



Northern Ireland  
Assembly

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**COMMITTEE FOR  
CULTURE, ARTS AND LEISURE**

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**OFFICIAL REPORT  
(Hansard)**

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**DCAL update on Companies Inspection  
NIEC**

10 June 2010

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR CULTURE, ARTS AND LEISURE**

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**Members present for all or part of the proceedings:**

Mr Barry McElduff (Chairperson)  
Lord Browne  
Mr Trevor Clarke  
Mr Billy Leonard  
Mr Raymond McCartney  
Mr David McClarty  
Miss Michelle McIlveen  
Mr Ken Robinson

**Witnesses:**

Mr Mick Cory )  
Mrs Rosalie Flanagan ) Department of Culture, Arts and Leisure

**The Chairperson (Mr McElduff):**

I invite the departmental officials to join the Committee. I welcome Mrs Rosalie Flanagan, the Department's permanent secretary, and Mr Mick Cory. Thank you for coming.

**Mrs Rosalie Flanagan (Department of Culture, Arts and Leisure):**

Good morning. Thank you for inviting us.

**The Chairperson:**

Rosalie, I think that this is your debut before the Committee as permanent secretary.

**Mrs Flanagan:**

Yes; it is one of many debuts that I have had over the past four months. I am sure that I will have some useful engagement with the Committee across a range of DCAL matters as time goes on.

**The Chairperson:**

We wish you well in your pursuits. I invite you to make your opening statement.

**Mrs Flanagan:**

We have provided the Committee with a briefing paper on the Northern Ireland Events Company's current position. I will give a further update on the company inspection. The Committee will be aware that the Northern Ireland Events Company (NIEC) was established by the old Department of the Environment in 1998 as a private company limited by guarantee, to attract major events to Northern Ireland. Its constitution and purpose was set out in a memorandum of association and articles. Sponsorship responsibility transferred to the Department of Culture, Arts and Leisure (DCAL) when it was established in 1999. The company is run by a group of non-executive, unpaid directors appointed by DCAL, and the directors are supported by a small executive team. The relationship between DCAL and the company is governed by a management statement and financial memorandum.

In September 2007, the then acting chief executive, Mr Jasper Perry, drew the Department's attention to a financial deficit in the company's accounts. In November 2007, the consultant company KPMG was engaged by DCAL to carry out, inter alia, a comprehensive and authoritative audit of the financial affairs of the company and a comprehensive review of the circumstances surrounding the deficit that had been accumulated by the company.

KPMG reported to the Department that, at 31 March 2008, the deficit was estimated to be £1.7 million. Following discussion with the PSNI, the Comptroller and Auditor General, the Department of Finance and Personnel and the Departmental Solicitor's Office, the Department referred the circumstance that gave rise to the deficit in the Events Company to the Department of Enterprise, Trade and Investment (DETI), requesting that the company inspectorate investigate the affairs of the NIEC.

Company inspectors were appointed by DETI in November 2008 under the Companies (Northern Ireland) Order 1986. The inspectors have the necessary wide-ranging powers and an obligation to investigate any and all areas of potential concern. DETI's functions in the area of company inspection are to seek to protect the public and to regulate the marketplace. In carrying out its functions, DETI gives due consideration to complaints that it receives. Importantly, investigations of this nature are confidential matters between DETI, the inspectors and the company that is being investigated. Company inspectors conduct interviews in accordance with the Police and Criminal Evidence Act 1984.

It is essential that confidentiality is upheld if confidence in the inspection process as a remedy for misconduct in the running of companies is to be maintained. That gives individuals with knowledge of company wrongdoing, including whistle-blowers, the necessary encouragement to come forward with complaints. Individuals may also wish to have their concerns investigated but not wish to see harm resulting to the company and its reputation through negative publicity. Confidentiality avoids the danger of companies or individuals who are innocent of any wrongdoing having their reputation compromised through negative publicity that has resulted from malicious, ill-founded or unsubstantiated allegations of misconduct.

