



Northern Ireland  
Assembly

**Committee for Regional Development**

**OFFICIAL REPORT  
(Hansard)**

**Inquiry into Unadopted Roads:  
Northern Ireland Water**

**9 May 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Regional Development

### Inquiry into Unadopted Roads: Northern Ireland Water

**9 May 2012**

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

Mr Pat Doherty (Deputy Chairperson)  
Mr John Dallat  
Mr Stewart Dickson  
Mr Ross Hussey  
Mrs Dolores Kelly  
Mr Ian McCrea  
Mr David McNarry  
Mr Stephen Moutray  
Mr Cathal Ó hOisín

**Witnesses:**

Mr Liam Mulholland	Northern Ireland Water
Mr Frank Stewart	Northern Ireland Water
Ms Sara Venning	Northern Ireland Water

**The Deputy Chairperson:** I welcome Sara, Liam and Frank. I ask you to make a presentation. You might note that we are in quite a sharp mood this weather. There will be questions from Committee members.

**Ms Sara Venning (Northern Ireland Water):** Good morning everyone, and thank you very much for inviting us to this Committee hearing in your inquiry into unadopted roads in Northern Ireland. As you know, Northern Ireland Water made a formal written submission to the Committee in March. Our presentation today aims to draw out some of the key messages of that written presentation.

I will introduce the NI Water team that is here today. In Northern Ireland Water, the connections to the water and sewerage network are facilitated by our developer services and connection team, which is headed up by Frank Stewart. The developer services teams sits within our customer service function, and Liam Mulholland is here as head of customer services. Finally, I am the director of customer service delivery in Northern Ireland Water and, therefore, have overall responsibility for the connection and adoption process.

At the start of this presentation, I make it clear that Northern Ireland Water absolutely recognises that unadopted infrastructure in developments in Northern Ireland is creating real issues for citizens. We see at first hand the difficult and really unpleasant circumstances that they are left to face. We are

keen to work with the various agencies and stakeholder groups involved to ensure that sites are brought up to the relevant standards.

I am very conscious of your time constraints, and we will try to be brief. I will kick off by setting the context of how the legislation impacts on the adoption process and giving a high-level overview of the process itself. I will then pass over to Frank, who is our expert in this area, to quantify the number of sites that we believe to be unadopted and give some details of where affirmative action is being taken to bring those sites to a standard at which they can be adopted. It is a complex process. Frank will draw to the Committee's attention areas where we believe there are weaknesses in the process and potential improvements. I will then conclude the presentation.

Looking at the terms of reference of the inquiry, we can see that it seeks to understand the issues preventing roads from being adopted. The Committee states quite clearly that you want to understand the processes associated with adoption and the key stakeholders. Northern Ireland Water plays a key role in the process. To explain the role, I will take a couple of minutes to set out the legislation that we operate under. Forgive me if I am stating the obvious, but, just for clarity, under both sets of legislation, when developers plan their site, they have plans for the sewerage infrastructure and the roads infrastructure, which they seek approval for. In an ideal world, when they get those proposals approved and construct the site, that approved proposal would be adopted by the relevant agencies — Roads Service or NI Water.

There are two relevant pieces of legislation that you will hear referred to today. Think of 2007 as the watershed year, if you like. Before 2007, we were governed by the Water and Sewerage Services (Northern Ireland) Order 1973. I will explain the relevance of article 17 and bonds in a minute. With the formation of Northern Ireland Water as a government company in 2007, the legislation changed somewhat. We are governed by the Water and Sewerage Services (Northern Ireland) Order 2006.

What does that mean? It means that for sites planned before 2007, article 17 is the relevant article under which the developers make an application to have sewerage systems approved. Once the approved schemes are installed, they are subsequently adopted. The adoption of the streets is covered under article 32, and the Roads Service administers the bonds security for the site covered by this legislation. So, when you hear article 17 mentioned in this presentation, think pre-2007 legislation. Bonds cover road and sewerage assets and lie with the Roads Service to administer. If a developer makes a default on any of the agreements covered by article 17 for sewers or article 32 for street works, enforcement action can be taken under article 11. That will be led by Roads Service because it holds and administers the bond. NI Water's input will be to assess the sewerage infrastructure and advise on what remedial action is required.

