Minister for Social Development requiring the production of documents required by the Committee for Social Development

As you are aware the Minister for Social Development was required in a notice issued by you on 28 January 2015, to produce a report under Section 44 (7) of the 1998 Act by 5 pm on 26 February 2015.

The Committee has considered further correspondence from the Minister today in which the Minister indicated that it is not his intention to release any further material in relation to the Fact Finding Report.

The Committee agreed to approach the Minister with a view to entering into arbitration on the issue.

In order to facilitate these discussions the Committee for Social Development agreed that I should write to advise you that the Committee agreed that the deadline for producing the full report under Section 44 (7) should be extended again, until 5pm on Thursday 5 March 2015.

The Committee would ask that the report is delivered to the Committee for Social Development Office, Room 114, Parliament Buildings, Belfast, BT4 3XX.

Yours sincerely

Mr Alex Maskey MLA
Chairperson, Committee for Social Development

Letter to Minister from Chairperson – 26.02.15

Committee for Social Development
Room 284
Parliament Buildings
Belfast
BT4 3XX

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26 February 2015

Our Ref: CSD/022/2013/3/AM

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

Dear

DSD Special Adviser – Fact-Finding Exercise

Thank you for your letter of 25 February 2015 which the Committee considered today in closed session.

The Committee notes that it is not your intention to share further material in relation to the Report and agreed that I seek to meet with you to discuss a proposed way forward.

The Committee proposes to invite you to agree to a mechanism of arbitration of inviting the Lord Chief Justice to appoint a High Court Judge to examine the report in the context of the Terms of Reference for the Committee's Inquiry to determine if further information should be disclosed.

In order to facilitate these discussions the Committee agreed to write to the Speaker to request that the notice issued under section 44 (7) of the 1998 Act be extended until 5 pm on Thursday 5 March 2015.

Yours sincerely

Alex Maskey

Chairperson, Committee for Social Development

Letter from Minister to Chairperson – 04.03.15



Department for
**Social
Development**

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From: The Minister

Alex Maskey MLA
Chairperson
Committee for Social Development
Room 284
Parliament Buildings
Belfast
BT4 3XX

Your Ref: CSD/022/2013/3/AM
Our Ref: COR/1068/2015

Dear Alex

4 March 2015

DSD SPECIAL ADVISER - FACT FINDING EXERCISE

Thank you for your letter of 26 February.

You have indicated that you wish to meet to discuss a proposed way forward and you have invited me to agree a mechanism of arbitration of inviting the Lord Chief Justice to appoint a High Court Judge to examine the report in the context of the Terms of Reference for the Committee's Inquiry to determine if further information should be disclosed.

I am, of course, willing to meet. Unfortunately owing to personal circumstances the Department's legal advisor is not available this week, I do not envisage our meeting taking place any earlier than next week. My Private Office will make the necessary arrangements.

In advance, I must restate that I have already provided the Committee with all material that I consider to be of a factual nature. I have attempted to maintain a fair balance between protecting the interests of those involved in the process and assisting the Committee. The Committee now has the unedited accounts of all the witnesses interviewed in the process and in addition considerable material from the report including the recommendation that a formal disciplinary investigation be held.

I took this action to avoid unnecessary controversy between the Department and the Committee and if anything, the balance has fallen more in favour of the Committee than those involved in the process.

I regret that I cannot accede to the proposal in your letter.

Yours sincerely

MERVYN STOREY MLA
Minister for Social Development

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Letter from Chairperson to Minister – 06.03.15

Committee for Social Development

Room 284
Parliament Buildings
BELFAST BT4 3XX

Email: kevin.pelan@niassembly.gov.uk
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Our Ref: CSD/022/2013/3/SK

Mr Mervyn Storey MLA
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Ormeau Road
Belfast BT7 2JB

6 March 2015

Dear Mervyn,

DSD Special Adviser Fact-Finding Exercise – Mechanism for Arbitration

Thank you for your letter of 4 March 2015 in which you indicated that while you were willing to meet with me you were unable to accede to the proposal for arbitration as outlined in my letter of 26 February.

In light of your clarification on this matter and on the basis that the meeting was to discuss whether you would agree to the mechanism outlined, I have decided that such a meeting would have little or no merit.

The Committee discussed this issue at its meeting of 5 March and agreed with my view.

Despite this difficult matter I would hope that we can continue to build a solid working relationship to address the wide range of policy issues under the remit of the Department for Social Development.

Yours sincerely

Alex Maskey

Chairperson, Committee for Social Development

Letter to Chairperson from the Minister 09.03.15



Department for
**Social
Development**
www.dsdni.gov.uk

From: The Minister

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Mr Alex Maskey MLA
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

09 March 2015

Dear Alex

**DSD SPECIAL ADVISER FACT FINDING EXERCISE – MECHANISM FOR
ARBITRATION**

Thank you for your letter of 6 March.

I very much share your hope that we can continue to build a solid and positive working relationship to address policy issues under the remit of the Department.

Yours sincerely

**MERVYN STOREY MLA
Minister for Social Development**

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INVESTOR IN PEOPLE

Draft apologies to Councillor Palmer

Following a BBC Spotlight programme focusing on the Northern Ireland Housing Executive, during which there appeared to be two alternative recollections of a telephone conversation between Cllr Jenny Palmer and the DSD ministerial advisor Stephen Brimstone, DUP leader Peter Robinson MLA hosted a meeting between the two recently.

Speaking afterwards, Mr Robinson said;

“Following the programme, I indicated that I would be pleased to meet with Jenny and Stephen should they so desire. I was pleased that they both sought a meeting. Having met with both separately, I hosted a further meeting between the two.

Both were agreed that the only issue discussed during the conversation was the Board's consideration of the contractor Red Sky. [REDACTED]

[REDACTED]

was

ance [REDACTED]

acknowledged

[REDACTED]

STATEMENT ENDS

Jenny Palmer – Revised Draft

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[REDACTED]

[REDACTED]

[REDACTED] issues of adm-nt. such as those

[REDACTED]

STATEMENT ENDS

Jenny Palmer- Revised Draft 2

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT ENDS

Proposed Amendments:

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

STATEMENT ENDS

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT ENDS

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT ENDS.

Draft

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Both were agreed that the only issue discussed during the conversation was the Board's consideration of the contractor Red Sky [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT ENDS.

Note To Editors

Code of Conduct for Special Advisers as referenced above

- 3. V. liaising with the Minister’s party to ensure that the Department’s own policy reviews and analysis take full advantage of ideas from the party, and encouraging presentational activities by the party which contribute to the Administration’s and Department’s objection;
- 3. VI. helping to brief Assembly Members and officials of the Minister’s party on issues of the Administration’s policy;
- 9. The Administration needs to present its policies and achievements to the public in order to aid understanding and so maximise the effectiveness of its policies, and this is a legitimate use of public funds and resources. It would be damaging to the Administration’s objectives if the Minister’s party took a different approach to that of the Administration, and the Administration therefore needs to liaise with the Minister’s party to make sure that party publicity is factually accurate and consistent with the Administration policy. To secure this consistency, the Administration will also want to make sure the Assembly Members and officials of the Minister’s party are briefed on the issues of Administration’s policy.

Redacted Copy Covering Letter



From: The Minister

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1 Cromac Place
Gasworks Business Park
Ormeau Road
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BT7 2JB**

e-mail: private.office@dsdni.gov.uk

Tel: (028) 9082 9034

Mr Alex Maskey
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

18 February 2015

Dear Alex

DSD SPECIAL ADVISER - FACT FINDING EXERCISE

Thank you for your letter of 12th February. I am disappointed that the Committee is not prepared to accept an honest attempt to find a suitable compromise which will fully meet the Committee's needs. It is difficult to understand how the Committee can decide that the statements would not sufficiently meet the Inquiry's requirements when it has not seen them and I would respectfully urge the Committee to reconsider its decisions. In any event I have had those interviewed in the fact finding process consulted and they have not objected to the record of their interviews as annexed to the Report being provided by to the Committee.

Accordingly the interview records from Mrs Palmer, Mr Brimstone and Mr Ewart are attached. For the avoidance of any doubt these are the statements I referred to in my letter of 11th February and they are the only interviews conducted in the course of the process. Accordingly they are the factual element of the report as they provide the accounts of events which the only witnesses interviewed gave. I do so to assist the Committee and not as a result of any compulsion. I am also prepared to release sections of the report of a factual nature provided the Committee agrees to respect the confidentiality of the report and not to refer to it in public or in its report without my agreement. My view is that the rest of the report falls within the exception to the power of the Committee to require production of a document set out in section 44 (9) of the Northern Ireland Act 1998. My reasons for coming to this view are twofold: firstly, on the basis of the information supplied to me to date by the Committee, I do not consider the remainder of the report to be relevant to the terms of reference of the Committee and



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even if it were relevant, its production is not necessary for the Committee to complete its task. Secondly, there is a strong public interest in maintaining the confidentiality of the disciplinary process within the civil service and on this ground also I consider that the remainder of the report falls within the exceptions set out in section 44 (9). I will provide further representations on these points, and indeed wider legal issues, in the event that the Committee does not accede to my request to reconsider its decision and revoke the requirement to produce the report in its entirety.

Your letter refers to significant contradictions in the evidence provided to the Committee on key allegations made in the Spotlight Programme aired on 3th July 2013. You do not set out in your letter what those contradictions are nor how they relate to the terms of reference of the Inquiry. I should be grateful if you would provide me with details.

You also state that if the report is not provided the Clerk should initiate the relevant Section 44 enforcement procedures. I should be grateful if you would provide me with details of those procedures.

I trust this issue which appears to me to be peripheral to the work of the Inquiry can be amicably resolved.

Yours sincerely



MERVYN STOREY MLA
Minister for Social Development

Redacted copy of the report of the DSD Special Adviser fact-finding exercise

COPY NR 1

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**Director
Corporate HR**



Department of
**Finance and
Personnel**
www.dfpni.gov.uk

**FACT FINDING INVESTIGATION TO ESTABLISH IF THERE IS ANY BASIS
FOR PROCEEDING WITH A FORMAL DISCIPLINARY INVESTIGATION
INTO THE BEHAVIOUR OF MR STEPHEN BRIMSTONE, SPECIAL
ADVISER.**

INVESTIGATING OFFICER: [REDACTED]

POSITION: DIRECTOR, CORPORATE HR (DFP)

DATE: 25 SEPTEMBER 2013

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[REDACTED]

CONFIDENTIAL**Introduction**

1. On 14th August 2013 [REDACTED] (DSD, Human Resources Director) wrote to me requesting that I undertake a preliminary enquiry to establish if there is any basis for proceeding with a formal disciplinary investigation with respect to allegations of misconduct regarding Mr Stephen Brimstone ("SB"). It is not a formal disciplinary investigation. Rather, it is a fact finding exercise designed to determine that there is no immediate and indisputable evidence that the allegations made against SB are malicious or false.
2. SB is the Special Adviser to Mr Nelson McCausland MLA, Minister responsible for Social Development. He is also a temporary Civil Servant.
3. The allegations were made by Mrs Jenny Palmer ("JP") in the BBC Spotlight television programme, which was broadcast on 3rd July 2013, and in essence relate to what she alleges was said to her by SB in a telephone conversation on 1st July 2011.
4. The allegations relate to the possible breach of certain parts of the Code of Conduct for Special Advisers and the general conduct provisions in the Northern Ireland Civil Service HR Handbook.
5. More specifically, and firstly, the allegations relate to a possible breach of aspects of paragraphs 5 and 6 of the Code of Conduct for Special Advisers, in particular that he acted in a way which did not uphold the political impartiality of civil servants. Secondly, the allegations may also be judged to have had an adverse effect on the working of DSD, and subject it to unfavourable criticism.

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6. I accepted my appointment of Investigating Officer for this case on 20th August 2013 and conducted 3 interviews in the course of the investigation.
7. [REDACTED] (DFP, Corporate HR) was the note taker for each of the formal interviews.
8. This report details the process followed and the findings of the investigation.

Background and contextual information

9. JP is an Independent Board Member of the Northern Ireland Housing Executive ("NIHE") and a member of its Audit Sub-Committee. She is also a Councillor on Lisburn City Council representing the Democratic Unionist Party ("DUP").
10. In the BBC Spotlight programme JP alleged that SB pressured her via a telephone call on 1st July 2011 to vote against the proposed termination of the NIHE contract with the Red Sky maintenance company at a shortly to be arranged Extraordinary General Board meeting ("EGM") of NIHE, contrary to her preferred position on the matter. A copy of the relevant extract from the transcript of the programme is attached at **Appendix A**.
11. The telephone conversation between SB and JP was conducted via the mobile telephone owned by Mr Allen Ewart ("AE"), who at the time was also a Councillor serving on Lisburn City Council and the Special Adviser to Mr Sammy Wilson, the then Minister for Finance & Personnel, and who is now also the Special Adviser to Mr Simon Hamilton MLA, Minister for Finance & Personnel. This came to pass as SB did not have JP's contact details but was aware that AE would have these.

[REDACTED]

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Methodology

12. Central to this investigation was the collection of information during interviews conducted with JP and SB. However, during these interviews it became clear that it was necessary to conduct a further interview with AE.
13. All interviewees were offered the opportunity of being accompanied by a colleague at interview. In the event, each was unaccompanied
14. A signed record of the interviews conducted with JP and SB is provided at **Appendices B and C respectively**. At the date of this report, a signed record of the interview conducted with AE has yet to be received, although I have received written agreement from AE that he is content with the record of his interview, which is provided at **Appendix D**.

Findings

15. JP and SB separately confirmed that they did not know each other personally and had never spoken to each other before the telephone conversation on 1st July 2011.
16. JP and AE know each other personally and have worked together as colleagues on Lisburn City Council for a number of years.
17. Both JP and SB agreed that the only other occasion that they spoke directly to each other after the 1st July 2011 was during a meeting on 6th August 2013 in DUP headquarters in Dundela Avenue, Belfast, which was chaired by Mr Peter Robinson MLA ("PR"), First Minister, and attended by JP, SB, Mr Jeffrey Donaldson MP ("JD") and Mr Gavin Robinson, Special Adviser to the First Minister ("GR"). I will refer to this meeting in later paragraphs.

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18. SB telephoned AE on the 1st July 2011 to seek JP's telephone number. On receiving the call AE informed SB that JP was actually, at that moment, attending the same event that he was attending, namely a celebratory event at the Boyne Centre. AE was supporting his Minister at the time, Mr. Sammy Wilson MP MLA. Rather than provide contact details to SB, AE handed his mobile telephone to JP to allow the conversation between SB and JP to take place.
19. Central to judging whether a formal disciplinary investigation should be commenced was my consideration of the responses given by the interviewees to questions relating to the alleged use by SB of specific phrases, and which were quoted in the BBC Spotlight programme by JP as having been used by SB in his conversation with her. The phrases in question were:
- a) *"We need you to do that";*
 - b) *"The party comes first";* and
 - c) *"There is no point on you being on the Board if you are not prepared to do what you are asked to do."*
20. On this matter the recollections of JP and SB differ completely. On the one hand JP was definite and unequivocal in her recollection and indicated that SB had used these phrases verbatim. On the other hand SB, while prefacing that his memory of what precisely he said had faded in the two years hence and that, as a consequence, he could not recall exactly what he said, nevertheless indicated that such phrases would not be in his nature to use. He repeated this point a number of times.
21. The respective recollections of the emphasis and tone of language used by SB during the conversation also differed completely. On the one hand JP alleged that the emphasis was one of 'an instruction' and was

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delivered in an aggressive tone. On the other hand SB recalls that the emphasis was on providing context and advice with a desire to ensure that JP brought 'balance' to the discussion at the forthcoming EGM as his Minister had little confidence in the Chairperson of the NIHE, Mr. Brian Rowntree. SB did not recall that his tone was in anyway unusual.

22. In relation to the question of voting at the forthcoming EGM, JP was unequivocal in saying that SB instructed her to vote against the proposal to terminate the Red Sky contract. However, SB indicated that he could not recall asking JP to vote one way or the other, and in any event it was unlikely he would have done this as her vote was only one of 14 Board members and that if he had wanted to influence voting he would have had to call the other 13 NIHE Board members as well.
23. When asked if he had consulted with anyone about the need to contact JP, or if he had been instructed by anyone else to do so, SB indicated that he could not recall any specific conversation. However, he did say that as the matter was a strategic issue he would have been surprised if he had not consulted with others in the DUP. But that after two years he was unable to recall exactly who.
24. Their knowledge of the proposed forthcoming EGM [scheduled for 5th July 2011] was also completely different. JP claims SB was the first to advise her of the forthcoming meeting as she had not been informed of this by NIHE officials.
25. AE indicated that he was not in earshot of JP when she spoke with SB. Indeed he recalled that she moved to the periphery of the room that the function was in for the duration of the call, and as far as AE could tell she was not accompanied. On handing back the mobile telephone to AE, AE does not specifically recall what JP said to him other than to ask him who SB was. He did not recall JP saying to him that SB had used the 3 phrases (i.e. those outlined in paragraph 19), or words to that effect, and

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that she did not appear to be emotional or upset. He said that the stance she had taken in the BBC programme was quite different, in that she showed emotion, and that he was surprised at that.

26. JP claimed the conversation between her and SB lasted approximately 5 minutes or so. SB claimed that the telephone call duration in total lasted 10 minutes and 21 seconds according to the details on his telephone bill. AE estimated that the duration between him handing the telephone to JP and receiving it back was approximately 5 minutes, although he could not really recall with precise accuracy.
27. JP claims that immediately after the call ended she gave some feedback to AE and sought his view as to what she should do next. She indicated that AE was sympathetic towards her and suggested that she escalate the matter to JD, who apparently knew JP very well. AE confirmed that he did advise this course of action, although he was unsure as to when he did this. AE indicated that he did so as he knew JP and JD were close colleagues and that this had dated back to when both of them had decided to leave the Ulster Unionist Party to join the DUP.
28. SB and AE indicated that Minister McCausland had little confidence in the ability and competency of the NIHE Chairperson, Mr. Brian Rowntree. SB and AE also said that JP was very close to and supportive of the Chairperson.
29. In the course of the JP and AE interviews they indicated that JP attended a meeting in Stormont with DUP Press Officers about a year or so ago, with AE in attendance, to discuss the approach from BBC about the forthcoming programme. Indeed AE indicated he had arranged this having been approached to do so by JP. Both confirmed that the officers, Mr. David Robinson, who was the DUP Communications Officer at the time and Mr. Tim Johnston, advised that JP should not agree to be

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interviewed by the BBC. JP recalled that she discussed SB's alleged conduct although AE did not recall if it was discussed.

30. I referred in paragraph 17 to a meeting held on 6th August 2013 at which both JP and SB were in attendance. According to JP the sequence of events leading up to this, and what occurred during it and thereafter, was as follows:
- a) On 2nd August JP met PR along with JD, who she had asked to come along with her. PR specifically asked her what SB had asked her to do before going on to suggest that she may have misunderstood that SB was providing advice and was not bullying her [JP's emphasis]. She alleges she told PR that SB effectively 'ordered' her to go into the NIHE Board meeting and stand against the rest of the Board. In response, she alleges that PR said he would speak to SB and then ask her and SB to meet with him again to discuss the matter.
 - b) On 5th August JD called JP and said a meeting had been organised for 4.30pm on 6th August at DUP Headquarters, Dundela Avenue, Belfast.
 - c) On the 6th August the meeting took place. It was chaired by PR, with JP, SB, JD and Mr Gavin Robinson ("GR") in attendance. GR took notes of the meeting, which would appear were not circulated afterwards.
31. The recollections of JP and SB differed significantly in respect of what happened at the meeting. JP recalls that she asked that as the matter was such a public event following the BBC Spotlight broadcast she would like a public apology and a supportive DUP party statement as to her conduct and integrity, and that after some debate SB offered her an apology and confirmed that her version of events was accurate. On the

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other hand SB did not recall making such a fulsome apology but indicated that he only apologised for unintentionally causing JP emotional distress on account of the fact that he had a personal belief system.

32. It was agreed at the meeting that a DUP statement would be prepared that would reflect agreement by all parties. Both JP and SB indicated that an agreed draft has not yet been reached despite iterations having been circulated via JD as a middle person.
33. Having watched the BBC programme AE indicated that he would definitely not have said the things that SB is alleged to have said as they would have undermined the obligations for political impartiality required of a Special Adviser.

Conclusions

34. The only undisputed facts that exist relating to the telephone call are limited to confirmation that a telephone conversation between SB and JB definitely occurred on the 1st July 2011, that it was facilitated via the mobile telephone of AE, and that it lasted approximately 5 to 10 minutes. The recollections of what actually was said by SB and JB in the conversation are completely different.

35. [REDACTED]

36. [REDACTED]

37. [REDACTED]

[REDACTED]

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[REDACTED]

38. [REDACTED]

39. [REDACTED]

40. [REDACTED]

41. [REDACTED]

[REDACTED]

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42. [REDACTED]

43. [REDACTED]

44. [REDACTED]

45. [REDACTED]

46. [REDACTED]

47. [REDACTED]

[REDACTED]

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[REDACTED]

Recommendation

48. In view of the above conclusions and evidence presented in this short report it is recommended that a formal disciplinary investigation into the behaviour of SB be commenced [REDACTED]

[REDACTED]

49. [REDACTED]

50. [REDACTED]

[REDACTED]

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51. In the course of her interview JP also alleged that SB had instructed a DSD civil servant to send an email to the Chairperson of the NIHE, Mr Brian Rowntree, at around 7.30am on the morning of the 5th July 2011, and prior to the EGM on the same day, to urge him not to agree to terminate the Red Sky contract at that time. In any further investigation it would probably be important to establish the facts around this matter, including who set up the meeting.

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Appendices

- A. Transcript of BBC Spotlight programme**
- B. Minutes of Meeting – Investigation Interview with Mrs Jenny Palmer on 30th August 2013**
- C. Minutes of Meeting – Investigation Interview with Mr Stephen Brimstone on 2nd September 2013**
- D. Minutes of Meeting – Investigation Interview with Mr Allen Ewart on 9th September 2013**

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ANNEX 3

Extract from transcript of Spotlight programme, 3 July 2013

JP = Jenny Palmer

MMA = Spotlight Presenter/Interviewer Mandy McAuley

JB = Jim Brown

BR = Brian Rowntree

At the very time Nelson McCausland and Brian Rowntree were exchanging salvos on the 1st of July, Jenny Palmer was attending a commemoration of the Battle of the Boyne.

JP: We were there enjoying the day and we were having a cup of tea after the ceremony and a colleague asked if I would take a phone call. The voice at the other end of the phone said we hadn't met and possibly we should have, but there wasn't the time now to do so and he said there would be a Board meeting on Tuesday. Now, I didn't know at that time that it had been called even and then he told me that he needed me to, basically, go against the decision of the Board on the extension of the contract for Red Sky and I said to him "I ca... I don't think I can do that". He said "we need you to do that". I went in to shock.

MMA: Who was the person who made the call?

JP: It was the Minister's Political Advisor

MMA: Nelson McCausland's Political Advisor...and he gave his name as...?

JP: Stephen Brimstone. He said the party comes first. You do what you're told, otherwise there's no point in me...no point in me being on the Board if I wasn't prepared to do what they asked me to do. It was going against everything that I had worked for and my reputation. He said "the party comes first here".....

MMA: Jenny Palmer did confide in the Chairman of the Housing Council, the body she represents on the Housing Executive Board.

JB: Jenny Palmer came to me, first of all with her integrity in tatters because she was being asked to do something she wasn't prepared to do. She was being pressurised to do something political which she wasn't in the Housing Executive Board to do. She was a representative of the Northern Ireland Housing Council and not a representative of the DUP...

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MMA: The Housing Executive Board was called to an extraordinary meeting on Tuesday, July 5th 2011, just as Stephen Brimstone had predicted. There was one item on the agenda, Nelson McCausland's request to extend the Red Sky contracts. Jenny Palmer arrived early.

JP: I purposely went down early and I spoke to Brian about half an hour before the Board meeting and it was a private conversation he and I had.

BR: In my nine years as Chairman of the Housing Executive, I have never had a Board member, particularly a political Board member, so upset. An external source approached a political member to influence the decision and debate at Board level. That would have taken away and divided the Board in relation to its corporacy and wouldn't have given rise to a unanimous decision in relation to that matter.

MMA: Jenny Palmer declared an interest and Brian Rowntree ruled she should exclude herself from the meeting. In her absence, the Board, again, voted unanimously to uphold the sacking of Red Sky.

BR: The public need to know – why did someone seek to use political advantage, not for the benefit of the public sector, for the benefit of a commercial entity.

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Minutes of Meeting – Investigation Interview

Nature of Meeting	Fact Finding Investigation Meeting
Date	30 August 2013
Venue	6 th Floor Conference Room Royston House
Time Start	10.00am
Time End	11:30am
Time of adjournment/ recommencement	

<u>People Present:</u>	
Name of witness	Jenny Palmer
NICS Department	n/a
Name of investigating officer	[REDACTED] Director of HR NICS
Name of note-taker	[REDACTED] CHR, NICS
Others present	No

[REDACTED]

Jenny Palmer Fact finding investigation meeting, 30 August 2013,
Royston House, 10.00am

Questions Jenny Palmer

1. Can you confirm that you received a telephone call from Mr Stephen Brimstone (SB) to discuss a proposed Extraordinary General Meeting (EGM) of the NIHE Board to be held on the 5th July 2011 at which the Red Sky contract was to be discussed?

Jenny Palmer confirmed that she had received a phone call from Stephen Brimstone on the 1st July 2011 to discuss the EGM.

2. Had you ever spoken to Mr Brimstone before? Did you know who he was, and what his role was within DSD, and within the DUP? Had you any previous dealings with Mr Brimstone on NIHE business before you received the telephone call?

Jenny Palmer advised that she knew of SB, that he was the Special Adviser to the Minister but had no dealings with him personally before the event in question. In hindsight, she would have also been aware that due to him being the Special Adviser to the Minister he would also have been a member of the DUP.

3. What is your position within the NIHE? How were you appointed and what does that role entail?

Mrs Palmer was a board member of the NIHE and a member of the Audit Committee. Mrs Palmer was appointed through public procurement, the members of which were taken from the Northern Ireland Housing Council of which she was a member.

4. Are you a member of the DUP? What roles have you held [and continue to hold] within the DUP? Is there any connection between your membership of the DUP and your role on the NIHE Board?
Leaving aside this particular incident for one moment, has anyone from within the DUP ever sought to influence how you should undertake your role and duties as an Independent Board Member (IBM) on the NIHE Board?

Mrs Palmer stated that she was currently a DUP councillor of Lisburn City Council. She was appointed as a party political representative to the role of a NIHE board member.

Prior to the event in question she had never been approached by anyone within the DUP to influence how she should undertake her role as an IBM on the NIHE Board.

5. Had the status of the Red Sky contract, and options for how the NIHE might deal with this, been discussed at previous NIHE Board meetings? What was presented and discussed?

Mrs Palmer stated that the Red Sky contract was discussed on several occasions. The Board was aware through an internal audit report that there was serious overcharging and failures to fulfil contractual agreements. The Board had been attempting for 18 months to address the clawback issue and to have Red Sky acknowledge the overcharging and to address the problem.

However through dealings with Red Sky solicitors, Red Sky were denying the allegations and instead seeking extra money from the NIHE for work they had completed. It became clear that there would be no resolution to this and the Board accepted that due to public money having been squandered and misused by Red Sky, there was no alternative but to end the contract.

6. Do you recall if any representations had been made to the NIHE Board by DSD as to its preference for the future status of the Red Sky contract? If so, do you recall how these were made, and by whom? When was the first occasion you were made aware that an EGM was to be held on Tuesday 5th July 2011? Who informed you of this and what do you recall was said?

Mrs Palmer confirmed that when an announcement was made that the Red Sky contract was to be ended representatives from the Department and politicians from the East Belfast area where Red Sky were based became heavily involved. In fact there was even an email sent to the Chairman of the Housing Executive by Michael Sands (DSD) on behalf of Stephen Brimstone on the morning of the board meeting at 7.30am instructing him not to close the contract.

On the 1st July 2011, Mrs Palmer was attending the opening of the Boyne Centre as an invitee of Allan Ewart (AE) who was the Special Adviser to Sammy Wilson. AE informed her that Stephen Brimstone was on the telephone looking her contact details but as she was in attendance with him, AE would pass the call over to Mrs Palmer.

Mrs Palmer took the call and stated that SB had said to her initially that you don't know me, we have never met and there's no time to meet before the Board meeting on Tuesday. This took Mrs Palmer aback as there was never a Board meeting on Tuesdays, they were always on the last Wednesday of the month. SB reiterated that the meeting would be held on the following Tuesday and that she would be required to seek an extension on the Red Sky contract. Mrs Palmer was shocked and asked SB to repeat what he had said for confirmation. Again SB stated that he wanted Mrs Palmer to vote for an extension on the Red Sky contract. Having heard this repeated and had the time to compose herself, Mrs Palmer considered the request and responded that she didn't think she could do that.

SB then said that there was no point being on the board if she wouldn't do what the party wanted her to do and that the party came first. SB then said he would call her later. In Mrs Palmer's estimation, the conversation lasted about 4-5 minutes in total.

7. In the course of the call, were you asked to vote against a proposal to terminate the Red Sky contract, or alternatively abstain from the voting process? What did you say in reply to the phone call? How did the call end?

Mrs Palmer stated that SB was not advising her to vote against the Board's recommendation, she was being told to vote against the Board's recommendation. The tone of the phone call was aggressive and SB sounded angry stating that the party comes first. Mrs Palmer knew that if she voted against the recommendation to end the contract, she would damage the integrity of the Board Audit Committee, the NIHE Board and herself and she wasn't prepared to do that. Her reply to SB was that she didn't think she could do what he was asking and SB ended the call abruptly saying that he would call her that evening to discuss further but never did.

8. Following the telephone call, what action did you take?

It was very clear to Mrs Palmer that if she did not comply with SB's instruction she would be in trouble with the party. AE recognised that when Mrs Palmer returned his telephone to him she was very upset and he asked her what was wrong. Once Mrs Palmer told AE what she was being told to do, AE was very sympathetic and suggested that she raise the matter with her MP Jeffery Donaldson (JD). Mrs Palmer left the Boyne Centre very upset and at that stage felt that she had no option but to resign her post. On her return home Mrs Palmer called JD and explained her circumstances. Both were attending a Causeway Institute meeting that afternoon and agreed to meet following this to discuss the situation.

9. What was discussed at this meeting?

Mrs Palmer explained her situation to JD and sought his help and advice. The DSD minister, the First Minister, Sammy Douglas and Robin Newton along with DSD officials had met Red Sky and Mrs Palmer felt that if they were involved at that level, she could not discuss the matter with them and there was nobody else to turn to.

JD agreed that it seemed as if she was looking like a "lamb led to slaughter" and thought about a way to protect her integrity. He suggested that he would speak to the chairman of the HE Board Brian Rowntree (BR) to agree that there was a conflict of interest in her involvement in the matter as DSD were seeking an extension on the contract. If BR agreed, then at the beginning of the meeting BR would ask Mrs Palmer to remove herself from the room before the meeting began.

10. What happened at the EGM?

Mrs Palmer didn't receive any papers for the EGM and was contacted prior to this by a NIHE official regarding the date for the EGM. As Mrs Palmer was unable to participate, the minutes recorded that the board was aware of the approach to Mrs Palmer and this was discussed at length. In hindsight, the firm was going quickly into liquidation and there may have been no need for an EGM however the decision needed to be taken based on the evidence available. The decision was taken not to extend the contract. Following the meeting, Mrs Palmer received several telephone calls of support from Board members.

11. What contact have you had with Mr Brimstone since receiving that telephone call?

Mrs Palmer stated that there had been several events and meetings that they both attended since and there was no interaction between the two.

12. Have you met Mr Brimstone since? If so, when and where?

Mrs Palmer stated that JD asked her to attend a meeting with Peter Robinson scheduled for the 2nd August 2013. Mrs Palmer had watched 'The View', a BBC programme where Nelson McCausland (NM) had said that he didn't tell SB to call Mrs Palmer. Mrs Palmer had then thought if NM hadn't asked SB to call, then who had? It was her assumption that it would only have been PR or PR's SPAD and therefore she was uncomfortable to meet PR on her own. Mrs Palmer asked JD would he accompany her attend the meeting on the 2nd August.

In PR's office, PR asked Mrs Palmer what SB had asked her to do. PR read from the SPAD code and stated that the adviser was to advise not bully and she may have misunderstood. Mrs Palmer was quite clear what SB wanted her to do and that when he was interviewed for the Spotlight programme, his version of the telephone call was very different to Mrs Palmer's version. Mrs Palmer told PR that SB didn't refer to issues or concerns as he said in the BBC programme, rather she was ordered to go into the boardroom and stand against the committee.

PR said that he would speak to SB and then ask both her and SB to attend a meeting once this was done. Mrs Palmer was content to attend as long as it was not confrontational.

On the Monday night (5th August 2013) JD called Mrs Palmer and said a meeting had been organised for 4.30pm the following afternoon (6th August 2013) at the DUP headquarters in Dundela Avenue, Belmont Road, Belfast and they arranged to meet at a coffee shop close by at 4pm. At the coffee shop as they walked in was SB alongside Gavin Robinson (GR), the ex mayor of Belfast and provider of legal advice to the party. Mrs Palmer was taken aback and she and JD left and went to another café. Mrs Palmer was worried regarding the presence of the barrister and the fact that SB was seeking legal advice. JD told her not to be anxious and that SB may indeed be seeking legal advice about the situation as he may realise the seriousness of the situation.

13. What happened at this meeting?

Mrs Palmer advised that in attendance was SB, PR, JD and herself. GR was in the background to take notes for PR. PR asked Mrs Palmer what she would like as a resolution. JP said that as this was such a public event, she would like a public apology and a party statement around her conduct and integrity.

When asked about the telephone call in question, SB responded by saying that as a Christian he would never intentionally hurt, bully or cause stress to an individual and that he couldn't exactly recall what was said as he had many conversations on a range of issues with lots of people.

Mrs Palmer replied by saying that although SB may not remember, she could remember verbatim their conversation about Red Sky and proceeded to repeat it.

Following this, SB offered an apology to Mrs Palmer and confirmed that her version of the events was accurate.

PR then asked whether an apology and a statement from the party would make her happy. Mrs Palmer agreed with this suggestion and that all she wanted was to have her name cleared and her integrity protected.

PR then said that he, JD and GR would draw up a statement and this would go to Mrs Palmer and SB for sign off before it would be released.

14. Where is this statement now?

Following the meeting, JD forwarded the statement that he received and spoke to Mrs Palmer about the content. Mrs Palmer was disappointed with the detail and felt that the statement contained more opinion than facts. Having set down with her family to discuss the content, Mrs Palmer made her amendments and returned it to JD. Mrs

Palmer spoke to JD and said that all she wanted was an apology and he agreed that the amendments she had made were fair and reasonable. He then forwarded the draft to GR.

A number of days passed and Mrs Palmer had yet to receive back agreement on the revised draft and contacted JD via text message to establish its status. On the Saturday evening JD emailed Mrs Palmer with the revised draft. After reading it, Mrs Palmer thought that it was unacceptable and was worse than the first one. Mrs Palmer thought SB's actions were depressing and it didn't reflect the discussions at the meeting and therefore couldn't sign it off.

The statement had changed and protected NM and contained opinions about Red Sky rather than fact which Mrs Palmer had wanted.

Mrs Palmer wondered was PR aware of the content as this was supposed to be agreed in his name. JD asked Mrs Palmer to respond to him with the reasons as to why this current draft was unacceptable. Mrs Palmer did so and stated that she was very disappointed in SB's actions. JD spoke personally to GR to explain Mrs Palmer's position on the statement and GR has still to respond on this.

JD said that PR was impressed with Mrs Palmer's knowledge of NIHE affairs and agreed that there was a lack of communication between Board members of important bodies and the DUP hierarchy. Mrs Palmer said there was no party direction given to her in any of the years she had sat on bodies and that in the future it was something that the DUP would take on board.

15. Is there anything else you would like to add to what you have said?

Mrs Palmer said that she has had no contact with DUP officials concerning the statement and apology except through JD. There also had been no provision of the minutes taken by GR to the attendees following the meeting.

Regarding the television programme, the BBC had contacted Jim Dillon (JimD), an

UUP councillor on Lisburn Council asking could he get Mrs Palmer to meet with them. JimD informed Mrs Palmer that he had seen a file of Red Sky with her name mentioned at least 12 times within it. Mrs Palmer was concerned and approached AE who then set up a meeting with the DUP Press Team in Stormont. Timmy Johnson and John Robinson were present. This meeting lasted less than 10 minutes and although Mrs Palmer stated that she thought SB had acted inappropriately in his role as SPAD, this was dismissed and instead she felt that she was talked down to by those present. The result of the meeting was that she was to ask the BBC to email the questions to her and she would forward these onto the Press Office for answer even though they did not fully understand the issues.

Mrs Palmer went to JimD and gave him her business card which was then handed to the BBC. That Friday Mandy McAuley (MM) and John O’Kane from the BBC arrived at Mrs Palmer’s door. They showed Mrs Palmer a video clip from the programme that they were releasing and asked Mrs Palmer to provide her side of the story. After discussions with her family, Mrs Palmer agreed to be interviewed as it was important that the truth and the facts were disclosed. Mrs Palmer is also aware that there is a further Spotlight programme that will be released in the Autumn by the BBC on this issue.

I agree that these minutes are a fair and accurate summary of the investigation meeting held on **30 August 2013**

Signed: 

Print Name: 

Date: 25-9-13

Minutes of Meeting – Investigation Interview

Nature of Meeting	Fact Finding Investigation Meeting
Date	02 September 2013
Venue	6 th Floor Conference Room Royston House
Time Start	10.30am
Time End	11:10am
Time of adjournment/ recommencement	

<u>People Present:</u>	
Name of interviewee	Stephen Brimstone
NICS Department	DSD
Name of investigating officer	[REDACTED] Director of HR NICS
Name of note-taker	[REDACTED] CHR, NICS
Others present	No

Stephen Brimstone Fact finding investigation meeting, 02
September 2013, Royston House, 10.30am

Questions Stephen Brimstone

1. When did you first telephone call Mrs Palmer to discuss the proposed NIHE Extraordinary General Meeting planned for 5th July 2011 and the issues relating to the consideration of the Red Sky contract?

Stephen Brimstone called Mrs Palmer on the 1st July to discuss the event in question.

2. Did you know Mrs Palmer? Had you ever spoken to Mrs Palmer prior to making the telephone call? Did you know that Mrs Palmer was a NIHE Board member representing the Northern Ireland Housing Council?


Stephen Brimstone did not know Jenny Palmer (JP) and had never spoken to her before the telephone call in question.

3. Did you discuss the need to make the call with anyone else?

Mr Brimstone stated that the whole process was two and a half years ago and he couldn't specifically recall who he had conversations with around calling JP. However, there would have been strategic discussions within the party around such issues but he couldn't recall the detail. The telephone call wasn't intended to take place at that time as he was just looking JP's details from Allan Ewart (AE).

4. How did you get JP's telephone number and how long did the call last? What do you recall was said to Mrs Palmer in the conversation?

Mr Brimstone called AE to obtain JP's telephone number to discuss the



upcoming meeting on the 5th July. However AE and JP were at an event together at the time of the call so AE passed the telephone over to JP for Mr Brimstone to speak to her. The phone call, as highlighted on Mr Brimstone's phone bill was 10 minutes and 21 seconds and took place at 11.57am on the 1st July 2011.

5. What do you recall you said to Mrs Palmer in the conversation? How did you know an EGM was to be held on 5th July?

Mr Brimstone made the telephone call to JP on the 1st July 2011 in advance of the meeting on the 5th July 2011 in order to fully brief JP on Minister McCausland's position on the matter which was reflective of the party's overall position. It was Mr Brimstone's view that the conversation was based on the presumption that all the Board members were aware that there was to be an EGM on the 5th July.

During the telephone call Mr Brimstone said that it was important for JP to be aware of the present issues and the issues that were emerging from the Red Sky contract. Mr Brimstone acknowledged that Red Sky were overcharging but that this was not isolated just to Red Sky and the contracts shouldn't be handed over to the other NIHE contractors until there was satisfaction that the others were not doing the same.

Rather, Mr Brimstone explained, that it would be prudent if there was a few months of an extension agreed so that due diligence would be carried out to introduce the appropriate controls for public procurement.

JP rejected Mr Brimstone's analysis completely on the Red Sky issues and when asked as the DUP representative to consider and reflect the party position to the Board so that they understood and were aware of the Minister's position, she was not happy to do so.

6. Did you instruct Mrs Palmer to vote against the proposal to vote against the termination of the Red Sky contract?

Mr Brimstone disagreed with this and said it was not as the BBC Spotlight programme had outlined. However, he did realise that his defence was weak if he couldn't recall exactly what was said, even if it was 2 years after the telephone conversation. Mr Brimstone stated that of 14 members; her vote was only 1 and that if Mr Brimstone wanted to have changed the vote he would have had to call the remaining 13 Board members. Mr Brimstone did say that he couldn't recall asking JP to vote one way or the other but that he had wanted JP to reflect the Minister's position to the Board. Mr Brimstone said that had he spoken in the manner alleged he certainly would have recalled that, it would not be the language he would use.

7. In the course of the conversation, and specifically in relation to an alleged request not to vote for the termination of the Red Sky contract, did you say to Mrs Palmer, and I am quoting here from what Mrs Palmer said in the BBC Spotlight programme, "we need you to do that", or words to that effect?

Mr Brimstone couldn't recall the exact words that he used. However in general conversation it would not be the type of language that he would use. Rather than use the word 'we', he would have referred to 'the party'. Therefore Mr Brimstone did not agree that he said that phrase.

8. In the conversation, did you also say to Mrs Palmer, "*the party comes first*", "*there is no point on you being on the Board if you are not prepared to do what you are asked to do*", and "*the party comes first*", or words to that effect?

Mr Brimstone denied making the specific statement 'the party comes first'. This was Mr Brimstone's first conversation with JP and it would not be the type of language that he would use. Mr Brimstone couldn't recall exactly what he did



say but as it was their first conversation he would have outlined the context of the phonecall and introduced himself as she may not have known who he was. Mr Brimstone also denied saying 'there is no point on you being on the Board if you are not prepared to do what you are asked to do' as this would not be something he would have said.

9. What do you recall Mrs Palmer saying in response?


Mr Brimstone wanted to set out to JP what the reason for the call was and why it was necessary. The DSD Minister Nelson McCausland (NM) had told the Chair of the NIHE his position and wanted it shared amongst the other members. However NM had no confidence in the Chair and it was known that officials in the Department also had no confidence in him. It was evident to the Minister that the NIHE Board was also weak and dominated by the Chair.

Therefore the call to JP was to ensure that the Minister's position was reflected to the Board members. Mr Brimstone said that initially he was unaware of who Red Sky were that he just noticed the vans with signage however just prior to joining the Department it had become a big issue for elections in East Belfast.

Mr Brimstone said that we felt it was important to contact JP about the issue. The concern was that NIHE Board was not considering all the views and that JP's purpose was to provide balance. JP sounded agitated and aggrieved, there was clearly an issue that she had against our views on how NIHE dealt with contracts and the NIHE Chair.

10. How did the telephone call end?

Mr Brimstone said that the telephone call ended as any normal conversation would and he had no concerns following it and wasn't aware that he had been out of order. JP was not in tears or displaying any emotion but it was clear that she was not for changing her mind or deviating from her decision and she seemed to take issue with our views on NIHE.



Mr Brimstone said that in the nature of his job he is required to be robust. On times there have been occasions where he thought he may have went a step too far. Mr Brimstone has a personal belief system where on reflection, if he had of thought to himself that he may have pressed an individual on issues too far, he would have ensured that he cleared the air afterwards. If he ever had left any individual in tears then he would have ensured that they were aware that it was not his intention to have done so. On this occasion he did not feel that this happened.

11. Who requested the NIHE to arrange an EGM for the 5th July? Did you play any part in requesting that the NIHE hold this meeting? Did you ask anyone to set the meeting up?

Mr Brimstone denied having any involvement in the organisation of the meeting or asking anyone to set the meeting up. Mr Brimstone said that he recalled that the Chair of the NIHE had told the Minister the EGM was scheduled for the 5th July. Therefore it was instigated by the NIHE. It was a single agenda item to discuss Red Sky's contract continuation. The main issue for the Minister was not Red Sky, but the fact that contracts would be handed over to other contractors if the decision to terminate the Red Sky contract was taken. Although there were initial concerns about job losses, this would not be a major issue either as TUPE Regulations would apply and the jobs would have been handed over to the other contractors.

In the meeting that Red Sky had with the Minister it was identified that the NIHE had systems in place which would permit double payments and these system issues would also be operating for the other contractors. All contractors therefore could be having the same issues which wouldn't fix the problem. This was the Minister's main concern.

The Spotlight programme concerned alleged political interference in the NIHE vote. Mr Brimstone declared that everything was above board and that there was nothing wrong or improper that took place. The telephone conversation was not about the vote and again Mr Brimstone stated that he didn't know the NIHE Board and if it was

solely about the vote, he would have been calling all of the members if that was the case.

12. Have you spoken to Mrs Palmer about this issue subsequent to the telephone conversation?


Mr Brimstone stated that the first conversation he had with JP since the telephone conversation took place in DUP headquarters in Dundela Avenue, Belmont Road, Belfast at a meeting with Peter Robinson (PR) as party leader, Jeffery Donaldson (JD) as the local MP, JP and himself. Gavin Robinson (GR) attended as a notetaker. This was in the last week of July or the first week of August of this year.

13. What happened at this meeting? Did you feel that the meeting resolved the issues?

PR had called the meeting to talk through the issues as JP had appeared distressed on the television programme. Mr Brimstone mentioned that there had been media speculation around an apology. As a SPAD, Mr Brimstone does not make public statements and is expected to be in the background and the party did not have any issue with what he did. The only apology that there may be would be if he unintentionally caused any distress to someone; it would not be for what he said. Mr Brimstone stated that if he had caused a lady any distress then he would apologise and felt it was prudent to do so if he had inadvertently caused this.

Mr Brimstone stated that at the beginning and end of the meeting he had shook JP's hand and, also on the way out he had discussed other matters with her. However he did not feel that the matter was dealt with or finished.

Mr Brimstone said that JP would not have done a BBC Spotlight television programme without a particular agenda and he wasn't convinced that the issues had been brushed aside following the meeting. Someone going to journalists to discuss what had happened following the meeting proved this. Mr Brimstone said that his job role was to carry out the direction of the party. Mr Brimstone would have been very



surprised if at any time he was asked to break the law or lie in any way. If however he did inadvertently cause upset or distress he should and would apologise.

The minutes of the meeting by GR were not shared however Mr Brimstone himself has his own record of what was discussed.

14. What were the next steps agreed at this meeting?

Following the meeting, it was agreed that there would be a public statement released. However currently there is no agreed statement but its still the intention to release this. Mr Brimstone stated that he had agreed the parts relevant to him as has PR. It seems that JP has some issues around the opinions that are attributed to her and the statement is with her to agree. The statement is being dealt with by the party leader.

Mr Brimstone summarised this interview by agreeing that there was a telephone call to AE to get JPs number on the 1st July. The call was to discuss the Red Sky issue but he didn't instruct or advise JP on how to vote, if this had of been the case he would have called the other Board members. It was simply to have JP reflect the party position and provide balance. The quotes that have been suggested that Mr Brimstone used were not in his nature, rather he would have used different language than those alleged. There was a meeting to clear the air and the apology to JP was if she had taken offence at Mr Brimstone's tone, not specifically around his phrases.

a. Have you anything further you wish to add?

Mr Brimstone had nothing further to add.

I agree that these minutes are a fair and accurate summary of the investigation meeting held on 02 September 2013

Signed: 

Print Name: [REDACTED]

Date: 11/SEPT/2013

[REDACTED]
[REDACTED]
9

Minutes of Meeting – Investigation Interview

Nature of Meeting	Fact Finding Investigation Meeting
Date	09 September 2013
Venue	6 th Floor Conference Room Royston House
Time Start	10.40am
Time End	11:20am
Time of adjournment/ recommencement	

<u>People Present:</u>	
Name of witness	Allan Ewart
NICS Department	DFP
Name of investigating officer	[REDACTED] Director of HR NICS
Name of note-taker	[REDACTED] CHR, NICS
Others present	No

[REDACTED]

Allan Ewart Fact finding investigation meeting, 09 September
2013, Royston House, 10.40am

Questions Allan Ewart

1. Did Stephen Brimstone (SB) telephone you on 1st July 2011 to seek Jenny Palmer's (JP) contact details? Where were you at the time?

Mr Ewart confirmed that SB had called asking for JP's number. He was on a ministerial visit with Sammy Wilson at the Boyne Centre attending an event.

2. Did you invite JP to the event? Did you travel together to the event on the 1st July 2011?

Mr Ewart advised that JP was there in a different role and that they had travelled separately.

3. How long have you known JP?

Mr Ewart has known JP for some time, they were both elected onto the Lisburn city council at the same time in 2005 and has sat beside her in this capacity for 6 - 8 years. Mr Ewart would consider that he and JP are good friends.

4. On receiving the telephone call, what did you say to SB and what then did you do?

Mr Ewart stated that SB asked for JP's phone number. Mr Ewart informed SB that they were at the same event and that JP was sitting opposite him. Mr Ewart passed the telephone over to JP to continue the conversation.

5. Was JP within earshot of you when she spoke to SB? How long did the conversation seem to last?

[REDACTED]

Mr Ewart stated that JP took the telephone and walked away. Mr Ewart did not see where she went or heard what was said on the telephone. Mr Ewart knew that JP was attending with her husband but didn't think that he had accompanied her for the phone call. JP seemed to have been gone for around 5 minutes and returned the telephone to Mr Ewart.

6. In recounting to you what SB is alleged to have said to JP in the call [in relation to the alleged request not to vote for the termination of the Red Sky contract], did JP say that SB had used some or all of the following phrases, or words to that effect:
- *we need you to do that;*
 - *the party comes first; and*
 - *There is no point on you being on the Board if you are not prepared to do what you are asked to do.*

Mr Ewart stated that it was difficult to recall what had happened as there had been so much subsequent discussion about the phone call since it was made and particularly since the television programme. Mr Ewart did recall that JP did not seem to know who SB was when he made the phone call.

Mr Ewart stated that the Department of Social Development was not happy with the performance of the Chair of the Northern Ireland Housing Executive (NIHE) Brian Rowntree (BR) and that JP was very close with BR. Mr Ewart said that JP seemed to have confidence in BR whereas others did not.

When JP handed back the telephone following the conversation she did not seem upset. Mr Ewart did say that she may have acted concerned however. Mr Ewart stated that JP never mentioned the alleged statements and Mr Ewart did not recall JP mentioning that she was being asked to vote against the termination of the Red Sky contract or that she needed to follow the party line.

7. Did you see the BBC Spotlight programme? What was your reaction to hearing JP using these phrases on the programme?

Mr Ewart said that on the television JP seemed emotional. The TV programme was worse in that it portrayed the event worse than what it was. JP had not reacted that way following the phone call with SB, there was no emotion. Mr Ewart indicated that JP had put her reputation on the line and was surprised with the television programme content, remarking that he wouldn't have done it.

Mr Ewart stated that if he had of been in SB's position he would not have said those things and that there was no way Mr Ewart would have done that as the role of the Special Advisor was not supposed to use political influence. Mr Ewart then remarked that he wasn't saying that SB actually had said what was inferred.

8. What was JP's mood after the telephone call? Did she comment to you on the tone of SB's language used in the call?

Mr Ewart stated that he wasn't in JP's company after the phone call and that he travelled back in the ministerial car. From the conversation Mr Ewart had with JP, the impression he got was that JP did not know who SB was.

9. Did JP seek advice from you as to how she should take the matter forward within the party, or did she seek a reaction to the call from you?

Mr Ewart said that JP asked that she would like to speak to someone about the phone call. Mr Ewart couldn't recall when exactly JP had asked him who she could contact, whether it was that day or a few days later. Mr Ewart suggested that JP contact Jeffery Donaldson (JD) as they had both come to the DUP from the UUP at the same time. Mr Ewart said that at the time, JP had seemed concerned but was unsure why.

Mr Ewart advised JP to meet JD as she was not confident to meet with people as the whole issue was around BR. JP stated that the Minister and BR were at loggerheads and JP didn't know what to do about Minister's request. Mr Ewart knew that JP was close to JD so he suggested she should go and see him.

10. I understand that you subsequently accompanied JP in a meeting in Stormont with DUP Press Officers. When was this meeting? Who was there?

Mr Ewart said that the meeting occurred before the BBC Spotlight programme. JP had approached Mr Ewart last year before Christmas and told him that the BBC wanted to do a programme on the Housing Executive. Mr Ewart advised JP not to do it and that she should go and meet the party people who were involved with the press before making a decision.

Mr Ewart set up the meeting and accompanied JP where they met John Robinson the DUP's Director of Communications and Timmy Johnson, Peter Robinson's SPAD who appeared towards the end. Mr Ewart couldn't recall what happened at the meeting but remembered the advice being that JP should not do the BBC programme.

Mr Ewart said that concerns around SB's conduct may have been raised by JP but that the DUP officials did not seem annoyed with this. The DUP officials advised JP against the television programme saying that it would open a can of worms.

11. Other than this meeting, have you had any further discussions with JP about this matter?

Mr Ewart said that he and JP never discussed the matter except when JP informed him that the programme was coming up. Mr Ewart said that he hadn't heard anything except what was in the media and he assumed that there was a meeting with the first Minister. On the way to the interview Mr Ewart stated that he heard Eamon Mallie on

the Nolan Show (9th September 2013) talking about the fact that no apology had been released as yet.

I agree that these minutes are a fair and accurate summary of the investigation meeting held on **09 September 2013**

Signed:

Print Name:

Date:




6

Points of Disagreement

Meeting Date: 09 September 2013

(Please list and reference any points that have been included in the summary minutes which you do not feel are an accurate reflection of the meeting and what was said on the day.)

For example a date may have been incorrect or a technical term not recorded correctly, or someone's name.

e.g. 1. Point 2.3 – I attend the meeting on 23rd November, not 24th November

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.



9.

10.

Etc

I agree that ***except for the points listed above*** the minutes are a fair and accurate summary of the investigation meeting

Signed:

Print Name:

Date:

A large, dark, irregular redacted area covering the signature and name fields.

8



Northern Ireland
Assembly

Appendix 6

Committee Approach - Procedural Fairness

Committee Approach – Procedural Fairness

Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions

Committee Approach – Procedural Fairness

Background

In preparing for its inquiry the Committee commissioned legal advice on a number of issues including procedural fairness.

The Committee discussed the advices and recognised the need to be cognisant of the issues they raised as the inquiry proceeded and to seek further legal advice as and when required.

Members will note that the primary aim of the inquiry is to make findings of fact which will inform consideration by the Assembly of matters set out in the Committee's terms of reference. The Committee's findings of fact may carry considerable weight particularly where they make findings about the actions of individuals. The Committee should be aware of the potential impact any findings may have on the reputation of an individual and seek to ensure that procedural fairness is afforded to individuals who will be affected by its findings.

Procedural fairness is a shorthand for a number of steps which may be taken to ensure fairness in an administrative decision-making process.

In seeking to minimise the risk of legal challenge to the Committee's findings and procedures and ensure witnesses are treated fairly, the Committee is asked to agree the following approach as to how the inquiry will be conducted.

Proposed approach to ensure procedural fairness

The Committee's role is to consider and evaluate evidence in the context of its agreed terms of reference and report its findings to the Assembly. It is suggested that —

- I. All witnesses should be made aware in advance of their appearance before the Committee of the issues on which they are likely to be questioned and (where necessary) there should be disclosure of evidential material sufficient to enable the witness to give meaningful and focused answers.
- II. Witnesses should be advised in advance of any meeting at which an oath or affirmation will be required.
- III. Witnesses should be afforded a fair opportunity to put their own cases and to correct or contradict any statement which is inconsistent with evidence previously received by the Committee.
- IV. Where the Committee's findings refer adversely to an individual, and those findings are to be included in the Committee's report to the Assembly, the Committee may wish to give that person the opportunity to comment on those findings before publication.
- V. Members should declare any interest relevant to proceedings.
- VI. Where a member of the Committee has evidence relating to the inquiry this should be shared with all Members prior to any witness session.
- VII. The Committee should not normally consider any evidence provided anonymously.

The Committee also agreed the following two additional points after considering the letter of 10 July 2014 from the Departmental Solicitor's Office:

- Where the Committee's findings refer adversely to an individual, and those findings are to be included in the Committee's report to the Assembly, the Committee may wish to give that person the opportunity to comment on those findings before publication; and
- The Committee believe that should a witness be accompanied by a legal adviser there is the potential for proceedings to become adversarial and this is a situation the Committee would seek to avoid. The Committee is also unaware of issues related to this inquiry which would necessitate the attendance of legal advisers. However, the Committee accepts that witnesses may apply to the Committee to be accompanied by a legal or other adviser and to consult any such adviser in the course of the meeting.

Comments from Stephen Brimstone - 13 April 2015

Dr Kevin Pelan
Committee Clerk
Committee for Social Development
Room 284
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

13 April 2015

Dear Kevin

SDC INQUIRY – PHASE 3 DRAFT REPORT

I refer to your letter dated 27 March 2015 enclosing the draft report in relation to Phase 3 of the Committee's Inquiry and seeking any comments I may have on the content. Having considered the draft report in detail, my comments are as follows:

I believe it is important to clarify my role as a Special Adviser which the Code of Conduct acknowledges adds a political dimension to the advice available to Ministers and also provides Ministers with the direct advice of experts in their professional field, while reinforcing the political neutrality of the permanent Civil Service by distinguishing the source of political advice and support.

My role as a Special Adviser is to help the Minister on matters where the work of the Department and the Minister's party responsibilities overlap and it would be inappropriate for permanent civil servants to become involved. I provide advice from a standpoint that is more politically committed and politically aware than would be available to the Minister from the Civil Service. Part of my role also involves "devilling" for the Minister from a party political viewpoint and includes liaising with the Minister's party to ensure that the Department's own policy reviews and analysis take full advantage of ideas from the party.

However, in considering now the content of this draft report, I do not believe that this has been taken into account or considered in relation to the comments, conclusions and recommendations of this draft report.

In relation to the references in the draft report to my phone call to Councillor Palmer in July 2011, I have already advised the Committee in my evidence of the context of the phone which was:

"The Minister became aware that a party councillor was one of the four political appointees on the Housing Executive Board, and that was Councillor Palmer. It was discussed and the Minister felt that it would be useful for me to contact Councillor Palmer to ensure that she was fully aware of his concerns, ahead of the special board meeting on 5 July, and that she could ensure that his concerns were accurately reflected to the wider board at the meeting on the following Tuesday. I undertook to

contact Councillor Palmer.”

Further, in relation to the Committee’s comments on my “*proclaimed inability to recollect details of this phone call*” I provided as full an account as possible of this phone call bearing in mind this happened some years ago in July 2011. I stand by the consistent evidence I have given to the Committee in this regard. Hansard records my detailed recollection as:

“I called Councillor Allan Ewart, who sat on Lisburn City Council with Councillor Palmer, on the Friday morning before the Tuesday board meeting, to ask for contact details for Councillor Palmer. He happened to be at an event with Councillor Palmer and suggested that I could speak to her there and then. I had no issue, and he passed the phone to Councillor Palmer. I introduced myself and explained my role in the Department with Nelson McCausland. I had never met Councillor Palmer and assumed that she did not know anything about me either. I outlined the issue regarding the Red Sky contract, including some of the allegations that had been made publicly. In light of the special board meeting in the next week, which we had been made aware of, at which the board would vote on terminating the Red Sky contract, I said that the Minister wanted me to brief her on his concerns and ask if she would reflect those concerns to the board in an accurate fashion.

The Minister did not have confidence in the then chairman to accurately reflect his position — his concerns about the handling of contracts by senior management and the chairman of the board — to the wider board. He believed that he had received no convincing assurance from the chairman that the Red Sky issues were not prevalent among other contractors, particularly adjacent contractors who would automatically get the Red Sky contracts post-termination, if the board voted that way. My recollection is that I outlined how the Minister wanted a clear and transparent tendering exercise, as had been indicated in writing to the chairman, which would also allow time to get assurances that the same Red Sky issues were not happening with other contractors as well. There was no issue with terminating the Red Sky contract early, due to the issues identified, but the Minister wanted the termination to take place when there could be some degree of assurance that the new contracts could be properly delivered. To date, he had not been given any evidentially based assurance by the then chairman. Councillor Palmer, from my recollection, became very defensive regarding the then chairman and strongly contested any suggestion that he was not carrying out his duties appropriately. Councillor Palmer went on to tell me about her role on the board’s audit subcommittee and said that, in her view, all of the fault lay with Red Sky, the issues were solely limited to Red Sky and the management of the Northern Ireland Housing Executive was appropriately managing the response maintenance contract.

I responded by asking about Leeway Maintain, another response maintenance contractor in Belfast about which the housing Executive internal audit department was raising concerns regarding overcharging etc — the same issues as with Red Sky. Councillor Palmer refused to accept that. I again asked that she reflect the Minister’s concerns to the board. She said she could not do that. I believe that the phone call ended after this point, and I did not pursue the issue with Councillor Palmer any further.”

In relation to the Committee’s conclusion “*that, in calling Councillor Palmer, Mr Brimstone was attempting to influence the board’s discussions*” I fail to see how the

Committee came to that conclusion when the evidence provided demonstrated that Councillor Palmer was only one member on a Board of ten members, of which eight members attended the Board meeting on 5 July 2011.

I also refute the Committee's comments in relation to my evidence in that I was deliberately evasive to the point of obstructing the Committee. I would remind the Committee that I have given evidence voluntarily on five occasions in relation to this Inquiry and the report itself acknowledges that I was formally advised by the Chairperson that it was within my rights not to answer any question.

Finally, as Special Adviser to the Minister for Social Development I am mindful that, whilst the Housing Executive, as a Non Departmental Public Body, operates with some independence under its Board, the Minister is nevertheless, ultimately accountable to the Assembly for the Housing Executive's efficiency, effectiveness, activities and performance.

Yours sincerely

Stephen Brimstone

Letter to Stephen Brimstone - 27 March 2015



Committee for Social Development

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Our Ref: CSD/022/2013/3/AM

27 March 2015

Mr Stephen Brimstone
Department for Social Development
Lighthouse Building
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Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

Dear Stephen,

Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions

The Committee agreed at its meeting on 26 March that, in line with its procedural fairness guidelines, it would issue the enclosed confidential draft report to you so that you have an opportunity to comment on it.

The Committee will conclude on its Inquiry on 16th April 2015 and as such, I would ask that you provide any comments you wish to make by 5PM Monday 13th April.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan
Clerk, Committee for Social Development

Letter to Nelson McCausland - 27 March 2015



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Assembly

Committee for Social Development

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Our Ref: CSD/022/2013/3/AM

27 March 2015

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Yours sincerely

Kevin Pelan

Dr Kevin Pelan

Clerk, Committee for Social Development



Northern Ireland
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Appendix 7

List of Witnesses

List of Witnesses

Mr Nelson McCausland	Former Minister for Social Development
Mr Stephen Brimstone	Department for Social Development – Special Adviser
Mr Will Haire	Department for Social Development – Former Permanent Secretary
Mr Michael Sands	Department for Social Development – Deputy Director of Housing
Mr Jim Wilkinson	Department for Social Development – Director of Housing
Ms Heather Cousins	Department for Social Development – Former Deputy Secretary
Mr Declan Allen	Northern Ireland Housing Executive – Head of Procurement
Mr Clark Bailie	Northern Ireland Housing Executive – Former Acting Head of Corporate Services
Mr Stuart Cuddy	Northern Ireland Housing Executive – Former Acting CEO
Mr Raymond Kitson	Northern Ireland Housing Executive – Former Repairs Inspection Unit Manager
Mr Colm McCaughley	Northern Ireland Housing Executive – Former Director of Housing and Regeneration
Mr Paddy McIntyre	Northern Ireland Housing Executive – Former Chief Executive
Dr John McPeake	Northern Ireland Housing Executive – Former Chief Executive
Mr John McVeigh	Northern Ireland Housing Executive – Head of Internal Audit
Mr Brian Rowntree	Northern Ireland Housing Executive – Former Chairperson
Councillor Jenny Palmer	Lisburn City Council
Mr Peter Cooke	Red Sky – Former Managing Director



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Appendix 8

Draft report which was not
agreed by the Committee

Minority report to Inquiry arising from BBC N.I. Spotlight programme – compiled by DUP Members of the Committee.

Reasons for the production of a minority report

1. Over the course of phase 3 of the committee's inquiry it became clear that there were divergent views on the appropriateness of the actions of Minister McCausland and his Special Adviser (SpAd), Stephen Brimstone, in relation to the termination of the Red Sky response maintenance contracts in 2011 by the Northern Ireland Housing Executive.
2. Indeed, following the BBC Spotlight report of 3rd July 2013 there was a debate on the 8 July 2013 which indicated the possible future direction of the inquiry, when a number of members appeared to have already drawn conclusions as to the appropriateness of the Minister's actions and that of his SpAd.
3. The allegations made against the Minister Nelson McCausland and his SpAd Stephen Brimstone rested, in part, on the accusations levelled in the programme by Councillor Jenny Palmer.
4. On reflection it is concerning that every party involved in the inquiry and production of the Committee report, appeared to have reached a judgment based on the comments made in the Spotlight programme at this early stage and before any evidence from the people involved was ever heard at Committee. These comments include:

- Caitriona Ruane (Sinn Fein)

“Although the minister and his adviser have sought to dispute Jenny Palmer's version of events about improper political influence, anyone who has seen the programme will draw their own conclusion about who is most believable”

- Jim Allister (TUV)

“anyone who watched Councillor Jenny Palmer should have no difficulty in deciding who is telling the truth.. She exuded integrity and honesty in everything she said. What a contrast with the cutting and running SPaD”

- Mark Durkan (SDLP)

“the revelations by Spotlight its allegations and insinuations of political corruption – at least that and possible criminality” I have no reason to doubt what Jenny Palmer said is true”

- Ross Hussey (UUP)

“Allegations of political interference have been made and the evidence is clearly there fromJenny Palmer whose integrity is clearly intact”

Given the positions adopted before the inquiry ever began it is little wonder therefore that the Committee agreed such a one-sided report, the conclusions of which ignored much of the evidence which the Committee received.

5. Subsequently, during this last phase of the inquiry, it was evident by the nature of the questioning during the evidence sessions, the analysis of written submissions and related material and, ultimately, the conclusions reached by the Committee on this matter that these views had persevered.

6. Following consideration of the Committee's draft report a minority of Committee members agreed that it did not in any way reflect their views and that attempting to amend the report to incorporate these views was simply incompatible with the majority view. Indeed, this became clear when attempts to have a series of amendments made to the Committee's initial draft report to achieve what the minority believed to be a more balanced report were consistently rejected by the Committee.
7. Therefore, following discussion at Committee, it was agreed that the most appropriate way to reflect the minority view was to produce a minority report which the Committee would then consider for inclusion as an appendix in its report.
8. At its meeting of 16 April 2015 the Committee considered the draft report and agreed that it should be included as an appendix to its report.

Key Issues

9. As with the Committee report this minority report considers the central issue to be whether the actions of the former Minister in relation to the decision of the NIHE to terminate the Red Sky contracts in 2011 were appropriate.
10. Related to this, and referred to in detail in the Spotlight programme, were the actions of the SpAd in contacting Councillor Palmer prior to the special meeting of the NIHE board on 5 July 2011, which had been called to review the decision to terminate the Red Sky contracts.

Context of the Minister's Actions

11. In considering the central issue it is important to understand the context underpinning the Minister's actions.
12. The decision to terminate the Red Sky contracts had been taken by the NIHE Board on 13 April 2011, roughly a month prior to the Minister's appointment.
13. Following his appointment he quickly became aware of concerns regarding the termination of the contracts. These were raised by East Belfast MLAs and the MP for the area who wrote to him voicing their concerns about the potential job losses in their constituency as a result of the termination of the contracts. In his evidence to the Committee Mr McCausland stated:

"this issue emerged within weeks — in fact, within days — of my arriving in the Department in May 2011. I wanted to have an opportunity to explore what the options might be so that, if there was a better option, it could be considered by the Housing Executive."
14. In addition to potential job losses there were also concerns that the reasons for termination of the Red Sky contracts, overcharging and poor workmanship leading to a loss of trust and confidence, might also be present in other contractors including those to whom the contracts would be transferred under TUPE arrangements. Mr McCausland told the Committee:

"I wanted to be sure that we were not in a position where the Housing Executive removed contracts from one company and then transferred one of those contracts to another company in which similar issues might exist. No other company had been subjected to the same level of forensic scrutiny as Red Sky. There had been some work done on Leeway Maintain by the RIU and in view of the whistle-blowing evidence about it, but I wanted to have an assurance that we were not in a position of simply moving contracts from a company where there were issues — certainly, serious issues — to another company where there might also be serious issues".

15. It is within this context that we considered whether the actions of the Minister were appropriate.

Meeting with East Belfast MLAs

16. The Committee considered evidence concerning a meeting Minister McCausland attended with East Belfast MLAs and representatives of Red Sky (the former Managing Director and former Independent Financial Director of Red Sky on 27 June 2011). The Committee noted that Departmental officials had advised him against attending this meeting which was to discuss the Red Sky contract, on the basis that it was an on-going contractual matter between the Housing Executive and Red Sky.

17. Much has been made of the Minister's decision to attend this meeting given his officials' advice but the Committee also heard that the Minister received legal advice which said that

"Ministers may meet with whom they choose."

18. On this point the Permanent Secretary also noted that

"legally a Minister has an absolute right to attend such meetings. They just need to be very clear about what they can say and what their role is".

19. **It is therefore our view that the Minister in agreeing to this meeting acted within the parameters of his office.**

Advice to the Minister regarding the meeting of 27 June 2011

20. We note that DSD officials provided a briefing for the Minister in advance of the meeting which included advice and a 'line to take'. The advice related to being cautious in relation to 'contractual matters'. The note of the meeting also states that the Minister indicated early in the meeting that:

"these matters were currently with the Administrator and the Housing Executive"

21. This statement clearly reflected the advice contained in the briefing provided to him by officials. In oral evidence Mr Wilkinson (DSD) stated that the brief to the Minister was very clear in relation to contractual matters and that:

"At the meeting, it was very much the Minister listening to reps"

22. At the same evidence session the Permanent Secretary said:

"You might argue that MLAs often bring up those issues of concern to Ministers....the Minister felt that it was his duty to listen.....There was no decision at that meeting. The Minister listened and heard a concern, but there was no action at that meeting ..."

23. **It is therefore clear that the Minister followed the advice of the officials during this meeting.**

Action by the Minister following this meeting

24. Following concerns raised at the meeting of 27 June 2011, and subsequent meetings with NIHE on 28 and 30 June 2011, Minister McCausland wrote to Mr Rowntree, then Chairman of the NIHE Board, on 1 July 2011. In his letter he confirmed that he had asked officials to carry out a forensic investigation of other contractors to ensure that the problems identified in Red Sky were not also evident in other contractors.

25. The Permanent Secretary in fact wrote to the Committee on 4th November 2014 to clarify that:
- “there were two contract related response investigations in relation to another company dating back to October 2010. This information was provided at that time by the Housing Executive who also advised that a preliminary investigation suggested that there were serious issues to be addressed and a full investigation was underway”*
26. In written evidence the former Chairman of the NIHE, Mr Rowntree, also referred to ongoing reviews in line with RIU and NIHE audit reports. In oral evidence he stated:
- “Red Sky was not the only contractor under investigation, but it was the most difficult contractor in its relationship with the organisation and its adherence to standards. They were way ahead in negative indicators, and, as an organisation, we were duty-bound to respond.”*
27. **We therefore believe that the Minister’s actions requesting a forensic examination was an appropriate and a prudent step to seek assurance that that other firms, including those to whom these contracts were to be transferred, were not equally guilty of overcharging and, through this to ensure value for money service provision to tenants of the Housing Executive.** To do otherwise may have led to accusations that he had acted irresponsibly.
28. The Minister also went on to request that the Chairman put to the Housing Executive Board that the termination date of the Red Sky contracts should be extended beyond 14 July 2011 to allow an open procurement competition, subject to the administrator stating that it could continue. He stated that this contract should be for a period of six months or until new contract procedures could be put in place.
29. It has been suggested that the Minister’s actions represent a deliberate attempt to give a private organisation advantage in a procurement exercise. However, it must be emphasised that the Minister did not instruct nor direct the NIHE to rescind its decision to terminate the contracts. Rather the Minister *requested* that his view - that the termination date be extended - was put to the NIHE Board for consideration and discussion with the Red Sky administrator.
30. **In addition it should be noted that the Minister referred to the contracts ultimately being awarded via an open procurement competition. We note that such a competition would be administered and decided upon solely by the Housing Executive and therefore, in proposing this approach, the Minister could not be considered to have sought to confer advantage on any organisation.**
31. It is important to note Mr Rowntree’s letter to the Permanent Secretary on 1 July 2011 in which he expresses concern “about the road you are pushing us down” and threatening legal action if the Permanent Secretary did “not step back and withdraw DSDs involvement.” This clearly suggests that the Chair believed he was being formally directed by the Minister to take action to extend the Red Sky termination notice which he did not believe the NIHE should take.
32. However, on this specific matter the Permanent Secretary told the Committee that he met with the NIHE Chairman on 4th July 2011, the day before its special board meeting, to ensure that he was clear about exactly what the Minister was requesting:
- “It was not a direction that he had been given, it was a request to look at this issue and put it to the board, and it emphasised the point about the role of the administrator”.*
- “It seems to me that he has a right to ask the board, but he does not have the right to direct it”.*
33. The Minister in evidence to the Committee made it clear that rather than direct the board his letter to the Chairman on 1 July “made a request” and “that the role of the Department with regard to a public body under its ambit is one which needs to be carefully considered” and he made the point that “when the Housing Executive took its decision to terminate the Red Sky contract he endorsed that decision.”

34. Furthermore, this request was subject to the Red Sky administrator being able to continue to service the Red Sky contracts during the proposed extended period.
35. **It is therefore clear to us that this represents a Minister acting objectively, pragmatically, in the best interests of tenants, the public purse and to protect jobs, in a short period of time after assuming office and before the termination notice for the Red Sky contracts had expired.** Indeed we believe that for him to have done otherwise would have been to neglect his duty.
36. In relation as to whether the comments made by the Minister regarding the establishment of a new company were compatible with the advice given to him by DSD officials, Mr Wilkinson stated:
- “The key thing is that the Minister expressed his view at the time”.*
37. And when asked if that was compatible with the line the Minister had been advised to take, Mr Wilkinson said:
- “I followed up why that was the Minister’s view and what he would like to achieve. We were quite clear that the decision making would be entirely a matter between the Housing Executive and the Administrator”*
38. **Therefore, not only was the Minister transparent about his actions and the reasons for taking them, it is clear that the final decision regarding the extension of the termination date was not actually his to take but lay entirely with the Housing Executive and the administrator.**

Phone call between the Special Adviser and Councillor Palmer

39. Although the terms of reference of the inquiry refer to the actions of Ministers, considerable time was given to the consideration of the actions of the Minister’s special adviser, Stephen Brimstone. This related specifically to the phone call made by Mr Brimstone on 1 July 2011 to Councillor Palmer.
40. However, based on the evidence heard by the Committee the only undisputed fact about this phone call was that a phone call was made.
41. There was, and is, no agreement between Councillor Palmer and Mr Brimstone as to the nature or content of the phone call, nor is there any third party corroboration to support either’s account of the phone call.
42. Reference was made during the oral evidence sessions to the inability of Mr Brimstone to recollect the details of this phone call but we accept that it is reasonable to expect that a person may not recollect the detail of a phone call which lasted between 5 and 10 minutes, and which took place almost 4 years ago.
43. We also note that while Councillor Palmer’s account is clear and has been consistent this does not, in itself, make it accurate. Indeed the Committee heard evidence from Councillor Palmer in which she said that Michael Sands told her that Mr Brimstone had informed him of having made the phone call. However, Mr Sands subsequently denied he said this to Councillor Palmer.
44. However, there is no doubt that she was made aware of the Minister’s views on this matter and that the Minister did not have confidence in the NIHE Chairman to adequately convey these to the board.
45. We would also point out the futility of requesting a single member to vote against the board’s position on termination of the contracts given that there are ten members of the board and a single vote would not have changed the board’s ultimate decision.

46. While we do not make judgment on either account we simply highlight this to point out the potential impact the passage of time may have on the veracity of the evidence provided by individuals on this specific issue.
47. It could be argued that the more honest answer to a question about a conversation which took place nearly two years before would be to say that recollection was hazy at best which is the position adopted by Mr Brimstone.
48. **We therefore believe that any conclusions on this matter made on the basis of the evidence heard by the Committee are little more than speculation.**

Issue of Overpayments

49. The Committee in its report on phase 2 of the inquiry referenced a number of previous reports which painted a picture of the Housing Executive as an organisation which exhibited significant failings in governance and contractual management.
50. The Minister explained the position clearly in his evidence to the committee when he was challenged about his querying of the NIHE decision to terminate the Red Sky contracts. He told the committee
- “The issue of overpayment was one which the NIHE had been partly responsible for because of the chaotic way in which it dealt with maintenance payments and its failure to address these issues.”*
51. Evidence from the Permanent Secretary, noted above, indicates that the issue of overcharging for work was not confined to Red Sky. It is also clear that the Housing Executive’s approach to the management of maintenance contracts also contributed to overcharging. It is therefore of concern that despite senior NIHE officials knowing this it was only Red Sky who were subject to the ultimate sanction of termination of contracts.
52. Mr Cooke, the former Managing Director of Red Sky, said in his oral evidence to the Committee:
- “What we could find — I can freely agree with this — was that there was massive difficulty in working those contracts in the way that they were written. Nobody was doing that. In fact, the Housing Executive had instructed a number of variances to make them operational, and the vast bulk of what was claimed as overcharging was actually down to contractors doing exactly what they had been told to do.”*
53. Peter Cooke of Red Sky in his evidence explained that the NIHE had various codes for specific jobs but that often the types of jobs that actually had to be done did not fall clearly into a specific cost code. He said, for example, that if a garden had to be cleared there was a certain code which applied regardless of whether it involved lifting one item of rubbish or a lorry load of rubbish. In order to address the disparity in the expected work with that which actually had to be done, contractors were simply told by the NIHE to claim for more than one garden if the standard charge did not cover the work done. This approach while convenient to ensure payment was made, presented problems when the official work requested and the actual costs were audited and found not to match e.g. ten gardens were claimed for when only one was cleared.
54. This left the transaction looking dubious and resulted in the appearance of overpayment and fraud by the contractor.
55. The surprising thing is that the NIHE management had not sought to remedy this problem but instead left contractors to bear the consequences.

