



Northern Ireland
Assembly

Public Accounts Committee

Report on The Governance of Land and Property in the Northern Ireland Housing Executive

Together with the Minutes of Proceedings of the Committee relating
to the Report and the Minutes of Evidence

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**THE REPORT REMAINS EMBARGOED UNTIL
00:01AM ON 16 MARCH 2016**

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PUBLIC ACCOUNTS COMMITTEE MEMBERSHIP AND POWERS

The Public Accounts Committee is a Standing Committee established in accordance with Standing Orders under Section 60(3) of the Northern Ireland Act 1998. It is the statutory function of the Public Accounts Committee to consider the accounts, and reports on accounts laid before the Assembly.

The Public Accounts Committee is appointed **under Assembly Standing Order No. 56** of the Standing Orders for the Northern Ireland Assembly. It has the power to send for persons, papers and records and to report from time to time. Neither the Chairperson nor Deputy Chairperson of the Committee shall be a member of the same political party as the Minister of Finance and Personnel or of any junior minister appointed to the Department of Finance and Personnel.

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:

Ms Michaela Boyle³ (Chairperson)

Mr John Dallat⁵ (Deputy Chairperson)

Mr Roy Beggs¹⁴

Mr Trevor Clarke⁸

Mr Phil Flanagan¹³

Mr Paul Girvan

Ms Claire Hanna¹⁶

Mr Ross Hussey

Mr Conor Murphy¹⁷

Mr Edwin Poots¹⁸

Mr Jim Wells¹⁵

¹ With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew

² With effect from 23 January 2012 Mr Conor Murphy replaced Ms Jennifer McCann

³ With effect from 02 July 2012 Ms Michaela Boyle replaced Mr Paul Maskey as Chairperson

⁴ With effect from 02 July 2012 Mr Conor Murphy is no longer a Member and his replacement on this committee has not yet been announced

⁵ With effect from 07 September 2012 Mr John Dallat replaced Mr Joe Byrne as Deputy Chairperson.

⁶ With effect from 10 September 2012 Mr Sean Rogers was appointed as a Member

⁷ With effect from 10 September 2012 Mr Daithi McKay was appointed as a Member

⁸ With effect from 01 October 2012 Mr Trevor Clarke replaced Mr Alex Easton

⁹ With effect from 11 February 2013 Mr Sammy Douglas replaced Mr Sydney Anderson

¹⁰ With effect from 15 April 2013 Mr Chris Hazzard replaced Mr Mitchel McLaughlin

¹¹ With effect from 07 May 2013 Mr David McIlveen replaced Mr Sammy Douglas

¹² With effect from 16 September 2013 Mr Alex Easton replaced Mr David McIlveen

¹³ With effect from 06 October 2014 Mr Phil Flanagan replaced Mr Chris Hazzard

¹⁴ With effect from 06 October 2014 Mr Roy Beggs replaced Mr Michael Copeland

¹⁵ With effect from 18 May 2015 Mr Jim Wells replaced Mr Alex Easton

¹⁶ With effect from 7 September 2015 Ms Claire Hanna replaced Mr Sean Rodgers

¹⁷ With effect from 14 September 2015 Mr Conor Murphy replaced Mr Daithi McKay

¹⁸ With effect from 5 October 2015 Mr Edwin Poots replaced Mr Adrian McQuillan

List of Abbreviations Used in the Report

the Committee	Public Accounts Committee (PAC)
C&AG	Comptroller and Auditor General
the Department	Department for Social Development
PSNI	Police Service for Northern Ireland
NIHE	Northern Ireland Housing Executive
LPS	Land and Property Services

Executive Summary

Introduction

1. The Northern Ireland Housing Executive has played a pivotal role in the provision of social housing over the past 40 years, often in difficult and challenging circumstances. It is Northern Ireland's largest landlord, responsible for the management of around 87,000 homes and is also one of the largest landholders in Northern Ireland, holding more than 900 hectares of land.
2. In early February 2010, three NIHE Directors highlighted concerns, to the then Chief Executive, about the involvement of other senior NIHE officials in a planning application relating to land owned by a private developer at Nelson Street in Belfast. In September 2010, the Northern Ireland Commissioner for Complaints issued a report which found maladministration relating to the disposal of NIHE land at Hardcastle Street in Belfast. In response to these concerns, NIHE conducted a series of investigations into a number of land dealings which took place prior to 2010, eventually referring five cases to the Police Service for Northern Ireland (PSNI) for further investigation. Whilst two of these cases were passed to the Public Prosecution Service, no prosecutions have resulted.
3. These events brought to light serious failings in NIHE's corporate governance regime. Following the conclusion of the PSNI investigations the Comptroller and Auditor General (C&AG) published his report¹ in January 2016 highlighting concerns around the governance, leadership and ethical standards in NIHE prior to 2010. The C&AG concluded that weaknesses in NIHE's governance and an inadequate internal control environment prevented it from protecting its own interests and demonstrating value for money and probity in some of its land deals with private developers.