Therefore, DETI requires that nothing relating to the inspectors' investigation is disclosed into the public domain until such time as the matter that is under investigation has been examined fully and a report made. In addition, if the process is not conducted in the strictest confidence, that may be prejudicial to the conduct of the investigation and any potential prosecutions that might result.

As was mentioned at our previous meeting on the matter, we have kept in regular contact with DETI about the progress of the investigation. It has advised us that it is conducting a thorough investigation into the affairs of the Northern Ireland Events Company. Inspectors have reached the stage where they have completed their examination of papers and are now preparing to initiate and undertake interviews with relevant persons.

When the report is received by DETI from the inspectors, and depending on whether matters of substance have been discovered by the inspectors, DETI may refer it to the Public Prosecution Service (PPS) and/or other regulatory bodies. Application may also be made to have the

company wound up. The Public Accounts Committee and the Committee for Culture, Arts and Leisure are regarded as regulatory authorities and, therefore, may be entitled to have sight of the report. However, that will depend on whether any civil or criminal proceedings are recommended by the inspectors, in which case those matters would have to be dealt with first.

The public interest is best served by maintaining the confidentiality of the process until such time as civil, criminal and other regulatory action has been considered and concluded, because if criminal activity is discovered, it will be referred to the PPS. As soon as the potential for referral has been identified by the inspectors, an interim report will be referred to DETI and, subject to legal advice on the matter, will then be referred to the PPS. The PPS decides whether there is a case to prosecute and, if so, it would be referred to the police for investigation. Company inspectors will take guidance from DETI with regard to continuing further work on the company inspection, if it came to that point.

Another area relating to public interest is that the potential for future civil action will need to be examined in light of the report's recommendations, legal advice and whether other actions are under way at the time. The Northern Ireland Audit Office intends to report on the matter to the Public Accounts Committee, as the statutory Committee established to examine such matters.

As regards DCAL's responsibilities, it has no locus in the company inspection. We referred the matter for inspection and DETI has accepted it. Therefore, it now being dealt with by DETI under the Companies (Northern Ireland) Order 1986. The inspectors' report will go to DETI, not DCAL, and DETI will decide what action, if any, will be taken, depending on the contents of the company inspectors' report. Ownership for the process report and subsequent actions rests with DETI.

At our previous meeting, the Committee was interested in timescales. Company inspectors have wide-ranging powers and an obligation to investigate any and all areas of potential concern. Although the specific areas of complaint raised by DCAL will be regarded as a priority, inspectors cannot exclude other areas that may arise during the investigation. Following the Committee's previous discussion on the issue, the DETI Minister, Arlene Foster, wrote to the Committee on 5 December 2009. In that letter she said that the average length of a company inspection is two years, but DETI does not consider the Events Company investigation to be an average case. That is the current information that we have about the timescale.

DETI has advised that the cost will depend on a number of factors, including the complexity of the investigation, the number and co-operation of the persons to be interviewed and the production of papers. The Department has not offered any estimate of costs, as it thinks that that could subsequently be inaccurate. However, I again refer to the letter from Arlene Foster, in which she said that expenditure from the beginning of the inspection to the end of August 2009 was £150,000. DETI has advised us that the costs incurred will be proportionate to the value and quality of the work being undertaken by the inspectors, and the costs are being regularly monitored and authorised by DETI.

Another issue that came up was value for money. The recommendation to appoint the inspectors was made after careful consideration of the issues among various parties. The potential cost of such a route was considered, as well as where the public interest lay, given the indicators of potential fraud and the high degree of public concern. When he appeared before the Committee in October 2008, the Comptroller and Auditor General confirmed the appropriateness of the company inspection route. Consideration of value-for-money issues and the appointment of company inspectors was, and remains, a matter for DETI.