56. Mr Cooke went on to say:

"I believe that Red Sky was doing exactly what everybody else was doing, what they were being told to do and what was being signed off properly by maintenance officers across all the districts."

57. On allegations that Red Sky had been treated unfairly by NIHE Peter Cooke, said

"I would use the word "victimisation", but I cannot give you the reason behind that because I do not know."

58. In relation to the possibility that the issues apparent in Red Sky may be present in other contractors the former Acting Chief Executive, Mr Cuddy, said:

"...Our problem was that that might have been the case — as it turned out, it was the case — but two wrongs do not make a right. We were quite happy to say, "Yes, we will look at those contracts and if there are overpayments and overcharging, we will deal with those as well".

"..The problem was Red Sky was off the Richter scale; it stood out because of the scale of this. And the scale was identified through the forensic report."

59. The response of the Chairman, Brian Rowntree, when the Minister asked for other contractors to have their accounts subject to forensic examination, bearing in mind that the NIHE had admitted that more than one firm had been identified as overcharging, was quite disturbing. Mr Rowntree expressed his concern about the Minister becoming involved in operational matters of the NIHE and wrote to the Committee stating:

"The minister requested that his department seek to nominate other contractors for further review and these nominations were not totally in line with the prioritisation and work plans of the NIHE."

60. It is our view that in the face of its own evidence that other firms were involved in overcharging these responses are a damning indictment of the complacency which existed at the top of the NIHE and pose questions as to why one firm was pursued whilst investigation of the same behaviour were not a priority for the NIHE or part of its work plan. We believe the opposition of the NIHE to the forensic examination requested by the Minister reflected a desire by senior NIHE officials to hide the incompetence which the NIHE had displayed in dealing with maintenance contracts over a number of years even though it was known that the system was open to abuse.

61. The Committee also heard that there was significant media interest in Red Sky. The Committee received evidence from Mr Rowntree that in seeking legal advice on the Red Sky contracts the NIHE has provided its QC

"with reports that we had made and the various political commentaries that had taken place. We copied him in on political commentaries from the media around the Red Sky intervention. There were numerous political commentaries around Red Sky."

62. Subsequent legal opinion received by the NIHE from its QC referred to "strong political pressures to terminate the Red Sky contract" and advised that in light of this any termination of the contract might be successfully challenged.

63. Mr Rowntree went on to give the opinion that the 'political pressures' were from political individuals and from the parties:

"...People in west Belfast; some people in Lisburn; people in Poleglass"

64. Indeed Mr Cuddy, the then Acting Deputy Chief Executive, referred to a previous intervention by the former Minister, Alex Attwood, who queried why the Red Sky contracts could not be terminated. When asked about how this differed from Minister McCausland's approach Mr Cuddy said

"The difference was that the civil servants at a senior level who accompanied the Minister to those meetings were echoing to the Minister the advice that we were giving. Where there is bad press around a contract, we can understand any Minister saying, "For goodness' sake, what are you doing? Are you not going to get this sorted out? I want this contract terminated". We put the view logically to him that there were certain steps that we had to take...."

65. However, at a fundamental level we regard it as unusual that a query by one minister, regarding the termination of the Red Sky contract, is not viewed by NIHE officials in the same way as Minister McCausland's query regarding the extension of the contracts.

66. The former Managing Director of Red Sky, Mr Cooke said

"The media, and the BBC in particular, enjoyed bringing Red Sky to the front as often as possible. I cannot believe that, when I went to Red Sky, I had never heard of it before. That is because when you start reading this stuff afterwards, you find that it was clearly an issue that stirred the public imagination for some considerable period of time. I was not aware of it other than that it appeared in the media to be a bit of a political football. I know nothing that justifies why that would be the case, other than perhaps that it was a company from east Belfast winning a contract in west Belfast. However, that is supposition."

67. **This media focus on Red Sky coupled with representation by political representatives may have contributed to allegations of sectarianism underpinning the focus on Red Sky and the perception that it had been 'singled out' despite evidence that other firms had engaged in similar practices.**

68. There is no dispute that there were attacks on Red Sky workers, political pressures from Sinn Fein representatives, and former SDLP ministers; a worker moved from his position in West Belfast and other contractors under investigation were not treated in the same way. We believe in any other circumstances questions about whether there was a sectarian motivation would not have been dismissed out of hand as they were by the NIHE and the media.

69. It is evident that Red Sky was not the only contractor under investigation indeed Brian Rowntree acknowledged that Red Sky was "not the only contractor under investigation" yet it was the only one to face such draconian action by the NIHE.

Conclusions

70. There were serious allegations of political interference in Housing Executive contractual matters made against the Minister and his special adviser in the BBC Spotlight programme aired in July 2013.
71. Over this phase of the inquiry the Committee received hundreds of pages of evidence and heard from a number of witnesses; with some witnesses giving evidence on several occasions and four witnesses giving evidence under oath or affirmation.
72. Our analysis of the evidence, written and oral, leads us to conclude that the actions of the Minister in requesting the NIHE to consider in conjunction with the administrator, an extension to the termination notice of Red Sky, were solely in the interests of the tenants of the Housing Executive.

73. The evidence shows that the issues pertinent to Red Sky were known to exist in other contractors and the Housing Executive was aware of these. In this context the Minister's decision to conduct a forensic analysis of other contractors and seek to have the termination notice of the Red Sky contract extended until this analysis was completed was both logical and practical.
74. We would also emphasise that it is our view that the Minister never at any time sought to confer advantage to a private organisation in any public procurement exercise by requesting that an extension to the termination date be considered. This is supported by the evidence heard by the Committee which was told that the decision to extend the contracts rested on the ability of the administrator to continue to service the Red Sky contracts during the extension period. When the Minister was advised that this could not be facilitated by the administrator he replied to the Housing Executive
- “...the Housing Executive should proceed to the termination of the Red Sky contract on 14 July and move forward with the proposals to re-assign contracts to adjacent contractors ...”*
75. We are therefore content that the Minister did not seek to formally direct the Housing Executive using an Article 10 Direction of the Housing (Northern Ireland) Order 1981 and in fact ultimately supported the Housing Executive's decision to proceed with the termination of the contracts.
76. Having raised the issues which became the subject of this inquiry we can only express our outrage at the arrogant refusal of the BBC Spotlight producer to attend the committee and answer questions about the content of the programme. We find it hypocritical that a programme which demanded transparency from the Minister refused to have any scrutiny of its content and claims choosing rather to hide behind the cloak of editorial independence.



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Appendix 9

**Phase 3 Supplementary
Evidence – Documentation
regarding investigations into
Red Sky Group (2006 – 2010)**

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Correspondence

Appendix 3

Request to Treat as Confidential



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

Headquarters Fraud Unit
Strandtown Police Station
1-5 Dundela Avenue
BELFAST
BT4 3BQ

Telephone No: (028) 90650222
Extension: 15108
FAX: (028) 9090 1760
e-mail: fraud@psni.police.uk

Mr David Moss
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

Please reply to: D/Chief Inspector

Your Reference:

Our Reference:

Date: 28 September 2006

Dear *David*,

RE: RMU AUDIT – BELFAST DISTRICT 7

First and foremost, thank you for the excellent reports you forwarded in respect of this matter. Following on from our meeting and discussion on Tuesday 26th September 2006 I have now had the opportunity to review the latest report. While appreciating the time and effort that has gone into this report I would submit that there is little in the way of evidence (to a criminal standard) to link a specific individual to a criminal offence. However, it is clear from the report that there are areas of concern on both sides of this contractual arrangement that would in my opinion undermine any potential criminal investigation from the outset. It is however the lack of evidence, despite a comprehensive audit of the case, linking an individual to a specific offence that suggests to me this matter is not suitable for a criminal investigation at this juncture.

In conclusion, as there is insufficient evidence to establish an identifiable individual who could be held to account for their criminality and in the circumstances I would not be of a mind to consider this case suitable for investigation by the Police Service of Northern Ireland, Fraud Unit. I do however appreciate the work that has gone into this case and this is not wasted as the findings/recommendations contained with the latest report can be implemented to ensure this situation does not develop again.



Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Request to Treat as Confidential

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Cherry', written in a cursive style.

J CHERRY
D/C/Inspector
Head of Fraud Unit

Correspondence

Request to Treat as Confidential

Personal, Professional, Protective Policing



20 December 2011

Mr Larry Cheshire
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

Dear Larry

RE: RED SKY

We recently attended a meeting with ACC Harris and the Chairman of NIHE, Brian Rowntree, in relation to the investigation previously referred to this Branch relating to Red Sky.

During our discussions we agreed that there had been systematic errors within NIHE in relation to accounting and supervision procedures relating to contracts for maintenance involving Red Sky.

The matter was the subject of extensive enquiries by this Branch. As a result of the enquiries I am of the opinion that there is insufficient evidence of criminality to warrant further investigation and I do not believe that the systemic failings in the NIHE would be conducive to achieving the burden of proof required in a criminal prosecution.

In the circumstances no further action will be taken by this Branch.

If you require any further information please do not hesitate to contact this office.

Yours sincerely

ROY McCOMB



Detective Chief Superintendent
Head of Organised Crime Branch
Knocknagoney House, 29 Knocknagoney Road, Belfast, BT4 2PP
Tel (028) 9082 2400

9.2 Red Sky Correspondence to NIHE February 2008 (with clarification provided in 2014)

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WWW.REDSKYGROUP.COM

For the attention of Mr P McIntyre
Chief Executive Officer

Housing Centre
NIHE
2 Adelaide Street
BELFAST
BT2 8PB

Our Ref FC/LG/001

25 February 2008

Dear Paddy

BELFAST 1 AND 3 REGIONS

I am corresponding directly with you in good faith to seek an amicable resolution to the existing hostilities between our respective organisations particularly since it is very clear to me that neither party to this unhappy saga will achieve a singular happy outcome.

As a previous Board Member of the NIHE and a former external appointee to the NIHE Audit Committee, I regard my period of time with NIHE with some pride and I wish to emphasise the esteem in which I hold the Executives and Board of NIHE for their outstanding contribution to our society in Northern Ireland. Of the many testaments that I could make about the NIHE I would consider that fairness and equality are the touchstones of NIHE practice, which mirror that of the Red Sky Group especially with regard to equal opportunities for all of our employees.

BELFAST

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Red Sky Group Limited
Company Registration Number: 02227777 Registered Office: Grove Street East, Belfast, BT5 5BH





Consequently Paddy you will understand the competing tensions that I have experienced as a result of our Board's decision to mount a legal challenge against the NIHE's purported Termination Notice in relation to District's 1 & 3 formally issued on 17 December 2007.

I thought it might be helpful to provide to you some brief observations which I consider are material to the ongoing situation.

1. You will recall that Norman Hayes, our Managing Director, and myself met with you and Colm McCaughley on 14 November 2007 regarding the West Belfast Contract with the principal objective to achieve a mutually acceptable resolution to the difficulties with this contract.
2. You will recollect that it was agreed by all in attendance that the Contract would be re-configured to take into account the impact of existing backlogs and other remedial works that required attention.
3. It was further agreed that this process should commence immediately with the necessary input from both NIHE and Red Sky representatives who had direct accountability for the West Belfast Contract.
4. Subsequent to this meeting, a further meeting was convened on 19 November 2007 between the NIHE and Red Sky Management at which an Improvement Plan was agreed. An obvious precondition - which in my view was entirely appropriate - was the necessity to establish "Workshops" to assist the achievement of a mutual and successful outcome against which relative KPI's and other related measurement tools could be established, agreed, and monitored within pre-agreed timescales.



5. Regrettably, it appears to me that the subsequent failure of NIHE to engage with Red Sky on the basis of the pre-agreed Workshop process has contributed to the current unhappy situation.
6. You will of course agree that our executives had fully attempted to engage with NIHE representatives in good faith to implement the agreed arrangements and were diligently working towards fulfilling the Improvement Plan, introducing various Divisional initiatives, including new structures, revised working practices, and allocating additional management resources. Both I as Chairman, and Norman Hayes as Managing Director, were taking an active role in monitoring progress daily. However it was very evident from an early stage that, contrary to our agreement with you and Colm on 14 November 2007 and despite our best endeavours NIHE appeared to be working towards a different agenda of terminating the Red Sky contract for Districts 1 & 3.
7. It was with great disappointment therefore that we received the NIHE formal communications of the 12, 13 and 17 December 2007 (enclosed herewith). It is apparent to me and our legal advisors that these letters demonstrate *mala fides* on the part of NIHE in the context of my observations at 6 above. *
ie HC-06
13th cannot
be covered
8. You will be aware that despite the failure of NIHE to initiate the Workshop process as previously agreed, Red Sky has significantly reduced the backlog level in relation to this Contract since the time of our initial discussions. I would stress that we have relevant data which validates this observation and further, we also have data demonstrating that the extent of other contractors backlogs in other Districts far exceed those for which Red Sky are condemned yet it would appear that Red Sky have been "singled out" by NIHE to receive a purported Termination Notice in the circumstances.



9. Additionally Paddy, the serving of a purported Termination Notice has not only been extremely detrimental to the financial status of Red Sky Group but also materially damaging to its reputation and credibility in both the Public and Private sectors.
10. In the circumstances you will appreciate that Red Sky will be seeking compensation.
11. I would also point out that since receipt of the purported Termination Notice, Red Sky has received a deluge of apparently superfluous requests/communications from the West Belfast District Office which, we consider are designed primarily to increase friction and hostility between our two organisations. In the circumstances it seems to me to be difficult to derive any other conclusion other than that such actions are designed to be discriminatory on the grounds of the perceived political background of Red Sky Group.
12. Consequently current tactics emanating from NIHE representatives are creating ill will, hostility and grievance within the content of our dedicated labour pool and this strategy only serves to further our contention that there has been an orchestrated campaign to achieve NIHE's ultimate objective of removing Red Sky Group from Districts 1 and 3. The extent of the significant increase in the escalation of queries, remedial requests, backlog updates etc, represents a further indication of NIHE's unreasonable demands in relation to this Contract. Of greater concern to us is the result of such actions which have led to not only local West Belfast staff but also other operatives resigning their positions within our Group further compounding our operational proficiency and capability.



13. I would also stress that, in addition to the legal challenge mentioned above, we have also been advised that it is open to Red Sky to consider additional legal recourse against named NIHE individuals.

Paddy, as stated above I wish to seek an amicable resolution and this letter is not intended to be either intimidating or threatening. Rather, I hope you would acknowledge the communication as a very honest endeavour on my part which, in settling out some observations one can avoid having to "wash-dirty-linen" in public – albeit if that is the course we must take, so be it. I believe that our respective positions would be best served if we were to agree to meet at earliest possible time in an attempt to end hostilities and to seek mutual accommodation reflecting each parties position.

Finally Paddy this private correspondence is in recognition of my having worked with you and Colm over many years, particularly in a respectful and professional manner, and I believe we can, with our respective inputs, achieve a satisfactory outcome to this unhappy situation.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read "Frank Cushnahan", written over a horizontal line.

Frank Cushnahan
Chairman
Red Sky Group Ltd

Copy to : Mr B Rowntree, Chairman - NIHE

FRANK CUSHNAHAN

The Chairman
Committee for Social Development
Northern Ireland Assembly
Room 284
Parliament Buildings
Belfast
BT4 3XX

16 October 2014

Dear Chairman

Your Ref: CSD/022/2013/3/SK

I am in receipt of your letter of 6 October 2014 seeking my response to a specific extract from a letter received by the Northern Ireland Housing Executive in February 2008 indicating that "one can avoid having to wash dirty linen in public – albeit if that is the course we must take so be it".

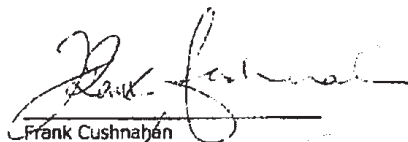
A very significant period of time has elapsed since early 2008 but my best recollection of the event leading to such inclusion in that letter of February 2008 was in recognition of a possible Red Sky legal challenge to claims of NIHE for suggested overcharging.

My purpose in writing to NIHE at that time was to seek, as best I could, a mutual and reciprocal arrangement between the respective counter-parties thus avoiding the likelihood of a legal dispute which would require a significant incurring of time, effort and, most importantly potentially very high legal costs for both parties. Hence the observation as to "washing dirty linen within a public domain" where one party would make contentious statements in Public Court proceedings and the other party would counter on a "tit-for-tat" basis.

The "wash-linen-in-public" comment was therefore used as a "figure-of-speech" reminding NIHE that whatever the contentions were it was best to seek resolution without resorting to very public and very expensive High Court action(s) where no-one has control of the outcome.

I hope that the foregoing observations are helpful albeit as I have already indicated, they relate to a period in early 2008.

Yours sincerely


Frank Cushnahan



9.3 Documentation regarding Red Sky complaints about NIHE staff November 2008 & November 2010

Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Appendix 4

Craig Ross
Sally
18/11



www.redskygroup.com

Colm McCaughley
Director of Housing & Regeneration
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
Belfast
BT2 8PB



17th November 2008

Dear Colm,

I am writing to confirm meeting with yourself, Frank and myself on 5th December 2008 at 11am, as arranged with your assistant. As we progress towards Christmas it is hoped the 'Season of Goodwill' will extend to relationships between Red Sky Group and West Belfast District Office, and our first KPI meeting, scheduled for Wednesday, should be a good indicator of this!

On a positive note, we much appreciate the assistance that has been provided by both Ross Campbell and Peter Craig over the past few months, and we hope that Peter will progress the jobs prior to 22 October, as agreed, and bring all outstanding issues to satisfactory closure in a timely manner.

It is also considered necessary to re-iterate our deep concern in relation to certain personalities who remain working in the West Belfast District Office, and we trust appropriate actions will be taken to address this in the near future.

We look forward to meeting you on the 5th December,

Yours sincerely,

Pauline Gazzard

Pauline Gazzard
Group Development Manager

BELFAST 100, Victoria Road Belfast, BT2 8PB Tel: 01234 123456 Fax: 01234 567890 www.redskygroup.com	DUBLIN 100, Victoria Road Dublin, D01 Tel: 01234 123456 Fax: 01234 567890 www.redskygroup.com	SCOTLAND 100, Victoria Road Glasgow, G1 Tel: 01234 123456 Fax: 01234 567890 www.redskygroup.com
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Red Sky Group Limited
100, Victoria Road, Belfast, BT2 8PB, Northern Ireland. Tel: 01234 123456



Northern Ireland
Housing Executive

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB

STRICTLY PRIVATE & CONFIDENTIAL

Will Haire
Permanent Secretary
DSD, Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

1st November 2010

Dear *Will*

Project Young

I enclose for your attention the following documentation duly marked "Restricted" in accordance with current legal opinion and the directions of the Consultant's ASM and Heather Dunwoody (CMD).

- CMD Consulting – Final Report in connection with the Review of the Relocation of [REDACTED]
- Management Statement and Response in connection with the Relocation of [REDACTED]
- ASM Red Sky Report (2010) – Full version including detailed appendices
- 5 copies of ASM Report (2010) Red Sky excluding detailed appendices
- Management Response to ASM Red Sky Report (2010)
- NIHE Response Maintenance Improvement Plan as agreed by our Board on Wednesday, 27th October 2010

I draw your attention to a number of key factors in relation to the above documentation;

- CMD Consulting Final Report in connection with the re-location of [REDACTED] – this Report draws no firm conclusion due to the lack of firm evidence to support the allegations made by [REDACTED] that he was relocated because of his personal interventions to improve the Red Sky West Belfast contract.

However you will note from the Management Response that the Board is insisting on a greater degree of transparency and accountability in all future relocation matters and greater involvement of our Personnel Department.



Telephone 03448 920 900 Fax 028 9043 9803



INVESTING IN PEOPLE

The Board has also agreed that Management seek to meet again with [REDACTED] and also his Union representative.

- ASM Red Sky Report (2010) – Final Report. The Board noted the detail of the Management Response and the acknowledgement of requirements for immediate improvements to our Inspection and Response Maintenance processes. The detailed Response Maintenance paper is a positive development and will improve the present arrangements and bring about significant accountability to the inspection and contract management regime.

This will be further supported by the establishment of the Compliance Unit lodged within the Corporate Services Directorate. A detailed paper in connection with this new Unit will be forwarded to your office separately.

The ASM Report highlights the following significant issues for consideration;

- ***Actual evidenced findings; (All job categories) See Para (4.21) – Main Report***

Anomalies value £40,419 across all contracts held by Red Sky

- ***Actual evidenced sample 472 work orders***

Summary of Recoupment

Evidenced Anomalies – (Defined Categories)

See Para (5.29) – Main Report

£33,779 actual payment irregularities

£27,809 of these inspected by N.I. Housing Executive

We also refer you to Section 5.27 of the Report where ASM note 53 SOR items (Duplicate Codes) requiring further detailed investigation by N.I. Housing Executive. The Board has agreed to investigate these in full and report back within three months.

We will also pick up on Section 5.28 of the Report – NIAO Matches (3 jobs in total) as part of the further investigation work by N.I. Housing Executive.

The Board is also preparing a detailed internal review in connection with the performance of staff responsible for the supervision and management of this contractor. This will be passed to Personnel for comment and relevant action.

The Board has acknowledged the shortcomings in respect of the Red Sky Response Maintenance contract and Mr Clark Bailie, our Director of Finance is to write to Red Sky to seek an initial overview meeting and share data findings only at this stage with their office.

The Board did seek legal opinion as to the possible termination of the Red Sky contracts but Senior Counsel opinion did highlight the risk with such an immediate course of action. The Board agreed to defer this matter and review the position at the conclusion of the additional investigation process. In any event the contract will expire on 31st March 2011.

It is my opinion that significant work has been done in relation to this contractor and that the combined organisational response will set in place a more robust governance framework.

Kind regards.

Yours sincerely



Brian Rowntree
Chairman

9.4 NIHE/DSD correspondence March 2009

**Housing
Executive**

Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
Belfast BT2 8PB

Chief Executive
P McIntyre MCIH
www.nihe.gov.uk

Telephone 028 9024 0588 • Fax 028 9043 9803
Minicom: 0845 6504381
Email: Paddy.McIntyre@nihe.gov.uk



Mr Barney McGahan
Deputy Secretary
Department for Social Development
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast BT7

10th March 2009

Dear 

RED SKY WEST BELFAST CONTRACT

1. Please find attached a report on the Red Sky West Belfast contract. It is one of five such contracts held by Red Sky on a four year basis from March 2007.
2. There have been difficulties with this contract from the outset. Initially this was due to poor performance on the contract by Red Sky. The other contracts have been delivered satisfactorily.
3. This has developed over time to one where relationships between our local staff managing the contract and Red Sky have declined and have become fractious. The Centre have had to intervene to resolve disputes under the contract.
4. NIHE took steps to terminate the contract but on legal advice could not complete this and were required to give Red Sky time to deliver on the contract. Performance has improved but further improvements are required.
5. Reference has been made to a report commissioned from Cooke and Kettle (commissioned in 2007 and completed in February 2008) by the Housing Executive in relation to the clearing of communal areas in flats of which there are a significant number in this area. It should be noted that the value of this part of the contract is about 5% of the total contract value. Following receipt of the Report and following a review of it by Technical Services staff, including Contract Claims staff, a percentage of invoiced payments were made. The view was taken that the contract specification could never have been delivered because of the poor condition of these communal areas from the outset. The specification has since been revised.

6. The Minister asked a number of questions regarding Audit involvement in this contract. (email 4th March). The response is:
- The Housing Executive did not call in the Audit Office
 - The Public Accounts Committee Office received a letter from the West Belfast Housing Community Network.
 - The letter was referred to the Northern Ireland Audit Office (Local Government Branch) which is responsible for External Audit of the Housing Executive.
 - I have spoken to John Buchanan who has advised me that the letter referred to the award of tender, invoicing and payment, quality and overall performance on the contract.
 - John has advised me that he plans to deal with this as part of his normal annual audit of contract as part of his Annual NIHE Audit Programme.
 - They have taken a number of files for examination.
 - The Cooke and Kettyle file was not one of those identified for review.
7. The detail of the Minister's enquiry has not been made known but if there are any issues not covered by the NIAO review, I am happy to refer it to them.
8. The Cooke and Kettyle report was an internal report. The Minister referred to the local office Maintenance staff being stood down. This leads me to conclude that the source of the issues raised is internal. I would urge caution in this matter, given the allegation and counter allegations which has been a feature of this contract.
9. I should point out that the internal staff concerned legal representatives have now written to us concerning correspondence with RSG. Clearly this moves the position to a further formal stage.

I trust this is of help to you. I have sent the full lever arch Cooke and Kettyle Report. This is the original file and should be returned as soon as possible.

Yours sincerely



P McIntyre
Chief Executive

**BRIEFING NOTE
RED SKY GROUP LTD**

Red Sky Group Ltd (RSG) has 5 response maintenance contracts:

Belfast District 1 & 3	-	West Belfast
Belfast District 2	-	East Belfast
Belfast District 6	-	North Belfast
Belfast District 7	-	South Belfast
Newtownabbey District 1 & 2		

All of these contracts, with the exception of West Belfast, are running satisfactorily.

The West Belfast response maintenance contract commenced on 5th March 2007. It has a 4 year term. The contract quickly ran into problems and in response to requests for assistance the HQ Contracts Policy Unit (CPU) were brought in. An assessment of the problems revealed a number of difficulties.

- Performance - Key Performance Indicators (KPIs) for West Belfast were consistently poor in contrast to the other response maintenance contracts which RSG held.
- Relationships - Between key staff in the District Office and RSG were problematic from the outset. Initially caused by some RSG staff.
 - Relationships with Public Representatives - Because of initial poor performance there was a lack of confidence by community/public representatives in RSG.
- Contract documentation - There were inconsistencies in interpretation which led to argument. For example the application of dayworks in the contract was causing problems.


- Specification
 - There were problems with interpretation of specifications in the contract. There were issues around the cleaning; and replacement of door locks. This was significant because this involved a large number (60+) of flats in West Belfast.

- Contract Administration/project management
 - There were significant backlogs in jobs issued but not complete. A number of factors seem to have been involved: contractor performance, relationships and the inability to agree interpretation of contract documentation and specification. This impacted on the cash flow of RSG.

In the light of this the Housing Executive decided it should terminate its contract with RSG by giving notice under a particular clause which gives either party the right to do so without giving reason. This notice was served on 17 December, 2007 and was to take effect after 3 months.

During this period of notice RSG challenged the Housing Executive's action on a number of fronts including discrimination because they were perceived as a Protestant firm. Following further legal opinion the Housing Executive agreed to set aside the termination notice and enter into a Standstill Agreement between the parties.

The basis of the legal opinion was that the Housing Executive should demonstrate reasonable cause for termination of the contract. Whilst there was evidence of poor performance there were other difficulties in connection with contract administration, backlogs in payments and relationships which might have been relevant. In particular RSG claimed to have widespread evidence of attempts by NIHE staff to undermine RSG and that the basis of these attempts were discriminatory. It was considered that the Housing Executive's position in the matter of termination was not robust.



The Standstill Agreement, which was set for a period of 6 months, would allow both parties to productively re-engage in an attempt to resolve the difficulties. It was intended that the Standstill Agreement would be administered by a group of senior staff from both parties: the Senior Executive Group. The Housing Executive was to be represented by both Central and District staff but, in the event, District staff refused to participate. The District Office staff took the view that RSG were making unacceptable complaints against them.

During this time the Housing Executive central staff engaged Cooke and Kettle, an external consultant, to undertake a review of the cleaning of flats in West Belfast. This report, referred to as the "Cooke Report", found that cleaning was not being done consistently to the specification and that there was a need in some of the blocks to have a one-off comprehensive clean to bring the blocks to a state where they could be regularly maintained to a satisfactory standard.

During the Standstill Period the cleaning specification in the contract documentation was reviewed. This included a further inspection on site. A significant number of the blocks of flats were in a poor condition. There were instances of extensive graffiti, vandalism, defective door entry systems, defective landlord lighting and other health and safety work needed. There was evidence too of recent cleaning, which in the context of some of the blocks, was satisfactory. Since the cleaning of most of the blocks was undertaken on a weekly rota unsuccessful jobs were quickly overtaken by new orders issued the following week. This anomaly exacerbated the whole business of administration around the issue of cleaning and illustrated a weakness in administration. (In short by the time of inspection and dispute it was ready for cleaning again).

It was concluded that the specification for cleaning in the contract documentation needed to be refined and a new specification has since been drafted for the use in new contracts. RSG has agreed to adopt this specification now in its contract for West Belfast.

In addition the Senior Executive Group agreed to pilot the refurbishment of the communal area of the poorer block of flats. This involved the removal of graffiti, repairs to stair treads and doors and full repaint. This was very successful and received good tenant feedback. A recent review shows that it is being maintained in good order. Such works are necessary before a regime of straightforward cleaning can be put in place.

Indeed, in the light of feedback from this the Housing Executive propose further work in other blocks of flats and move the cleaning programme from a weekly to a monthly regime. Additional cleans between cycles may be ordered as necessary.

Outstanding invoices for cleaning were dealt with by payment of a percentage against specific time periods (ie 60% before March 2008; 90% after March 2008). This was based on the fact that cleaning had taken place but was ineffective in some of the blocks because of their condition. (This was supported by the photographic evidence supplied in the Cooke report).

The payment rates were based on:-

- the understanding that "basic" cleaning had taken place
- the condition of the blocks (and the extent to which this made compliance with the specification extremely difficult)
- observations by HQ staff on the operation of the cleaning contract and
- the difficulties with the specification itself.

The Standstill Period was to allow both sides to work together in an effort to improve all aspects of running the contract. Paramount was the issue of relationships. However, because the District Staff refused to engage little progress on the day to day administration was achieved. District Office staff did engage with non executive RSG staff but this did not assist RSG with their objective in raising standards by dealing with issues.

RSG did show significant improvement in their level and quality of service, they introduced a new management structure and relocated other members of staff who the District Office claimed were difficult. This proved to be a turning point in the performance of RSG. On this basis the Standstill Agreement was set aside on 17th September, 2008 to allow normal re-engagement.

It is evident that problems still persist in this contract. Some of the issues identified in December 2007 remain:

- Performance
 - Whilst some improvement on the KPI returns has taken place there remains much room for improvement.
 - This does not sit easily with the other

- 4 response maintenance contracts held by RSG.
- Relationships
 - There is still much evidence of poor relationships and lack of trust between the parties.
 - There is evidence too of stress related absenteeism on both sides.
 - Some District Office staff have again taken issue with RSG; and engaged legal advisors to represent their interests.
- Specification
 - Advice/instruction has been issued on the adams-rite locks issue.
 - The issue of the cleaning is being resolved at Centre. The specification has been changed and the frequency of cleans moved out to a monthly basis and a separate programme of refurbishment of blocks has been agreed.
- Contract Administration/ Project Management
 - The District Office requested assistance in reducing the backlog of work and payments in the system.
 - It was agreed that Central colleagues would take the backlog from 23rd October and deal with it leaving the District Office to administer recent work.
 - The significant backlog has been reduced considerably and payments made after appropriate checking.

- Other issues of long overdue payment for works ordered and complete have been actioned – e.g. work undertaken by Leeway Maintain as substitute for RSG

The current position of the contract has been reviewed.
The main issues are as follows:

- KPIs
 - More improvement is required but this needs both parties working together.
- Communication
 - There are weekly meetings between the parties but there appears to be a backlog of instructions requested on queries raised by RSG.

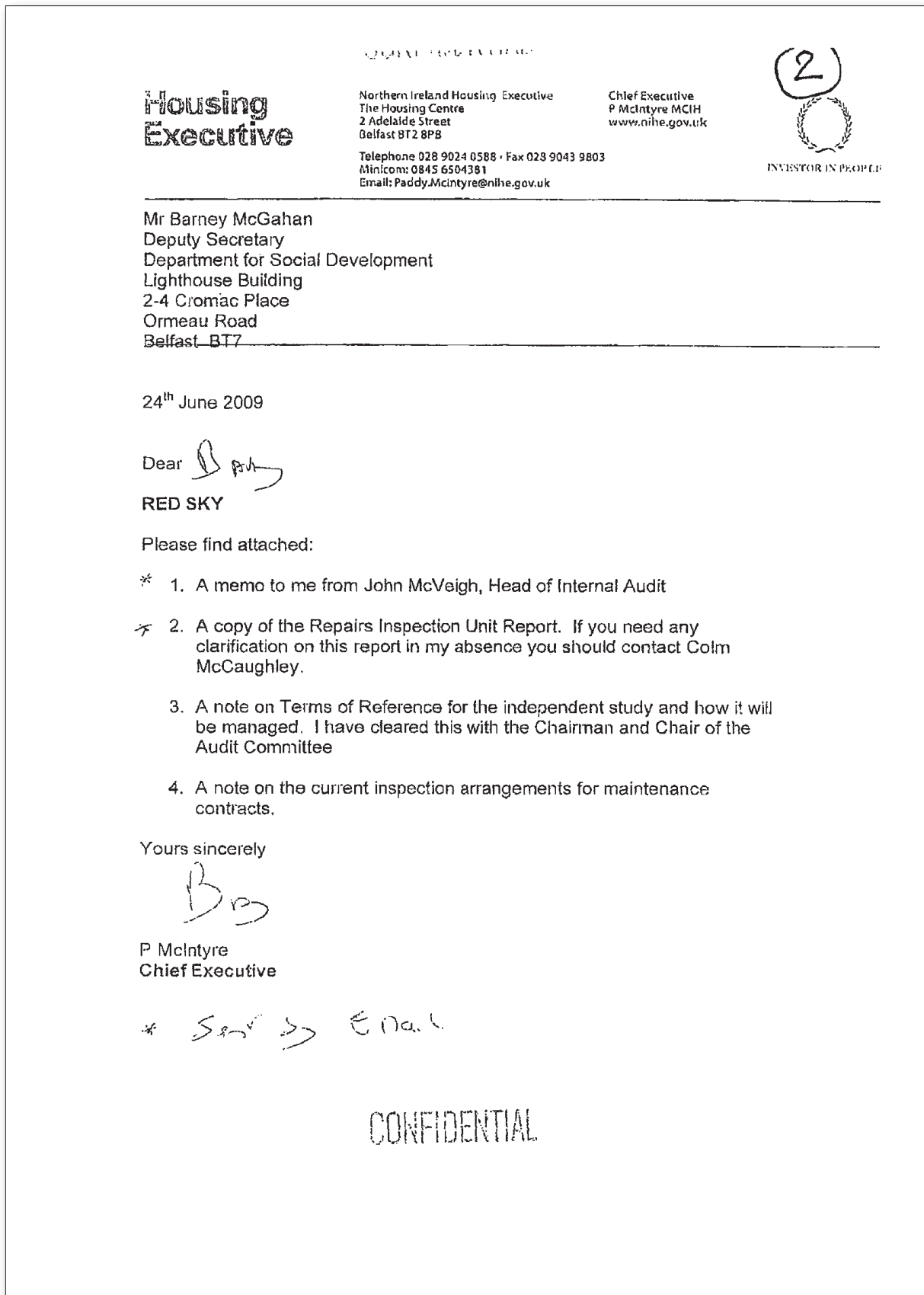
RSG still complain about cashflow problems caused by delays in payment. Minutes of KPI meeting on 21 January, 2009 indicate that between £157,000 and £114,000 is outstanding according to RSG and West Belfast respectively.

- RSG observe that the performance of West Belfast is much slower than the other Districts where they had contracts. West Belfast Office argues that this is more of a consequence of jobs either out of time or not up to the required standard by RSG.

Conclusion

Issues around performance, specification and documentation are being overcome albeit slowly. A more fundamental problem with relationships remains.

9.5 Repairs Inspection Unit memos and report draft 2 – 24 June 2009



CONFIDENTIAL

DISTRICT/CSU MAINTENANCE INSPECTION SYSTEM

Pre-Inspection

- 100% COT
- Requests for replacement policy items
- Self-help requests
- Requests by CSU

Post-Inspection

- High Risk
 - 100% COT
 - 100% Adaptations
 - 100% Policy Items
 - 100% Jobs >£750
- Medium Risk
 - 50% >£100 <£750
- Low risk*
 - 6% <£100

(A special exercise on a 2000 sample was undertaken in 2008)

RIU MAINTENANCE INSPECTION SYSTEM

See attached

CONFIDENTIAL

RIU Pro-Forma Sample Report

Inspection Sample Number _____

District Office _____

Priority of jobs sampled:		No. of orders issued by District		
		Large >10,000	Medium 7,500-10,000	Small <7,500
Emergency Maintenance Building	EMB	3	2	2
Urgent Maintenance Building	UMB	10	7	5
Routine Maintenance Building	RMB	15	12	9
Emergency Maintenance Electrical	EME	3	2	2
Urgent Maintenance Electrical	UME	8	6	4
Emergency Maintenance Plumbing	EMP	3	2	2
Urgent Maintenance Plumbing	UMP	8	6	4
Routine Maintenance Plumbing	RMP	5	3	2
Routine Disabled Adaptations	RDA	2	2	2
Shower Adaptations	AD1/ADP	3	3	3
Change of Tenancy	COT	15	15	15
TOTAL		75	60	50

Number of jobs issued within the previous 12 month period _____

Type of Inspection

Previous 2008/2009 6 th Round inspection score	Policy & Procedures Compliance Assurance	Site Inspections
Not Satisfactory	2 x Full Inspection in the year	1 x Full Inspection 1 x reduced inspection if applicable
Limited	1 x Full Inspection per year	1 x Full Inspection per year
Satisfactory Substantial	Focus only on the areas of non compliance in the 6 th round	1 x full inspection

CONFIDENTIAL

Signed _____
RIU Officer

Date _____

RED SKY INVESTIGATION

PAYMENTS

- The client for the project is the NIHE through Chief Executive and advised by the Audit Committee.
- Chief Executive to draft Terms of Reference and consult with HIA, NIAO and Chair of Audit Committee. Draft copy attached.
- Panel chaired by Director of Corporate Services/Deputy Chief Executive to be set up to select Consultants by quotation. Consultant to be asked to submit proposals and costs for investigation. The Panel will consist of the Director of Finance, Director of Design and Property Services and Head of Procurement. Panel to set out criteria for selection.
- Consultants should be either Quantity Surveyor or Building Surveyor with contract management experience and with no previous involvement in these contracts.
- The Liaison Officer should be the Head of Internal Audit who will liaise with relevant officers as necessary.
- Draft final report to be submitted to the Chairman, Chief Executive, Chair of Audit Committee and NIAO before finalisation and submission to the Audit Committee.
- Head of Research to establish the appropriate sample of Inspection and be responsible for extraction of the sample.
- Director of Design and Property Services to provide an estimate of costs and timescales.
- Director of Personnel and Management Services to advise as to the appropriate procurement process for the Consultant.
- Head of Legal Services to provide advice as to whether or not and when Red Sky should be advised and consulted.

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PROCUREMENT

- Construction Procurement Department to be asked to review the Procurement process including Red Sky's eligibility to tender in the light of previous experience. Procurement Manager to be Liaison Officer for this (separate) project.

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TERMS OF REFERENCE FOR INDEPENDENT STUDY

“To establish the extent to which Red Sky comply with the terms of contract in terms of the quality of work and tenant satisfaction the accuracy of invoicing and the quality and accuracy of the controls undertaken by Maintenance personnel. Precise sampling methodology to be determined by the Research Department”.

The outputs from the investigation will be:

- a) The extent measured (in volumes and cost) in absolute and percentage terms of work invoiced and completed.
- b) The extent measured in absolute and percentage terms of compliance with the contract specification (precise narrative description of any failure along with the photographic evidence must be supplied, if available).
- c) The extent to which any case identified in a) and b) was post-inspected by Maintenance staff or was the subject of a post inspection by RIU in their reports.
- d) Recommendations as to what actions should be taken in respect of their findings specifically and generally.
- e) Benchmarking against Best Practice in Contract Management

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Page 1 of 2

Mcveigh, John

From: Mcveigh, John
Sent: 10 June 2009 11:33
To: McIntyre, Paddy; McCaughley, Colm
Cc: Campbell, Ross; Kilson, Raymond
Subject: RIO Report - Red Sky - Draft 2
Sensitivity: Private

Paddy / Colm,

Having read the 2nd draft of the RIU report into Red Sky, I have concerns over some of the changes made. Specifically:

1. Paragraph 7.3 – I don't see where these figures are coming from.
2. Paragraph 7.4 – column 4 of the table "Total value of work orders inspected" has a total in draft 2 of £246k. In draft 1, the total is £108k. The effect of this change is to lower the % of overpayment in the sample selected from 9% in draft 1 to 4% in draft 2. Where are these new figures coming from?
3. This rationale behind this new inflated total is also reflected in the subsequent tables in paras. 7.5 – 7.9. Again, why?
4. Paragraph 7.2 (draft1) – in draft 1, the report noted that 25% of the sample selected showed overpayment. This is omitted from draft 2. Why?
5. Paragraph 10 – in draft 1, the table included clearly established and stated "non-compliance" by Red Sky across all 5 of their districts in contract performance. However, in draft 2, this table has been replaced with a new table and the key statistic showing "non-compliance" is concealed in line 3 of the table and the words "non-compliance" are not used. The net effect of this change is to obscure a key finding of the original report.
6. Paragraph 11.4 – draft 2. A new table has been included analysing Jobs Completed on System (JCS) and Outside Response Time (ORT) – effectively looking at tenant satisfaction levels. References are made to a "NI Average" of 2282. What is this and where does it come from? Equally, there is a column called "% of orders issued" – where does this calculation come from and what is its relevance?
7. In the original draft, a "District average" table was included showing a spike in JCS calls in South East – this has been omitted from the 2nd draft. Why?

In short, while I think that some of the additional explanation in Draft 2 is helpful (particularly surrounding the logic used to select the sample in section 7), the net effect of these changes are to obscure the answers to Renéé Crawford's questions – which the report is designed to answer.

Whatever way this data is presented, what is indisputable is that Red Sky have received some overpayment for work done and that their performance is currently below the standards NIHE expect.

In my view, it was to NIHE's credit that the first RIU draft spelt that out in unambiguous terms. Again, in my view, moving away from that clarity is not a helpful direction to take.

Regards.

John.

John McVeigh
Assistant Director (Head of Internal Audit)

Northern Ireland Housing Executive.

10/06/2009

Mcveigh, John

From: Wylie, Yvonne
Sent: 10 June 2009 16:14
To: Mcveigh, John
Cc: McIntyre, Paddy; Campbell, Ross; Kitson, Raymond
Subject: Confidential - Red Sky - Draft 2
Sensitivity: Private

John

1. The figures in para 7.3 have been added in, as agreed with CX, to provide the Northern Ireland comparators for --
 - overpayments relative to value of inspections
 - overpayments relative to value of orders issued

12
2009-10
identified or
low level

This provides the benchmark against which Red Sky can be compared.

2. The substitute figures for table 7.4 are given to show the value of the inspections not just those inspections which failed (which was shown in draft 1). This in our view is much more meaningful because you can then see the relationship between the amount inspected and the amount overpaid.

The question being posed is how prevalent are overpayments – the second draft directly answers this in two ways:-

- against the amount inspected and
 - against the overall orders issued over a specific period of time
3. Rationale is as given above.
 4. All % figures on inspections which had overpayments have been set aside because they can mislead. The importance of overpayments is the value not the volume. For example in the results of some Districts many overpayments can produce a low overpayment value while in others few overpayments can have a high value (eg West Belfast has 10% failure amounting to £44 but just two overpayments in East Belfast have value of over £3k!).
 5. The original table is contained in the new table (the shaded part). It shows the non-compliance rate although I would agree it is not as clear as before (there simply wasn't room!!). But we can change this.

More fundamentally we have added the section which measures non-compliance against the actual work items (see 10.1). This is important because it gives a much clearer picture of the nature of the failure (For example on the original measurement if there are ten items on the order and one fails, then they all fail. In a typical COT there are fifty items).

6. We simplified this table by adding the months together. The NI average is obtained by adding together all the Districts to get 2282 and expressing it as a % of the total orders issued. The relevance of the calculation is to show the incidence of

10/06/2009

Page 2 of 2

"dissatisfaction" relative to the total transactions.

Hence we added percentages to the table to give a clearer picture of the level.

7. We simplified the table to maintain a consistent approach of comparing Red Sky against N Ireland averages.

I cannot agree that we have managed to obscure the results. It is essential that we are seen to be fair and transparent therefore we have been careful –

- be consistent in how we compare (at an NI level)
- show the relevance of findings to the overall value of work/contracts
- avoid "skewed" comparisons

Some of what appeared in the original in more dramatic style simply would not stand up to external scrutiny by way of its importance or relevance (eg being a penny wrong on a works order is not relevant).

I am now content that we can release such a document to Red Sky in due course.

Colm

10/06/2009

Mcveigh, John

From: Mcveigh, John
Sent: 10 June 2009 17:11
To: Colm.McCaughley@NIHE.GOV.UK
Cc: Paddy.McIntyre@nihe.gov.uk
Subject: RE: Confidential - Red Sky - Draft 2
Sensitivity: Private

Colm,

Thanks for the clarification on the points raised.

The only query I could not work out from the information given related to point 6 and the 2282 NI average, but it's a relatively minor point which I can look at with Raymond.

That said, I think some of the data will be subject to interpretation by NIAO. While I understand the % overpayment in the sample selected is relatively small at 4.2%, one could extrapolate that over the total value of the Red Sky contract (£8.06M) and arrive at a sizeable figure. If one took the 25% overpayment error rate and did the same extrapolation, the figure could become more significant. Of course, the best way to answer this once and for all may be a more comprehensive testing sample of the contract in general. That would be a call for either yourself or NIAO.

The business of the non-compliance rate in section 10 is obviously a matter of presentation. I still feel it would be best to flag this up more clearly.

I won't have time to produce a new quality assurance opinion in writing before meeting John Buchanan tomorrow.

However, I feel our additional correspondence may cover this anyway as it follows on from the original RIU report. Will talk to Paddy and see if he wants something more. In the meantime, I will not be giving John Buchanan a copy of my existing memo / opinion until speaking to Paddy.

Regards.

John.

John McVeigh
Assistant Director (Head of Internal Audit)

Northern Ireland Housing Executive.
2 Adelaide Street, Belfast BT2 8PB
Phone: 028 90 318501 (DDI)
Work Mobile: 07826866854
Personal Mobile: 07732834725
Email: john.mcveigh@nihe.gov.uk

From: Wylie, Yvonne
Sent: 10 June 2009 16:14
To: Mcveigh, John
Cc: McIntyre, Paddy; Campbell, Ross; Kitson, Raymond
Subject: Confidential - Red Sky - Draft 2
Sensitivity: Private

John

04/05/2011

Housing Executive

INTERNAL MEMORANDUM

To: Paddy McIntyre (Chief Executive)
From: John McVeigh (Assistant Director / Head of Internal Audit)
cc: Colm McCaughley (Director of Housing and Regeneration)
Date: 11 June 2009 Ref: MCV 7

Subject: Red Sky Investigation – Internal Audit Assurance on the Response Investigations Unit (RIU) report

Paddy,

Further to my previous memorandum, I have now reviewed the newest draft of the Response Investigations Unit (RIU) report. My comments below are based on the data and findings included in this latest version, which has now been sent to John Buchanan (NIAO).

As instructed at the meeting held on Tuesday May 26th, I carried out a high level overview of the work done to date by the RIU team which looked into concerns raised by Ms Reneé Crawford (Chairperson – West Belfast Housing Community Network) surrounding work done by the Red Sky Group under an Achieving Excellence in Construction (AEC) contract in the Belfast West Area.

Main points are as follow:

TERMS OF REFERENCE

1. As set out in the **Annex A** timeline, NIHE Directorate of Housing and Regeneration began an investigation into the maintenance contracts of the Red Sky Group during April 2009.
2. It was observed at the outset that the investigative team, led by the Assistant Director (Estate Management) had no formal terms of reference for their investigation.
3. In order for audit to discharge its oversight function, I felt some terms of reference should apply for my role in the investigative process, so I took the four "concern headings" that Ms Crawford has set out in her initial letter (received by PAC – 7 November 2008) as my terms of reference. These were:

- A. The Tendering process which was used to award Red Sky the contract;
- B. Invoicing and payment process to Red Sky;
- C. The number of inspections carried out by the District to monitor the quality of work; and
- D. The overall quality of work.

A. TENDERING PROCESS

4. Red Sky Group were awarded the AEC contract for Belfast West on March 5th 2007.
5. However, in order to answer questions surrounding the process which led to the appointment of Red Sky, it was necessary to first understand their previous involvement with NIHE which dates back some years before that.
6. Annex A contains an overview of the Red Sky Group involvement with NIHE in total.
7. There is evidence that under the names "*Clear-It*", "*Spectrum Premier Services*" and "*Red Sky Group*", at a senior level, individuals have been involved with NIHE as far back as 1994.
8. During that time, Clear-It, Spectrum and Red Sky were awarded at least 3 separate tenders for maintenance services at the following times:
 - December 1994;
 - February 2000; and
 - March 2007.
9. The 2007 tender process was awarded using the following factors:
 - Management Structure / Skills;
 - Human Resources ;
 - Transport Plant and Equipment;
 - Management / Quality / Delivery;
 - Effective working with Tenants;
 - Partnerships / Team working;
 - Key Performance Indicators (KPIs);
 - Sub-contractors / Suppliers; and
 - Computer Technology.
10. Having spoken to the NIHE Procurement department and reviewed the evaluation scoring criteria it is clear that, on the basis of the recorded scores alone, Red Sky Group were correctly awarded the contracts concerned.
11. However, it is unclear whether the performance issues documented in Annex A were taken into account in the evaluation process and if so, whether this would have affected the decision reached.
12. RIU did not look at the tendering process in their investigation.

B. INVOICING AND PAYMENT PROCESS

13. The first aspect of the concerns expressed in West Belfast Housing Community letter of complaint which RIU addressed was a review of the Invoicing and Payment process.
14. Five areas where Red Sky carry out maintenance work for NIHE were reviewed for overpayment trends. They are:
- North Belfast District 6;
 - East Belfast District 2;
 - South Belfast District 7;
 - West Belfast Districts 1 and 3; and
 - Newtownabbey Districts 1 and 2.
15. Results were as follow:

Figure 5.1 (RIU Report June 2009) – Annual RIU Inspection Findings - Red Sky

District	Overpayments
North Belfast District 6	£1,083.22
East Belfast District 2	£1,436.28
South Belfast District 7	£493.96
West Belfast Districts 1 and 3	£938.27
Newtownabbey Districts 1 and 2	£2,108.65
Total	£6,060.38

16. As a comparison figure, the average overpayment identified per District during the last round of inspections for all the NIHE Trade Maintenance Contracts was £821.00.
17. On the basis of this initial payment sample, it would appear that while three of the areas sampled are experiencing a comparatively higher overpayment rate to the contractor, Belfast West is not experiencing an inordinately higher level of overpayment than other areas.
18. However, as a follow up exercise, a sample of contractual payments from the areas identified as experiencing a higher level of overpayment (**in bold**) were extracted for further testing (See Table figure 7.2 below).

Figure 7.2 (RIU Report June 2009) – Red Sky Contract Sample Across 5 Districts

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work order	Overpayment made
Change of Tenancy	90	71	19	£176,363.21	£2,665.20
Routine	61	41	20	£22,728.38	£2,063.61
Emergency and Urgent	104	79	25	£18,753.82	£2,083.95
Adaptation	18	13	6	£28,330.75	£3,450.46
Totals	273	203	70	£246,176.16	£10,263.22

19. Based on the sample of 273 work orders valued at a total of £246,176.16, 70 overpayments totaling £10,263.22 were identified.

20. The audit methodology applied by RIU appears to be sound.

C. NUMBER OF INSPECTIONS CARRIED OUT BY DISTRICT TO MONITOR THE QUALITY OF WORK

21. RIU selected a sample of 6 months of Defect and Job Issue Inspection reports issued between the dates of 1st September 2008 - 8th April.

22. From this sample, RIU further extracted a number of jobs for site inspection to verify that the work claimed had been carried out.

23. An extract from the results across the five districts maintained by Red Sky follows below:

Figure 7.7 (RIU Report June 2009) – Red Sky Contract Sample – Belfast West

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work order	Overpayment made
Change of Tenancy	23	19	4	£66,103.37	£43.76
Routine	9	9	0	£8,196.19	0
Emergency and Urgent	7	7	0	£476.92	0
Adaptation	0	0	0	0	0
Totals	39	35	4	£74,776.48	£43.76

24. The work done by RIU appears to show that the inspection process in use by NIHE does seem to be functioning and is detecting defects and other overpayment issues as they arise.

25. It also shows that the inspection process operating in Belfast West is effective.

26. The audit methodology applied by RIU in this area appears to be sound.

D. OVERALL QUALITY OF THE WORK

27. The final area that RIU examined is that of the overall quality of work carried out by Red Sky.

28. RIU carry out regular assessment of the quality of workmanship of NIHE contractors and this is measured by means of Key Performance Indicators.

29. Data available for Red Sky is as follows:

Figure 10.0 (RIU Report June 2009) – Red Sky Contract – Quality of Contractors work

Annual Inspection findings Measuring The Quality of Work		Newtownabbey	North Belfast (6)	East Belfast	West Belfast	South Belfast
RIU Compliance measurement	No of inspections RIU measured	75	75	75	75	75
	Unsuccessful inspections	20	25	19	22	16
	% of UNS to be <10% for full comp	26%	33%	25%	29%	21%
Actual % using work items	No. of work items UNS	31	75	25	29	18
	No. of work items within the order	894	1472	721	903	861
	Actual % of UNS work items	3.5%	5%	3.5%	3.2%	2%

30. Under the terms of the contract Red Sky operate under, NIHE have deemed "compliance" to be attained when the contractor reaches 90%+ compliance levels on its work done.
31. Figure 10.0 above shows that each of the five districts managed by Red Sky is showing a performance level which is below this figure and is non-compliant with performance levels required under contract.
32. RIU also noted higher levels of tenant complaints with work done in the West and North Belfast areas compared to other areas managed by Red Sky.
33. The audit methodology applied by RIU in this area appears to be sound.

CONCLUSION

34. On the basis of the terms of reference I have adopted in paragraph 3 of this review, I would conclude that the work done by RIU has used a sound methodology to answer concerns B – D.

Regards.

J McVeigh
Enc

NIHE INTERNAL AUDIT

ANNEX A

TIMELINE OF RED SKY GROUP INVOLVEMENT WITH NIHE

"CLEAR IT SERVICES": 11-13 Cregagh Road, Belfast

Contracts with NIHE:

- At least one contract - 1 December 1994 for 2 years 9 months.

Performance Issues Arising:

- District Maintenance Officer (DMO), called meeting 6 December 1996 to discuss continual poor performance.
- Due to this unsatisfactory situation DMO requested a 100% post inspection of contractors work.
- NIHE Client Services Officer investigated the recent use of "Clear-it" by "NIHE Emergency Control" and requested that this contractor is not used again for this purpose.
- Letter of contract termination, to include 3 months notice, sent out 19 December 1995.

"SPECTRUM PREMIER SERVICES": Grove Street, Belfast

Contracts with NIHE:

- At least six Measured Term Contracts from February 2000 (duration unknown).

Performance Issues Arising:

- Evidence was disclosed that indicated employees of NIHE had met with the Directors of Spectrum in the USA (photographic evidence).
- The employee admitted that he was the individual in the photograph. Neither the Directors of Spectrum or their legal representatives were prepared to offer an explanation.
- PSNI contacted – June 2000. Responded by saying "insufficient grounds for a "formal criminal investigation".
- View taken by NIHE that there were grounds for suspicion, though the evidence falls short of that which would be required to support a criminal prosecution. Disciplinary action was taken against Executive employees. Director of Client Services and Client Services Officer held meetings with the contractor and took appropriate actions regarding payments and outstanding monies.

NIHE INTERNAL AUDIT

ANNEX A

- Extensive correspondence circa 2000 between NIHE and Spectrum concerning incomplete or unsatisfactory work leading to outstanding invoices remaining unpaid.
- Letter - February 2001: From Spectrum to NIHE demanding payment of all outstanding invoices (approx £190k outstanding in July 2000).
- Internal NIHE Memo - February 2001 – Re: Outstanding payments: £61k of invoices returned as did not pass NIHE post-inspection process.

"RED SKY GROUP": Grove Street, Belfast

Contracts with NIHE:

- Group launched 12 June 2006.
- 3 companies – Spectrum, Image Technical Services and AJ Kramer brought under one group title – "Red Sky".
- Continued to hold Spectrum's contracts with NIHE.
- AEC Contract: 5 March 2007 - 4 year term (includes Belfast West)

Performance Issues Arising:

- November 2005 – Anonymous complaint made to NIHE citing alleged collusion between NIHE employees and Spectrum personnel for the purposes of possible commercial gain.
- January – June 2006 – Internal investigation carried out by NIHE into the allegations made.
- July 2006 – Department of Social Development memo under DAO (DFP) 5 / 96 – notifying Department of Finance and Personnel of "suspected fraud in NIHE". Evidential package forwarded to PSNI for consideration.
- September 2006: PSNI letter to NIHE: *"lack of evidence...linking an individual to a specific offence suggests...this matter is not suitable for a criminal investigation at this juncture."*
- January 2007 – NIHE investigation estimates sum in excess of £80k was overpaid to Red Sky Group as a result of possible *"duplicate orders, over-specification and charges for items deemed already included in orders"*.
- February 2007 – February 2008: After extensive discussion involving expert legal opinion, a settlement figure of £20k reached between NIHE and Red Sky, payable by Red Sky.

NIHE INTERNAL AUDIT

ANNEX A

2008 - Belfast West Complaint

- Difficulties develop in relationship between NIHE personnel in Belfast West and Red Sky from outset of AEC maintenance contract.
- NIHE took steps to terminate the contract 17 December 2007 with 3 months notice. These steps were discontinued on basis of NIHE legal opinion.
- November 2008 - West Belfast Housing Community Network contacted the Public Accounts Committee Office who referred it to the NI Audit Office.
- April – June 2009 – NIHE investigation underway into above mentioned concerns.

FW: Report on Red Sky

Page 1 of 1

Mcveigh, John

From: McIntyre, Paddy
Sent: 16 June 2009 17:06
To: Mcveigh, John
Subject: FW: Report on Red Sky

This is briefing for minister which you should attend with me.paddy

From: McGahan, Barney [mailto:Barney.McGahan@dndni.gov.uk]
Sent: 16 June 2009 15:33
To: McIntyre, Paddy; Cousins, Heather
Cc: Dillon, Lynn
Subject: FW: Report on Red Sky

Paddy, will 5.15 suit? I can drive if that helps.

Heather, would you like to be involved?

Barney

From: Donald, Jennifer (Dr)
Sent: 16 June 2009 15:12
To: McGahan, Barney
Cc: Shannon, Alan; McKee, Helen; Dillon, Lynn
Subject: RE: Report on Red Sky

Barney

Tuesday evening at Parliament Buildings should be fine - again 5.15pm would suit the Minister's diary, if that would suit you and Paddy.

Thanks
Jennie

From: McGahan, Barney
Sent: 16 June 2009 14:55
To: Donald, Jennifer (Dr)
Cc: Shannon, Alan; McKee, Helen; Dillon, Lynn
Subject: Report on Red Sky

Jennie, report is going to the Housing Executive Audit Committee tomorrow and nothing of significance found. I will get a copy of the briefing note which is currently being prepared later today. Paddy has suggested giving Minister a verbal briefing to explain their report. Executive business precludes this Thursday and Paddy isn't free, Friday is Constituency day, Monday I have Audit Committee and Paddy isn't free. Would Minister be available late on Tuesday, either here or in Parliament Buildings - the North/South Council Housing Stream meeting is consuming the earlier part of that day for Paddy and he is on leave from Wednesday.

Barney

22/06/2009

(P)

Confidential

**RIU Interim
Investigation Report**

Red Sky

Response Maintenance Contracts



Maintenance Services

Date: 9th June 2009

Red Sky Investigation

1.0 Introduction

- 1.1 DOHR at the beginning of April 2009 requested an investigation into the maintenance contracts of Red Sky.

2.0 Terms of Reference

- 2.1 To establish the extent to which Red Sky are meeting the requirements of their response maintenance contracts.
- 2.2 The investigation should in particular establish the quality of work undertaken; Report on the operation of the invoicing and payment system, identify any potential under or overpayments and recommend any follow up action required.

3.0 Repairs Inspection Unit (RIU) Involvement

- 3.1 A number of inspections which had recently been carried out in Districts working with Red Sky have been revisited to identify possible trends.

4.0 Response Maintenance Contracts Held by Red Sky

- 4.1 The following District Response Maintenance Contracts are currently held by Red Sky

Districts Red Sky are working in	Actual letting dates of Contract		Value paid in Contract 08/09
North Belfast District 6	11/08/08	20/03/11	£1,279,503
East Belfast District 2	11/08/08	01/08/09	£1,439,800
South Belfast District 7	11/08/08	01/08/09	£1,803,374
West Belfast Districts 1 & 3	11/08/08	05/03/11	£1,878,767
Newtownabbey Districts 1 & 2	12/08/08	20/03/11	£1,659,638
Total			£8,061,082

5.0 Annual RIU Inspection Findings

- 5.1 The recent 6th round inspection reports were re-inspected in the area of overpayments made to the contractor in error.

District	Overpayments
North Belfast District 6	£1,083.22
East Belfast District 2	£1,436.28
South Belfast District 7	£493.96
West Belfast Districts 1 & 3	£938.27
Newtownabbey Districts 1 & 2	£2,108.65
Total	£6,060.38

5.2 As a comparison figure, the average overpayment identified per District during the annual RIU 6th round (08/09) inspections for all the All Trade Maintenance Contracts was **£821.00**

5.3 The three Districts within the table in 5.1 in excess of £1000 were examined in greater detail.

6.0 RIU Inspection Process

6.1 Initially a series of standard query listings (SQL) reports was scripted over a 6 months period to identify defects and jobs issued between the dates of 1st September 2008 - 8th April 2009

6.2 From a desk top exercise RIU scrutinised these SQL's and selected a sample of jobs for site inspection to verify that the work claimed had been carried out. The sample included all priorities with a greater emphasis on high value jobs and any other specific area identified as worthy of further investigation.

6.3 A preliminary copy of this report was submitted to the ADOHR explaining the typical findings. It was agreed two officers focused further on West Belfast Contract. There was also a concern regarding showers being over claimed and how the contractor had asked for a confirmation order. One RIU officer focused on additional scripted SQL's for showers and confirmation orders in all Red Sky's contracts issued over a 6 months period.

7.0 RIU Findings Regarding "Work Paid But Not Done"

7.1 The RIU findings have proven that the claims made by the contractor generally match the site inspection findings. There are a number of variances from our finding which are summarised below.

7.2 These inspections were targeted at work orders which are considered to show risk of inconsistencies. The relative value of the overpayments identified has been given against:

- The value of the work orders inspected
- The value of the work orders issued. (Explain?)

Examples of the overpayments are given for each District.

7.3 As a comparison factor the Northern Ireland average overpayments relative to the value of work orders inspected for the "All Trade Contractors" as identified during the 2008/2009 RIU inspection program is 1.6% (Explain?)
The comparison factor relative to the value of the total work orders issued within the RIU program was 0.07%

7.4 Report on all Red Sky's Contracts

4.2% of the value of the works orders inspected has been overpaid
0.2% of the value of the total works orders issued has been overpaid.

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work orders inspected	Overpayment made
COT	90	71	19	£176,363.21	£2,665.20
Routine	61	41	20	£22,728.38	£2,063.61
E & U	104	79	25	£18,753.82	£2,083.95
Adaptation	18	12	6	£28,330.75	£3,450.46
Totals	273	203	70	£246,176.16	£10,263.22

Examples of over claiming are summarised in each of the Districts findings

7.5 Newtownabbey District:

2.5% of the value of the work orders inspected has been overpaid
0.1% of the value of the total works orders issued has been overpaid.

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work orders inspected	Overpayment underpayment made
COT	26	21	5	£37,338.49	£618.90
Routine	7	5	2	£3079.64	-£61.90
E & U	12	8	4	£746.60	£412.50
Adaptation	5	4	1	£6414.11	£201.89
Totals	50	38	12	£47,578.84	£1171.39

Of these overpayments the typical elements of work over claimed are:

- Provision of a tubular hand rail incorrect measurement (**Appendix A**)
- Paving being claimed for removal yet not done.
- Claiming for hacking up flooring screed while wooden floors are present.
- Replacement of a shower yet none provided
- On two work orders additional units have been fitted yet not paid.

7.6 East Belfast District:

17% of the value of the work orders inspected has been overpaid
0.8% of the value of the total works orders issued has been overpaid.

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work orders inspected	Overpayment made
COT	5	3	2	£4,388.19	£806.76
Routine	39	22	17	£8,947.86	£2072.39
E & U	72	54	18	£15,880.09	£1458.41
Adaptation	7	3	4	£12,297.91	£3005.61
Totals	123	82	41	£41,514.05	£7,343.17

Of these overpayments the typical elements of work over claimed are:

- Two showers were replaced that were within the warranty period
- Removal of Graffiti being paid in excess of the surface (**Appendix B**)
- The provision of a ramp using inappropriate SOR codes (**Appendix C**)
- The installation of a single grab rail at the door entry (**Appendix D**)
- 1 x shower unit paid but not fitted, the tenant did not report this however the contractor asked for the order as a confirmation order.
- Floor tiling being claimed but not fitted (**Appendix E**)

7.7 North Belfast District 6:

1.9% of the value of the work orders inspected has been overpaid
0.2% of the value of the total works orders issued has been overpaid.

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work orders inspected	Overpayment made
COT	35	27	8	£68,360.27	£1,195.78
Routine	6	5	1	£2504.69	£53.12
E & U	8	7	1	£535.25	£187.33
Adaptation	3	3	0	£2478.31	-----
Totals	52	42	10	£73,343.27	£1,436.23

Of these overpayments the only significant elements of work over claimed:

- The replacement of a composite door and frame paid not done.
- The payment for a external door frame, only one stile replaced

7.8 South Belfast District

3.2% of the value of the work orders inspected has been overpaid
0.02% of the value of the total works orders issued has been overpaid.

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work orders inspected	Overpayment made
COT	1	1	0	£172.89	-----
Routine	0	0	0	-----	-----
E & U	5	3	2	£1114.96	£25.71
Adaptation	3	2	1	£7140.42	£242.96
Totals	9	6	3	£8,428.27	£268.67

Of these overpayments the only significant elements of work over claimed:

- A bathroom lighting circuit claimed x 10 instead of 1 no.

7.9 West Belfast District

0.05% of the value of the work orders inspected has been overpaid
0.003% of the value of the total works orders issued has been overpaid.

Priority	No. work orders	Successful inspection	Overpayment identified	Total value of work orders inspected	Overpayment made
COT	23	19	4	£66,103.37	£43.76
Routine	9	9	0	£8,196.19	-----
E & U	7	7	0	£476.92	-----
Adaptation	0	0	0	-----	-----
Totals	39	35	4	£74,776.48	£43.76

Of these over and under payments the typical elements of work are:

- An underpayment was made to the contractor for the installation of a 600mm kitchen unit however a 1000mm unit has been installed.
- An additional kitchen unit being paid on a separate work order in addition to the original order.

8.0 Confirmation Orders

- 8.1 Confirmation work orders are generally requested by the contractor for follow up work to a previous order were the work had not been completed. A typical example to this would be an immediate call out (ICO)
- 8.2 From the RIU initial findings confirmation orders appeared to be issued in error on a number of occasions see samples below. However an SQL has confirmed that these orders are not excessive and are in line with other contractors. See table below which covers the 2008/2009 financial year.

District	Number of confirmation orders requested	Comparison average issued by District, per Area	
North Belfast	86	Belfast	139
East Belfast	200	North East	123
South Belfast	214	West	69
West Belfast	169	South	41
Newtownabbey	300	South East	226

- 8.3 On a number of these confirmation orders there appears to be several months before the request is made by the contractor.
- One such request was for a replacement shower however no such shower exists in the dwelling.
 - Another request came in on March to remove graffiti 6months earlier
- 8.4 RIU are satisfied after a review that in general the procedures adopted by most Districts complied with policy and procedures. However this is a high risk area which needs to be continually reviewed.

9.0 Shower Unit Installation

- 9.1 All materials supplied by the contractor have a 6 month defect liability period and any problems should be referred back to the contractor as a recall.
- 9.2 A number of additional jobs had been issued to Red Sky to have the new shower serviced and on a number of occasions replaced, while the shower is within the 6 months defect liability period.

10.0 The Quality of Red Sky’s Work

10.1 The inspection samples mainly focuses on more complex, high cost work orders with similar samples being applied across all contracts. If any single work item fails within the work order then the entire inspection is classified as unsuccessful. The percentage inspection failure does not therefore reflect the level of all the works completed. While the scale of items which fail is low nevertheless each item is important in the context of tenant satisfaction and satisfactory control of the contract.

(7)

10.2 A comparison percentage factor for Northern Ireland for unsuccessful items of work across the “All Trade Contractors” as identified during the 2008/2009 RIU inspection program was 1.7%

10.3 These measurements from the table below is taken from the RIU findings in the previous 6th round annual inspection program for each of the District’s with Red Sky as their Contractor.

Annual Inspection findings Measuring The Quality of Work		Newtownabbey	North Belfast (6)	East Belfast	West Belfast	South Belfast
RIU	No of inspections RIU measured	75	75	75	75	75
Compliance measurement	Unsuccessful inspections	20	25	19	22	16
	% of UNS to be <10% for full comp	26%	33%	25%	29%	21%
Actual % using work items	No. of work items UNS	31	75	25	29	18
	No. of work items within the order	894	1472	721	903	861
	Actual % of UNS work items	3.5%	5%	3.5%	3.2%	2%

Non-Comp →

The average score for all Red Sky contracts was 3.6%

10.4 Attached are a number of examples of the typical unsatisfactory work as identified in the 6th round inspection within Red Sky’s contracts.

- Earth bonding not being reconnected after plumbing repairs (**Appendix F**)
- Replacement 3 lever door lock & furniture (**Appendix G**)
- Ledge & braced sheeted doors twisting (**Appendix H**)
- Bath splash back and floor tiling missing (**Appendix I**)
- Cutting of a letter box opening out of line (**Appendix J**)

11.0 Customer Service Unit Reports

11.1 CSU along with Maintenance Services have developed a series of system reports to identify if the contractor is performing satisfactorily regarding completion times of the work.

- 11.2 Outside response time (ORT) these figures represent all 2nd time call received from the tenant indicating that the work is not done and is outside the required completion date. This report will aid the monitoring the date the contractor is claiming as the completion date of the work.
- 11.3 Jobs completed on system but the work not done on site (JCS) these figures represent all 2nd time call received from the tenant indicating that the work is not done however the contractor has a completion date recorded on the celink system.
- 11.4 The following table summarises the previous four months JCS/ORT for each of Red Sky's contracts. For comparison purposes the NI average is 2.3%

This table is generated by the tenant reporting that the contractor
Failed to complete work on time from January - April

District	JCS	ORT	Total	% of orders issued	Red Sky's average %
North Belfast	5	100	105	3.9%	2.3%
East Belfast	5	69	74	1.9%	
South Belfast	4	103	107	2.3%	
West Belfast	8	179	187	3.3%	
Newtownabbey	6	45	51	0.9%	
Northern Ireland Average	2282			2.3%	

- 11.5 The following table identifies all recalls referred back to the Contractor by the CSU or District staff. These calls are classified as "REC". All jobs have a warranty of six months from the actual completion date of the previous order, with the exception of drainage.

This table is generated by work the contractor had completed
But has since failed for the period of January – April 09

District	Total no. of jobs Recalled	% of orders issued	Red Sky's average %	
North Belfast	156	5.8%	4.1% /	
East Belfast	141	3.7%		
South Belfast	153	3.3%		
West Belfast	259	4.5%		
Newtownabbey	212	3.8%		
Northern Ireland Average	3272		3.3% /	

12.0 Risk Based Inspections

- 12.1 The new risk based inspections process commenced in April 2008. The risk areas are identified through desktop analysis and supported if necessary by an onsite inspections.

12.2 These analysis examined financial trends and patterns across all contracts. The areas of risk included

- Contractor's performance
- Staff inefficiencies
- Working practices

12.3 Since the start of the risk based inspections over 30 analyses have been completed, Red Sky have only been highlighted twice regarding very small overpayments. One report was passed to the Area Manager for his information regarding the cost and practice involved power hosing in South Belfast.

13.0 Conclusion

13.1 From the information contained within this report, RIU are satisfied all areas of risk have been considered and scrutinised relating to work paid but not done. The evidence available indicates that inappropriate payments were approved, but not beyond that which is normally identified in such as the annual inspection.

13.2 At a general level while there remains some concern around the quality of work these contracts are functioning satisfactorily. The performance across the contracts is variable and particular attention needs to be paid to East Belfast. The position in the West Belfast contract has significantly improved but requires robust ongoing management to ensure this is consolidated.

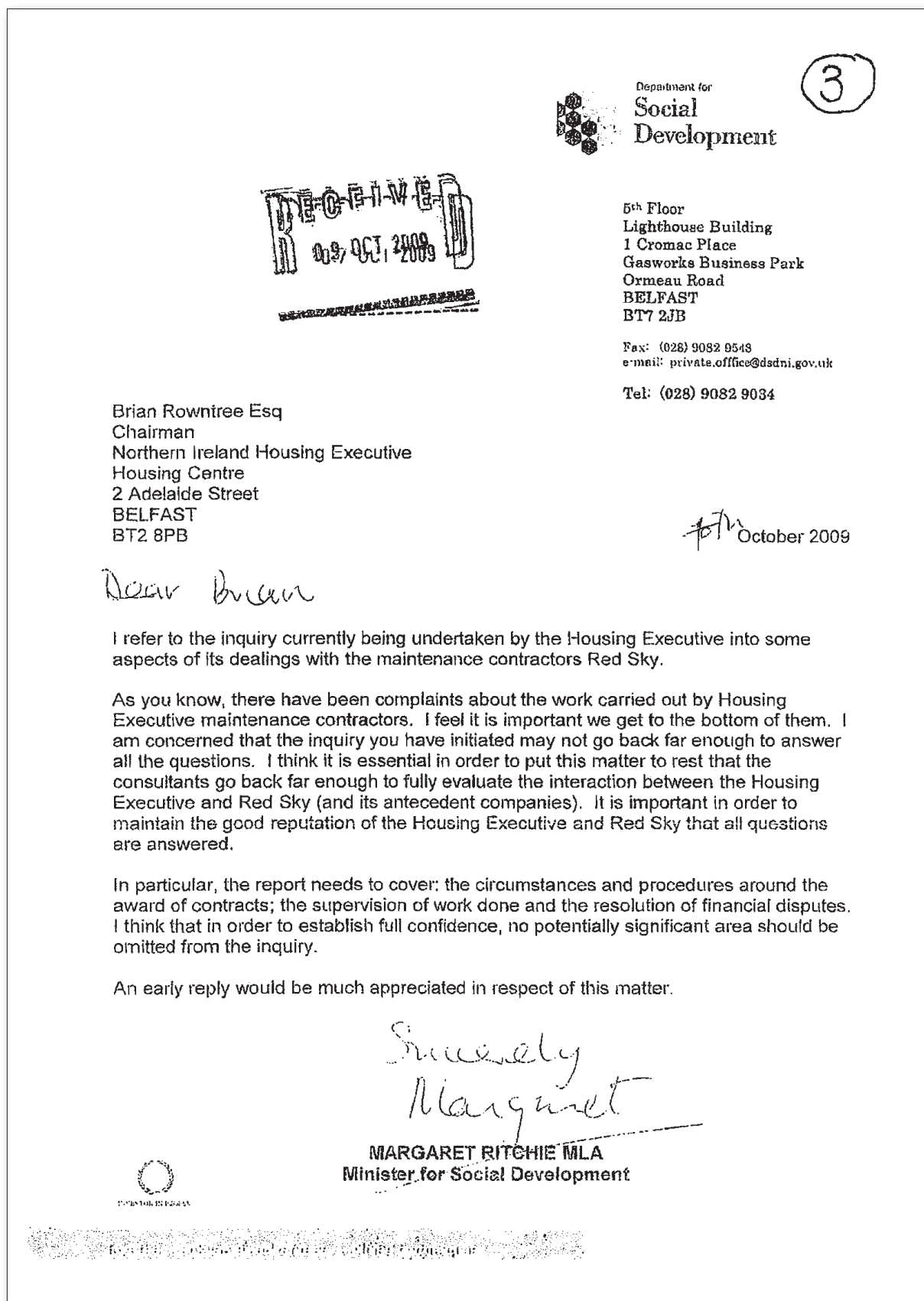
13.3 A further report is still to be completed on the site findings. On completion this will be forwarded to each District Manager for their comments and recovery of money from their contractors.

13.4 Training needs were identified in previous inspection reports in the areas of non compliance; however there is still work being approved which does not fully comply with the standards. RIU has amended their inspection process to report on the post inspection officer in the event of work failing to meet the Housing Executive standards or overpayments. The issues around the areas of non compliances with specific Housing Executive standards will be drawn to the attention of Red Sky and relevant Maintenance Officers.

13.5 In brief the recommended actions are:

- Discuss finding with Red Sky and the District Maintenance staff.
- Action financial recovery (estimated value **£10,263.22**)
- Identify the specific officers requiring further training on the Housing Executive Standards and arrange appropriate training.
- Bring the results of the Inspection findings to the attention of all District Maintenance Managers.
- Revisit the East Belfast District at the start of the 7th round inspection programme.

9.6 Miscellaneous correspondence October 2009 – October 2010



Housing Executive

Northern Ireland Housing Executive
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Chairman
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INVESTOR IN PEOPLE

Margaret Ritchie MLA
Minister for Social Development
5th Floor, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Belfast
BT7 2JB

23rd October 2009

Dear *Margaret*

RED SKY

Thank you for your letter of 10th October regarding the investigation being undertaken into some aspects of our dealings with Red Sky.

I understand you have been advised that a firm of independent Forensic Accountants (supported by Surveyors and Central Procurement Department) have been appointed to investigate a range of allegations, including those raised with the Northern Ireland Audit Office.