¹ The Governance of Land and Property in the Northern Ireland Housing Executive, Report by the Comptroller and Auditor General, 7 January 2016.

Conclusions

4. The Committee's examination of a number of individual land disposals has left the impression that some staff in NIHE felt they did not need to operate within the Housing Executive's governance and control systems. Advice and guidance was simply ignored, with serious consequences for NIHE. The Committee finds it difficult to understand how some staff could take such a cavalier approach and even more difficult to understand why senior management, the Department or other NIHE staff failed to challenge the obvious disregard for proper processes and fundamental controls.
5. The Committee can only conclude that such an approach demonstrates an organisational culture which was seriously flawed. This should have been tackled at the top of the organisation. It was not. The Board failed to establish a culture of compliance around the stewardship of publicly owned assets in its care. The Board clearly did not set the right tone and did not lead the way on promoting an appropriate organisational culture - this was left to senior management. It appears to the Committee that some senior officials were in reality making Board-level decisions. This was wrong. The roles of the Board and senior management should be separate: the Board governs and the Chief Executive manages the organisation.
6. The Department and indeed NIHE missed opportunities to tackle the weaknesses in governance and control. The multiple concerns raised by audits in the period between 2001 and 2010 should have prompted action. The Committee considers that there were clear failings in the Department's oversight of NIHE. It is unbelievable that the Department did not think it necessary to test the performance and governance assurances received from NIHE.
7. In 2013, this Committee concluded that the culmination of basic failures in governance and management over many years exposed the Housing Executive to a very significant risk of fraud, impropriety and poor value for money in relation to its response maintenance expenditure. These governance failings also applied to land dealings and left the Housing Executive vulnerable to corruption in its dealings with private developers.

8. The Committee recognises that much has changed in the Housing Executive since these serious issues were initially uncovered. Both the Executive and the Department have made considerable strides in addressing the serious flaws that emerged. However, we consider that the lessons emerging from this report are important not only for the Department for Social Development and the Housing Executive, but also for Boards, Audit Committees and senior managers across the public sector.

Summary of Recommendations

Recommendation 1

The Committee recommends that all public bodies give consideration to making available the declarations recorded by individual Board members and senior officials in the register of interests. In the Committee's view, bodies should be guided by the principle of maximum transparency.

Recommendation 2

The Committee recommends that DFP issue a reminder to all public bodies to ensure that each organisation has effective and robust procedures for dealing with Assembly Questions and that the protocols for correcting inaccuracies in answers to Assembly Questions are clear.

Recommendation 3

The Committee recommends that at the most basic level, all Boards should have a system in place which allows the Board to track issues and monitor the implementation of any required action.

Recommendation 4

The Committee recommends that if a public body wishes to deviate from expert advice, it should fully consider the implications of this action and ensure that their reasons to deviate are fully documented.

Recommendation 5

The Committee recommends that public bodies do not become involved in tax planning arrangements that have the primary objective of reducing or avoiding tax. DFP should consider if additional guidance is needed to emphasise this point.

Recommendation 6

The Committee recommends that NIHE's system of delegation is clarified to identify when staff can use their delegated authority. Whilst it should be clear who is responsible for approving the sale of land, it is essential that staff are not permitted to amend multi-million pound contracts without reverting to the NIHE Board.

Recommendation 7

The Committee recommends that NIHE should ensure that the findings, recommendations and lessons learned arising from audit work are read across to all operational areas within NIHE.

Recommendation 8

The Committee recommends that NIHE and its sponsor department continue to strive to foster an effective, honest and open working relationship based on a full understanding of each other's responsibilities. This will ensure that there is a good two way flow of information with risks, threats and indeed opportunities dealt with appropriately.

Introduction

1. The Public Accounts Committee (the Committee) met on 20 January 2016 to consider the Comptroller and Auditor General's report "The Governance of Land Disposals in the Northern Ireland Housing Executive". The witnesses were:

- Mr Andrew Hamilton, Accounting Officer, Department for Social Development;
- Mr Jim Wilkinson, Director of Housing Strategy, Policy and Reform, Department for Social Development;
- Mr Clark Bailie, Chief Executive, Northern Ireland Housing Executive;
- Ms Fiona Boyd, Counter Fraud and Security Advisor, Northern Ireland Housing Executive;
- Mr Colm McCaughley, former Director of Housing and Regeneration, Northern Ireland Housing Executive;
- Mr Kieran Donnelly, Comptroller and Auditor General; and
- Ms Alison Caldwell, Treasury Officer of Accounts.