For sites planned after the formation of Northern Ireland Water in 2007, article 161 is the relevant article under which developers make their application to have the sewerage systems approved by NI Water. Those approved schemes are then adopted once installed. Two separate bond arrangements are now required: one for sewers with NI Water and one for street infrastructure with the Roads Service. When you hear article 161, think after 2007. For us, the bond covers sewerage assets only and lies with NI Water. In that instance, if the developer defaults on the agreement that they made under article 161, the enforcement is carried out under article 161(6). It is led by Northern Ireland Water. Frank will update the Committee on instances when we have had cause to invoke the enforcement action.

I am conscious that I have referred to bonds on a couple of occasions. I just want to clarify what we mean when we talk about bonds. In the approval process for agreeing the sewerage infrastructure, developers are asked to provide a bond security. For the gravity sewers in a site, the value of the bond is 40% of the estimated cost to install those gravity sewers on a completed site. For the waste-water pumping stations on a site, the bond is set at 50% of the estimated cost to construct the pumping station if the site were finished. Really, the underlying principle with the bond security is that it needs to be adequate to cover the cost of any remedial action that may be required if the developer does not live up to the agreement that was made under the relevant article.

We have set the scene with regard to the legislation and the bonds. The adoption process itself starts with pre-assessment. Therefore, a developer plans the site, he has plans and he submits those plans

through to us for approval. We have over 1,500 sites where we are either considering the plans or where we have advised the developer that this is the minimum scheme and we are awaiting their acceptance of that advice. The second stage is the approval of the design where Northern Ireland Water and the developer have agreed the layout and hydraulic design. We have over 1,300 sites where the design has been approved and/or is in construction.

Once the construction process is complete, adoption can commence. That commences with preliminary adoption where we go out and inspect the sewers and ensure that they are fit for purpose. We need a greater than 50% occupancy rate for the section of sewer being inspected and, once those conditions are met, we can release up to 70% of the bond, and a 12-month maintenance period commences. The developer then assumes responsibility for the maintenance of the equipment for a 12-month period. There are just under 300 sites sitting at that stage in Northern Ireland at the minute.

The final stage in the process is final adoption: the 12-month maintenance period is complete, we have satisfied ourselves that any minor defects have been rectified and the system is operating as expected, and we then release the final 30% of the bond and adopt the infrastructure. Almost 3,500 sites have made their way through the whole process and have been adopted.

I will hand you over to Frank, who will take you through and give you more detail on the quantification of some of the unadopted sites and give you some information on enforcement actions and costs.

**Mr Frank Stewart (Northern Ireland Water):** You can categorise unadopted development into four categories. For us, the definition of an unadopted development is where a final adoption certificate has not been issued or released. The four categories that we place our unadopted developments into are as follows. The first is backlog sites, and there are around 1,200 of those on our record system. Broadly, those fall into the article 17 process, which was pre-April 2007. Some of those sites date back to the early 1990s. A substantial number of those backlogged sites have been completed, meaning that the drainage system has been completed but the developer has not made formal application for the final adoption of those sewers. It is Northern Ireland Water's position that those sewers remain in private ownership and are the responsibility of the developer until the final certificate is released.

Secondly, there could be situations where the construction has stopped, and there may be reasons for that. It may be that the developer has ceased to trade and the site is in administration, or it might simply be that the developer has parked his development and is waiting for the market to pick up.

The third category would be where construction has commenced and Northern Ireland Water is not aware of that. A number of developments fall into that situation where there is no bond and no article 161 agreement, and the sewer design has not been agreed with Northern Ireland Water. In those situations, the developers operate at their own risk. Northern Ireland Water is working with its counterparts in Roads Service to identify those sites and advise developers of their responsibilities.

The fourth area is development that is under construction. That is where an article 161 agreement has been put in place — or an article 17 earlier — the sewer design has been approved and the developer may have commenced construction or he may be waiting for the market to pick up. Those sewers will be considered for adoption at a future date.

Going back to the definition of an unadopted site, it is one which has not had a final certificate released. Looking at our record system, you could say that there are about 2,800 on our system, but that needs qualified in that about 1,500 of those are at pre-assessment stage and about 1,300 have approved agreements in place. However, we must be careful to note that not all of those sites will have issues and many will be dealt with under due process and will be adopted at some stage in the future. We think particularly of the 1,200 sites that are pre-2007. Northern Ireland Water works very closely with our colleagues in the private streets department of the Roads Service, and currently we are working to address about 30 of those developments that have been identified as a priority. Some of those sites have serious sewer defects. Others fall into the older development category, and we are trying to move those forward. Part of that consultation or liaison with the Roads Service involves the private streets sewer adoptions working group. That meets quarterly, and we discuss sites that have issues and how the adoption of those sewers and streets can be moved forward.