I appreciate your concern that the Terms of Reference for the assignment, which have been agreed by the Northern Ireland Audit Office and which Barney McGahan has had sight of, do not go back far enough to fully evaluate the interaction between the Housing Executive and Red Sky (and its antecedent companies). I can confirm, however, that the Consultants have been given the report of the investigation carried out on in 2006/07 which at that time was referred to PSNI who advised that there was no case for taking any criminal proceedings. The papers relating to a previous investigation in 2000 have been destroyed in line with the guidelines relating to the disposal of records. At that time disciplinary action was taken and the matter referred to PSNI. This information is also being shared with the consultants.

I too would be keen that, to maintain the good reputation of both the Housing Executive and Red Sky, all questions are answered. In doing so, we need to take into account the outcome of previous investigations, the availability of information after so many years and the cost implications.

The current process of investigation has built into it a mid-term review of interim findings and any matters of a significant or serious nature will be highlighted at the earliest possible stage.

The final Report will be available in January 2010 and I am confident that the investigation will be as comprehensive as we all desire.

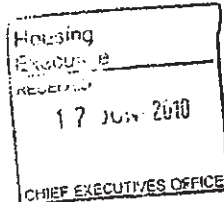
Yours sincerely



Brian Rowntree
Chairman

16 June 2010

Mr Paddy McIntyre
Chief Executive
NIHE Head Office
The Housing Centre
2 Adelaide Street
Belfast
BT2 8PB



www.redskygroup.com

Dear Mr McIntyre

Red Sky Group

It has been brought to my attention by my Group Head of Maintenance Pauline Gazzard that Sharon Crooks – Newtownabbey 1 District Manager has highlighted to Pauline a number of issues concerning Red Sky Group job pricing.

Through meetings and correspondence such matters have been determined at just 5 issues and it is my understanding that these have been fully investigated and resolved to Sharon's satisfaction. None of the items was material.

Given the sensitivity that such matters might provoke I thought you would welcome my communication (associated emails attached) to clarify the position and make you aware of the background should this be found useful.

I know you will appreciate Red Sky Group is keen to maintain its long and established excellent business relationship with the NIHE and in this regard if there were to be any major concerns that the Housing Executive have with Red Sky's invoicing processes or otherwise we would be most willing for a suitably qualified arbitrator to be mutually appointed to address any matters giving rise to material issues.

Yours sincerely

Norman Hayes
Group Managing Director

BELFAST Att
25/06/2010
10:14:15 AM
10/06/2010 10:14:15 AM
10/06/2010 10:14:15 AM

Appendix 14

Red Sky Group Limited



Emma Phillips

From: Pauline Gazzard
Sent: 16 June 2010 16:29
To: Crooks, Sharon
Cc: Emma Phillips
Subject: FW: Update on current position

Hi Sharon

Further to my email below (attached for ease of reference), I understand that when Stuart called with you yesterday to collect details from your file on 'potential issues', he was advised that there were no additional matters requiring attention, other than those 5 previously communicated in your email and to which we had fully explained by return.

As a consequence, I am therefore given to understand that there are no material issues upon which you currently have concerns.

Clearly, as I have already indicated to you, I am very keen to investigate any matters, however small, that you feel should be addressed by Red Sky Group, such that our previous excellent relationship continues.

Looking forward to hearing from you.

Kind regards
Pauline Gazzard
Group Development Manager
Red Sky Group Limited
Grove Street East
Belfast, BT5 5GH
Phone +44 (0) 2890454544
Mobile +44 (0) 7976834457
Fax +44 (0) 2890457222
pauline.gazzard@redskygroup.com

From: Pauline Gazzard
Sent: 13 June 2010 11:23
To: 'Crooks, Sharon'
Subject: Update on current position

Sharon

Thank you for taking the time to meet both Jack Brown and myself on Thursday, which we all agreed was a very worthwhile exercise.

Like you, we are very keen to move forward and ensure that any perceived issues are addressed in a timely manner in order that we can get on with working together constructively.

At this juncture it is apparent that a number of steps have been taken by both NIHE and Red Sky Group, and when you advised that things seem to be improving week by week, and indeed day by day, this was very reassuring. Indeed, as we agreed the main issue seemed to be a breakdown in communications, which is so often the case.

To progress this matter I have summarised actions below to ensure we both have the correct understanding, however, if there is anything I have missed, please let me know:

- > Stuart & Raymond will talk up more at meetings and ensure you (and Maintenance Officers) are aware of issues they are having with MO's.
- > More frequent informal communication will be encouraged for both sides
- > More frequent joint inspections etc will be encouraged
- > MO's will ensure jobs are coded correctly when issued – this reduces potential for keying errors from both NIHE & RSG

16/06/2010

Page 2 of 2

- > *Realistic completion dates will be entered by MO's*
- > *Past Inspections will be completed in a timely manner*
- > RSG have introduced revised procedures to ensure all worksheets/job packs are signed off as complete by Supervisors before being passed over to pricing team for processing. This will eliminate the possibility going forward of jobs being completed off system before every task had been completed (e.g. rubbish being collected at end of COT)

In relation to the jobs where potential issues were evident (i.e. from the jobs you showed us in your folder), as agreed you will provide details of these to myself. Upon receipt I will ensure full investigation is completed and, indeed, if actions are required, these will be completed as a matter of urgency. I am on holidays Monday and Tuesday but if possible Stuart could collect these from you before my return and I will assess on Wednesday.

As also advised at our meeting, Red Sky Group would be happy for an external party, suitable to both NIHE and RSG to look at any issues you may have, if required.

Finally, as we agreed, we are hopeful that with the actions taken, by both NIHE & RSG, will address the perceived problems over the past couple of months, and as you are happy that with the checks etc that RSG have in place, there should be no further issues moving forward. If for any reason there are any more problems you have agreed to flag them directly to myself for investigation.

Sharon, I trust we, as agreed on Thursday, can move on, recommence the communication lines and return to the previously good working relationship RSG and Newtownabbey I enjoyed.

Any queries, please let me know, and I hope to see you soon.

Kind regards
Pauline Gazzard
Group Development Manager
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Mobile +44 (0) 7976834457
Fax +44 (0) 2890457222
pauline.gazzard@redskygroup.com

16/06/2010

Emma Phillips

From: Pauline Gazzard
Sent: 16 June 2010 16:00
To: Emma Phillips
Subject: FW: Problems[Suspected spam]
Sensitivity: Private

Kind regards
Pauline Gazzard
Group Development Manager
Red Sky Group Limited
Grove Street East
Belfast, BT5 5GH
Phone +44 (0) 2890454544
Mobile +44 (0) 7976834457
Fax +44 (0) 2890457222
pauline.gazzard@redskygroup.com

From: Pauline Gazzard
Sent: 27 May 2010 17:11
To: Crooks, Sharon
Subject: FW: Problems[Suspected spam]
Sensitivity: Private

Sharon

With reference to your email below, I have now had the opportunity to consider the contents in full and following discussion with other members of RSG staff our comments are as follows.

Firstly, I am very disappointed by the contents – particularly as we have always enjoyed a very good working relationship with Newtownabbey 1 – while it was not perfect, (as you would expect with a response maintenance contract) any issues were raised informally by Glen and we worked very well together to ensure that a quality service was delivered in a timely manner resulting in satisfied NIHE staff, RSG staff and most importantly tenants. I would consider that we should be working together to ensure this remains the case, and as always confirm that RSG are fully committed to successful delivery of this Contract. I consider your comments, ‘someone in your office is continually keying work and coding incorrectly’ and ‘serious enough to indicate that you have a problem with some of your staff’ are not conducive to retaining our good working relationship and partnership. Whilst I am happy to investigate any issues you may have I would appreciate if similar allegations are not documented until full details are known.

Indeed, I consider that, as with everything, there are 2 sides to every story and RSG are also experiencing a number of problems with NIHE staff which are contributing to existing position.. In particular these are:

- ❖ Certain maintenance officers continue to issue jobs which have not been coded, e.g. 7557831 – no codes used to refix fence and clear/dump rubbish. This allows for ambiguity and there are clearly identifiable codes in the SOR. Indeed, it also emerged this week that a particular maintenance officer was unaware that there were codes for door furniture, example job no. 7555992, 7553792. Lack of clarity and information makes our job much more difficult and we are put in a position of coding jobs to ensure they are completed. This is in an attempt to satisfy NIHE & tenants.
- ❖ We are experiencing difficulties with incorrect codes detailed on many jobs, e.g. 7552938 – first

16/06/2010

instruction is to fit new front door, followed by a further instruction to re-hang front door, and same on back door.

- ❖ [REDACTED] – we received an email from yourself, via Pat Hunt asking us to address a number of outstanding repairs following tenant complaint. Upon investigation by RSG it emerged that none of the requested items were included on order – surely NIHE should have completed some investigation or looked at the order before asking RSG to resolve.
- ❖ We have a major issue with the time scales provided for completion of COTs. Stuart Hill has 25 examples of jobs which have been issued with very short turnaround times – whilst norm has now reduced to 3 weeks across all districts, some of N1 jobs are under 3 days, and most under 12 days!
- ❖ Post inspections – the terms of the Contract advise that post inspections will be completed within 5 days. It is most disappointing that Newtownabbey 1 are very slow in completing these and this adversely affects the cash flow of RSG. Also, it is considered inappropriate that we have to continually chase for money we are owed as this leads to potential ill feeling. This matter has only arisen in recent times as previously Glen ensured all Post Inspections and Authorisations were completed in a timely manner. Furthermore it takes considerably longer to process similar jobs in N1 than N2.

In relation to the specific queries you have raised, responses are:

3 [REDACTED]

1.5m² wall tiling claimed for – 0.5m² installed. Workmanship poor. -
 3.2m² floor tiling claimed for- 2.25m² installed.
 4.5m² floor/wall tiling hacked off ????? – 3m² maximum
 Copper fittings claimed for – these are DTBI.
 Service H&C water installation S12BA05 – Why has this been claimed?

The RSG operative who completed this work has recently been disciplined for poor workmanship and indeed is not currently working.

All measurements were taken from his job sheet and this is the primary reason for the issues identified.

On this basis we have sent an Operative back to site and he has now tiled 2m of wall tiles and has plastered 2m.

We acknowledge workmanship was poor.

Please make necessary adjustments and we will refund.

We apologise for these deficiencies. On this basis there was absolutely no intention to claim for work that was not completed or to code incorrectly.

[2] [REDACTED]

Hardwood doorframe claimed for on coal shed- Softwood frame has been fitted. Workmanship poor, no stops fitted.

Galvanised pad bolt claimed for- old bolt has been used.

Job sheet states Operative fitted 1 leg of doorframe, and it did not clarify if this was hardwood or softwood. It would be a natural assumption that as this was an exterior door it would be hardwood. As job sheet did not stipulate that old bolt had been used, new pad bolt was claimed. Again we apologise for error. On this basis there was absolutely no intention to claim for work that was not completed or to code incorrectly.

[3] [REDACTED]

Tenant's own tiles have been used. RSG have claimed for supplying and fitting tiles.
 Grab Rails claimed for - not fitted.

16/06/2010

Folding shower seat claimed for- not fitted

15m metres copper pipe claimed for- Identified a maximum of 5 metres used.

Floor covering quantities claimed are excessive as is PVC skirting. The room has a floor area of about 3m².

It was stated at meeting by MO that he had coded this job in this way even though he was aware tenant had their own tiles to be installed - he said he was not aware there was another code, therefore could you please address this with MO.

In relation to Grab rail – we confirm a grab rail was fitted as per tenant.

Tenant refused shower seat, however, we, by an error, did not remove this from order.

We can only see 5m copper pipe claimed - please advise.

We had taken sizes from Operatives job sheets.

[4] [REDACTED]

Not washed out

This was an oversight – and relates to final wash out only – it should be noted that complete cleanout was done, which is the majority of the work.

5) [REDACTED]

Power hosing of path not exceeding 10sq m cost £23.04 changed to 140sq m costing £241.92 and only 10 Sq m powerhosed

140sqm was powerwashed and this has been agreed by MO. Whilst it stated on the job sheets for 10sq m, it did not specify the location, and consequently RSG operative power washed the entire area. Retrospectively we acknowledge that we should have asked for clarification before commencing.

Whilst I fully acknowledge deficiencies as stated above, and apologise for these, I confirm there was no deliberate intention to code/key incorrectly.

In relation to your request for additional resources for Newtownabbey 1 – I do not consider this is appropriate as our squads for Newtownabbey are as follows:

Newtownabbey response maintenance squad covering Newtownabbey 1 & 2

Newtownabbey COT squad covering Newtownabbey 1 & 2

We consider we give an excellent service to both Districts consistently. Furthermore, we do not consider any additional resources are required ongoing. Any issue with backlogs are currently being addressed and backlogs have reduced significantly in the last couple of weeks and will continue to do so. It is anticipated that by next Friday Overdues will be under 30 in Newtownabbey 1.

In conclusion, I would reiterate that we, at RSG, try on every occasion to work well with all staff in your District and will continue to do so. Stuart and Raymond are considered excellent supervisors and are ably supported by Jack, Laurence, Ronnie and myself. I have full confidence in their commitment and capabilities, and would hope, that given the chance they will prove their capabilities.

I would respectively suggest that there may be issues on both sides and perhaps a meeting would be beneficial, to get any ongoing issues addressed.

Kind regards

Pauline

16/06/2010

From: Crooks, Sharon [mailto:Sharon.Crooks@nihe.gov.uk]
Sent: 24 May 2010 13:51
To: Pauline Gazzard
Subject: FW: Problems[Suspected spam]
Sensitivity: Private

Pauline
I would appreciate a reply to my Email
Sharon

From: Crooks, Sharon
Sent: 13 May 2010 07:30
To: Pauline Gazzard
Subject: Problems
Sensitivity: Private

Pauline
We had our usual meeting yesterday (12th May) with Ronnie and Stuart(Raymond was unable to attend) and whilst we are happy that all 3 of them are working really hard and trying to work with us it becomes really frustrating for all concerned when someone in your office is continually keying work and coding incorrectly. Some examples below:

1.5m² wall tiling claimed for - 0.5m² installed. Workmanship poor.
3.2m² floor tiling claimed for- 2.25m² installed.
4.5m² floor/wall tiling hacked off ????? - 3m² maximum
Copper fittings claimed for - these are DTBI.
Service H&C water installation S12BA05 - Why has this been claimed?

[2] [REDACTED] - 7554978

Hardwood doorframe claimed for on coal shed- Softwood frame has been fitted. Workmanship poor , no stops fitted.
Galvanised pad bolt claimed for- old bolt has been used.

[3] [REDACTED] - 7541794 Adaptation.

Tenant's own tiles have been used. RSG have claimed for supplying and fitting tiles.
Grab Rails claimed for - not fitted.
Folding shower seat claimed for- not fitted
15m metres copper pipe claimed for- Identified a maximum of 5 metres used.
Floor covering quantities claimed are excessive as is PVC skirting. The room has a floor area of about 3m².

[4] [REDACTED] - COT .

Not washed out.

5) [REDACTED]

Power hosing of path not exceeding 10sq m cost £23.04 changed to 140sq m costing £241.92 and only 10 Sq m powerhosed

These are only a few that I have picked out but I think you will agree that they are serious enough to

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indicate that you have a problem with some of your staff.

The overcharging is causing ill feeling between your staff and mine and we need to address this immediately. We are a partnership Pauline and need all our staff to work together and support each other.

It was suggested at our meeting that Red Sky should put extra resources into Newtownabbey 1 to try and address the poor workmanship resulting in unsuccessful work. I am sure Stuart and Ronnie will discuss this with you.

I am happy to discuss these issues with you.

Look forward to your reply

Sharon

Sharon Crooks
District Manager
Newtownabbey 1 D.O
Tel no. 25666010

***** IMPORTANT MESSAGE *****

The contents of this email from the Northern Ireland Housing Executive do not represent the expressed view of the Housing Executive unless that is clearly stated. It is intended only for the person(s) to whom it is addressed and is confidential. The Housing Executive does not accept any liability whatsoever for its contents (including attachments), usage or onward transmission. It may also be legally privileged and subject to internal monitoring.

16/06/2010



www.redskygroup.com

Mr P McIntyre
 Chief Executive
 Northern Ireland Housing Executive
 2 Adelaide Street
 Belfast
 BT2 8PB

11th October 2010

Dear Mr McIntyre

NIHE & Red Sky Group

Our Company has worked with the Northern Ireland Housing Executive for a number of years.

As a result of developments over recent days we find ourselves in the very difficult position of not being able to contact key people in the NIHE following the content of last weeks BBC expose on both radio & television.

Previously our key contacts would have been either Colm McCaughley or Ross Campbell but both of these men are unavailable. I would therefore appreciate an early opportunity to discuss with you a number of matters which are of very serious concern to me and my colleagues.

I am especially concerned at the BBC news report which was widely profiled last Thursday, Friday and today, and the fact that the so called interim report referred to in the news item has yet to be made available to Red Sky Group. While the BBC claims to have seen the report, we regrettably have not. Given that it is obviously in the public domain to some extent, as well as having been seen by the BBC, surely we need to be able to have sight of this document to be at least able to comment on the content therein?

At the moment we feel very much that we have been proven 'guilty' via the media yet have had no access to the information apparently used to reach that conclusion.

Red Sky Group's legal representative, Johnsons, have raised a number of questions with your legal department – to which the lack of a response is increasingly worrying – and I would ask that in advance of any meeting which I hope can take place this week, answers to the following questions are provided:

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1. When was the review commissioned?
2. Is the review specific to Red Sky Group?
3. When and to whom the interim findings were made available?
4. What are the contents of the report?
5. Can we have a copy of the report?
6. Who carried out the review?
7. Can you provide an explanation as to how this information was released or made available to the BBC and by whom?



www.redskygroup.com

The involvement of any Minister in suggesting investigation of a privately owned company is a worrying development and we need to be fully prepared for such an eventuality and we believe that answers to the above questions are a fundamental entitlement.

This situation is causing considerable damage to our Company and I need to act as a matter of urgency to ensure not only 'damage limitation' but also to redress a position which I feel has completely misrepresented the work carried out by Red Sky Group in West Belfast.

At the start of the contract back in 2007, there were issues that we were all aware of, however the effort and commitment from Red Sky Group staff over the last 3 years has in our view resulted in positive achievements being made with regard to the delivery of this contract.

Much of this was accomplished by working together with your own NIHE staff in West Belfast who, are largely to be admired for the work they continue to deliver in partnership with Red Sky Group.

It is difficult to comprehend why when working with the other Belfast regions there have been few areas of contention (as evidenced in the quality of the audit work carried out monthly by NIHE staff) compared to the experience we have had in West. Whilst on one hand, this is reassuring; it is on the other hand an isolated and damaging departure from the norm.

Finally I would reiterate that these allegations and the media attention this story has received is a source of great distress to all of our employees, Red Sky Group currently employs over 300 people in Belfast and the majority are not surprisingly despondent and worried about the impact all of this may have on their jobs.

I look forward to an early response.

Yours sincerely

Norman Hayes LIN
Group Managing Director

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Red Sky Group Limited

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9.7 ASM Howarth Report – October 2010

Phase 3.

8. Copy of the ASM Howarth investigation commissioned by the NIHE in 2009.



Ref: NGN/BC/gp/798

Private and confidential

P McIntyre Esq
Chief Executive
Northern Ireland Housing Executive
2 Adelaide Street
BELFAST
BT2 6PD

21 October 2010

Dear Sir

Re: Project Young – final report

Thank you for your referral of this matter. We are pleased to be of assistance to you.

We enclose our final report on this matter.

If you require clarification of any aspect of our report please do not hesitate to contact Nicola Niblock or Brian Clerkin.

Yours faithfully

A handwritten signature in black ink that reads 'ASM'.

ASM

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Terms of reference

I

Terms of reference

1.1 We have been instructed by the Northern Ireland Housing Executive ("NIHE") to carry out a review into the activities of one of their "Response Repair" contractors, Red Sky Group Ltd ("Red Sky").

1.2 The requirement for this review arises as a result of a complaint in respect of the activities of Red Sky districts in the Greater Belfast area. We understand that the complaint, or variations thereof, was raised with the Public Accounts Committee, the Northern Ireland Audit Office, the Minister responsible for the Department for Social Development and a range of local political representatives in early 2009. As a result of the concerns raised the NIHE's Repairs Inspection Unit ("RIU") undertook an initial review of the contractor's work June 2009.

1.3 As a result of continuing concerns and the sustained nature of the allegations the NIHE Audit Committee requested that a further independent review be undertaken on this matter.

1.4 In respect of the contracts which Red Sky currently hold with the NIHE we have been asked to consider (see paragraph 3.1):

- a) the quality of the workmanship undertaken;
- b) whether the invoices submitted by the contractor, and paid by NIHE, were appropriate within the context of the work requested and the work actually carried out;
- c) whether the inspection regime in place within the NIHE operated as expected;
- d) whether the contracts were properly awarded; and
- e) a limited number of other personnel and process issues.

1.5 Following the issue of our draft report on this matter on 1 March 2010 NIHE instructed us in June 2010 to carry out the following additional work:

- a) a further classification of the financial anomalies identified during round 1 and round 2 inspections; and
- b) an extrapolation of our findings from round 1 and 2 to determine the possible level of overcharging / errors.

1.6 As a result of our initial findings in respect of certain personnel and process issues, and in order to investigate the matter more fully, the NIHE commissioned an independent report by an expert in Human Resources. As these personnel and process issues are now dealt with more fully in a separate report we have not included any of our initial findings or comments on these matters within our final report.

NIHE Re: Project Young

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Terms of reference

I

The information provided to us and the context of our report

1.7 We have based our analysis and conclusions on the information provided to, and obtained by, us. This consisted of information obtained from the NIHE's Ce-Link and Repair Response computer systems, direct inspection of work carried out by Red Sky across its contracts (these inspections were carried out on our behalf by VB Evans & Co, Chartered Quantity Surveyors and Construction Cost Consultants), inspection of the documentation in relation to the submission and awarding of the contracts (this review was carried out by the Department of Finance and Personnel's Central Procurement Department), interviews with various members of the NIHE staff, discussions with the NIAO and others, and a review of reports relevant to Red Sky and its contracts with NIHE (a list of these reports is attached at paragraph 3.5).

1.8 As agreed in our terms of reference, whilst carrying out our review we did not correspond with Red Sky or any other third party who may have been involved in the contracts.

Restriction on circulation/duty of care

1.9 This report is addressed to the NIHE and it is not to be released beyond the NIHE or the Department for Social Development, without our prior written consent. No duty of care is accepted to any party other than those to whom the report is addressed. No responsibility is accepted for any reliance placed upon the report should it be used for any purpose other than that stated above.

1.10 This report has not been prepared for the purpose of any Court action that may arise from NIHE's consideration of this matter.

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Introduction and background

II

Red Sky Group Ltd

2.1 The participation of Red Sky, and its predecessor trading entities, in NIHE contracts goes back to at least 1994. We understand that at that stage the business was called Clear It Services and that it later became known as Spectrum Premier Services ("Spectrum"). Spectrum had at least six measured term contracts with the NIHE from February 2000 onwards, two of the contracts currently under review were originally awarded to Spectrum. Red Sky was launched on 12 June 2006 and amalgamated three existing businesses, Spectrum, Image Technical Services and AJ Kramer.

2.2 Mr Norman Hayes is the Managing Director of Red Sky Group. We understand that Mr Frank Cushman, (a former Chairman of NIHE) became a director of Red Sky Group in April 2007 resigning in May 2010.

Egan contracts

General

2.3 The contracts in question are "Egan" contracts. The procurement and letting of Egan contracts takes account of the principles of the Rethinking Construction Report produced by Sir John Egan in 1998. Under these contracts the intention is to develop a closer longer term working relationship between the awarding authority (NIHE) and the contractor (Red Sky).

2.4 These Egan contracts varied from the traditional measured term contracts placed by the NIHE in that:

- ◆ the contract is for the provision of a response maintenance repairs service to all properties managed by a particular District Office;
- ◆ the contract is for the provision of a response maintenance repairs service embracing building, plumbing and electrical related work including more extensive works such as a Change of Tenancy, Minor Disabled Adaptations and the installation of Door Entry Systems, ie it is an "all trades" contract. It however excludes all work relating to Solid Fuel Closed Room Heating, Oil Heating and Gas Heating installations;
- ◆ the contract requires the Contractor to provide an emergency cover service outside normal working hours. This includes night-time, weekends and public holiday cover; and
- ◆ there is a direct electronic link between the NIHE District Office and the Contractor's office to allow the transfer of information and to enable the major day to day administrative elements of contract management to be carried out electronically.

2.5 A central theme of Egan contracts is the "partnership" between the NIHE District Office and the Contractor.

2.6 Currently there are 35 NIHE district based contracts with 16 different contractors. The contracts vary in size from approximately £300,000 to £1,900,000 per contract per annum.

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2.7 Red Sky currently hold the following Egan maintenance contracts with NIHE:

District	Contract start date	Contract end date		Value of contract in 2008/09 * £
East Belfast	2 Aug 04	1 Aug 09	**	1,439,800
North Belfast - 6	20 Mar 07	20 Mar 11		1,279,503
South Belfast	2 Aug 04	1 Aug 09	**	1,803,374
West Belfast (1 & 3)	5 Mar 07	5 Mar 11		1,878,767
Newtownabbey 1 & 2	20 Mar 07	20 Mar 11		1,659,638

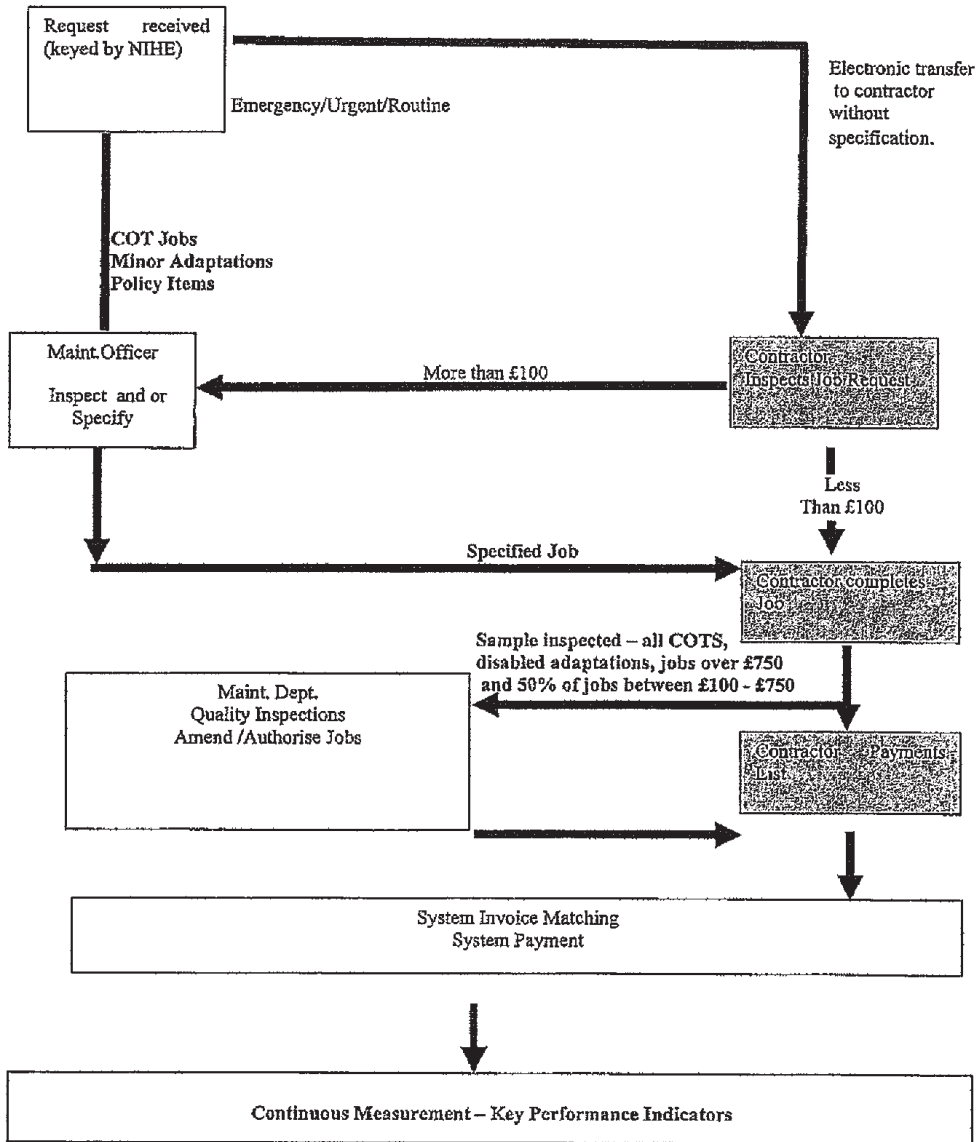
* information from the RIU 2009 report into Red Sky
 ** we understand that these contracts have very recently been put out to re-tender

Authorisation and placing of works orders

2.8 In order to be able to fully understanding the findings set out later in this report it is important to be aware of the ordering process for repairs and other minor works and the various authorisation levels which apply in Egan contracts. A high level description of these work flows and document flows associated with this process are set out below with more detailed job specific workflow charts attached at Appendix A.

Introduction and background

II



Introduction and background

II

2.9 The classification of orders and the associated required response times are as follows:

Classification	Response and completion time to be within
Immediate Call Out	Immediate
Emergency	24 hours from receipt of Repair Request
Urgent	4 days from receipt of Repair Request
Fast Stream	10 days from receipt of Order
Routine	3 weeks from receipt of Order
COT (change of tenancy)	As stated on the order

2.10 It can be seen from the flow chart set out on page 5 that for works orders below £100 the contractor visits the site and repairs the defect and subsequently records the details of the work completed on the computerised job work record. Once the contractor has been notified of a defect it does not require further authorisation for jobs below a value of £100.

2.11 Of the jobs below £100, 6% are selected at random for telephone “inspection” by the Customer Service Unit (“CSU”), for jobs with a value of between £100 and £750 50% are selected for physical inspection by the Maintenance Officers (“MO”) and for jobs over £750 all jobs are physically inspected. In addition to these “value” criteria all “policy” jobs are inspected, these include all Change of Tenancy (“COT”) jobs and minor adaptations for disabled tenants.

2.12 A Schedule of Rates (“SOR”) is created by the NIHE in respect of its Egan Contracts. This assigns codes, and costs, to each possible piece of work that the contractor could be asked to complete, including an extremely detailed list of the specific work that must be completed in respect of each code including items that are Decmed to Be Included (“DTBP”) within each code. The price for each SOR code is set by the NIHE and uplifted annually for inflation on the anniversary of the commencement of the contract. Under Egan contracts the use of codes other than SOR codes is to be avoided.

2.13 For an Immediate Call Out (“ICO”) within normal working hours the contractor will receive a base fee of £30, for ICOs outside normal working hours the contractor will receive £40, for aborted calls the contractor will receive a base fee equivalent to one hour of the time of a general tradesman (in March 2006 this was £11) and there is a minimum charge for all orders of £15.

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2.14 We have summarised the number and value of jobs issued from the commencement of each contract to 31 October 2009, and under the three major authorisation levels as follows:

No of Years	E Belf 5.25	N Belf 5.33*	S Belf 5.25	W Belf 2.66	N'abbey 1 2.64	N'abbey 2 2.64
Under £100 no.	49,109	25,262	63,269	39,869	25,368	21,365
Under £100 value	1,693,526	802,815	2,150,897	1,174,623	723,226	607,922
£100 - £750 no.	7,839	3,158	9,909	4,845	3,783	2,899
£100 - £750 value	2,062,387	786,357	2,640,566	1,174,445	948,311	699,764
Over £750 no.	1,880	907	2,613	1,026	943	531
Over £750 value	3,074,468	1,813,516	3,917,918	1,907,291	1,685,601	935,637
Total no.	58,828	29,327	75,791	45,740	30,094	24,795
Total value	6,830,382	3,402,688	8,709,381	4,256,359	3,357,139	2,243,323

** includes previous contract (with Spectrum) commencing in June 2004*

Repairs Inspection Unit ("RIU")

2.15 The RIU are, as the name suggests, an inspection unit within the NIHE which carry out annual inspections of each district.

2.16 In addition to the annual inspections the RIU will also carry out a more focused audit when a specific concern has arisen and when requested to do so.

Timing of work carried out

2.17 Our/VB Evan's site inspections took place between 16 December 2009 and 17 February 2010. The desk top review was also carried out between December 2009 and February 2010. Our report is based on the findings at that time and does not take into consideration any change in systems or alterations that may have occurred since our initial work was carried out.

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Scope of our investigation

3.1 The scope of this review, as set out in our amended terms of reference for our draft report is as follows:

"Undertaking this assignment will require forensic accounting, quantity surveying and specialist procurement advice input. In undertaking this assignment we will be required to provide a report which deals with the following issues:

- a) *the extent to which the contractor complied with the terms of the contract in terms of:*
 - i. *the quality of work undertaken; and*
 - ii. *the accuracy of invoicing.*
- b) *the quality and accuracy of work undertaken by NIHE personnel with regard to inspections and approval of work carried out;*
- c) *the level, value, and details of jobs reviewed by us, which were, in our opinion, invoiced and paid at an amount over and above the amount originally specified in the works order, together with, where appropriate, supporting documentary and photographic evidence;*
- d) *the extent to which any jobs which were invoiced and paid at an amount over and above the amount originally specified in the works order, had been subject to post inspection review by NIHE maintenance staff or the RIU;*
- e) *the extent of testing undertaken by us and whether the sample selected was representative of the entire populations of work undertaken by the contractor;*
- f) *the extent to which the NIHE's management of the procurement of the relevant contracts was appropriate and in line with best practice;*
- g) *the extent to which various personnel and process concerns raised by NIHE staff or others as a result of any contract management issues, have been appropriately dealt with;*
- h) *any other considerations relevant to specific concerns raised by the NIAO not covered under a) to g) above;*
- i) *any other considerations relevant to the NIHE's contract management processes generally; and*
- j) *recommendations for action to address any issues identified."*

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3.2 The scope of the work required for this review therefore falls broadly into three categories:

- a) the quality of workmanship of Red Sky and potential overpayment by the NIHE;
- b) personnel and process issues; and
- c) the procurement management around the awarding of the contracts to Red Sky.

Quality of workmanship of Red Sky and potential overpayment by the NIHE

3.3 The work required to address this area of concern was carried out by means of:

- i) discussions with relevant NIHE staff and a review of previous relevant reports;
- ii) a site inspection by VB Evans of jobs completed by Red Sky; and
- iii) a desktop review and analysis of information held on NIHE's computer systems.

3.4 As part of the review of the quality of workmanship and potential overpayments and to obtain a detailed understanding of Egan contracts generally, and Red Sky contracts in particular, we interviewed the following staff:

- i) Peter Craig, Contract Claims Manager;
- ii) Frances Gallagher, Head of Legal Services;
- iii) Larry Cheshire, Counter Fraud and Security Advisor;
- iv) Graham Houston, Project Manager Modernising Services;
- v) Raymond Kitson, RIU Manager; and
- vi) Maureen Taggart, Director of Personnel.

3.5 We also reviewed the following reports

- i) Cooke and Kytte report in respect of the cleaning of communal areas in West Belfast;
- ii) RIU report dated September 2006 on District 7 (South Belfast);
- iii) RIU 5th round inspection report on West Belfast, dated 4 August 2008;
- iv) RIU 6th round inspection reports on all Red Sky Contracts;
- v) RIU report on West Belfast, dated 22 November 2007;

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- vi) RIU investigation Report on Red Sky, dated 9 June 2009 (and earlier drafts); and
- vii) files held by maintenance officers in West Belfast in respect of various jobs undertaken by Red Sky.

Site inspections

3.6 523 physical inspections were carried out on jobs completed by Red Sky. Given the possible effects of “wear and tear” on the work carried out by Red Sky the sample selected for inspection was taken from jobs that were issued during the period from 1 May 2008 to 31 October 2009, an 18 month period. 320 random site inspections were carried out during the first round of inspections which took place between 16 December 2009 and 15 January 2010 and a further 51 inspections were selected from the 6th round RIU inspections covering all of Red Sky’s Districts. 152 site inspections were carried out during the second round of focussed inspections, these second round inspections were carried out between 27 January 2010 to 17 February 2010.

3.7 When selecting the sample of 500 jobs details of approximately 750 jobs were provided to VB Evans, 450 for round one, 75 for the RIU re-inspections and 225 for round two inspections. This larger sample allowed for VB Evans to deal with “no access” jobs and jobs which for some reason could not be inspected (eg the work carried out was underground) and still obtain the required number of actual physical inspections across job types, values and districts. VB Evans were provided with details of the minimum number of jobs that had to be tested from each district for each set of inspection (see Appendix B1.1, B2.1 & B3.1). This minimum number specified for each district allowed for more inspections to be carried in districts where more jobs had been issued.

3.8 We have summarised the number and value of jobs issued for this 18 month period of review under the three major authorisation levels as follows:

	E Belf	N Belf	S Belf	W Belf	N'abbey 1	N'abbey 2
Under £100						
No.	12,755	10,522	16,657	22,028	11,290	9,998
Value	£474,404	£347,822	£580,255	£674,532	£323,806	£300,482
£100 - £750						
No.	2,406	1,538	3,133	3,030	1,453	1,431
Value	£664,225	£424,374	£878,499	£748,021	£373,458	£353,674
Over £750						
No.	559	525	784	702	367	279
Value	£894,903	£1,091,107	£1,134,251	£1,358,594	£627,639	£500,240
Total						
No.	15,720	12,585	20,574	25,760	13,110	11,708
Value	£2,033,532	£1,863,303	£2,593,005	£2,781,147	£1,324,903	£1,154,396

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3.9 We have summarised the number and value of MTE jobs completed for this 18 month period of review under the three major authorisation levels as follows:

	E Belfast	N Belfast	S Belfast	W Belfast	N'abbey 1	N'abbey 2
Under £100 no	12,050	9,737	15,564	20,354	10,575	9,597
Under £100 value	475,797	349,774	584,680	683,865	327,321	305,773
£100 - £750 no	2,300	1,447	2,848	2,800	1,419	1,397
£100 - £750 value	633,214	403,298	772,438	694,915	363,342	347,087
Over £750 no	535	492	726	662	350	274
Over £750 value	857,075	1,024,075	1,059,310	1,258,641	608,172	495,613
Total no	14,885	11,676	19,138	23,816	12,344	11,268
Total value	1,966,086	1,777,147	2,416,429	2,637,422	1,298,835	1,148,473

3.10 When selecting jobs for inspection the sample was selected from jobs issued to ensure that we drew our sample from the entire population.

3.11 The site inspections focused on the quality of the workmanship, whether the work had been completed as specified on the works order and whether it had been priced in accordance with the schedule of rates.

First round inspections

3.12 Given the nature of the inspection process of works orders, as described in paragraph 2.10, we stratified the population for the first round of inspections into the following three strata:

- ♦ jobs with values less than £100;
- ♦ jobs with values between £100 and £750; and
- ♦ jobs with values over £750.

3.13 This also allowed the weighting of the sample towards higher value items.

3.14 100 jobs were inspected at random from each strata. This random sample was reviewed to ensure that the sample included jobs covering each district. The jobs selected for each district and a detailed summary of the method of selection is attached at Appendix B1.

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3.15 The jobs inspected in each strata and in each district are summarised as follows:

	E Belf No.	N Belf No.	S Belf No.	W Belf No.	N'abbey 1 No.	N'abbey 2 No.	Total No.	*
Under 100								
Total in 18 mth period.	12,755	10,522	16,657	22,028	11,290	9,998	83,250	
Sample inspected	19	11	24	30	17	12	113	
£100 - £750								
Total in 18 mth period.	2,406	1,538	3,133	3,030	1,453	1,431	12,991	
Sample inspected	21	12	26	22	14	11	106	
Over £750								
Total in 18 mth period.	559	525	784	702	367	279	3,216	
Sample inspected	17	18	25	20	12	9	101	
Total								
Total in 18 mth period.	15,720	12,585	20,574	25,760	13,110	11,708	99,457	
Sample inspected	57	41	75	72	43	32	320	
* Total excludes cancelled jobs								

RIU inspections

3.16 50 jobs were selected for re-inspection from the population of jobs viewed by the RIU as part of their 6th round inspections. These jobs covered all of the districts in which Red Sky holds an Egan contract and each strata. These re-inspections were undertaken to determine whether we could rely on the work carried out by the RIU and the results they had obtained.

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3.17 The RIU jobs inspected in each strata and in each district are summarised as follows (Appendix B2):

	E Belf No.	N Belf No.	S Belf No.	W Belf No.	N'abbey 1 No.	N'abbey 2 No.	Total No
Under £100							
Sample inspected	6	4	1	3	1	3	18
£100 - £750							
Sample inspected	2	5	7	4	2	1	21
Over £750							
Sample inspected	1	4	2	1	2	2	12
Total							
Total	75	75	75	75	75	75	450
Sample inspected	9	13	10	8	5	6	51

Second round inspections

3.18 Based on the results of the first round of inspections a more focused sample of approximately 150 jobs was selected for the second round of inspections. This sample was selected to allow additional work to be carried out on any areas of concern arising from the first round of inspections and/or other work.

3.19 The jobs inspected in the second round are summarised as follows (Appendix B3):

	E Belf No.	N Belf No.	S Belf No.	W Belf No.	N'abbey 1 No.	N'abbey 2 No.	Total No
Sample inspected	28	23	22	22	25	32	152

Desktop review

3.20 Given the number of jobs that are undertaken through each contract, we also carried out a desktop review of the information available within the NIHE's computer systems to try to identify any areas of concern that may indicate overpayment by the NIHE and / or inadequate inspections by District office staff. The following Structured Query Language ("SQL") reports, covering the period from May 2007 to October 2009, were obtained (via the NIHE's IT department), and reviewed:

- i) the number, and value, of jobs for each month, for each district in Northern Ireland under £100;
- ii) the number, and value, of jobs for each month, for each district in Northern Ireland between £100 and £750;
- iii) the number, and value, of jobs for each month, for each district in Northern Ireland over £750;

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- iv) the number, and value, of jobs completed with an SOR code of 3333 (this is where a pro rata of an existing SOR code is to be used) for each month, for each district in Northern Ireland;
- v) the number, and value, of jobs completed with a SOR code of 6666 (this is a job where the specification and price is set by a QS) for each month, for each district in Northern Ireland;
- vi) the number, and value, of jobs completed with a SOR code of 9999 (over £500 – set by QS, under £500 set by DMM and requiring a day works sheet) for each month, for each district in Northern Ireland;
- vii) the number of jobs completed “out of time” for each month, for each district in Northern Ireland and for each work category;
- viii) the number of overdue jobs per district and per work category at 31 October 2009;
- ix) the value of jobs completed per month by contractors other than the Egan contractor specified for that district, for each district in Northern Ireland;
- x) details of the NIHE “housing stock” in each district in Northern Ireland at 31 October 2009;
- xi) the result of inspections carried out by each Maintenance Officer, per month for each district in Northern Ireland;
- xii) details of duplicate SOR codes at the same property within a six month period for the Red Sky contracts; and
- xiii) a review of the “matches” identified for the Northern Ireland Audit Office’s National Fraud Initiative in respect of Red Sky (and Spectrum).

3.21 For the reports reviewed under items i) to xi) we analysed and reviewed the data with particular emphasis on the performance of the Red Sky districts versus the other districts in Northern Ireland to identify any unusual trends or statistics.

3.22 When exceptions or unusual trends were identified further work was undertaken to try to establish the cause of these trends.

Personnel and process issues

3.23 Concerns had been raised in relation to a number of personnel and process related matters in respect of the management of various contracts and in particular the moving of certain staff members to different roles within the NIHE.

3.24 As noted at para 1.6 the personnel process issues are now part of a separate report and we have therefore not included any further comment on this area within this final report.

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Review of the procurement of the Red Sky Contracts

3.25 A review has been carried out by the Department of Finance and Personnel's Central Procurement Directorate ("CPD") into the awarding of these contracts to Red Sky. As part of our work on this aspect of the review we:

- i) met with CPD in advance of the commencement of their review to ensure that they were fully appraised of the concerns raised by the NIAO in relation to the procurement of the relevant contracts;
- ii) met and corresponded with CPD during the course of the preparation of their report to ensure that we were fully appraised of the work they were undertaking and their initial findings; and
- iii) reviewed and discussed CPD's final report with them and considered its implication in respect of both the specific, and wider, requirements of this review.

Progress reporting

3.26 In addition to undertaking each of the three work streams noted above we were also required to keep the NIHE appraised of the progress of the review. In particular we met with NIHE management, and others, on the following dates:

Date	Attendees	Purpose of meeting
19 Jan 2010	NIHE management and representatives from DSD and the NIAO	To provide an update of progress to date
2 Feb 2010	NIHE Chief Executive	To provide an update of progress to date
26 Feb 2010	NIHE Chief Executive, Deputy Chief Executive and Head of Internal Audit	To verbally update of key findings

3.27 We issued a draft of our report on this matter for discussion purposes on 1 March 2010. Further meetings took place on the following dates:

Date	Attendees	Purpose of meeting
2 Mar 2010	NIHE management	To discuss draft report
8 Mar 2010	NIHE Director of Finance	To discuss draft report
31 Mar 2010	NIHE Director of Finance, Head of Internal Audit and Head of Procurement	To discuss draft report and additional work
3 Jun 2010	NIHE Director of Finance, Head of Internal Audit and Head of Procurement	To discuss additional work and time scale for final report
11 Jun 2010	NIHE Chief Executive and Director of Finance	To discuss progress re final report
15 Sep 2010	NIHE Director of Finance, Head of Internal Audit, Ross Campbell and Michael Kavanagh of NIHE Housing and Regeneration, Raymond Kitson of RIU and VB Evans	To discuss VBE's findings
16 Sep 2010	NIHE senior management and a representative from DSD	To provide an update as to the current position

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Site inspections**First round inspections**

4.1 As stated previously the site inspections were carried out by VB Evans, Chartered Quantity Surveyors and Construction Cost Consultants. A copy of VB Evans' report incorporating details of their inspections and findings is attached at Appendix H. When considering the findings the following points should be borne in mind:

- ◆ where works are incomplete (e.g. a door is fitted but not painted as specified) the full value of the item has been treated as an anomaly. Red Sky have not completed the work as specified and the job is therefore incomplete, it is therefore reasonable to include the value of that SOR item as an anomaly; and
- ◆ where the contractor has made a change to the specified work (eg a ramp is installed but not in accordance with the specification) V B Evans have allowed for the value of the work actually completed, taking account of the different cost of the item as installed when compared with the cost of the item as specified, ie it is the differential in these costs that has been treated as an anomaly.

4.2 For each job inspected where there was a financial anomaly VB Evans has provided a work sheet which sets out details of the issues found, these are attached to Appendix A of their report (final version attached). These anomalies have been summarised by value range (<£100 etc) and as a percentage of the value of those jobs where anomalies arose and also as a percentage of the whole sample selected in that district. The results have been summarised under the following headings:

Heading	Meaning
Samples available to survey	The number of jobs from which VB Evans could choose their sample
Accessed	The number of jobs actually inspected
Total value of jobs accessed	The total value of the jobs inspected
No of jobs where financial concern identified	The number of jobs which were inspected on which financial anomalies were found, eg the workmanship was not up to standard, items were not completed as per specification, items that were on the job specification were not carried out all
Total value of jobs where there were anomalies	The total value of all jobs where a financial anomaly was found.
Value of anomalies	The actual value of the SOR code (the value of the individual works item) on which the financial anomaly was found, or the value of the deemed adjustment (for example on disabled ramps)
Value of anomalies as a % of the total value of jobs where anomalies have occurred	The value of all the financial anomalies in comparison to the total value of jobs where a financial anomaly existed.
Value of anomalies as a % of the total value of jobs accessed	The value of all the financial anomalies in comparison to the total value of all jobs inspected.

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4.3 We have summarised VB Evans' findings from the first round site inspections for each district below:

East Belfast

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies were identified	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
<£100	21	19 (90%)	743	5 (26%)	239	199	83	27
£100-£749	28	21 (75%)	4,757	10 (48%)	3,025	1,456	48	
>£750	22	17 (77%)	30,492	10 (59%)	19,016	4,618	24	15
Total	71	57 (80%)	35,991	25 (44%)	22,280	6,272	28	17

4.4 The 25 financial anomalies can be summarised as follows:

	<£100 No	£100 - £749 No	>£750 No	Total No
Communal lighting	2			2
Should be a recall	1			1
No work carried out	1			1
Work not to specification or not acceptable	1	3	5	9
Minor electrical		3		3
Fitting of doors		1		1
Disabled ramp		1	1	2
Additional work claimed but not done		1		1
Work specified which can not be done		1		1
Kitchen refits and floor tiling			4	4
	<u>5</u>	<u>10</u>	<u>10</u>	<u>25</u>
No inspected by NIHE staff	<u>0</u>	<u>6</u>	<u>10</u>	<u>16</u>

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North Belfast

Sample Category	Samples available to survey		Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies occurred £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred	Value of anomalies as a % of the total value of jobs accessed
	No	Accessed No					%	%
<£100	15	11 (73%)	365	2 (18%)	107	75	70	21
£100-£749	21	12 (57%)	2,853	6 (50%)	1,910	520	27	18
>£750	28	18 (64%)	41,039	13 (72%)	30,809	1,788	6	4
Total	64	41 (64%)	44,257	21 (51%)	32,826	2,383	7	5

4.5 The 21 financial anomalies can be summarised as follows:

	<£100 No	£100 - £749 No	>£750 No	Total No
Should be a recall	1			1
Work not to specification or not acceptable	1	3	7	11
Disabled shower			3	3
Work claimed but not done		2	-	2
Kitchen refits and floor tiling			2	2
Under claim by Red Sky		1	1	2
	<u>2</u>	<u>6</u>	<u>13</u>	<u>21</u>
No inspected by NIHE staff	0	5	12*	17

* Although 12 were inspected a further 1 was due to be inspected but due to no access was not, however it was still passed for payment.

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South Belfast

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
<£100	29	24 (83%)	783	3 (13%)	60	47	79	6
£100-£749	40	26 (65%)	7,732	6 (23%)	2,081	572	27	7
>£750	38	25 (66%)	36,825	13 (52%)	22,763	3,377	15	9
Total	107	75 (70%)	45,340	22 (29%)	24,904	3,996	16	

4.6 The 22 financial anomalies and 3 non-financial anomalies (sample 241, 269 and 272) can be summarised as follows:

	<£100 No	£100 - £749 No	>£750 No	Total No
Communal lighting	1			1
Work not to specification or not acceptable	1	5	8	14
Fitting of doors and latches	1			1
Work claimed but not done		2		2
Work specified which can not be done		1		1
Kitchen refits and floor tiling		1	4	5
Other			1	1
	3	9	13	25
No inspected by NIHE staff	0	6	13	19

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West Belfast

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
<£100	42	30 (71%)	1,022	3 (10%)	145	33	23	3
£100-£749	27	22 (81%)	5,689	8 (36%)	1,963	493	25	9
>£750	31	20 (65%)	42,219	12 (60%)	29,341	2,273	8	5
Total	100	72 (72%)	48,930	23 (32%)	31,450	2,799	9	6

4.7 The 23 financial anomalies and 1 non-financial anomaly (128) can be summarised as follows:

	<£100 No	£100 - £749 No	>£750 No	Total No
Work not to specification or not acceptable	4	6	8	18
Disabled ramp and rails		2		2
Work claimed but not done			1	1
Work specified which can not be done				
Kitchen refits and floor tiling			3	3
	<u>4</u>	<u>8</u>	<u>12</u>	<u>24</u>
No inspected by NIHE staff	<u>0</u>	<u>3</u> *	<u>10</u> **	<u>13</u>

* Although 3 were inspected a further 3 were due to be inspected but due to no access they were not, however they were still passed for payment.
** Although 10 were inspected a further 2 were due to be inspected but due to no access they were not, however they were still passed for payment.

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Newtownabbey I

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies were £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
		17						
<£100	17	(100%)	466	4 (24%)	87	83	95	18
£100-£749	20	14 (70%)	3,431	6 (43%)	1,333	1,000	75	29
>£750	16	12 (75%)	17,499	7 (58%)	8,749	1,600	18	9
Total	53	43 (81%)	21,396	17 (40%)	10,169	2,683	26	13

4.8 The 17 financial anomalies can be summarised as follows:

	<£100 No	£100 - £749 No	>£750 No	Total No
Communal lighting	1			1
Work not to specification or not acceptable	2	3	3	8
Disabled ramp and rails		1	2	3
Work claimed but not done	1		1	2
Work specified which can not be done		2	1	3
	<u>4</u>	<u>6</u>	<u>7</u>	<u>17</u>
No inspected by NIHE staff	0	2	6 *	8

* Although 6 were inspected a further 1 was due to be inspected but due to no access it was not, however it was still passed for payment.

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Newtownabbey 2

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
<£100	20	12 (60%)	338	3 (25%)	99	51	51	15
£100-£749	15	11 (73%)	2,590	5 (45%)	1,185	323	27	12
>£750	14	9 (64%)	22,089	5 (56%)	14,797	1,802	12	8
Total	49	32 (65%)	25,017	13 (41%)	16,081	2,177	14	9

4.9 The 13 financial anomalies can be summarised as follows:

	<£100 No	£100 - £749 No	>£750 No	Total No
Work not to specification or not acceptable	1	2	3	6
Disabled ramp and rails		2		2
Work claimed but not done	2	1	1	4
Other			1	1
	<u>3</u>	<u>5</u>	<u>5</u>	<u>13</u>
No inspected by NIHE staff	<u>0</u>	<u>3</u> *	<u>5</u>	<u>8</u>

**Although 3 were inspected a further 1 was due to be inspected but due to no access it was not, however it was still passed for payment*

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Summary

4.10 The results of the round one inspections can be summarised as follows

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies were £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
<£100	144	113(78%)	3,717	20 (18%)	737	488	66	13
£100-£749	151	106(70%)	27,052	41 (39%)	11,497	4,362	38	16
>£750	149	101(68%)	190,163	60 (59%)	125,474	15,459	12	8
Total	444	320(72%)	220,932	121 (38%)	137,709	20,309	15	9

4.11 Based on the results of the first round of inspections VB Evans recommended that the second round inspections concentrate on the following areas:

- ◆ Category 1: hanging of doors – doors being hung with shaved edges but not made good in respect of décor/failure to paint items as specified;
- ◆ Category 2: the repair or replacement of door latches or door handles - where a door latch or handle is specified for replacement, the complete handles and latch both appear to be replaced and the more expensive work claimed;
- ◆ Category 3: COTs and, in particular kitchens, - some COT and kitchen schemes are being completed with variances between works specified and works carried out. It was also noted that tiles due to be lifted from floors are being left in-situ and the new tiles laid over the existing tiles;
- ◆ Category 4: railings - short lengths of galvanised hand rail are being over measured and railings are often left unpainted;
- ◆ Category 5: disabled ramps - ramps are not being installed as specified and even though they may be fit for purpose, the work completed would have been considerably cheaper than the works specified and charged; and
- ◆ Category 6: communal lighting - maintenance of communal lighting does not appear to be being carried out as scheduled.

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4.12 For each of the categories identified above the following number of jobs were inspected, covering all of the districts:

Category	1	2	3	4	5	6	Total
E Belfast	4	3	6	6	2	7	28
N Belfast	4	3	7	5	0	4	23
S Belfast	2	3	5	5	1	6	22
W Belfast	4	2	5	5	2	4	22
Newtownabbey 1	4	3	5	6	2	5	25
Newtownabbey 2	3	5	5	7	1	11	32
Total tested	21	19	33	34	8	37	152
Total no in period May 08 to Oct 09	1,949	11,365	787	272	56	11,534	25,963

4.13 The findings from the second round of inspections can be summarised by category as follows:

Category 1 - hanging doors

Sample Category	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies there were £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
E Belfast	4	4,909	3(75%)	4,825	684	14	14
N Belfast	4	4,305	3(75%)	3,842	440	11	10
S Belfast	2	176	1(50%)	84	59	71	34
W Belfast	4	2,318	4(100%)	2,318	544	23	23
N'abbey 1	4	7,322	2(50%)	4,121	668	16	9
N'abbey 2	3	8,090	3(100%)	8,090	518	6	6
	21	27,121	16(76%)	23,280	2,913	13	11

4.14 The results of the second round of inspections for this category confirm that there is a consistent problem across all the districts of a failure to complete work to doors especially in respect of decoration of doors and as per the specification. The full cost of the work is however claimed by Red Sky.

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Category 2 – door latches and handles

Sample Category	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies occurred £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
E Belfast	3	1,113	1(33%)	993	290	29	26
N Belfast	3	5,154	1(33%)	3,174	710	22	14
S Belfast	3	484	1(33%)	83	56	68	12
W Belfast	2	42	0(0%)	0	0	0	0
N'abbey 1	3	2,289	1(33%)	217	190	87	8
N'abbey 2	5	2,823	5(100%)	2,823	1,250	44	44
	19	11,906	9(47%)	7,291	2,495	34	21

4.15 The results of the second round of inspections for this category confirm that there is a consistent problem across all the districts, but particularly in Newtownabbey 2 where, when a latch is specified door handles are also added and vice versa. We note however that the cost of replacing a latch is below the minimum threshold payment of £15 and where this item is specified on its own rather than as part of a larger job then the financial loss is not as great as might first appear. The cost of the latch and handles together is £19.

Category 3 - COTs and hitchens

Sample Category	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where anomalies occurred £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
E Belfast	6	1,374	5(83%)	1,150	254	22	18
N Belfast	7	1,165	2(29%)	286	214	75	18
S Belfast	5	1,479	0(0%)	0	0	0	0
W Belfast	5	5,341	1(20%)	4,685	471	10	9
N'abbey 1	5	955	2(40%)	553	455	82	48
N'abbey 2	5	3,629	2(40%)	3,076	414	13	11
	33	13,943	12(36%)	9,750	1,808	19	13

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4.16 The results of the second round of inspections for this category confirm that there is a consistent problem across all districts but particularly in East and North Belfast and in Newtownabbey 1 in respect of the fitting of kitchens in compliance with specifications (the issues identified do not relate to the issue that existed previously with post formed kitchens). In particular it would appear that new tiles are frequently laid on top of existing tiles, even though the specification and payment require the old tiles to be lifted.

4.17 A potential health and safety issue may exist from the incorrect work being carried out on the floor tiles if the old tiles contained asbestos.

Category 4 - Railings

Sample Category	Accessed	Total value of jobs accessed No £	No of jobs where financial concern identified	Total value of jobs where there were anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred	Value of anomalies as a % of the total value of jobs accessed
						%	%
E Belfast	6	4,719	6(100%)	4,719	1,074	23	23
N Belfast	5	1,970	3(60%)	1,527	207	14	11
S Belfast	5	3,557	2(40%)	181	181	100	5
W Belfast	5	1,507	4(80%)	1,402	692	49	46
N'abbey 1	6	2,032	4(67%)	1,765	1,734	98	85
N'abbey 2	7	2,759	6(86%)	2,616	1,106	42	40
	34	16,545	25(74%)	12,211	4,995	41	30

4.18 The results of the second round of inspections for this category confirm that there is a consistent problem in all districts in respect of the over measurement of hand rails and that these rails are frequently not being painted as specified.

Category 5 – Disabled ramps

Sample Category	Accessed	Total value of jobs accessed No £	No of jobs where financial concern identified	Total value of jobs where there were anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred	Value of anomalies as a % of the total value of jobs accessed
						%	%
E Belfast	2	7,580	2(100%)	7,580	2,863	38	38
N Belfast	0	0	0(0%)	-	-	0	0
S Belfast	1	2,052	1(100%)	2,052	36	2	2
W Belfast	2	6,862	2(100%)	6,862	1,410	21	21
N'abbey 1	2	4,819	2(100%)	4,819	3,066	64	64
N'abbey 2	1	878	0(0%)	-	-	0	0
	8	22,191	7(88%)	21,313	7,376	35	33

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4.19 Given the specialised nature of this category it was not possible to inspect as many jobs as would have been desirable as there were very few works orders which fell into this category during the period of review with no works orders at all within North Belfast. However the results of the second round of inspections in the remaining 5 districts confirm that there is a consistent problem in all districts inspected in respect of ramps for the disabled not being completed as specified. VB Evans state that the ramps inspected were “fit for purpose” however they had not been built to specification and the cost of constructing the actual ramps provided would have been considerably less than the cost if they had been completed to specification. The full specification cost was however claimed and paid.

Category 6 – Communal lighting

Sample Category	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where there were anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
E Belfast	7	288	7(100%)	288	288	100	100
N Belfast	4	96	1(25%)	29	29	100	30
S Belfast	6	102	2(33%)	28	28	100	28
W Belfast	4	116	4(100%)	116	116	100	100
N'abbey 1	5	96	3(60%)	27	27	100	28
N'abbey 2	11	96	4(36%)	35	35	100	37
	37	794	21(57%)	523	523	100	66

4.20 The results of the second round of inspections for this category confirm that maintenance of communal lighting does not appear to be being carried out as scheduled. This problem was found in all districts but appears to be a particular issue in East Belfast.

Summary of 2nd round of inspections - total

Sample Category	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where there were anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
E Belfast	28	19,983	24(86%)	19,555	5,453	28	27
N Belfast	23	12,690	10(43%)	8,858	1,600	18	13
S Belfast	22	7,851	7(32%)	2,428	361	15	5
W Belfast	22	16,186	15(68%)	15,383	3,233	21	20
N'abbey 1	25	17,514	14(56%)	11,502	6,139	53	35
N'abbey 2	32	18,276	20(63%)	16,641	3,323	20	18
	152	92,499	90(59%)	74,367	20,110	27	22

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Summary of first and second round inspections

4.21 The combined findings from the first and second round inspections can be summarised as follows:

Sample Category	Samples available to survey No	Accessed No	Total value of jobs accessed £	No of jobs where financial concern identified	Total value of jobs where there were anomalies £	Value of anomalies £	Value of anomalies as a % of the total value of jobs where anomalies have occurred %	Value of anomalies as a % of the total value of jobs accessed %
E Belfast	108	85 (79%)	55,974	49(58%)	41,835	11,725	28	21
N Belfast	99	64 (65%)	56,947	31(48%)	41,683	3,983	10	7
S Belfast	144	97 (67%)	53,191	29(30%)	27,332	4,357	16	8
W Belfast	138	94 (68%)	65,116	38(40%)	46,833	6,032	13	9
N'abbey 1	90	63 (76%)	38,910	31(46%)	21,671	8,822	41	23
N'abbey 2	90	64 (71%)	43,294	33(52%)	32,722	5,500	17	13
Total	669	472 (71%)	313,432	211(45%)	212,076	40,419	19	13

4.22 It can be seen from the above table that of the 472 jobs inspected during round 1 and 2, that 45% had some form of financial anomaly. The value of the financial anomalies equated to 13% of the total value of the jobs inspected.

Further classification of results

4.23 Following on from our draft report of 1 March 2010, NIHE requested that VB Evans provide a further analysis to assist with potential recoupment from Red Sky. The financial anomalies were therefore classified into four categories:

Category A: Clear Cut. Contractor should not have been paid for non-conforming or defective works (ie overclaims) or they should have been paid for works they have omitted to claim (ie underclaims)

Category B: Grey area. Evidence not conclusive or it may be unreasonable to deduct full amount for anomaly identified.

Category C: Repeat works orders for communal areas which it would appear may not be being done as required.

Category D: Works (generally hand rails) where the item is installed incomplete (ie not painted) but is fit for purpose and acceptable. In this instance, a Category A deduction would be made for the painting and the remainder left in Category D which is deemed fit for payment.

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4.24 The detailed findings are attached at Appendix K and summarised as follows:

	Category				Total £
	A £	B £	C £	D £	
E Belfast	9,111	2,208	407	-	11,726
N Belfast	2,350	1,588	29	16	3,983
S Belfast	2,591	1,665	46	54	4,357
W Belfast	3,983	1,972	69	9	6,032
N'abbey 1	5,283	1,279	35	2,224	8,821
N'abbey 2	2,650	2,149	35	666	5,450
	<u>25,967</u>	<u>10,861</u>	<u>622</u>	<u>2,968</u>	<u>40,419</u>

Re-inspection of RIU inspection

4.25 51 jobs previously inspected by the RIU during its 6th round of inspections were re-inspected by VB Evans to ensure that we could rely on the work carried out by the RIU and the results they had obtained. The following jobs were re-inspected:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1 & 2	Total
	No	No	No	No	No	No
Jobs re-inspected	9	13	10	8	11	51

4.26 The detailed results of the re-inspection of RIU inspections are set out in the VB Evans report attached at Appendix H. With the exception of one inspection VB Evans found that the result of the inspections carried out by the RIU concurred with their findings. VB Evans has stated that the one exception only became apparent after they held discussions with the tenant and if they had not been able to discuss the repair with the tenant they would have reached the same overall conclusion as the RIU.

4.27 Given this high level of compliance between the results of VB Evans inspections and those of the RIU, in our opinion, we are able to place reliance on the results obtained by the RIU and use these results along with our own desktop review and the inspections by VB Evans to highlight any possible patterns and trends that emerge and whether these have existed over a period of time.

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4.28 The various inspections carried out and reports prepared by the RIU and their findings are summarised under the following headings:

- ◆ Round 6 inspections;
- ◆ District 7 report – 2006;
- ◆ RIU – West Belfast report 22 November 2007; and
- ◆ RIU – report June 2009.

Round 6 inspections

4.29 We have not attached the detailed RIU reports to our report but have attached extracts in respect of the findings and recommendations at Appendix C.

4.30 It should be noted that, given the different purposes and aims of the VB Evans inspections and the RIU inspections, the approach taken to the summary of the findings is different in that even where the RIU find the work to be unsatisfactory they do not always attach a financial value to this anomaly, it would appear that where it is an issue of poor workmanship the recommendation is that the Contractor should be made to rectify the matter. Where VB Evans find anomalies they have, where practical, attached a financial value to this anomaly. The findings from the RIU 6th round of inspections can be summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N ^o abbey 1 & 2	Total
No of inspections	75	75	75	75	75	375
No of jobs with anomalies	32	41	26	39	38	176
Recoverable costs (£)	1,436	1,083	494	938	2,109	6,060

4.31 We understand that the Northern Ireland average overpayment per district during the 6th round of RIU inspections was £821. As such all the Red Sky districts, with the exception of South Belfast, had identified recoverable costs in excess of the Northern Ireland average.

4.32 We understand from a review of the results of the 6th round of inspections that the RIU identified the following recurring issues:

- ◆ hanging of doors – doors being hung with shaved edges but not made good in respect of décor/failure to paint items as specified;
- ◆ COT's and, in particular kitchens, - some COT and kitchen schemes are being completed with variance between works specified and works carried out;
- ◆ railings and gates - these are not being completed to specification in particular with regard to painting;
- ◆ measurement – there are frequent overmeasurement in all areas; and

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- ◆ deemed to be included – items are included on the final works order that should not be separately coded or priced as they are DTBI within other items listed on the works order.

District 7 report - 2006

4.33 A special technical and management audit was carried on South Belfast (District 7) during January 2006. As a result of this audit RIU found that the typical reasons for overpayments were:

- ◆ duplicate ordering;
- ◆ deemed to be included;
- ◆ over specification; and
- ◆ kitchen unit specification.

4.34 This RIU inspection took the form of a desktop review with back up site inspections. As with the 6th round inspections we have not attached a copy of the full report to our report but have included the summary of findings at Appendix D. The overpayments identified in this RIU audit were:

	£
Duplicate ordering	36,000
Additional payment for kitchens (mainly in respect of post formed – all Red Sky districts)	102,000
Over specifying	47,000
DTBI	14,000
Work not done	8,000
	<u>207,000</u>

4.35 We understand Red Sky disputed many of the matters identified and a significantly reduced repayment was eventually agreed.

4.36 The nature of the anomalies found in this inspection are similar to those found in the 6th round of inspections and in the inspections carried out by VB Evans, with the exception of the issue of post formed kitchens which, from the work carried out, now appears to be resolved. The issue of duplicate ordering is discussed in the Results of the Desktop Review at paragraph 4.80.

RIU – West Belfast report 22 November 2007

4.37 This report focused on certain specific areas of concern in West Belfast, namely:

- i) to review a sample of COT and general jobs the District was withholding from payment; and
- ii) jobs with the status of “Issued” and which were beyond the required completion date.

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4.38 We have not attached the detailed RIU report to our report but have attached extracts in respect of the findings and recommendations at Appendix E10.

4.39 With regard to the 10 jobs reviewed under i) of paragraph 4.37 the RIU found that the District's actions were appropriate in 5 cases and in the remaining 5 they should have amended the order to reflect the completed work and authorised for payment.

4.40 In respect of item ii) of paragraph 4.37, the RIU found that Red Sky, at that time, were responsible for 83% of all jobs in excess of 4 weeks beyond the required completion date in the Belfast Area.

RIU - report June 2009

4.41 A review of the Red Sky contracts was carried by the RIU in the Spring of 2009. We have not attached the detailed RIU report to our report but have attached extracts in respect of the findings and recommendations at Appendix E.

4.42 The RIU audit identified jobs from a desktop review and then carried out site inspections to verify that the work claimed had actually been carried out. The sample selected by the RIU included all priorities and job types with a greater emphasis on high value jobs. RIU summarised their findings under five main headings which are discussed in more detail below:

- ◆ confirmation orders;
- ◆ shower unit installations;
- ◆ customer service reports;
- ◆ quality of Red Sky's work; and
- ◆ work paid for but not done.

4.43 We have had sight of both the first draft and the final interim RIU report on this investigation. On review of these two reports it is noted that some of the detail contained in the first draft is not available in the final version and the failure rate per item, which is a much lower number, rather than per job (which we understand is the usual measurement for the NIHE) is quoted. In addition the comment, which in our view is significant, that all of the Red Sky districts were non compliant, does not appear. It is unclear why these details, which in our opinion contribute to the reader's understanding of the issues arising, are not contained in the final report. We note however the conclusion is the same in both reports (see Appendix E9).

Confirmation orders

4.44 This previously had been an area of concern in the Red Sky contracts, particularly in South Belfast. RIU's conclusion on this area is that "*RIU are satisfied after a review that in general the procedures adopted by most Districts complied with policy and procedures. However this is a high risk area which needs to be continually reviewed.*"

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Shower unit installations

4.45 The main area of concern with regard to this category of investigation is noted as follows; "A number of additional jobs had been issued to Red Sky to have the new shower serviced and a on a number of occasions replaced, while the shower is within the 6 month defect liability period."

4.46 This finding concurs with our findings both from site inspections carried out by VB Evans (this is identified in their report as an issue arising but not as an area for further investigation) and our desktop review (see paragraph 4.80) in that items that should be treated as recalls are, on occasions, being paid for.

Customer Service Unit Reports

4.47 The first area of this review focused on the reports generated by the CSU and looked at:

- ◆ Outside Response Time ("ORT") which represent 2nd time calls received from the tenant indicating that the work is not done and is outside the required completion date; and
- ◆ Jobs Completed on System ("JCS") which represent jobs completed on the computer system but the work is not done on site.

4.48 The RIU results are summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1 & 2	Total
Total JCS & ORT	74	105	107	187	51	524
% of orders issued	1.9%	3.9%	2.3%	3.3%	0.9%	2.3%
Northern Ireland average						2.3%

4.49 The second area examined was the number of recalls:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1 & 2	Total
Total Recalls	141	156	153	259	212	921
% of orders issued	3.7%	5.8%	3.3%	4.5%	3.8%	4.1%
Northern Ireland average						3.3%

4.50 Both the areas of JCS and ORT's and Recalls appear to be in line with the Northern Ireland averages. However the findings from our desktop review indicate that items that should be classified as recalls are not always correctly treated (see paragraph 4.80), this may also be the case in other districts in Northern Ireland.

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Quality of Red Sky's work

4.51 The results for this area were drawn from the 6th round inspections and can be summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N ^o abbey 1 & 2	Total
No of inspections	75	75	75	75	75	375
No of unsuccessful inspections	19	25	16	22	20	102
% of unsuccessful inspections	25%	33%	21%	29%	26%	27%

The RIU regard a <10% as fully compliant

4.52 In the 6th round of inspections 34% of contractors scored a full compliance and 37% were partially compliant, all of the Red Sky districts were treated as failing to comply.

4.53 When reviewing the above table it should be borne in mind that if one item on a job is unsuccessful then the whole of that job is treated as an unsuccessful inspection, ie if there are one hundred items specified on a job and one items fails then the whole of the job is treated as unsuccessful. If the failure rate of the actual works items is examined then the failure rate is 3.6%.

4.54 It is clear from the results of the 6th round of inspections carried out by the RIU that Red Sky's quality of work does not comply with the NIHE required standards and is in the bottom 29% of all contractors (Red Sky represents half of these 29% of contractors).

Work paid for but not done

4.55 As noted above RIU have summarised their findings in a different manner to VB Evans in that even where RIU find the work to be unsatisfactory they do not always attach a financial value to this anomaly. The findings from the RIU 2009 audit can be summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N ^o abbey 1 & 2	Total
No of inspections	123	52	9	39	50	273
No of jobs with overpayment	41	10	3	4	12	70
Total value of works orders inspected (£)	41,514	73,343	8,428	74,776	47,579	245,640
Overpayments (£)	7,343	1,436	268	44	1,172	10,263
% overpayment	17.8%	2.0%	3.2%	0.1%	2.5%	4.2%

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4.56 The main reasons identified by RIU for overpayments can be summarised as follows:

- ◆ incorrect measurements;
- ◆ work not being completed to specification; and
- ◆ work being claimed for, which has not been done.

4.57 RIU conclude that *“inappropriate payments were approved, but not beyond that which is normally identified in such as the annual inspection”*. While we accept that this may be the case for most of the Red Sky districts an overpayment rate of 17.8% as recorded by East Belfast could not be considered acceptable and could be indicative of a larger problem in that district.

Desktop review

4.58 The work undertaken in respect of our desktop review is outlined in detail in Section III, however, in summary it consisted of interrogating and analysing the data held by NIHE on its IT systems to determine whether it was possible to identify that Red Sky’s performance differed markedly from that of other NIHE contractors. The findings of this desktop review are set out below.

The “stock” at 31 October 2009

4.59 The NIHE housing stock for each district at 31 October 2009 is summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N’abbey 1	N’abbey 2	NI total*
	3,474	2,970	3,948	5,130	2,126	2,158	87,332

* Excludes Armagh – Armagh maintenance work is done in house rather than by a third party contractor

The number of and value of jobs under £100, between £100 - £750 and over £750

4.60 Information was analysed and reviewed under these categories to establish if the number and or value of jobs in the Red Sky Districts was out of line with the N Ireland average, if anomalies did exist it may indicated that more jobs were being completed by Red Sky and at a higher cost than would be expected.

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4.61 The detailed analysis is attached at Appendix F1 and can be summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1	N'abbey 2	NI aver*
<£100							
Average no of jobs per unit of stock	6	5	7	7	8	7	7
Average value of jobs per stock (£)	221	192	247	215	250	226	236
£100 - £750							
Average no of jobs per unit of stock	1.0	0.7	1.1	0.8	1.1	1.0	1.1
Average value of jobs per stock (£)	271	190	301	197	270	251	266
>£750							
Average no of jobs per unit of stock	0.25	0.25	0.29	0.18	0.24	0.21	0.27
Average value of jobs per stock (£)	406	511	421	337	412	378	557
* excludes Armagh							

4.62 The number of jobs and value of jobs in each of these categories, when considered in conjunction with the size of stock in each district, is in line with the Northern Ireland average.

The number of and value of jobs completed with an SOR code of 3333, 6666 and 9999

4.63 Information was analysed and reviewed under these categories to establish if there was an excessive use of these, non standard SOR codes.

4.64 The detailed analysis is attached at Appendix F2 and can be summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1	N'abbey 2	NI aver*
3333							
Average no of jobs per stock	0.03	0.13	0.06	0.16	0.03	0.09	0.17
Average value of jobs per stock	179	454	89	447	12	98	341
6666							
Average no of jobs per stock	0.06	0.06	0.06	0.25	0.14	0.07	0.09
Average value of jobs per stock	77	66	58	123	119	61	100
9999							
Average no of jobs per stock	6	7	7	7	8	6	6
Average value of jobs per stock	355	380	386	309	590	337	419
* excludes Armagh							

4.65 Taking into consideration both the average number and average value of jobs, when considered in conjunction with the size of stock in each district, none of the districts would cause concern when viewed against the Northern Ireland average.

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The number of jobs completed out of time

4.66 The detailed analysis is attached at Appendix F3 and can be summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1	N'abbey2	NI aver
% of jobs completed out of time							
Apr 07 – Dec 07	7	6	3	28	8	8	
Jan 08 – Oct 09	3.0	2.9	3.2	13.9	1.9	1.7	2.5
No of outstanding jobs at 31 Oct 09							
At 31 Oct 09	1,063	1,124	1,902	2,604	645	569	685

4.67 It can be seen from the above table that in all districts with the exception of Newtownabbey 1 and 2, the percentage of overdue jobs is higher than the N Ireland average, however it is only in West Belfast that this is a significant issue. It can be seen that whilst the number and percentage of overdue jobs remains high in West Belfast there has been a significant improvement from the period April 07 to December 07.

4.68 On examination of the information underlying these statistics it became clear that the contractor can key in any completion date that it wants, and that the completion date does not have to be keyed within a specific time period. The contract states at clause A20/7.10 that *“the contractormust notify the Housing Executive, electronically within 24 hours, that the work has been completed”*. We carried out an exercise on the jobs that we had selected for site inspections, of the 308 jobs inspected in round one and 152 selected for possible inspection in round 2, 42 had been recorded as being completed out of time however if instead one took the date of completion as being the actual date that it was keyed into the computer less 4 days (to allow for weekends etc) then the number of jobs completed out of time increased from 42 to 118. For example the contractor can, on say 23 February 2010 go in and key that the job was completed on 23 February or any other date in the past that it chooses, there is no way of checking (unless there has been an inspection or a complaint) what the actual completion date is. The system of recording completion dates is therefore open to manipulation by the Contractor and any information or statistics based on this information is potentially unreliable.

The value of jobs completed by contractors other than the Egan contractor

4.69 Within an Egan contract the main contractor is meant to complete all jobs that fall within the contract as it is an “all trades” contract and only specialist jobs such as gas, steel shutters etc are completed by other contractors. The District office can pass work to other contractors in certain circumstances such as where there is a significant delay in the Egan contractor being able to complete the required works. On the other hand the Contractor may not want to do the specific work as it may considered unprofitable or it may have a shortage of staff or work pressures elsewhere.