The Department for Social Development (the Department) and the Northern Ireland Housing Executive (NIHE) provided the Committee with further information on 8 February 2016. The Committee also received correspondence from a number of interested parties on other matters arising from the Comptroller and Auditor General's report.

2. This report is about weaknesses in the Department's oversight of the Housing Executive; flaws in NIHE's corporate governance structures; the breakdown of NIHE's internal controls linked to land and property dealings with private developers prior to 2010; and the mismanagement of a serious conflict of interest. The Committee also took evidence on a number of individual land dealings involving NIHE and private developers.
3. Members of the Committee would like to acknowledge that in their experience NIHE staff are dedicated, diligent, honest and provide a service central to the wellbeing of local communities. The Housing Executive has a proud history

and on formation tackled some of the worst social housing problems in Europe transforming the lives of many families. This good work continues. However, the Committee is very disappointed that in recent years a small number of senior NIHE officials have seriously damaged the reputation of the organisation and the Committee considers that NIHE staff and the public have been badly let down.

4. In taking evidence the Committee focused on the following areas:
 - a number of individual land and property deals involving NIHE over the period 2004 to 2010; and
 - governance and control within NIHE.

Individual land dealings examined by the Committee

5. The Committee heard evidence around a number of land and property dealings in which NIHE was involved. The weaknesses in many of these disposals highlight major concerns with the system of governance that was present in NIHE at that time.

Nelson Street, Belfast

6. The Committee examined NIHE's involvement with a privately owned site at Nelson Street in Belfast. The site was purchased by a property development company, Big Picture Developments Limited in July 2006. The land had been zoned both as a development opportunity site and for social housing. The Department had previously approved a plan submitted by a Housing Association for 66 social housing units and the Housing Association had been at an advanced stage in negotiations to purchase the Nelson Street site. NIHE strongly supported the plan for social housing on the site as North Belfast was an area of high housing need.
7. In early 2008, Big Picture Developments submitted a planning application for a mixed use development including office and commercial space and 238 private apartments. The application made no provision for social housing. NIHE objected to the planning application in September 2008.
8. In February 2009, the Housing Executive's Director of Housing and Regeneration, Colm McCaughley, emailed NIHE's Belfast Area Office raising

the issue of NIHE's objection to the planning application at Nelson Street and made a number of arguments as to why this objection was unreasonable.

9. The Committee was concerned when they were told that Mr McCaughley had a conflict of interest in this case. A close family relative was a financial consultant who worked for a property company which invested in Northern Ireland through Big Picture Developments. Mr McCaughley had declared this interest in the Housing Executive's register of interests. In evidence to the Committee, Mr McCaughley identified that the close family relative was his son.
10. The Committee understands that in April 2009 a member of Mr McCaughley's staff wrote to the NIHE legal department requesting that it consider the reasonableness of NIHE's Nelson Street objection. After intervention by Mr McCaughley in December 2009 in the Nelson Street case a letter was sent by a Housing and Regeneration Division official, to DoE Planning Service in January 2010. This indicated that NIHE was withdrawing its request for social housing on the site. The NIHE Chief Executive told the Committee that Mr McCaughley was "articulating an argument which reflected the position of the developer" and not that of NIHE. When it became clear that this letter had been sent, NIHE wrote to DoE Planning Service to rescind the original letter and reaffirm NIHE's support for social housing at Nelson Street.
11. Mr McCaughley explained to the Committee that his intervention was not just about the Nelson Street site but rather about a zoning policy which impacted upon "100 sites" - it just so happened that Nelson Street was the first site in which the legality of the zoning policy could be challenged. In the Committee's opinion had his son not been working for the owner of the Nelson Street site, Mr McCaughley's only possible motive for becoming involved in the case should have been the public interest, and as he said to the Committee "for the betterment of the planning system". However, the policy change which Mr McCaughley was campaigning for, if successful, would have resulted in his son's employer potentially gaining many millions of pounds.
12. The average person in the street would have had his suspicions that with his son working for the developer, any involvement by Mr McCaughley relating to

that developer would have appeared to be lobbying on their behalf. Public perception is an important consideration for the public service, especially in issues of conduct. The Committee firmly believes (and at the hearing Mr McCaughley also agreed) that he should have totally detached himself from the Nelson Street case. The Committee also believes he should not have pursued any concerns with NIHE policy without consideration of the conflict which existed in the Nelson Street case. There were opportunities for him to stand aside and pass the issue to an independent Director. However, the Committee is not convinced that Mr McCaughley did everything possible to alert his colleagues, or the NIHE Board, to the full implications of his conflict of interest.