Looking at post-2007, six sites have been identified that are in administration and are potential article 161(6) enforcement sites. All of those developers and administrators have been written to, and we are working with the administrators on a number of those sites to see if we can agree a resolution as to how the sewers can be taken forward. Thinking of our input to the article 11 private street quarterly process, enforcement action has been taken by Roads Service, and our part in that has been to take forward the adoption of the sewers. We have provided input on a number of those. Three or four years ago, an article 11 enforcement was a rare exception, but in 2010-11, Northern Ireland Water completed sewer adoption procedures and adopted sewers on 14 sites. In the year just past, we completed sewer adoption procedures in 32 developments. That, collectively, is 46 sites, which will allow Roads Service to move forward with the adoption of the roads. Ongoing with that, we are dealing with, or have dealt with, 110 queries where there is potential for article 11 enforcement. Some are straightforward. With some, as we have discovered, it is just that the developer never completed his paperwork and did not apply for the final adoption, although everything was in order. As I said earlier, however, some are more complex.

Looking at 30 developments — just taking that figure as a standard that we have looked at — we have looked at what the cost to replace sewers in those developments might be. It was a very high-level assessment, which began with looking at the 100% replacement of all sewers, but, again, that must be qualified, as not all sewers have issues and defects. According to the high-level assessment, it could cost £8 million to replace all sewers and pumping stations in those 30 developments, but, using our assessment that there is a 40% value for remedial works, that would reduce that £8 million to £3.2 million. If you translate that across the 1,200 potential backlog sites, the replacement value for remedial works to those defects could be in the range of £41 million to just over £100 million.

You might wonder why there is such a range in that. There are so many variables in sewer construction. The diameter of the sewer could be anything from 150 to in excess of 1,200. The pipe material could be PVC, which is the standard for sewer pipes, but those with a larger diameter are concrete and, obviously, more expensive. The construction of sewers depends on the depth at which they are being constructed. An increased depth results in increased cost. Then there is the question of whether a waste water pumping station is needed for that development, or, increasingly, whether a sustainable drainage system — commonly known as SUDS — is required in that development. All of those add to cost.

As regards the article 161(6) enforcement procedure, where we have been formally notified that a development is in administration, we will trigger the process by issuing what we call a 28-day letter. That asks the developer and his assignees for their programme for completing the site. If there is no response, we will move forward to inspect the sewers, prepare a defects list and estimate the cost of repair. When that is prepared, we will notify the developer, his assignee, the successors and the bond provider of the estimated cost of remedial works and ask them whether they wish to move forward and do the work. If there is no response within 28 days, we will serve the article 161 enforcement notice. The developer and his successors and assignees have the right to commence remedial works at any time until our contractor commences work on site.

Our assessment of the weaknesses in the current system are that the article 161 agreements for future adoption of sewers are simply that — agreements. If the developer constructs the sewers to a satisfactory standard, we will agree to adopt those sewers. While the developer is obliged to enter into an article 32 agreement, which ties him into the planning process, he has no obligation to complete an article 161 agreement, despite the fact that the road drainage run-off is usually accommodated within the sewers that are approved under the article 161 process.

A Northern Ireland Water requirement is for a bond security of 40% of the estimated cost to replace the sewers in a default situation. The value of the bond must be adequate to cover the cost of remedial works. I should say that mostly that is appropriate, but there are few that cost more. What could be done better? The article 161 agreement would have greater depth if it had legal standing. We suggest that it could be made a prerequisite of the article 32 process, hence, tying it into the planning process.

Northern Ireland Water is not formally made aware when a developer is in administration or a receiver is appointed, and, sometimes, we have to go chasing them. If that was done better, we could begin

the process earlier. There could be a time-bound requirement for the developer to apply for formal adoption from the date that the development is 100% complete — perhaps a year after completion. However, it is true to say that, within the past year, that has become less of an issue, as developers are generally clued-in to that process and make their applications earlier.

Property certificates should be mandatory for first-time property sales. At the minute, Northern Ireland Water receives requests for first-time resales. That ties in to the solicitors' conveyancing process, where you may or may not be aware that agreement is in place. That concludes my presentation. I will hand back to Sara.