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4.70 The value of jobs completed by other contracts in each district is attached at Appendix F4 and summarised as follows:

District	E Belf £	N Belf £	S Belf £	W Belf £	N'abbey 1 £	N'abbey2 £	N I total* £
Total for period	86,391	193,792	68,843	236,560	75,228	35,872	1,566,361
Average value per stock	25	65	17	46	35	17	18

* excludes Armagh

4.71 It can be seen that with the exception of South Belfast and Newtownabbey 2 the work completed by other contractors is significantly higher than in other districts in Northern Ireland. The majority of this work appears to have taken place during April to August 2008.

Result of inspections carried out by Maintenance Officers

4.72 When a MO inspects a property the outcome of the inspection is recorded as successful, unsuccessful, no access or other by the MO. The detailed result of these inspections per MO are attached at Appendix F5 and summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1	N'abbey2	N I other Districts*
Total number of inspections	7,296	6,705	10,646	18,248	6,409	7,152	203,693
Total unsuccessful	227	684	701	3,575	350	658	6,369
% unsuccessful	3.1%	10.2%	6.6%	19.6%	5.5%	9.2%	3.1%

* excludes Armagh

4.73 It can be seen that with the exception of East Belfast all of the Red Sky areas had an above average number of unsuccessful inspections. This may arise for several reasons including that, the quality of work in the Red Sky areas is below standard and / or the inspectors in these areas are more stringent than those in other NI districts when it comes to passing work for payment.

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4.74 We also looked at the average number of inspections per COT (Change of Tenancy) for each district. It should be remembered that every COT is required to be inspected. The detailed result of these inspections per COT are attached at Appendix F5.9 and summarised as follows:

District	E Belf	N Belf	S Belf	W Belf	N'abbey 1	N'abbey2	NI other Districts*
Total number of COTs	1,635	988	2,002	1,576	945	1,456	34,105
Total inspections of COTs	1,620	1,464	2,009	2,224	1,067	1,919	39,107
Average inspection per COT	0.99	1.48	1.00	1.41	1.13	1.32	1.15

* excludes Armagh

4.75 This table again helps to highlight the fact that some districts are having to carry out more inspections than others and in particular North and West Belfast and Newtownabbey 2 are significantly above the Northern Ireland average.

4.76 Given the nature of building work it is to be expected that a certain level of jobs will result in an unsuccessful inspection. Furthermore, it could be expected that there would be a relatively consistent level of unsuccessful inspections across districts and between inspectors within the same district. As noted above there was a wide variation in the unsuccessful failure rates across the Red Sky districts. However, our detailed review of the data also identified a wide variation in the level of unsuccessful inspections between inspectors in the same district. In particular we noted a number of inspectors with unusually low levels of unsuccessful (ie failed) inspections when considered against the overall level of unsuccessful inspections set out at paragraph 4.72. We have summarised below the inspectors in the Red Sky districts who have more than 600 inspections and an unsuccessful rate of below 2% (see Appendix F5):

East Belfast	Unsuccessful %	"Other" %	Comment
Inspector 1	0.08%	0.47%	
Inspector 8	0.38%	6.57%	All no access
North Belfast			
Inspector 37	0.19%	11.61%	10.9% no access
South Belfast			
Inspector 68	1.01%	22.28%	15% no access and 7% override
Inspector 70	-	4.80%	4% no access and 1% override
Inspector 73	0.79%	3.69%	1% no access and 3% override
Inspector 83	0.14%	47.92%	1% no access and 44% override
Newtownabbey 1			
Inspector 138	1.70%	22.07%	2% no access and 19% override

4.77 We have been unable to clarify when an inspection should be recorded as "override". We discussed this with Mr R Kitson from the RIU but he was unsure as to the specific circumstances in which this should be used.

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4.78 Of the 211 site inspections carried out by VB Evans and in which financial anomalies were identified 79 from round 1 and 51 from round 2 had been inspected and passed by the NIHE's Maintenance Officers (Appendix I).

4.79 We also note that it would appear that if a MO is unable to gain access to a property on two occasions he is not required to try again before he passes the inspection. We understand that the MO is meant to try to verify that the work has been carried out by some other means however this does not appear to be recorded anywhere on the NIHE computer systems.

Duplicate SOR codes at the same property within a six month period

4.80 We obtained a report which showed instances where the same SOR code had been claimed within a six month period in the Red Sky districts. Under Clause A20/23.1 of the contract contractors are required to provide a warranty period of 6 months on parts and labour. Sample testing was carried out on this report, the results of which are summarised as follows (see Appendix F6 for detailed results):

	No of SOR codes re-occurrences within 6 mths		No selected for desktop review		Total no of jobs with anomalies		% jobs with anomalies	Total number of anomaly SOR items		Items which should have been treated as recalls		Items which are duplicates	
	No	£*	No	£*	No	£*	%	No	No	£*	No	£*	
E Belf	3,867	15	9,697	9	9,166	60	31	3	148	28	3,039		
N Belf	5,445	15	4,350	4	651	27	7	1	27	6	178		
S Belf	6,160	15	1,535	7	673	47	8	1	32	7	511		
W Belf	7,629	15	7,727	1	43	7	1			1	13		
N'abbey 1	3,909	8	1,170	3	528	38	3			3	161		
N'abbey 2	2,629	7	882	3	111	43	3			3	91		
	29,639	75	25,360	27	11,172	36	53	5	207	48	3,993		

*values of 2nd "duplicate" job

4.81 It can be seen from the above table that of the 75 jobs reviewed 27 (36%) had potential "duplications". Within these 27 jobs there were 53 SOR codes which appear to be duplicates or recalls, 17% of the total value of jobs reviewed are potential "duplicate" invoices or recalls.

4.82 Two examples of the type of probable duplication that have been found are:

Property 20398 – East Belfast: on 2 June 2008 extensive work was carried out on the bathroom and kitchen of this property including a new toilet, bath, kitchen cupboards and sink. The same work was also recorded (and paid for) with a completion date of 30 August 2008; and

Property 45323 – South Belfast: on 8 October 2008 a new shower door enclosure was completed in this property. This work was also recorded (and paid for) as being completed in this property on 29 October 2008.

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4.83 Although there are some larger value jobs with duplications our review identified that the majority are occurring on jobs with values less than £100. These jobs are not subject to routine site inspection and are usually “specified” by the contractor.

4.84 Several of the jobs identified had been recorded as being inspected. The inspecting and authorising officer should be asked to provide their comments on these cases.

4.85 The issue of duplication of orders appears to have been an area of concern for some period of time. This is an area where additional work needs to be undertaken, particularly in East Belfast, to determine the full extent of duplication and recalls paid for incorrectly.

“Matches” identified for the Northern Ireland Audit Office’s National Fraud Initiative

4.86 We were provided with details of the matches identified as part of the NIAO’s NFI. Of particular interest in terms of this review were the matches which showed Red Sky invoices with exactly the same value and with an invoice date either on the same date, within 10-days of each other or exactly one year apart.

4.87 Of these matches 9 were reviewed in greater detail and discussed with VB Evans. Of these, and from a review of the documentation available, 6 appear to be reasonable, however site inspections would be required in order to clarify this.

4.88 The remaining 3 matches would appear to be duplications. Details of these are attached at Appendix G and summarised below:

Match 2662 and 2661

4.89 2662 is for “ramp/f-wall/G-rail top level” to be carried out at 17 Knocknagoney Avenue. This job was inspected by Inspector 2. 2661 is for exactly the same work to be carried out to 19 Knocknagoney Avenue, again it was inspected by Inspector 2. VB Evans inspected these locations and has confirmed that the work was carried out to 19 Knocknagoney Avenue with no work being done to no. 17. Both invoices for £1,049.97 (excluding VAT) each were paid.

Match 2536 and 2535

4.90 2536 relates to the “removal of stored bonfire material from rear of property” and is for 46 Lendrick Street, Belfast, the job was completed on 3 June 2008. This job was inspected by Inspector 8. 2535 is for exactly the same work to be carried out to 50 Lendrick Street, Belfast again this job was inspected by Inspector 8. VB Evans has reviewed the location and layout of these properties and has confirmed that the work could not be carried out to both. Both invoices for £639.58 (excluding VAT) each were paid.

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Match 2329 and 2330

4.91 2329 is to “carryout dry lining to Rear Bedroom 1” of 13 Bentham Drive and was completed on 5 February 2008. This job was inspected by Inspector 71. 2330 is for exactly the same work to be carried out to the same property, giving the same location in the property, Rear Bedroom 1. The second job was also recorded as being inspected by Inspector 71. Both invoices for £1,300 (excluding VAT) each have been paid.

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Summary of results

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The quality of workmanship of Red Sky

Our findings

5.1 From the inspections carried out by both VB Evans and the RIU it is clear that Red Sky's workmanship is not always to the required standard. VB Evans identified 45% by number and 13% by value, of all jobs inspected as having anomalies (see paragraph 4.21). In the RIU's 6th round of inspections all of the Red Sky districts failed to comply with the required standard. In these inspections only 29% of contractors failed to comply with Red Sky representing almost 50% of the failed contractors (albeit that the % of items that failed to pass inspection is relatively low at 3.6%).

5.2 The VB Evans' report showed that Newtownabbey 1 had the highest level of financial anomalies at 23% and North Belfast the lowest at 7%.

5.3 Whilst VB Evans has classified their findings in a different manner to the RIU, the overall results are broadly similar with identification of items not being completed to specification and items not being carried out at all. The RIU report shows that overpayments due to wrong measurement, items not being carried out at all, the wrong item being fitted or DTBI items are relatively low with the exception of East Belfast which is at 17.8% of the value of items inspected. West Belfast, on the contrary, has a very low level of overpayment at only 0.1%. This may be explained in part by what would appear to be a more stringent inspection regime in West Belfast which has the highest rate of failed inspections at 19.5% whereas East Belfast has a lower unsuccessful rate of inspections of only 3.1%, the lowest of all the Red Sky areas (this is also the conclusion reached by the RIU in their report of November 2007 – Appendix E10).

5.4 Typical examples of work that VB Evans has identified as not being completed to standard are:

- ◆ the edge of doors (including external doors) not being painted or varnished after they have been planed and fitted;
- ◆ not painting railings as per the specification; and
- ◆ not building disabled ramps as per the specification.

5.5 Typical examples of work not being completed at all are:

- ◆ not lifting floor tiles when being paid to do so but simply tiling over them; and
- ◆ communal lighting not being inspected when scheduled.

Summary of results

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Duplication of payments

5.6 There is evidence of duplication of payments both from the matching exercise carried out for the NIAO and our review of SQL reports. Duplication of payments has occurred in all Districts but this would appear to be particularly significant in East Belfast and very limited in West Belfast. Before any final conclusions can be reached as to whether these duplications have arisen from “innocent” errors or deliberate duplications further work would need to be carried out (see recommendations section).

Completion of work on a timely basis

5.7 Red Sky is above the N Ireland average in respect of the percentage of jobs being completed outside of the stipulated time however the variation is only significant in West Belfast and the position of overdue jobs appears to have been improving. As stated above this should be reviewed against the low value of overpayments identified in the West Belfast District.

5.8 Given our findings in respect of the difference between the date a job is being recorded as completed and the actual date that this completion date is being keyed, these results should be viewed with caution as the actual position could be significantly worse than would first appear.

Inspections

5.9 From our desktop review, the site inspections by VB Evans and the work carried out by the RIU there is clearly a problem with NIHE’s Maintenance Officers passing work which was either not completed per the specification or was not been carried out at all. The extent of this problem varies from MO to MO and from District to District.

5.10 West Belfast has the highest rate of unsuccessful inspections however it has the lowest level of overpayments of the Red Sky districts as identified by the RIU.

5.11 There is also an issue with the classification of inspection results with the “override” code being used frequently by some MOs.

Red Sky’s quality statement

5.12 Red Sky’s quality statement submitted with its tenders includes the following in respect of its commitment to quality of work and the processing of the work sheets:

- ◆ after the works are completed, operatives confirm with the tenant that the work has been carried out satisfactorily and job sheets are signed off as necessary;
- ◆ operatives return job documentation at the end of the day to the Contract Supervisor;
- ◆ jobs sheets checked to ensure full completion of the requested works;
- ◆ where follow up work is necessary, NIHE will be contacted before any further works are carried out.

Summary of results

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5.13 If Red Sky was fully implementing its quality statement then the issues identified in paragraphs 5.1 to 5.11 would not have arisen.

Procurement process

5.14 The procurement review was undertaken by Roy Mitchell, a Deputy Division Director within the Department of Finance and Personnel's Central Procurement Directorate ("CPD").

5.15 Mr Mitchell's final report on this matter is included at Appendix L and a copy of this summary of the procurement review's findings has been discussed and agreed with Mr Mitchell. We would like to place on record our thanks to Mr Mitchell for both his efforts in undertaking the procurement review and for the open and co-operative manner in which he undertook the ongoing process on liaising with other elements of the review team.

5.16 The findings from the CPD procurement review can be summarised under the following headings:

- ◆ appropriateness of the procurement process used and the decisions reached; and
- ◆ assessing quality concerns in public sector procurement.

Appropriateness of the procurement process used and the decisions reached

5.17 The CPD review found that the process adopted by the NIHE in letting these tenders (a restricted tender using a Most Economically Advantageous Tender assessment) was appropriate and consistent with what would have been expected for contracts of this nature. CPD have identified a number of areas of potential improvement in terms of the relative weightings attaching to the quality and cost elements of the assessment and the cost scoring formula adopted. However, CPD found that both the weightings used and costing formula were clearly explained in the tender documentation and consistently applied in the assessment process. The CPD review did not identify any irregularities in the conduct of the procurement process.

Summary of results

V

Assessing quality concerns in public sector procurement

5.18 The extent to which, if any, poor past performance can be used as a reason for excluding an existing supplier from a tender process, or marking down their score within a tender assessment process, is a matter of some contention. The layman's perspective might well be that if a supplier has failed to deliver in the past then this must count against them in any future assessment. However, based on our discussions with CPD and its report we understand that competition law requires all potential suppliers to be treated equally and assessed only on the merits of the tender documentation submitted by them. In assessing two tenders, one of which has been submitted by a supplier known to the awarding authority, and which has "done a good job" in the past and one of which has been submitted by a supplier which is not known to the awarding authority, the awarding authority cannot favour the supplier that is known to them. The supplier that is not known could easily be capable of undertaking the work to the same or higher standard than the supplier that is known to them. Exactly the same principle applies to a known supplier with a "poor" performance record.

5.19 The CPD review identifies only two possible opportunities for a supplier to be discounted from a tender process on account of past performance:

- ◆ if the supplier has been convicted of a criminal offence relating to the conduct of his business. In this case this would only apply if Red Sky had been successfully prosecuted for fraud, or a related offence, in relation to their business activities; or
- ◆ if in response to a specific question the supplier knowingly included within their tender documentation a false statement in relation to their past performance.

5.20 The CPD review has not identified any evidence that either of these options were available to NIHE in the circumstances of this case.

5.21 In effect awarding authorities must deal with poor performance within the framework of the existing contract rather than seeking to "hold it against" the supplier in the tendering for a future contract.

5.22 We understand from our discussions with NIHE management that they have previously sought legal advice on this issue which confirms the view taken by CPD. We also note that the Department of Finance and Personnel has taken the same line in responding to Public Accounts Committee recommendations in relation to the exclusion of poorly performing suppliers. However, if the NIHE is in any doubt as to its legal standing on this point then it should seek independent, up to date, legal advice on this matter.

Summary of results

V

Opportunities to achieve recoupment from Red Sky

Site Inspections

5.23 VB Evans identified financial anomalies on 13% of jobs, by value and totalling £40,419 (para 4.21), of these VB Evans has classified £25,967 (para 4.24) as Category A – ie this is work that the contractor has not carried out at all or which is not fit for purpose. This amount should be recouped from the Contractor.

5.24 Similarly for Category C, V B Evans has identified £622 (para 4.24) of works in respect of communal repeat orders that had not been carried out and should therefore be recouped. We note that with this category only the specific works order has been included (the order for that month or that week). This is an area where further work should be carried out to identify the possible extent of non compliance (see paragraph 6.1 – 6.3).

5.25 Category B consists of the financial anomalies where the work was partly completed but not to the full specification. As such it may not be reasonable to recoup the full value of the anomaly. For the specific jobs and defects identified the contractor should be asked to make good any defective work.

5.26 On analysis of the NIHE's ability to estimate the total level of financial anomalies across all of the work undertaken by Red Sky, based on our sample testing are set out in Appendix M. Based on this analysis the total estimated financial anomalies over the 18 month period under review are £1.3m of which £810,000 are Category A anomalies i.e. they are "clear cut."

Duplicate SOR

5.27 53 SOR items were identified from our desktop review totalling £4,200 (Appendix F6.1) which would appear to be either duplicated payments or payments for recalls. It would appear that this £4,200 may be recoupable from Red Sky, however additional on-site work would need to be carried out to verify our desktop findings.

NIAO Matches

5.28 3 jobs were identified from our desktop review totalling £2,990 which would appear to be duplicate payments. This amount would appear to be recoupable from Red Sky, however additional on-site work would need to be carried out to verify our desktop review.

*NIHE Re: Project Young**SECTION***Summary of results**

V

Summary of recoupment

5.29 We have summarised below the level of recoupment that the NIHE could seek from Red Sky based on actual payments made and on the extrapolation of our findings.

	Para	Based on actual payment £	Estimate over entire population £
Category A	5.23 / Appendix M	25,967	809,700
Category C	5.24 / Appendix M	622	107,122
Duplicate SOR	5.27	4,200	4,200
NIAO matches	5.28	2,990	2,990
		<u>33,779</u>	<u>924,012</u>
Inspected by NIHE		<u>27,809</u>	

5.30 In addition Red Sky should be asked to “make good” the defects identified under Category B and make a financial contribution towards the extrapolated financial anomaly of this category.

Recommendations

VI

6.1 The recommendations made in the section remain substantially unchanged from those made in our draft report dated 1 March 2010.

The quality of workmanship of Red Sky and duplication of payments

Communal lighting

6.2 Additional work should be carried out urgently in respect of the level of compliance of the maintenance of communal lighting, particularly in East Belfast. This is an area where VB Evans site inspections have shown that there is non compliance and it is also an area that is open to abuse and where historic non-performance is difficult to prove. Additional work should help to establish the extent of the problem.

6.3 In addition all communal lighting should be inspected on an ad-hoc, but regular, basis by the responsible MO, even though each order is usually for less than £100.

6.4 A log or register should be maintained on site which records the contractors' visits and is signed by the operative.

Floor tiles

6.5 Additional work needs to be carried out in respect of kitchens which have been recorded as having the floor tiles lifted. This additional work will help establish the extent of the problem and is also required to ensure that the register for asbestos is correct in respect of those houses which have tiles that have simply been tiled over. We have been advised by VB Evans that this is a potential health and safety issue.

6.6 The contractor should be reminded of its obligation to complete work as specified and the MOs of the need to ensure that this work (as with all other items) is carried out.

Duplicate SOR codes

6.7 Additional work needs to be carried out to establish the extent of duplicate orders and orders that should have been treated as recalls. From our findings this would appear to be an area where significant overpayment could have arisen.

6.8 The results of the duplicate orders should be discussed with both the MOs and the contractor to establish the reason why they have arisen. The issue of duplicate orders has arisen previously with Red Sky and was highlighted as part of the RIU District 7 review.

6.9 Although duplicate orders have arisen on all of the value categories they would appear to be more prevalent in the under £100 jobs where there is no site inspection and only 6% are "inspected" by the CSU via a telephone call. This is obviously an area that is open to abuse as a contractor can carry out work that is in line with the reported defect but that may not be required, up to a value of £100 with very little risk of this being identified by NIHE. Although each individual job is low value this category of job accounts for 23.7% (by value) of all jobs under the Egan contracts in the Red Sky districts.

NIHE Re: Project Young

SECTION

Recommendations

VI

6.10 We would suggest a certain level of site inspections for jobs with values under £100 is required to provide a “deterrence factor” against contractors who seek to abuse the fact that the NIHE has limited oversight over these lower value jobs. Sufficient resources should be made available to ensure that this can be implemented.

6.11 In addition to site inspections regular review and investigation of duplicate SOR codes should be carried out by the NIHE’s internal audit department and/or RIU.

6.12 We understand that a “pop up” screen appears to the contractor when the same SOR code is entered on the Ce-Link computer system for the same property within a six month period. The Contractor should be reminded that this screen cannot be ignored and the reason for the duplication should be investigated before the job is processed.

6.13 We also understand that a “pop up” screen also appears internally to NIHE staff. The ‘horising officer should likewise be reminded that this screen cannot be ignored.

Inspections

6.14 The anomalies identified by VB Evans’ testing, which had been passed by the NIHE’s own MOs, should be discussed with the MO’s responsible for passing the unsatisfactory work. The timing and format of these “discussions” will depend on the NIHE’s decision in terms of how it plans to deal with Red Sky in relation to this matter.

6.15 Additional training or updates would appear to be required for MOs in respect of:

- ◆ measurement;
- ◆ recording of inspections results; and
- ◆ what course of action should be taken if the inspector is unable to gain access to a property to inspect or if the work continually fails inspection.

6.16 Certain MOs need to be reminded of the need to properly inspect and if necessary re-inspect jobs before passing them for payment.

6.17 The Area Managers should regularly review the number and percentage of successful and unsuccessful inspections of the MO’s within their areas.

6.18 It is unclear from the work we have carried out why jobs are being passed by inspectors when clearly they should not be passed. This area needs to be investigated with the District Offices.

6.19 Jobs with values of more that £1,000 should not be passed without a site inspection regardless of access issues.

Recommendations

VI

Recording of overdue jobs

6.20 The contractor's performance is measured, in part, by the number of overdue jobs. The date that a job is completed is recorded on the system by the contractor. The contractor is able to key in any completion date that it wishes. It has been found that there are a significant number of variances from the date that a job is recorded as complete on the system and the date that this completion date is keyed on. The District Offices receive a report on a monthly basis which, amongst other things, shows the date that the actual completion date is keyed. However, they do not appear to be reviewing or challenging this information.

6.21 The computer system should be amended to prevent the contractor from keying a completion date that is more than four days earlier (to allow for weekends and bank holidays).

Key performance indicators ("KPIs")

6.22 Although not a formal part of our review we have attached various summaries of the KPIs achieved by Red Sky districts at Appendix J.

6.23 It would appear that when the contracts were issued to East and South Belfast in August 2004 that they contained set targets in respect of the KPIs ie that the contractor would be expected to achieve at least national average on 3 out of 8 KPI's, 1 KPI would be set by the employer with the remaining 4 for which no equivalent national average exists, being agreed as part of the enabling meeting.

6.24 In the contracts issued during 2007 the contract states that all the KPIs would be agreed at the enabling meeting.

6.25 It is unclear why the 2007 contracts were amended to remove the benchmarking against national averages, however it may have been part of the move to the "partnership" approach under Egan.

6.26 Unfortunately we have been able to obtain details of the KPI's agreed for any of the districts at the enabling meetings. It is unclear if these targets were ever set or reviewed.

6.27 Although KPI's are monitored we have seen no evidence that poor performance is challenged by the NIHE. However without documentation to support the KPI's that were (or were not) agreed at the enabling meetings this monitoring of KPI's may be somewhat futile.

6.28 When Egan contracts are being renewed, consideration must be given (along with consultation with the NIHE's legal department) to incorporating set KPI's with guidance which enables the revision and amendment of KPI's, if necessary, during the term of the contract. The NIHE should closely monitor the data it produces in respect of KPI's and the targets set, challenge poor performance and if necessary, and under the terms of any new contract, terminate the contract for consistent poor performers.

Recommendations

VI

Monitoring ongoing performance

6.29 We have through our desktop review identified a suite of reports which could, if collated and reviewed regularly, provide NIHE management with useful information in relation to the performance of both its contractors and its MOs. We recommend that the NIHE establish a performance measurement function, either under the auspices of the RIU or Internal Audit, whose role is to proactively “mine” the data held on the NIHE’s systems to identify trends, or outliers, which could direct specific further investigations into poorly performing contractors or maintenance officers.

Procurement process

6.30 In line with our recommendation noted above we recommend that the NIHE critically review the KPIs, quality targets and non-performance penalties that it sets within any future contracts and that it proactively manages, under the terms of the contracts, any quality issues that emerge, including where necessary taking formal action for non-performance.

6.31 In light of the difficulties and delays encountered in retrieving procurement documentation relevant to these contracts (in particular NIHE’s inability to locate the PQQ documentation) we recommend that the NIHE review its procedures for the retention and storage of all documentation relating to major procurement exercises.

NIHE's potential next steps with regard to Red Sky

VII

7.1 The potential next steps available to the NIHE remain substantially unchanged from those made in our draft report dated 1 March 2010.

7.2 In our opinion the NIHE should provide a copy of this report to its legal department and obtain legal advice before it takes any further action. The possible courses of action available to NIHE are discussed below.

Recoupment

7.3 We have set out at para 5.29 the sums that NIHE could seek recoupment of and the sums/jobs that should be discussed with Red Sky as to possible recoupment or "making good."

7.4 We would again draw attention to the fact that VB Evans carried out their site inspections during December 2009 to February 2010. As such our finds do not take into consideration any "alterations" that may have taken place since that time. Prior to seeking recoupment NIHE may wish to confirm whether any of the anomalies identified and included in the recoupment figure have subsequently been "made good."

7.5 We would also recommend that additional work is carried out on duplicate SOR codes which have arisen. This is an area which has been found to have given rise to overpayments. This investigation could be carried out by ASM in conjunction with either VB Evans or RIU or by the NIHE's Internal Audit unit in conjunction with the RIU (paragraphs 7.7 and 7.8 should be considered along with this section).

Termination of the contract

7.6 Both VB Evans and the 6th round RIU inspections found that the work that Red Sky has completed is not to the standard required by the NIHE. We understand that the NIHE has considered the termination of Red Sky's contracts previously in respect of poor quality workmanship and its legal advice has been not to pursue this through the Courts. We do not consider that the issues identified, with regard to workmanship, in this review are significantly different to those identified previously.

7.7 With regard to the proposed termination of the West Belfast contract we understand that initially legal advice was that the contract could be terminated, however it would appear that this advice was later revised as the contract was not terminated. Given the failure to comply with quality standards both in terms of workmanship and processing of jobs for payment, NIHE should consider obtaining further legal advice as to whether the failure to comply, as identified by both ourselves, VB Evans and the RIU, is sufficient grounds to terminate the contract. We understand that other evidence on the quality of workmanship and disputes over duplicate invoicing is held by some of the District Offices and should also be reviewed when deciding if the contract can be terminated. Given that the contract period has expired in both East and South Belfast we would suggest that legal opinion, and any associated work, is concentrated on the remaining contracts.

Potential fraud case

7.8 The area where "provable" fraud may potentially have occurred is the area of duplicate SOR codes and payments (see para 7.4).

NIHE Re: Project Young

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NIHE's potential next steps with regard to Red Sky

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7.9 This report was not prepared for use in Court. The level of evidence to succeed in a fraud case is high and therefore if it was considered that this was a potential course of action that should be taken then additional work, with a fraud action in mind, would need to be undertaken.

Management of future contracts

7.10 In order to try to minimise the risk of these difficulties arising with contractors in the future it is imperative that the new contracts are reviewed to ensure that clear targets are set and that there are robust "get out" clauses with regard to poor performance, and that non-performance clauses are implemented when necessary.

7.11 It is also critical that the MO's performance is monitored to ensure that they are fully carrying out their roles.

Exclude from future contracts

7.12 Based on the advice we have received from CPD and the advice we understand was previously provided from the NIHE's legal department, this is not possible unless Red Sky are convicted of a criminal offence (ie fraud) in relation to their work.

Summary

7.13 In assessing its next steps the first decision which the NIHE will need to take is whether it wishes to pursue Red Sky by way of criminal proceedings (ie fraud), via the civil law route (breach of contract), via a negotiated recoupment, or a combination of these.

7.14 In preparing any civil claim against Red Sky the NIHE will need to consider whether the quantum claimed should exclude any jobs inspected by and passed as "good" by its own Maintenance Officers. The exclusion of these jobs will reduce the quantum claimable by the NIHE by approximately 82%.

7.15 A negotiated recoupment is potentially easier to secure than a civil judgement because the parties may be prepared to deal in broad principles and round sums rather than having to "prove" every pound of loss. This is particularly relevant given the very high number of low value items associated with these contracts and the fact that there can be a degree of subjectivity in assessing the quality of workmanship delivered. However if this route was followed it would still leave in place a contractor who was not performing to standard. In order to try to ensure that Red Sky meets its obligations under the contract it is essential that the MOs carry out inspections to the standards required (by the NIHE) and that they should be given the support and resources necessary to do this.

Overall summary

VIII

8.1 There are clear issues in respect of the quality of Red Sky's workmanship across all districts. These appear to have existed for some time and certainly from the commencement of the contracts in 2007.

8.2 There is evidence of overcharging by Red Sky in a number of areas. We have identified and made recommendations in relation to those areas where we feel this is occurring most frequently and where further work should be undertaken to determine the extent of overcharging.

8.3 The inspection process as it is currently operating is not working, albeit that this is worse in some districts than in others, and substandard work is being approved and passed for payment. There must remain the possibility of collusion between certain members of NIHE staff and Red Sky. In addition the failure of the inspection regime to operate effectively could potentially hinder any legal action that NIHE may wish to take.

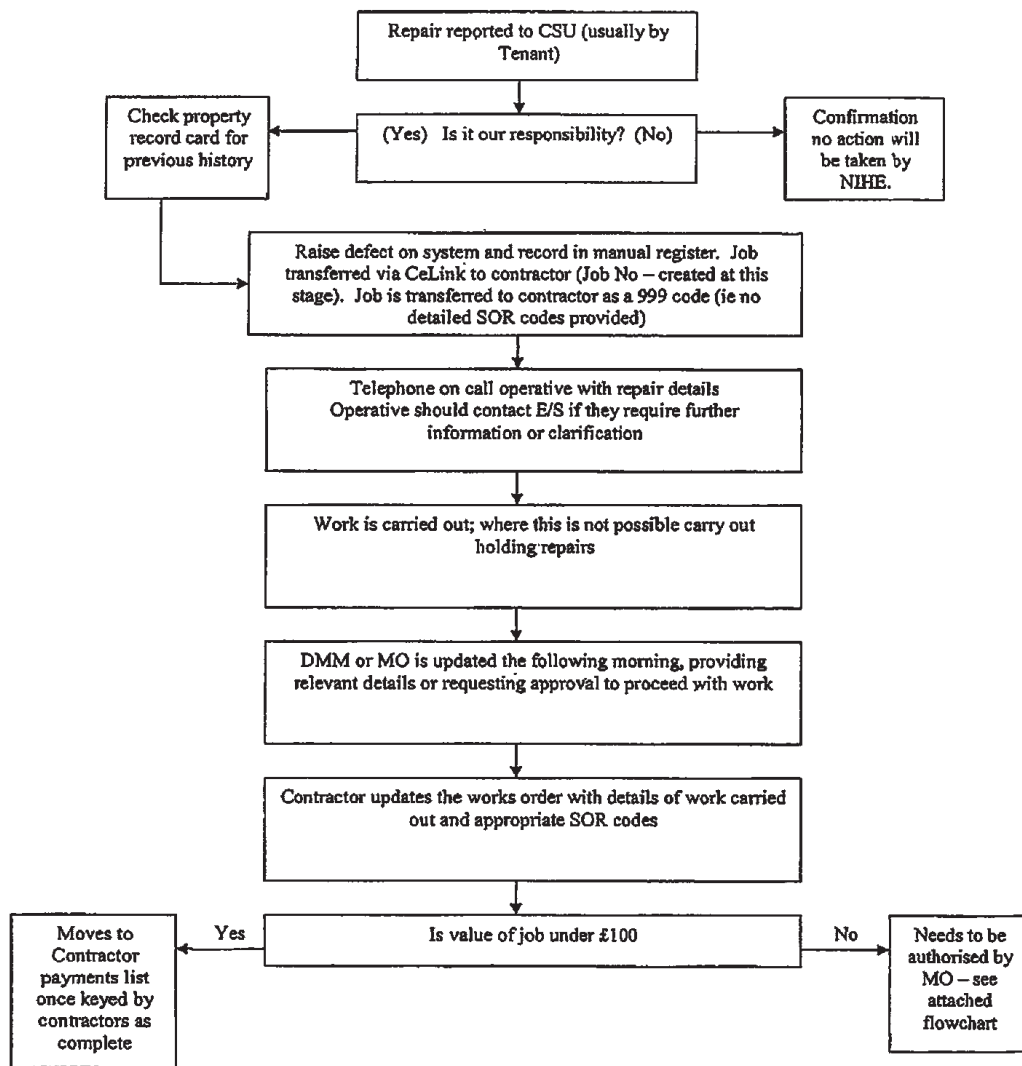
8.4 It would appear that some of the targets which were required to be set under the contracts have either not been set/agreed or documentation in respect of the targets is not readily available. In addition poor performance under the current contracts is not being managed. It is essential that this is addressed in any new contracts going forward.

8.5 There are a limited number of realistic next step options available to the NIHE. The management of the NIHE and other relevant parties need to consider the findings of this report and take legal advice in respect of its next steps which are outlined at Section VII.

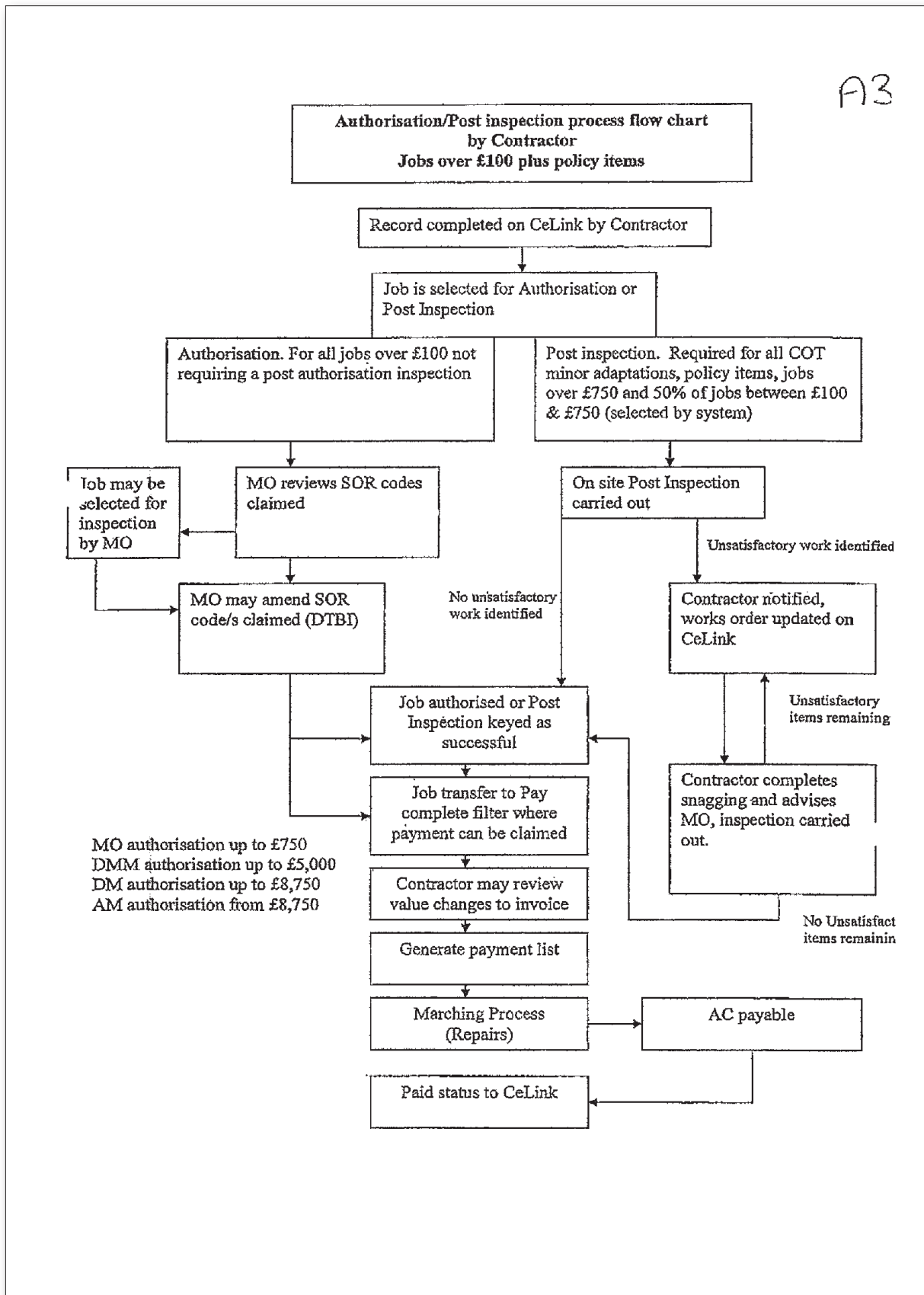
8.6 These Red Sky contracts are Egan contracts which are meant to operate in the "spirit" of partnership and mutual trust between the Contractor and the NIHE. Given the ongoing problems that the NIHE have experienced with Red Sky in several of its Districts and over an extended period of time, and the time and resources that have been applied to reviewing Red Sky's performance, the principles of the Egan Contracts have clearly failed in these districts.

Appendix A1

Immediate and Emergency Services Flow Chart



A3



9.8 Note of meeting to discuss ASM Howarth report – November 2010

Note of meeting to discuss the ASM Horwath report on Red Sky

Date of meeting: Friday 5th November 2010

Venue: Minister's office Lighthouse Building

List Attendees: Minister
Michael McKernan
Barney McGahan
Brian Rowntree
Stewart Cuddy
Joann Hanna

The following issues were discussed:

ASM Horwath Report on Red Sky

The report was discussed Brian and Stewart confirmed the report would be summarised and Red Sky would receive a copy for consideration week commencing 8 November and would be given 12 weeks to consider the findings. Brian advised NIHE were keen to engage with Red Sky as they were due to tender for forthcoming contracts worth £45 million over 5 years and they were currently trying to sell the company. NIHE hoped to meet with Red Sky week commencing 15 November.

The group discussed recovery of any overpayments identified, Brian confirmed NIHE would be seeking to recover any overpayment identified. Minister asked for views of extrapolation, as a basis for recovery. Stewart advised statistical extrapolation is not recognised in Civil law courts. Brian advised that extrapolation would be explained to Red Sky to try reaching agreement. He did also advise that NIHE costs could be recoverable if used to produce evidence of overpayments. Brian raised the issue of the communication with this investigation highlighting he was fearful Johnston Bros would seek to exploit it.

Tender process -exclusion at pre-qualification stage

Minister sought assurance that a company could be excluded from the tendering process at pre-qualification stage on the basis of past poor performance. Both NIHE and DSD officials were in agreement that the legal advice they had both received indicated that a company could not be excluded based on past performance. Minister advised the group he had received advice to the contrary and asked Barney to seek further legal confirmation.

ACTION POINT: Barney to seek further legal advice regarding this issue.

NIHE investigations

The group had a general discussion around the other NIHE investigations. NIHE officials updated Minister on the investigations and assured him that all relevant information was being passed to the scrutiny group who then decided on the course of action to be taken eg fraud or disciplinary. Minister expressed concern at the number of systems failures. Officials assured Minister that all appropriate action was being taken to ensure failings/poor processes were identified, appropriate action was taken and sanctions were appropriate applied. Brian and Stewart also stressed processes including training where necessary would be identified to reinforce and ensure a robust service was established.

[REDACTED]

TUPE

Minister raised the issue of TUPE. He asked why it was not written into contracts. Following discussion Minister indicated it should be written into contracts.

[REDACTED] Not relevant ✓

9.9 Red Sky/BDO/NIHE correspondence and minutes relating to report findings November 2010 – June 2011

Meeting @ Red Sky's offices Wed 24 Nov @ 3pm.
 Present: H Hayes, P Girard, G. — Red Sky Group
 C. Bache, P. Gray NIHE.

Clare Bache presented findings as tabled by V.B. Evans and explained reasons for carrying out the investigation.

Red Sky expressed concern on way material was leaked to BBC and the disastrous impact this has had on the trading of Red Sky Group. Red Sky questioned why if the Debtors were pending jobs being completed. Satisfactorily, as RI4 did not find any problems, why the sudden surge of complainants. A question was raised if other investigators were ongoing against other contractors and if not, why not? Appears problem existed at Debtors level. Are Red Sky not going to receive the full report?

Red Sky agreed to analyse the findings but may want sufficient time to properly investigate, and may want clarification. Red Sky happy to keep channel open for discussing findings using P. Gray as contact.

Housing Executive

INTERNAL MEMORANDUM

To: Stewart Cuddy – Chief Executive (A)
From: Raymond Kitson - Repairs Inspection Unit Manager
CC: John McVeigh - Head of Internal Audit
Peter Craig - Corporate Procurement Unit
Francis Gallagher - Head of Legal Services
Date: 22nd December 2010
Re: Red Sky's Report – Relating to Newtownabbey 1

Please find attached final copy of the report and appendices served on Red Sky on the 23rd December 2010 as completed by the RIU.

Regards

Raymond Kitson
Repairs Inspection Unit Manager

Housing Executive

Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
Belfast BT2 8PB
Telephone: 028 9024 0588 : Fax 028 9031 8009
Textphone: 0845 6504381
www.nihe.gov.uk



INVESTOR IN PEOPLE

Mr. Hayes
Red Sky Group Ltd
Grove Street East
Belfast
BT5 5GH

23rd December 2010

Re: Repairs Inspection Unit - Investigation relating to Newtownabbey 1 District Office

Dear Mr. Hayes

RIU have conducted an investigation into payments made to your company from the Newtownabbey 1 District Office. This came about as a result of concerns which you brought to the attention of Paddy McIntyre, the Chief Executive at the time.

I have provided you with a 15 page report which illustrates and quantifies the overpayments identified. A series of appendices referred to in the report are also included which gives an individual breakdown including the addresses, job numbers and dates issued on each of these overpayments.

You will note from section 8.0 of the report that it is being recommended that the Housing Executive seeks to recover in full the overpayment of £64,624.06 and the VAT where applicable, by withholding and /or deducting the said amount in accordance with the relevant contract provisions. However, before taking steps to implement the overpayment process for that amount the Housing Executive wishes to give you an opportunity to comment upon and to explain the overpayments as detailed in the appendices to the report which can then be taken into account when authorising the withholding or deduction of money from the February payment to the company.

Accordingly, you should provide the following information to us on or by the 31st January 2011 together with any other comments you may consider relevant otherwise the Housing Executive will seek to recover the sum of £64,624.06 from the February 2011 payment to the company upon the notice as required by contract.

Duplicate ordering of jobs

In appendices 24a, 27, 48 & 52. I have listed those jobs which have been the subject of apparent duplicate ordering. Your comments are sought in relation to each of the jobs listed within each of these appendices. In particular, you should address the following issues in respect of each of those jobs:

1. Do you accept that there has been a duplicate claim?
2. If so, who is responsible for the duplicate claim and how did this occur?

Over specification (items that are deemed to be included)

In appendices 8, 9, 15, 16, 17, 18, 19, 20, 21, 23a, 26a, 26b, 28a, 28b, 30, 32a, 32b, 33a, 34a, 35, 36a, 36b, 37, 38, 39, 40, 41, 42, 43, 44 & 46 I refer to all the jobs where it appears as though your Company has asked the Housing Executive to authorise work which was unnecessary. In relation to each such job, please comment separately and in each instance your comments should cover the following issues:

1. Do you accept that relevant part of the work was unnecessary?
2. If not, why not?
3. If you accept that the relevant part of the work was unnecessary, who was responsible for seeking to have such work ordered?
4. How did that situation arise?

Yours sincerely

Raymond Kitson
Repairs Inspection Unit Manager

enc.



Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Messrs Peter Cook and Norman Hayes
Red Sky Group
Grove Street East
Belfast

11th February 2011

Dear Messrs Cook and Hayes

OVERPAYMENTS REPORT – NEWTOWNABBEY 1

I refer to our meeting on Friday 4th February 2011 to discuss the above matter.

At that meeting I expressed my disappointment that Red Sky had not replied to my letter dated 23rd December 2010 which sought a response by 31st January 2011.

I am now writing to confirm what I advised at our meeting, namely that I have allowed a further month to enable you to provide a comprehensive response by the end of February 2011. If such a response has not been received before close of business on 28 February then I shall authorise the Contracts Claims Manager to move immediately to issue the Notice of Intention to deduct monies pursuant to Clause 30.6 of the Conditions of Contract for the sum of £64,624 on the grounds evidenced by the RIU December 2010 findings, a copy of which you have already have under cover of my December 2010 letter.

I wish it to be clear that in pursuing recovery of the overpayments the Housing Executive reserves its legal position in respect of the issues raised by the RIU findings referred to above. In particular, it is intended to take them into account together with your response, if provided, in reaching our conclusions as to the appropriate action to be taken in relation to the incidence of recurring overpayments generally including the V B Evans findings.

Yours sincerely



S Cuddy
Acting Chief Executive



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: stewart.cuddy@nihe.gov.uk



INVESTOR IN PEOPLE

20/1/11

Meeting @ Red Sky Offices. re UB Evans report.

Ex ch. N. Hayes
P. Cooke. } Red Sky.
P. Carrach.

C. Baulic, P. Gray - NIHE.

N. Hayes introduced issues:-

Full report ready

Issue of N'Abbey a concern

P. Cooke

3 delays / risks brought in by Northern Bank.

Significant standard changes in terms of management

C. Baulic.

Full Report not being handed over.

N'Abbey issue will be dealt with by Acting CX.

Full report required based on legal opinion before Red Sky
can progress further. (Legal advice suggests R. SG are entitled
to this information)

Delays on agency costs tho' Tom Wilson - Clarke to pursue.

€303k not paid in respect of Manulife office.

(North, West
North)

Contract terms quite clear.

Reference to parts for P. Gray

MO's have an issue in passing jobs thro' Post legislation.

KPI's - Only unsatisfactory in West Belfast, everyone else
from other District Office with RSG were working well.

Construction Line - A number of links from HIE

David Boul.
Graham Harkin. Tim Kelly

D.T. 1.

DMMs

Up to £500 Dist. M-ings to use common sense
in Clongull St with Colin McLaughlin (3/4 years ago)

P. Cooke feels aggrieved that RSG are being investigated
wrongly. There are quality issues and RSG will deal
with.

Pamela met with Tarrant in West Belfast and noted the
papers from Dist office were in proper order and exactly the
same as reported through newspapers.

Action plan

- V.B. Evans Report - Suggest this being dealt with first
- N'Abbey Report - Not possible to produce by 31 Jan
(Wentworth not payment of £300k, timing etc.)

V.B. Evans only

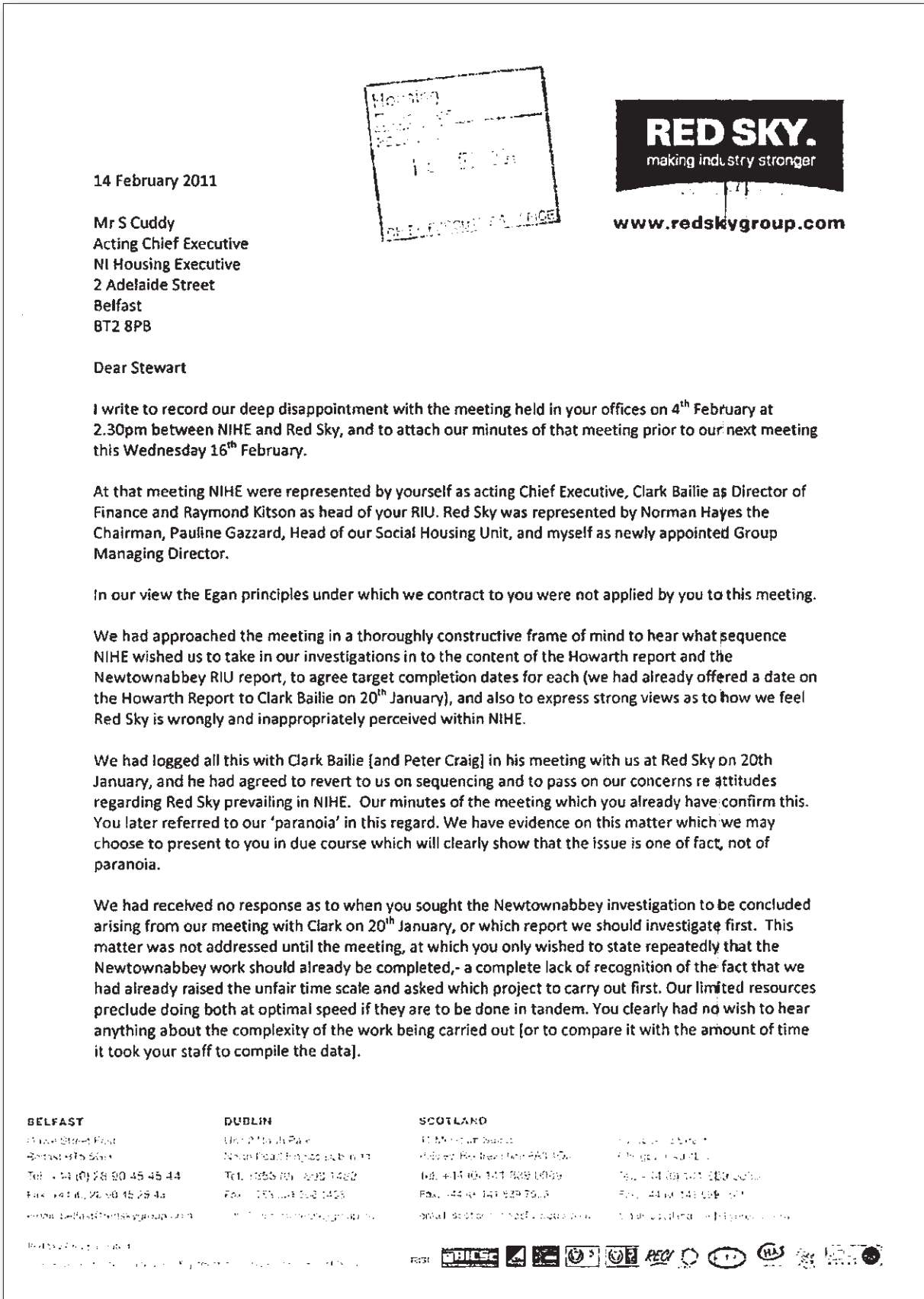
By Districts

2-3 weeks for each District plus depliment
weeks.

Overall to end of May '11.
This equates to leaving N'Abbey Report.

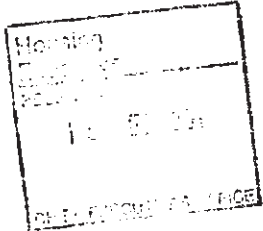
Clark to speak to senior members of CX to establish
the sequence of events and which report is dealt with.

Common contract for all these issues. _____
RS4 would be concerned that a report is published without RS;
seeing the content of the report.
Clash to respond accordingly.



14 February 2011

Mr S Cuddy
Acting Chief Executive
NI Housing Executive
2 Adelaide Street
Belfast
BT2 8PB



www.redskygroup.com

Dear Stewart

I write to record our deep disappointment with the meeting held in your offices on 4th February at 2.30pm between NIHE and Red Sky, and to attach our minutes of that meeting prior to our next meeting this Wednesday 16th February.

At that meeting NIHE were represented by yourself as acting Chief Executive, Clark Bailie as Director of Finance and Raymond Kitson as head of your RIU. Red Sky was represented by Norman Hayes the Chairman, Pauline Gazzard, Head of our Social Housing Unit, and myself as newly appointed Group Managing Director.

In our view the Egan principles under which we contract to you were not applied by you to this meeting.

We had approached the meeting in a thoroughly constructive frame of mind to hear what sequence NIHE wished us to take in our investigations in to the content of the Howarth report and the Newtownabbey RIU report, to agree target completion dates for each (we had already offered a date on the Howarth Report to Clark Bailie on 20th January), and also to express strong views as to how we feel Red Sky is wrongly and inappropriately perceived within NIHE.

We had logged all this with Clark Bailie [and Peter Craig] in his meeting with us at Red Sky on 20th January, and he had agreed to revert to us on sequencing and to pass on our concerns re attitudes regarding Red Sky prevailing in NIHE. Our minutes of the meeting which you already have confirm this. You later referred to our 'paranoia' in this regard. We have evidence on this matter which we may choose to present to you in due course which will clearly show that the issue is one of fact, not of paranoia.

We had received no response as to when you sought the Newtownabbey investigation to be concluded arising from our meeting with Clark on 20th January, or which report we should investigate first. This matter was not addressed until the meeting, at which you only wished to state repeatedly that the Newtownabbey work should already be completed,- a complete lack of recognition of the fact that we had already raised the unfair time scale and asked which project to carry out first. Our limited resources preclude doing both at optimal speed if they are to be done in tandem. You clearly had no wish to hear anything about the complexity of the work being carried out [or to compare it with the amount of time it took your staff to compile the data].

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Red Sky Group Limited, registered in the Republic of Ireland





- 2 -

In the event we felt that you did not wish to hear anything we said, nor indeed the corroborating information of our position from your colleague Clark Bailie, who clearly on several occasions confirmed to you that we were awaiting a response from NIHE as to which report to complete first. You chose not to hear that we had already explained to Clark that the original date for completion of the Newtownabbey report was impracticable as the time table took no account of the practicalities of so doing, and that we wanted NIHE to choose which report to complete first. We received the letter at the start of the Christmas break and during one of the busiest times we or NIHE have seen as a consequence of the thaw, where incidentally our substantial response was complimented by your staff in the most difficult circumstances. All our staff and management were fully occupied dealing with this major disruption, as indeed were all our normal contacts at NIHE. This was apparently the reason why payments to us were further delayed, as your staff reported to us that they had no time to spend in their offices approving payments until the crisis was over. That your staff and ours are still playing catch-up even now is clear testimony of this! As a simple fact we do not have the resources to vastly increase our response to a crisis on behalf of your tenants and carry out two in depth investigations at the same time.

You made reference to Newtownabbey being a 14 page report, and thus belittled the effort we would need to investigate its contents, and yet the file runs to over three hundred pages, and 140 separate issues to investigate. We do agree that some of these may possibly be grouped together and are working to do so where relevant. Raymond stated that the contracts between us are 'black and white' with respect to how work should be instructed and how it should be coded, and that NIHE staff were trained and thus would only follow procedures. How then do we regularly receive verbal instructions from your staff and indeed many of the call-outs to us over Christmas came without orders? In reality we work in the spirit of the contract and its Egan principles and carry out the jobs without orders as requested by your staff. Is this black and white?

We found your repeated insistence on needing to see 'product' most unhelpful- when we offered to share our interim findings (product!) with Peter Craig as our investigations proceed as has previously been the case in other such investigations, you insisted only on seeing the final report. If you follow this route then by definition you will see nothing until we finish and write our response. If the matter is as urgent to you as you suggest we would have thought a weekly update from one of your staff would be most helpful in allowing you to keep your Board updated.

We absolutely agree that we urgently need to investigate these matters in detail and revert with our findings, and I confirm that we are fully committed to that, but we greatly resent you saying we had already taken a month when we had already notified you through Clark of our view that this time frame was impossible in conjunction with Howarth, and we were waiting for your response as to which was to take priority. For you to say 'both together' was unreasonable and shows a complete lack of understanding of the scale of the task in front of us. We do of course agree that the report makes significant allegations which need to be responded to, and that is what we will do with the utmost urgency subject to our limited resources.



- 3 -

When we ultimately offered you a completed final report in 8 weeks you chose to tell us that you would be withholding payment of the sum noted in the investigation from current work until you receive the report, unless it is received by end February. We think this is a most alarming development and reserve the right to contest this in due course. In any event we will be working with all speed and capacity without detrimentally affecting our daily work for NIHE to complete our response as soon as possible and I must emphasise that will want to be given the opportunity to discuss our findings verbally as we submit it.

Equally we felt you were dismissive of the late payments issue which we have been reporting to NIHE, especially with regard to West Belfast District. For over 18 months we have been reporting that you are outside the payment terms of your contract, and confirmed that we are owed in excess of £280,000 which is not subject to any queries. This is totally unconnected with payment delays over Christmas, when your staff were under the same pressure as ours, and we are already pleased with the impact Clark Baillie's intervention has had on this specific issue.

In summary I think this adversarial meeting had none of the ethos of the Egan Principles culture in it, and we found your approach both unreasonable and unhelpful. It is in both parties interest that we find a proper and fair resolution of this matter. I suggest that when we meet again in the future it should be in a more positive, open and constructive atmosphere with open minds on both sides to address the matters between both parties and find appropriate solutions and a mutually beneficial ongoing relationship. I am prepared to give my undertaking that we will approach these discussions in this spirit and request you to do likewise.

We have herewith stopped further work on the Howarth report until the Newtownabbey investigation is concluded, as we do not have the resources to do both together without a serious impact on our delivery of the Newtownabbey report.

Yours sincerely

A handwritten signature in black ink, appearing to read "Pete Cooke".

Pete Cooke
Group Managing Director

cc Norman Hayes Red Sky Group
Pauline Gazzard Red Sky Group
Brian Rowntree NI Housing Executive

Att

Northern Ireland Housing Executive and Red Sky Group Limited Meeting – Newtownabbey Overpayments

Minutes of Meeting held 4th February 2011, 2.30 pm

Venue: 6th Floor, NIHE, Adelaide Street, Belfast

In attendance:

NIHE	Stewart Cuddy	Acting Chief Executive	SC
	Clark Bailie	Finance Director	CB
	Raymond Kitson	Repairs Inspection Unit Manager	RK
RSGL	Norman Hayes	Group Executive Chairman	NH
	Peter Cooke	Group Managing Director	PC
	Pauline Gazzard	Operations Manager	PG

- 1.0 SC welcomed RSG to the meeting, served tea/coffee, and made introductions.
- 2.0 SC advised purpose of meeting was to discuss Newtownabbey report, the overpayments and the lack of response from RSGL.
- 3.0 SC advised that RSGL were due to have submitted a full response by 31st January 2011, and it was totally unacceptable that no reply had been received.
- 4.0 PG advised that at most recent meeting with CB & Peter Craig that clarification had been sought by RSGL as to which report they should concentrate on first, that is, ASM Howarth or Newtownabbey 1. She advised that they were fully aware report had been due by 31st January and indeed at meeting RSGL had advised CB of this. He had agreed at that meeting that he would speak to appropriate personnel in NIHE and have RSGL advised accordingly. RSGL were waiting on this reply, and that was the main reason that they had not submitted a response by 31st January 2011.
- 5.0 CB confirmed that he had agreed that at previous meeting with RSGL he had would seek clarification of preference for reporting for RSGL, and that he spoke to SC in this regard.
- 6.0 PG also advised that due to the extreme weather conditions over the Christmas period, all RSGL resources had been deployed to ensure calls were attended as soon as possible and this also had an impact on completion of report work.
- 7.0 Indeed, PG also felt that it should be acknowledged that in addition to the unprecedented weather conditions there had been the Christmas holiday period within the period of the report being received on 23rd December, and response being required by 31st January.
- 8.0 PG went on to clarify that while RK documented the report had been commissioned further to issues raised by NH in a letter to Paddy McIntyre, however, that in reality this letter was in response to issues raised by Newtownabbey 1 District Manager, Sharon Crooks.

- 9.0 SC continued that RSG actions were unsatisfactory, and that they were unresponsive which reflected very badly on their business.
- 10.0 SC went on to state that if he was a contractor he would be taking the matter very seriously and he found RSGL unresponsive behaviour very tardy.
- 11.0 When PG asked for clarification on the terminology he had used, as she was taking notes, he repeated his statement, then advised that she did not intimidate him by taking notes, and if required he had 2 or 3 solicitors in the building, and if she wanted to go down that route, so could he.
- 12.0 SC continued with a verbal onslaught as to how it was very unsatisfactory that RSGL had done nothing and it did not reflect well on RSGL business.
- 13.0 PG immediately stated that she was very disappointed by SC's comments. SC was making an assumption that RSGL had not completed any work on the report – RSGL had not said this. The only thing he knew was that RSGL had not submitted a response by due date, and she again re-iterated that RSGL were awaiting response from NIHE in this regard. Furthermore, they had actually thought this would be addressed at this meeting.
- 14.0 PG continued that she found his comments very offensive as RSG employ over 400 people across Belfast and she is totally committed to her job and ensuring continued success of the business. She has worked continuously to ensure a satisfactory response and quality service is delivered to NIHE, and secure employment for all, which has a massive impact on local economy.
- 15.0 PG continued that she was extremely disappointed, as RSGL had come to the meeting in the spirit of the EGAN partnership to discuss current position and agree how all parties could move things forward.
- 16.0 SC then advised that he had been tasked by the Board to meet RSGL and determine when NIHE would receive a full response in writing to Newtownabbey 1 report. He stated that the report had determined that RSGL owed NIHE £ 64k +VAT, and as response had not been received, he was totally within his rights to stop RSGL payments.
- 17.0 PG advised that she found this particularly unreasonable as NIHE currently owed RSGL in excess of £300k for work that had been completed.
- 18.0 SC advised that this was a separate issue and was being addressed.
- 19.0 PG advised that she had been flagging this up to NIHE for at least 18 months, and only recently, when RSGL had met CB, had any action been taken, however, in excess of £300k was still outstanding.
- 20.0 SC advised most of the money owed was in dispute but Harry Dornan was looking after it.
- 21.0 PG advised that this was incorrect, this figure related totally to work completed by RSGL and awaiting payment, and none of this amount was in dispute, there is a figure of approximately £19k additional owed which is in dispute. The contract states that NIHE have only 5 days from completion of job to post inspect and advise Contractor if there are any issues; if this is not received, then payment must be made within 21 days, therefore the majority of this amount should be passing over for payment as RSGL had not been advised within 5 days of any issues.

- 22.0 SC advised that PG was sidetracking the issue and he would not allow the meeting to be sidetracked.
- 23.0 PG advised it was not her intention to side-track meeting. It was imperative to progress current position and RSGL remain totally committed to do whatever possible to take action. Indeed PG advised they had also advised CB & Peter Craig of this in previous meetings.
- 24.0 PC reiterated that RSGL considered this a very important factor.
- 25.0 PC advised of his role within RSGL and how RSGL were taking both investigations very seriously and would be carrying out full reports on work, however, timescales and restriction on resources were a limiting factor.
- 26.0 SC advised again that RSGL were due to respond by 31st January and had not done so, and this was unacceptable.
- 27.0 PC again repeated again that RSGL were awaiting response from NIHE.
- 28.0 SC again stated his position and meeting headed towards an impasse.
- 29.0 At this stage PC advised that he did not think RSGL should continue the meeting as SC refused to listen to anything RSGL had to say. He advised that RSGL had come today to advise NIHE of their new structure and the actions they had taken to make improvements, and also to work with NIHE to ensure, in the spirit of the EGAN contract, that a suitable timeframe was agreed.
- 30.0 PC advised that he had been Managing Director in a number of Northern Ireland companies, and indeed had had considerable previous experience in working with the NIHE, and he had never in his business career been subjected to such treatment in a meeting.
- 31.0 SC stated he was disappointed by this, and he considered his behaviour was appropriate – he needed a date to give to his Board. Also, he stated that he had never met any of the RSGL representatives before and had no pre-conceptions.
- 32.0 PG advised it was difficult to give a date until response was received from NIHE in relation to timescale proposed for ASM Howarth was agreed.
- 33.0 CB advised he would be contacting RSGL within next couple of weeks to discuss proposed timescale.
- 34.0 SC advised that it was a separate matter and reiterated that RSGL had failed to respond in required time for Newtownabbey report.
- 35.0 PC asked PG to provide a date that RSGL would make their best endeavours to achieve.
- 36.0 NH & PG advised they were hesitant in providing a date without first knowing about other investigation requirements.
- 37.0 SC advised this was unacceptable.
- 38.0 NH asked RK how long it had taken for NIHE to complete report.
- 39.0 RK advised that it had taken approximately 2 months but not on a full time basis.
- 40.0 SC further clarified this by stating that Raymond's team had not been working full time on it over that 2 month period.
- 41.0 Discussion was held on time taken to complete proposed response on investigation and significant work required.
- 42.0 Again an impasse was reached.
- 43.0 PC asked PG to give a date.

- 44.0 PG advised hesitantly, that without full clarification available on Howarth report, that she would commit to having work completed in 8 weeks, and submit report by 31st March, 2011.
- 45.0 SC immediately advised this was unsatisfactory and full response was required by 28th February, 2011, and if it was not received payments could be withheld.
- 46.0 PC asked SC why he had asked for a date if he was immediately going to refute it.
- 47.0 SC advised date suggested by RSGL was unacceptable.
- 48.0 PG asked if interim meetings could be held to discuss findings on an ongoing basis, as had previously been NIHE method in similar disputes.
- 49.0 PG went onto to confirm that she had had regular meetings with Peter Craig during the previous West Belfast dispute, and it had been proposed by NIHE that a similar pattern would be utilised in ASM Howarth report.
- 50.0 SC advised this would not be happening and a full response in writing was required by date. He stated repeatedly that interim meetings were not an option.
- 51.0 PG requested if NIHE policy and Contract terms had changed, as EGAN contract was strongly based on partnership and a 'no blame culture' - previously this had been enforced through Paddy McIntyre, Colm McCaughley & Ross Campbell. Indeed, she advised that herself, Paddy, Colm, and RSGL retired Chairman Frank Cushnahan had met a number of times to discuss ongoing performance. While these meetings brought forward a number of contentious and difficult matters, they were addressed professionally with satisfactory resolutions sought. She had never been subjected to such treatment by NIHE, especially by a member of their senior management.
- 52.0 NH also advised that Ross Campbell had been in regular contact with RSGL to discuss performance and advised consistently that no material issues had been identified.
- 53.0 Furthermore, PG had been advised by Glen Espie that Colm McCaughley told him directly that NIHE were impressed by changes in RSGL performance when Mr McCaughley was at a meeting in Newtownabbey.
- 54.0 PC reiterated the point that he considered the timescale from 23rd December to 31st January particularly unreasonable due to weather conditions, the holiday period, and the Howarth report.
- 55.0 SC stated he could not see what the problem was as RSGL only had to respond to a 14 page document and RSGL should have made this a priority and by not responding at all, they were obviously not treating the matter seriously.
- 56.0 PC stated to SC 'You are just not listening to us', again reiterating the reasons and emphasising that this primarily was because RSGL were awaiting response from NIHE.
- 57.0 CB again stated that he had undertaken to advise NIHE Senior management of the concerns RSGL had raised in relation to timeframe for completion of Newtownabbey report and had sought clarification as to which report they should prioritise, and were awaiting NIHE to advise them.
- 58.0 Once again SC dismissed RSGL comments and pursued his Agenda.

- 59.0 The fact that RSGL had only to respond to a 14 page document was confirmed by RK.
- 60.0 PG stated that this was not the case at all – the summary document was 14 pages, however the contents received from NIHE were a full lever arch file. She stated that a full investigation on a case by case basis is required.
- 61.0 RK stated that if RSGL accept the findings of a particular section surely that is sufficient to respond. PG advised that this is incorrect as each job may be different and will require investigation. She did concede that there will be some jobs that can be bulked together and addressed quickly, while others will require significant work and analysis, including site visits.
- 62.0 RK advised that he did not consider this was the case as contract is black and white and once RSGL had gone through findings it should be clear.
- 63.0 PG, NH, & PC refuted this – Contract is open to interpretation and indeed Colm McCaughley had confirmed this when he talked about DM's applying common sense, particularly up to a value of £500.
- 64.0 RK then produced his minutes of the meeting where C McCaughley had made these statements.
- 65.0 PG advised that MO's regularly pro-rata codes, rather than having 'dayworks' signed off, if they feel there are exceptional circumstances.
- 66.0 RK responded that they should not do this and all MO's have been trained in this regard.
- 67.0 Again PG advised that Contract was open to interpretation – it is definitely not applied in a black and white manner, and whether MO's should or shouldn't utilise pro rata codes was somewhat irrelevant, as it is common practice throughout.
- 68.0 PG again requested that meetings could be held on an ongoing basis, working through report, as it made more sense for ongoing communication and action.
- 69.0 SC again stated this was not an option. NIHE required a full report to be submitted, before any meetings or discussions are held.
- 70.0 PG went on to state that RSGL had a major issue that RK's own RIU had completed normal audits in Newtownabbey over the time frame that this investigation had been completed and result of audits had been satisfactory.
- 71.0 RK advised that this covered a sample only and the particular section referred to was unsatisfactory.
- 72.0 RK went on to show photographs of particular jobs and asked if RSGL did not have a Quality Team to inspect these.
- 73.0 PG confirmed regular Audit & Quality checks are completed by RSGL.
- 74.0 PG advised that Newtownabbey staff had advised RSGL staff that RK would be contacting and visiting them in December to discuss this report, however, that had not happened.
- 75.0 RK responded by asking why the staff should have done that, to which PG responded that he would need to ask them, however, it did not alter the fact that he had not contacted RSGL to discuss, again against the principles of EGAN.
- 76.0 NH raised concerns that RK may not be impartial due to previous experiences with RSG.
- 77.0 PC asked if other Contractors were being subjected to similar investigations, and examination.

- 78.0 SC advised he had spoken to another Contractor on the same morning.
- 79.0 SC then accused RSGL representatives of being paranoid. He then requested if RSGL would like to discuss any other matters at the meeting.
- 80.0 PC reiterated that RSGL had come to the meeting with an open mind, however, due to the tone of the meeting and their treatment, they did not consider it appropriate to discuss any other matters.
- 81.0 SC reaffirmed required date of 28th February for submission of full report in writing, or he had authority to withhold payments.
- 82.0 Meeting ended.

noted

Northern Ireland
Housing Executive

Acting Director of Corporate Services
Clark Bailie

2 Adelaide Street
Belfast BT2 8PB

Mr. Peter Cook
Group Managing Director
Red Sky Group
Grove Street East
Belfast
BT5 5GH

11th February 2011

Dear Mr. Cook,

Re: Response to the VB Evans findings

I refer to our previous discussions on 24 November 2010 and 20 January 2011. On both of those occasions you indicated that your firm would have difficulty in meeting the end of January 2011 timescale within which to provide the Housing Executive with a response to the VB Evans findings. As you know, I advised on both occasions that the Housing Executive's expectations would be that a response should be received from your company by that date. However, at the January meeting, I did undertake to make enquiries regarding a possible extension of the 31 January 2011 date.

Following careful consideration of your request for an extension of time, I can now advise that a response is required by 28 February 2011. That response should include the following:

1. Confirmation that you accept the findings as contained within the VB Evans documentation provided to you on 24 November and supplemented by further information provided on 4 January 2011.
2. If you do not accept the accuracy or validity of any or all of those findings, please specify in what respects you assert that they are inaccurate or invalid.

As previously agreed, your staged response regarding the VB Evans findings should be provided to Mr. Peter Craig, Contracts, who will also be the relevant point of contact for any further information or clarification as may reasonably be required by you.

Yours sincerely,

Clark Bailie

Clark Bailie
Acting Director for Corporate Services



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Housing

Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Messrs Hayes & Cooke
Red Sky Group
Grove Street East
Belfast BT5 5GH

16th February 2011

Dear *Wendell Rose*,

I refer to our meeting today which I believe we all found very helpful and clarified a number of key issues.


As agreed I am writing to advise you of the revised timetables for the submission and receipt of your response to both the Newtownabbey Review and the Horwath Report.

In respect of the Newtownabbey Review we expect, as agreed, to receive your response by the end of February 28th and any supporting analysis by the 7th March 2011.

In respect of the Horwath Report we agreed that you would respond by the end of March 2011 with any supporting analysis by 7th April 2011.

We look forward to receipt of all information in accordance with the above timetable.

Yours sincerely


Stewart Cuddy
Chief Executive (Acting)

Suppressed Copies to: *Maureen Laggart*
Clark Baird
John McPeckle
Dolores Ferran
Raymond Kibon
Daniel Lamb



Telephone 03448 920 900 Fax 028 9043 9803
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Lucas, Maureen

From: Pauline Gazzard [Pauline.Gazzard@redskygroup.com]
Sent: 16 February 2011 15:02
To: Cuddy, Stewart
Cc: Peter Cooke; Norman Hayes; Rowntree, Brian
Subject: Proposed Action Plan - Newtownabbey 1 Report
Attachments: Red Sky Group Proposed Action Plan Newtownabbey 1.pdf

Stewart

Once again thanks to both yourself and your Chairman for your time this morning, and participation in what we consider was a very constructive meeting.

As requested, please find Draft Action Plan to ensure work is completed within the agreed timescale.

Whilst this will undoubtedly put a massive strain on our resources, over an already difficult period, we fully appreciate the urgency and significance of this work.

We will undertake to dedicate the appropriate level of resource, and from an administrative nature, resources will be deployed from all parts of our Group, however, at an analytical and investigatory level we are limited to a small number of Managers and Supervisors who can complete the work, in addition to their other duties, critical to business continuity.

We will forward details of outstanding information required on Newtownabbey Report over the next couple of days and would welcome your early response.

Once again we confirm our total commitment to delivery of documentation to agreed timescales.

If you require any clarification or additional information, please do not hesitate to contact me.

Kind regards
Pauline Gazzard
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Mobile +44 (0) 7976834457
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N'abbey 28 Feb for info
7 March for analysis

Howarth 31 March for info
7 April for analysis

17/02/2011

28 February 2011

Mr S Cuddy
Acting Chief Executive
NI Housing Executive
2 Adelaide Street
Belfast
BT2 8PB



www.redskygroup.com

Dear Stewart

Further to your request to submit our findings in relation your "Investigation Audit Report" of December 2010, please find attached our preliminary findings and brief * responses in relation to the allegations contained within your Investigation Report.

We would point out at this time that the attached documents are by no means definitive, and we are continuing to deploy significant efforts into providing a detailed response by 7th March 2011. The attached comments have been prepared in the 12 day period from 16th February 2011 until present day as requested by your Chairman, Mr Brian Rowntree at the meeting of 16th February 2010, which you attended.

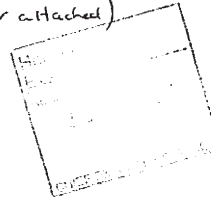
A detailed fully substantiated analysis of our findings in response to your Investigation Report is under preparation for 7th March 2011 and our personnel and advisors are confident of providing more detail in accordance with your request.

We would welcome any comments upon this initial submission in advance of 7th March 2011.

Yours sincerely

Peter Cooke
Group Managing Director

* Considerable volume of documents including statistical data (not attached)



Att

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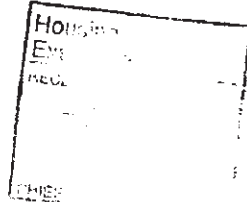


CONFIDENTIAL

Sy
R. Wilson
C. Ballie
S. Lytle
D. Harris
B. Robinson

7th March 2011

Mr S Cuddy
 Acting Chief Executive
 NI Housing Executive
 2 Adelaide Street
 Belfast
 BT2 8PB



www.redskygroup.com

RECEIVED

Dear Stewart

Please find attached our transitional findings on the NIHE Investigation Audit Report in relation to 'Concerns Regarding Overpayments' with reference to Newtownabbey 1 from your RIU. We require this letter to remain attached to all copies of this report that you may produce please, as it is an integral part of our report only to be considered in conjunction with the report. *

I wish to strongly qualify our response by pointing out that we have been working on it day and night, including week-ends, and there is more research and analysis we would have wished to do if we had been given a fair and reasonable timescale in which to complete this exercise. In particular we have not yet completed our work to prepare a counter-claim on work where we have been underpaid, and we must therefore reserve the right to make this submission at a later date.

Whilst you left me with little choice but to make our staff accept your required timetable against their own judgement of what was practical, the impact on our normal business with you has been highly significant, and having deployed key staff to this exercise, we have suffered a massive lack of skilled resources to plan, manage and key-off work, impacting negatively on our vital cash flow. Equally your Maintenance Officers have become increasingly nervous of approving work when completed or making any decision with respect to Red Sky Group as a consequence of your ongoing investigation into their work, and this has further damaged our cash flow. Please take these factors into proper account when setting more appropriate timescales on any future reviews.

As you will see from our response, we believe that the scale and conclusions of your RIU Report are deeply flawed. There are indeed sums which we will consider repaying, some attributable to Red Sky, for which we can only take responsibility, and some due to the practices applied consistently by your own staff over the period. The majority of your findings are rebutted robustly in our response, mainly due to custom and performance applied by your trained staff across all the Districts.

** considerable volume of documents including statistical data (not attached)*

CONFIDENTIAL

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 Email: Belfast@redskygroup.com

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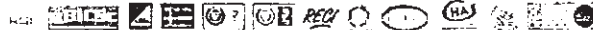
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Red Sky Group Ltd

Company No. 2720177, Registered Office: 100, Victoria Road, Belfast, BT2 8PB



CONFIDENTIAL 

- 2 -

It was of particular interest to us to find that over 75% of your findings appear to be directly attributable to actions by your own staff, and yet the timbre of your report sees us very much as the 'guilty party'.

Clearly we need to meet to find a fair and reasonable way forward when you have had time to study our response. I would ask you to consider delaying the completion of our review of the Howarth report until that time. Please also be aware that we will be continuing to press for the full Howarth report before being prepared to submit our findings. Your Corporate Governance and Gateway Reports clearly identify flaws in your own practices which we will maintain need to be taken into account as a backdrop when the findings of your various reviews and investigations into Red Sky Group are considered.

Finally I wish to reiterate my recent offer for Red Sky Group to become involved with you in discussions about potential improvements in the format of future contracts to resolve these issues and prevent any recurrence.

Yours sincerely



Peter Cooke
Group Managing Director

Att

CONFIDENTIAL

Page 1 of 2

Lucas, Maureen

From: Peter Cooke [Peter.Cooke@redskygroup.com]
Sent: 11 March 2011 14:16
To: Lucas, Maureen
Cc: Norman Hayes; Pauline Gazzard
Subject: RE: NIHE Investigation Audit Report
Sensitivity: Private

Dear Stewart

Thanks for your email. I am disappointed that you feel unable to delay the Howarth Report review by a couple of weeks, as we are genuinely buried in replying to your Reviews and Investigations, but of course I note your requirement.

Kind regards
Peter

Peter Cooke
peter.cooke@redskygroup.com
[REDACTED]

From: Lucas, Maureen [mailto:Maureen.Lucas@NIHE.GOV.UK]
Sent: 11 March 2011 13:37
To: Peter Cooke
Subject: NIHE Investigation Audit Report
Sensitivity: Private

Dear Peter

Thank you for your letter dated 7th March enclosing your response to our report on Newtownabbey. We will give careful consideration to your comments and respond in due course.