13. The Committee was disappointed that Mr McCaughley dismissed the issues he faced on the Nelson Street case as “the ogre of conflict of interest”. Proper conduct in public life is essential to the maintaining of fairness and transparency in public services. Guidance is in place to ensure effective corporate governance and to help protect public servants - it should not be seen as a chore or hindrance. The Committee would also remind all senior public servants that it is their responsibility not only to follow guidance but to act as role models for others regarding matters of propriety. Senior staff should lead by example, especially in matters of conduct.

14. Equally as disappointing to the Committee was that the NIHE as an organisation also failed to handle the conflict properly. Other senior NIHE officials, in particular the then Chief Executive, Paddy McIntyre, neither intervened nor challenged Mr McCaughley until he had become deeply involved in the Nelson Street case. In his evidence to the Committee the present Chief Executive indicated that at that time he was the Director of Finance but had been totally unaware of the conflict or indeed Mr McCaughley’s register of interest declarations.

Recommendation 1

The Committee recommends that all public bodies give consideration to making available the declarations recorded by individual Board members and senior officials in the register of interests. In the Committee’s view, bodies should be guided by the principle of maximum transparency.

15. Three Assembly Questions tabled by a North Belfast MLA relating to Nelson Street were forwarded to NIHE in January 2010. One of these questions enquired about the continued intention to develop social housing on the site. NIHE forwarded a reply to the Department which reflected the wording of the letter that had been sent from Housing and Regeneration Division to the Planning Service withdrawing support for social housing. The Department realised that the response did not reflect the Department's support for social housing on the site and they amended it.
16. Another Assembly Question sought confirmation on whether the Department had had any contact with developers involved in Nelson Street. The response indicated that there had been no contact but this was inaccurate since there had been a meeting between officials from Big Picture Developments and two senior NIHE officials in 2007. NIHE explained that the person who provided the answer made an assumption that the Assembly Question was a reference to recent contacts only and that the inaccurate response was not intended to mislead.
17. The Committee noted that a disciplinary investigation was conducted into the actions of two members of staff from the Housing and Regeneration Division who were involved in aspects of the Nelson Street case. Strangely, however, the disciplinary investigation did not extend to the inaccurate answer that was provided to the second question. In the Committee's view this was a mistake.
18. Assembly Questions are a key accountability mechanism in the democratic system of government and Assembly Members have a legitimate expectation that responses are open, honest and accurate. Responses should comprehensively address the matter raised and public officials should not make assumptions around the questions that Members ask. The Committee was disappointed to hear that the response to these questions did not "go through all channels it should have."
19. It is even more concerning that the inaccurate response to the second Assembly Question, which misled the Assembly, was not subsequently corrected by the Department. The Department did not contact the Member

who asked the question, the Speaker or the Minister to provide a corrected response.

Recommendation 2

The Committee recommends that DFP issue a reminder to all public bodies to ensure that each organisation has effective and robust procedures for dealing with Assembly Questions and that the protocols for correcting inaccuracies in answers to Assembly Questions are clear.

20. In the Committee's view there were a series of actions including a conflict of interest and instances of poor judgement that seem to have had the potential to provide an advantage to the developer at the expense of NIHE's preference for social housing on the Nelson Street site.

Hardcastle Street, Belfast

21. The Committee was told that in the late 1990s a private developer, Wendleford Limited, had approached the Housing Executive requesting that it vest land at Hardcastle Street in Belfast to provide secure car parking for private apartments. In March 1999 the Housing Executive acquired this land under a Vesting Order. Both the NIHE Board and the Department approved this course of action.
22. NIHE admitted to the Committee that there is only a brief file note (and no direct correspondence with Wendleford) to support why its officers felt it necessary to vest land to assist the aims of a private developer. In the Committee's opinion the lack of audit trail is totally unacceptable and adds weight to the Committee's suspicions of impropriety in this transaction.
23. In early 2000, before Wendleford had secured ownership of the Hardcastle Street site, it obtained planning consent to build four apartments on the land. On two occasions, the NIHE's Chief Executive's Business Committee ordered that the land should be offered for sale on the open market. However, in March 2005 the land was sold without competition to Wendleford Limited, for £98,000, despite the stated interest of another developer. The Committee heard no convincing explanation as to why the Chief Executive's Business

Committee was ignored. The Committee was also appalled to learn that as part of this sale NIHE agreed to pay Wendleford £16,500 which related to Wendleford's costs in obtaining planning consent for the four apartments.

24. The Department confirmed that it was completely unsighted on the off market sale of the Hardcastle Street site. However, the Committee would point out that the Department had approved the Vesting Order for this land and should have been aware of the reasons for vesting.