In conclusion, DCAL is not in a position to communicate, other than as I have already done, on progress or details of the company inspection process to the Committee. It is entirely a matter for DETI until the report has been written and DETI makes a judgement as to what happens thereafter. My colleague Mick Cory and I are happy to take questions from the Committee on the issue.

**The Chairperson:**

Your paper states that there are five creditors remaining. When will the Department aim to have those cases resolved?

**Mrs Flanagan:**

I will ask Mick to speak on the detail of that.

**Mr Mick Cory (Department of Culture, Arts and Leisure):**

As the paper outlines, there are five creditors remaining. One creditor is in administration and, at this point in time, the administrator has not been in contact with the company or the Department

with a view to resolving that. Therefore, we are assuming that that has lapsed. Another creditor is the subject of a court case, and the solicitors involved are discussing evidence and swapping statements of defence, and so on. The three other creditors have matters of substantial financial and legal sensitivity. At this point, it is very difficult for me to indicate a timescale. One creditor in particular is also subject to investigation by another Department on a separate matter relating to planning and environmental regulations. Therefore, until that matter is resolved, our Department's position is that it cannot settle, in line with the Executive's decision.

**Lord Browne:**

You have already paid £1 million to creditors. How much money is outstanding?

**Mr Cory:**

The contingent liabilities that exist are of the order of about £850,000, but I caution that that is not necessarily the amount that will be paid out. Before any payment will be made, the service will have to be verified, and the creditor will have to be confirmed as being a valid creditor. Indeed, their claim will have to be looked into in some detail. The figure also encompasses a range of all the creditors. There are five outstanding creditors, but there are also a number of other cases that we could not say are formally closed off. However, the company's view, and that of its solicitor and legal advisers — whose advice was confirmed by the Department — would be that the claim would not stand. For the sake of completeness, we have included that in the total amount in case there is something that we do not know about.

There are also a number of other unquantified contingent liabilities. We do not know how much they may amount to, but we have taken a prudent and cautious approach. For example, we have identified them in our accounts as a potential liability, although they have not yet been bottomed out.

**Mr McCartney:**

I want to ask about the timescale. According to the Hansard report of a Committee meeting in November 2009, Mick indicated that the inspection would take two years, although he did say that it could take more or, perhaps, less time than that. Rosalie indicated this morning that it will take longer than two years. The inspectors have had the papers for 18 months, yet they have only now reached interview stage.

**Mrs Flanagan:**

At the time Mick gave evidence to the Committee, that was the information available. In fact, I think that it remains the position that the norm is for an inspection to last about two years. However, it is a very complex case, and we have not been given an indication of how much longer it will take.

**Mr McCartney:**

The Committee has been dealing with the issue for a long time. On a number of occasions, we had to hold sessions in private because of concerns about confidentiality and fears about prejudicing the outcome. I do not want to speak on behalf of the Committee, but a number of members were concerned that the investigation might take so long that by the time it reaches a conclusion, we will have forgotten what it was about in the first place. That is one of our underlying fears. What steps can we take? When the Committee was told that the inspection would last two years, there was a great reluctance among members to accept that it would take that long, given that there had been a number of investigations and reports. We are now being told that it has taken 18 months to read papers and that the process has only now reached interview stage. Furthermore, the findings, whatever they may be, may have to be referred to the PPS.

To my mind, there have always been two aspects to the matter: the financial aspect, which could lead to criminal proceedings, and the question of what led to the breakdown of procedures and scrutiny. If this inspection runs into the next mandate, a new Committee and new members will be left to pick up on an issue that will have become a distant memory for many. The Department should be pressing for progress. I understand that you cannot tell inspectors how to do their job or at what speed they should do it, but, five years after the process began, the issue will come before a new Committee and we will all be condemned for having allowed the inspection to take so long. That is more of an observation than a question.

**Mrs Flanagan:**

I appreciate the points that you make, although I think that the issue will always have a fairly high profile and that, once the process reaches the next stage, any new Committee will wish to take evidence from us.