I would like to confirm that we expect to receive your response to the Horwath Report by the dates which we agreed i.e. substantive response by 31st March 2011 and supporting comments by 7th April 2011.

Yours sincerely



S Cuddy
Acting Chief Executive

11/03/2011

Page 1 of 1

McGahan, Barney

From: Cuddy, Stewart [Stewart.Cuddy@NIHE.GOV.UK]
Sent: 14 March 2011 17:50
To: McGahan, Barney
Cc: Cousins, Heather; Todd, Wendy
Subject: RE: Red Sky.

Barney,
Responses were received on time for the Newtownabbey report. We need to go through the response in detail. The response to Howarth is due at the end of March with final comments on 7th April. In relation to Newtownabbey they are suggesting over payments of just over £3000 against our figure of just over £64000. Their key argument is that our staff signed off the work. It is important that at least for this initial response we prove as far as possible that notwithstanding the work being approved /signed off by our staff that either the work was not done or was overcharged. This can then be used as a precedent for subsequent reports.

Stewart

From: McGahan, Barney [mailto:Barney.McGahan@dndni.gov.uk]
Sent: 14 March 2011 10:31
To: Cuddy, Stewart
Cc: Cousins, Heather; Todd, Wendy
Subject: Red Sky.

Stewart, I need to update Minister this week on progress. Were the requisite responses received? What is the current state of play?
Barney

***** IMPORTANT MESSAGE *****

The contents of this email from the Northern Ireland Housing Executive do not represent the expressed view of the Housing Executive unless that is clearly stated. It is intended only for the person(s) to whom it is addressed and is confidential. The Housing Executive does not accept any liability whatsoever for its contents (including attachments), usage or onward transmission. It may also be legally privileged and subject to internal monitoring.

28/03/2011

Mr S Cuddy
Acting Chief Executive
Northern Ireland Housing Executive
2 Adelaide Street
Belfast
BT28PB

7 April 2011

Dear Stewart

We enclose our detailed response to the (undated) Investigation Report produced by Messrs VB Evans through ASM Horwath on your behalf, a copy of which was delivered to us by NIHE Finance Director, Clarke Bailie and Contracts Manager Claims, Peter Craig on 24th November 2010.

We have responded to each matter raised in some detail within this Report, however we offer our general response by way of introduction in this letter. We reiterate that we find it extraordinary that we have been denied access to the full Horwath Report and request again that we be given access to this forthwith.

The Investigation Report has not been produced on an impartial basis. If it had, we would have been invited to participate in the process and would have been pleased to address the matters raised by VB Evans prior to publication of such a document. Red Sky Group has had no input into the VB Evans' findings. Without exception, each and every matter could and should have been discussed with ourselves, as is required by the contract, and your own personnel before any such Report was issued to the Executive. This would have been a far more cost effective process for both Parties and a more consequential and considered report would have been produced with the benefit of any lessons learned being shared between the Parties. The fact that the Executive commenced this process in our absence and without our knowledge (prior to the media 'becoming involved') is completely at odds with the spirit of the Contracts between us and flouts the Egan principles under which we are both required to work.

In the absence of proper dialogue with ourselves and the NIHE personnel involved, VB Evans has relied only on documents and partial and second-hand hearsay evidence of third parties (tenants) who were not aware of the reasons behind the questions asked of them nor the purpose for which the answers were to be used. The entire investigative process has been far from conclusive other than in highlighting shortfalls in the Contract form itself.

We have continually liaised closely with NIHE's personnel to address all matters of scope, clarification and agreement of value for works carried out. The report takes absolutely no cognisance of this practice which has been carried out as a matter of conduct between our two entities over a number of years. The report reads with a particular slant ('guilty until proved innocent') on alleged shortcomings within Red Sky Group, an entirely inappropriate slant given the lack of input allowed from the parties involved.

*date
date*

*VB Evans
Report not
supplied*

*RS has
had opportunity
to comment
but + others
also involved*



www.redskygroup.com

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Red Sky Group Limited
Company Registration Number N25773





- 2 -

The Investigation Report suggests that we have been overpaid substantial sums of money which we are not properly due. We refute this entirely. By contrast we shall demonstrate in this submission that we are entitled to further payment on several of the jobs investigated. This may have a significant impact when we revisit and revalue every job undertaken under these contracts, which we reserve our right to do.

*Raymond's
investigation did
nothing*

Enc

The VB Evans Report set out to look in detail at 222 jobs worth £229,362.69, an average of £1033.16 per job. On completion of our own investigation we calculate that we owe you a sum of £1122.73 in total. This represents the equivalent of just one job in over two hundred and twenty where anomalies were identified, or less than half a percent of the value of the works investigated. We believe you owe us at least £1917 and that you therefore owe us £794.58 overall. This outcome is in total contrast to the views expressed in the media as a consequence of 'leaks'.

To reach this result we have together expended hundreds of thousands of pounds, wasted untold time and energy and irrevocable damage has been inflicted on the reputation of Red Sky. We find this entire investigation to be uncalled for, biased, ludicrous, grossly and unfairly mishandled and a vast waste of public and private funds. We believe that Red Sky continues to suffer unwarranted criticism from the Executive and/or members of its staff and we are continually spending money refuting ill founded allegations.

You have informed us that you plan to present us imminently with more similar investigations/audits. We would suggest, in the strongest possible terms, that you reconsider this position. Such investigations will simply waste more public and private time and money in this way when our work has already been subjected to considerable scrutiny without any indication of impropriety. The continued exchange of documents and findings in this regard is proving to be a vastly expensive and disruptive process, without any conclusion or even a strategy for conclusion being in sight. We suggest that appropriately authorised persons from each party be appointed to begin a joint review of the findings and would welcome a third party overseer in this process who is able to make informed decisions.

We look forward to your response and shall be pleased to hear of any alternative proposals you may have to progress the matter towards urgent conclusion.

Yours sincerely

Peter Cooke
Group Managing Director

Enc





Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Mr Peter Cook
Red Sky Group
Grove Street East
Belfast
BT5 5GH

12th April 2011

Dear Peter

Overpayments in Relation to Newtownabbey 1

I refer to your response dated 7th March 2011 in relation the above matter.

I have now had the opportunity to carefully consider your response and having done so I am disappointed with the extent of the overpayment accepted by the Red Sky Group and the justifications put forward rejecting the reminder. Essentially, you make the case that in general a large part of the overpayments relate to jobs which were passed for payment by the Housing Executive. While this raises issues for us internally it does not entitle your firm to ignore their responsibilities under the contract or to entitle the firm to receive and retain overpayments.

As you know the initial overpayment as identified and detailed in Raymond Kitson's letter of 23 December was £64,624.06 and VAT where applicable. Having fully analysed and taking into account your response, that figure has now been revised as follows - £55,300.41 (plus VAT, where appropriate). To this we have also added the overpayment relating to a communal lighting charge of £3174.36 repayment of which has been previously requested from you by the District but as yet remains unpaid. This gives a total recovery amount of £58,474.77.

I enclose with this letter a booklet containing two sets of documents from which the said overpayments can be specifically identified. The first set of documents relates to communal lighting charge. The second Document entitled "Review of the Red Sky Response. ..." identifies the overpayments by reference to job number, and also to the relevant part of your response document and our initial RIU report.



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no: 18001 03448 920 900 Email: stewart.cuddy@nihe.gov.uk



IN AUSTOR IN PEPLE



Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Mr Peter Cook
Red Sky Group
Grove Street East
Belfast
BT5 5GH

12th April 2011

Dear Peter

Overpayments in Relation to Newtownabbey 1

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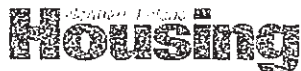
I enclose with this letter a booklet containing two sets of documents from which the said overpayments can be specifically identified. The first set of documents relates to communal lighting charge. The second Document entitled "Review of the Red Sky Response. ..." identifies the overpayments by reference to job number , and also to the relevant part of your response document and our initial RIU report.



Telephone 03448 920 900 Fax 028 9043 9803
TYPETALK no : 18001 03448 920 900 Email: stewart.cuddy@nihe.gov.uk



INVESTOR IN PEOPLE



Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Mr Peter Cook
Red Sky Group Limited
Grove Street East
Belfast
BT5 5GH

HAND DELIVERED

13th April 2011

Dear Peter

Response Maintenance Repairs Service:
Belfast District 2 – 302/001/AT
Belfast District 6 – 316/001/AT
Belfast District 7 – 317/001/AT
Belfast Districts 1 and 3 – 301/001/AT and 303/001/AT
Newtownabbey Districts 1 & 2 – 605/001/AT

The Northern Ireland Housing Executive has received reports and analysis of issues around performance and overpayments in relation to all of the above contracts. Following receipt of these the Executive sought to give the Red Sky Group an opportunity to comment and have taken into account the replies received.

The Board of the Northern Ireland Housing Executive, having considered the matter carefully, now wishes to invoke the provisions of Clause A20/6.2 of the Conditions of Contract. We are, therefore, under separate cover, serving Notices of Termination in respect of each of the above contracts.

Although there is no requirement to give reasons for the notice, the Board has taken the view that the trust and confidence necessary for the satisfactory operation of these contracts has been undermined to the extent that the Northern Ireland Housing Executive has decided to service notice and terminate the above contracts.

Yours sincerely

Stewart Cuddy
Acting Chief Executive



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: stewart.cuddy@nihe.gov.uk



CUSTOMER FOCUS



Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Mr. Peter Cooke
Red Sky Group Limited
Grove Street East
Belfast
BT5 5GH

13th April 2011

Dear Peter,

I wish to advise you that further to our correspondence this afternoon in relation to the termination of Red Sky contracts we have had a number of media enquiries.

I realise that you probably have not had an opportunity yet to advise your staff so I thought that it would be appropriate to inform you of this development.

The Housing Executive is currently preparing a short factual statement to confirm the termination of the contract. I would like to assure you that the Housing Executive did not seek any publicity in respect to this matter but are now obliged to respond.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Stewart Cuddy". The signature is stylized and includes a large loop at the beginning.

Stewart Cuddy
Acting Chief Executive



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: stewart.cuddy@nihe.gov.uk



NIHE
INVESTOR IN PEOPLE

Housing Executive

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Textphone: 0845 6504381
www.nihe.gov.uk



INVESTOR IN PEOPLE

Messrs Michael Jennings and Brian Murphy
Administrators
BDO
10 Callender Street
Belfast BT1 5BN

BY HAND

RECEIVED
16 MAY 2011
wrt/0007/05
PERM SEC BSD

12th May 2011

Re: Repairs Inspection Unit - Investigation relating to East Belfast District Office

Dear Messrs Jennings and Murphy,

Further to Mr. Stewart Cuddy's letter dated 10 May 2011, RIU have conducted an investigation into overpayments made to Red Sky Group (now in Administration) from the East Belfast District Office. This investigation came about as a result of similar concerns experienced in the Newtownabbey 1 District.

A 12 page report and appendices are attached which quantify the overpayments identified. The appendices referred to in the report give an individual breakdown including the addresses, job numbers and dates issued on each of these overpayments.

You will note from section 5.0 of the report that it is being recommended that the Housing Executive seeks to recover in full the overpayment of £108,524.08 by withholding and /or deducting that amount in accordance with the relevant contract provisions. As indicated in Mr. Cuddy's letter the process of deduction of weekly payments of £25,000 will commence on 16 May 2011. The Housing Executive wishes to give you an opportunity to comment upon and to explain the overpayments as detailed in the appendices to the report which may then be taken into account in a final reconciliation of the withholding or deduction of money payments by the Housing Executive to Red Sky Group Ltd.

You should provide the following information to us on or by the 27th May 2011 together with any other comments you may consider relevant.

Duplicate payments of jobs

In appendices 11, 12i, 18, 25 & 29 the jobs which have been the subject of apparent duplicate payments have been listed. Your comments are sought in relation to each of the jobs listed within each of these appendices. In particular, you should address the following issues in respect of each of those jobs:

1. Do you accept that there has been a duplicate payment?
2. If so, who is responsible for the duplicate payment and how did this occur?

Items claimed which are deemed to be included

In appendices 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 12g, 12h, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27 & 28 reference is made to all the jobs where it appears that Red Sky Group Ltd has claimed for work which was deemed to be included. In relation to each such job, please comment separately and in each instance your comments should cover the following issues:

1. Do you accept that relevant part of the work was deemed to be included?
2. If you do not accept this, please provide reasons and further clarification.
3. If you accept that the relevant part of the work was deemed to be included I would ask you to explain how the situation arose?

Yours sincerely


Peter Craig

Contracts Manager Claims

Enc.

cc Mr. B Rowntree, Chairman
Mr. S Cuddy, Chief Executive
Ms. M Taggart, DPMS
Mr. D Allen, Head of Procurement
Ms. F Gallagher, Head of Legal Services
Mr. J McVeigh, Head of Audit
Mr. G Quigg, Legal Services

Housing Executive

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www.nihe.gov.uk

34

Messrs Michael Jennings and Brian Murphy
Administrators
BDO
10 Callender Street
Belfast
BT1 5BN

BY HAND

3 June 2011

Dear Messrs Jennings and Murphy

Re: Repairs Inspection Unit - Investigation relating to South Belfast District Office

Further to Mr. Stewart Cuddy's letter dated 10 May 2011, RIU have conducted an investigation into overpayments made to Red Sky Group (now in Administration) from the South Belfast District Office. This investigation came about as a result of similar concerns experienced in the Newtownabbey 1 District.

A 13 page report and appendices are attached which quantify the overpayments identified. The appendices referred to in the report give an individual breakdown including the addresses, job numbers and dates issued on each of these overpayments.

You will note from section 5.0 of the report that it is being recommended that the Housing Executive seeks to recover in full the overpayment of £119,917.17 by withholding and /or deducting that amount in accordance with the relevant contract provisions. As indicated in Mr. Cuddy's letter the process of deduction of weekly payments of £25,000 will continue until all the overpayments have been recovered. The Housing Executive wishes to give you an opportunity to comment upon and to explain the overpayments as detailed in the appendices to the report which may then be taken into account in a final reconciliation of the withholding or deduction of money payments by the Housing Executive to Red Sky Group Ltd.

You should provide the following information to us as soon as practicable together with any other comments you may consider relevant.

Duplicate payments of jobs

In appendices 6, 9, 13, 21, 28, & 32 the jobs which have been the subject of apparent duplicate payments have been listed. Your comments are sought in relation to each of the jobs listed within each of these appendices. In particular, you should address the following issues in respect of each of those jobs:

*file Red sky / Project
Yang*

AB 3/6/11

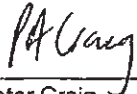
1. Do you accept that there has been a duplicate payment?
2. If so, who is responsible for the duplicate payment and how did this occur?

Items claimed which are deemed to be included

In appendices 3, 4, 7, 19, 26, 27, 31, 34, 35 & 36 reference is made to all the jobs where it appears that Red Sky Group Ltd has claimed for work which was deemed to be included. In relation to each such job, please comment separately and in each instance your comments should cover the following issues:

1. Do you accept that relevant part of the work was deemed to be included?
2. If you do not accept this, please provide reasons and further clarification.
3. If you accept that the relevant part of the work was deemed to be included I would ask you to explain how the situation arose?

Yours sincerely



Peter Craig
Contracts Manager Claims

Enc.

cc Mr B Rowntree, Chairman
~~Ms S Cuddy, Chief Executive?~~
Ms M Taggart, DPMS
Mr D Allen, Head of Procurement
Ms F Gallagher, Head of Legal Services
Mr J McVeigh, Head of Audit
Mr G Quigg, Legal Services
Mr R Kitson, Audit

PC8147

● Page 2

Housing Executive

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Textphone: 0845 6504381
www.nihe.gov.uk

38

Messrs Michael Jennings and Brian Murphy
Administrators
BDO
10 Callender Street
Belfast
BT1 5BN

BY HAND

21 June 2011

Dear Messrs Jennings and Murphy

Re: Repairs Inspection Unit - Investigation relating to West Belfast District Office

Further to Mr. Stewart Cuddy's letter dated 10 May 2011, RIU have conducted an investigation into overpayments made to Red Sky Group (now in Administration) from the South Belfast District Office. This investigation came about as a result of similar concerns experienced in the Newtownabbey 1 District.

A 13 page report and appendices are attached which quantify the overpayments identified. The appendices referred to in the report give an individual breakdown including the addresses, job numbers and dates issued on each of these overpayments.

You will note from section 5.0 of the report that it is being recommended that the Housing Executive seeks to recover in full the overpayment of £70,106.88 by withholding and /or deducting that amount in accordance with the relevant contract provisions. As indicated in Mr. Cuddy's letter the process of deduction of weekly payments of £25,000 will continue until all the overpayments have been recovered. The Housing Executive wishes to give you an opportunity to comment upon and to explain the overpayments as detailed in the appendices to the report which may then be taken into account in a final reconciliation of the withholding or deduction of money payments by the Housing Executive to Red Sky Group Ltd.

You should provide the following information to us on or before 30 August 2011 together with any other comments you may consider relevant.

Duplicate payments of jobs

In appendices 10, 21, 28 & 32 the jobs which have been the subject of apparent duplicate payments have been listed. Your comments are sought in relation to each of the jobs listed within each of these appendices. In particular, you should address the following issues in respect of each of those jobs:

file Red Sky/ Project Young
[Signature] 21/6/2011

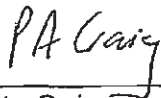
1. Do you accept that there has been a duplicate payment?
2. If so, who is responsible for the duplicate payment and how did this occur?

Items claimed which are deemed to be included

In appendices 3, 4, 6, 7, 9, 19, 27, 31, 34, 35 & 36 reference is made to all the jobs where it appears that Red Sky Group Ltd has claimed for work which was deemed to be included. In relation to each such job, please comment separately and in each instance your comments should cover the following issues:

1. Do you accept that relevant part of the work was deemed to be included?
2. If you do not accept this, please provide reasons and further clarification.
3. If you accept that the relevant part of the work was deemed to be included I would ask you to explain how the situation arose?

Yours sincerely



Peter Craig
Contracts Manager Claims

Enc.

cc Mr B Rowntree, Chairman
~~Mr S Cuddy, Chief Executive~~
Ms M Taggart, DPMS
Mr D Allen, Head of Procurement
Ms F Gallagher, Head of Legal Services
Mr J McVeigh, Head of Audit
Mr G Quigg, Legal Services
Mr R Kitson, Audit
Mr D Lambe, Director of Finance (Acting)

PC6161

• Page 2

9.10 Links to other reports

NIAO Report – NIHE Management of response of maintenance contracts – 2012 -
http://www.niauditoffice.gov.uk/nihe_contracts.pdf

PAC Report - NIHE Management of response of maintenance contracts
http://www.niassembly.gov.uk/Documents/Reports/Public-Accounts/NIHE_management_maintenance.pdf



Northern Ireland
Assembly

Appendix 10

Phase 3 Supplementary Evidence – Documentation relating to events following the termination of the Red Sky Contracts

Contents

Phase 3 Supplementary Evidence – Documentation relating to events following the termination of the Red Sky Contracts

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	<ul style="list-style-type: none"> ■ note of the meeting ■ letter to Minister requesting meeting ■ briefing advising Minister to decline meeting and draft response ■ documentation regarding amendment to draft response ■ briefing for Permanent Secretary ■ NIHE input to briefing for Minister ■ briefing for Minister 	
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10.1 NIHE board meeting paper – 13 April 2011

Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Delivered by
hand.



Housing

Chairman Brian Rowntree CBE
2 Adelaide Street
Belfast BT2 3PB

CONFIDENTIAL
Will Haire
Permanent Secretary
Department for Social Development
Lighthouse Building
1 Cromac Place, Gasworks Business Park
Ormeau Road, Belfast BT7 2JB

13th April 2011

Dear *Will*

I enclose for your attention a copy of a restructured Board paper duly approved by the Board of NIHE at our special Board meeting today.

This notice of termination in respect of Red Sky Contracts is effective from 12.00 noon tomorrow and the contractor is being notified accordingly.

Kind regards.

Yours sincerely

Brian Rowntree
Chairman



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no: 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



Correspondence

Chief Executive
For Board Meeting
On 13th April 2011

RESTRICTED

FOR APPROVAL

**PROPOSAL TO TERMINATE THE RESPONSE MAINTENANCE
CONTRACTS HELD BY RED SKY GROUP LTD**

1.0 Introduction

- 1.1 Red Sky Group Ltd (RSG) currently holds five contracts for response maintenance within Belfast and Newtownabbey. The value of these contracts is approximately £7m per annum (Appendix 1). The contracts were let in 2004 and 2007.
- 1.2 A number of response maintenance contracts, including those held by RSG, have been extended to facilitate the procurement exercise to renew them. It is planned to commence the renewal procurement during 2011.
- 1.3 Notwithstanding this wider procurement exercise, this paper seeks the Board's agreement, on the basis that the Housing Executive considers that it has lost all trust and confidence in the RSG, to issue a three month termination notice in respect of all response contracts held by them.

2.0 Background

- 2.1 Concerns with the service provided by RSG have existed for some time. These concerns have emanated from within the Northern Ireland Housing Executive (NIHE) itself, our tenants and from local representatives. The issue was so serious that in 2007 the NIHE took a decision to issue a Notice of Termination in respect of one of their contracts at that time. Discussions with RSG led to a Standstill Agreement to suspend potential litigation and to explore an agreed resolution. The contract was not terminated.
- 2.2 In early 2009 a Whistleblowing communication was received by the Northern Ireland Audit Office (NIAO). The whistleblower made assertions as to the performance of RSG. This matter was raised at the highest level within the NIHE and featured in a number of

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Assembly Questions. Subsequently the Repairs Inspection Unit (RIU) commenced investigations relating to these assertions.

3.0 Audit Committee

3.1 In response to these concerns the Audit Committee commissioned forensic accountants ASM Horwath to undertake an independent review into the activities of RSG regarding their work on NIHE response maintenance contracts.

3.2 ASM Horwath was asked to consider a range of issues, including the quality of the work undertaken, the appropriateness of the invoices submitted, the effectiveness of the inspection regime operated by NIHE, and whether or not the contracts had been properly awarded. ASM Horwath employed a firm of quantity surveyors, VB Evans, to assist them with this commission.

3.3 ASM submitted its final report in October 2010 and, based on a sample of 472 site inspections, highlighted a number of significant findings and recommendations which included the following items:

- "It is clear that Red Sky's workmanship is not always to the required standard" with "45% by number and 13% by value, of all jobs inspected as having anomalies" (Para. 5.1);
- "evidence of duplication of payments" (Para. 5.6) with further work required to determine if these "have arisen from "innocent" errors or deliberate duplication";
- timeliness of completion of work, significantly in West Belfast (Para. 5.7);
- detailed schedules showing financial anomalies totalling £40,418.67, of which £25,967 was classified by VB Evans as 'Category A' i.e. work that the contractor has not carried out at all or which is not fit for purpose (Para. 5.23);
- attention was drawn to jobs related to communal lighting, floor tiling and duplicate Schedule of Rates (SOR) codes.

3.4 RSG was provided with copies of the findings of the site inspections, but not the main ASM Horwath report; on the basis of legal advice, and invited to provide a response and explanation of these findings. RSG's response has now been received and

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evaluated (see 4.0). NIHE's view is that while some adjustments to the reported level of overpayment are justified, the RSG response is not acceptable.

- 3.5 RIU were asked to review samples of RSG work in all six Districts as a response to concerns regarding potential overpayment being claimed by RSG. These samples were of contemporaneous work of RSG. This report was issued in December 2010 to RSG relating to Newtownabbey 1 District Office. RIU's initial finding concluded that RSG had been overpaid to the sum of £64,624.06 (subsequently revised to £55,300.41 – see paragraph 4.1) for work either not done, deemed to be included or over specified. RSG were asked to respond to the findings and explain how each individual overpayment occurred.

3.6

(b) (5)

4.0 Responses from Red Sky

- 4.1 RSG responded to the Newtownabbey 1 report and acknowledged that they would repay £10,210.34 to the Housing Executive. RIU reviewed in detail their individual responses and have adjusted the £84k (see paragraph 3.5) figure down to £55,300.41. RIU have included an additional £3,174.36 which came to light relating to an overpayment for communal lights in Newtownabbey 1.
- 4.2 RSG failed to adequately address the issues raised as they attribute a large part of these overpayments to:
- "The Maintenance Officers failings.
 - Interpretation of the contract.
 - Occasional oversight and relatively minor errors.
 - Codes claimed were consistent with the ongoing conduct and performance established since the outset of the contract".

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- 4.3 Of the £10.2k referred to above, RSG is willing to refund to the NIHE £2.7k claimed for communal lighting inspections carried out to three blocks that were demolished some 10 years ago. RSG's explanation acknowledges that their system was not sufficiently robust to prevent the invoicing of these jobs. They confirmed a revised procedure is now in place.
- 4.4 In addition, RSG claims that duplicate communal lighting orders issued on the same day to the value of £2.5k were paid correctly due to the deficiencies in the HMS system and as such RSG completed the work as requested therefore payment received was fair and reasonable. In short, they claim that the work was ordered twice and completed twice.
- 4.5 RSG claims to be preparing a report for submission to the NIHE as a counter claim. They also allege that there have been some underpayments and this is accepted. Further, RIU can confirm that a high percentage of the identified overpayments were either pre/post inspected or authorised by NIHE staff. However these matters do not exonerate RSG of their contractual responsibilities particularly under Clause A32/540 (which requires the contractor not to include any unnecessary work).
- 4.6 RSG provided a response to the VB Evans findings at the beginning of April. RIU can confirm from the detail received that the £40,418.67 overpayments as identified by Horwath have been challenged by RSG. RSG responded by saying that they accept they owe the Housing Executive £1122.73 but claim the Housing Executive owes them £1917.00 giving an underpayment of £794.56 to RSG.
- 4.7 RSG have indicated in their responses:
- Work in dispute was ordered and/or approved by Housing Executive maintenance staff.
 - They are unhappy with the full deduction of money for what they see as minor quality issues.
 - Occasional oversight and relatively minor errors.
 - Measurement provision of the contract is ambiguous and open to interpretation.

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- Acceptance that errors occurred in the commercial light check and claim to have revised their internal procedures to avoid any potential recurrence.
- 4.8 RIU have reviewed all the individual responses from the details available from both parties and have reviewed minor quality issues from the recovery sum which adjusted the VB Evans' recovery figure of £40,418.57 to £29,085.58
- 5.0 Assessment by Chief Executive and Senior Management Team
- 5.1 The Chief Executive and Senior Management Team met on Friday 8th April 2011 to discuss the matter in detail. Careful consideration was given to a number of factors including:
- a. The past and current difficulties with the contract;
 - b. The adverse findings of the Honvath and RIU Reports in relation to contractor performance and the scale of overcharging;
 - c. The unacceptable responses from RSG to report findings, particularly their continued failure to acknowledge their contractual responsibility not to bill for work which is not needed and unnecessary;
 - d. Their billing for work to buildings which no longer exist i.e. have been demolished;
 - e. Tenant and local representatives' dissatisfaction with contract performance.
- 5.2 The unanimous view of the Chief Executive/Senior Management Team, having had regard to all the relevant issues, was that all the above matters had led to an irrevocable breakdown in trust and loss of confidence in the contractor and that a recommendation should be made to the Board that the contract should be terminated as soon as possible.
- 6.0 Options
- 6.1 The options for terminating a contract in circumstances where the employer under a contract has lost all trust and confidence are to

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be found in the relevant contract and in the general law of contract as it has developed.

- 6.2 In the RSG situation the most relevant contract condition is to be found in clause A20/6.2 of the standard conditions of the Response Maintenance Service contracts. This clause on its face permits either party to terminate the contract on three months' prior written notice. There is no explicit requirement to provide reasons.
- 6.3 Apart from the contractual arrangements for bringing a contract to an end there is also in general contract law the concept of "fundamental breach" also referred to as "repudiatory breach". In summary, such a breach consists of conduct by one party which is so serious that it justifies the innocent party treating itself as discharged from further obligations under the contract. In other words it must go to the very root and essence of the contract.
- 6.4 As to what constitutes fundamental breach will depend on the specific facts and circumstances of each particular case. It is well established that the relevant test can be the quantitative value or ratio of the breach to the overall value of the contract. The greater that ratio the more likely it is that a court would uphold a fundamental breach.
- 6.5 The converse is equally true, the smaller the value of the breach to the overall contract the less likely or improbable that a court would sustain a claim of fundamental breach.

7.0

- 7.1 risk that the termination of all contracts will be challenged through the courts by RSG, who, by this action, will in effect lose all their Housing Executive business at one fell swoop. Such a challenge may present through public law (i.e. a Judicial Review) or private law (i.e. contract breach pursued through commercial court). Brief comments are offered on each in the following paragraphs.

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Public Law Challenge

7.2 In November 2010 Solicitors acting on behalf of RSG served on the Housing Executive a "pre-action judicial review protocol letter" setting out the basis of a proposed challenge which was fundamentally concerned with the Housing Executive's conduct of its review of RSG operations without providing them with an opportunity to participate. This is consistent with their stance that all Housing Executive decisions in relation to operation of the contract are matters of public law and therefore amenable to judicial review.

7.3

7.4 This assurance of fair procedure has also been made on behalf of the Housing Executive in previous exchanges of correspondence between the parties legal representatives. It is considered that in doing so the Housing Executive is in a stronger position in the event of a challenge on public law grounds.

Private Law Challenge

7.5 If not challenged by way of judicial review, RSG may well still seek to challenge any decision to terminate all contracts under private law asserting that the Housing Executive is acting in contravention of its obligations (either implied or explicit) under the contract.

7.6

7.7

7.8 An interim remedy available to RSG may well be to seek an injunction preventing the Housing Executive from implementing the termination of the contracts prior to any determination by the court of the disputed issues. Such an injunction, if granted, would prevent the Housing Executive from terminating the contracts until determination of the issues / case by the court.

7.9 One of the effects of terminating contracts for services for which there is clearly an on-going requirement is the application of TUPE whereby all the employees of RSG who are engaged mainly in the provision of the former contract services would by operation of law transfer to the replacement contractors as their employees. The significance of this effect cannot be understated.

8.0 Operational Issues

8.1 There are three potential operational issues to note:

- The management of the RSG contracts during the Notice period. Previous experience has indicated that additional contract management input will be required during the Notice period. However, the full provisions of the contract will still apply; RSG will continue to receive works orders for all relevant jobs, and they will be expected to complete the work in compliance with the terms of the contract. The districts involved may need additional support and this is being considered.
- The re-allocation of the Red Sky contracts at the end of the Notice period. Once the notice period has expired and the termination takes effect we will need to ensure that we have in place continuity of service provision through to the end of the current contracts. Whilst the

are significant contractors, including the NIHE DLO. It is thus likely that the reallocation of the work will require the cooperation of the contractors. Work will be required to clarify how this process may operate, but there are significant risks involved.

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- The procurement process to renew the contracts. As noted in 1.1 above, it is planned to commence the renewal of response maintenance contracts during the current year. This includes those contracts held by the RSG.

9.0 Media and Communication

9.1 All communications regarding this issue need to be carefully considered, with particular attention required in terms of timing. There is a range of stakeholders who would need to be informed about in the event that the Board decide to terminate the contracts. These include:

- Contractor
- Other contractors
- Staff – those involved in managing contracts and wider staff
- Political representatives
- Tenants
- Media

9.2 The current position is that:

- Journalists have been keen to get access to investigation reports. They have a number of sources within the NIHE, RSG and local communities.
- A key issue for journalists has been one of continuing poor contract performance while still receiving public money, and a perception that the NIHE has not acted to deal with this problem.
- The ongoing concerns of public representatives.

9.3 Other potential media issues include:

- Potential risk of reputational damage to NIHE.
- Potential job losses in RSG (mitigated by TUPE).

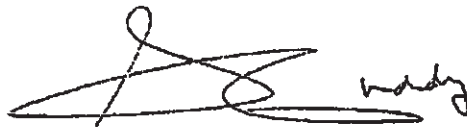
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- Tenant and unauthorised NIHE staff testimony to the press.

10.0 Recommendations

- 10.1** It is recommended the Board approve the termination of the five "All trades" Response Maintenance contracts held by RSG on three months Notice and authorise officers to prepare and issue the relevant Notices as soon as practical following the Board meeting which will initiate the formal Notice period.



Stewart Cuddy
Chief Executive (A)

13.4.2011

Correspondence

Appendix 1 – Red Sky Contracts

Contract	Commencement Date	Duration	Value
Newtownabbey 1 & 2	5 th March 2007	4 Years	£1.5m
North Belfast	20 th March 2007	4 Years	£1.0
South Belfast	30 th June 2004	4 Years	£1.5m
West Belfast	5 th March 2007	4 Years	£1.5m
East Belfast	3 rd August 2004	4 Years	£1.0m

10.2 Red Sky contract termination correspondence – 13 April 2011



Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Mr Peter Cook
Red Sky Group Limited
Grove Street East
Belfast
BT5 5GH

HAND DELIVERED

13th April 2011

Dear Peter

Response Maintenance Repairs Service:
Belfast District 2 – 302/001/AT
Belfast District 6 – 316/001/AT
Belfast District 7 – 317/001/AT
Belfast Districts 1 and 3 – 301/001/AT and 303/001/AT
Newtownabbey Districts 1 & 2 – 605/001/AT

The Northern Ireland Housing Executive has received reports and analysis of issues around performance and overpayments in relation to all of the above contracts. Following receipt of these the Executive sought to give the Red Sky Group an opportunity to comment and have taken into account the replies received.

The Board of the Northern Ireland Housing Executive, having considered the matter carefully, now wishes to invoke the provisions of Clause A20/6.2 of the Conditions of Contract. We are, therefore, under separate cover, serving Notices of Termination in respect of each of the above contracts.

Although there is no requirement to give reasons for the notice, the Board has taken the view that the trust and confidence necessary for the satisfactory operation of these contracts has been undermined to the extent that the Northern Ireland Housing Executive has decided to service notice and terminate the above contracts.

Yours sincerely

Stewart Cuddy
Acting Chief Executive



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FOR PEOPLE

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INVESTOR IN PEOPLE

Mr Peter Cook
Red Sky Group Limited
Grove Street East
Belfast
BT5 5GH

HAND DELIVERED

13th March 2011

NOTICE OF TERMINATION OF CONTRACT

Dear *Peter*

Response Maintenance Repairs Service – Belfast Districts 1 and 3 – 301/001/AT and 303/001/AT

In accordance with Clause A20/6.2 of the above Contract, which currently exists between the Red Sky Group Limited and the Northern Ireland Housing Executive, notice is hereby given on behalf of the Housing Executive terminating the said contract with effect from 14th July 2011.

With effect from 14th July 2011 your employment as Contractor under the said Contract will therefore cease without further notice. Until that date the Contract will remain in full force and effect and you are obliged to continue to fulfil your obligations in accordance with and subject to the conditions of contract and in a satisfactory manner.

Yours sincerely

A handwritten signature in black ink that reads "Peter Craig".

Peter Craig
Contracts Manager (Claims)

10.3 Meeting between NIHE and East Belfast MLAs – 28 April 2011

4. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 28 April 2011. The meeting was to discuss Red Sky at the office of the Chairman of the NIHE. Those present included: Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA, Stewart Cuddy Acting Chief Executive, Dr John McPeake- Director of Housing & Regeneration and Acting Deputy Chief Executive

MEETING TO DISCUSS RED SKY
CHAIRMAN'S OFFICE, NIHE, 2 ADELAIDE STREET, BELFAST
THURSDAY 28TH APRIL 2011



PRESENT:

Alderman Peter Robinson MLA
Robin Newton, MBE, MLA
Mr Sammy Douglas

Mr Brian Rowntree Chairman
Mr Stewart Cuddy, Acting Chief Executive
Dr John McPeake, Director of Housing & Regeneration/
Deputy Chief Executive (A)
Mrs Maureen Lucas - Minutes

Mr Rowntree welcomed Alderman Robinson, Mr Newton and Mr Douglas to the meeting which was convened to discuss the termination by the Housing Executive of the Red Sky contract.

Mr Robinson made his opening remarks indicating that the decision to terminate the contract reflected a sectarian bias on behalf of the Housing Executive which stemmed from concerns with the West Belfast contract. He further indicated that the Housing Executive was treating Red Sky differently from other Contractors and had it not been for the ongoing election, there would have been an enquiry/investigation into the matter by the Assembly. He stated that the Housing Executive can expect such an enquiry/investigation after the election.

Mr Robinson expressed concern that there had been no consultation with local representatives and the whole issue reflected his belief that West Belfast elected representatives were out to get Red Sky. He also believed that the decision was a significant matter that should not have been taken during "purdah".

Mr Rowntree in response categorically denied any sectarian bias or political interference in what was a completely commercial and contractual decision and, in his opinion, was not in breach or subject to "purdah".

Mr Newton said he had been in discussions with Red Sky and it was their contention that the firm's overall performance in West Belfast, based on their KPI and contract measurement, had been more than satisfactory. The Group had therefore been surprised to learn that the contract had been terminated.

Mr Newton also referred to the letter sent by Peter Cooke to Stewart Cuddy in which he issued a strong rebuttal of the findings of the V B Evans Report. Further, in a meeting with representatives from Red Sky on 16th February Mr Rowntree had indicated that further discussions would be held as soon as Red Sky submitted their response to the Report's findings.

It was therefore of some surprise that a letter was then issued by the Housing Executive advising Red Sky that their contract had been terminated without any further dialogue having taken place.

Mr Douglas said he was aware that senior management from Red Sky had met with senior management in the Housing Executive on a regular basis. However, Peter Cooke advised him that at no stage was the question of fraud raised.

Mr Newton asked why Red Sky had been denied full access to the Horwath Report.

Mr Rowntree in response explained that sections of the Horwath Report are of a confidential nature and contained information relating to Housing Executive staff who had been responsible for the supervision of the Red Sky contract. As there may be internal disciplinary action which potentially may need to be referred to the PSNI for further investigation, only the relevant sections of the Report were released to Red Sky.

Based on the findings of this Report, Mr Robinson asked if there have been any failings on the part of the Housing Executive in relation to the Red Sky contract.

Mr Rowntree said as previously stated there have been issues of concern about the management of the contract by Housing Executive staff and this is under investigation with the potential for disciplinary action.

Mr Rowntree said he welcomed the opportunity to put on record the fact that the Housing Executive's Board entered into detailed and prolonged discussion before reaching its decision to terminate the Red Sky contract and was fully aware of the consequences for the Group, particularly those from the 400 workers employed on Housing Executive contracts.

He assured those present that the provisions of TUPE, as contained within the contract documentation, will be applied to those workers and, although this information had been included in a statement released by the Housing Executive, it had been of some surprise that there had been no comment from Red Sky about TUPE in their recent public statement. Mr Rowntree added that, in advance of any action by the Administrator, the Housing Executive sought Legal Opinion in relation to TUPE and it was confirmed that the provisions of TUPE will apply in the case of Red Sky.

Mr Newton referred to a small company located in East Belfast which recently went into administration. Under the provisions of TUPE its employees were transferred to a new company based in Portadown. However, when they reported for work they were advised that there was no work for them and he sought an assurance that this will not be the case for Red Sky employees when they move to a new Contractor.

Mr Cuddy advised that Dr McPeake had made arrangements to meet with individual Contractors following this meeting and the question of TUPE and other issues will be discussed in detail with them.

Mr Douglas said it was confusing that the Housing Executive, while admitting to having lost confidence and trust in the Red Sky's employees because of allegations of overcharging and shoddy workmanship, is prepared to enter into the TUPE process with them.

Mr Rowntree in response explained that the contract is between the Red Sky Group and the Housing Executive and the issues which have arisen are with the management of the company and not its employees.

In answer to Mr Robinson's request for a definitive reason why the contract was terminated, Mr Rowntree confirmed that it was because of substantial overpayments, estimated (post the Horwath Report) to be around £340,000.

Mr Cuddy added that the investigative work carried out by Horwath (a firm of independent forensic Accountants) found that significant overcharging had occurred and, when the figures were extrapolated, would have amounted to around £1.5m. A report on the overpayments was sent to Red Sky who, in their response, contended that on the contrary the Housing Executive owed them in the region of £790. Mr Cuddy said, having looked at the response in detail, it was considered that Red Sky had not given serious consideration to the matter.

Following on from the Horwath Report, Mr Cuddy advised that further investigations were carried out into Red Sky's work in other Districts and, unfortunately, further significant levels of overcharging were uncovered.

Mr Robinson asked if the Housing Executive has carried out similar sample checks and/or investigations into any of its other contractors.

Mr Cuddy assured Mr Robinson that the Housing Executive closely monitors all of its Contractors. However, Red Sky had been very high "on the radar" for some time.

Mr Cuddy referred to a recent BBC interview in which Mr Cooke denied any problem with overpayments but, in an interview a few days later, conceded that there had indeed been overpayments and that these related to buildings which no longer existed.

Mr Robinson said in his opinion Housing Executive staff must bear some of the blame for the overpayments, given that it was their responsibility to check the invoices from Red Sky, particularly in the case of invoices relating to buildings which are no longer in existence.

On the basis of the findings, Mr Cuddy said it is possible that there will be disciplinary action in relation to Housing Executive staff with the potential for PSNI involvement.

He pointed out, however, that it is the responsibility of all Contractors to identify to the Housing Executive what jobs are required and to ensure that back-up documentation is provided, including a record of the time taken to carry out the work. Questions have obviously been raised about the records for work carried out by Red Sky on buildings which do not exist.

Mr Robinson sought an explanation as to why the Housing Executive gave Red Sky an extension to the contract when the findings of that Report were already known.

Mr Cuddy in reply explained that a healthcheck into Contract Procurement and Contract Management was carried out as part of the Housing Executive's Review of Governance. This review highlighted the need for all Egan contracts to be substantially reviewed and updated. All contractors, including Red Sky, were therefore written to extending their contract up to 31st October 2011 and explaining the timings for the new procurement exercise for NIHE contracts. Parallel to this the Red sky investigations were ongoing but no decision was taken to terminate their contract until the matter was discussed at the Housing Executive's Board meeting on 13th April 2011.

Mr Robinson sought an assurance that the rules of the partnership arrangement were correctly followed.

Mr Cuddy explained that the Department for Social Development arranged for an expert team of Gateway Reviewers to be commissioned to look at the Housing Executive's contracts and contract management system. The team concluded that, although the Egan system had been embraced by the organisation, it pointed out that Egan is a style of working and should not be viewed as a contract. The team found that the Housing Executive was deficient in its contract specifications in that they were not sufficiently specific in relation to KPIs, penalties etc. The team also pointed to the need to build up trust between the Housing Executive and its contractors and that this must be underpinned by having robust contracts in place. This was a criticism that applied across the whole public sector.

Mr Cuddy said difficulties with the Red Sky Group dated back to 2007 and unfortunately the Housing Executive's management team and the Board had lost confidence and trust in the relationship with the Group, mainly due to the consistent pattern of overcharging which has emerged.

Mr Robinson asked for an estimate of how often the Housing Executive had written to Red Sky about their concerns.

Mr Cuddy said that in his role as Acting Chief Executive he had met with representatives from the Group for the first time in January/February 2011. This had been a particularly robust meeting during which Peter Cooke was advised of the seriousness of the situation and of the possible outcome for the company.

Following that meeting Mr Hayes contacted Mr Rowntree to express his concern about what he perceived to be an unacceptable attitude displayed by Mr Cuddy during the discussions. He requested a further meeting with Mr Rowntree and during this meeting the seriousness of the issues were again underlined and Red Sky representatives were reminded of their contract obligations.

Mr Cuddy said initially Red Sky refused to provide the Housing Executive with a response to the findings of the Horwath Report but eventually agreed to do so. Following the meeting a letter was sent to Red Sky setting out the points agreed at the meeting and asking that a response to the Horwath Report be provided by 7th April 2011.

Mr Robinson said he had concerns that the Housing Executive had not entered into meaningful discussions with Red Sky in relation to the findings of the Report, particularly in relation to overpayments.

Mr Cuddy assured those present that Red Sky had been provided with a detailed job by job report and, in addition ongoing discussions had taken place with Pauline Gazzard, Head of Social Housing Unit in the Group, who had asked for additional information and clarification to enable a response to be provided.

Mr Newton commented on other areas of ambiguity as outlined to him by Red Sky. For example where a whole job was deemed to be overcharged because, for example, the value of one screw had not been included.

Mr Rowntree conceded that this had been commented on in the Horwath Report and the Housing Executive had acknowledged the anomaly.

Mr Newton said he had been advised by Red Sky that they had, at their own expense, employed the services of a specialist Quantity Surveyor who concluded that, in his opinion, the Group had performed well over the period of the contract.

Mr Rowntree referred to the meeting which had taken place in February and attended by Norman Hayes, Peter Cooke and Pauline Gazzard, the purpose of which was to seek their agreement to respond to the report findings by certain dates. During the meeting Mr Rowntree said he had emphasised to Mr Cooke and his colleagues that the obligations of their contract must be honoured in terms of controls and financial management. Unfortunately the meeting had become acrimonious for a short time as Mr Hayes refused to accept the Housing Executive's stance on the matter.

Mr Rowntree reminded those present of the substantial contract with Red Sky which is paid on average £150,000 per week for maintenance work it carries out on behalf of the Housing Executive.

Mr Rowntree referred to a recent claim for £500,000 submitted by Red Sky for a scheme in Carrickfergus. This figure was reached following an evaluation carried out by a Quantity Surveyor appointed by Red Sky to review the previous settlement of £40,000 paid to the Group some time ago in full and final settlement.

Mr Robinson said it was his understanding that Red Sky had not at any time agreed to the figure of £40,000 and he believed there were differences of opinion as to how the matter could be resolved.

In response to Mr Robinson's contention that this could be construed as Red Sky having been underpaid in this particular contract, Mr Rowntree said that, in his view, no two Quantity Surveyors would assess a particular scheme and reach the same conclusion in relation to its value.

Mr Rowntree outlined a number of critical issues which led to the breakdown in the relationship between Red Sky and the Housing Executive, particularly in relation to the Group's financial standing and its viability.

He explained that, as part of the normal process of tendering, preliminary enquiries with regard to all contractors are made through Constructionline. In the case of Red Sky preliminary enquiries revealed that the Group had been suspended from their system and this called into question their financial standing.

In order to get a clear understanding of the position, Constructionline were contacted and they advised that the financial standing allocated to Red Sky was £50,000 which would have prevented them from re-tendering for the contract. However this financial standing was subsequently increased to £2m and this enabled Red Sky to proceed to tender.

Mr Rowntree said obviously he and his officials had serious concerns about their reinstatement and also the fact that in a number of Districts Red Sky have been unable to secure credit from some merchants and suppliers.

Mr Robinson asked for a comment on the risk or consequences for the Housing Executive in relation to the actions of Red Sky.

Mr Rowntree in response said Red Sky's workmanship was found to be of a sub standard nature and there were concerns that they may have been using inadequate materials resulting in tenants expressing dissatisfaction with the quality of work carried out by the Group.

Mr Newton said he was surprised at this statement and could give an assurance that the materials used by Red Sky were of a high specification.

Mr Rowntree said it was important to point out that problems relating to the Red Sky Group date back to 2007. As a consequence of a number of concerns about the Group's activities investigations were undertaken by Horwath and V B Evans and the findings of both reports pointed to a pattern of overpayments and overcharging. The findings were of major concern to the Housing Executive as well as the Northern Ireland Audit Office who view instances of overcharging and overpayments as suspected fraud. Following the Audit Office's insistence that the allegations be addressed, a review of Red Sky's activities in all Districts was undertaken. This revealed a consistent pattern of overcharging. Mr Rowntree emphasised, however, that this does not reflect on the actions of Red Sky's employees but on the organisation's management which has not honoured its contractual obligations and who focused primarily on maximising cash flow. Mr Rowntree added that the Housing Executive has its own deficits which are being addressed and in this respect internal disciplinary procedures are under way in relation to the Newtownabbey Contract and activities in other Districts.

At a recent meeting with Red Sky representatives Mr Rowntree said an attempt was made to seek an acknowledgement from them that there was a problem and an assurance that any monies owed to the Housing Executive would be repaid.

In reply to Mr Newton's request for examples of overcharging, Mr Rowntree explained that these were in relation to communal lighting and work orders for buildings which no longer existed. He added that it was evident from investigative work that Red Sky were not updating their work orders as specified within their Contract and this led to questions about who was responsible for generating the invoices, who had authorised the work orders and who had taken the decision not to inform the Housing Executive.

Mr Douglas said Red Sky had undertaken to discipline any member of staff involved and that it was their understanding that a previous Contractor had been guilty of similar activities.

Mr Rowntree in reply said that the Housing Executive is fully aware of this allegation in relation to the previous Contractor and will be following this up in their investigations.

Mr Rowntree then outlined the sequence of events following the Housing Executive's decision to terminate the Red Sky contract.

At 12.00 o'clock on Friday 15th April 2011 it was announced that Red Sky was intending to appoint an Administrator.

On learning of the announcement the Group came under pressure from creditors and tradesmen and at 11.00 o'clock on Tuesday morning 19th April 2011 Red Sky went into voluntary Administration.

It was also confirmed that an Administrator had been appointed and was awaiting a Court Order. Mr Rowntree was advised of this action in a telephone call on Wednesday afternoon 20th April 2011.

As a follow up two meetings were held with Francis Martin of BDO (one in a Conference call and one face to face) to discuss issues relating to TUPE and the Housing Executive's wish to protect the jobs of those employees working on Red Sky's Maintenance Contracts. Mr Rowntree added that no representative from Red Sky was present at the meetings and to date there has been no contact from the Group in relation to TUPE issues.

In order to take forward the provisions of TUPE Mr Rowntree advised that Dr McPeake would be meeting with adjacent Contractors later in the day to discuss the transfer of Red Sky's contracts and working arrangements to ensure that the relevant details are passed from Red Sky to the new Contractors to facilitate a smooth transition.

Mr Newton asked if it was the case that, following the announcement that Red Sky had gone into voluntary administration, the Housing Executive was legally required to meet with not only the Administrator but also the management of Red Sky.

Mr Rowntree explained that the Administrator is the spokesperson for the Group for a 14 day period and, with effect from Tuesday 3rd May 2011, will take over responsibility for its employees and the payment thereof.

In explaining the procedure for terminating a contract Mr Cuddy said it is normal practice to give three months notice. The alternative is a fundamental breach i.e. termination of the contract immediately. The decision to terminate the contract by giving three months notice, was, therefore, to ensure the continuance of service to its tenants and as far as practicable, to protect the relevant jobs of those employed by Red Sky. Mr Cuddy added that it had not been expected that Red Sky would decide to go into voluntary administration and it was at this stage the Group's financial vulnerability in relation to its cash flow situation became clear.

Mr Cuddy said that in deciding on voluntary administration the Group has no liability to its creditors and is protected by the Court from having to pay those creditors. However, a voluntary breach of contract does not serve the Housing Executive's purpose of striving to provide a continuance of service.

Mr Cuddy added that the Housing Executive has acknowledged that Red Sky has a voluntary breach of contract in place and will be re-engaging with them with effect from Thursday 5th May to ensure that the provisions of TUPE apply.

Mr Robinson asked for an explanation of the timing of the Housing Executive's decision to terminate the contract. In his view it would have been more appropriate to have taken this action in say one month's time following the election.

Mr Robinson also referred to a statement made on the matter by the Minister for Social Development which confirmed to him that the decision in relation to the termination of the Red Sky contract is in breach of “purda”

Mr Cuddy assured Mr Robinson that it was coincidental that the decision was taken during the run-up to an election and he was surprised that anyone would consider this action to be in breach of “purdah”.

Mr Newton referred to occasions during his presence at Committee meetings in Belfast City Council when objections had been raised by West Belfast Councillors in relation to the award of Contracts to Red Sky. Mr Newton confirmed that these were not NIHE Contracts. He believed these objections to be politically motivated. Mr Robinson added that it was his understanding that Red Sky consistently received low scoring for work carried out in the West Belfast area, compared to any other District in which they were working.

Mr Cuddy conceded that several years ago there had been a major issue with the work of Red Sky in West Belfast. However, control mechanisms were put in place and the problem was resolved. Mr Cuddy added that investigations looking at the pattern of overcharging in other Districts have, as explained earlier in the meeting, revealed major discrepancies.

Mr Robinson asked for an assurance that investigations on this scale are undertaken by the Housing Executive in relation to all of its Contractors where there are issues of concern.

Mr Cuddy in response explained that there are currently one of two other Contractors “on the radar” with different issues which have given rise to concern (for example Stothers Leeway) and these matters are being addressed.

Mr Newton said he was concerned that in his opinion information is being leaked to the media by staff within the Housing Executive.

Mr Rowntree said the Housing Executive is mindful of this allegation and is currently looking at the potential relationship between its staff and its Contractors.

Mr Douglas said that, before reaching its decision to terminate Red Sky’s contract, the Housing Executive should have entered into some form of arbitration with the Group’s management, as is normal practice in the construction industry. It was of concern to him that the employees of Red Sky had learned of the termination of the contract from their colleagues in West Belfast who had read about the decision in the Andersonstown News. Mr Douglas believed this information could only have come from someone working within the Housing Executive.

Mr Cuddy assured Mr Douglas that, as soon as the Board reached its decision to terminate the contract, Management in the Housing Executive became fully aware of the potential public relations aspect particularly in relation to the consequences for the employees of Red Sky. Letters were, therefore, drawn up advising Red Sky of the Board's decision and these were hand delivered to Peter Cooke's office on the same day as the Board took its decision. An email was also issued to the Districts concerned notifying them of the decision and it was following this that Management learned of the Andersonstown News article.

Mr Cuddy emphasised that there could be no prior knowledge of what the Board's decision would be and the source of the information leaked to the Andersonstown News is not known.

Mr Rowntree assured those present that there was no "witch hunt" by the Housing Executive in relation to any contractor.

Mr Rowntree said it was of particular concern to him and his colleagues that the Chair of the Assembly's Public Accounts Committee, in his role as an MLA, had made a public statement in which he named a Contractor.

Mr Newton said in his opinion Red Sky would not be in the position they are today had they not bid for the West Belfast Contract.

Mr Rowntree said he disagreed with this view and explained that in 2007 Red Sky decided to terminate the West Belfast Contract but later withdrew their decision and continued to work in that area.

Commenting on ongoing problems with Red Sky dating back to 2007, Mr Cuddy advised that at that time the Northern Ireland Audit Office had brought to the attention of the Housing Executive an overpayment, originally calculated as £200,000 but which was subsequently reduced to £20,000. Mr Cuddy added that the findings of the Horwath Report have revealed a consistent pattern of overcharging in Newtownabbey and other parts of Belfast over a period of time.

Mr Cuddy assured those present that the expectation was that Red Sky's contract would be extended to November when all contracts would be re-let and it was not expected that a recommendation for termination would require to be considered by the Board.

Mr Douglas asked for an estimate of the amount of overcharging involved for (a) buildings which do not exist and (b) any other examples.

Mr Cuddy advised that the amount the Housing Executive is seeking to recover over the five controls is estimated to be over £300k.

Mr Robinson asked if the Red Sky contract would not have been terminated if they had admitted that this situation should not have happened, had given an undertaking to deal with whoever was responsible and offered to put in place a mechanism to ensure that it did not happen again.

Mr Cuddy in response reiterated comments made earlier in relation to the findings in the Horwath Report which pointed to a pattern of consistent and widespread overcharging and overpayments and the fact that the Northern Ireland Audit Office are closely monitoring the situation to ensure that the appropriate action is taken.

Mr Rowntree said it was disappointing that although Red Sky had been aware of the findings of the Horwath Report since November 2010 their response did not adequately address the issues and did not give any commitment to do so.

While Mr Newton accepted that Red Sky were required to provide a response by 7th April 2011 and that the seriousness of the situation had been made clear to them, he was at a loss to know why they did not respond giving the commitment required when he understood they had been willing to engage with the Housing Executive.

Mr Cuddy said it was clear that Red Sky did not accept what he had told them and had requested a meeting with Mr Rowntree to discuss the matter further. It was at this meeting that they agreed to provide a serious response within the timeframe of 7th April 2011. Unfortunately the letter received from Red Sky did not meet the requirements of a serious response.

Mr Newton said he believed political advantage had been taken of the situation, that the timing of the termination was ill-advised and that it should have been stalled until after "purdah".

He reiterated his view that leaks are emanating from within the Housing Executive and that there has been a politically-led, politically inspired campaign against the Red Sky Group. Mr Newton said he was also of the view that there are elements within the Housing Executive biased against the company and a report which appeared recently in the "Sunday World" confirmed to him that information is being leaked from within the Housing Executive.

Mr Cuddy assured Mr Newton that the decision to terminate the contract was not considered to be a breach of purdah. It was an operational matter affecting the delivery of a service to the Housing Executive's tenants and he was confident that the decision was taken in that context only.

Mr Rowntree assured those present that the Housing Executive is anxious to reach a satisfactory conclusion to this matter and will be assisting the Administrator in any way it can over the next 13 weeks. Dr McPeake added that he has emphasised to his staff that maintenance work will continue to be allocated to Red Sky during the period of notice.

Mr Newton asked why the Housing Executive had been reluctant to respond to the BBC who were running a news bulletin on the Red Sky developments.

Mr Rowntree in response advised that Red Sky had asked Kevin Magee of the BBC to run a feature giving their side of the story.

In pursuit of a comment Mr Magee contacted the Housing Executive and he was advised that an Administrator has been appointed and that discussions in relation to TUPE and the transfer of Red Sky's contract to adjacent contractors were a key consideration.

Mr Rowntree said that the Housing Executive's role now is to ensure a continuance of the contract during the period of administration and it will, therefore be important for Red Sky to engage not only with the Administrator but with other Contractors.

Mr Robinson at this point indicated that he had to leave the meeting to attend another engagement.

In bringing the meeting to a close, Mr Rowntree thanked Mr Robinson, in his absence, Mr Newton and Mr Douglas for their interest and concern. He undertook to provide Mr Newton with a copy of the Minutes of the meeting and an update on matters relating to TUPE.

10.4 Correspondence between Minister and East Belfast MP/MLAs – April/May 2011



Cllr Naomi Long MP
Alliance Party Deputy Leader
Member of Parliament for Belfast East

PRIVATE OFFICE

05 MAY

SOCIAL DEV'TMENT
Tuesday 26 April 2011

Mr Alex Attwood
Minister for Social Development
5th Floor, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Rd
Belfast BT7 2JB

Our Ref: L260411RedSky
Your Ref: COR/713/2010

Dear Minister,

I am writing, further to my previous letter of 21st October 2010, regarding the NIHE internal audit of Red Sky, in which I raised with you a number of issues regarding the impact of the leaking of information to the press ahead of completion of the report, my concerns at the narrow remit of the audit which appeared to be restricted to Red Sky work only, and in which I also raised the need for a full and proper opportunity for Red Sky to respond to any interim report and provide rebuttal and/or refutation of any allegations made in order to ensure that due process is followed.

As you will be aware, the situation has now moved on and NIHE has now served a notice of termination of the contract with Red.Sky and I understand that the company has since entered into voluntary receivership.

As you will appreciate, I am concerned for the jobs of the 400-plus employees of the firm which are now clearly in jeopardy and for those suppliers and sub-contractors whose businesses will now also be under significant pressure, not to mention the knock-on effect of job losses on this scale to the wider local economy.

I have also always acknowledged that it is crucial that NIHE, as with all other Government agencies and Departments, fulfils its duty to ensure that value for money is obtained in all its activities, that robust checks and balances are in place to safeguard public finances and that those processes are fair and equitable.

I, along with my colleague, Chris Lyttle, met recently with employees of Red Sky and they expressed to us their view that the process which has been followed to date in this case has not been fair, open or transparent and they were keen that I would raise those concerns with you directly.

They firstly indicated that it is their understanding that Red Sky has not been permitted to see either the full terms of reference of the internal audit conducted or the entire report which was submitted to NIHE by the auditor. Whilst I understand that they did have access to the section of the report relating to the work of Red Sky specifically, they were unable to consider the contents in the wider context of the full report and any other issues raised therein with respect to issues relating the running of the contracts more generally.

Furthermore, whilst they confirmed that Red Sky were afforded an opportunity to provide rebuttal to NIHE, as you had assured me in your last letter would be the case, this was, in their view, not afforded any serious consideration, as only 4 days later a final position was taken by NIHE with respect to the contract.

*C/O Alliance Party East Belfast Constituency Office 56 Upper Newtownards Road Belfast BT4 3EL
Tel: 028 90472004 Fax: 028 90656408 Email: belfast.east@allianceparty.org*



Cllr Naomi Long MP
Alliance Party Deputy Leader
Member of Parliament for Belfast East

They expressed significant concern that each job undertaken was subject to a pre- and post-contract inspection before being passed for payment and yet, to the best of their knowledge, the District Managers and Maintenance Managers employed by NIHE have not been approached or interviewed in relation to their role in approving any alleged over-payments or poor workmanship or to give their view of the performance of Red Sky. Indeed, the staff representatives stated that it is their understanding that Red Sky's key performance indicators against the contract were good across all Districts but that these were not included or considered as part of the investigation.

They also stated that they understand that Red Sky senior management had challenged the value of disputed work and they feel that, as a result, the company should have had access to some form of arbitration process regarding the disputed amount before the value was deducted from their most recent payment run.

Finally, they remain extremely concerned that the apparent lack of benchmarking against the performance and claims of other contractors operating the same contracts as part of this audit, as they feel that to consider Red Sky in isolation could lead to problems with the contract itself being interpreted unfairly as problems with Red Sky's operation of the contract. The staff representatives who met with me and with my colleague, Chris Lyttle, have stated that they would welcome a fair comparison of the company's performance against that of other contractors and believe that the only way to achieve this is through an independent review of all maintenance contracts and contractors.

I realise that at the time of your last response you were constrained in terms of a detailed response by the fact that my query related to matters which were part of an on-going investigation and by the confidentiality issues which surround such a case, and I recognise that, in addition, you may now be further constrained by potential legal implications of what is now a contractual dispute.

I would not seek in any way to interfere with due process in this regard, but would simply seek your reassurance that the issues which the staff members have raised with me will be fully and fairly considered and responded to as far as is possible within those constraints and your further assurance that the company has been and will continue to be treated in a fair and equitable manner when compared to other contractors.

I look forward to your response in due course.

Best Regards,

Naomi Long MP

*C/O Alliance Party East Belfast Constituency Office 56 Upper Newtownards Road Belfast BT4 3EL
Tel: 028 90472004 Fax: 028 90656408 Email: belfast.east@allianceparty.org*



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e-mail: private.office@dndni.gov.uk

Tel: (028) 9082 9034

Mrs Naomi Long MP
Alliance Party East Belfast Constituency
56 Upper Newtownards Road
BELFAST
BT4 3EL

Our ref: COR/1004/2011

25 May 2011

Dear Naomi

Thank you for your letter of 26 April to my predecessor, Alex Attwood, about a number of issues in relation to the independent review of Red Sky commissioned by the Housing Executive.

I share your concerns in relation to the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. However, I can assure you that the Housing Executive is currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination. As part of this process the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.

You are also concerned in relation to the knock on effect to the wider local economy and in this regard I think it is important to stress there will still be an on-going need for response maintenance services for those properties currently serviced by Red Sky and this will continue to provide business for suppliers and sub-contractors.

In relation to the investigation process, it is correct that Red Sky has not been provided with a copy of the terms of reference for the work undertaken by the forensic accountants, ASM Horwath, or with a copy of the full report. This decision was made by the Housing Executive because the report provides an independent, professional review of a range of issues concerning the management of these contracts and it would not be appropriate to disclose all the documentation.



I have, however, been assured by the Housing Executive that Red Sky were provided with sufficient extracts from the ASM Horwath report, together with supporting documentation, to allow the Company to undertake its own assessment of the findings. The same is equally true for additional and subsequent reviews undertaken by the Housing Executive's own Repairs Inspection Unit. In all cases Red Sky has been given the opportunity to consider and examine the evidence collected across those Districts for which it provided maintenance services.

As part of this process Red Sky was invited to provide explanations of the evidence presented to them and their responses were carefully considered and, in a few cases, accepted and appropriate adjustments made. In some cases, Red Sky accepted responsibility for the overpayments. However, in most cases, the company's explanations were simply not acceptable. The fact that the Housing Executive responded quickly to submissions received from Red Sky does not indicate any lack of rigour in assessing those submissions which I am assured were given all due consideration.

With regard to your comments about the role of Housing Executive staff in the management of these contracts, the Housing Executive specifically asked ASM Horwath to investigate this matter and their findings are presented in the report. It would not be appropriate to allow Red Sky to have access to this information, especially as internal disciplinary action is underway.

The Housing Executive does not accept Red Sky's suggestion that some form of arbitration should have been applied. The review of these contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office and a preliminary review considered both the substance and seriousness of these claims. I am advised that before external reviewers were appointed, the process has been conducted throughout in a fair and careful manner and Red Sky has been given ample opportunity to respond at the appropriate times.

In relation to the apparent lack of benchmarking against performance of other contractors. The Housing Executive has advised that there is on-going benchmarking and review of all contractors' performance and that any concerns about quality or invoicing practices would be dealt with appropriately.

The Housing Executive assures me that it firmly believes its management of what is a very serious matter was demonstrably fair, open and transparent and that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence has been identified, validated and evaluated. They have advised that they provided Red Sky sufficient information to respond to any claims against the Company and those responses were given due consideration before any decisions were made.

I hope this information is helpful and provides the assurances that you seek.

Yours sincerely

Nelson McCausland

NELSON McCAUSLAND MLA
Minister for Social Development

CLLR.ROBIN NEWTON MBE
ASSEMBLY MEMBER FOR EAST BELFAST
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Northern Ireland
Assembly

PRIVATE OFFICE
17 MAY 2011
SOCIAL DEV'TMENT

Mr Nelson McCausland MLA
Minister
Department of Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Belfast
BT7 2JB

17th May 2011

Dear Minister

RE: **RED SKY**

You will be aware from extensive press coverage about the controversial decisions of the Northern Ireland Housing Executive and the former Minister for Social Development, Alex Attwood, regarding the above company.

I would be grateful if you would agree to an urgent meeting with my party colleague, Sammy Douglas MLA and representatives of Red Sky so they can make you aware of their concerns regarding the termination of the Northern Ireland Housing Executive's contracts and the implications this will have for the company and the employees.

Yours very sincerely

CLLR. ROBIN NEWTON MBE
ASSEMBLY MEMBER FOR EAST BELFAST



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Councillor Robin Newton MBE MLA
Constituency Office
13 Castlereagh Road
BELFAST
BT5 5FB

Our ref: INV/1020/2011

31 May 2011

Dear Robin

Thank you for your letter on 17 May requesting a meeting with your party colleague, Sammy Douglas MLA, and representatives of Red Sky to discuss the termination of the Housing Executive's contracts.

I know you are aware that, in response to concerns raised in relation to the performance of Red Sky who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. I understand Red Sky were provided with copies of the relevant findings and invited to respond. Following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is a contractual matter between the Housing Executive and Red Sky that I understand has been taken forward in line with the contract requirements.

However, like you I am concerned about the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. I have therefore advised the Housing Executive of my concerns and I have been assured that they are currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination. As part of this process the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.



I can assure you that I will be kept updated in relation to this matter. If you feel that a meeting would still be beneficial, please contact my Diary Secretary, Chris Barry on 9082 9033 to arrange a suitable date and time.

Yours sincerely
Nelson McCausland

NELSON McCAUSLAND MLA
Minister for Social Development

10.5 Correspondence relating to former senior management of Red Sky's approaches to NIHE

36

Rowntree, Brian

From: Rosemary.Morrow@bdo.co.uk on behalf of Francis.Martin@bdo.co.uk
Sent: 17 June 2011 08:52
To: Cuddy, Stewart
Cc: Rowntree, Brian; McPeake, John; Michael.Jennings@bdo.co.uk
Subject: Red Sky Group
Attachments: NIHE Briefing Note116.6.11PC.docx

Good morning Stewart

I trust you are well.

In advance of the meeting this morning with Peter Cooke, John Rooney and Sam Moore from Red Sky Group, please find attached a copy of a Briefing Note which was forwarded to me late yesterday evening, setting out brief details of the proposed bidding team for the potential acquisition of the Red Sky Group - In Administration.

If successful, the management team, together with the proposed investors, will acquire the business through Newco. Peter Cooke, has confirmed that he will prepare in full the Assigning Assessment Questionnaire as soon as the details of Newco have been finalised. Meanwhile, the management team look forward to providing you with further information this morning.

Regrettably, at late notice, I will be unable to attend the meeting at 10.15 am. Michael (Jennings) will, of course, be attending.

Good luck for the meeting.

Best regards.

Francis

Francis Martin
Managing Partner
Director of Finance
francis.martin@bdo.co.uk

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17/06/2011

35

Lucas, Maureen

From: Lucas, Maureen on behalf of Cuddy, Stewart
Sent: 17 June 2011 16:04
To: 'Francis.Martin@bdo.co.uk'
Cc: Rowntree, Brian; McPeake, John; Gallagher, Frances; Allen, Declan
Subject: RE: Red Sky Group

I am replying to your e mail and attached briefing note in respect of the meeting which you had requested between the Housing Executive and management representatives of the Newco purchasing the existing Red Sky Company.

While I was prepared to facilitate this meeting it is clearly inappropriate for the Housing Executive to discuss future contractual arrangements with the successor to Red Sky, particularly when the identity of the proposed new company is unknown. We therefore believe it to be premature to meet at this time if we cannot be advised as to who the 'group of well known investors with construction experience' are to be.

In relation to the specific questions raised in the Briefing note I would respond as follows:

1. The issues in relation to the termination of the contract relate primarily to TUPE issues and are therefore issues which require discussion between the outgoing contractor (the Administrator) and incoming contractors when appointed. They are not issues on which the Housing Executive can or should comment.
2. The Housing Executive cannot supply details of the forthcoming procurement arrangements in advance of those arrangements being finalised.
3. The contract will terminate on 14 July 2011 (previously notified in writing).



S Cuddy
Acting Chief Executive

From: Rosemary.Morrow@bdo.co.uk [mailto:Rosemary.Morrow@bdo.co.uk] On Behalf Of Francis.Martin@bdo.co.uk
Sent: 17 June 2011 08:52
To: Cuddy, Stewart
Cc: Rowntree, Brian; McPeake, John; Michael.Jennings@bdo.co.uk
Subject: Red Sky Group

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17/06/2011

Page 2 of 2

 Administration.

If successful, the management team, together with the proposed investors, will acquire the business through Newco. Peter Cooke, has confirmed that he will prepare in full the Assigning Assessment Questionnaire as soon as the details of Newco have been finalised. Meanwhile, the management team look forward to providing you with further information this morning.

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Good luck for the meeting.

Best regards.

Francis

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Managing Partner
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17/06/2011

10.6 Documentation relating to meeting between Minister, East Belfast MLAs and former Senior Management of Red Sky - 27 June 2011

Meeting with MLAs and Red Sky Representatives – 27 June 2011

Attendees:

Minister McCausland MLA

Sammy Douglas MLA

Robin Newton MLA

Peter Robinson MLA

Jim Wilkinson DSD

Michael Sands, DSD

Stephen Brimstone, Special Adviser

Peter Cooke, Red Sky Rep

John Rooney, Red Sky Rep

Peter Robinson opened the meeting by stating that Red Sky considered that the Company has been treated unfairly and badly and the Housing Executive had failed to act upon opportunities that would have resolved the issues before the notice to end the contract.

The company provides a high level of employment in the east Belfast and does not operate any less satisfactorily to other companies in this business area. He enquired if there was still time to resolve the issues or if it was past the post.

The Minister indicated that these matters were currently with the Administrator and the Housing Executive.

Peter Cooke gave the Minister a brief history to the company and advised on how they were trying to establish a new company to acquire the entire Red Sky business including Bel Air from the Administrator. This latter company had already been sold and the focus was now on the maintenance side a large part of which included the housing contracts which are due to expire on 14 July. This created concerns for the future existence of the company as without the NIHE contract the business was not viable.

Some discussion took place around the current position with the contract that was due to end and arrangements for that contract to be passed on, and whether new contracts were due to be signed on Friday. The Department was not aware of this and sought clarity directly from the Housing Executive on this issue and also on the information received from Red Sky Reps that new contracts due to be in place for 1 November had indeed been extended and renewal of contracts would take place in March 2012.

The Minister indicated that he would seek clarification on these matters, and was concerned that current information appeared to be not entirely up-to-date.

Peter Cooke gave the Minister examples of 'irregularities' in terms of the Red Sky's performance. While he was embarrassed by these irregularities, he felt that the company was victimised for winning the West Belfast project and there was a clear campaign to remove the Company from that area.

The Minister advised that he has asked officials to instruct the NIHE to rigorously review all existing contracts to same level of scrutiny. He also advised that he would

like to have the administrator in place until end of August to allow all issues relating to the handover of contracts to be considered, during this time the proposed new company might also be able to progress matters.

Jim Wilkinson advised that further clarification needs to be sought from the Housing Executive and the Minister advised that this will be available tomorrow. He further indicated that the proper route for the consideration of contractual matters is between the Housing Executive and the Administrator.

Letter to Minister requesting meeting – 17 May 2011

CLLR.ROBIN NEWTON MBE

ASSEMBLY MEMBER FOR EAST BELFAST

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Northern Ireland
Assembly

PRIVATE OFFICE
17 MAY 2011
SOCIAL DEV'MENT

Mr Nelson McCausland MLA
Minister
Department of Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Belfast
BT7 2JB

17th May 2011

Dear Minister

RE: RED SKY

You will be aware from extensive press coverage about the controversial decisions of the Northern Ireland Housing Executive and the former Minister for Social Development, Alex Attwood, regarding the above company.

I would be grateful if you would agree to an urgent meeting with my party colleague, Sammy Douglas MLA and representatives of Red Sky so they can make you aware of their concerns regarding the termination of the Northern Ireland Housing Executive's contracts and the implications this will have for the company and the employees.

Yours very sincerely

CLLR. ROBIN NEWTON MBE
ASSEMBLY MEMBER FOR EAST BELFAST

IMPORTANT – Please quote our reference on all correspondence

Briefing advising Minister to decline meeting and draft response – 27 May 2011



Department for
**Social
Development**

www.dsdni.gov.uk

INV/1020/2011

From: Susan McCarty
Housing, Director's Office

Date: 27 May 2011

1. Stephen Brimstone
2. Nelson McCausland

REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Issue: Councillor Robin Newton MBE, MLA has written to you requesting that you meet with Sammy Douglas MLA and representatives of Red Sky.

Timing: 26 May 2011

Priority: Routine

Communications: Priority 1: Invest in housing and address the housing crisis

FOI Implications: This note may be disclosable.

Presentational Issues: None

Financial Implications: Not applicable

Legislation Implications: Not applicable

Equality Implications: Not applicable

Executive Referral: Not required

Recommendation: That you decline the invitation to meet with Mr Douglas MLA and representatives from Red Sky and a draft reply is attached for issue to Councillor Newton MLA.

Detail

Councillor Robin Newton MBE, MLA has written to you requesting that you meet with Sammy Douglas MLA and representatives of Red Sky to make you aware of their concerns regarding the termination of the Housing Executive's contracts and the implications this will have for the company and the employees.

2. The review of the Red Sky contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office. In response to the concerns raised in relation to the performance of Red Sky, who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants, ASM Horwath, were commissioned to undertake an independent review of Red Sky activities. Red Sky were provided with copies of the findings and invited to respond.
3. However, following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is in line with contractual requirements. The Housing Executive is now putting in place the necessary arrangements to

provide response maintenance services to their tenants who remain their priority.

4. The Board of Red Sky Group then decided to enter into voluntary administration on 19 April; a decision which the Housing Executive believes was taken as a result of the Group's financial position.
5. There are 400 plus employees of Red Sky, though not all are engaged on response maintenance. The Housing Executive is currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination as part of this. The impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.
6. These are ongoing contractual issues between Red Sky and the Housing Executive and indeed Administrators have been appointed to take ongoing responsibility for the administration of the Red Sky Group.

Recommendation

7. That you decline the invitation to meet with Cllr Newton MLA and Mr Douglas MLA and representatives from Red Sky at this time as this is an ongoing contractual matter between the Housing Executive and Red Sky. A draft reply is attached for issue to Councillor Newton MLA.

Susan McCarty

Ext: 38325

cc Will Haire
Heather Cousins
Jim Wilkinson
Michael Sands

Norman Sletator
Michael Henderson
Grainne McConnell
Joann Hanna
Chris Barrv

DRAFT RESPONSE

5th Floor
Lighthouse Building
1 Cromac Place
Gasworks Business
Park
Ormeau Road
BELFAST
BT7 2JB

Fax: (028) 9082 9548
e-mail:
private.office@dndni.gov.uk
Tel: (028) 9082 9034

Councillor Robin Newton MBE, MLA
Constituency Office
INV/1020/2011
13 Castlereagh Road
Belfast
BT5 5FB

Our ref:

Date: May 2011

Thank you for your letter on 17 May 2011 requesting a meeting with your party colleague, Sammy Douglas MLA, and representatives of Red Sky to discuss the termination of the Housing Executive's contracts.

I know you are aware that, in response to concerns raised in relation to the performance of Red Sky who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. I understand Red Sky were provided with copies of the relevant findings and invited to respond. Following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is a contractual matter between the Housing Executive and Red Sky that I understand has been taken forward in line with the contract requirements.

However, like you I am concerned about the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. I have therefore advised the Housing Executive of my concerns and I have been assured that they are currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination. As part of this process the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.

I can assure you that I will be kept updated in relation to this matter but, as this is a contractual matter between the Housing Executive and Red Sky, I believe that a meeting would not be beneficial at this particular time.

NELSON MCCAUSLAND MLA
Minister for Social Development

Documentation regarding amendment to draft response

Mills, Karen

From: McCarty, Susan
Sent: 27 May 2011 14:37
To: Kennedy, Alan
Cc: Goodall, Roisin
Subject: FW: Deadline 26/5/11 - INV/1020/2011 - Robin Newton - request for a meeting with Sammy Douglas MLA and representatives of Red Sky

As discussed I advised Chris that he needs to check protocol as we were advised by heather that SPAD can not ask officials to amend submissions but puts his comments to Minister - Chris will follow this up

Susan McCarty
Housing Director's Office
Level 2
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Phone x 38325/90829325

From: Bowsie, Margaret
Sent: 27 May 2011 14:30
To: McCarty, Susan
Cc: Goodall, Roisin; Kennedy, Alan; Kerstens, John; Smith, Joy; Mills, Karen; Mills, Karen
Subject: FW: Deadline 26/5/11 - INV/1020/2011 - Robin Newton - request for a meeting with Sammy Douglas MLA and representatives of Red Sky

Susan
As discussed.
Margaret

From: Barry, Chris
Sent: 27 May 2011 12:47
To: Bowsie, Margaret
Cc: Housing, Director's Office
Subject: RE: Deadline 26/5/11 - INV/1020/2011 - Robin Newton - request for a meeting with Sammy Douglas MLA and representatives of Red Sky

Margaret,

The special advisor has looked at this and has requested the following amendment:

Letter to remain as it is, however the last line should read "I can assure you that I will keep updated in relation to this matter. If you feel that a meeting would still be beneficial, please contact...."