Enabling

25. The Committee understands that in late 2006 and early 2007 the then Director of Housing and Regeneration, Colm McCaughley, presented papers to the NIHE Board which attempted to explain the rationale behind the Hardcastle Street disposal. Mr McCaughley argued that the off market disposal was justified as part of NIHE's enabling role. Enabling was defined as "assisting the private sector with land assembly where access or title problems are preventing or constraining development".
26. The NIHE Board in April 2007 told the Director of Housing and Regeneration to report back with a formalised enabling policy. This was never done. The Committee is concerned that an important request from the NIHE Board could effectively be ignored by the Executive Team and that at the time there was no mechanism for the Board to keep track and ensure that any actions requested were carried out.

Recommendation 3

The Committee recommends that at the most basic level, all Boards should have a system in place which allows the Board to track issues and monitor the implementation of any required action.

27. The Committee heard conflicting evidence from witnesses on the enabling issue. In his evidence to the Committee Mr McCaughley stated that enabling was a key housing policy across the United Kingdom and had been a NIHE Policy since 1996. The Committee was told that enabling featured in a Department of the Environment sponsored review in the 1990s. The Committee notes that this document is, in fact a set of "proposals for future

housing policy”. The brief paragraph given over to enabling is far short of a workable policy document, which would have highlighted where, when and how a policy of enabling would be implemented. The proposal for an enabling policy was never taken forward.

28. NIHE and the Department explained that between the late 1990s and late 2000s enabling was a generic concept but it was never a formal NIHE or Departmental Policy. It is obvious to the Committee that in 2007 the NIHE Board also recognised that enabling was not a formal policy by requesting that a policy should be developed. The Committee is concerned that for many years NIHE may have sold public sector assets on the basis of a concept as opposed to a formalised written and agreed policy.
29. Mr McCaughley offered no explanation to the Committee as to why the NIHE Board’s request for enabling activities to be formalised as a policy was ignored. The Committee can only conclude that the lack of a documented policy and procedures suited some senior NIHE officials at that time who had no desire to be constrained by the NIHE Board. However, the fact that enabling activities were never documented or approved by the NIHE Board makes it incredibly difficult for NIHE officials to defend themselves from accusations and suspicions of misconduct.

Victoria Place Apartments, Glenalpin Street, Belfast

30. Colm McCaughley’s son, who acted for a property development company with links to Big Picture Developments, asked Mr McCaughley for help in obtaining a wayleave permission and a lease from NIHE, for a balcony overhang at an apartment development known as Victoria Place in Glenalpin Street, Belfast, which was nearing completion. In the Committee’s opinion there was a clear conflict of interest and Mr McCaughley should not have been involved. He should have referred this transaction to another independent Director.
31. In Mr McCaughley’s view this was “a nothing” transaction that got “stuck in the system somewhere”. However, the Committee firmly believe that the transaction had potentially huge financial implications for the property developer. At that time (2008) the property market had gone into severe decline and some buyers were attempting to rescind contracts to purchase

apartments. This was one such case. Without the grant of a wayleave and lease from NIHE, sales of Glenalpin Street apartments may have been more difficult to complete. It is also surprising that a “nothing” transaction became a priority case for a very senior officer - a Director - in the Housing Executive.

32. Mr McCaughley argued that he was involved in many such requests from a number of sources. However, the Committee notes that few other developers in this situation could have had the sort of access to a senior NIHE official that is demonstrated in this situation.
33. The Committee was informed that the Glenalpin Street valuation, albeit a nil value, was only received from Land and Property Services (LPS) some five months after the wayleave permission had been granted. In explaining this situation Mr McCaughley said that due to the vast number of land dealings at that time the “process sometimes got ahead of the valuation”. The Committee is shocked at this explanation and finds this situation to be totally unacceptable. Guidance and regulations work to ensure effective corporate governance extends throughout the public sector and to protect staff from accusations of favouritism. However, in the examples presented to the Committee, some staff appear to have viewed guidance as an inconvenience that could be ignored or actively avoided.

Millmount House and Lands

34. In May 2003, NIHE sold Millmount House, a listed farmhouse, on the open market to a private developer for £500,000. In February 2004, the NIHE Board approved the sale on the open market of land surrounding the house. During the sale process it became apparent that a Right of Way granted to the purchaser of Millmount House would prevent the highest bidder from obtaining the £35.2 million of funding to complete the purchase. The developer who had previously purchased Millmount House retained control over a key access point to the Millmount Lands and effectively held a ransom strip.
35. The Committee was informed by NIHE’s Chief Executive that the advice obtained from LPS prior to the sale of Millmount House was that NIHE should consider selling both the house and lands together. However, this advice was disregarded and instead the house was sold separately in advance of the sale

of the lands. This decision proved to be a significant error of judgement. All witnesses, in their evidence to the Committee, admitted that with the benefit of hindsight the house and lands should have been sold as a package.