**Ms Venning:** Thanks, Frank. Thank you all for your attention. Summing up, there are two key messages. First and foremost, sewer adoption is a developer-led process. Therefore, the developer puts forward their scheme proposals, and we approve. However, the time that elapses between approval and adoption is entirely at the developer's discretion. They need to apply to NI Water to have the scheme adopted. If they do not apply, the scheme remains unadopted and the equipment remains not maintained. Moreover, we have seen this morning that there is nothing to stop a developer constructing a sewerage scheme that does not have any form of approval from Northern Ireland Water. Therefore, we have suggested making the article 161 approval process for sewers a prerequisite within the article 32 private streets process to prevent that. We have also suggested introducing a time-bound requirement for developers to apply for final adoption following completion of the site.

We recognise that people are operating in a difficult economic climate, and we have been working with developers to try to make the adoption process more affordable for them. The practical outworking of that is to encourage developers to break their sites into smaller phases. Each smaller phase can have a bond associated with it, and, therefore, as the phase completes and is occupied, the bond can be released.

To reiterate, we absolutely understand and recognise the difficulties that people who are living in unadopted sites face, and we have been working with our colleagues in Roads Service to identify the solutions that are required to bring the sites up to an adoptable standard. That said, we know of almost 3,000 sites with unadopted infrastructure in place. While most of those are likely to proceed through to adoption, some will not. We in Northern Ireland Water will play our part to make sure that the citizens of Northern Ireland are not left living in developments with substandard equipment. We are happy to take any questions.

**The Deputy Chairperson:** Thank you for your submission. What do you consider to be the main contributory factor to bonds becoming ineffective? Do you have any proposals to either change the bond system or replace the whole system with a new bond system?

**Mr Stewart:** The bond system is part of the legislation, and we have not thought about replacing it with anything else.

**The Deputy Chairperson:** If you had a blank sheet and were to draw it all up from the start, given all your experience, would you come up with a new system?

**Mr Stewart:** It is the first time that I have been asked that question. I have never thought much about it. I will need a wee bit of time to put some thought to it.

**The Deputy Chairperson:** You can maybe come back to me towards the end.

**Mr Dickson:** Thank you for the presentation, which was one of the most helpful presentations that we have had on this matter, particularly as you set out very clearly the legislative differences; what happened pre-2007 and what happens currently; the very clear weakness in the legislative process in that the requirement to have a bond is not mandatory; and mandatory property certificates. The issue of property certificates has been exercising the Committee throughout the inquiry. It seems very clear to me that we need to move towards some sort of statutory requirement to have a bond in place before any work commences. That seems to be self-evident given the nature of some of the horrendous stories that we have heard around this table in the past weeks.

You are suggesting that there should be legal standing to article 161, and my question follows on from the Chair's question. Do you believe that a bond is the best way forward in dealing with that? There are, as I understand it, various types of bonds, including, quite simply, the ability to put cash in your hands and insurance-style bonds. Do you have any views on the differing types of bond, or are you content that, once there is statutory regulation over commencement, most of the current bonds and bond arrangements will be satisfactory to your organisation?

**Ms Venning:** Yes. From our perspective, we just need to have the bond facility in place, and the key thing is that the value of the bond needs to be sufficient to cover the remedial work. The thing to understand is that we do not have a big pot of bonds, and, for example, if the bond on one site is £1,000 and, on your site, is £2,000 and the remedial work for your site is £1,500, we cannot take £500 from the first site because it is ring-fenced. The key thing is, first, for us to make sure that you cannot go into a development and construct a sewerage system without having a bond in place. So, tying the 161 agreement in with the article 32 agreement would get us round that. The second thing is that we should not be tempted to reduce the value of the bonds to such an extent that, potentially, we will not be able to fund the remedial work.

**Mrs D Kelly:** Thank you for your presentation. I cannot help but wonder who is the champion for the consumer in all this. We heard last week from the Law Society, and I note that one sentence in your presentation relates to property certificates being mandatory for all first-time purchases. It says that that would focus conveyancing solicitors, and that seems to suggest that they have not been focused in the past on ensuring that purchasers' needs are met. You also say that — it has certainly been my experience — this has not just happened because of the recession. You said yourself that some of these sites go back to the late 1990s, and there had been bonds in place. It has been my experience that the Department for Regional Development (DRD) has been remiss in pursuing developers over the bonds. Do you accept that as a valid criticism?