Can you notify officials and ask them to contact me if there are any queries. We can make the amendment here in Private Office.

Thanks,

Chris.

Mills, Karen

From: Kennedy, Alan
Sent: 01 June 2011 10:45
To: Mills, Karen
Cc: McCarty, Susan; Goodall, Roisin
Subject: RE: Overdue/pending reports.

Karen

Re INV 1020: Chris Barry advises that Minister agreed with SPAD, and the letter has been amended and issued - Closing Response will follow shortly.

Alan

(NB. The letter is changed on TRIM but the Briefing still advises to decline...)

From: McCarty, Susan
Sent: 01 June 2011 10:12
To: Owens, Michael
Cc: Goodall, Roisin; Kennedy, Alan; Mills, Karen
Subject: FW: Overdue/pending reports.

Michael

INV 1020 is cleared

Ta

Susan McCarty
Housing Director's Office
Level 2
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Phone x 38325/90829325

From: Owens, Michael
Sent: 01 June 2011 10:09
To: Goodall, Roisin; Kennedy, Alan; Kerstens, John; McCarty, Susan; McGrugan, Samuel; Mills, Karen; Shields, Rosemary; Smith, Joy
Subject: Overdue/pending reports.

Susan,
please see reports for today,

overdue

<< File: rpt_Mail_Overdue_Pending.rtf >> << File: rpt_MinCorr_Overdue_Pending.rtf >>
pending

<< File: rpt_Mail_Overdue_Pending.rtf >> << File: rpt_MinCorr_Overdue_Pending.rtf >>



Department for
**Social
Development**

5th Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
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Fax: (028) 9082 9648
e-mail: private.office@dssdni.gov.uk

Tel: (028) 9082 9034

Councillor Robin Newton MBE MLA
Constituency Office
13 Castlereagh Road
BELFAST
BT5 5FB

Our ref: INV/1020/2011

31 May 2011

Dear Robin

Thank you for your letter on 17 May requesting a meeting with your party colleague, Sammy Douglas MLA, and representatives of Red Sky to discuss the termination of the Housing Executive's contracts.

I know you are aware that, in response to concerns raised in relation to the performance of Red Sky who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. I understand Red Sky were provided with copies of the relevant findings and invited to respond. Following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is a contractual matter between the Housing Executive and Red Sky that I understand has been taken forward in line with the contract requirements.

However, like you I am concerned about the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. I have therefore advised the Housing Executive of my concerns and I have been assured that they are currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination. As part of this process the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.



I can assure you that I will be kept updated in relation to this matter. If you feel that a meeting would still be beneficial, please contact my Diary Secretary, Chris Barry on 9082 9033 to arrange a suitable date and time.

Yours sincerely
Nelson McCausland

NELSON McCAUSLAND MLA
Minister for Social Development

Briefing for Permanent Secretary



From: Heather Cousins
Deputy Secretary, RHSSG

Date: 16 May 2011

Will Haire

RED SKY

Issue: You requested a briefing in relation to Red Sky in advance of a meeting with Minister McCausland.

Timing: Immediate

Priority: Urgent

FOI Implications: This note may be disclosable.

Presentational Issues: None

Financial Implications: None

Legislation Implications: None

Equality Implications: None

Executive Referral: Not required

Recommendation: **To consider the information provided.**

Detail

You requested a briefing in relation to Red Sky in advance of a meeting with Minister McCausland.

Detail

2. The review of the Red Sky contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office. In response to the concerns raised in relation to the performance of Red Sky, who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. Red Sky were provided with copies of the findings and invited to respond.

3. However, following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is in line with contractual requirements. The Housing Executive is now putting in place the necessary arrangements to provide response maintenance services to their tenants who remain their priority.

4. The Board of Red Sky Group then decided to enter into voluntary administration on 19 April; a decision which the Housing Executive believes was taken as a result of the Group's financial position.

5. There are 400 plus employees of Red Sky, though not all are engaged on response maintenance. The Housing Executive is currently in discussion with other contractors to agree the arrangements to be put

in place at the end of the three month notice period for Contract termination as part of this. The impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.

6. In relation to a knock on effect on the local economy, there will still be an on-going need for response maintenance services for those properties currently serviced by Red Sky and this will continue to provide business for suppliers and sub-contractors.

Independent Review

7. Red Sky was not provided with a copy of the terms of reference for the work undertaken by the forensic accountants, ASM Horwath, and their appointed quantity surveyors nor with a copy of the full report. This decision was made by the Housing Executive because the report provides an independent, professional review of a range of issues concerning the management of these contracts and it would not be appropriate to disclose all the documentation. The Housing Executive is sensitive to the risk that the company might pursue any accusations of reputational damage.
8. The Housing Executive did provide Red Sky with sufficient extracts from the ASM Horwath report, together with supporting documentation, to allow the company to undertake its own assessment of the findings. As part of this process Red Sky was invited to provide explanations of the evidence presented to them. Red Sky's responses were carefully considered and, in a few cases, accepted and appropriate adjustments made. In some cases, Red Sky accepted responsibility for the overpayments. However, in most cases, the company's explanations were simply not acceptable and the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts.

9. In relation to the role of Housing Executive staff in the management of these contracts, the Housing Executive specifically asked ASM Horwath to investigate this and their findings are presented in the report. Internal disciplinary action is underway.

10. The Housing Executive has assured us that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence has been identified, validated and evaluated. They have ensured Red Sky was given sufficient information to respond to any claims against the Company and those responses were given due consideration before any decisions were made.

Conclusion

11. To consider the information provided.

HEATHER COUSINS

Ext: 38001

cc Jim Wilkinson
Susan McCarty

NIHE input to briefing for Minister

Mills, Karen

From: Pritchard, Gary [Gary.Pritchard@NIHE.GOV.UK]
Sent: 24 June 2011 11:32
To: Kerstens, John
Cc: Blease, Jonathan; Murray, Jim
Subject: FW: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY
Attachments: 20110624 PRIOFF Red Sky for DSD (4).doc

John

Revised draft with one minor amendment for clarification purposes.

Regards

Gary Pritchard

From: Pritchard, Gary
Sent: 24 June 2011 10:47
To: John.Kerstens@dndni.gov.uk
Cc: /o=NIHE/ou=First Administrative Group/cn=Recipients/cn=Jonathan.Blease1;/o=NIHE/ou=First Administrative Group/cn=Recipients/cn=jim.murray1
Subject: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

John

Reply to follow up questions attached.

Regards

Gary Pritchard

From: Kerstens, John [mailto:John.Kerstens@dndni.gov.uk]
Sent: 23 June 2011 15:24
To: Pritchard, Gary
Cc: Finnegan, Colette; Hughes, Lynda; Susan.McCarty@dndni.gov.uk; Roisin.Goodall@dndni.gov.uk
Subject: FW: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Gary,
Please see Susan's email below.
can you provide urgent response to the 2 questions raised please.

Thanks

*John Kerstens
Director's Office
Housing Division
Level 2
Lighthouse Building
Gasworks Business Park
Belfast
Tel. no. 028 9082 9280
email john.kerstens@dndni.gov.uk*

From: McCarty, Susan
Sent: 23 June 2011 15:21
To: Kerstens, John
Cc: Goodall, Roisin
Subject: RE: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

John

In the attached brief it states;

BDO asked us to meet a potential bidder to provide information to inform their interest in the NIHE Contract. The bidder was an established well-known Company. This meeting took place but we understand the Company concerned is unlikely to bid for the NIHE Contract.

BDO asked us to meet a second potential bidder whom we understand comprised previous owners/managers of Red Sky Group who were hoping to set up a new Company. We agreed to meet if BDO would provide us with details of the potential buyer, including the names of the shareholders/investors. BDO undertook to provide those details for the meeting but subsequently informed us that the potential bidder was not in a position to provide the information requested and that the new Company had not yet been established.

Is it possible to advise of the name of the Company NIHE meet and if not can they explain why please.

Had NIHE placed the same conditions on a meeting with the well known company ie details of the potential buyer, including the names of the shareholders/investors as on the second potential bidder. If not can they explain why please

Susan McCarty
Housing Director's Office
Level 2
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Phone x 38325/90829325

From: Kerstens, John
Sent: 23 June 2011 15:15
To: McCarty, Susan
Cc: Goodall, Roisin
Subject: FW: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Susan,
NIHE input in relation to meeting with Red Sky.

John

*John Kerstens
Director's Office
Housing Division
Level 2
Lighthouse Building
Gasworks Business Park
Belfast*

Tel. no. 028 9082 9280
email john.kerstens@dsdni.gov.uk

From: Pritchard, Gary [mailto:Gary.Pritchard@NIHE.GOV.UK]
Sent: 23 June 2011 14:51
To: Kerstens, John
Cc: Hughes, Lynda; Finnegan, Colette
Subject: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

John

As requested - please see attached a briefing note in relation to Red Sky.

Best regards

Gary Pritchard

From: Kerstens, John [mailto:John.Kerstens@dsdni.gov.uk]
Sent: 23 June 2011 13:05
To: Pritchard, Gary
Subject: FW: TRIM: INV/1020/2011 : REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Gary,
Further to our conversation just a few minutes ago our Director advised that we need the input to reflect the current position with the company and proposed buyers.

Thanks

John Kerstens
Director's Office
Housing Division
Level 2
Lighthouse Building
Gasworks Business Park
Belfast
Tel. no. 028 9082 9280
email john.kerstens@dsdni.gov.uk

From: Kerstens, John
Sent: 20 June 2011 16:24
To: 'Pritchard, Gary'
Cc: 'Hughes, Lynda'; 'Finnegan, Colette'; 'Mason, Wenda'; Murray, Jim; Goodall, Roisin
Subject: TRIM: INV/1020/2011 : REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Gary,
Minister has agreed to meet Sammy Douglas MLA and representatives from Red Sky on Monday 27 June. Our Director has asked for an update on the Housing Executive's position in relation to your dealings with the Administrator please.
We would need this by close of play on Thursday 23 June please.
Thanks

UPDATE ON RED SKY CONTRACT

1. CURRENT POSITION

The Red Sky contract expires on 14th July 2011. The Housing Executive's priority is to have suitable arrangements in place to ensure continuity of service to our tenants.

In the absence of any clear information from BDO (Administrators of Red Sky Group) in relation to potential bidders who might be interested in the NIHE Contract, the Housing Executive has, per the provisions of the Contracts, entered into negotiation with adjacent NIHE Contractors to deliver the service requirements. It is anticipated that these discussions/negotiations are likely to be successful. As a contingency in the event that any of these negotiations prove to be unsuccessful, there is provision to offer the work to other existing NIHE Contractors.

In the meantime, we are continuing to prepare to re-tender those response maintenance contracts which expire on 31st October with a view to having new contracts in place for 1st November 2011.

2. MEETINGS WITH BDO (ADMINISTRATORS OF RED SKY)

A number of meetings have taken place with BDO, Administrators of Red Sky. The main focus of these meetings has been twofold:

- i) To get an update on any sale of the Company (or parts of the Company) and any potential buyers who could service the NIHE contract when it expires on 14th July.
- ii) To press BDO for the necessary information to be made available to enable any Transfer of Undertakings (TUPE) requirements in relation to Red Sky staff to be managed as efficiently as possible.

i) **Potential Buyers**

As yet BDO have been unable to provide us with any definitive information on buyers. They have, however, advised that there appears little or no interest from any potential bidder in the Housing Executive Contract.

At Appendix 1 are details of meetings which BDO asked the NIHE to host.

- ii) BDO have recently provided information in relation to TUPE and this has been passed on to the adjacent Contractors who will now liaise directly with BDO to determine those staff who will transfer to the adjacent Contractors. It is our understanding that the Contractors believe the information provided to date is inadequate and are pressing the Administrators for the additional information required.

3. LEGAL PROCEEDINGS

There have been no legal proceedings issued by, or on behalf of, either the NIHE or Red Sky Group. However, legal proceedings have been threatened on two occasions by Red Sky Group.

- i) In 2007 in response to a termination notice issued by the NIHE in respect of a number of response maintenance contracts in Belfast.
- ii) In April 2011 in response to the NIHE's decision to terminate all response maintenance contracts and the service of the Termination Notices.

4. FREEDOM OF INFORMATION REQUESTS/MEDIA INTEREST

There are presently two Freedom of Information requests with NIHE relating to the Red Sky Group: one from BBC and one from a Red Sky Group employee. Both requests are seeking documentation regarding investigations and the decision by NIHE to end the contract.

There is ongoing Press interest from local media who regularly contact NIHE for updates.

APPENDIX 1

REQUESTS TO MEET POTENTIAL BIDDERS FOR RED SKY GROUP

BDO asked us to meet a potential bidder to provide information to inform their interest in the NIHE Contract. The bidder was an established well-known Company. This meeting took place but we understand the Company concerned is unlikely to bid for the NIHE Contract.

BDO asked us to meet a second potential bidder whom we understand comprised previous owners/managers of Red Sky Group who were hoping to set up a new Company. We agreed to meet if BDO would provide us with details of the potential buyer, including the names of the shareholders/investors. BDO undertook to provide those details for the meeting but subsequently informed us that the potential bidder was not in a position to provide the information requested and that the new Company had not yet been established.

We were however advised that the new Company would not be able to meet all NIHE parameters and it was unsure whether it would seek to be a Contractor to NIHE in future. For these reasons we did not believe a meeting would serve any fruitful purpose.

BDO, the Administrators, shared in advance with NIHE the details of the Company we met with, including its name and owner. We were also advised that further details were readily available from Companies House since it was a registered Company. We accessed these details from Companies House and further information from the Constructionline website/database. This type of information was not available in respect of the second potential bidder since it had not been incorporated/established as a Company.

We have checked with BDO, the Administrators, and they are happy that we disclose the name of the Company. The Company was the Lagan Group.

Briefing for Minister



From: Susan McCarty
Housing, Director's Office

Date: 24 June 2011

1. Stephen Brimstone
2. Nelson McCausland

MEETING WITH ROBIN NEWTON MLA, SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Issue: You have accepted an invitation from Councillor Robin Newton MLA to meet with Sammy Douglas MLA and representatives of Red Sky. The meeting will take place in your office in Parliament Buildings on Monday 27 June at 17.00 with a pre-brief at 16.45pm.

Timing: 24 June 2011

Priority: Urgent

Communications: Housing

FOI Implications: This note may be disclosable.

Presentational Issues: Ongoing media interest and FOI requests in relation to the NIHE investigation and termination of contracts.

Financial Implications: Not applicable

Legislation Implications: Not applicable

Equality Implications: Not applicable

Executive Referral: Not required

Recommendation: To note the briefing attached

Detail

You have accepted an invitation from Councillor Robin Newton MLA to meet with Sammy Douglas MLA and representatives of Red Sky. The meeting will take place in your office in Parliament Buildings on Monday 27 June at 17.00 with a pre-brief at 16.45pm.

2. Attending the meeting along with Councillor Newton MLA and Mr Douglas MLA will be Peter Robinson MLA. The representatives from Red Sky will be:-

- Norman Hayes Chief Executive
- John Rooney Financial Director
- Sam Moore Operational Consultant
- Peter Cooke Managing Director

Legal Proceedings

3. There have been no legal proceedings issued by, or on behalf of, either the Housing Executive or Red Sky Group. However, legal proceedings have been threatened on two occasions by Red Sky Group:-

- in 2007 in response to a termination notice issued by the Housing Executive in respect of a number of response maintenance contracts in Belfast.
- in April 2011 in response to the Housing Executive's decision to terminate all response maintenance contracts and the service of the Termination Notices.

4. As these are contractual matters between Red Sky and the Housing Executive and, in view of the previous threats of legal proceedings, a view from Departmental Solicitors Office was sought in relation to this meeting. [REDACTED] *

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. I therefore suggest you may wish to be cautious in relation to any discussions around these issues. The termination of the contract is a matter between the Housing Executive and Red Sky and the appointment of the Administrator by Red Sky has now placed matters relating to the future of the company, including any potential sale, in the hands of the Administrator.

Line to Take

- Issues regarding the termination of the contract with Red Sky by the Northern Ireland Housing Executive are contractual matters between the two parties concerned. An Administrator has been appointed to oversee the affairs of the company and their activities and role is governed by the laws of insolvency. These matters are subject to ongoing legal processes in which the Department has no role.

Conclusion

* Legal advice

6. Attached at Annex A is the background and current position on Red Sky. Jim Wilkinson, Director of Housing and Michael Sands, Deputy Director will accompany you at the meeting.

7. To note the briefing attached

Susan McCarty

Ext: 38325

cc Will Haire

Heather Cousins

Jim Wilkinson

Michael Sands

Michael Henderson

Grainne McConnell

Barbara McConaghie

Fiona Nelson

Chris Barry

RED SKY

ANNEX A

Background

1. The review of the Red Sky contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office. In response to the concerns raised in relation to the performance of Red Sky, who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. Red Sky were provided with copies of the findings and invited to respond.
2. However, following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive, having taken legal advice agreed in April to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is in line with contractual requirements. The Housing Executive is now putting in place the necessary arrangements to provide response maintenance services to their tenants who remain their priority.
3. The Board of Red Sky Group then decided to enter into voluntary administration on 19 April; a decision which the Housing Executive believes was taken as a result of the Group's financial position.
4. There are 400 plus employees of Red Sky, though not all are engaged on response maintenance. The Housing Executive is in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination as part of this. The impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.

Independent Review

5. Red Sky was not provided with a copy of the terms of reference for the work undertaken by the forensic accountants, ASM Horwath, and their appointed quantity surveyors nor with a copy of the full report. This decision was made by the Housing Executive because the report provides an independent, professional review of a range of issues concerning the management of these contracts and it would not be appropriate to disclose all the documentation.
6. The Housing Executive did provide Red Sky with sufficient extracts from the ASM Horwath report, together with supporting documentation, to allow the company to undertake its own assessment of the findings. As part of this process Red Sky was invited to provide explanations of the evidence presented to them. Red Sky's responses were carefully considered and, in a few cases, accepted and appropriate adjustments made. In some cases, Red Sky accepted responsibility for the overpayments. However, in most cases, the company's explanations were simply not acceptable and the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts.
7. In relation to the role of Housing Executive staff in the management of these contracts, the Housing Executive specifically asked ASM Horwath to investigate this and their findings are presented in the report. Internal disciplinary action is underway.
8. The Housing Executive has assured us that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence has been identified, validated and evaluated. They have ensured Red Sky was given sufficient information to respond to any claims against the Company and those responses were given due consideration before any decisions were made.

Current Position

9. The Red Sky contract expires on 14th July 2011 and the Housing Executive's priority is to have suitable arrangements in place to ensure continuity of service to their tenants.

10. In the absence of any clear information from BDO (administrators of Red Sky Group) in relation to potential bidders who might be interested in the Housing Executive Contract, the Housing Executive has, per the provisions of the Contracts, entered into negotiation with adjacent Housing Executive Contractors to deliver the service requirements. It is anticipated that these discussions/negotiations are likely to be successful. As a contingency, in the event that any of these negotiations prove to be unsuccessful, there is provision to offer the work to other existing Housing Executive Contractors.

11. In the meantime, the Housing Executive is continuing to prepare to re-tender those response maintenance contracts which expire on 31st October with a view to having new contracts in place for 1st November 2011.

Meetings with BDO (administrators of Red Sky)

12. A number of meetings have taken place with BDO and the main focus of these meetings has been twofold:
 - i) To get an update on any sale of the company (or parts of the company) and any potential buyers who could service the Housing Executive contract when it expires on 14th July.
 - ii) To press BDO for the necessary information to be made available to enable any Transfer of Undertakings (TUPE) requirements in relation to Red Sky staff to be managed as efficiently as possible.

13. As yet BDO have been unable to provide the Housing Executive with any definitive information on buyers. They have, however, advised that there appears little or no interest from any potential bidder in the Housing Executive Contract.

14. BDO have recently provided information in relation to TUPE and this has been passed on to the adjacent Contractors who will now liaise directly with BDO to determine those staff who will transfer to the adjacent Contractors. It is the Housing Executive's understanding that the Contractors believe the information provided to date is inadequate and are pressing the Administrators for the additional information required.

Meeting potential bidders

15. BDO asked the Housing Executive to meet a potential bidder to provide information to inform their interest in the Housing Executive Contract. The bidder was an established well-known company (the Lagan Group). BDO provided the Housing Executive with the details of the company including its name and owner and advised that further details were readily available from Companies House as it was a registered company. The Housing Executive accessed these details from Companies House and further information from the Constructionline website/database.

16. The meeting took place but the Housing Executive understands that the company is unlikely to bid for the Housing Executive Contract.

17. BDO then asked the Housing Executive to meet a second potential bidder whom they understand comprised of previous owners/managers of Red Sky Group who were hoping to set up a new company. The Housing Executive agreed to meet if BDO would provide them with details of the potential buyer, including the names of the shareholders/investors. BDO undertook to provide those details for the meeting but subsequently informed the Housing Executive that the potential bidder was not in a position to provide the information requested and that the new company had not yet been established.

18. The Housing Executive were also advised that the new company would not be able to meet all the Housing Executive parameters and it was unsure whether it would seek to

be a Contractor to the Housing Executive in future. For these reasons the Housing Executive did not believe a meeting would serve any fruitful purpose.

10.7 Documentation relating to meeting between Minister and NIHE – 30 June 2011

7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.



From: Heather Cousins
Deputy Secretary

SUB/xxx/2011

Date: 30 June 2011

Nelson McCausland

RED SKY

Issue: Meeting with the Northern Ireland Housing Executive to discuss the termination of the Red Sky contract and subsequent reassignment of NIHE maintenance contracts to adjacent contractors.

Timing: Immediate

Priority: Urgent

FOI Implications: This note may be disclosable

Presentational Issues: None at present

Financial Implications: Extracts may be exempt under Section 42 – legal professional privilege

Legislation Implications: None

Equality Implications: None

Executive Referral: N/A

Recommendation: That you meet with the Northern Ireland Housing Executive in relation to this matter.

Detail

You have requested a meeting with NIHE officials to ask them to consider extending, through the administrator BDO, the Red Sky maintenance contract beyond the termination date of 14 July to enable investigations to be undertaken with the adjacent contractors to give you assurances that the problems identified in Red Sky are not endemic across NIHE contractors.

Background

2. The review of the Red Sky contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office. In response to the concerns raised in relation to the performance of Red Sky, who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. Red Sky were provided with copies of the findings and invited to respond.
3. However, following the Housing Executive's consideration of the matter, including Red Sky's response and legal advice, the Board of the Northern Ireland Housing Executive agreed in April to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice. This is in line with contractual requirements.
4. The Red Sky contract is therefore due to expire on 14th July 2011 and the Housing Executive's priority is to have suitable arrangements in place to ensure continuity of service to their tenants. The Housing Executive has, per the provisions of the contracts, entered into negotiation with adjacent

maintenance contractors to deliver the Housing Executive service requirements until new response maintenance contracts are let. These discussions/negotiations are at an advanced stage. As a contingency, in the event that any of these negotiations prove to be unsuccessful, there is provision to offer the work to other existing Housing Executive Contractors.

5. The Housing Executive has also indicated that throughout the period of notice they have been in contact with the Administrator on both the continuation of the contracts until contract end on 14th July 2011 and in relation to any potential purchasers of the company who might seek to have Housing Executive contracts assigned (subject to relevant contractual requirements and meeting the Housing Executive's requirements in relation to various bona fides such as company registration, financial position, etc. This would also have potentially raised an issue of whether this was a Single Tender Action and whether this could be justified). Most recently they have advised that as they have entered the 14 day notice and the Administrator has not brought to their attention any eligible new purchaser, they are robustly seeking to conclude contracts, as per existing arrangements with adjoining contractors.

Way forward

6. In order to provide you with assurances you have now requested the Department to undertake a forensic examination of a sample of contractors including those who may be requested to carry out the Red Sky contracts after contract termination on 14th July 2011. In order to allow this work to be undertaken it will be necessary for the Housing Executive to extend the current termination date, subject to the Administrator being able to provide confirmation that Red Sky (In administration) remains in a position to service the contract until any future termination date that might be imposed.

Possible Complications

7. Should the Housing Executive not agree to alter their current proposals and extend the contract termination date to allow investigations to take place you have indicated that you may consider issuing a Direction on this matter.

[REDACTED]

[REDACTED]

10. You also need to be certain by way of assurances from the Administrator BDO, that Red Sky (in administration) are capable of continuing with this contract beyond 14 July. Should this not prove the case then, in order for the Housing Executive and the Department to be assured that tenants have suitable maintenance services available, there may be no alternative but to assign the contracts as currently planned, in tandem with any ongoing Departmental investigation into past contractual activity and arrangements.

11. Should the Department's investigations prove that no similar issues to the Red Sky situation have been identified within the adjacent contractors, then similarly the Red Sky contract can be reassigned to those contractors.

12. As a preliminary measure we have asked NIHE to provide an update on the current position regarding disciplinary action and contract related response maintenance investigations. I attach these at Annex B for your information.

[REDACTED] Legal advice also at Annex A

Conclusion

13. That you note the attached briefing in advance of the meeting with the Chair and Chief Executive of the Housing Executive.

14. Next steps will depend on the NIHE's response to your request for the lifting of the contract termination date of 14 July and extension of this contract until the Department's investigation is complete. A further briefing will be provided on the issue of a Direction should this be necessary.

Lines to take

- In order to provide you with assurances you have now requested the Department to undertake a forensic examination of a sample of contractors
- You are asking the NIHE to extend the Red Sky contract to after 14 July
- You also need to be certain by way of assurances from the Administrator BDO, that Red Sky (in administration) are capable of continuing with this contract beyond 14 July.

HEATHER COUSINS

Ext: 38001

cc: Will Haire
Jim Wilkinson
Michael Sands
Susan McCarty
Stephen Brimstone
Barbara McConaghie

RESPONSE MAINTENANCE INVESTIGATIONS UPDATE **Annex B**

Investigation into Response Maintenance Contractor Red Sky

1.0 Introduction

- 1.1 Red Sky Group Ltd currently holds the all-trades Egan Contracts for NIHE districts Newtownabbey 1 and 2, North Belfast, East Belfast, South Belfast and West Belfast.

2.0 Action Taken

- 2.1 In response to concerns in respect of potential overcharging and other contractual issues on the part of the contractor, NIHE commissioned an independent expert report in 2010 which concluded that there was evidence of overcharging by Red Sky in all the NIHE districts examined. Following this report NIHE established an internal inspection review across all six district contracts. This inspection is not yet complete however overcharging to the value of c£500,000 has been identified in addition to what appears to be evidence of potential fraud perpetrated against NIHE.

- 2.2 In view of these findings it is likely that the matter will be referred to PSNI for formal criminal investigation.

3.0 Leeway Maintain

- 3.1 In October 2010 the Housing Executive's Repairs Inspection Unit (RIU) reported on an overpayment of £2,433 for a job which should have cost £271. This related to an invoice submitted by Leeway Maintain for work under the response maintenance contract for Shankill District. Following consideration of the RIU report, there was a disciplinary investigation of the maintenance officers involved with this job which resulted in one member of staff being downgraded and another receiving a written warning.

In February 2011 a Whistleblower made known his concerns regarding the performance of the contractor and alleged irregularities concerning the management of the contract and the behaviour of a named Leeway Maintain representative. These allegations are currently being investigated and it is expected this will be concluded within the next two months.

- 4.0 It should be noted that these investigations do not refer to ongoing routine contractual disputes where litigation is being pursued.

DISCIPLINARY IN RELATION TO
RESPONSE MAINTENANCE CONTRACTS

The attached schedule indicates the disciplinary cases actioned in the past twelve months in relation to failure in contract management.

1. Shankill Road

These cases were raised through an audit. An investigation was undertaken and referral made to Personnel for disciplinary action.

2. Newtownabbey 1

These cases were raised through an audit investigation/report and were referred to Personnel for disciplinary action. The allegations are such that they fall within the boundaries of gross misconduct. Under procedures this requires the setting up of a disciplinary panel. These are currently being established and should convene in July.

3. Shankill Road

This case has arisen as a result of information provided by a Whistleblower. A preliminary investigation suggests that there are serious issues to be addressed. A full investigation is now underway. This will inform the disciplinary process.

Further Action

Further disciplinary action is being considered in relation to other Districts involving Red Sky, i.e. East Belfast, South Belfast, North Belfast and West Belfast.

Details of the above are included in the attached Appendix.

DISCIPLINARY ACTION – CONTRACT RELATED			
OFFICE	CONTRACTOR	ISSUE	ACTION
1. Shankill Road	Leeway Maintain	<ul style="list-style-type: none"> • Overpayment to Contractor; • Failure to comply with procedures 	<p><u>District Maintenance Manager</u> Downgraded and issued with final written warning.</p> <p><u>Maintenance Officer</u> Written warning</p>
2. Newtownabbey	Red Sky	<ul style="list-style-type: none"> • Payments made for work not done; • Overpayments; • Failure to comply with procedures 	<p><u>4 Maintenance Officers</u> Disciplinary process under way.</p> <p>Disciplinary Panel being established under procedure for gross misconduct.</p>
3. Shankill Road	Leeway Maintain	<p><u>Issues Identified</u></p> <ul style="list-style-type: none"> • Payments for work not completed; • Failure to comply with NIHE procedures; • Overcharging; • Poor workmanship 	<p>Early investigation stage.</p>

17.

Draft Minute
Meeting with NIHE Reps regarding Contract Management – 30 June 2011
Attendees:

Minister McCausland
Stephen Brimstone
Brian Rowntree, NIHE
Stewart Cuddy, NIHE
Jim Wilkinson
Heather Cousins
Michael Sands
Will Haire (latter part)
Barbara McConaghie

Following on from the previous meeting held on Tuesday 28 June the Minister advised that he had given consideration to the issue and wants to ensure he has public and personal confidence in relation to Housing Executive contracts. The Minister advised that after receiving information from the Housing Executive today which indicates there are emerging issues with another company he has cause for concern.

The Minister advised that he has asked the Department to for a forensic examination to take place on the management of contracts and, therefore, it would be inappropriate to issue/change contracts until this examination was completed; in the region of 8 weeks. The Minister asked the Housing Representatives to take this proposal to the Board and recommend his proposal on the basis that BDO can guarantee to conduct the work.

Brian Rowntree raised concern about this advising of the serious allegations against the current contractor. Stewart Cuddy advised that the Accounting Officer, Will Haire, should be at the meeting and asked for the request to be put in writing.

Brian Rowntree advised that the Administrator was put on notice today and had concerns that this way forward would not allow for proper maintenance provision to be in place.

Will joined the meeting and advised that officials would work through the issues highlighted and report back to the Minister in 24 hours.

Brian objected to engaging with the contractor who has acted inappropriately.

Will advised that officials and the NIHE would face challenges but needed to look at the Minister's request in taking forward the investigation and the implications.

Created by Barbara McConaghie/DSDNI on 28/06/2011 at 08:55:48

Meeting

Status: Confirmed

Subject Meeting with NIHE
Venue PB
With
Contact Name
Contact Tel No

Start Date 28/06/2011 Time 09:30 - 11:30

Notes
Office Only Notes
Internal Participants
External Participants Requiring
Access via Reception

Country
Region
Constituency

Arrangements Outstanding
Facilities Required To Be Booked
Refreshments Required To Be
Booked

Related Documents

Transaction History

Created by Helen McKee/DSDNI on 30/06/2011 at 14:12:05

Meeting

Status: Confirmed

Subject with Housing Executive to discuss Red Sky
Venue Min Off, LB
With
Contact Name
Contact Tel No
Start Date 30/06/2011 **Time** 16:30 - 17:30

Notes

Office Only Notes

Internal Participants

Brian Rowntree
Stewart Cuddy or John McPeake

External Participants Requiring
Access via Reception

Country

Region

Constituency

Arrangements

Outstanding

Facilities Required To Be Booked
Refreshments Required To Be
Booked

Related Documents

Meeting with Housing Executive to discuss Red S

FW TRIM FW RED SKY - VERY URGENT

Transaction History

10.8 Follow-up correspondence to 30 June meeting including advice on Ministerial Direction - 1 July 2011

DSI / 11 / 206429 Page 1 of 1

E-mail Message

From: Sands, Michael [EX:/O=NIGOV/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT/CN=RECIPIENTS/CN=0596453)]
To: McCarty, Susan [EX:/O=NIGOV/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT/CN=RECIPIENTS/CN=1083876)]
Cc:
Sent: 04/07/2011 at 07:36
Received: 04/07/2011 at 07:37
Subject: FW: NIHE Direction

Attachments: Ministerial direction.DOC

Susan, To see the final Sub.
M

From: Sands, Michael
Sent: 01 July 2011 15:57
To: McConaghie, Barbara
Subject: FW: NIHE Direction
Importance: High

Barbara, I would be grateful if this Sub could be brought to Minister's attention
Before our 4.00pm meeting.
Michael



From: Will Haire
Permanent Secretary

Date: 1 July 2011

Nelson McCausland

RED SKY

Issue: Direction to the Northern Ireland Housing Executive to defer the termination of the Red Sky contract.

Timing: Immediate

Priority: Urgent

FOI Implications: Extracts may be exempt under Section 42 – legal professional privilege

Presentational Issues: Significant media interest

Financial Implications: [REDACTED]

Legislation Implications: [REDACTED]

Equality Implications: None

[REDACTED] Legal advice

Executive Referral:

[REDACTED]

Recommendation:

That a direction should not be issued to the Northern Ireland Housing Executive in relation to this matter.

Detail

You asked the Chairman of the Board of the Housing Executive not to terminate the Red Sky contract on the 14th July but to extend this for an eight week period as you have asked officials to carry out a forensic investigation of a sample of Housing Executive contracts, including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination. Should the Housing Executive refuse your request you have indicated that you would wish to issue a Direction under Article 10(1) of the Housing Order to the Housing Executive not to terminate the Red Sky contract on 14th July and to extend this for eight weeks.

Background

2. The review of the Red Sky contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office. In response to the concerns raised in relation to the performance of Red Sky, who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. Red Sky were provided with copies of the findings and invited to respond.
3. However, following the Housing Executive's consideration of the matter, including Red Sky's response and legal advice, the Board of the Northern Ireland Housing Executive agreed in April to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice. This is in line with contractual requirements.

4. The Housing Executive has provided assurance that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence has been identified, validated and evaluated. They ensured Red Sky was given sufficient information to, respond to any claims against the company and those responses were given due consideration before any decisions were made. Action was then taken in line with legal advice and contractual requirements.

5. The Red Sky contract is therefore due to expire on 14th July 2011 and the Housing Executive's priority is to have suitable arrangements in place to ensure continuity of service to their tenants. The Housing Executive has, per the provisions of the contracts, entered into negotiation with adjacent maintenance contractors to deliver the Housing Executive service requirements until new response maintenance contracts are let. These discussions/negotiations are at an advanced stage. As a contingency, in the event that any of these negotiations prove to be unsuccessful, there is provision to offer the work to other existing Housing Executive Contractors.

6. The Housing Executive has also indicated that throughout the period of notice they have been in contact with the Administrator on both the continuation of the contracts until contract end on 14th July 2011 and in relation to any potential purchasers of the company who might seek to have Housing Executive contracts assigned (subject to relevant contractual requirements and meeting the Housing Executive's requirements in relation to various bona fides such as company registration, financial position, etc. This would also have potentially raised an issue of whether this was a Single Tender Action and whether this could be justified). Most recently they have advised that as they have entered the 14 day notice and the Administrator has not brought to their attention any eligible new purchaser, they have been robustly seeking to conclude contracts, as per existing arrangements with adjoining contractors.

The use of a Direction

7. [REDACTED]

- [REDACTED]
- [REDACTED]

8. [REDACTED]

9. You have indicated that your reason for seeking an extension of the termination of the Red Sky contract and the proposals to assign this to neighbouring contractors, is to allow officials to carry out a forensic investigation of a sample of contractors, including those who would be taking forward the Red Sky contract, to give you assurances that the problems identified in Red Sky are not endemic across Housing Executive contractors.

Consideration

10. In considering the issue of this direction there are a number of factors to be taken into account.

Government Accounting and Use of Public Funds

11. From a Government Accounting perspective there needs to be an assessment of whether this option represents the best approach to applying government funds and securing the services to tenants. Whilst there is no doubt that the Minister's request for a sample forensic investigation into other contractors is prudent, there is no strong evidence to suggest that these contractors have in anyway misused public funds. There is however, strong evidence, supported by detailed Housing Executive investigation, that has raised issues of overcharging and indeed I understand the Housing Executive is currently recouping £25k per week from Red Sky. Further the Red Sky contract was terminated only after the company was offered an opportunity to respond to the findings put to them. The Housing Executive has indicated they are close to a position where they could transfer contracts to neighbouring contractors. This could be done in tandem with any ongoing forensic investigation work.

Contract, Procurement and Insolvency Issues

12. [REDACTED]

Potential Legal Challenge

13. [REDACTED]

[REDACTED]

14 [REDACTED]

Additional Issues

15. It is likely that the Housing Executive will challenge this and there is also the potential for resignations from the Board. This of course would create the risk of adverse publicity as there has been an intense degree of press interest in this issue to date. This could have a reputational affect on this Department and the Minister.

16. The NIAO are already preparing a report on all aspects of Housing Executive procurement which will be published in October/November and which will lead to a PAC hearing.

17. As indicated above any decision needs to look beyond the issue of any initial direction of the Housing Executive and to where the contractual issues, including those relating to employment law and TUPE, would proceed in the coming weeks and months.

Recommendation

18. I do not believe that the reasons and any supporting evidence is sufficiently rigorous in this matter to justify the issue of a direction under Article 10 to the Northern Ireland Housing Executive

19. As Accounting Officer I must therefore advise you that the Minister's wishes, namely a forensic investigation and continuation of services to tenants, can be achieved more appropriately through the proposed assignment of the Red Sky contract to neighbouring contractors. Further

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] I would therefore recommend that a Direction should not be issued to the Housing Executive in relation to this matter.

20. There are also potential issues of contractual and insolvency law that may come to play in such matters and use of a direction for the purposes outlined might be considered. As such you may wish to consider whether such an action might fall under the category of matters which may require to be brought to the Executive's attention.

21. The Minister, of course, has wider political matters to consider and has his own judgement to make. If the Minister's wishes the Department to issue a Direction to the Housing Executive under Article 10(1) of the Order, I would require a formal Ministerial Direction, as Accounting Officer, from you to that effect. I am required to bring any such direction to the attention of DFP and C & AG who will normally draw the matter to the attention of PAC.

22. Should the Minister direct me in this matter, I would suggest that the Direction to the Housing Executive:-

- a. Advises them to extend the Contract with the Administrator for a period of 8 weeks;
- b. Before such an extension requires them to seek written assurance from the Administrator that continued services to tenants can be provided; and

- c. Further indicates that should the Administrator sell the company there will be not automatic transfer of Housing Executive contracts, rather these will fall to the Housing Executive to manage either through assignment to neighbouring contractors through the current contractual arrangements or normal procurement routes.

WILL HAIRE

Ext: 38002

cc: Heather Cousins
Jim Wilkinson
Michael Sands
Susan McCarty
Stephen Brimstone
Barbara McConaghie

DS1/11/205941

Goodall, Roisin

From: McCarty, Susan
Sent: 01 July 2011 13:28
To: SpAd, DSD; DSD Private Office; Howland, Marie
Cc: Haire, Will; O'Connor, Sheila; Cousins, Heather; Todd, Wendy; Wilkinson, Jim; Sands, Michael; McConaghie, Barbara
Subject: FW: SUB TO MINISTER - RED SKY - URGENT

Importance: High

Tracking:	Recipient	Read
	SpAd, DSD	
	DSD Private Office	Read: 01/07/2011 13:31
	Howland, Marie	
	Haire, Will	
	O'Connor, Sheila	
	Cousins, Heather	
	Todd, Wendy	
	Wilkinson, Jim	
	Sands, Michael	
	McConaghie, Barbara	Read: 01/07/2011 13:43

Please see attached

Susan McCarty
Housing Director's Office
Level 2
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Phone x 38325/90829325



Submission to
Minister - advis...



From: Heather Cousins
Deputy Secretary

Date: 1 July 2011

1. Stephen Brimstone
2. Nelson McCausland

RED SKY

Issue: Request to Housing Executive Board to extend the termination date of Red Sky contract with the Administrator.

Timing: Immediate

Priority: Urgent

FOI Implications: None

Presentational Issues: Significant media interest

Financial Implications: None

Legislation Implications: None

Equality Implications: None

Executive Referral: N/A

Recommendation: To consider the draft letter for issue to Brian Rowntree.

Background

You met with Brian Rowntree, Chairman of the Northern Ireland Housing Executive, to discuss response maintenance contracts, the position in relation to the termination of the Red Sky contract and the proposals to assign this to neighbouring contractors. You indicated that you would be asking officials to carry out a forensic investigation of a sample of contractors including those who would be taking forward the Red Sky contract.

2. In order to facilitate that investigation you asked that the Housing Executive extend the termination of the Red Sky contract on 14 July 2011 for a period eight weeks.

Recommendation

3. A draft letter formally putting this request to the Chairman is attached for your consideration.
4. A further briefing will be provided on the issue of a Direction, should this be necessary.

HEATHER COUSINS

Ext: 38001

cc: Will Haire
Jim Wilkinson
Michael Sands
Susan McCarty
Stephen Brimstone
Barbara McConaghie

Correspondence

Annex A

 **Department for
Social
Development**
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JE
Fax: (028) 9082 9048
e-mail: private.office@dssdot.gov.uk
Tel: (028) 9082 9034

Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

1 July 2011

Dear Brian

I refer to our meeting on 30 June 2011 to discuss response maintenance contracts. As I indicated I have asked officials to carry out a forensic investigation of a sample of Housing Executive contracts including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination.

Following our discussions and subject to the Administrator stating that he can continue I would now ask you to put to the Housing Executive Board that the termination date of the Red Sky contract should be extended from 14 July 2011 to allow an open procurement competition for the Red Sky contracts to be undertaken with immediate effect. This contract would be for a period of six months or until the new contract procedures can be put in place.

Yours sincerely
Nelson McCausland

NELSON MCCAUSLAND MLA
Minister for Social Development

Report on the Northern Ireland Housing Executive; Management of Response Maintenance Contracts

Annex B

EMailed to an ex
MBus + posted to
Jim Seeks -
EMailed to SWT

Housing

Chairman Brian Rowntree CBE
2 Adelaide Street
Belfast BT2 8PB

Will Haire
Permanent Secretary
Department for Social Development
Lighthouse Building
1 Cromac Place, Gasworks Business Park
Ormeau Road, Belfast BT7 2JB

1st July 2011

Dear *Will*

NIHE Contract – Notice of Termination Red Sky in Administration

I am writing to you in your position as Senior Accounting Officer to register my serious concerns and misgivings and that of my Board and Senior Management Team in relation to the above matter.

As you know the NIHE Board approved the termination of the Red Sky contract on 13th April 2011 to take effect from 14th July 2011. The termination was a direct result of findings of very significant overcharging and poor performance as set out in the independent forensic report carried out by accountants, A&M Horwath, supported by VB Evans, Quantity Surveyors. In addition our Internal Repairs Inspection Unit has conducted a series of detailed reviews/inspections in districts covered by the Red Sky contracts.

You were also advised that active consideration is being given to referring the matter to PSNI for possible criminal investigation in relation to suspected fraud.

It is therefore incomprehensible why Minister McCausland and your Department for Social Development would seek to direct the NIHE to allow BDO, the Administrators to continue to deliver the contract past the termination date of 14th July 2011. This is all the more surprising given that we are reaching agreement with existing adjacent contractors to take over those contracts in line with public procurement procedure and to enact the relevant TUPE provisions.

I have during a number of meetings repeatedly advised you why my Board and I believe such an approach would compromise, not only the Housing Executive, but also your Minister and Department. The reasons for this are:-



Telephone 03448 920 900 Fax 028 9043 5903
Typetalk no: 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



Correspondence

- i) Although the Administrators are overseeing Red Sky in Administration a number of its previous senior management continue to manage the NIHE contract. Some of these are the same people who were responsible for the overcharging and poor workmanship which led us to give notice to terminate the contract and give rise to a consideration of referral to PSNI for suspected fraud.
- ii) It is understood that the senior management of Red Sky have mounted a successful buy-out of that part of Red Sky in Administration which was responsible for delivery of the NIHE contract and that they anticipate that their new company will inherit the contract from the Administrators following the sale of Red Sky in Administration. We believe such an outcome would be contrary to sound public sector procurement principles, not to mention the likely public confusion and outcry of the reinstatement of a contractor who had only just been terminated for serious malpractice.
- iii) There is likely to be a clear presumption of a major conflict of interest in that the senior management of the company in Administration is to be awarded a contract as a reconstituted new company. This would be further exacerbated since such an award would be without any public procurement or competition.
- iv) We understand that meetings have taken place with the senior management of Red Sky in Administration and the Minister, First Minister and other DUP elected representatives. We further understand that the Administrators were not present. This raises the question of did these meetings constitute canvassing and lobbying for government contracts and in breach, not only of public procurement principles, but basic Codes of Conduct in Public Life.
- v) We have also made you aware of our concerns regarding Construction Line and the removal of Red Sky from their notation list and the subsequent reinstatement of Red Sky on the basis of unaudited management accounts and a phone call from a Red Sky Director and a partner of a leading accounting firm. Such reinstatement was at the higher notation level and within months the company was insolvent and placed in Administration.

This matter is presently the subject of a review by NIHE.

Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Hopefully you can see why we have serious concerns and reservations about the road you are pushing us down. I would respectfully ask that you step back and withdraw Department for Social Development involvement and that of your Minister in this matter and thereby allow the Housing Executive to proceed to manage what is an operational business issue (albeit an important one). If you are not disposed to do this I will have no other choice but to seek legal advice as to how the Housing Executive should proceed in order to protect and not compromise its integrity and contractual/procurement obligations in this matter.

Yours sincerely



Brian Rowntree CBE
Chairman

10.9 Documents relating to NIHE Board meeting - 5 July 2011

Page 1 of 2

Wilkinson, Jim

From: Cuddy, Stewart (SStewart.Cuddy@NIHE.GOV.UK)
Sent: 05 July 2011 10:01
To: Sands, Michael; McLaughlin, Maria
Cc: Wilkinson, Jim; Allen, Declan; Gallagher, Frances
Subject: RE: NIHE Response Maintenance Contracts
Sensitivity: Private

Michael,
I have asked our Head of Procurement Declan Allen to speak to you in respect of the above matter,
Stewart

From: Sands, Michael (mailto:Michael.Sands@dssdnl.gov.uk)
Sent: 05 July 2011 07:40
To: McLaughlin, Maria
Cc: Cuddy, Stewart; Wilkinson, Jim
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

Brian,
Minister's SPad thinks that six months is too long a time frame for continuation by the Red Sky Administrator. Our advice from CPD is 91 days (i.e. under the EU limit) to complete the tender exercise once all paperwork is prepared so if we allowed to the end of the month for paperwork, say 1 month + 3 for the tender exercise = 4 months in total. Could the question re 4 months be put to BDO as below rather than 6?
Regards
Michael

From: McLaughlin, Maria (mailto:Marie.McLaughlin@NIHE.GOV.UK)
Sent: 04 July 2011 16:11
To: Haire, Will
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

Dear Mr Haire

Mr Rowntree asked me to forward you this email from Declan Allen.

Regards
Marie

From: Rowntree, Brian
Sent: 04 July 2011 16:00
To: McLaughlin, Maria
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

From: Allen, Declan
Sent: 04 July 2011 15:19
To: Michael.Jennings@bdo.co.uk
Cc: Cuddy, Stewart; Rowntree, Brian; Gallagher, Frances; Taggart, Maureen; McPeake, John

05/07/2011

**597TH (EMERGENCY) MEETING OF THE NORTHERN IRELAND
HOUSING EXECUTIVE HELD ON WEDNESDAY, 5TH JULY 2011**

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PAPER NO 598/3(2)

5th July 2011

**MINUTES OF THE 596TH(A) (SPECIAL) MEETING OF THE
NORTHERN IRELAND HOUSING EXECUTIVE HELD ON
TUESDAY, 5TH JULY 2011 AT 10.00 AM IN THE BOARDROOM, 6TH
FLOOR, HOUSING CENTRE, BELFAST**

1. **PRESENT**

Mr B Rowntree	Chairman
Mrs A Henderson	Vice-Chair
Mrs A Coffey	
Mrs E Dunbar	
Mr K Millar	
Mr E O'Neill	
Mrs J Palmer	Left the Meeting at 10.25 am
Dr M Wilson	

2. **IN ATTENDANCE**

Mr S Cuddy	Chief Executive (Acting)
Dr J McPeake	Director of Housing & Regeneration/ Deputy Chief Executive (Acting)
Mr C Ballie	Director of Corporate Services (Acting)
Mrs M Taggart	Director of Personnel & Management Services
Mr D Lamb	Director of Finance (Acting)
Mrs D Ferran	Director of Design & Property Services (Acting)
Mr J Murray	Principal Information Officer
Mr D Allen	Head of Procurement
Mrs C Reynolds	Board Secretary

3. **APOLOGY**

An apology for absence was recorded for Mr J Speers who had a prior engagement which he was unable to rearrange.

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5th July 2011

3 continued.....

It was noted that the Board quorum is 4 due to the current vacancy.

4. BOARD PAPERS

Members were referred to the pack circulated this morning. The confidential nature of the business before the Board today was highlighted and Members were asked to return their papers to the Board Secretary prior to leaving the Boardroom. The Chief Executive (Acting) was thanked for the way in which business had been arranged at short notice and for the support given by Legal Services, Procurement & Secretariat office in the preparation of papers.

5. CONFLICT OF INTERESTS

Members were asked if they had any conflict of interests to declare in relation to any business on the agenda. Two interests were declared:-

a) **Mr D Lamb – Director of Finance (Acting)**

The Director of Finance (Acting) reported that he was a member of the Board of the South Eastern Regional College whose Chair, he believed, was an acquaintance of a Director in the former Red Sky company.

Decision taken: The Chairman thanked the Director of Finance (Acting) for declaring this interest but ruled that it did not require him to leave the room or refrain from participating in discussions. The Board agreed with the Chairman's ruling.

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5th July 2011

5 continued.....

b) **Mrs J Palmer – Board Member**

Mrs Palmer declared her interest as a member of the DUP Party.

Decision taken: The Chairman commented on the heightened political interest in the Red Sky issues recently and particularly over the last few days. He said that he did not wish Mrs Palmer to be compromised in her position as Board Member nor did he wish other Members to feel compromised due to Mrs Palmer's presence. The Chairman ruled that in the best interests of good governance, Mrs Palmer should take no part in discussions on today's business and should absent herself from the meeting. Mrs Palmer was in agreement with the Chairman's suggestion.

The Board agreed with the Chairman's ruling and accepting the Board's decision, Mrs Palmer left the meeting at 10.25 am.

c) **Mrs A Henderson – Vice-Chair**

The Vice-Chair, Mrs A Henderson said while she did not perceive herself as conflicted, she wished to notify the Board that she had been contacted at home by the wife of an NIHE maintenance officer. The caller made reference to the ongoing investigations into maintenance contracts. The Vice-Chair declined to comment on the matter.

Decision taken: The Chairman thanked the Vice-Chair for her notification of this matter and it was agreed that it did not conflict her.

Dr M Wilson reported that she had been contacted by the media yesterday but had not returned the call.

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5th July 2011

continued.....

6. **BRIEFING PAPERS**

Members were asked to take some time to read the papers before them. Following this, the Chairman referred to the purpose of today's meeting. At Page 4 of Members' papers was a letter from the Minister dated 4th July 2011 requesting that (*"the Board be asked to extend the termination date of the Red Sky contract from 14th July 2011 to allow an open procurement competition for the Red Sky contracts to be undertaken with immediate effect. This contract would be for a period of six months or until the new contract procedures can be put in place."*)

Members noted discussions at a series of meetings with the Minister and Department for Social Development officials in relation to the Board's decision to terminate the Red Sky contract. The Chief Executive (Acting) had sought clarification of the reasons for the Minister's particular interest in this contract but had not received a response.

Following a number of very difficult exchanges, the Minister had given an interview this morning with Good Morning Ulster. A transcript of the interview was circulated at the start of today's meeting. In his interview the Minister had not referred to the need to respond to any decisions taken by the Board this morning, nor to the absence of any legal challenge by Red Sky to the Board's decision to terminate the contract.

Members were then referred to the series of emails between the Head of Procurement and the Administrator who was a BDO Partner. To date the Administrator was unable to confirm that, should the Board agree to the Minister's request, he as BDO Administrator could provide a response maintenance service for a period of six months following 14th July 2011.

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5th July 2011

6 continued.....

A further email was sent this morning clarifying the Housing Executive's belief that since no confirmation had been received from BDO, they are therefore unable to provide such service.

The Board agreed that the Administrator is not in a position to do so.

The Board expressed deep concern at this point at the Administrator's email dated 4th July 2011 at 17.29 and questioned his authority to judge the ability of 'Newco' to undertake the services required.

Decision taken: The Board agreed that the Administrator's failure to respond to the latest email from the Head of Procurement indicated the Administrator's inability to deliver the required services. The Board also agreed that such action may in fact be outside the current legal processes.

Members were then referred to an email received this morning from the Department for Social Development which referred to the views of the Minister's Special Adviser on the suggested procurement period.

The Board was concerned that instructions appeared to have been given by a political Special Adviser.

Decision taken: The Board agreed that instructions would not be accepted from a Special Adviser and objected to this interference in this process. In particular, what was apparently being suggested i.e. the deliberate curtailment of the public procurement process, may in fact be illegal.

The Board noted the legal issues around the Minister's request and heard that the Housing Executive had been asked about extending the servicing of an existing contract, not about creating a new contract for six months. Members noted that the

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5th July 2011

6 continued.....

existing contract legally ends at the completion of the formal Notice period.

Again, it was reiterated that the Administrator had failed to confirm his ability to service the contract for 6 months beyond 14th July 2011. As such, the Housing Executive requires a solution for the continuation of service provision beyond 14th July 2011. Negotiation with the adjacent contractors was the only practical way forward, all things considered and legal.

A response will be sent to the Department for Social Development after today's meeting.

CX(A)

Adjacent Contractors

The Board was updated on discussions with adjacent contractors and confirmed that 3 contractors have confirmed their commitment to service provision in the relevant Districts. This has involved these contractors incurring expenses to increase their capacity to do so. Due to media attention and also the Minister's recent statement, the contractors are seeking confirmation of the Board's commitment to allocate the additional work.

The Board noted with dissatisfaction the time taken by the Administrator to enter into discussions with contractors on TUPE arrangements. The Board also noted that the Administrator had been put on notice in relation to his potential conflict of interest in this matter.

Following further discussion the Board was reminded of the current arrangements following the termination of the Red Sky (in administration) contract with effect from 14th July 2011. The proposal is to have the 3 adjacent contractors cover service provision through 5 contracts.

The Board noted that ordinarily approval of such operational matters would be delegated to the Chief Executive at the Chief

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6 continued.....

Executive's Business Committee. However, due to the significance of the issues, Board input was deemed appropriate.

Members also commented on the notifications given to and engagement with senior officials at the Department for Social Development at each stage of the current contract investigation and termination process during which time no objections were raised.

Discussion followed on the current legal status of Red Sky. It was noted that as a legal entity, Red Sky is no longer trading. The Administrator was responsible for handling all matters for "Red Sky in Administration". As such, the Administrator should not act in the interests of the former Directors of Red Sky, and nor could the former Directors act on behalf of Red Sky in Administration without the consent of the Administrator.

Before considering the Minister's request formally the Board noted the following previous statement from the Member who was unable to attend the meeting:-

"I fully support the position of the Board and the decisions taken to date and, in consideration of the thorough and robust investigations undertaken, I would reaffirm my endorsement of the action taken to terminate the contract with Red Sky."

Decisions taken: Following individual comments from each Member, the Board unanimously agreed that there has been no significant change to the situation since 13th April 2011.

The Board unanimously endorsed the decisions taken on 13th April 2011, having gone through the procurement process and having given commitments to adjacent contractors. The Board agreed to proceed to allocate contracts to the adjacent contractors who had been selected on the basis of merit and within the processes and timescales agreed by the Board and Chief Executive's Business Committee.

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continued.....

7. **MINISTER'S PROPOSED INVESTIGATIONS INTO OTHER CONTRACTORS**

The Board discussed the Minister's proposal to investigate the work of the adjacent contractors. Members, while agreeing that any investigation should be co-operated with fully, were concerned that the investigation would not apply to all contractors but only those due to receive work carried out previously by Red Sky plus a number of the other contracts.

Decision taken: The Board agreed that a letter should be sent to the Department seeking details of the terms of reference, scale of the investigation, proposed methodology and timescale for the investigations, to be approved by the Board. Details of the investigating officers and their relevant qualifications should also be requested.

CH

8. **RESPONSE TO MINISTER**

The Chairman then referred to the potential outcomes of the Board's decision to proceed with the termination of the Red Sky contract and drew Members' attention to the draft letter to the Minister, circulated. It was noted that the letter had been drafted by Senior Counsel for the Board's consideration.

Having considered the contents of the draft letter all Members expressed their dismay and disappointment that the Board should be put in the position of having to consider such action.

Decision taken: Subject to a number of minor amendments the Board unanimously agreed that the letter should be issued to the Minister as soon as possible after the Board meeting today. Members agreed that the Board had been left with no alternative course of action but to challenge any potential Ministerial directive.

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Decision taken: It was further unanimously agreed that should a Ministerial directive be issued to extend the Red Sky contract, the Chairman and Chief Executive (Acting) should be given authority to serve any notices required on the Courts as detailed in the draft letter.

Decision taken: The Board agreed that, subject to legal advice, the adjacent contractors should receive public assurance of the Housing Executive's commitment to them, once the relevant contracts are signed.

DOPMS

In closing the meeting, the Chairman thanked Members for their attendance and constructive contributions to the decisions made. He asked Members to maintain the confidentiality around discussions today, particularly in light of the growing media interest and possible future legal action.

CHAIRMAN

10.10 Follow-up correspondence to NIHE board decision of 5 July 2011

Correspondence

Annex C

Housing

Chairman Brian Rowntree CBE
2 Adelaide Street
Belfast BT2 8PB

Mr Nelson McCausland
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

PRIVATE OFFICE

05 JUL 11

SOCIAL DEV'TMENT

C-3 16.15.

5th July 2011

Dear Minister

NIHE Contract: Notice of Termination Red Sky (now in Administration)

As Chairman of the Board I refer to your recent correspondence in relation to the termination of the Red Sky contract on 14th July 2011. The matters raised by your office were given full consideration by the Board of the Northern Ireland Housing Executive at our meeting this morning.

The Board has asked that I express their deep concern at the stance that has been taken by your office with respect to the termination of the Red Sky contract. The contract was terminated following thorough and extensive forensic investigations that identified serious failings in contract performance and significant levels of overpayments of public funds. Upon careful consideration of those investigations the Board formed the view that the trust and confidence necessary for the satisfactory operation of these contracts had been profoundly undermined and so advised Red Sky on 13th April 2011. The Board has, this morning, reconfirmed that view with respect to Red Sky in administration.

It is notable that Red Sky did not mount any public or private law challenge to the Board's decision to terminate the contract on 13th April 2011. Indeed, on 25th May 2011 you wrote to Naomi Long MLA in terms the Board considered wholly supportive of the decision to terminate the contract. The Board have had difficulty reconciling that expression of support with the fact that some six weeks later the indications are that the issue of a direction pursuant to Article 10 of the Housing (Northern Ireland) Order 1981, ordering NIHE to extend the Red Sky contract for a period of six months, is under consideration.

The Board has given serious consideration to your stance on this matter. The Board also noted that to the best of our knowledge there has never, to date, been



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Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

a statutory direction issued to the Northern Ireland Housing Executive. The Board also noted that this unprecedented step is being contemplated in order to secure a benefit for a particular contractor and /or purchaser thereof.

I have previously advised your office that in order to discharge NIHE's obligations to our tenants we have put in place arrangements to enable our adjacent contractors to take over those Red Sky contracts subject to termination with effect from 14th July 2011. Those arrangements are regulated by the relevant TUPE provisions to enable lawful transfer of affected staff. The adjacent contractors have accrued liabilities in preparation for the assumption of that additional work on 14th July 2011. The proposed intervention by your office will lead to losses for those contractors who may seek redress for breach of their legitimate contractual expectations from NIHE and/or your Department. The Acting Chief Executive, as Accounting Officer for NIHE, has reminded me of his obligations under Managing Public Money Northern Ireland (MPMNI). Accordingly, I have advised the Board that compliance with any such direction will expose NIHE to a risk of incurring novel and contentious expenditure in circumstances where the Comptroller and Auditor General has qualified the NIHE accounts for 2010/11 for reasons connected to the Red Sky contracts.

More fundamentally, the Board considered that it would be an abdication of the responsibility owed to thousands of our tenants to reinstate the Red Sky contracts a matter of months after reaching a firm resolution to terminate on grounds of serious performance issues (including financial irregularity). Public confidence in the Board's ability to discharge its statutory function would be eroded in the absence of a coherent rationale for extending those contracts. The Board considers that the issuing of a statutory direction pursuant to Article 10 of the Housing (Northern Ireland) Order 1981, in the circumstances of this case, for the purpose of securing the continuity of contract for a single discredited contractor, amounts to an unwarranted and improper interference in an operational matter.

The Board recognises the scope of the power afforded to the Department by Article 10 of the 1981 Order. It is, however, a power that must be exercised for a proper purpose in accordance with public law principles. The Board considers that the unprecedented issuing of an Article 10 direction to NIHE in this context is a "significant and controversial matter" as defined in paragraph 2.3 of the Ministerial Code provided for in paragraph 4 of Schedule 1 to the Northern Ireland (St Andrews Agreement) Act 2006.

It is also a "cross-cutting" issue as defined in paragraph 2.4 of the Ministerial Code that is likely to engage MPMNI. It is the considered view of the Board that you have, therefore, a duty pursuant to section 28A of the Northern Ireland Act 1998, read in conjunction with the provisions of the Ministerial Code, to bring the



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Correspondence

proposed decision to issue an Article 10 direction before the Executive Committee for approval. The Board understands that the Executive Committee will next meet on 7th July 2011 and that there is, therefore, an opportunity to ensure that any Article 10 direction complies with the requirements of the Northern Ireland Act 1998.

In the event that your office issues a statutory direction pursuant to Article 10 without the matter having been placed before the Executive Committee for full consideration and approval, the Board of NIHE have resolved that they will immediately challenge the legality of such a direction in the High Court. The basis of that challenge will be:

- (i) breach of the Ministerial Code and section 28A of the Northern Ireland Act 1998;
- (ii) the *ultra vires* nature of the statutory direction;
- (iii) the improper use of the Article 10 power to secure a benefit for a single contractor.

The Board has instructed our legal representatives to take the necessary preparatory steps to present a challenge to the legality of any Article 10 direction. We have put the High Court on notice that it may be necessary to convene an urgent judicial review hearing at short notice over the coming days to seek a declaration as to the legality of your actions. I am advised that given the urgent nature of this matter it will not be possible to issue a pre-action letter in accordance with the usual High Court protocol. I am, therefore, copying this letter to Phillip Gunn in the Departmental Solicitor's Office to afford notice of our intended course to your legal representatives.

The Board has directed that the adjacent contractors should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14th July 2011 to discharge our primary statutory function of ensuring adequacy of provision for our tenants. In the event that you, or the Executive Committee, determine that an Article 10 direction is not appropriate, we would invite you to confirm that position to NIHE as soon as is practicable.

Yours faithfully



Brian Rowntree CBE
Chairman

cc Will Haire Permanent Secretary
Phillip Gunn Departmental Solicitor



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Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Annex D



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Social
Development

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Lighthouse Building
1 Cromac Place
Gaworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Fax: (028) 9082 0548
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Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
2 Adelaide Street
BELFAST
BT2 8PB

Our ref: SUB/1238/2011

7 July 2011

Dear Brian

I refer to your letter dated 5 July 2011 responding to my letter of 1 July 2011.

I feel I must state at the outset that I am gravely disappointed and concerned at the manner in which this matter has been dealt with.

There has been what I consider a lot of unhelpful debate and discussion around this issue and I think it is important that I state again my position in relation to this matter. My primary concern has been to ensure that the best possible value for money services are provided to tenants.

When I took up Office initially I was briefed on the Issues surrounding the Red Sky contract and also the Gateway Review completed by my predecessor which contained recommendations that were being taken forward to ensure that an appropriate procurement and contract management regime is in place in relation to response maintenance contracts.

I have become increasingly concerned that the Issues which led to the termination of the Red Sky contract may be present in other contracts which have not been the subject of any full forensic investigation.

As you are aware, due to my concerns, I have instructed officials to carry out a forensic investigation of a sample of Housing Executive response maintenance contracts and the management of them in order to provide me with reassurances in relation to the other contracts, the services to tenants and the use of public funds. This is an action I am sure you will agree is fully justified and which I know you will support.

1

Correspondence

In parallel to this is the implementation of the recommendations from the Gateway Review must be taken forward as a priority to ensure that a new procurement and contract management regime and new contracts are in place later this year. I consider this to be essential to put contracts on a sound basis for moving forward. I understand that you advised my officials, at a recent Oversight Group meeting, there might be a slight delay in relation to the completion of the new contract management regime. I am aware that since then you have written to Will Haire suggesting a delay until February 2012. However, I consider it is of critical importance that robust contract arrangements are in place and we move to that position without delay and I would ask that you now review the position again and advise me urgently if the timescales for the implementation can be earlier.

Turning to my letter on 1 July, I was explicit in my request to you that, subject to the Administrator stating that he can continue to service the contract, you put to the Housing Executive Board that the termination of the Red Sky contracts should be extended to allow an open procurement exercise for the Red Sky contracts to be undertaken. Open procurement was, in my view because of the concerns I had, the most appropriate way forward to assign those contracts. Implicit in my request was the need to move to this position quickly.

It is therefore regrettable that your reply does not cover these matters but in fact focuses on a potential future issue of a Direction under Article 10 of the Housing (NI) Order 1981.

However, regardless of that fact, I have now fully considered your response to my letter and also the advice from the Housing Executive's Head of Procurement which states that you have only received assurance that the Administrator can provide such services up to the end of July, thereafter it is intended that the Company will be sold. The Administrator has indicated the contracts could only be serviced thereafter only through the new company acting as "managing agent" / "facilitating" the Administrator. The Head of Procurement further advises the letting of a new contract, that would deliver a response maintenance service until your main procurement is complete, would take in the region of four months and such a contract period would not be commercially viable.

Therefore, aligning this advice with my original request to you, I can now confirm that the Housing Executive should proceed to the termination of the Red Sky contract on 14 July and move forward with the proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants.

In taking this action I would ask that you seek assurance from the adjacent contractors as to the application of TUPE arrangements and you provide me with detailed briefing on this issue. Further my concerns as regards contractual arrangements remain and I therefore want your assurance that you have in place robust and focused contract monitoring arrangements for these and all response maintenance contracts and I want you to provide me with details of those arrangements.

2

Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Finally, in taking this action I must reiterate that the primary concern must be to ensure that tenants receive the best possible service in relation to response maintenance. My duty as the Housing Minister is to ensure that this is the case and so I now intend to ensure that the Performance Review meetings are held monthly initially and the focus of reporting by the Housing Executive at these meetings will be on the progress in relation to the implementation of the recommendations from the Gateway Review and also on the monitoring of the response maintenance contractors performance until the new contracts are in place.

I will now ask my officials to arrange the next meeting.

Yours sincerely

Nelson McCausland

NELSON McCAUSLAND MLA
Minister for Social Development

Northern Ireland
Housing Executive

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB



Sett by
lettings
+ John
McLoughlin



Mr Nelson McCausland
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

15th July 2011

Dear Minister

Thank you for your letter dated 7th July 2011.

I share your commitment to ensuring that our response maintenance contracts and our management of them provide the best service to tenants and value for money in the use of public funds. I will of course facilitate and support the proposed forensic investigation.

With respect to the Gateway Review, I again share your view that the priority must be to have in place as soon as practicable a new procurement and contract management regime. You will be aware that, following a number of recommendations from the DSD Oversight Group, including the adoption of additional Key Performance Indicators (KPI's), we reviewed our timetable which already had little or no slack. Taking into account the additional time necessary to develop and validate these including legal opinion, and deal with additional matters raised by the Project Board, we proposed a revised date of 1 February 2012. This was to ensure that we were not awarding new contracts during the Christmas period bearing in mind the severe weather conditions we experienced in 2010. We can, if you insist, have the new contracts (and potentially new contractors) operational from 1 January 2012 but our risk assessment is that this would not be wise and that 1 February 2012 is the preferred date. This will allow us to provide proper training for any new contractors on the NIHE's works ordering and contract management arrangements.

I can advise you that our Board were advised that, based on discussions and correspondence with the Administrators over the last 3 months, they could not service the contract beyond 14 July 2011. Indeed, they refused to confirm in



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writing that they could service the contract up to 14 July and were working with us on a week by week basis. The Board were also aware that, if they sought to revoke the termination notice, it could potentially leave the NIHE open to a legal challenge further down the road.

As requested in your letter, I can confirm that have reassigned the contract to adjacent contractor with effect from 14 July 2011.

The most recent position I have on TUPE, which you know is a matter between the Administrator and the adjacent contractors is, that to date, 138 employees will transfer. A further pool of 47 staff remains under review and some of these may transfer depending on the extent of their current involvement in NIHE contracts. I will be happy to provide an update in due course.

As regards contract monitoring arrangements, please find attached a short summary of our monitoring arrangements for response maintenance contracts which you can see are very thorough. Any recommendations for improvement from the Gateway Review Healthcheck are currently being implemented.

Finally, I note your intention to having the Performance Review meetings monthly so that you can gauge progress on these matters and I look forward to our meeting at the end of August.

Yours sincerely



Brian Rowntree
Chairman



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Current Control Arrangements Response Maintenance Contracts

Background

- Sixteen contractors deliver an "All Trades" Response Maintenance service to NIHE's thirty five District Offices through a total of twenty eight individual contracts (prior to the termination of RSG).
- The Area Manager acts as contract administrator for all the response maintenance contracts within his / her area, but day to day management responsibility rests with the District Maintenance Manager and District manager for each district.
- Tenants normally report repairs by telephone to one of the 6 Customer Service Unit (Belfast, Newtownards, Craigavon, Omagh, Londonderry, Ballymena), although repairs can also be reported at district level.
- Upon receipt of a repair call, the CSU enters the details of the repair job into the Repairs computer system which electronically passes the job directly to the relevant contractor.
- Jobs are classified into distinct categories depending on their nature:
 - Jobs with a significant health and safety risk are treated as Immediate Call Out (ICO) and contractors are required to drop everything and attend immediately.
 - Jobs which are serious but not life threatening are classified as Emergency and should be completed within 24 hours.
 - Jobs which are less serious but not routine are classified as Urgent should be complete within 4 days.
 - Remaining jobs (except Change of Tenancy Repairs) are classified as routine and should be completed within 4 weeks.
 - Change of Tenancy Repairs are associated with new allocations. The timescale available depends on the scale of the work, but in most cases should be completed within 6 weeks.



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Control Arrangements

- A sample regime exists for pre and post inspection depending on the nature of the work and its value.
- In general, 20% of the total number of jobs are subject to inspection as follows:
 - 100% of jobs costing >£750 are pre and post inspected by District Maintenance staff.
 - 100% of COT repairs are pre and post inspected by District Maintenance staff.
 - 100% of jobs containing "policy" items are inspected – these are jobs that include replacement (as opposed to repair) of major components such as doors, window frames, kitchen units, etc.
 - 6% of jobs costing under £100 are subject to telephone follow up via the CSUs.
 - Inspections of jobs costing between £100 and £750 accounts for the remaining total up to the full 20% (i.e. after taking account of inspections below £100, COT, "policy" items and over £750).
- Jobs to be inspected are generated by the computer system, but local district staff have the discretion to augment inspection activity to reflect any local concerns.
- The District Maintenance Manager (DMM) and the District Manager (DM) are required to review a sample of jobs each month. In the case of the DMM he/she must examine at least 12 jobs; in the case of the DM he/she must examine at least 6 jobs.
- Contractor performance is monitored via a series of 6 Key Performance Indicators. These are measured monthly at a meeting which includes the DMM, the DM, and the contractor.
- A series of "control reports" are available to assist the DMM and DM in managing the contractor. These include reports on jobs to inspect, jobs that have been raised and post inspected by the same officer (for specific checking re segregation of duties), KPI performance and trends, jobs



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outstanding, and payments outstanding.

- A list of jobs submitted as complete is checked each day. DMMs and DMs can intervene to hold a payment or request a post inspection on the basis of his/her review of the trends or any issues that stand out from the review process.
- Area Managers are provided with monthly contractor performance reports by HQ to facilitate cross district comparisons.
- Compliance auditing is provided via the Repairs Inspection Unit, which from 1st July is part of the new Corporate Assurance Unit. This covers the major work streams associated with response maintenance contracts.

Future

- On the foot of the Contract Management Health Check work is well advanced in the following areas:
 - Changing the form of the contract to introduce “penalties” for poor performance.
 - Revised monitoring and management arrangements, with a new escalation process for dealing with issues. This includes creation of new specialised Area Contract Manager positions.
 - Revised KPIs and formal “traffic light” warning system linked to the escalation process.
 - A revised statistically based inspection regime, and greater involvement of the CSU's in securing tenant feedback on the works.



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INVESTING IN PEOPLE

Correspondence

Annex E



From: **The Permanent Secretary**
Mr Will Haire

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Gasworks Business Park
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BT7 2JB

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Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
2 Adelaide Street
BELFAST BT2 8PB

31 August 2011

Dear Brian

I refer to your letter dated 1 July 2011 in relation to the notice of termination of the Red Sky contract.

Your letter sets out the serious concerns of the Housing Executive Board and Senior Management Team in relation to the continuation of the Red Sky contract past the termination date of 14th July. You also asked that I step back and withdraw the Department's involvement and that of the Minister in this matter. I am therefore responding to you as I am concerned about statements in your letter, particularly in relation to my role in this matter. While the key issue is now to move on and together focus on service delivery, it is however important that I put my position clearly on the record.

The standard expected of me in my role as Accounting Officer is at all times to act within the authority of the Minister to whom I am responsible and to support the Minister with clear, well reasoned, timely and impartial advice. It is, however, ultimately the Minister's decision to accept or reject that advice. Also, in practice, whilst the Housing Executive, as a Non Departmental Public Body, operates with some independence under its Board, the Minister is nevertheless, ultimately accountable to the Assembly for the Housing Executive's efficiency, effectiveness, activities and performance. This is because the Minister is responsible – *Inter alia* - for the founding legislation; has influence over your strategic direction and appoints your Board.

In the first instance, as you know, I was well aware of the serious concerns of the Housing Executive Board and the Senior Management Team in relation to this matter and can assure you the Minister was fully briefed on these issues. That said the Minister quite clearly stated that his primary concern was to ensure that the best possible value for money services are provided to tenants. Therefore, in his role as Minister, he wrote to you on 1 July, following your meeting on 30 June, advising that he had asked officials to carry out a forensic investigation of a sample of Housing Executive maintenance contracts and, subject to the Administrator stating that he could continue to service the contract, that you put to the Housing Executive Board that the termination of the Red Sky contracts should be extended to allow an open competition for the contracts to be undertaken with immediate effect.

Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts

Against this backdrop you will understand that I am very concerned about the tone and references in your letter such as:

"it is therefore incomprehensible why Minister McCausland and your Department for Social Development would seek to direct the NIHE" and "the road you are pushing us down". As you are aware a direction on this issue was not issued.

I believe that I acted appropriately in my role as Accounting Officer in relation to this matter, but the substance of your letter calls that into question along with my integrity. In that respect, I believe that you should withdraw the remarks you made, particularly as your final sentence advised that if I did not do as you requested you would seek legal advice on the matter.

Finally, I understand that excerpts from your letter have entered the public domain. That part of the content of a letter from you to me should have made its way to the media is highly regrettable. It is important that this does not recur.

Yours sincerely



Will Haire

10.11 DSD/NIHE correspondence November 2012 – March 2013

From the Minister



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Mr Donald Hoodless
Chairman
Northern Ireland Housing Executive
The Housing Centre
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BT2 8PB

12 November 2012

Dear Donald

May I take this opportunity in the first instance to welcome you to your new position as Chairman of the Housing Executive. I believe that the skills and experience that both you and the Vice-Chairman, Peter Roberts, bring to the Board of the Housing Executive will offer a real opportunity to address the recent failings of governance in the Housing Executive and will work to restore confidence in the Organisation as a whole. In particular, the issues in relation to contract management must be tackled promptly to ensure that the organisation moves in a new direction.

Whilst I understand that you will need to become aware of a number of high priority issues for the Board to deal with, I do however want to bring to your attention the draft ASM report which my Department commissioned in October last year.

The background to this is that in July 2011, in light of my concerns that the issues which led to the termination of the Red Sky contract by the Housing Executive may be present in other contracts which had not been the subject of any full investigation, I asked that a forensic investigation was carried out of a sample of Housing Executive maintenance contracts to provide me with assurances in relation to the management of other contracts, the quality of services to tenants and the proper use of public funds.



1

Together, tackling disadvantage, building communities

I find it significant that I as Minister and not the Housing Executive had to instigate this forensic investigation into the other contractors employed by the Housing Executive to service 'response maintenance' contracts. There appeared to be no desire or urgency within the organisation to face up to the real potential that such failures, identified between the Housing Executive and Red Sky, could also exist across the breadth of the response contract arena and potentially across all contracts managed by the organisation. Indeed I received an assurance from the then Chairman, Brian Rowntree, that the monitoring arrangements for response maintenance contracts were very thorough. Further the then Chairman, Brian Rowntree, and the then acting Chief Executive, Stewart Cuddy, pointed out that they had been aware of the failures of Red Sky for some years. This was therefore not a case of the problem only recently coming to light. As a result, and in light of the recent draft ASM Report, the further work of the NI Audit Office and indeed the Housing Executive's own RIU reports in the last year, I find this significant failure by the then Chairman, Brian Rowntree, and the Senior Management Team within the organisation to be completely unacceptable.