Recommendation 4

The Committee recommends that if a public body wishes to deviate from expert advice, it should fully consider the implications of this action and ensure that the reasons to deviate are fully documented.

36. NIHE acknowledged that whilst they had been aware of the Right of Way prior to the sale of the Millmount House, its “strategic importance was not appreciated”. Mr McCaughley highlighted to the Committee that NIHE officials actively reviewed NIHE land holdings looking for ransom strips. Despite this being NIHE’s largest ever land sale, the Right of Way, which was effectively a ransom strip, appears to have been inexplicably missed. The Committee was told by Mr McCaughley that “there was no more preparation done on any site in Northern Ireland than on Millmount”. Not with standing this, and consultancy fees of over a quarter of a million pounds, the Committee is concerned that no one appears to have realised the significance of the Right of Way.
37. The developer who had purchased Millmount House later offered to buy the surrounding lands for £36.1 million. The Housing Executive’s “hands were tied” and the Board agreed to sell in December 2005. In the Committee’s view, the amount received for the sale of the lands at Millmount was unlikely to reflect the open market value when the sale completed. A deposit of £1 million was initially paid and the contract was closed through a novation agreement whereby an off-shore Isle of Man consortium replaced the developer as the buyer. This consortium sold the house and lands some 11 months later for £96 million.
38. In the Committee’s view it was a catastrophic decision to sell Millmount House prior to the lands and this potentially created a significant loss to the public purse. This decision appears to have been driven by concern over security costs of around £1,500 per week. In contrast, the off-shore private sector consortium made a staggering profit of over £1 million per week over the 11 months it owned the lands.

39. It deeply concerns the Committee that there was no sense within a publicly appointed, publicly funded and publicly accountable body that there was anything improper or unethical about assisting an off shore consortium to create arrangements that may have helped to reduce their tax liabilities arising from this significant land sale. In the Committee's opinion, NIHE should not have been involved in such a transaction.

Recommendation 5

The Committee recommends that public bodies do not become involved in tax planning arrangements that have the primary objective of reducing or avoiding tax. DFP should consider if additional guidance is needed to emphasise this point.

Annadale, Belfast

40. In February 2003 the NIHE sold land at Annadale, Belfast on the open market for £3.4 million to a private developer. Prior to the sale, the land had been valued by LPS at £3.5 million, based on the development of 60 terraced social houses. The contract of sale allowed for an initial deposit of £50,000 and two stage payments; 15 months and 27 months after the contract signature date.
41. The Annadale site contract was extended on three occasions by an Assistant Director and the full balance of £3.35 million was received in August 2007, some four and a half years after contract signature. The Committee was told by NIHE that the contract was extended to allow the developer to obtain planning consent for apartments. NIHE suggested that the contract extensions were routine and in line with the contractual arrangements. The Committee does not agree with this explanation. The contract completion date was in fact extended by over two years beyond the original anticipated completion date.
42. The Department told the Committee that it was concerned that the NIHE Assistant Director may not have had the delegated authority to approve the contract extensions. It is absolutely clear to the Committee that when difficult judgements and crucial decisions are required in multi-million pound contracts, then the Board should be involved. In the case of the Annadale site contract extensions, the NIHE Board was unsighted.

Recommendation 6

The Committee recommends that NIHE's system of delegation is clarified to identify when staff can use their delegated authority. Whilst it should be clear who is responsible for approving the sale of land, it is essential that staff are not permitted to amend multi-million pound contracts without reverting to the NIHE Board.

43. The developer obtained enhanced planning consent for 216 apartments (on condition that 50 would be allocated for social housing) during a period when the property market was booming in Northern Ireland. Given market conditions and the probability that enhanced planning consent would be achieved, the Committee was surprised when told by NIHE that there is no evidence of any consideration of clawback in the Annadale sales files. During investigations NIHE engaged an independent valuer who estimated that the Annadale land would have been worth in the region of £17 million in August 2007, when NIHE finally received payment of the balance of the £3.4 million sale price. The Committee believes that the public purse, in all likelihood lost out on significant additional revenue.
44. In the event, the developer honoured his agreement to provide 50 apartments for social housing on the Annadale site. A Housing Association paid over £9 million (£184,000 per unit) for the 50 apartments with £7.7 million being provided as government grant.

Investigations

45. NIHE told the Committee that its investigators referred five separate cases to the PSNI for further investigation. These were NIHE's involvement at Nelson Street; disposals at Victoria Place apartments; a proposed disposal at Glenalpin Street; a disposal at Hardcastle Street; and a disposal at Skegoneill Avenue. The five evidence packs were prepared under the terms of the Memorandum of Understanding with the PSNI and NIHE investigators made recommendations as to where the criminal investigation should be focused. The PSNI subsequently referred two cases (Nelson Street and Victoria Place apartments) to the Public Prosecution Service. The Public Prosecution Service concluded that "insufficient evidence existed to provide a reasonable prospect of conviction".