**Mr McCartney:**

I accept that, but, in five years' time, the questions that will be asked of us will be, "Why did it take you so long? This happened five years ago, so why are you finding out only now about how the procedures broke down and led to criminal proceedings?"

**Mrs Flanagan:**

I know that, previously, Gavin Patrick from DCAL's governance support unit appeared before the Committee to explain all the steps that the Department has taken to tighten up procedures and to put in place very robust and stringent procedures to ensure, as far as it can, that this sort of thing will not happen again in an arm's-length body for which it is responsible. In that sense, we are not waiting for the outcome of the investigation before taking those steps.

**Mr McCartney:**

No, but we are waiting on the outcome of the investigation to tell us how the procedures broke down in the first instance. The point has been made that the things that happened in this arm's-length body would not have happened in any other arm's-length body. Although I agree that steps have been taken to prevent such things from happening again, we have not been able to ascertain why procedures were not followed in the first instance.

**Mr K Robinson:**

I have a question about the future role of this Committee. The issue was brought to the attention of the Committee early in its life, and, as a Committee, we have been very circumspect, despite the fact that some members had difficulty with the approach that we have taken. We have listened to legal advice and have tried to be circumspect. As Raymond said, we are all very conscious of the time factor. What will the Committee's role be after whatever is going to emerge emerges? What sort of costs, legal or otherwise, will accrue to DCAL as a result of the ongoing investigation?

**Mrs Flanagan:**

As far as the role of the Committee is concerned, I assume that when the report and any investigations are eventually completed, the Department and the Committee will want to consider how the situation arose in the first place. We will want to learn lessons from what happened and put in place any new structures or remedial action that would be necessary over and above what we have done already. I am sure that the Committee will want to hold us to account on that.

I think that you were asking about the costs to DCAL of the investigation as opposed to the costs of the creditors. We will probably have to take some further legal advice at some stage, but there is no particular cost that I am aware of at the moment.

**Mr K Robinson:**

I was just wondering because the matter was brought to our attention at the start, and we dealt with it in the way that we thought was most beneficial. It has now passed to another Department, which is taking the lead and which will, presumably, receive the report when the outcome is eventually arrived at. At that stage, will we in the Committee merely be notified of what has happened in the process? Will the Department be asked to pick up a percentage of the cost involved in the whole process? That is what I am trying to tease out.

**Mrs Flanagan:**

Our understanding is that DETI will pay the full cost of the company inspection. This Department will not be making a contribution to that.

**Mr K Robinson:**

So, it will all fall to DETI.

**Mrs Flanagan:**

Yes.

**Mr K Robinson:**

What about legal representation for DCAL? Presumably the legal costs will have to be covered by the Department as it was responsible for the arm's-length body.

**Mr Cory:**

Two elements are involved, one of which is the cost of legal advice being provided to the company. The company has its own solicitors and, in line with the Executive's decision, most of the work relates to dealing with creditors and advising directors how to deal with them. That is being covered by the Department; it is encompassed as part of the non-quantified contingent liability.

**Mr K Robinson:**

So that is money that has been set aside?

**Mr Cory:**

Exactly right. However, if the situation escalates, or if another big case emerges — I do not foresee that happening at this point, but we must be conscious that it might — we may have to go back to the Executive to obtain further financial cover.

**Mr Leonard:**

Have any weaknesses arisen, or do you see any potential for them to arise, given that a lot of the problems occurred under DCAL's watch but that the issue will now be under DETI's watch? I am thinking of the lessons learned, the procedures and public accountability rather than just departmental accountability.

**Mrs Flanagan:**

I would not describe any of it as a weakness. I understand that you see that our focus on the issue is different from DETI's. However, we will ultimately receive the report, draw up a list of lessons learned and take action accordingly, so that will only be a strength to us in moving forward with our arm's-length bodies, particularly companies. I imagine that that would be the case not only for DCAL but across all Departments that have arm's-length bodies and companies.

**The Chairperson:**

I thank Rosalie and Mick for coming along today.