The draft ASM Report was received by my Department on Friday 29 June 2012 and the findings and the evidence confirm I was right to have concerns and indicate there are considerable issues in relation to the Housing Executive's management of response maintenance contracts. I forwarded the draft Report to Anne Henderson, then Acting Chair, on 4 July and asked for the Housing Executive's comments to me by 17 August 2012. John McPeake forwarded their initial comments to my Department on 21 August 2012.

My officials considered the Housing Executive's detailed response and raised a number of key issues with the Housing Executive on 18 September 2012. These included:

- In relation to the district responses, the commentary submitted indicated a tendency to robustly challenge the findings, suggested failings are the responsibility of tenants or sought to reduce the amount of overpayment. Whilst it is appropriate that the districts have an opportunity to comment, the Housing Executive was asked what further checking was proposed where district and ASM opinions differ.
- It was difficult to quantify the extent of the acceptance of the findings and the level of overpayments as the Housing Executive's approach was to examine identified anomalies regardless of classification. As the ASM summary of findings was based on the Category A classifications, defined as clear cut where Contractors should not have been paid for work, (and the subsequent potential overpayments extrapolated from these figures only), the Housing Executive was asked to review the responses in order to isolate those which relate to Category A anomalies only. This was to allow my officials to discuss the Housing Executive responses with ASM in order to finalise the draft report.
- More detail was also asked for on what action the NIHE intend to take, when and with whom in relation to further more detailed follow up investigations in respect of a number of the contractors.

When I asked my officials for an update in relation to the Housing Executive's response to the draft Report, I was advised that a further response had been received on 2 October which did not provide the information requested. As a result my officials had written again to the Housing Executive on 4 October asking urgently for the information from the Housing Executive's initial analysis relating to the Category A classifications and information on the issue of more detailed follow up investigations in respect of a number of the contractors. I understand that a further response was received on 5 November which advised that;

- the first response was an interim one mostly based on desk top audits;
- the follow up work on Category A is now inspection based and will be forwarded on completion, which is not expected to be until December; and
- following this, the Housing Executive will be best placed to determine the exact actions in following up with specific contractors.

I am very concerned and disappointed that my Department is therefore still not in a position to discuss the Housing Executive's responses with ASM in order to finalise the draft Report. I consider these delays to be unacceptable. I believe that the Housing Executive needs to focus on dealing with these issues and provide a timely response which would demonstrate an unequivocal determination to address these matters with the necessary pace and urgency.

My letter on 4 July to the then Acting Chair, Anne Henderson, advised that I would keep this all under review and would consider if any further action was needed if I did not see improvements and I also advised the Assembly on 3 July I would report again in the Autumn to provide an update on these matters. Therefore, whilst I understand there are appropriate processes to go through, it is important that I have early clarity from the Housing Executive on their assessment of the actual and potential levels of overpayments involved (based on the ASM category A analysis) and what action is being taken.

I would therefore be grateful if you would consider the issues I have raised and provide me with your comments and an assurance that the information will be provided urgently to my Department.

I would also add that the issues raised in the draft ASM report and the recent NIAO report raise further concerns for me in relation to other contracts managed by the Housing Executive, for example, planned maintenance, which I referred to in the letter to the previous Chair on 4 July (the Ballynahinch scheme). I believe the Board need to consider this and what action may need to be taken to provide me with assurances that these issues are not endemic across the contracts managed by the Housing Executive.

Finally, I want to assure you that I and my Department are committed to assisting you and the Board to bring about the necessary changes, particularly in relation to improvements in contract management. In order to provide that support, and subject to the agreement of my Executive colleagues, I will seek the assistance of the Department of Finance and Personnel's Performance and Efficiency Delivery Unit. This Unit was established to secure quantifiable and measurable improvements in the performance and delivery of public services, drawing upon the major programme of civil service and public sector reform now in place in Northern Ireland and aims to work constructively

with Departments and public bodies in identifying the scope for significantly improved service delivery in selected areas, and the options to implement step changes in effectiveness and efficiency in those areas.

Yours sincerely

Nelson McCausland

NELSON MCCAUSLAND MLA
Minister for Social Development

Northern Ireland
Housing Executive

Chief Executive
Dr John McPeake

2 Adelaide Street
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Mr Will Haire
Permanent Secretary
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WH/0001/12

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03 DEC 2012

PERM SEC DSD

30 November 2012

Dear *Will* 8/12

Please find attached a letter from Stewart Cuddy. This was tabled and noted at the November Board Meeting of the NIHE along with the recent letter dated 12 November 2012 from the Minister to our Chairman, Donald Hoodless. As you can see it addresses as a matter of record, certain factual inaccuracies in the Minister's letter.

I should be grateful if you would bring this matter to the attention of the Minister and arrange for a copy of Mr Cuddy's letter to be kept on file and provided to anyone who gets a copy of the Minister's letter, thereby ensuring accuracy.

Yours sincerely


John McPeake
Chief Executive



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Housing Executive

Director of Corporate Services/
Deputy Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A.
2 Adelaide Street
Belfast BT2 8PB

Donald Hoodless
Chairman
NI Housing Executive
The Housing Centre
2 Adelaide Street
Belfast BT2 8PB

26th November 2012

Dear

Chairman

I refer to Minister McCausland's letter to you dated 12th November 2012 which has been copied to Board Members and is on the Board agenda for the November Board meeting.

In that letter it is alleged that I had been aware of the failures of Red Sky for years. I wish to point out for the record that from March 1998 to December 2010 I was the Director of Corporate Services/Deputy Chief Executive. During that time responsibility for response maintenance lay with the Director of Housing & Regeneration (previously Director of Client Services). I became aware of what were concerns with Red Sky at the same time as the Audit Committee and the Board. I had no prior knowledge of substantiated failures. Once the concerns were investigated and substantiated via the original ASM Horwath Report (end of October 2010) I, as Acting Chief Executive, (January 2011 – September 2011) recommended to the Board that the Red Sky contract be terminated, a recommendation which was supported and approved by the Board. It may now seem ironic that, at that time, the Minister sought to have the contract retained by Red Sky.

I therefore reject completely any suggestion that I had prior knowledge of Red Sky failures and failed to do anything about it. Since the Minister's letter is being shared with Board Members I would ask that you also share with them the contents of this letter.

Yours sincerely



Stewart Cuddy
Director of Corporate Services/Deputy Chief Executive

cc: John McPeake, Chief Executive



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**From: The Permanent Secretary
Mr Will Holroyd**

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**Dr John McPeake
Chief Executive
Northern Ireland Housing Executive
2 Adelaide Street
BELFAST
BT2 8PB**

18 December 2012

Dear John

I refer to your letter dated 30 November 2012 enclosing a letter from Stewart Cuddy dated 26 November to Donald Hoodless, in relation to a letter from the Minister to the Chairman on 12 November 2012. You advise that Stewart Cuddy's letter addresses as a matter of record certain factual inaccuracies in the Minister's letter dated 12 November 2012.

From my reading of his letter, Stewart Cuddy appears to be disputing the parts of the Minister's letter which state:

"Further the then Chairman, Brian Rowntree, and the then acting Chief Executive, Stewart Cuddy, pointed out that they had been aware of the failures of Red Sky for some years." and "I find this significant failure by the then Chairman, Brian Rowntree and the Senior Management team within the organisation to be completely unacceptable".

However, I am not clear what the factual inaccuracies are that require to be brought to the Minister's attention.

Stewart Cuddy's position in the Senior Management Team and previous statements that are a matter of record would certainly indicate and suggest that he would have

been aware of the failures of Red Sky for some years, particularly considering his role as Director of Corporate Services/Deputy Chief Executive which incorporated Internal Audit; membership of the Chief Executive's Business Committee; his attendance at the Audit Committee meetings; and then as Acting Chief Executive.

By way of example, in relation to his role as Director of Corporate Services and attendance at the Audit Committee, the NI Audit Office report on the NIHE Management of Response Maintenance Contracts states that both Internal Audit and the Audit Committee were briefed on issues relating to Red Sky in October 2006.

His views in relation to this are in fact also a matter of record. For example, Stewart Cuddy, as the then Acting Chief Executive, advised the Board on 13 April 2011 of *"the concerns with the Red Sky Group Ltd advising of a history of issues with RSG's performance dating back to 2007"*. Also, at a meeting with Peter Robinson on 28 April 2011 he advised that *"Red Sky had been very high" on the radar "for some time"*.

The Minister's letter also referred to the failure of the Senior Management Team in dealing with the issues surrounding Red Sky, which the NI Audit Office report confirmed date back to 2000. Again I believe this is a matter of record taking account of the recent NI Audit Office Report and you advised at the PAC in September in relation to the Red Sky issues, that the Housing Executive accepted that it took too long to sort out the problems with the contractor and in your view the Housing Executive did not do a particularly good job in dealing with the Red Sky contract over the years.

It would appear from Stewart Cuddy's letter that he has inferred from the Minister's letter a criticism that he was aware of failings of Red Sky and failed to act. The Minister's letter is quite clear. Firstly it references the fact that the then Chairman and Acting Chief Executive had been aware of the failings for some time, information from the NIAO report and other matters of records indicate that this is factually correct. Secondly, the Minister's letter indicates that in his opinion this failure by the senior management to act on these issues arising from ASM, NI Audit Office and the organisations own internal reports to be unacceptable. I believe that you have yourself accepted this fact with regard to your responses to the PAC.

Further, I feel there appears to be a factual inaccuracy in Stewart Cuddy's letter. He advises in his letter to the Chairman that *"the Minister sought to have the contract retained by Red Sky"*. The Minister has clearly stated in correspondence to the then Chairman on 7 July 2011 that he believed the most appropriate way forward was for an open procurement exercise for the Red Sky contracts to be undertaken. This was subject to the administrator being able to provide assurance that those contracts could be serviced until such an exercise could be undertaken. When the Housing Executive advised that the administrator could only provide services until the end of July and

thereafter the Company would be sold, and that it would take in the region of four months for an open procurement exercise, the Minister confirmed to the then Chairman that the Housing Executive should proceed with the termination of the Red Sky contracts and re-assign those contracts to adjacent contractors to ensure continued provision of services to tenants. It is not therefore the case that the Minister sought to have the contract with Red Sky retained.

Before then I consider your request further I would be grateful for your advice on what the factual inaccuracies are that need to be brought to the Minister's attention.

I am copying this letter to Donald Hoodless at this stage for his information.

Yours sincerely



WILL HAIRE

Northern Ireland
Housing Executive

Chief Executive
Dr John McPeake

2 Adelaide Street
Belfast BT2 8PB

RECEIVED

WJL/16/03

Mr Will Halre
Permanent Secretary
DSD
Lighthouse Building
1 Cromac Place
Belfast BT7 2JB

PERM SEC DSD

21 March 2013

Dear Will

I refer to your letter of 18 December 2012.

I have discussed your letter with Stewart Cuddy and gave him an opportunity to think about the issues raised therein. We met on a number of occasions since to discuss the letter. He has made clear to me that his concern is specifically related to the following sentence of the Minister's letter of 12 November 2012:

"Further the then Chairman, Brian Rowntree, and the then acting Chief Executive, Stewart Cuddy, pointed out that they had been aware of the failures of Red Sky for some years."

Stewart believes that someone reading this statement could readily conclude that these named individuals alone had personal knowledge of the failures of Red Sky "for some years". This then gives rise to the erroneous inference that they, despite having such personal awareness, took no action.

I am advised and accept that over those years these individuals would have had no greater knowledge, than the various persons sitting on the various committees referred to by you, including the representatives of NIAD and the Department who attended meetings of the Audit Committee and other meetings to discuss the serious matters identified in the context of Red Sky.

As you will undoubtedly recall, it was Stewart Cuddy, in his capacity as Acting Chief Executive who recommended to the Board termination of the Red Sky contract in the light of the various reported concerns. In doing so, he acted on the concerns of the Organisation to ensure regularity and probity of public monies on housing contracts and in doing so acted in a professional and responsible manner and with the full support of the Board and the senior management team.



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At my attendance before the PAC I accepted that there had been shortcomings in the way in which the NIHE and the senior management involved in the relevant Division had dealt with the Red Sky situation. However, this was clearly a reference to the senior officer/s previously responsible for the contract and not those who pursued the concerns and took action ultimately resulting in the termination.

I have also accepted that the way in which the senior management team was managed was not conducive to an earlier resolution of the Red Sky issue. The contract management issue and the resolution of it were vested entirely with one division. I also accepted that at the time the matters were not adequately escalated by the Director of Housing and Regeneration to the senior management team, the Audit Committee or the Board. I am advised that Stewart Cuddy regularly raised concerns with the then Chief Executive about the lack of transparency regarding aspects of work within Housing and Regeneration Division, but his concerns were not adequately addressed at the time.

As Chief Executive, I am acutely mindful of the need and desirability to continually improve contract management to deliver to our tenants the service they are entitled to expect and to adequately protect the public purse. I am therefore anxious and committed to moving forward in this process.

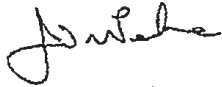
However, in doing so it is important that the record of previous difficulties is accurate and fair in all respects. In this instance, the naming of particular individuals can unfairly and incorrectly be misinterpreted that they had been personally aware of the concerns about this contractor for years and failed to take appropriate action. This simply is not the position and as such it is important for the record that the correct position should be noted.

Upon reflection, Stewart is happy that I withdraw his request that a copy of his original letter be kept on file and provided to anyone who gets a copy of the Minister's letter on the basis of your confirmation that he is not being singled out for criticism for what we all acknowledge and accept was an organisational failure.

It is a matter of record that in Stewart's time with the Housing Executive it has never had any evidence, cause or reason to believe that he acted other than in an open, *honest and professional manner in the best interests of the organisation.*

I hope that this letter clarifies the situation and that all parties can now move forward
in a positive frame of mind.

Yours sincerely



John McPeake
Chief Executive

10.12 Briefing paper for Minister's meeting with Chair of Social Development Committee – 6 July 2011

DSI/11/210031-



From: Will Haire
Permanent Secretary

Date: 6 July 2011

Nelson McCausland

MEETING WITH ALEX MASKEY MLA - RED SKY

Issue: You have agreed to a meeting with Alex Maskey MLA, Chair of the Social Development Committee at 12.45pm on 6 July 2011.

Timing: Immediate

Priority: Urgent

FOI Implications: This note may be disclosable

Presentational Issues: Significant media interest

Financial Implications: None

Legislation Implications: None

Equality Implications: None

Executive Referral: None

Recommendation: To note the briefing and suggested lines to take.

Background

The review of the Red Sky contracts was prompted by concerns raised by a whistleblower through the Northern Ireland Audit Office. In response to the concerns raised in relation to the performance of Red Sky, who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities.

2. However, following the Housing Executive's consideration of the matter, including Red Sky's response and legal advice, the Board of the Northern Ireland Housing Executive agreed in April to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice. The Red Sky contract is therefore due to expire on 14th July 2011. The Housing Executive has entered into negotiations with adjacent maintenance contractors to deliver the Housing Executive service requirements until new response maintenance contracts are awarded.
3. You wrote on 1 July to the Chairman of the Board of the Housing Executive advising that you have asked officials to carry out a forensic investigation of a sample of Housing Executive maintenance contracts. You also asked, subject to the Administrator stating that he can continue to service the contract, that he put to the Housing Executive Board that the termination of the Red Sky contracts should be extended to allow an open competition for the contracts to be undertaken with immediate effect. You indicated that the contract would be for a period of six months or until such times as a contract can be put in place.
4. You have now agreed to meet Alex Maskey MLA today at 12.45pm to discuss the situation. I will also attend the meeting along with Jim

Wilkinson.

5. I have attached the following for your information:

- Annex A** **Lines to take**
- Annex B** **Correspondence**
 - letter to Naomi Long MP - 25 May 2011
 - letter to Chairman NIHE - 1 July 2011
- Annex C** **List of current NIHE investigations**

Conclusion

6. To note the briefing and suggested lines to take.

WILL HAIRE

Ext: 38002

- cc:**
- Heather Cousins**
 - Jim Wilkinson**
 - Michael Sands**
 - Susan McCarty**
 - Stephen Brimstone**
 - Barbara McConaghie**

Lines to take

Annex A

- When I took up Office, I was fully briefed by my officials on the issues that arose from the Governance Audit and Gateway Review of the Housing Executive carried out last year by my predecessor. This highlighted clearly that there were issues in relation to existing response maintenance contracts.
- The recommendations from the Gateway Review in relation to procurement and contract management are now being implemented to ensure that the Housing Executive enters into a new contract management regime.
- The date for the completion and implementation of the new contract management regime was to be October/November this year when new contracts and contractors would be in place.
- On 24 June my officials were advised that there may be a slight delay of a number of weeks in relation to completion of the new contract management regime. However, at a meeting last week I was informed by the Housing Executive that this delay could extend to a number of months to March 2012. No rationale has yet been provided by the Housing Executive in relation to this delay and I will be following this up. I consider it of critical importance that robust contract arrangements are in place and we move to that position without delay.
- When I took up Office I was also briefed on the situation with Red Sky and at that time I was broadly content with the actions taken by the Housing Executive and confirmed so in a letter to Naomi Long dated 25 May 2011
- My officials were also assured by the Housing Executive that ongoing regulation and inspections had not identified similar concerns in other

contractors, other than one in another area which is subject to further detailed investigation.

- However, having received more information from the Housing Executive in relation to the particular Red Sky issues and in fact to other investigations currently ongoing in the Housing Executive in relation to contractors and Housing Executive Personnel, I became increasingly concerned that issues similar to those in Red Sky, which led to the termination of their contract, may in fact exist with other response maintenance contractors.
- In light of this, and to ensure that these issues are not endemic across contractors, I have now instigated a forensic investigation, similar to the one carried out on Red Sky, of other contractors and in particular those adjacent contractors who the Housing Executive intend to assign the Red Sky contracts to.
- I wrote to the Housing Executive on 1 July and asked them, that rather than assign these to adjacent contractors where similar problems may exist, they take this forward by an open procurement competition.
- I attached three conditions to this request namely;
 - response maintenance services to tenants must not be affected,
 - the Administrator states that he can continue to service the contract; and
 - implicit that this open procurement exercise must be carried out within a reasonable timescale.
- My primary concern throughout has been to focus on having new contract arrangements in place which underpin the best possible services to be provided to tenants.

- I have received a response from the Housing Executive which focuses on their response should I issue a direction on this matter, but does not actually answer the questions I have asked. I am still seeking the answers to those questions.
- I will consider carefully the Executive's answer and but I can assure you my decision will always focus on the need to ensure services for tenants and protecting public funds.

Correspondence

Annex B

Letter to Naomi Long MP 25 May 2011



COR 1004 2011 -
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Letter to Chairman NIHE 1 July 2011



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KB)



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Mrs Naomi Long MP
Alliance Party East Belfast Constituency
56 Upper Newtownards Road
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BT4 3EL

Our ref: COR/1004/2011

25 May 2011

Dear Naomi

Thank you for your letter of 26 April to my predecessor, Alex Attwood, about a number of issues in relation to the independent review of Red Sky commissioned by the Housing Executive.

I share your concerns in relation to the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. However, I can assure you that the Housing Executive is currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination. As part of this process the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.

You are also concerned in relation to the knock on effect to the wider local economy and in this regard I think it is important to stress there will still be an on-going need for response maintenance services for those properties currently serviced by Red Sky and this will continue to provide business for suppliers and sub-contractors.

In relation to the investigation process, it is correct that Red Sky has not been provided with a copy of the terms of reference for the work undertaken by the forensic accountants, ASM Horwath, or with a copy of the full report. This decision was made by the Housing Executive because the report provides an independent, professional review of a range of issues concerning the management of these contracts and it would not be appropriate to disclose all the documentation.



I have, however, been assured by the Housing Executive that Red Sky were provided with sufficient extracts from the ASM Horwath report, together with supporting documentation, to allow the Company to undertake its own assessment of the findings. The same is equally true for additional and subsequent reviews undertaken by the Housing Executive's own Repairs Inspection Unit. In all cases Red Sky has been given the opportunity to consider and examine the evidence collected across those Districts for which it provided maintenance services.

As part of this process Red Sky was invited to provide explanations of the evidence presented to them and their responses were carefully considered and, in a few cases, accepted and appropriate adjustments made. In some cases, Red Sky accepted responsibility for the overpayments. However, in most cases, the company's explanations were simply not acceptable. The fact that the Housing Executive responded quickly to submissions received from Red Sky does not indicate any lack of rigour in assessing those submissions which I am assured were given all due consideration.

With regard to your comments about the role of Housing Executive staff in the management of these contracts, the Housing Executive specifically asked ASM Horwath to investigate this matter and their findings are presented in the report. It would not be appropriate to allow Red Sky to have access to this information, especially as internal disciplinary action is underway.

The Housing Executive does not accept Red Sky's suggestion that some form of arbitration should have been applied. The review of these contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office and a preliminary review considered both the substance and seriousness of these claims. I am advised that before external reviewers were appointed, the process has been conducted throughout in a fair and careful manner and Red Sky has been given ample opportunity to respond at the appropriate times.

In relation to the apparent lack of benchmarking against performance of other contractors. The Housing Executive has advised that there is on-going benchmarking and review of all contractors' performance and that any concerns about quality or invoicing practices would be dealt with appropriately.

The Housing Executive assures me that it firmly believes its management of what is a very serious matter was demonstrably fair, open and transparent and that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence has been identified, validated and evaluated. They have advised that they provided Red Sky sufficient information to respond to any claims against the Company and those responses were given due consideration before any decisions were made.

I hope this information is helpful and provides the assurances that you seek

Yours sincerely
Nelson M'Cauleand

NELSON McCAUSLAND MLA
Minister for Social Development

 Department for
**Social
Development**
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB
Fax: (028) 9082 9548
e-mail:
private.office@dssdni.gov.uk

Tel: (028) 9082 9034

Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

1 July 2011

Dear Brian

I refer to our meeting on 30 June 2011 to discuss response maintenance contracts. As I indicated I have asked officials to carry out a forensic investigation of a sample of Housing Executive contracts including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination.

Following our discussions and subject to the Administrator stating that he can continue I would now ask you to put to the Housing Executive Board that the termination date of the Red Sky contract should be extended from 14 July 2011 to allow an open procurement competition for the Red Sky contracts to be undertaken with immediate effect. This contract would be for a period of six months or until the new contract procedures can be put in place.

*Yours sincerely
Nelson McCausland*

**NELSON MCCAUSLAND MLA
Minister for Social Development**

RESPONSE MAINTENANCE INVESTIGATIONS UPDATE

Annex C

Investigation into Response Maintenance Contractor Red Sky

1.0 Introduction

- 1.1 Red Sky Group Ltd currently holds the all-trades Egan Contracts for NIHE districts Newtownabbey 1 and 2, North Belfast, East Belfast, South Belfast and West Belfast.

2.0 Action Taken

- 2.1 In response to concerns in respect of potential overcharging and other contractual issues on the part of the contractor, NIHE commissioned an independent expert report in 2010 which concluded that there was evidence of overcharging by Red Sky in all the NIHE districts examined. Following this report NIHE established an internal inspection review across all six district contracts. This inspection is not yet complete however overcharging to the value of c£500,000 has been identified in addition to what appears to be evidence of potential fraud perpetrated against NIHE.
- 2.2 In view of these findings it is likely that the matter will be referred to PSNI for formal criminal investigation.

3.0 Leeway Maintain

- 3.1 In October 2010 the Housing Executive's Repairs Inspection Unit (RIU) reported on an overpayment of £2,433 for a job which should have cost £271. This related to an invoice submitted by Leeway Maintain for work under the response maintenance contract for Shankill District. Following consideration of the RIU report, there was a disciplinary investigation of the maintenance officers involved with this job which resulted in one member of staff being downgraded and another receiving a written warning.

In February 2011 a Whistleblower made known his concerns regarding the performance of the contractor and alleged irregularities concerning the management of the contract and the behaviour of a named Leeway Maintain representative. These allegations are currently being investigated and it is expected this will be concluded within the next two months.

- 4.0 It should be noted that these investigations do not refer to ongoing routine contractual disputes where litigation is being pursued.

DISCIPLINARY IN RELATION TO
RESPONSE MAINTENANCE CONTRACTS

The attached schedule indicates the disciplinary cases actioned in the past twelve months in relation to failure in contract management.

1. Shankill Road

These cases were raised through an audit. An investigation was undertaken and referral made to Personnel for disciplinary action.

2. Newtownabbey 1

These cases were raised through an audit investigation/report and were referred to Personnel for disciplinary action. The allegations are such that they fall within the boundaries of gross misconduct. Under procedures this requires the setting up of a disciplinary panel. These are currently being established and should convene in July.

3. Shankill Road

This case has arisen as a result of information provided by a Whistleblower. A preliminary investigation suggests that there are serious issues to be addressed. A full investigation is now underway. This will inform the disciplinary process.

Further Action

Further disciplinary action is being considered in relation to other Districts involving Red Sky, i.e. East Belfast, South Belfast, North Belfast and West Belfast.

Details of the above are included in the attached Appendix.

DISCIPLINARY ACTION – CONTRACT RELATED			
OFFICE	CONTRACTOR	ISSUE	ACTION
1. Shankill Road	Leeway Maintain	<ul style="list-style-type: none"> • Overpayment to Contractor; • Failure to comply with procedures 	District Maintenance Manager Downgraded and issued with final written warning. Maintenance Officer Written warning
2. Newtownabbey	Red Sky	<ul style="list-style-type: none"> • Payments made for work not done; • Overpayments; • Failure to comply with procedures 	4 Maintenance Officers Disciplinary process under way. Disciplinary Panel being established under procedure for gross misconduct.
3. Shankill Road	Leeway Maintain	Issues Identified <ul style="list-style-type: none"> • Payments for work not completed; • Failure to comply with NIHE procedures; • Overcharging; • Poor workmanship 	Early investigation stage.

10.13 NIHE/BDO/Adjacent Contractor correspondence

DS1/11/208064 Page 1 of 2

E-mail Message

From: McCarthy, Susan (EX/O=NIGOV/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDL)VCN=RECIPIENTS/CN=1033876)
To: McCarthy, Susan (EX/O=NIGOV/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDL)VCN=RECIPIENTS/CN=1033876)
Cc:
Sent: 05/07/2011 at 09:59
Received: 05/07/2011 at 09:59
Subject: FW: Contractor E-mails

Attachments: RE: Response Maintenance Contracts
RE: Response Maintenance Contracts
RE: Response Maintenance Contracts

Susan McCarty
Housing Director's Office
Level 2
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Phone x 38325/90829325

From: Cuddy, Stewart (mailto:Stewart.Cuddy@NIHE.GOV.UK)
Sent: 04 July 2011 17:19
To: Haire, Will
Cc: Sands, Michael
Subject: FW: Contractor E-mails
Sensitivity: Private

Will,

Please see enclosed letters from our adjacent contractors confirming their commitment to proceed as planned wef 14 th July 2011. These also highlight the advanced stage of our negotiations to have in place response maintenance contracts by the due date. These letters further imply that type are progressing satisfactorily,

Stewart

From: Allen, Declan
Sent: 04 July 2011 17:10
To: Cuddy, Stewart
Cc: Rowntree, Brian; Taggart, Maureen
Subject: Contractor E-mails
Sensitivity: Private

Mills, Karen

From: Sands, Michael
Sent: 05 July 2011 11:40
To: Hara, Will; Wilkinson, Jim
Subject: FW: NIHE Response Maintenance Contracts

Jim, Will,
To see current position from NIHE.
M

From: Allen, Declan (mailto:Declan.Allen@NIHE.GOV.UK)
Sent: 05 July 2011 11:37
To: Sands, Michael
Cc: Rowntree, Brian; Cuddy, Stewart
Subject: FW: NIHE Response Maintenance Contracts

Michael,

For your information

Please see e-mail below to Michael Jennings, BDO Administrator for Red Sky, outlining the our position as to the capability and ability of BDO to provide a Response Maintenance Service to the NIHE post the 14th July 2011.

Regards.

Declan

**Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive**

e-mail: declan.allen@nihe.gov.uk
Tel: 028 80318889
Mob: 07820 187969

From: Allen, Declan
Sent: 05 July 2011 09:58
To: 'Michael.Jennings@bdo.co.uk'
Cc: Rowntree, Brian; Cuddy, Stewart
Subject: FW: NIHE Response Maintenance Contracts

Michael,

Further to my e-mail of last evening.

As you have not provided any clarity as to your (BDO as Administrator for Red Sky) ability or otherwise, to provide a response maintenance service to the NIHE from the 14th July 2011 it must be assumed that you are in fact unable to do so.

Regards.

Declan

**Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive**

e-mail: declan.allen@nihe.gov.uk

Tel: 028 90318889
Mob: 07920 187989

From: Allen, Declan
Sent: 04 July 2011 18:00
To: 'Michael.Jennings@bdo.co.uk'
Cc: Rowntree, Brian; Cuddy, Stewart
Subject: RE: NIHE Response Maintenance Contracts

Michael,

Thank you for getting back to me so promptly.

I sought clarification from you if BDO, acting as the Administrator for Red Sky (in Administration), could undertake the Response Maintenance Service Provision in the Current Red Sky (in Administration) districts for a minimum period of six months. I understand from your response below that BDO are unable to provide the required service without subcontracting another contractor. It is therefore clear that you are unable to provide a Response Maintenance Service to the NIHE during the next six months.

I would be most grateful if you could confirm that my understanding is correct or alternatively confirm that BDO solely and without subcontracting or relying on new enterprises can provide the required Response Maintenance Service to the NIHE for the minimum period of 6 months commencing from the 14th July 2011.

Regards.

Declan

Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive

e-mail: declan.allen@nihe.gov.uk
Tel: 028 90318889
Mob: 07920 187989

From: Michael.Jennings@bdo.co.uk [mailto:Michael.Jennings@bdo.co.uk]
Sent: 04 July 2011 17:29
To: Allen, Declan
Cc: Francis.Martine@bdo.co.uk; Pamela.Gillies@bdo.co.uk; Barry.John.Keliv@bdo.co.uk; Michael.Hagan@bdo.co.uk; James.Naill@bdo.co.uk
Subject: Re: NIHE Response Maintenance Contracts

Declan,

Thank you for your e-mail received at 3.19pm. I have just finished a meeting with the Bank at which we agreed that BDO as Administrators would continue to service the above contracts until the sale of the Red Sky business to Newco which is likely to complete at the end of July 2011.

I can confirm that we did discuss the question as to whether trading for a further 8 weeks post 14 July or if necessary even longer for a 6 month period could be facilitated and this could be facilitated with the assistance of Newco acting as a managing agent on behalf of the Administrators albeit the weekly payments from NIHE would still be made to the Administrators account & the Newco would be utilising the Administrators employees to fulfill the contract requirements

If you have any queries, please do not hesitate to contact me.

Kind regards

Michael

Michael.Jennings

Page 1 of 2

Wilkinson, Jim

From: Cuddy, Stewart [Stewart.Cuddy@NIHE.GOV.UK]
Sent: 05 July 2011 10:01
To: Sands, Michael; McLaughlin, Maria
Co: Wilkinson, Jim; Allen, Declan; Gallagher, Frances
Subject: RE: NIHE Response Maintenance Contracts
Sensitivity: Private

Michael,
I have asked our Head of Procurement Declan Allen to speak to you in respect of the above matter,
Stewart

From: Sands, Michael [mailto:Michael.Sands@dssni.gov.uk]
Sent: 05 July 2011 07:40
To: McLaughlin, Maria
Cc: Cuddy, Stewart; Wilkinson, Jim
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

Brian,
Minister's SPad thinks that six months is too long a time frame for continuation by the Red Sky Administrator. Our advice from CPD is 91 days (ie under the EU limit) to complete the tender exercise once all paperwork is prepared so if we allowed to the end of the month for paperwork, say 1 month + 3 for the tender exercise = 4 months in total. Could the question re 4 months be put to BDO as below rather than 6?
Regards
Michael

From: McLaughlin, Maria [mailto:Maria.McLaughlin@NIHE.GOV.UK]
Sent: 04 July 2011 16:11
To: Haire, Will
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

Dear Mr Haire

Mr Rowntree asked me to forward you this email from Declan Allen.

Regards
Maria

From: Rowntree, Brian
Sent: 04 July 2011 16:00
To: McLaughlin, Maria
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

From: Allen, Declan
Sent: 04 July 2011 15:19
To: Michael.Jennings@bdo.co.uk
Cc: Cuddy, Stewart; Rowntree, Brian; Gallagher, Frances; Taggart, Maureen; McPeake, John

05/07/2011

Page 2 of 2

Subject: NIHE Response Maintenance Contracts
Sensitivity: Private

Michael,

I have been discussing your reply to Stewart Cuddy dated 4th July 2011 with our Chairman. The Chairman has asked that I confirm the position in relation to whether current Red Sky (in administration) rates could be enhanced should the company in administration continue with the provision of Response Maintenance Services post 14th July 2011. Any work carried out post 14th July by Red Sky in administration will be as per the current percentage adjustment. There will be no enhancements to their rates.

I also require clarification of an additional point by return and certainly no later than close of business today. The Department for Social Development has asked our Chairman to ascertain if Red Sky in Administration would be able to continue with the Response Maintenance service for a minimum period of 6 months and not the 8 weeks as you may already be aware of. Any continuation would be in accordance with the current Terms and Conditions applying to the contracts and as stated above at the current rates outlined in the contract. I would request that you provide, by close of business, your express guarantee that should it be required, the company in administration could continue for a minimum period of 6 months. I would also confirm that the request relates to BDO as administrator for Red Sky in Administration and not to any new entity or buyer of Red Sky.

This request should not be taken to imply or constitute a contract offer or guarantee of additional work to Red Sky (in Administration) (nor sub contractors nor any new enterprise) post the 14th July 2011.

I would appreciate your reply by return or at least no later than 17:30 today.

Regards.

Declan

Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive

e-mail: declan.allen@nihe.gov.uk
Tel: 028 90348869
Mob: 07920 187969

51

Rowntree, Brian

From: Cuddy, Stewart
Sent: 06 July 2011 14:29
To: Michael.Jennings@bdo.co.uk
Cc: Francis.Martin@bdo.co.uk; Barry-John.Kelly@bdo.co.uk; Pamela.Gillies@bdo.co.uk; James.Neill@bdo.co.uk; Rowntree, Brian; McPeake, John; Michael.Hagan@bdo.co.uk; Allen, Declan
Subject: RE: Transfer of NIHE Contracts

Michael,

I refer to your e-mail below and also to my telephone conversation with you last night. I wish to formally put on record that your continued actions and your latest e-mail are considered to be unhelpfully obstructive in ensuring that the TUPE protections are afforded in a timely and proper manner to affected employees. These actions may also be seen as disadvantaging the adjacent contractors in a commercial context. It is my intention to take this matter further and to look at the regulatory provisions around your role as Administrator of Red Sky.

The relationship and discussions between the NIHE and our sponsoring Department should not in any way prevent you from carrying out your role in a fair, efficient and objective manner. As explained to you last night when I again reiterated my disappointment at the lack of your progress in addressing the TUPE requirements, the Housing Executive position remains unchanged and we expect the adjacent contractors to take over the provision of the response maintenance service with effect from the 14th July 2011. We have repeatedly advised you of this position over the past three months.

Stewart

From: Helen.Crowe@bdo.co.uk [mailto:Helen.Crowe@bdo.co.uk] On Behalf Of Michael.Jennings@bdo.co.uk
Sent: 06 July 2011 11:53
To: Allen, Declan
Cc: Francis.Martin@bdo.co.uk; Barry-John.Kelly@bdo.co.uk; Pamela.Gillies@bdo.co.uk; James.Neill@bdo.co.uk; Cuddy, Stewart; Rowntree, Brian; McPeake, John; Michael.Hagan@bdo.co.uk
Subject: Transfer of NIHE Contracts

Dear Declan

As you are aware, we have been in ongoing discussions with you and the Adjacent Contractors over the past week, including meeting with each of the Adjacent Contractors on Wednesday 29 and Thursday 30 June 2011. All Adjacent Contractors, as you are aware, have already been provided with TUPE details. We acknowledge there has been great uncertainty over the past few days, particularly in the light of the decision by the Department for Social Development Minister, Nelson McCausland, to defer the transfer of the existing Red Sky contracts for eight weeks from 14 July 2011. We have understood, therefore, that the contracts and the staff, will remain with the Red Sky Group in Administration.

We now note your request last evening to continue to progress our discussions with the Adjacent Contractors as a matter of urgency and we will proceed on this basis. However, for clarity, and therefore, for the avoidance of any doubt, could you please confirm, in writing by return, that this request does not, in any way, conflict with the instructions to the Housing Executive by the DSD Minister, Nelson McCausland, to defer transfer for the eight week period post 14 July 2011.

You will appreciate no doubt that we, in our role as Administrators, wish to avoid any actions which would comprise the stated positions of NIHE and your Minister.

I look forward to hearing from you.

06/07/2011

Mills, Karen

From: Allen, Declan [Declan.Allen@NIHE.GOV.UK]
Sent: 05 July 2011 16:00
To: Michael.Jennings@bdo.co.uk
Cc: Rowntree, Brian; Cuddy, Stewart; Francis.Martin@bdo.co.uk; Pamela.Gillies@bdo.co.uk; Barry-John.Kelly@bdo.co.uk; Michael.Hagan@bdo.co.uk; James.Neill@bdo.co.uk
Subject: RE: FW: NIHE Response Maintenance Contracts

Michael,

Thank you for the update.

I acknowledge that BDO (acting as Administrator for Red Sky) can only provide a response maintenance service to the NIHE to the end of July 2011.

Regards

Declan

Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive

e-mail: declan.allen@nihc.gov.uk
Tel: 028 90318389
Mob: 07920 187969

From: Michael.Jennings@bdo.co.uk [mailto:Michael.Jennings@bdo.co.uk]
Sent: 05 July 2011 12:08
To: Allen, Declan
Cc: Rowntree, Brian; Cuddy, Stewart; Francis.Martin@bdo.co.uk; Pamela.Gillies@bdo.co.uk; Barry-John.Kelly@bdo.co.uk; Michael.Hagan@bdo.co.uk; James.Neill@bdo.co.uk
Subject: Re: FW: NIHE Response Maintenance Contracts

Declan,

I have just returned to the office following meetings all morning & received your e-mail below & a further e-mail last night. For clarity my objective is to sell the Red Sky business as a going concern & I have agreed to do so with a new purchaser. This is likely to complete by 31 July & as I have stated in my prior e-mails Red Sky In Administration will indeed be able to continue to service the NIHE Response & Maintenance Service until the date the sale completes & thereafter Red Sky In Administration can continue to service the NIHE contract albeit we will be working with the new purchaser to utilise their location & central overhead function. The Company will have the capacity & competency to continue to provide the service required.

Kind regards

Michael

Michael Jennings
Partner
Business Restructuring

For and on behalf of BDO Northern Ireland
Lindsey House
10 Colander St
Belfast BT1 5PN

☎ 028 9043 7225 (DDI)
☎ 028 9043 7224 (Fax)

 michael.jennings@bdo.co.uk
 www.bdo.com

"Allen, Declan" <Declan.Allen@nife.gov.uk>
05/07/2011 09:58

To: Michael Jennings/BEU/BCOUK
cc: "Rowntree, Brian" <Brian.Rowntree@nife.gov.uk>, "Cuddy, Stewart"
<Stewart.Cuddy@nife.gov.uk>
Subject: FW: NIFE Response Maintenance Contracts

Michael,

Further to my e-mail of last evening.

As you have not provided any clarity as to your (BDO as Administrator for Red Sky) ability or otherwise, to provide a response maintenance service to the NIFE from the 14th July 2011 it must be assumed that you are in fact unable to do so.

Regards.

Declan

Declan Allen MCIPS

Head of Procurement

Northern Ireland Housing Executive

10.14 Documentation relating to outcome of investigations into other contractors

Housing Executive: Contract Management

Mr McCausland (The Minister for Social Development): With your permission, Mr Deputy Speaker, I wish to make a statement on the Northern Ireland Housing Executive's management of response maintenance contracts. I am aware that the issue has recently attracted significant media attention, and it is right and proper that it is in the Assembly that I make my position on it clear.

There has been a long record of concerns about the Northern Ireland Housing Executive's contract management regime. Those concerns stretch back to the previous Administration, and, indeed, they culminated in my immediate predecessor, Alex Attwood, commissioning on 7 October 2010 a review of governance in the Housing Executive. That review followed a series of internal and external investigations into the Housing Executive that raised concerns that its governance systems were not sufficiently robust. On 25 January 2011, he informed the House of the many recommendations that were to be implemented following the governance audit and gateway review. He advised that:

"a new discipline and rigour should be applied to contracts. That is necessary to protect tenants' needs, the Housing Executive's authority, the interests of the Department for Social Development (DSD), and government expenditure." — [Official Report, Bound Volume 60, p187, col 2].

The then Minister also welcomed the endorsement of the reports by the chairperson and acting chief executive of the Housing Executive. He advised that the Housing Executive board:

"must ensure that implementation occurs expeditiously and faithfully." — [Official Report, Bound Volume 60, p189, col 1].

On taking up post, however, and on foot of a briefing on the governance review findings and implementation, as well as on the issues leading to the termination of the Red Sky contract in July 2011, I expressed my concerns about contract management. I wrote to the chairperson of the Housing Executive board at that time asking for assurance that robust and focused contract monitoring arrangements were in place for all response maintenance contracts. I was assured that the monitoring arrangements for response maintenance contracts were very thorough. However, in the light of my continuing concern that the issues that led to the termination of the Red Sky contract by the Housing Executive could be present in other contracts that had not been the subject of any full investigation, I asked for a forensic investigation of a sample of Housing Executive maintenance contracts to provide me with assurances about the other contracts, the quality of services to tenants and the proper use of public funds.

That work began in October 2011 and considered: the quality of the workmanship that was undertaken; whether the invoices that were submitted by the contractors and paid by the Housing Executive were appropriate in the context of the work that was requested and

that that was actually carried out; whether the inspection regime in the Housing Executive operated as expected; and whether the key controls to manage contracts and ensure that the quality of works undertaken was monitored and that the price variations were identified, valued and approved, were adequate and operated effectively. The work also considered a classification of any financial anomalies that were identified during round one and round two inspections, which related to the contractors that were assigned Red Sky contracts and to other contractors respectively; and an extrapolation of any findings from round one and round two to determine the possible level of any overcharging or errors.

The investigation was to be carried out in two phases, with phase 2 to be taken forward only if the phase 1 findings provided cause for concern. I was advised that that was the case, and phase 2 began on 13 March 2012.

I am also aware that, in the wake of significant concerns having been raised by whistle-blowers, MLAs and the media, the Northern Ireland Audit Office decided to examine the Housing Executive's management of response maintenance contracts in view of the seriousness of the problems identified in the management of specific contracts and the potential for important lessons to be learned across the public sector.

The Audit Office report, to be published in the autumn, will cover the management of response maintenance contracts and the termination of the Red Sky contracts; the inspection of repairs and maintenance work; the handling of complaints and whistle-blower allegations; and contract management and governance.

I am aware that the Comptroller and Auditor General has also raised concerns relating to the Housing Executive's management of contracts as part of his audit of the 2011-12 accounts. I understand that those concerns will be included in his report on the accounts when the accounts are laid in the Assembly later this week.

During this period, my permanent secretary, who had chaired the oversight group that was set up to ensure the effective implementation of the recommendations from the governance review, advised me that he had concerns about the effective implementation of the recommendations that were made in the 2010 governance review on the management of maintenance contracts. In particular, he was concerned that the Housing Executive was not making full use of its internal assurance regime to improve contract management.

In view of his concerns, he asked for copies of all outstanding reports from the Housing Executive's internal assurance team. Those indicated significant issues with contract management and considerable time delays in agreeing the reports with managers, which also meant delays in the timely implementation of the recommendations. For example, of 12 reports by the repairs inspection unit, two were finalised, and of the 10 inspections outstanding, two have been outstanding from November 2011, four from January 2012, and the remaining four were issued on 9 May 2012. In all, 11 of the 12 reports contained a negative rating and highlighted poor workmanship and inaccurate charging.

The permanent secretary then asked the Department's head of internal audit to undertake an independent review of the Housing Executive's actions to implement the recommendations in the 2010 governance review that related to the independent inspection of maintenance contracts, and specifically to determine the reasons for the delay in the agreement of reports from the repairs inspection unit.

Taking account of all the factors together, including my initial concerns, the findings from phase 1 of the forensic investigation and the fact that the Audit Office had sufficient concerns to investigate the Housing Executive's management of response maintenance contracts, that caused me sufficient disquiet that I brought my performance review meeting with the chair of the Housing Executive forward to discuss the issues fully and to gauge the will and determination of the board and the senior management team to effect the change that is required. I asked the board to consider a number of issues that I raised, and I received its response on 29 June 2012.

I wish to consider further the detail of the response. Although it states that significant progress has been achieved, it acknowledges that more needs to be done. On the basis of the evidence that I have received to date, however, I cannot be assured of the board's conclusion in the letter that there is a clear demonstration of the board's commitment to addressing the issues raised in an effective and timely manner.

12.30 pm

On 29 June 2012, I received the draft report on the forensic investigation that I commissioned. As it was received only in the past few days, my officials and I need time to consider it in detail. Nevertheless, I am very concerned that the findings and evidence clearly demonstrate that there are considerable issues in relation to the Housing Executive's management of response maintenance contracts. The key findings in the report cover the quality of workmanship; invoices submitted by contractors; completion of work on a timely basis; Northern Ireland Housing Executive inspections; the ability to recover overcharging; and duplicate schedule of rates codes.

What does that mean for tenants in their homes? Many poor workmanship issues were covered. For example, in one change of tenancy, a back door was so badly fitted that it had to be removed, planed and rehung. A new door to a bathroom failed to lock. A handle to a cistern came off. Redecoration was of a very basic standard. Two new doors that were fitted to a newly fitted kitchen were off within nine months of installation. A blocked gully to a rear yard was still partially blocked and backing up, and the gully cover was missing. A socket for a washing machine was faulty. Other examples include more doors being claimed for than existed in a house. A new fan was fitted in a kitchen, but the new fan and a non-existent bathroom fan were serviced. Fire doors were fitted to a kitchen and living room where they were not required. A door was fitted with an excessive gap. Extensive work was done to a front door, but screws were missing from the hinges. Floor tiles were poorly laid, and there were lifting tiles. A gutter and downpipes were provided to the wrong side of a party line and were considered unfit for purpose.

I should point out that the report consists of three large lever arch files. It runs to several thousand pages, and there is page after page after page of such examples. There are many more examples, but I do not need to go into them. They clearly indicate that tenants are not getting the services that are expected or being paid for by the taxpayer.

The findings in the draft forensic investigation report give me grave cause for concern in relation to the Housing Executive's management of response maintenance contracts and its ability to respond to the issues, particularly as the Housing Executive disburses and is accountable for huge sums of public money: some £600 million a year, of which over £170 million is spent on maintenance. That reinforces the types of concerns that were noted in the Northern Ireland Audit Office's work, the Department's examination, and, most importantly, the findings of the Housing Executive's internal assurance teams. I will copy this draft report to the Housing Executive for comment, and I will ask it to consider the issues raised and respond to me by mid-August.

I have also received a report from the Department's head of internal audit, who completed the independent review of the actions undertaken by the Housing Executive to implement the recommendations of the 2010 governance review relating to the independent inspection of maintenance contracts and specifically to determine reasons for the delay in the agreement of reports from the repairs inspection unit. Once again, although officials will wish to consider the report in detail, its overall conclusion is that senior management in the Northern Ireland Housing Executive have not acted quickly enough to resolve the issue of the agreement of the draft reports from the repairs inspection unit. In expending so much effort in debating the methodology used in producing the reports, the Housing Executive has failed to focus on the reports' significant findings. Time that could have been better spent addressing the issues identified has instead been lost in protracted internal debate.

Taking all those factors together, I believe that the Northern Ireland Housing Executive, as an organisation, has, to date, failed to demonstrate the required response to known shortfalls in contract management in a manner that either recognises the importance and significance of the issues or demonstrates an unequivocal determination to address the matters with the necessary pace and urgency. I feel that tenants and the taxpayer are not getting the quality of service that they have the right to expect.

Let me also point out that this sequence of events relates only to the management of response maintenance contracts. I, therefore, have to assume that those types of problems may also be evident in the way in which the Housing Executive manages other contracts, such as planned maintenance contracts on which it spends £92.5 million a year.

The board has taken some actions very recently to start to deal with the issues, but I do not believe that they address the root cause of the matter. I continue to have major concerns about the culture in the organisation and the level of aspiration in the Housing Executive to deliver a quality service to tenants. I also need much more assurance that there is the necessary drive, determination and capability in the Housing Executive to effect the required change.

I must, therefore, take immediate action to ensure that the Housing Executive deals effectively with the issues and that the situation does not continue, particularly following the awarding of new contracts on 1 August 2012. I intend to introduce, with immediate effect, special accountability measures that must bring about improvements efficiently and effectively. The measures will significantly enhance the current oversight arrangements between my Department and the Housing Executive.

I will ask the Housing Executive to put a comprehensive work plan in place immediately. It will focus on the areas that I specify in which action must be taken to ensure the provision of quality services to tenants and the proper use of public funds. That will be informed by the findings from current reports and investigations. The work plan will be subject to my approval, and the Housing Executive will be required to provide me with fortnightly reports on the issues of concern.

In view of the fact that there have been significant delays in the implementation of the recommendations in internal audit and repairs inspection unit reports, particularly when those have been critical, I will also require that my Department has sight of all draft internal audit reports and repairs inspection unit reports as soon as they are produced, along with a timetable to ensure that the reports and recommendations are agreed and implemented immediately. Those reports are an important management tool. If many of the recommendations in the outstanding draft reports had been taken forward and implemented by management in a timely, effective manner, we would not be in the position that we are in today.

There will also be an increase in the number of accountability meetings between my Department and the Housing Executive. They are currently held quarterly but will now be monthly. The meetings will focus on the areas about which I have concerns. I will advise the board of the Housing Executive of the details of my special measures. I intend to keep all this under review over the coming weeks, and if I do not see improvements, I will consider whether any further action is needed.

Among the critical questions that I will be asking is this: how did these failings occur? What was the culture and practice in the Housing Executive that allowed this to happen and, indeed, to continue for so many years? I also undertake to report to the Assembly again in the autumn to provide an update.

I think that it is important that I comment on the resignation of the chairman of the Northern Ireland Housing Executive, which was tendered on 29 June. The chairman's decision to resign at this time was entirely a matter for him. My concerns have always been the management of contracts; ensuring value for money for the public purse; and, most importantly, ensuring quality service for tenants. It is a challenge to the board and the management team to show the required leadership, drive and determination to deal with the issues.

Finally, we need to look to the future. As you know, my predecessor commissioned a fundamental review of the Housing Executive. I have been considering this review and

further analysis that I commissioned. I hope to make a statement when the Assembly returns that will set forward my vision for new housing structures in Northern Ireland that will improve delivery and services for tenants and the taxpayer. One thing is clear to me: it is time for change, urgent change.

Mr A Maskey (The Chairperson of the Committee for Social Development): Go raibh maith agat, a LeasCheann Comhairle. I thank the Minister for his comprehensive statement. I, Mickey Brady and the Committee Clerk met the Minister and his officials this morning to go through the report. Departmental officials will give a further briefing to the Committee for Social Development on Thursday morning.

Clearly, the report makes for gloomy reading, and I presume that it will have perhaps quite a negative impact on the overall workforce in the Housing Executive. That needs to be addressed urgently. I appreciate that the Housing Executive will have a number of weeks to respond to the report.

In the Minister's statement, he raised the question of how these failings occurred. I repeat what I said in our private meeting: we will await the full response from the Housing Executive on this and the further reports into this matter. We are concerned that we are dealing with the quality of workmanship carried out in people's homes and the expenditure of vast amounts of public money. All of that has to be protected, and the Minister will have our full support in the quest to ensure that that happens. There has been a culture in agencies and, perhaps, some Departments of the responsibility never seeming to lie anywhere. Can the Minister assure the House that when the reports are developed and worked through, we will get to the bottom of where the responsibility lies in the agency and, if need be, the Department, in respect of any culpability over not ensuring that public money was spent wisely? If the reports were commissioned but sat on someone's desk, where were the trigger mechanisms to ensure that they were dealt with as a matter of urgency?

Mr McCausland: I thank the Member for his question. I assure him that, as I said in the statement, we are getting to the point where we can see the overall picture. We need to know how that situation arose and how it prevailed in the Housing Executive over such a number of years. I will want to know how that happened. We need to get to the bottom of it and see where responsibility lies. I will pursue that to the very utmost of my ability.

Mr Deputy Speaker: I remind Members that the Chair of the Committee gets some latitude for his question. Quite a lot of Members have indicated that they wish to ask a question, and I ask them to be concise.

Ms P Bradley: I thank the Minister for his statement, and I welcome that accountability measures have been put in place to maximise the provision of quality services. Is he now satisfied that the adjacent contractors who took over the Red Sky contracts did not have the same issues as Red Sky?

Mr McCausland: I thank the Member for her question, which is an important one. When I came into the Department, one of the first matters that I had to deal with was the ongoing issue around the Red Sky contracts. At that time, the action of the Housing Executive was to take contracts away from Red Sky, where there clearly were issues and problems, and shift them to other contractors. At the time, I asked the Housing Executive whether it could assure me that we were not taking work away from a company with problems and giving it over to another company with the same problems. The evidence that I now have from the various reports that I have referred to, including the draft report from ASM, indicates that there are significant issues and that those issues have been identified across all the contractors examined and a wide range of Housing Executive offices. These issues relate to payments for substandard work, work not carried out and poor quality of workmanship. However, these are contractual issues and due process must be followed. The Housing Executive has to be allowed the opportunity to respond and, indeed, to take up any relevant matters with their contractors through the normal process.

I assure you that I will return to the Assembly when that process has been completed. My focus has been on tackling contract management failings wherever they lie. If you are looking at the broad scheme of things: yes, there were issues in Red Sky. However, there were also issues with the other contractors. If you are looking at the scale of the issues, there is not much difference.

12.45 pm

Mr Copeland: I, too, welcome the statement, which must have been difficult for the Minister to bring to us this morning. Many years ago, I served my time, not in the sense usually associated with this place, but as a maintenance joiner. It is a difficult job to quantify, and it was within my own family. Is the Minister content that the way in which the contracts were written in the first place priced the jobs properly so that they could be done or was there a suggestion that the companies had priced them so tightly that they basically could not make enough money and they went for the extras? Could I also —

Mr Deputy Speaker: I think that the Member has asked his question.

Mr Copeland: — ask whether he has any evidence of fraud on one side or the other?

Mr McCausland: With regard to the Member's first point about contracts, those start on 1 August. Those new contracts are different to the previous contracts. More work has to be done to look at how those previous contracts were originally written, managed and monitored.

With regard to the Member's second point, if somebody claims that they installed 12 doors in a place but installed only eight or, as in an earlier example, paved a garden that did not exist, something rather strange is going on to say the least. The Member, I think, is nodding and, in fact, using the word "fraud" himself.

Mr Durkan: I thank the Minister for his statement. It has to be noted that the Northern Ireland Housing Executive has transformed housing here in Northern Ireland for the better over 40 years. However, shoddy workmanship and poor performance is unacceptable to tenants and taxpayers. The examples given in the statement, to use the Minister's own words, are not much different in nature or scale to the failures of Red Sky. Given that, can the Minister explain why he attempted to derail the termination of Red Sky contracts this time last year?

Mr McCausland: I think, perhaps, Mr Durkan failed to understand what I said earlier. Would Mr Durkan advocate, or does he think that it is a good idea, to take work away from a contractor who is performing inappropriately and give it to another person who is doing virtually the same thing? That is the question that he needs to answer.

Mr Easton: I thank the Minister for his statement. Minister, were you surprised by the resignation of the former chairman of the Northern Ireland Housing Executive on the day that you received the ASM Howarth forensic audit report?

Mr McCausland: The resignation of the chair was entirely a matter for him to decide. However, I was somewhat surprised at the timing, as I met the chair and put forward my concerns to him last Tuesday, many of which he should already have been aware. The issues that have given me cause for concern have been present in the organisation for quite a number of years. They have been systemic and endemic over the past eight years. Clearly, there are significant questions to be asked around the role of the board and the chair, who has led the board since 2004, in seeking a resolution to those ongoing and prevalent significant issues. In the near future, the further reports that I have referred to will raise even more questions, which must be answered.

Mr Brady: Go raibh maith agat, a LeasCheann Comhairle. I thank the Minister for his statement. Sometimes, Minister, the perception is that these problems occur in the large urban areas and in the larger Housing Executive offices. Do you consider that these problems are endemic throughout the Housing Executive, particularly in the smaller towns and rural areas that the Housing Executive deals with?

Mr McCausland: I have not had the opportunity to go through the several thousand pages, because we got the report only the other day. However, the information that I have been given from an initial study of the report is that it occurs across all the areas and all the contractors who were inspected so far.

Ms Brown: I thank the Minister for his statement. Given that you stated that you have been considering the review, and given everything that we have heard today, does that not place even more emphasis on implementing the long-awaited, fundamental review of the Housing Executive?

Mr McCausland: I thank the Member for her question. The review of the Housing Executive was initiated under my predecessor. The PricewaterhouseCoopers report was brought forward. We have looked at that and done some further work. I hope to bring

forward recommendations as soon as possible. However, that does emphasise the importance of moving forward with the review of the Housing Executive.

Mr Ross: The Minister said that he will now be copying the draft report to the Housing Executive for comment and that it will be responding to him by mid-August. When does he anticipate that the full, finalised report will be published? Is he confident that the public will have confidence that there will be value for money in those sorts of contracts in the future?

Mr McCausland: I have only just received the report in the past few days. It is extremely detailed, and my officials and I will need some time to consider all its implications. There is an issue around aspects of the report that are classified as commercial in confidence. However, I am committed to releasing as much information as possible in due course within those confines. We need to have openness, honesty and transparency about all this. We are dealing with one of the largest public sector bodies in Northern Ireland. We are dealing with hundreds of millions of pounds a year. It is important that the general public and taxpayers — as well as tenants — have confidence that they are all getting value for money.

Mr Campbell: Towards the end of his statement, the Minister referred to the culture and practice in the Housing Executive that allowed these things to happen. There is an elephant in the room, Mr Deputy Speaker, and somebody needs to identify the elephant. The Minister has just got the document. If he cannot respond to my question today, I will be content if he responds after the summer. What was the distinction between the Housing Executive's treatment of the Red Sky contract and the other contracts? What was the distinction? What was the underlying emphasis that made that distinction by the Housing Executive possible?

Mr McCausland: On the issues involved, there is very little difference between Red Sky and other contractors. The problems were across the board. Different areas, different contractors, but the same issues: overcharging and poor workmanship. At this point, I cannot answer the question as to why one particular contractor was selected for attention at that time and others were ignored, even though it was pretty obvious, from even the most cursory inspection, that this was a wider issue. I cannot answer that question at the moment. In due course, we need to get to the bottom of that sort of issue.

Mr Givan: I thank the Minister for his statement. In looking at the culture and practice in the Housing Executive, will the Minister, when he has read the document, be able to assure the House that there are no discriminatory practices in the Housing Executive, whose workforce is under-representative of the Protestant community? In my constituency, the Housing Executive built houses in Twinbrook and Poleglass, while the Protestant community was neglected. Minister, when you have had time to read the report in full, we will need an assurance that no discrimination is taking place in the Housing Executive now.

Mr McCausland: I certainly will want to ensure, as I think we all would, that there are no differences drawn and no discrimination, and that everything is done on a fair, honourable and equitable basis. I welcome the opportunity to put that on record. It is absolutely essential that we move forward in Northern Ireland, not just with this but with every issue, in a way that is fair and equitable. That should be the desire and commitment of everyone, and I am sure that any efforts that are undertaken to ensure that that happens will be welcome.

Mr I McCrea: I thank the Minister for his statement. Like others, I think that there are some shocking elements in it, and, no doubt, there will be more to come. Does the Minister feel that the Housing Executive is capable of managing the culture change in the organisation that he is referring to?

Mr McCausland: The whole issue of how we move forward is important. I believe that the organisation has failed to respond to known shortfalls in contract management either in a manner that recognises the importance and significance of these issues or in a manner that demonstrates an unequivocal determination to address these matters. The board has taken some actions to deal with the issues, but I do not believe that, to date, those address the root cause of the matter. I still have major concerns about the culture within the organisation and the level of aspiration in the Housing Executive to deliver and to provide me with an assurance that there is the drive, determination and capability within the organisation to effect the change that is required. I need answers to these issues, and that is what I will be focusing on.

As we move forward, that places tremendous responsibility on the board and on the senior management team. I met the former chairman earlier in the week, and I put forward my concerns to him. Many of those concerns should not have been new to him or to the board members because they have been causing me concern for some time. As we move forward, there are significant questions to be asked about the role of the board — including the chair, who was, in fact, in post from 2004 — in seeking a resolution to these significant issues. As we move forward and other reports are produced, those are questions that are going to be asked over the next number of months. I am sure that the questions that I have raised today will be asked again by others, and they are questions that will have to be answered.

Mr Allister: I carry no torch for the Housing Executive. I have seen enough shoddy work and had other experiences to cause me to share the anxiety of many. However, I want to ask the Minister about the process that he has followed. He has arrived at the point of a pre-emptive strike, whereby he is introducing a form of direct rule of the Housing Executive by his Department on the basis of a draft report that he has just told us he has not fully read and that the Housing Executive has never seen, if I understand him correctly. Therefore, it has had no opportunity to comment on it or to correct, if that were appropriate. Does he think that that process is sufficiently natural justice compliant to arrive at the point that he has arrived at?

Mr McCausland: I am absolutely confident that the way in which we have handled the issue has been the right approach. It has been a measured response, and it has been the correct response. The issues that are identified in the ASM report are not new. They are issues that have already been identified in a forthcoming report from the Audit Office and in the Housing Executive's internal reviews. Its own inspection unit identified those issues, but, as I said earlier, the reports sat on desks, perhaps from November last year, for six or seven months. It is only now that questions are being asked that these things are being extracted. In fact, they were only extracted when one of our departmental officials was put in the Housing Executive to do some work. It was only then that these things emerged. Therefore, there is the evidence of the internal inspection unit in the Housing Executive, and there is also evidence from the work being undertaken by the Audit Office and from this work. There is a pattern here.

It is not a single, pre-emptive issue. A whole series of bodies of evidence have emerged. That is why it was important that I came to the House at the earliest opportunity, given the importance and scale of the issue and that, ultimately and as the Member stated, the Housing Executive is a matter of real concern for every Member. On that basis, it was essential that I came here. I will return to the matter at the earliest opportunity in the autumn. Indeed, as I said, others will also return to it.

1.00 pm

Mr Lyttle: It is, indeed, of great concern that we are failing to provide some of the most vulnerable people in our society with the fundamental right of good shelter. This is a concerning statement, and it will take the Assembly some time to digest the reports. Will the Minister publish all the reports in conjunction with the statement? Also, why was the work of Red Sky staff not part of the wider review of Housing Executive contracted maintenance work?

Mr McCausland: As I said, the report fills three large lever-arch files and has several thousands of pages. Some of the material is in commercial confidence, but something can certainly be made available in due course. I want to be as open and transparent about this as possible. I think that that is crucial. So, we will look at that over the next while to see what can be done.

A year ago, the Housing Executive had a review of Red Sky. We then simply repeated that process with the other contractors. So, when you put all this together, you get the overall picture. I cannot answer your question about why the work did not initially cover the other contractors, in addition to Red Sky, particularly when contracts were taken from Red Sky and given to the others. That question needs to be put to others. When I came into the Department, I was determined to make sure at the earliest opportunity that the same questions were asked so that everybody and every contractor was treated fairly and equitably. I do not discriminate; I want this done fairly.

Mr F McCann: I thank the Minister for his statement. I am a bit concerned that, in the midst of dealing with what is obviously a very important matter, the whole issue has been

sectarianised. I was one of the people who complained about Red Sky after I stood in homes that had been badly repaired. Many hundreds of other people in west Belfast did the same. Can the Minister guarantee us that there will be no political or sectarian approach to the outcome of this?

Mr McCausland: I thank the Member for his question. I welcome the opportunity to put this on the record. The same issues that apply in one area apply in another, and the same issues that arose with one contractor, which, in this case, is Red Sky, have arisen with others. That is my point. I am not making any distinctions or qualifications. We are being open and frank about this. It is a widespread problem that impacts on people, whether they live in a unionist or a nationalist area. No matter what their background is, they deserve a good-quality service. The report has uncovered that the quality of workmanship is unsatisfactory in many areas.

It is quite clear from the review that there were anomalies in about half the jobs. The word “anomalies” covers substandard work, overcharging and a range of other things. Many of the jobs were substandard, and that is just not good enough. I am sure that the Member agrees that that is simply unacceptable.

The scale of this issue is very large. The figures for response maintenance, planned maintenance and grounds maintenance are £50 million a year, £90 million a year and £20 million a year respectively, and £170 million is the round figure for the total contracts budget. I touched on the fact that we were looking here at response maintenance. There are now some suggestions of issues with planned maintenance as well, which costs an even larger amount of money. In fact, there is some evidence of that. The Housing Executive has a major role in the management of contracts. It is core to the business and must be done properly.

Mr McGlone: Go raibh maith agat, a LeasCheann Comhairle. I also deeply resent the air of sectarianism that was introduced, and Mr Givan has disappeared from the Chamber. Those houses at Twinbrook and Poleglass were built on the basis of need in the face of flagrant discrimination over years; that has to be placed on the record. Wherever houses are needed, be it Twinbrook and Poleglass or north Belfast, that is where they should be built on the basis of need.

I return to the original point teased out by Mr Allister in regard to the report itself. It is established good practice that reports into important matters, such as this important and sensitive issue, are shared, for the purposes of factual accuracy, with those people or bodies into which the reports have been commissioned, especially if the performance of those people or bodies is being called into question. Will the Minister confirm that he shared the ASM Horwath report with the Housing Executive to ensure fair progress and natural justice and to check factual accuracy? If he did not do so, does he consider this to be a fair and proper way to progress?

Mr McCausland: The report arrived in its final form on my desk in the Department on Friday. The Housing Executive will be given a number of weeks — to mid-August — to

respond to it. The contractors will also get an opportunity to raise issues. However, the scale of the anomalies is such that half the jobs were affected. You might be able to explain away one or two anomalies here and one or two there. You will not be able to explain away anomalies in half the jobs. We now have a pattern of internal inspections in the Housing Executive — I brought this to the attention of the House for the first time today — which were carried out by the Housing Executive's own people and which identified problems. However, those reports simply got buried and bogged down in the bureaucracy of the organisation and sat there. People argued about whether it was 29, 30 or 31 on a particular page, rather than saying, "There is a problem here; let us deal with it."

The internal reports, which should have been brought to the attention of the board at the earliest opportunity, are part of the emerging body of evidence. So we have the Audit Office report that will emerge in the autumn, we have the Housing Executive accounts that will come from the auditor later this week with comments on those matters, and we have this report. New contracts will be in place on 1 August, so it is important that we get the air cleared and that people are aware of the background to the issue. All this material needs to be out as soon as possible, and I would have been very much criticised by Members of the Assembly had I not brought forward a statement today to get the information out there as soon as possible. It is important that Members are given their proper recognition and place and kept fully informed.

Mr Agnew: I thank the Minister for bringing the matter to the House. He mentioned that claims were made for work done that was never carried out. What efforts have been made to identify the total number of such cases? Is there some sense of how much it has cost the public purse? What will be done to recover money from contractors who claimed for work that they did not do? Will compensating the Housing Executive for work not done be a condition for those contractors being able to apply for future work?

Mr McCausland: New contracts have already been awarded that will start at the beginning of August. With regard to overcharging and other anomalies, the ASM Horwath people have gone through sample contracts for each contractor, which can then be scaled up to get a fuller picture. Although they have been working intensively since the later part of last year, they have been unable to go through every single docket of every contractor for every job throughout Northern Ireland over the past eight or nine years. It would not be possible to do that. What they have now is a sense of the scale of it. However, where it has been identified that claims were made that were fraudulent, unfounded, inappropriate and improper, yes: the Housing Executive should be chasing after people. We are talking about public money and people should not be getting away with wrongdoing

NIHE update Sept 2014

3. INVESTIGATIONS INTO OTHER NIHE CONTRACTORS UNDERTAKEN BY NIHE INTERNAL AUDIT AND THE REPAIRS INSPECTION UNIT

In October 2011, the DSD Minister requested that a forensic review should be carried out on a number of response maintenance contracts. This work was carried out by ASM Chartered Accountants, who identified a potential £64.5k overpayment. The Repairs Inspection Unit (RIU) was asked to quality assure the inspection findings which resulted in a significantly lesser figure being identified. RIU observations agreed in general with the District's comments resulting in a revised figure of £30,834.00 should be recovered.

The Director of Housing and Regeneration instructed RIU in December 2012 to conduct further inspections following the ASM report. RIU's conclusions to these investigation proved that the contractors quality of work and overpayments was in general of reasonable standard taking account of the RIU benchmarks.

As a result of concerns from Central Maintenance Unit, RIU conducted a preliminary investigation which identified potential overpayments to the Shankill District contract, Leeway Maintain Ltd. While the investigation was progressing a whistle-blower made a number of allegations relating to Leeway Maintain Ltd and the District Management.

On completion of the investigation into these allegations, RIU reported that a potential £243k may have been overpaid.

A number of other investigations are ongoing, so NIHE is unable to comment on the detail at this time.

During the period, 2011/2012 Internal Audit carried out a number of investigations linked to issues relating to Planned Maintenance contracts. This was covered within strand two of the SDC inquiry.



Northern Ireland
Assembly

Appendix 11

BBC NI Correspondence and Programme Transcripts

Letter to BBC – Request for Documentation Phase 3 7.5.14



Committee for Social Development

Room 284
Parliament Buildings
BELFAST
BT4 3XX

Email: kevin.pelan@niassembly.gov.uk
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Our Ref: CSD/022/2013/SK

BBC Litigation Department
BBC
Second Floor
Broadcast Centre
201 Wood Lane
London W12 7TP

7 May 2014

Dear BBC Litigation Department,

Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions

I am writing on behalf of the Committee for Social Development in relation to its Inquiry into allegations regarding NIHE contracts.

At a meeting on 4 July 2013, the Committee for Social Development agreed to hold an Inquiry into allegations regarding NIHE contracts and, on 3 October, agreed the following Terms of Reference;

- i. Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.
- ii. Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing.
- iii. The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.

And;

Should the Committee identify any evidence of corruption in relation to the operation of NIHE maintenance contracts and /or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.

The Committee is of the opinion that documents compiled by the Spotlight team in its research for the programme, aired on 3 July 2013, may be of importance to the Inquiry.

The Committee exhausted all other avenues for obtaining relevant documents prior to issuing this request for material from the BBC, and has asked me to highlight the information it has received to date in relation to strand (i) of the above Terms of Reference. A list of the information currently held by the Committee is contained in appendix A.

I would request that you make available to the Committee any documents held by you which relate to strand (i) of the above Terms of Reference and are not listed in Appendix A.

I very much appreciate your assistance in this matter. Please contact me if you would like to discuss.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan

Clerk, Committee for Social Development

(appendix A available on request from Committee Office - address above)

Letter from BBC 10.9.14



Legal Division

Our ref : LG/Legal/BC2A3
Your ref : CSD/022/2013

Direct Line: 020 8008 1944
Fax: 020 8008 2210

Dr Kevin Pelan
Clerk, Committee for Social
Development
Northern Ireland Assembly
Room 412
Parliament Buildings
Belfast BT4 3XX

10 September 2014

BY EMAIL: kevin.pelan@niassembly.gov.uk

Dear Dr Pelan

Inquiry by Committee for Social Development into allegations of impropriety surrounding NIHE contracts

We write further to your letter of 7 May 2014 and your request for BBC material to assist with Phase I of the Committee for Social Development's Inquiry into allegations regarding NIHE contracts.

We have now partially completed our review of production material gathered by Spotlight during its investigation. We set out in Appendix C the documents that we are able to provide. In line with the basis on which the BBC provided material during Phase I of the Inquiry, we ask the Committee to note that in the absence of a section 44 notice, material in relation to Phase ii is also provided to the Committee by the BBC on a voluntary basis.

In accordance with the approach we adopted in respect of the Committee's Request for materials in relation to Phase ii of the Inquiry, we have excluded any material provided by a confidential source or any material which we consider may tend to lead to the identification of a confidential source. We have also excluded any wholly irrelevant material. For the avoidance of doubt, we have also excluded any untransmitted footage (and accompanying transcripts) filmed during the production process.

The Committee will note from the attached Appendix C that included in the material now being provided is letters sent by the BBC during the 'right of reply' process. These letters are marked 'private and confidential' by the BBC but we are nonetheless happy to provide them (as we also did

in relation to Phase II). However, one or two of the replies that we received were also marked confidential by the sender and accordingly we have not provided these (or the corresponding letter that they were sent in response to).

As set out above, there is some material that is still to be reviewed. We anticipate being in a position to begin this exercise in the week beginning 22 September. Please rest assured that we shall keep in touch regarding our progress in this regard.

Yours faithfully,


BBC Litigation Department

APPENDIX C

FREEDOM OF INFORMATION MATERIAL	
	Letter from Johnsons solicitors to Housing Executive – 5/10/10
	Letter from Johnsons solicitors to Housing Executive – 13/10/10
	Letter from Housing Executive to Johnsons solicitors – 18/10/10
	Letter from Johnsons solicitors to Housing Executive 2/11/10
	Letter from Johnsons solicitors to Housing Executive 5/11/10
	Copy of above with email to DSD
	Letter from Housing Executive to Johnsons solicitors 15/11/10
	Letter from BDO (Red Sky administrators) to Housing Executive 4/08/11
	Letter from Minister to Robin Newton MLA re Red Sky meeting 31/05/11
	Letter from Housing Executive to Minister re Red Sky termination 05/07/11
	Letter from Housing Executive to Minister 15/07/2011
	Letter from DSD to Housing Executive 31/08/11
	Letter from Minister to Housing Executive 1/07/11
	Letter from Carson McDowell solicitors to Housing Executive 21/04/11
	Letter from Minister to Housing Executive 07/07/11
	Correspondence between Housing Executive and BDO June-August 2011
	Letter from Housing Executive to BDO 09/08/11
	Correspondence between BDO and Housing Executive 9-11/08/11
	Letter from DSD to Housing Executive 26/01/12
	Letter from Housing Executive to DSD 17/02/12
	Letter from Housing Executive to DSD 2/09/11
	Email from Housing Executive to DSD 28/03/11
	Email from BDO to Housing Executive 03/05/11
	Letter from BDO to Housing Executive 04/05/11
	Letter from Housing Executive to BDO 09/05/11
	Letter from Housing Executive to BDO 10/05/11
	Email from Housing Executive to BDO 11/05/11
	Letter from Housing Executive to Carson McDowell solicitors 16/05/11
	Email invitation to Red Sky meeting and subsequent emails 20/06/11
	Emails re Red Sky meeting 20/06/11
	Email from BDO to Housing Executive 28/06/11
	Letter from Robin Newton MLA to Housing Executive 18/07/11
	Letter from Housing Executive to Robin Newton MLA 25/07/11
	Email from BDO to Housing Executive 07/07/11
	Email from Housing Executive to DSD 07/07/11
	Email from Housing Executive to BDO 28/04/11
	Letter from Housing Executive to Carson McDowell solicitors 28/04/11
	Letter from Housing Executive to DSD 13/04/11q
	Letter from Housing Executive to DSD 10/03/2009
	Letter from Housing Executive to DSD 24/06/09
	Letter from Minister to Housing Executive 07/10/09
	Letter from Housing Executive to Minister 23/10/09
	Letter from Housing Executive to DSD 1 November 2010
	Emails between BDO and Housing Executive 4-5/07/11
	Emails from Housing Executive to BDO 29-30/06/11
	Emails between Housing Executive, DSD and BDO 1-6/07/11
	NIHE RIU Interim Inspection report on Red Sky 02/06/09
	Housing Executive internal memorandum 02/06/09

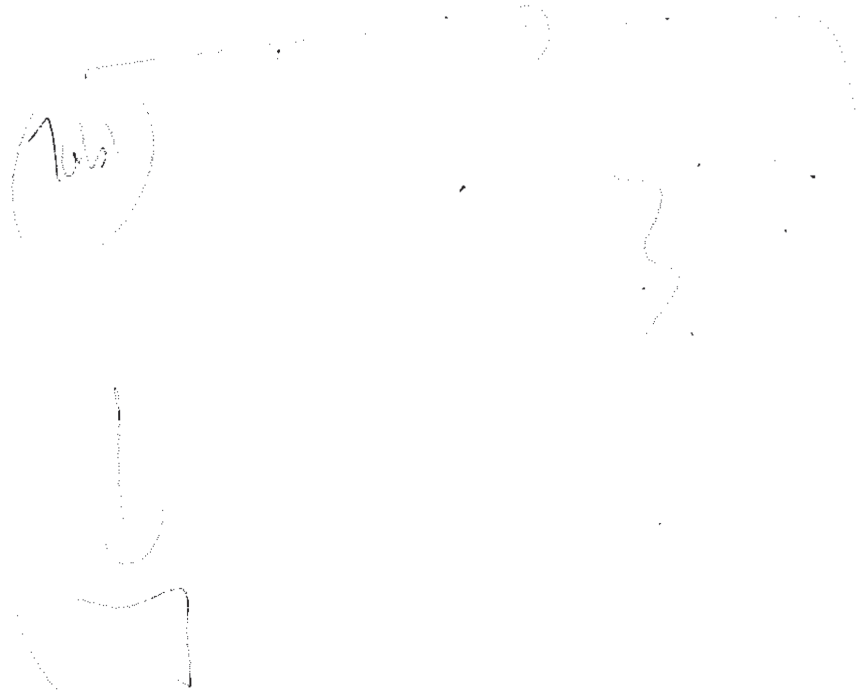
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NIHE RIU Interim Inspection report on Red Sky 09/06/09
Housing Executive emails re changes to report 10/06/09
Housing Executive Internal memorandum 11/06/09
Housing Executive Internal Audit Red Sky timeline
Housing Executive email 16/09/09
Minutes of meeting between Housing Executive and DUP representatives 28/04/11
PUBLICATIONS
Red Sky boss says contract move risks 450 jobs – Cardiff News
DUP 'closeness' to contracts row firm in spotlight – Belfast Telegraph
Companies in the UK – Red Sky corporate info
Ireland Investors line up \$395 million kitty – Rediff India Abroad
Attwood expects Red Sky report in 3 weeks – BBC News 07/10/10
Inquiry into Red Sky's NI Housing Executive work ends – BBC News 14/01/11
NI Housing Executive 'cancels' Red Sky contracts – BBC News 14/04/11
Red Sky: the background – BBC News 19/04/11
Red Sky construction firm in administration – BBC News 19/04/11
Report by the Comptroller and Auditor General on the 2011-12 Accounts and press release
Extract from ASM Horwath report 'ASM2'
Red Sky in the morning... - Sluggie O'Toole website 05/07/11
NIHE Management of Response Maintenance Contracts – NIAO 04/09/12
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Letter to Stephen Brimstone 13/06/13
Letter from Stephen Brimstone's solicitor 25/06/13
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To Nelson McCausland 16/11/12
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	Reply from DSD June 2013
	To Colm McCaughley 07/06/13
	To Colm McCaughley 21/06/13
	Response from Colm McCaughley 03/07/13
	Email from DSD communications office 27/11/12
	EXTRACTS FROM PAC REPORT APPENDICES
	Letter from PSNI to Housing Executive 28/09/11
	Letter from PSNI to Housing Executive 20/12/11
	Email from DSD to Housing Executive 05/07/11
	Letter from Robin Newton MLA to Minister 17/05/11
	MATERIAL FROM OTHER SOURCES
	Housing Executive memo re daywork schedule of rates 17/04/07
	Minutes of Red Sky meeting with Minister 27/06/11



Additional documents provided by BBC October 2014

LETTERS FROM BBC SPOTLIGHT	
21/06/13	BBC to Will Haire
19/11/12	BBC to Jim Wilkinson
14/06/13	BBC to Laurence Mercer
06/06/13	BBC to Frank Cushnahan
19/11/12	BBC to Frank Cushnahan
07/06/13	BBC to PSNI Organised Crime Branch
19/11/13	BBC to Glenn Roberts (Deloitte)
23/11/12	BBC to Piperhill Construction Ltd
19/11/12	BBC to Sharon O'Connor – Derry City Council
19/11/12	BBC to Gareth Kings – Constructionline
19/11/12	BBC to Jillian Ferris – Carrillion
19/11/12	BBC to Peter McNaney – Belfast City Council
LETTERS TO BBC SPOTLIGHT	
06/12/12	Derry City council to BBC
21/11/12	Belfast City council to BBC
07/12/12	Belfast City Council to BBC
23/11/12	Constructionline to BBC
05/12/12	Deloitte to BBC
06/12/12	Orr Solicitors to BBC on behalf of Cllr Jennifer Palmer
15/05/13	Cllr Jennifer Palmer to BBC
EMAILS	
6/11/12	Emails between BBC & NIHE FOI request seeking correspondence between NIHE & DSD on 4 th & 5 th July 2011
	Emails between BBC & NIHE Press office Interview request
8/11/12	Emails between BBC & DSD FOI request seeking correspondence between NIHE & DSD on 4 th & 5 th July 2011 Including acknowledgement
8/11/12	Emails between BBC & DSD DSD requesting clarification on FOI request
12/11/12	Emails between BBC & NIHE FOI request seeking all correspondence between Stewart Cuddy & Michael Sands on 4 th & 5 th July 2011
29/11/12	Emails between BBC & NIHE Response to FOI request :from 6/11/12 & 8/11/12
3/12/12	Emails between BBC & DSD Department confirming still considering FOI request from 9/11/12
5/12/12	Emails between BBC & NIHE FOI request for Red Sky contract
11/04/13	Emails between BBC & DSD Response to FOI request for emails on 4 th & 5 th July
15/04/13	Emails between BBC & DSD Clarifying if any documents were withheld from FOI request
26/04/12	Emails between BBC & DSD BBC FOI request to DSD for copy of the ASM Horwarth report Incl acknowledgement from DSD

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Letter to BBC – 15.09.14



Northern Ireland
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Our Ref: CSD/022/2013/SK

BBC Litigation Department
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London W12 7TP

15 September 2014

Dear BBC Litigation Department,

Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions

At its meeting on 8 May 2014 the Committee for Social Development considered the letter of 2 May 2014 from the BBC Litigation Department, advising that BBC personnel relevant to the Committee's Inquiry will not voluntarily attend Committee meetings to give the evidence requested by the Committee. The Committee subsequently discussed this issue and agreed not to pursue the matter further.