46. The Committee was dismayed to hear that the reason the PSNI were unable to progress other investigations was due to a lack of proper procedures and controls in NIHE's management of land disposals in the period before 2010. It is clear to the Committee that a poor control and governance environment not only heightens the risk of fraud but also hampers effective investigation.

Corporate governance, controls and accountability

There was a cavalier approach to rules, controls and guidance in some land and property transactions

47. The Housing Executive and the Department explained that prior to 2010 there were deficiencies in the arrangements for disposing of land. On several occasions, best practice and advice issued by DFP, LPS and the Department was either ignored or not complied with. The Committee is left with the impression that some staff in NIHE felt they did not need to operate within the Housing Executive's governance and control systems. Evidence taken by the Committee provided numerous examples in support of this view:

- proportionate economic appraisals were not completed to justify land disposals;
- there were issues of conduct and behaviour including a conflict of interest that was not properly handled by Mr McCaughley and the then Chief Executive, Paddy McIntyre;
- in the Millmount disposal advice from LPS was disregarded;
- the land at Hardcastle Street was sold off market to a preferred developer despite the Chief Executive's Business Committee recommending an open market disposal;
- there were instances in which delegated approval limits were ignored;
- there were instances where documentation justifying key decisions was poor which is likely to have undermined the viability of any criminal proceedings;
- there was poor planning and contract management which may have resulted in the public purse losing out on significant additional revenue, in particular the Annadale case;
- the NIHE Board was provided with inadequate or superficial information. In the case of enabling the Board was ignored when it requested that a formal policy be put in place; and
- the Committee was appalled to hear that on occasion NIHE's Land and Property department were sellotaping pre-prepared signatures to disposal schedules approving land disposals as opposed to obtaining original signatures.

48. The Committee believes that there was a cavalier attitude to controls, safeguards and guidance. The Committee finds it difficult to understand why senior management and the Board did not challenge the obvious disregard for proper process and fundamental controls. We can only conclude that the culture that existed within NIHE at the time effectively countered the wider public interest that should be a guiding principle for all public servants.

Governance and accountability weaknesses were not tackled by the NIHE Board or senior management

49. It is the responsibility of the NIHE Board and the Accounting Officer to ensure that the public assets entrusted to them are properly controlled and safeguarded. Yet the Committee has been left with the impression that at this time, no one took decisive action to tackle the serious issues that were arising, notably the conflict of interest. It cannot be an excuse that no one knew about the conflict - the Board and the then Chief Executive, Mr Paddy McIntyre, should have made it their business to know.

The Board failed in its duty to hold senior management to account

50. The failure by certain senior officials within the NIHE to adhere to the existing control framework for land and property transactions with private developers should have been identified by the NIHE Board and improvements demanded. It is the responsibility of the Board to define the control mechanisms that safeguard public resources. This did not happen. The Board clearly failed to establish a culture of compliance around the management and stewardship of publicly owned assets in its care.

51. It is the Board who have primary responsibility for promoting values for the whole organisation and demonstrating values of good governance through behaviour. The NIHE Board fell far short in its application of this fundamental responsibility. It is also clear that the Board failed to ensure that the highest standards of governance were complied with.

52. The Committee is at pains to understand why the NIHE Board in the period prior to 2010 was so blind to these serious flaws in governance. The Board clearly did not set the right tone and did not lead the way on promoting an

appropriate organisational culture - this was left to senior management. The Housing and Regeneration Division completely dominated the operational side of the Housing Executive - with a span of control within the organisation which was too wide. It appears to the Committee that as a result the Director of Housing and Regeneration was able to exert disproportionate influence on his senior management colleagues. This culture of disproportionate influence was never challenged by the Chief Executive. In the Committee's opinion, at times the Board appears to have been led by senior management.

53. The Committee welcomes the assurances provided by NIHE's present Chief Executive at its hearing that the organisation's structure has been reviewed and that Directors' responsibilities are now spread more evenly across the organisation.
54. This Committee at a previous inquiry uncovered that the information provided by some senior members of the Executive team within NIHE to the Board on important issues was inadequate. On occasion key information was withheld or presented in a superficial way. The Committee expects the NIHE Board to hold management to account; the Board should understand the business, not be afraid to ask for information and if it judges that it is not getting this information it should demand it from management.
55. The NIHE Board also relied on assurances from the Executive team without seeking appropriate evidence to validate the assurances. This weakness was repeated at the interface between NIHE and its sponsor department the Department for Social Development.

The leadership of NIHE failed to identify and correct fundamental flaws in corporate governance

56. The Committee's concerns around NIHE management were confirmed by the approach taken to a highly critical Internal Audit of land disposal in 2007. Rather than ensuring that the audit was finalised, presented to the Audit Committee and the findings used to address weaknesses in NIHE's systems, management seem to have effectively suppressed the report. The Committee believes that this is another indication that the culture in NIHE at the time was fundamentally flawed. Rather than use criticism to address weaknesses, it was hidden.

57. The evidence before the Committee points to a very disturbing situation that played out in the Housing Executive in the period under scrutiny. It appears that some senior officials were in reality making Board-level decisions. This was wrong. The roles of the Board and senior management should be separate: the Board governs and the Chief Executive manages the organisation. The Board must be kept adequately informed to enable it to direct and discharge its responsibility to monitor performance. The Committee welcomes the present Chief Executive's acceptance that he bears the prime responsibility for making sure that the Board is kept fully informed with meaningful, reliable, accurate and complete information by the Executive team.

The Department failed in its oversight of NIHE

58. The Committee considers that there were clear failings in the Department's oversight of NIHE. The Department presented the argument that it was not alert to the lack of compliance with controls relating to land and property transactions as they didn't test the information they received. In the opinion of the Committee, the Department and indeed the NIHE missed opportunities to tackle the control and governance weaknesses.

59. The Department, as far back as 2001, had concerns about value for money and probity in relation to four innovative Houses for Land schemes that NIHE were progressing. The Committee was told that the lessons from this report were not read across to other land disposals. In 2007, NIHE Internal Audit produced a critical report on land disposals which was robustly challenged by officials in the Housing and Regeneration Division and never finalised. The Department was unsighted on this report and the Committee welcomes the revised procedures which mean that all draft NIHE Internal Audit reports are now submitted to the Department.

60. In 2008 the Department felt sufficiently concerned to request an audit of its own monitoring arrangements. The findings of this audit were also damning: "the Department's monitoring arrangements were not fit for purpose; there were no information systems in place to facilitate the monitoring arrangements; and controls had been weakened in direct contravention of the applicable legislation." The report concluded that "the failure of the Department to monitor

this area of work means that it has no assurance that public owned assets are being fully utilised or, where appropriate, its maximum capital value is obtained through disposal”.

61. The Committee considers that the Department should not have been unsighted about the serious issues with land disposals in the Housing Executive. The multiple concerns raised by audits over this period should have prompted action. The Department’s explanation that “opportunities were not fully exploited” is not acceptable to the Committee. The warning signs were there but the Department ignored these concerns and failed to take action to increase its level of oversight and scrutiny.
62. In 2010, the Department commissioned a review of governance in NIHE. This review confirmed that although appropriate governance structures were in place they were not operating effectively. The governance and performance systems in place provided the Department with assurances which they accepted at face value. The Committee is stunned that no one in the Department considered that they should test these assurances. The Department informed the Committee that it now actively seeks evidence of compliance to validate the assurances provided and that NIHE is also now subjected to the same system of regulation and inspection as applied to Housing Associations. The Committee would add that it is important that the Department regularly reviews the processes for gaining assurance from its’ Arm’s Length Bodies.

Recommendation 7

The Committee recommends that NIHE should ensure that the findings, recommendations and lessons learned arising from audit work are read across to all operational areas within NIHE.

Recommendation 8

The Committee recommends that NIHE and its sponsor department continue to strive to foster an effective, honest and open working relationship based on a full understanding of each other’s responsibilities. This will ensure that there is a good two way flow of information with risks, threats and indeed opportunities dealt with appropriately.

63. A series of interrelated factors and weaknesses combined to create a fundamentally flawed corporate governance system within the Housing Executive in the period prior to 2010. Weaknesses in the Department's sponsorship activities failed to detect these corporate governance flaws. Recent inquiries by this Committee and the work of the Comptroller and Auditor General have highlighted the problems that NIHE experienced in the years leading up to 2010. The Committee implores the wider public service to take note and learn the lessons.

Improvements in NIHE's management of land

64. NIHE is currently undertaking a review of all NIHE land with the aim of identifying additional lands with development potential which could support the Social Housing Development Programme. NIHE explained that the project is scheduled to complete in March 2017 and that to-date 11.23 hectares have been reclassified as land with development potential. This reclassification has increased the NIHE land asset by an estimated £1.42 million but more importantly has potentially increased the land available for the construction of new social housing.
65. NIHE informed the Committee that it has drafted a specification of requirements for an improved Land Sales System. The new Land Sales System will be integrated with the existing Land Terrier Management System which will provide an end to end system capable of tracking a land transaction from application to completion.

Links to Appendices

Minutes of Proceedings can be viewed [here](#)

Minutes of Evidence can be viewed [here](#)

Correspondence can be viewed [here](#)

Other Documents relating to the report can be viewed [here](#)

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