At its meeting on 4 September 2014 the Committee discussed the schedule of evidence sessions for Phase Three of its Inquiry and noted again that it would be pertinent for the relevant BBC personnel to appear before the Committee to give evidence. The Committee therefore agreed to request oral evidence from the BBC in relation to Phase Three of its Inquiry at the Committee meeting to be held at **10.00am on Thursday 16 October 2014**, in Room 29, Parliament Buildings.

Phase Three of the Committee Inquiry relates to:

Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.

The Committee acknowledges that the BBC is currently working to provide the Committee with further information in respect of Phase 3 of the Committee Inquiry. As you will be aware

the Committee has already compiled a significant body of written information from the Department and other third parties named in the Spotlight programme.

The Committee is now at a point where it has exhausted all avenues for obtaining written evidence and will receive oral evidence in order to help inform the Committee and assist in its duty to carry out the Inquiry.

The Committee has requested that the producer of the Spotlight Programme, aired on 3 July 2013, and the relevant senior BBC staff involved in its production should attend the Committee on Thursday 16 October 2014.

The Committee notes your previous concern that any “request which is too widely drawn, and which is lacking in specificity, has a chilling effect on the BBC’s ability to exercise its convention rights of freedom of expression.”

The Committee assures the BBC that the appearance before the Committee will be solely focused on Phase Three of the Inquiry.

The Committee recognises the BBC’s rights in respect of Article 10 of the European Convention on Human Rights, and would emphasise that it is not asking the BBC to reveal its journalistic sources or requesting material which would identify its journalistic sources.

The Committee would like to clarify that this request to appear before the Committee does not constitute a notice under section 44 (7) of the 1989 Act.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan

Clerk, Committee for Social Development

Letter from BBC – 22.10.14

British Broadcasting Corporation Second Floor, Broadcast Centre, 201 Wood Lane, London W12 7TP



Legal Division

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Dr Kevin Pelan
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22 October 2014

BY EMAIL: kevin.pelan@niassembly.gov.uk

Dear Dr Pelan

Inquiry by Committee for Social Development into allegations of impropriety surrounding NIHE contracts

We write further to your letter of 15 September 2014 requesting that BBC personnel attend Phase Three of the Inquiry to give oral evidence.

On the 2 May we wrote to the Committee and set out our reasons for declining to voluntarily attend the Committee in relation to Phase One. We set out in detail why we felt that the attendance of the journalists would not advance Phase One of the Inquiry given that the programme had merely neutrally reported allegations and statements made by others. We also set out our understanding of the legal position and, in particular, the statutory framework governing the Committee's powers of inquiry. We received no substantive response to that letter. We are writing now to advise you that the BBC's position remains as set out in our 2nd May letter and that, for the same reasons, we do not consider it appropriate for BBC journalists to voluntarily attend to give evidence on this occasion.

1. THE STATUTORY FRAMEWORK

We do not propose to go back over our understanding of the legal position other than to repeat that we regard the Committee's request for BBC journalists to attend to give oral evidence as an unjustified interference with its rights of journalistic freedom of expression under Article 10 ECHR and the common law. We note that no attempt is made in the request to narrow, with reference to the programme, what the journalists are to be asked about but simply that the Committee noted that it would be "pertinent" for the "relevant BBC personnel to appear before the Committee to give evidence".

We would also repeat that we believe the Committee's scrutiny role and powers of Inquiry to be limited to the Department with which it is associated and that the Committee has no power to inquire into editorial judgements made by programme makers when deciding how to gather and convey information and ideas on matters of public importance. In this regard we would once again respectfully draw the Committee's attention to paragraph 9 of Strand One of the Belfast Agreement, s.44(2) and s.44(6) of the Northern Ireland Act 1998 and Standing Order 48(2) and our letter of 2 May.

2. EVIDENCE BEFORE THE COMMITTEE

In relation to whether or not Spotlight personnel could, in any event, add anything of any evidential value over and above that which was reported in the programme, we would make the following observations:

- Former NIHE Chairman Brian Rowntree is interviewed in the programme about his experiences during his tenure as Chair of the NIHE. The BBC merely reported what he had said. It is open to the Committee to call Mr Rowntree to ask him what he told BBC journalists;
- Jenny Palmer was interviewed in the programme about her experiences in respect of the award and modification of NIHE housing contracts. The BBC merely reported what she had said. Mrs Palmer has already given evidence to the Committee about what she told the BBC;
- Former Managing Director of Red Sky, Norman Hayes, who is referred to in the programme, can be called to the Committee to give evidence;
- Colm McCaughley (former Director in NIHE), who is referred to in the programme, has already given oral evidence to the committee;
- Paddy McIntyre (former NIHE Chief Executive), who is referred to in the programme, has already given oral evidence to the committee.
- The Committee already have the minute of the meeting dated April 28th 2011 between the NIHE and Peter Robinson referred to in the programme;
- The Committee already have the Public Accounts Committee Report referred to in the programme;
- We have already provided a copy of the NIHE interim inspection report referred to in the programme;
- Former Red Sky executive Peter Cooke was interviewed in the programme. It is open to the Committee to call him to give evidence about what he told BBC journalists;
- Mr McCausland and Mr Brimstone can be called to the Committee to give oral evidence;
- The reference in the programme to the 'official report' which described as 'disturbing' the fact that not all of the detail about Red Sky's performance was passed on to board of the NIHE is the CIPFA report which the Committee already have. Both Mr McIntyre and Mr McCaughley have already given evidence to the Committee;
- The Committee have a copy of the letter from Pauline Gazzard, former Red Sky manager to Colm McCaughley. Both Mr McCaughley and Mr McIntyre have referred to this letter in their oral evidence to the committee;
- The ASM Horwath report (into the performance of Red Sky) referred to in the programme has already been disclosed;
- The 'day works' memo issued by Colm McCaughley and referred to in the programme has already been provided by the BBC. In addition Mr McCaughley has already given evidence to the Committee about this memo;

- The minutes of the meeting referred to in the programme dated June 27th 2011 have already been provided;
- The Committee already have the letter dated 1 July written by Mr McCausland to Mr Rowntree and referred to in the programme;
- The Committee already have a copy of the right of reply letter written by Mr McCausland to the BBC;
- We have already provided a partial & redacted copy of the ASM Howarth report into the adjacent contractors (commissioned by DSD) which was published on the Department's website. The Department should be able to provide the Committee with the full unredacted version;
- It is open to the Committee to call Red Sky's administrators BDO to give oral evidence to the Inquiry.

We trust you will appreciate that, on the basis of what is set out above, the BBC's position is that calling the programme makers to merely repeat what they were told (in circumstances where the original maker of the various statements reported in the programme have themselves already given evidence or can do so) is unlikely to advance this Phase of the Inquiry in any meaningful way.

Finally, thank you for confirming that the request for BBC staff to attend to give evidence does not constitute a notice under section 44(7). For all the reasons set out under 1 and 2 above and in our letter of the 2 May, we do not consider it appropriate for BBC journalists to attend to give oral evidence. Accordingly, the BBC's co-operation with this Phase of the Inquiry will be limited to the substantial documentary disclosure that we have already (voluntarily) provided.

Yours faithfully,



BBC Litigation Department

Letter to BBC – 28.11.14



Committee for Social Development

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Our Ref: CSD/022/2013/SK

BBC Litigation Department
BBC
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28 November 2014

Dear BBC Litigation Department,

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013,
of impropriety or irregularity relating to NIHE managed contracts and consideration of any
resulting actions**

Thank you for your letter of 22 October 2014, reaffirming the reasons why you do not consider it appropriate for BBC journalists to voluntarily attend Committee to give evidence to the above mentioned Inquiry.

I wish to advise you that this issue remains under consideration by the Committee and that I will correspond with you again in due course.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan

Clerk, Committee for Social Development

Letter to BBC – 23.01.15



Committee for Social Development

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Our Ref: CSD/022/2013/AM

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23 January 2015

Dear BBC Litigation Department,

Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions

At its meeting on 22 January 2015, the Committee reviewed the evidence it has gathered to date relating to Phase 3 of its Inquiry. Members agreed that I should write to you seeking assistance in order to establish the facts around a number of issues. These include:

- conflicting evidence received by the Committee regarding the nature and content of the phone call from Mr Brimstone to Councillor Palmer on 1 July 2011;
- the motivation behind the Minister's actions in seeking to have the termination date of the Red Sky contract extended;
- conflicting evidence regarding the genesis of the email that was sent by Michael Sands to Brian Rowntree on 5th July 2011 at 7.40am; and
- evidence regarding the series of draft apologies from Mr Brimstone to Cllr Palmer.

The Committee is disappointed that the BBC has so far refused to attend to provide oral evidence to this inquiry despite the seriousness of the allegations made in the Spotlight Programme against the former Minister and his Special Adviser. However, given that the Committee has published all the oral evidence it has taken from witnesses on its website, the Committee believes the programme makers may now be in a position to present further evidence on the above issues, and possibly related matters, that confirms or contradicts evidence the Committee has heard to date.

To that end I would ask the programme makers to attend voluntarily to give evidence to the Committee on these matters.

I would be grateful if you could provide the Committee with a response within 10 working days of receipt of this letter.

Yours sincerely

Kevin Pelan

Dr Kevin Pelan

Clerk, Committee for Social Development

Letter from BBC – 12.02.15

British Broadcasting Corporation Second Floor, Broadcast Centre, 201 Wood Lane, London W12 7TP



Legal Division

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Your ref : CSD/022/2013

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12 February 2015

BY EMAIL: kevin.pelan@niassembly.gov.uk

Dear Dr Phelan

Inquiry by Committee for Social Development into allegations of impropriety surrounding NIHE contracts

We write further to your letter of the 23 January 2015.

The BBC's position in relation to the Committee's request for BBC personnel to attend to give oral evidence was set out at length in our letter of 7 May 2014. The position was re-iterated in our letter of the 22 October 2014. To date no substantive response to those letters has been received. We have now had a renewed request for BBC journalists to attend before the Committee, but have still not had the benefit of the Committee's response to our analysis of the legal position. In the absence of any such response, we do not feel we can usefully add anything to make our position any clearer. Accordingly, once again we will be declining the invitation to voluntarily attend to give evidence.

You have set out 4 issues where you say assistance is required to try and establish the facts. The Members have agreed that the BBC should be asked about these matters to see if we can assist with that exercise. Notwithstanding our principal objection to the request for the BBC to attend, we have nonetheless considered these issues and, in particular, whether the BBC's attendance is likely to be of any assistance. For the reasons set out below, we do not believe that our attendance would be of assistance.

- **Conflicting evidence received by the Committee regarding the nature and content of the phone call from Mr Brimstone to Councillor Palmer on 1 July 2011**
- The programme dealt with this matter neutrally. We reported the evidence as it was told to us. We reported what Councillor Palmer had told us about the phone call and we reported that we had asked Mr Brimstone for his response. We also showed Mr Brimstone being

confronted by Spotlight to ask for his response. We have provided the Committee with a copy of the right to reply letter sent to Mr Brimstone and the response received by his legal representatives. If we had any further information from Councillor Palmer or a response from Mr Brimstone, this would have been included in the programme. We didn't have the information then and we don't have it now. Accordingly, calling the journalists who conducted those interviews is not going to be of any assistance.

- **The motivation behind the Minister's actions in seeking to have the termination dated of the Red Sky contract extended.**
- We cannot possibly know what the motivation behind the Minister's actions was.

- **Conflicting evidence regarding the genesis of the email that was sent by Michael Sands to Brian Rowntree on 5 July 2011 at 7.40am.**
- We did not interview Michael Sands in the programme or Stephen Brimstone. The Committee, on the other hand, have had the benefit of having spoken to both individuals. If the Committee have been unable to establish the facts to their satisfaction having interviewed both parties, it is difficult to understand what the BBC could be expected to add; particularly in relation to the "genesis" of the email, when we have interviewed neither.

- **Evidence regarding the series of draft apologies from Mr Brimstone to Councillor Palmer**
- We understand that this took place after the programme was broadcast. Councillor Palmer has already given oral evidence to the Committee about the nature and extent of her contact with the Spotlight team after transmission. This issue was not discussed. Accordingly, we would not be able to assist with this. The Committee has already questioned Mr Brimstone about this matter.

Yours sincerely



BBC Litigation Department

BBC Spotlight Transcript - 3 July 2013

Spotlight – 03/07/13

Mandy McAuley (MMA): Tonight on Spotlight: the battle of Red Sky and the Housing Executive. We reveal detailed accusations of corruption.

Mr Hayes, it's Mandy McAuley from the BBC. Mr Hayes, did you authorise cash payments to three Housing Executive Maintenance Officers?

In a major investigation, the Housing Minister, Nelson McCausland is charged with misleading the Assembly.

Against a backdrop of sectarian suspicions and job losses, we reveal evidence indicating that First Minister Peter Robinson, Nelson McCausland and his Special Advisor have all broken the rules that govern public life.

Mr Brimstone, did Nelson McCausland tell you to ring Jenny Palmer and change her vote on the Housing Executive Board?

We see how a DUP Counsellor has been driven to near despair by the ruthlessness of members of her own party.

Jenny Palmer (JP): He said "the party comes first...you do what you're told". I didn't know who I could trust.

Ross Hussey (RH): I'm disgusted that woman was put in that position and has been brought to tears by a political party, but shame on them.

MMA: We seek to uncover the truth behind the scandal of a public body seemingly out of control, riddled with overcharging and corruption, and subject to political interference. At the heart of the battle, the clash between Nelson McCausland and the man who is, today, Chairman of the Northern Ireland Civil Service Commissioners. A conflict that threatens to destroy individual careers and the Housing Executive itself.

Brian Rowntree (BR): I want to say something now. I can't take much more. I really, really can't take much more.

MMA: Stormont last month, following a series of letters from Spotlight about the Housing Executive, a surprise announcement by the Social Development Minister, Nelson McCausland.

Nelson McCausland (NMC): The scale of what has been uncovered has been a scandal.

MMA: A massive loss of public money by the Housing Executive.

NMC: The figure is estimated to be some £18million. Let me say that again in case you think you've misheard: £18million in overpayments to four contractors.

MMA: The Minister's statement turns into an unprecedented public attack, delivered, without notice, on the man he blames: the former Chairman of the Housing Executive, Brian Rowntree.

NMC: The assurances he gave me that, during his tenure, significant progress had been achieved in dealing with the contract issues. These emphatic assurances from Mr Rowntree, both verbal and written, were useless. They were not worth the paper they were written on.

BR: I, at no stage, gave the Minister any assurances in relation to contracts. I gave the Minister assurances in relation to improvements in process.

MMA: Brian Rowntree, today the Chairman of Northern Ireland's Civil Service Commissioners, has a long record of public service. An independent member of the Policing Board. The only person publicly singled out by the Minister, he sees Nelson McCausland's statement as part of a sustained campaign to destroy his credibility because of a decision to end the contract of a discredited housing repair company from East Belfast called Red Sky.

Why were you named in the Assembly?

BR: My view is that I stood on something that people didn't like. My view is that I got close to the truth, but my view is that, because of the personal involvement I had, because of the knowledge I had of the issues involved, that it was easier to discredit me than deal with the facts and the truth surrounding the case.

MMA: But what are the facts and truths of the case? According to the DUP, Red Sky was targeted by Brian Rowntree simply because it was perceived as a mainly Protestant company.

NMC: At the time that the Red Sky contracts were terminated, it was argued by some people that Red Sky was singled out and the motivation behind this decision was questioned.

MMA: Sectarianism: the shout from Unionist benches. But Brian Rowntree maintains that Red Sky was dismissed because it was proven to have charged the Housing Executive for work that had not been done. Nelson McCausland insists Red Sky was one of many companies overcharging the Executive, but it alone was targeted and he says the revelation of the £18million loss is clear evidence that there were far worse abuses taking place under the Housing Executive's nose.

NMC: There's an old saying, somebody's either a fool or a knave – they either do something because of stupidity and incompetence, or there's something untoward behind it. Time will tell...we just, at present, do not know.

BR: I'm demanding a police inquiry into this issue. I'm demanding the Serious Fraud Office take this on board and, most importantly, I'm demanding an external, independent inquiry.

MMA: We have spent months piecing together the inside story of the Red Sky affair. We have pored over previously unseen documents – information that Stormont departments didn't want released. Many of the people we have interviewed are still too scared to speak publicly, but key figures have stepped forward for the first time. They tell how an investigation to expose wrongdoing turned into a sectarian struggle. How the Housing Executive, an independent body, became exposed to naked, political interference and how vast sums of public money were wasted.

April 2011, the start of the extraordinary battle between Brian Rowntree and the DUP, sparked by the decision to sack Red Sky. Multi-million pound repair contracts and, potentially, hundreds of jobs were at stake. Peter Robinson broke off campaigning for the Assembly elections to go and meet Brian Rowntree with other DUP politicians from East Belfast. They met here, at the Housing Executive Headquarters. We have spent months questioning the former Housing Executive Chairman about the Red Sky affair. In his first interview with us, he recalled that tense encounter with Peter Robinson.

BR: Yes, we did have a very intense and a challenging meeting. It was a very forthright and it was a very on-the-table conversation around the decision of the Board to terminate the contract of Red Sky and the ramifications that...for Red Sky as an entity and for the workers and for the local community.

MMA: According to this minute of the meeting, Peter Robinson said Red Sky was being singled out from other companies that carried out Housing Executive repairs. He was told an investigation by independent forensic accountants had found Red Sky overcharged the Housing Executive by as much as £1.5million, but he remained highly critical of the decision and the Housing Executive's approach to Red Sky.

Peter Robinson: Hello, how are you?

MMA: Peter Robinson said Red Sky's dismissal reflected a sectarian bias on the part of the Housing Executive.

Alex Kane (AK): I find it extraordinary because he's First Minister but, he is, in effect, de facto Prime Minister of Northern Ireland. You know, the buck ultimately for everything, for every department, for every Minister, it ultimately stops with him. He is the face of the Northern Ireland Executive. The face of the Northern Ireland Government and yet somehow, when he's...when he's given evidence that a company is overcharging on a massive scale, he defends the company. I can't imagine David Cameron or Alex Salmond doing this. Not once does he actually say 'you know, this shouldn't have happened. This is wrong, this is morally wrong. It's wrong financially. It's corrupt. It's whatever'. None of that. Suddenly, when faced with this evidence, he looks for the scapegoat again.

RH: In relation to the sectarian remarks, it is clutching at straws. It's attempting to justify the unjustifiable. Here we have a company who have admitted that they charged for something that did not happen. That's the important issue here. The question of sectarianism is a red herring in the Red Sky scenario. It's totally irrelevant.

MMA: In fact, the Housing Executive decision was not taken by Brian Rowntree alone. Indeed, one of the Housing Executive Board members who voted to dismiss Red Sky was a member of the DUP Jenny Palmer had, at the time, just won an award as Northern Ireland's outstanding Councillor for her work in Lisburn. With a successful background in business, she was also part of the Housing Executive's audit team that reviewed the evidence against Red Sky in depth. In an extraordinary challenge to her party's leadership, she says Red Sky's dismissal was a decision based entirely on the facts.

JP: I find it incredible that someone would say that we had removed the contract from Red Sky because of sectarianism. I...I totally refute that allegation. We were objective, we investigated, we challenged, we went through processes, the evidence was presented to us in a way that we could do no more. Red Sky were given opportunities and they didn't accept them...to put things right. The Board had no option but to remove that contract and there was absolutely not ever mentioned anything to do with religion or the religious breakdown of that contractor. Never. I never remember ever it being said to me in the board room, this is a Protestant workforce because I didn't even know that at the time.

MMA: So, what were the facts about Red Sky? Red Sky's owner, Norman Hayes, had a long history of doing repair work for the Housing Executive. It made him a fortune but he and his company had also been publicly linked to dodgy dealings involving a Housing Executive employee. Though none of that was mentioned in a relaxed interview in a rare television appearance by Norman Hayes on a magazine show.

Norman Hayes (NH): It's common sense is what I would say I would have, more than anything else...and persistence and I would say that I've been lucky.

MMA: A succession of Housing Executive officials were caught manipulating work orders and accepting gifts from Hayes' companies. Nights out in the Odyssey complex or, in one case, a trip to America. But while the workers were disciplined, there was no evidence against Hayes and his companies. A Police investigation, asked for by the Housing Executive, came to nothing and Hayes gained more and more Housing Executive work. In 2007, Red Sky got work in West Belfast for the first time. It was a crucial turning point. Almost immediately residents complained about the quality of the work. Mother of five, Sinead Flannery's kitchen ceiling collapsed four times in the space of a year after Red Sky repairs.

Sinead Flannery (SF): They had hammered a nail through the central heating pipe and the water was running along the pipe and leaking here and dripping. They had come out three times, fixed the pipe there, plastered it...they thought that's where the leak was, but all along, it was the hole over there with the nail in it and then, next thing, the ceiling's down again. The

best part of the ceiling just came down right on top of me. Really, on the head and all over my shoulders...I was covered in plaster and it was scary, being honest.

MMA: And you were pregnant?

SF: Yeah. I had only eight weeks to go.

MMA: The poor quality of Red Sky's work wasn't the only problem. In some cases, the work hadn't actually been done.

SF: I've had the people from the Housing Executive coming in to me and going 'this work was completed; this work was completed'. I'm going 'no it wasn't...go look for yourself'. They said they'd put extra cupboards above my kitchen walls. No they didn't.

MMA: And what else did they say had been completed?

SF: A new floor put in the bathroom. I says "no, sorry, there wasn't". They were sort of 'well, it's down here on paper'. I says "it may be down on paper, go in and see for yourself, I have nothing that's down there that they have done".

MMA: Another West Belfast resident says Red Sky ruined her house. She preferred to remain anonymous, but showed us photographs of the damage.

West Belfast Resident: I'd rung the Housing Executive to tell them that I thought that I had a bath leak, so they send two guys out. They came in, went straight up the stairs and came down and says 'oh, I have to go, I've broke your toilet'.

MMA: She waited several hours for them to come back and when they tried to clear the problem, it got worse.

West Belfast Resident: They came back and says to me that there was a blockage and did I know where the sewerage system was and, the next thing, human waste started flowing out of the soil stack in to the kitchen.

MMA: I mean, we're not talking a small amount...

West Belfast Resident: No.

MMA: This is like a slurry spray of...

West Belfast Resident: Yeah, and the smell. Oh, the fumes was really, really bad and it was just really, really sickening. They came walking down the stairs and just says to me 'look, sorry, we have to go...we knock off early' and they left me with this mess that they created. Red Sky created the mess and they left me with it then.

MMA: Inspectors in West Belfast refused to approve large amounts of Red Sky's work. These examples compiled by Housing Executive Maintenance Officers have never been shown publically before. An internal review by the Housing Executive found the firm was failing to meet targets and had built up a backlog of hundreds of unfinished jobs in just seven months. Red Sky said the real problem was sectarian bias from Housing Executive inspectors and local residents, spurred on by Nationalist politicians.

Red Sky would argue this was nothing to do with the quality of their work. It was because people in West Belfast did not want a Protestant firm working in this area.

SF: Well, I'll tell you that...I'm only after hearing that for the first from you. I didn't know where them guys came from, what part of the city they lived in. I made no judgement on them people whatsoever. I didn't ask questions and whatever. I just let them in to do the work. No reason to ask them anything to be honest with you.

MMA: You just wanted the work done.

SF: Yeah, that's what they're paid to do, isn't it? Doesn't matter where they come from.

MMA: So, the residents we spoke to said the problem with Red Sky was the quality of work, not their religion. But, it's the religion of the man holding the firm to account in West Belfast that is hardest to reconcile with the charge of sectarianism. An Elder in the Presbyterian Church, Gary Ballantyne, was the Senior West Belfast Manager criticising Red Sky. Gary Ballantyne and his inspectors tried to expose the problems with Red Sky. They contributed to detailed reports of Red Sky's performance. We know one crucial report was seen by two senior managers: Colm McCally and Chief Executive, Paddy McIntyre. They did not pass on all of the most serious information to Brian Rowntree and the Board of the Housing Executive – something an official report would later describe as “disturbing”. With the Housing Executive Board unaware of the criticism, Red Sky was allowed to expand. Following an extension to two contracts in 2008, Red Sky was in charge of repair work in most of Greater Belfast. In total, the contracts were worth nearly £7million annually. But in West Belfast, relations between Red Sky and Gary Ballantyne's inspectors had virtually broken down. Just before Christmas, Red Sky's Group Development Manger, Pauline Gazzard, wrote to Colm McCally, one of the managers who failed to pass on some of the most damning criticism of Red Sky's performance, saying she was looking forward to the season of goodwill, but she had a sour note.

[Not Pauline Gazzard herself, someone reading her words.]

Voice reading Pauline Gazzard (PG): “It is also considered necessary to reiterate our deep concern in relation to certain personalities who remain working in the West Belfast District Office and we trust appropriate actions will be taken to address this in the near future.”

MMA: There was no reply to her letter. But, over the coming months, Gary Ballantyne, his Maintenance Manager, and a Maintenance Officer, were all moved out of the West Belfast Office, although it has since been claimed, this was part of a normal rotation of staff.

Ross Hussey is a member of the Stormont Committee that interrogated the Housing Executive about Red Sky.

RH: They say a red sky in the morning is a shepherd's warning and I doubt...you totally overlooked this warning here, totally.

MMA: We showed him Pauline Gazzard's letter that appeared to call for Red Sky's critics to be removed.

RH: Red Sky were, in effect, pulling the strings of the Housing Executive. I think that there is more than alarming. It's scandalous. That letter undoubtedly would indicate that Red Sky basically called the shots. That letter would indicate that they said 'we want something done' and the response from the Housing Executive was to do as they asked. That's morally indefensible.

MMA: Like the reports on Red Sky's poor performance, Pauline Gazzard's letter was not shown to the Housing Executive's Board. But complaints about Red Sky spread and eventually reached the Northern Ireland Audit Office. They told the Housing Executive to call in forensic accountants to carry out an independent review. Their report has never been released in its entirety, but we've seen it. The report found significant evidence of overcharging, estimated by the forensic accountants at between £800,000 and £1.3million. It was this report that was to trigger the ending of Red Sky's contract. It shows details of jobs that the firm billed for twice and the Housing Executive paid for twice.

On this street Red Sky charged over £1,000 for installing a disabled ramp and rail. There's nothing wrong with that, except they charged exactly the same amount of money for the house next door, without doing any of the work.

And here, near Sandy Row, Red Sky charged £1,300 plus VAT to dry line the back bedroom of a house...and then charged the same amount again to do the same room in the same house. Red Sky also charged for work at addresses that didn't exist, like work on two blocks of flats that had already been demolished. The payments were admitted by Red Sky's Managing Director who'd only been with the company four months.

Peter Cooke (PC): Our operative will have driven through an estate and looked at x number of blocks and ticked the box to say 'everything is done, I've inspected it', but in reality, what he never did, was count the number of blocks and some of those blocks had been demolished in previous years, actually during the time of the previous contractor who was also paid for them, so that is an error on our part. We did not count the blocks and we held our hands up to that and we've repaid that sum. It's a very small sum.

MMA: Brian Rowntree had two reasons to be concerned about that statement.

BR: As a Chairman of a large public authority in Northern Ireland, to witness on TV someone admitting that they had charged for buildings that didn't exist gives you grounds for serious concern. What gives me grounds for further concern is that someone in our organisation approved those payments to Red Sky.

MMA: Housing Executive inspectors approved more than 80% of Red Sky's questionable charges. Eventually, eight Housing Executive workers were disciplined over Red Sky's payments and others retired before disciplinary action could be taken. Peter Cooke was only with Red Sky a matter of months, but he was the only representative of the company who agreed to appear in this programme. He claims Red Sky's overcharging was the fault of the Housing Executive.

PC: Red Sky was picked out as a scapegoat and vilified for following the system that they were told to follow.

MMA: He claims a memo was issued by the then Director of Housing, Colm McCally, which allowed officials more freedom to sign off payments to contractors.

[Male Voice]: The limit of £150 is now raised to £500.

MMA: It appears he too thinks there were high-ranking managers acting outside the knowledge and control of the Board of the Housing Executive.

PC: We were doing exactly what we were instructed to do and all the other contractors were the same and it's now clear, in retrospect, that the senior members of the Housing Executive didn't know that somebody high in their organisation had instructed everybody to operate in this way and it had been for everybody for at least four years.

MMA: That wasn't meant to give companies a clear run at...

PC: Absolutely, it wasn't.

MMA: ...charging more than they should've.

PC: No, absolutely, it wasn't and I'm not suggesting that that's what it should be doing either. What I'm saying here is that a system was run by the Housing Executive, not by the contractors, so the abuse would only come from the Housing Executive side. It cannot come from the contractors' side.

MMA: Brian Rowntree says he and the Housing Executive Board had no knowledge of any such system and he denies Peter Cooke told him about it.

Peter Cooke would say he did tell you in 2011...

BR: Well, let Peter Cooke produce the evidence.

MMA: Brian Rowntree insists that Red Sky's overcharging was so severe, it had to be stopped.

BR: Red Sky was in a league of their own and when you have an organisation that's in a league of their own, then you must deal with that.

MMA: The Housing Executive gave Red Sky notice and prepared to pass their work on to rival contractors. The largest source of their income disappearing, Red Sky immediately went in to administration. As we have seen, Peter Robinson left the election trail to confront Brian Rowntree. He said the Housing Executive decision reflected sectarian bias and, despite being told about the evidence against Red Sky, he remained highly critical of the decision, questioning whether other contractors had been subjected to similar investigations. For Red Sky workers and their supporters, Brian Rowntree became a hate figure. Placards denouncing him were hung outside Red Sky's gates.

Did you feel intimidated?

BR: Certainly, I did. Certainly, I did. Anyone would feel intimidated. It was a personalised campaign. Very, very fearful. I removed myself from my home for three days.

MMA: Why did you do that?

BR: For personal reasons.

MMA: Were you worried Loyalists would attack you?

BR: I was worried, on advice from others, and I removed myself from my home and I'll say no more than that.

Peter Robinson: Mr Speaker, I select the Department of Social Development, and nominate Nelson McCausland to hold it.

Mr Speaker: Mr McCausland.

NMC: Yes, Mr Speaker, I am willing to take up the office of Minister for Social Development...

MMA: Just over two weeks after the DUP accused Brian Rowntree and the Housing Executive of sectarianism, Nelson McCausland became the Minister in charge of housing. At first the new Minister seemed to clearly support the Housing Executive, but that would soon change. Time was running out for Red Sky. Discredited and facing financial collapse, its directors tried to reinvent Red Sky as a new company in order to inherit their contracts with the Housing Executive. They prepared to set up a shadow company. Totalis Solutions is currently run out of the same premises as Red Sky and involves many of the same people. Norman Hayes, Red Sky's owner, is described as one of the key management personnel. As they set about planning the new company, the directors asked Red Sky's administrators to get them a meeting with the Housing Executive to buy the contracts. The Housing Executive agreed but said they needed to know who the potential buyers were.

And when you requested those details, were you given them?

BR: None of those details were provided. In point of fact, they refused to provide the information that we asked for.

MMA: And were alarm bells ringing at this stage?

BR: Absolutely, and that...why would someone approach a public body and not provide those details?

MMA: But the Red Sky directors weren't finished.

PC: I believed an injustice was happening and there is no other recourse in those circumstances but to appeal to the politicians, so we contacted all of the local politicians from all of the parties.

MMA: Two DUP MLAs offered the Red Sky directors and their team a meeting at Stormont with Peter Robinson and Nelson McCausland and some of his officials. We first learned that meeting took place because we obtained a leaked set of minutes of what was said.

There are very strict rules governing the awarding of public contracts and the treatment of companies once they go in to administration which may be why Nelson McCausland's Department took five months to admit to us that the meeting took place and the First Minister's Office still hasn't responded to a Freedom of Information request to confirm Peter Robinson was there, although Peter Cooke has.

PC: We were invited to a meeting with First Minister. I don't even think we knew that Minister McCausland was going to be there at the time.

MMA: Both Ministers are listed on the leaked minute of the meeting, as is the man who acts as Nelson McCausland's Special Advisor, Stephen Brimstone. But two crucial parties to the whole Red Sky affair were missing: the Housing Executive and the administrators who, at that moment, were running Red Sky. According to the rules, companies in administration should always be represented by their administrators.

Jim Allister (JA): The two people absent from the meeting who might be thought to be the most pertinent are the Housing Executive themselves and the administrator. Now, what is going on here?

MMA: If you had known that the Housing Executive and the administrators were not going to be present, would you still have been happy to...

PC: Absolutely, we were looking to our politicians to try and put some pressure on the Housing Executive to reconsider their position.

JA: So, you have a company, for all intents and purposes, that's in administration and yet seeking to negotiate with the Housing Minister how they might get back into play under the guise of a new company. It does seem a surprising way to be conducting business and does underscore, I would have thought, the very considerable affinity between Red Sky and the politicians.

MMA: A leading QC has told Spotlight that by attending this meeting without Red Sky's administrators and by not reporting the discussions at the meeting to the Housing Executive, Nelson McCausland and First Minister Peter Robinson were in breach of the Ministerial Code which demands openness and the highest standards of propriety in the stewardship of public funds.

But what was the business that was going on? According to the minutes, compiled by Mr McCausland's officials, Peter Cooke told the meeting that they were trying to establish a new company to acquire the entire Red Sky business. Nelson McCausland is reported as saying he wanted to 'review all existing contracts to the same level of scrutiny as that applied to Red Sky's' and that he would like to have Red Sky's administrator in place until the end of August to allow all issues relating to the handover of contracts to be considered. During this time, the proposed new company might also be able to progress matters. If that is an accurate account of what took place at the meeting, then Nelson McCausland was, again, in breach of the Ministerial Guidelines, according to the QC we consulted, because the Red Sky directors would be given an unfair advantage over other companies. It's an interpretation of what happened at the meeting that is utterly rejected by Mr McCausland and for Red Sky Director, Peter Cooke, the reason for the meeting was to allow Red Sky to clear its name.

PC: The purpose of that meeting was to try and find some way of delaying the termination while Red Sky was in administration so that it could prove that it had been treated unjustly and have an opportunity to emerge back out into the sunlight as a trading business.

MMA: What we do know for certain is that on the 1st of July, four days after the meeting, Nelson McCausland wrote to Brian Rowntree, telling him that he was launching an investigation that would include those contractors to whom it is proposed to reassign the Red Sky contract.

NMC: Issues are emerging and, as I've said, it's not just one district or one contractor. That raises the question in my mind: is there something here that is endemic within the organisation?

MMA: In his letter of the 1st of July, Mr McCausland went on to say that providing certain conditions could be met, he wanted the termination date of Red Sky's contract to be extended. "I would now ask you to put to the Housing Executive Board that the termination date of the Red Sky contract should be extended from the 14th of July 2011 to allow an open procurement competition for the Red Sky contracts". But for Brian Rowntree, extending the contract was totally unacceptable. On that same day, he wrote to Nelson McCausland's Permanent Secretary saying, if the former directors succeeded in buying the business from the administrators, the reinstatement of Red Sky, after they had just been terminated for serious malpractice, was likely to produce a public outcry.

BR: The major issue here was, setting aside the termination notice, and this late surge to have Red Sky reinstated. In point of fact, the Board was being asked to query its own judgement. The Board was being asked to potentially set aside the issues of irregularity that had already been confirmed on the media by one of the directors of Red Sky.

MMA: In a letter to this programme, Nelson McCausland said that whilst there has been a great deal of speculation and innuendo, that I sought to either extend the contract with the Red Sky group or, indeed, assign the contract to a new company, this was not the case.

At the very time Nelson McCausland and Brian Rowntree were exchanging salvos on the 1st of July, Jenny Palmer was attending a commemoration of the Battle of the Boyne.

JP: We were there enjoying the day and we were having a cup of tea after the ceremony and a colleague asked if I would take a phone call. The voice at the other end of the phone said we hadn't met and possibly we should have, but there wasn't the time now to do so and he said there would be a Board meeting on Tuesday. Now, I didn't know at that time that it had been called even and then he told me that he needed me to, basically, go against the decision of the Board on the extension of the contract for Red Sky and I said to him "I ca...I don't think I can do that". He said "we need you to do that". I went in to shock.

MMA: Who was the person who made the call?

JP: It was the Minister's Political Advisor.

MMA: Nelson McCausland's Political Advisor...and he gave his name as...?

JP: Stephen Brimstone. He said the party comes first. You do what you're told, otherwise there's no point in me...no point in me being on the Board if I wasn't prepared to do what they asked me to do. It was going against everything that I had worked for and my reputation. He said "the party comes first here".

RH: I find it very difficult to put in to words my reaction to this. This is obviously a very genuine lady and to see this lady in tears because she has been a woman of honour...what person feels that they have the right to say the party comes first? I am an Ulster Unionist. I have been an Ulster Unionist all my life, but you cannot put your party before people. What about the public? What about public money? What about the fact that there are questions to be answered in relation to the fact that hundreds of thousands of pounds of your money and

my money was given to people that didn't do any work. I'm disgusted that woman was put in that position. I'm disgusted that I have to sit and look at a woman who has done her bit for her community. She seen herself working and she said that clearly in that...has been put in that position and has been brought to tears by a political party. Well, shame on them.

MMA: Why didn't you go and seek help from your party leader?

JP: Because at that point, I didn't know who I could trust.

MMA: You didn't think you could trust the...

JP: I didn't think I could speak to anyone who was at Stormont.

MMA: Jenny Palmer did confide in the Chairman of the Housing Council, the body she represents on the Housing Executive Board.

Jim Brown (JB): Jenny Palmer came to me, first of all with her integrity in tatters because she was being asked to do something she wasn't prepared to do. She was being pressurised to do something political which she wasn't in the Housing Executive Board to do. She was a representative of the Northern Ireland Housing Council and not a representative of the DUP

JA: Mr Brimstone is saying to one of the DUP's own Councillors, you must vote a certain way in the Housing Executive Board to extend the period for Red Sky and you must do it in the interests of the party, then it seems indisputable that, at some point, the interests of the party have become indistinguishable from the interests of Red Sky and that is the most frightening aspect and the most illuminating aspect of much of this.

MMA: The Housing Executive Board was called to an extraordinary meeting on Tuesday, July 5th 2011, just as Stephen Brimstone had predicted. There was one item on the agenda, Nelson McCausland's request to extend the Red Sky contracts. Jenny Palmer arrived early.

JP: I purposely went down early and I spoke to Brian about half an hour before the Board meeting and it was a private conversation he and I had.

BR: In my nine years as Chairman of the Housing Executive, I have never had a Board member, particularly a political Board member, so upset. An external source approached a political member to influence the decision and debate at Board level. That would have taken away and divided the Board in relation to its corporatcy and wouldn't have given rise to a unanimous decision in relation to that matter.

MMA: Jenny Palmer declared an interest and Brian Rowntree ruled she should exclude herself from the meeting. In her absence, the Board, again, voted unanimously to uphold the sacking of Red Sky.

BR: The public need to know – why did someone seek to use political advantage, not for the benefit of the public sector, for the benefit of a commercial entity.

MMA: In his letter to Spotlight, Nelson McCausland insists he was simply trying to ensure an open procurement process for Red Sky's work. But we do know that the DUP also regarded itself as fighting against sectarianism which may explain why a DUP stalwart who didn't share that view, was placed under so much pressure by forces within her own party.

JP: It hurts me deeply that they were prepared to use the smallest cog in government to manipulate a certain scenario and, yeah, I'm angry, but, in my eyes, I'm stronger than they are because I didn't do anything wrong. This morning, there was a message on my phone from my daughter, telling me to be honest and hold my integrity. Excuse me. And not to compromise my integrity for anyone and that meant...that message was so important that family...that they know the pressure that I have been under.

MMA: We wrote to Stephen Brimstone twice to ask him about Jenny Palmer's phone call. The first time, more than seven months ago. He didn't reply, so we went to ask him in person why he put pressure on his DUP colleague.

It's Mandy McAuley from the BBC. I've been trying to contact you. I'd like you to answer some of my questions. Mr Brimstone, why did you ring Jenny Palmer and tell her to change her vote in the Housing Executive Board? Mr Brimstone, did Nelson McCausland tell you to ring Jenny Palmer and change her vote on the Housing Executive Board? Mr Brimstone, we would just like you to answer our questions.

Stephen Brimstone: Good morning, how are you doing?

MMA: We would just like you to...why won't you answer our questions?

It had been a bruising encounter for all concerned. Red Sky was left out in the cold though Brian Rowntree would subsequently step down early as Chairman of the Housing Executive. It took a year for the investigation that Nelson McCausland had commissioned to report back on the other contractors who were given Red Sky's work. For some reason, the report sat on Nelson McCausland's desk for another year, out of public sight and scrutiny. Until, as we now know, shortly after he received a letter from Spotlight, one of several we have sent posing questions about his meeting with Red Sky, Nelson McCausland rushed in to the Assembly to talk about the report and also to announce the findings of a separate investigation revealing the £18million overspend. The DUP declared the announcement as a victory over those who had criticised Red Sky.

Male Voice: (Robin Newton MLA) Would the Minister agree that those elected representatives who made representation on behalf of East Belfast company, Red Sky, and, indeed, who were pilloried in the press for doing so, have now been completely vindicated?

NMC: On the basis of the report, there is really no doubt that the issues with Housing Executive contracts were not unique to Red Sky. Indeed, it's clear that there were a significant number of contractors that were engaged in the same or similar practices.

MMA: The charge here is very clear, that you singled out and you targeted Red Sky, a company from East Belfast, perceived to be Protestant, and that you did not target other companies. That is the charge.

BR: I refute that allegation. I simply stand on the evidence and that's all I can do. I can do no more than stand on fact and the fact is that Red Sky were number one on the list of contractors where we had indicators of poor performance but, most importantly, high levels of overcharging. Not the actual value of overcharging, it's the pattern and behavioural associated overcharging. In some cases, one in four orders having an overcharge allocated against it. They won't believe it.

MMA: Brian Rowntree is also adamant that the £18million figure announced by Nelson McCausland is for a far more expensive kind of repair work from that dealt with by Red Sky. He admits the loss of that much money in what is known as planned maintenance contracts is another stain on the Housing Executive he led, but he says the checks and balances that he put in place didn't stop with Red Sky. He says it was his Board and the Housing Executive's Audit Committee that uncovered the latest losses.

BR: There were problems in the Housing Executive. There were also problems in their relationship with contractors. I'm on record as saying that, but I'm not going to sit and take blame for something that's not my responsibility.

MMA: Some people would say it was your responsibility because it happened on your watch.

BR: Correct, and what did happen on my watch was that I uncovered the issues.

MMA: So you're saying that you actually initiated the planned maintenance investigation.

BR: Correct. There is nothing in the Minister's statement that wasn't done already by myself and the Board. I can't take responsibility or credit for that final report, but I initiated it...but no credit, nor no association of credit was given to me in the Assembly and that's why I'm saying the facts are that I practically gave my life to correct this situation, but now my life is being taken from me.

JP: The Minister made the announcement but actually the work was actioned by Brian Rowntree.

MMA: Do you think Nelson McCausland's performance in the Assembly was about settling a personal score?

JP: I think that there was a personal vendetta and I don't know who was orchestrating it except to say that certainly the Minister who made the statement was delivering it.

MMA: What is clear is that Nelson McCausland certainly does not believe that the information was uncovered thanks in any way to Brian Rowntree, although Mr McCausland has not repeated his accusations outside the Assembly Chamber. Alongside sectarianism, he suggested negligence or worse.

NMC: What has happened in the past must not happen in the future. As yet, it is not clear if this, which has taken place in the past, is a result of incredible incompetence or wilful corruption – time will tell.

MMA: Brian Rowntree has long suspected corruption within the Housing Executive. Spotlight has seen a dossier about Red Sky he sent to the PSNI and the Serious Fraud Office as part of a wider complaint in 2011. It said the Housing Executive suspected an organised campaign of fraud involving its own staff. At the time, he was told, there wasn't enough evidence for the Police to proceed but, astonishingly, we have discovered that there was evidence in the form of a potential witness ready to talk. The witness alleged that senior personnel within Red Sky were involved in making cash payments to Housing Executive staff.

They make very serious allegations that senior personnel within Red Sky were involved in making cash payments to Housing Executive personnel. To this day, that person has never been questioned by Police.

BR: I'm absolutely shocked. I'm absolutely gobsmacked.

MMA: The witness was Pauline Gazzard...the Red Sky Executive who had asked for certain personalities to be moved from West Belfast. By the time Red Sky's contract was terminated, she had left the company and was in the process of bringing a grievance against it. As Red Sky was folding, Pauline Gazzard wrote this 13-page letter to the company's administrators, BDO. She said she had become extremely uneasy about the dealings between Red Sky and people in the Housing Executive.

Voice reading Pauline Gazzard: Quickly I became aware that cash payments were being made to three District Maintenance Managers of NIHE and one Maintenance Officer.

MMA: Pauline Gazzard said Norman Hayes authorised the payments. She said she confronted him but he denied the allegation. It should be pointed out that Pauline Gazzard has never reported her allegations to the Police. Also, she said she has suffered from stress, depression and paranoia but she insists that her allegations about Norman Hayes and the Housing Executive are true. We wrote to Norman Hayes. He did not respond.

Mr Hayes, it's Mandy McAuley from the BBC. Mr Hayes, did you authorise cash payments to three Housing Executive Maintenance Officers? Mr Hayes, what were those payments for? Why won't you answer our questions? Did you authorise cash payments to three Housing Executive Maintenance Officers? Why would the Manager at the heart of your operations have written to the administrators making such serious allegations? Was she making it up?

Pauline Gazzard has told us Red Sky's administrators, BDO, did not appear to take her allegations seriously.

A potential witness who said she had direct knowledge of corrupt payments to public officials and nothing was done.

Does it surprise you that she received a letter from the administrators saying that this was outside their remit because it had happened outside their time as administrators?

BR: I was the then Chairman of the Housing Executive. Why did the administrators not pass that information to me?

MMA: Red Sky's administrators, BDO, told us they don't publicly discuss client issues and so couldn't answer our queries. The Police never spoke to Pauline Gazzard and we understand they didn't know about her allegations to the administrators. We asked the Police if they had known, would it have made a difference and would they do anything about it now. They refused to comment.

BR: On the back of this evidence, I'm demanding...I'm demanding a Police inquiry in to this issue. I'm demanding the Serious Fraud Office take this on board and, most importantly, I'm demanding an external, independent inquiry in to the role and responsibility of people who had information in this process, both internal and external of NIHE.

MMA: Within days of the attack in the Assembly, Brian Rowntree says that the attempts to destroy him continued. Nelson McCausland's Permanent Secretary, Will Haire, whom he had written to at the height of the dispute about Red Sky, rang him out of the blue.

How unusual is it for a Permanent Secretary to ring?

BR: It's unusual. Most unusual.

MMA: Brian Rowntree says he was informed that a complaint is being sent to the Northern Ireland Office to get him removed from the Civil Service Commission. The complaint is on the basis of two emails which it's claimed were copied to him three and a half years ago and which appear to link him to the alleged misuse of public funds on the Nationalist Rinmore Estate in Londonderry which is currently the subject of a Housing Executive audit. The accusation is that while publicly opposing this scheme, he was secretly working to push it through and promote a Nationalist agenda.

BR: I totally dismiss that out of hand. Well, those emails were never found in the Housing Executive system. There is no evidence anywhere because I've asked. I've had it checked by internal audit and the internal audit report confirms that. Those emails were never found on my system. They were never found on any Housing Executive system, but they're found on hard paper copy in DSD records.

MMA: It remains to be seen if the Permanent Secretary's action will result in Brian Rowntree's removal from his current post. A DSD spokeswoman said Mr Haire was carrying out his duty to report actions he believes conflict with the Civil Service Code of Ethics. But Nelson McCausland's close involvement in Housing Executive contracts didn't end with Red Sky. For several months, Spotlight has been investigating a decision he made to alter a multi-million pound housing contract. In 2011, the Stormont Executive announced a massive project for social housing: a pledge to put double glazing in every Housing Executive home – up to 40,000 properties – by 2015.

NMC: There are companies out there that are looking for work in the construction industry. There are tenants who are waiting for double glazing. This is something where we cannot consider, and I will not allow any possibility of failure.

MMA: But six months in, Nelson McCausland suddenly told the Housing Executive to put the project on hold.

NMC: Following discussions with those in the glass and glazing industry, I now have considerable concern around the value for money of the Housing Executive's current specification to contractors for window installation.

MMA: Nelson McCausland said changing the specifications around the windows contract would save money. In a letter to Spotlight, he says that what he described as the not insignificant sum of £15million has been saved, but those window companies that had tooled up to meet the previous specifications were forced to cut back. This glazing consultant has seen the effects for himself.

Willie Montgomery (WM): Well, local manufacturers are looking at lay-offs simply because, since this kicked off, there's been no contracts let. There's been a hold put on everything. I would visit most of the companies that supply the Housing Executive and I have seen lay-offs, I've seen order books greatly reduced and they're all sitting at the minute and if they have a few weeks' work ahead of them, that's about it. So there is, there's major implications there for company closures, at worst, and lay-offs.

MMA: What those companies didn't know what(was) that Nelson McCausland made the decision shortly after meeting with executives from one of their rivals, Turkington Holdings. Turkington Holdings is owned by Trevor Turkington. One part of his business is Turkington Windows which is in the installation business. Trevor Turkington has also publicly supported the DUP. In the 2011 Assembly election, he nominated Upper Bann MLA, Stephen Moutray.

Daithí McKay (DM): The owner of the company concerned is quite clearly a supporter of the Democratic Unionist Party, therefore, it's all the more important that whenever a member of that Party meets with Turkingtons, that that is transparent...it's made transparent to the Assembly.

MMA: But unfortunately, Mr McCausland has not succeeded in making this entirely clear to everyone. The Assembly's Social Development Committee, which oversees Nelson McCausland's Department, asked him on whose advice he'd decided to suspend the double glazing programme. The Minister wrote back saying his decision followed a meeting he had held with both the Glass and Glazing Federation, a trade industry body, and Fusion21, a social enterprise body based on Merseyside. We spoke to the Glass and Glazing Federation but they weren't aware of an official Federation meeting with the Minister. Spotlight has obtained a draft version of the letter sent by Nelson McCausland to the Social Development Committee. The draft, prepared for the Minister by a senior civil servant who was present, describes the meeting as having taken place with Turkingtons, but the letter that was sent by Nelson McCausland doesn't mention Turkingtons. Instead, as we know, he says the meeting took place with the Glass and Glazing Federation and Fusion21.

DM: I think it's quite obvious that the Minister is misleading the Assembly Committee so the question has to be asked, why that is and is it something to do with the fact that he suspended the double glazing scheme shortly after he held this meeting.

MMA: In a letter to Spotlight, Mr McCausland says that while staff from Turkington Holdings were at that meeting, "it is my understanding that they were not representing the interests of that firm, but rather representing the Glass and Glazing Federation, therefore, it is entirely right that the reference was corrected before issue of the letter". He also points out that the official minute is entitled "Meeting with Representatives of the Glass and Glazing Federation", but we have spoken to one of the Turkington executives who attended the meeting with Mr McCausland to discuss the double glazing programme. Ian Young, no longer with the firm, said Nelson McCausland was told Turkingtons are members of the Glass and Glazing Federation but says they did not tell him they were there on the Federation's behalf. He says he doesn't know why Mr McCausland subsequently portrayed their discussions as a Glass and Glazing Federation meeting.

Michael Copeland (MC): You've two people saying two entirely different things and I think the Department...or the Social Development Committee would be very anxious to clarify what the truth is. There's a smell about this and if that proves to be justified, I fear Minister McCausland will be faced with a series of questions and answering them could be extremely embarrassing.

MMA: Mr McCausland has also told MLAs in the Assembly that he met the Glass and Glazing Federation.

NMC: The Glass and Glazing Federation, I think, is a useful point of reference and that's why I met with them.

MMA: It is possible Mr McCausland thought that the men from Turkingtons were there as representatives of the Federation, but the Housing Executive has told us that their two officials who attended the meeting were not aware that the men from Turkingtons were representing the Glass and Glazing Federation. What is even harder to understand is why Nelson McCausland changed the draft letter to say that he also met Fusion21, the social enterprise body from Merseyside with whom, he said, he had also discussed double glazing specifications. We spoke to Fusion21 who said they met Mr McCausland but did not advise him on double glazing.

DM: That is extremely serious because the Minister has misled the Assembly Committee. He has misled members of the Assembly and the Minister has to be held account for the fact that he has done this, but aside from that, aside from what goes on in the Assembly, this has put people's jobs at risk. There are many companies in this area where staff have had to be cut back, people have had to be put on notice because of the fact this scheme has been suspended, so the Minister needs to answer to those people as much as he has to answer to members of the Assembly.

MMA: Where the story of Nelson McCausland, Red Sky and the Housing Executive will end is hard to predict. Not only are careers at stake, but it's clear that the future of the Housing Executive itself is in jeopardy and alongside all this, a lot of lives have been damaged. Shortly after our first interview with Jenny Palmer, we received a solicitor's letter, saying she was unsure which of her remarks were on or off the record. We understand the solicitor had been provided for Jenny Palmer by the DUP. Against the wishes of her party, Jenny Palmer subsequently wrote to us herself to say she was happy to stand over all her remarks and then gave us a second television interview.

JP: Someone said it before to me that they were using me as a lamb to the slaughter. That I was worthless. In their eyes, I was expendable. Had I done it, I would've been.

MMA: What has clearly emerged through this process is that for long periods of time on Brian Rowntree's watch, senior managers within the Housing Executive were out of control. He remains convinced it was his efforts to clean things up that has led to him being attacked.

BR: Instead of being the good guy, you become the enemy and it's easy to isolate the enemy 'cause you just make them a bitter and twisted person. I'm glad I'm sitting here tonight. I'm not bitter. I'm not twisted. I never set out to make this anything other than a campaign of putting right where wrong had been done. Wrong was done to me as a consequence of me doing right.

MMA: In the making of this programme, Spotlight wrote to the former Director of Housing, Colm McCally. In an email tonight, he threatened legal action if we broadcast anything which attacked his integrity or suggested he acted at any time other than in the best interests of the Housing Executive. We also wrote to former Chief Executive, Paddy McIntyre, who told us he didn't intend to comment. He then wrote to us tonight saying that the report which described his role in altering criticism of Red Sky's performance as disturbing had no standing within the Housing Executive. He denied any attempt to sanitise the content of that report and said the changes were accepted by the Head of the unit concerned. We have written to

Peter Robinson on several occasions, putting the charges contained in this programme and offering him the opportunity to reply. On Tuesday of last week, we received an email from Mr Robinson saying that he had no intention of being interviewed by Spotlight following, what he described, as our 'blatantly inaccurate and defamatory comments' about him in the past and that he had instructed his solicitor that if we broadcast the criticisms of him we have made in this programme tonight, his lawyer was to start proceedings against us without further instructions. But it's Nelson McCausland and his Special Advisor, Stephen Brimstone, against whom the most serious questions remain. Mr Brimstone has sent us a solicitor's letter in which he does not accept the accuracy of our reporting of his telephone conversation with Jenny Palmer and said he does not accept that he put pressure on her to change her vote. But it's Stephen Brimstone's boss, Nelson McCausland, who, ultimately, must take responsibility for both the behaviour of his Special Advisor and his own conduct.

ENDS

BBC - The View Transcript - 4 July 2013

Programme: The View – Nelson McCausland
Date & Time: 4.7.13 – 22.39
Subject: NIHE Contracts
Prepared By: Typist: Debbie Arthurs/Donna Morris
MMU: PC/GI

Mark Carruthers: A huge fishing expedition with not much of a catch at the end of it, or potentially the most serious political scandal since the Assembly came into operation in 1998. Contrasting views from two MLAs, the first from the Social Development Minister, Nelson McCausland, the second from the chair of his departmental committee, Alex Maskey. Both were prompted by last night's BBC Northern Ireland Spotlight investigation which alleged political interference in the running of the Housing Executive. Those claims have been strongly denied by Mr McCausland.

There's a lot we want to get through on the programme tonight, can we deal first of all with the phone call Jenny Palmer, who is a DUP councillor in Lisburn, received from your special adviser Stephen Brimstone. She says she was told by Mr Brimstone to vote against the Housing Executive Board's position terminating the Red Sky contract for the good of the party. How do you respond to that allegation?

Nelson McCausland: The programme last night presented the conversation between my special adviser and the councillor in a particular way, I want to make it very clear that it was a single telephone conversation and it was a fairly short telephone conversation, it lasted a matter of minutes. The position as I understand it is that the telephone call was really to explain to Councillor Palmer that there was a wider context here in terms of different contractors...

Mark Carruthers: What was that contract...

Nelson McCausland: I'm about to explain that, the focus has been very much, even in the programme last night, the focus was virtually entirely on one company, what I was clear about and I have since been fully vindicated on this by an independent consultancy report, was that it wasn't restricted to one company, when you looked at all of the contractors that we investigated subsequently it became clear this was a much more widespread problem and he was simply conveying that information to Mrs Palmer.

Mark Carruthers: So we will go on to talk about that particular issue, that company and other companies in a moment or two, but she says, Jenny Palmer says Mr Brimstone clearly attempted to bring political influence to bear on her. Do you accept she was put under pressure by Mr Brimstone?

Nelson McCausland: Well his account of the conversation is very different from her recollection of it and there the matter rests, two people who have a conversation and they have different recollections of it.

Mark Carruthers: Okay, did Mr Brimstone make that phone call at your behest?

Nelson McCausland: No.

Mark Carruthers: Did you know he was going to make that phone call?

Nelson McCausland: No.

Mark Carruthers: Should you not have known he was going to make that phone call?

Nelson McCausland: That is a bizarre and ludicrous question.

Mark Carruthers: Why?

Nelson McCausland: Well if you give me a chance to answer I would actually explain that to you. It's a bizarre and ludicrous question because am I expected to check every single telephone call that a member of staff makes, certainly not.

Mark Carruthers: He's your special adviser.

Nelson McCausland: If you just let me finish, the point is that it was two recollections of a telephone conversation, they don't accord with each other and I'm not sure we'll ever get to the bottom of it.

Mark Carruthers: Are you not concerned that Jenny Palmer's recollection of the conversation might be more accurate than Mr Brimstone's and if that is the case there's a problem?

Nelson McCausland: Well are you suggesting that he's lying?

Mark Carruthers: Are you suggesting that Mrs Palmer is lying?

Nelson McCausland: I'm not suggesting anything, I'm simply saying that there are two recollections of a conversation and they happen to differ.

Mark Carruthers: Yes but should we not be trying to get to the bottom of that?

Nelson McCausland: I think it is one of those situations in life that you'll never really get to the bottom of.

Mark Carruthers: Would it have been a mistake on the part of Mr Brimstone to try to influence Jenny Palmer in her vote on the Housing Executive Board the following week?

Nelson McCausland: It would have been absolutely ludicrous and pointless to do so if you bear in mind that there are, I think, 14 members on the Board and even if one person did vote in a particular way there are 13 others, so it would be a pointless futile exercise and one that he would not have entered into.

Mark Carruthers: Have you spoken to him about it?

Nelson McCausland: I have indeed.

Mark Carruthers: And he has, what did he say that he said to Mrs Palmer, what precisely did he say to her. You said it was a short conversation, give me a quick press of what he says he said?

Nelson McCausland: I think it's worth remembering the conversation was quite some time ago...

Mark Carruthers: Well she's got a very clear recollection of it.

Nelson McCausland: Indeed, a very clear recollection of it but it is a recollection and he has a recollection too.

Mark Carruthers: And what is that?

Nelson McCausland: And the recollection is, as I've already explained to you once, I'm happy to explain again, he set out the wider context that there are issues around contracts, not just in relation to Red Sky, but in relation to six other companies at least that we've looked at.

Mark Carruthers: Why do you think she was so upset, if it was simply about setting the wider context, why was she crying on Spotlight last night?

Nelson McCausland: I can't explain someone's behaviour or be held accountable for that, I understand that the actual interview with her was quite a lengthy interview, in fact a very long

interview, in fact there were two interviews with her and very short extracts were taken from that for the programme. But I can't explain her behaviour, that's a matter for her to explain.

Mark Carruthers: Have you spoken to Mrs Palmer about it?

Nelson McCausland: No I haven't.

Mark Carruthers: Do you not think you should?

Nelson McCausland: No.

Mark Carruthers: As a fellow member of the DUP?

Nelson McCausland: Why should I particularly?

Mark Carruthers: Well because she's making an allegation about a conversation that your special adviser had with her which she's clearly very upset about and which is part of a major issue now politically in Northern Ireland, that's why?

Nelson McCausland: Let me cut to the point here, Mark, we're dealing here with the Housing Executive, with scandals where in one case the chairman of the Housing Executive reports over payments to contractors of £18million. We're dealing with scandals that were mentioned even on the programme last night in regard to response maintenance contracts, issues regarding allegations of fraud and so on and there seems to be a fixation...

Mark Carruthers: We're going to be moving on to that...

Nelson McCausland: ...but it's important that we set it in context and the context is why is there this fixation on one small conversation...

Mark Carruthers: We will come on to that.

Nelson McCausland:when we are dealing with a scale of money here in tens of millions of pounds.

Mark Carruthers: Why do you think Jenny Palmer, as a DUP councillor, would not report a conversation with a special adviser of a DUP minister accurately?

Nelson McCausland: I can't be held accountable for what somebody says.

Mark Carruthers: Does it not bother you that her version of events is so different from his?

Nelson McCausland: I'll tell you what does bother me, what bothers me is that there seems to be a very partial approach to all of these issues within the BBC. Let's bear in mind here is a major issue, a major issue of public concern and the fixation of the BBC in producing the programme and subsequently today, I listened to the interview earlier on between Seamus McKee and Gregory Campbell where Seamus McKee was quite frankly rude and overbearing towards Gregory Campbell, he would hardly let him speak...

Mark Carruthers: It's not really relevant to this discussion is it?

Nelson McCausland: No it is, I think it is because it helps to set a picture of people in the BBC who are trying to defend the indefensible.

Mark Carruthers: Allegations made by a DUP councillor, this is a person who is a member, with respect Nelson McCausland, of your party?

Nelson McCausland: And the fact is that when I am dealing with issues on the scale that I'm dealing with, we have a stock of 90,000 homes...

Mark Carruthers: Jenny Palmer doesn't matter?

Nelson McCausland: Sorry, if you'd actually let me finish, if you'd let me speak and make a point without interrupting. There are 90,000 properties owned by the Housing Executive, the standard of service that has been delivered to many of the tenants in those homes has not been good enough. The value for money that should be the hallmark of a public body has not been clearly evident and when I'm dealing with those issues I'm not going to be side tracked by some issue about what somebody said to who and they'll never know what (unclear).

Mark Carruthers: It really doesn't matter we shouldn't be talking about it, is that what you're saying, doesn't matter at all?

Nelson McCausland: I think in the scheme of things it shows quite clearly the lack of perspective within the BBC.

Mark Carruthers: Okay, is your party going to take any action against Jenny Palmer for the allegations that she's made against Mr Brimstone?

Nelson McCausland: Once again you have this fixation, the 15 minutes will be up before we ever get to the core of the matter. The fact is that that's a matter for the party, I have no knowledge of that at all.

Mark Carruthers: Let's move on to Red Sky which is one of the companies...

Nelson McCausland: I hope we'll also move on to the other six contractors and then the four contractors....

Mark Carruthers: Let's talk about Red Sky, you said you always acted, you said today when you spoke to the DSD Committee you always acted with the highest level of integrity, why then did you attend a meeting with Red Sky representatives in June 2011 at which no representatives of either the administrators, who were running Red Sky at that point, or the Housing Executive were present?

Nelson McCausland: Well one of the things I said at the very start of the meeting with the Social Development Committee today was that I had three priorities in dealing with this sort of issue. One was to ensure that there's value for money, secondly, that we ensure a good quality service for tenants and, thirdly, that in everything I do I will do it with integrity and probity and I have sought at all times to do that...

Mark Carruthers: So why did you attend that meeting without representatives of either the administrators of the Housing Executive present?

Nelson McCausland: My hearing is perfectly good, you don't need to repeat the question.

Mark Carruthers: Well then answer the question.

Nelson McCausland: Well I will when you give me a chance to do so without interrupting. The decision is very simple, the meeting with the folk from Red Sky took place two years ago on the 27th June 2011...

Mark Carruthers: Yes that's correct.

Nelson McCausland: ...now that particular meeting, first of all I was approached by a number of elected representatives from across East Belfast and from different parties in regard to Red Sky, I have correspondence from Naomi Long in the Alliance Party. I had representation from other parties and I had representation from the DUP...

Mark Carruthers: ..only members of the DUP were there politically?

Nelson McCausland: Well if they are particularly active in representing the interests of their constituents are they to be condemned for that?

Mark Carruthers: You've talked about other politicians, I'm making the point that the only politicians who were present were members of the DUP, the question I asked you and would like you to answer it is why there were no representatives of the administrators who were running Red Sky or the Housing Executive at that meeting?

Nelson McCausland: If I am asked to have a meeting with elected representatives from East Belfast and they bring folk along with them to the meeting then I will hold the meeting.

Mark Carruthers: Okay, even if that might have been in breach of the Ministerial Code?

Nelson McCausland: I actually have taken legal advice on that and the legal advice I have received is that there was nothing improper at all.

Mark Carruthers: When did you take that legal advice, before the meeting or after the meeting?

Nelson McCausland: It was taken around the time of the meeting...

Mark Carruthers: Well was it before the meeting or after the meeting?

Nelson McCausland: My understanding is that the advice was taken, my recollection is, bearing in mind this was two years ago, I understand that we had advice before the meeting and it was also checked out afterwards.

Mark Carruthers: Why did you take the advice before the meeting if there was no problem with it? You must have asked for advice because you might have been concerned that you might have been in breach of some sort of....

Nelson McCausland: On the one hand you are asking me and expecting that I would take advice and then when I take advice that is a problem. The meeting took place, we dealt with issues and I was very clear on this, I wanted to be sure at that time that in addressing the issues of Red Sky and I am not in the business of defending Red Sky, never have been, I acknowledge very clearly that there were issues about Red Sky but I also acknowledge and I was subsequently vindicated that when you look at all of the other contractors at the same time and we examined through an independent report, six other contractors.

Mark Carruthers: But the evidence, the clear evidence from the independent forensic audit that was done and that was given to the Housing Executive indicated that there may indeed have been problems with other companies but there was no....

Nelson McCausland: No sorry, you are totally wrong in that, please don't misrepresent the facts.

Mark Carruthers: There was clear evidence in the ASM1 report, as it is known, that Red Sky had been acting inappropriately.

Nelson McCausland: And you said that there was no evidence about others. The fact is the report that was commissioned by the Housing Executive didn't consider any of the others, it didn't say they were clean, it didn't say they were in fault, it didn't say anything. I must correct you there. The point is that the initial report commissioned by the Housing Executive, and they brought in ASM and they did a forensic audit, identified issues with Red Sky. My question at that point was, to the chairman of the Housing Executive, have you looked at the other companies? And the answer was that I got back from him, that they had in place, he said there are robust systems in place and we can stand over other companies. The proof was that that was not true, I was misled.

Mark Carruthers: It may or may not be the case, here is my question. The ASM report was very clear that there was wrongdoing on the part of Red Sky why did you not do something about that, why did you continue to defend contracts being given to that company when you

knew the evidence was there that the company had acted inappropriately? Isn't that the point?

Nelson McCausland: If you would only listen to what I have said. I said very clearly I am not in the business of defending, you said I am defending, I am not defending anybody. If there was wrongdoing by company A, B or C, I will deal with that and the point I am making clearly is that the report that was commissioned by the Housing Executive picked out one company but did not look at the others and the problem..

Mark Carruthers: Forgive me for saying, slightly repeating yourself.

Nelson McCausland: No I am just simply having to correct you, the point is that we were in the process potentially of taking a contract away from a company where there was clearly something wrong, to give it to another company where potentially there was something wrong, because it was already clear at that point.....

Mark Carruthers: On the 27 June you asked for the contract of Red Sky to be extended, why did you do it? You said you weren't defending Red Sky but you asked for the contract to continue with that company for a further period of time, why did you do that?

Nelson McCausland: You just made another statement that is totally wrong...

Mark Carruthers: That is correct; I have the minutes in front of me, you did.

Nelson McCausland: You made a statement that is totally wrong, and I hope you will retract it. I was already in possession of some evidence that there was fault with other companies because there was a second company that had emerged...

Mark Carruthers: Would you talk about Red Sky, would you mind if we talked about Red Sky because that is what I want to ask you about, the minutes in front of me, the Minister advised that he would like to have the administrator in place until the end of August to allow all issues relating to the handover of contracts to be considered. You then went on to say during this time the proposed new company might also be able to make progress on matters and here is the point, here is the reason that I am asking that question, because Red Sky representatives were talking about acquiring the company's contracts for a new company, that is what the minutes record and that, according to the QC who was consulted by the Spotlight team, is in breach of the Ministerial Code.

Nelson McCausland: First of all when we were dealing with Red Sky I was already in possession of evidence that another of the companies to which the contracts might well transfer was a company where there were similar difficulties. I was suspicious because it is clear to me that if you looked across the whole realm of contracts you had more than one company where there were irregularities, those irregularities weren't just occurring in more than one company, they were occurring in more than one Housing Executive district and therefore you come to the conclusion, how widespread is this? But the Housing Executive had failed to carry out a proper investigation which I commissioned. That report, which you obviously aren't particularly interested in, the ASM2, clearly indicated that when you looked at six other companies similar issues appeared there as well.

Mark Carruthers: I already dealt with that, I know all about the ASM2 report as well. Can I go back to the first question I asked you about Red Sky which was why were you at that meeting and why were there not representatives of the administrators there because the administrators or the individuals who were running Red Sky at that time, so you couldn't actually, with any authority whatsoever, talk to employees of Red Sky, they were not running the company at that time and they were in conversation at that meeting and I have got the minutes in front of me, very clearly talking about a new company acquiring the Red Sky contracts, why were you taking part in that meeting?

Nelson McCausland: Once again you have got it wrong, because....

Mark Carruthers: I haven't got it wrong, I have got the minutes in front of me.

Nelson McCausland: I am much more informed about this than you are...

Mark Carruthers: Really? Because you haven't explained anything.

Nelson McCausland: You can either ask questions or you can try that sort of bullying approach in order...

Mark Carruthers: Can you just answer the question, why were the administrators not at the meeting?

Nelson McCausland: I will answer questions when I get a chance to, without being constantly and rudely interrupted.

Mark Carruthers: Why were the administrators not at the meeting?

Nelson McCausland: I am trying to correct a point, because once again....

Mark Carruthers: Could you just answer that question because I think our viewers would like to know?

Nelson McCausland: And I think that I should have the opportunity to correct all the errors that you are introducing...

Mark Carruthers: So that is not right, the administrators were at the meeting were they?

Nelson McCausland: You made a statement a moment ago and the statement was very simple, the statement was, if you would actually listen instead of grimacing at people you might have a better sense of what is going on, but it is rather typical of the way that this whole issue has been handled by the BBC.

Mark Carruthers: You still haven't answered the question, I am sorry, I have given you ample opportunity, you keep talking about other issues, would you please answer the question as to why the administrators weren't at the meeting?

Nelson McCausland: I will deal with the issue quite simply. The ASM2 report investigated six different companies and it was clear that similar issues occurred, you said you know all about that, it was quite noticeable last night in the Spotlight programme that that particular report was almost sidelined and almost totally ignored.

Mark Carruthers: You are clearly not going to answer that question and I have given you ample opportunity but you are not going to answer it....I wanted to talk to you about Turkingtons as well and I am not going to get an opportunity to do that, so what I am going to ask you finally....

Nelson McCausland: I will come back to the point about Red Sky very simply, it is this, in all my correspondence with the chairman of the Housing Executive and it is on record, what I was keen to secure was that we keep the administrator there in place until we get to the point where there could be an open tender, could they keep the contract going delivering a service to tenants until we get to that point where there would be an open tender, because otherwise....

Mark Carruthers: And there was nothing open about the process where individuals who work for Red Sky were sitting in a meeting with the Minister and others getting an unfair advantage, that is the allegation over other companies in the way that they might be able to access the contract.

Nelson McCausland: That is an allegation that I totally reject.

Mark Carruthers: You refute that allegation? Okay well that is fine and you are perfectly entitled to refute it, that is not how other people see it, I can't talk to you about Turkington's because we have run out of time but what I do want to ask you is this and it is an issue that was raised today and it is a simple one, would it not be wise for you to stand aside as DSD Minister while the Assembly discusses the issue on Monday and while the Statutory Inquiry by the DSD committee investigates the whole issue?

Nelson McCausland: I haven't had that suggestion put to me by anybody. I spent two and a half hours with the committee this morning, not one member of the committee suggested that and it would be a ludicrous suggestion anyway.

Mark Carruthers: Well I have heard it mentioned by other people, they might not be members of the committee but other politicians have been on the airwaves suggesting that that is the case....

Nelson McCausland: Well I haven't heard that, nobody has put it to me...

Mark Carruthers: Well let me ask you about it now, I am suggesting it, I have heard it, would it not make sense for you to step aside and allow the inquiry to happen without you being in post as Minister?

Nelson McCausland: It is an absolutely bizarre suggestion.

Mark Carruthers: Why is it a bizarre suggestion? That is precisely what the First Minister did whenever he was being investigated, the investigation took place and then he reassumed his position as First Minister.

Nelson McCausland: I have no intention of stepping aside from doing the job that I am doing which is about delivering a good outcome for tenants in the Housing Executive. For too long the Executive has condemned people to living in some cases, 9,000 tenants in cold, damp houses.....

Mark Carruthers: So you are quite happy that you will be vindicated on Monday and vindicated in the DSD inquiry?

Nelson McCausland: I have been vindicated time and time again, the ASM2 report that you skimmed over so lightly fully vindicated the stand that I have taken, the PAC report fully vindicated the stand that I have taken and time after time report has shown I have been right, Housing Executive got it wrong.

Mark Carruthers: And when the deputy First Minister says today that this is a situation which threatens potentially the institutions at Stormont, what, he is over egging the pudding, he has got it hopelessly wrong?

Nelson McCausland: Clearly, yes.



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