**Ms Venning:** The Committee will hear from the Department, and I will leave that question to its officials. A backlog site is one where 18 months have elapsed since the developer has applied for a preliminary adoption certificate, and we and the Department are counting that as a backlog site and are actively progressing and pursuing those to ask whether they are ready for final adoption. So, I think we are trying to be proactive, but, again —

**Mrs D Kelly:** But you said that some of them have been in existence for over 20 years.

**Ms Venning:** Yes, and I —

**Mrs D Kelly:** It is hardly really working.

**Ms Venning:** Absolutely, but the key thing is that it is a developer-led process. If the developer never finishes their site, allows people to move in and does not apply for the preliminary adoption, there is no power within Northern Ireland Water to ask for any further information on that. That is why we made the second suggestion, which was to have a time-bound prerequisite that states that, if your site is finished, you must apply for adoption within a certain amount of time. Those two factors combined should help address that.

**Mrs D Kelly:** But there are regulations in relation to public health about having proper sewer infrastructure and good drinking water supplies, so there is a mismatch across the areas of responsibility. It appears to me that the needs and rights of the consumer have not been championed in the way in which some would have us believe for the last two decades and more.

**Ms Venning:** The water infrastructure on the site is covered. That is ours, and has always been ours. The drinking water quality is protected, and we absolutely look after that.

**Mrs D Kelly:** But I have been told about one particular site where eight houses in a row have all been connected to the one water connection, rather than having a connection to each individual house, because the developer would have had to pay a sum to NIW for each connection point. That has been

allowed to happen. Nobody said, "stop, that cannot be right", until the house at the bottom of the supply chain discovered that the water pressure was extremely bad, and then people started to ask questions. We have heard from Building Control as well, and there are checks. We all know that if you build a house, agencies come out and check that you have complied with each stage, but there has been a failure somewhere along the line in relation to that example of water connections. That is just one example on one site.

**Mr Stewart:** Where we are made aware of those, we are certainly pursuing them under our water fittings regulations and the requirements. We have spoken to some developers who, we have discovered, have carried out that practice. In some cases they have said that it is a short-term solution and is simply to get houses up and running. Building Control has a role to play in that too, and we work closely with Building Control on those matters. Where we do find offenders, we are going after them.

**Mrs D Kelly:** But are you going after them robustly, as you ought to and should have done during the good days, never mind being sympathetic to developers who are in difficulties these days?

**Mr Stewart:** Yes, where they have failed on the requirements under the water connection process, we are taking that forward as an unapproved connection and dealing with it appropriately. Where pumping stations have failed and there are clearly health and safety issues, we have taken steps to correct those. It might be simply that the developer has not carried out his maintenance, we have spoken with him, and he has then gone and done that. Sometimes, it might be a wee bit more serious than that, and we need to carry out emergency works to get the pumping station up and running. Sometimes it is not possible to do that, because there are more serious issues, and, in that case, we sit down with developers, administrators and bond providers to find out if there is a more permanent solution.

**Mrs D Kelly:** Thank you. I am not convinced that enough was done over the years, and I certainly do not think that there is good co-ordinated effort. As public representatives, we get the runaround, never mind Joe Public getting the runaround from the different agencies. The buck has to stop somewhere.

**Mr McNarry:** Thank you very much for your presentation; I found it very helpful. At the outset, I will state that I do not ascribe to the allegations that all developers are cowboys, nor do they set out to be rogues. I think we are now dealing with circumstances that many of us did not foresee. As Dolores said, it is the end purchaser who comes to our offices to tell us about problems, so I think our inquiry is designed to find solutions to the problems now and make sure that they do not happen again.

I have a couple of questions. You say that it will cost an estimated £8 million to deal with problems in 30 developments that Roads Service has referred to you. That seems an awful price. Who pays for that?

**Ms Venning:** We looked at those 30 priority sites and calculated that, if we had to replace everything, it would cost £8 million. However, we will not have to replace everything, and the cost of the remedial work comes from the bond money. For those sites, in the first instance, if the developer were still there, we would make representations to him and say, "This is the work that must be carried out; can you please effect this work." If he cannot do that, or if he is not there to do it, and we have to do it, it comes from the bond.

**Mr McNarry:** I found that figure frightening. I am glad that you tell me now that it is something that you plucked out of the air, because I actually thought that there was a situation like that. Prior to that, you said that there are some 1,233 developments under article 17. We have those with unadopted sewers. I do not have a calculator, and I could not work out in my head the cost of those on the basis of what 30 might have cost us.

Why are you saying these things? What do you want to happen? You tell me that the 30 are fictitious. I take it that the 1,233 are not fictitious. What type of costs or money are we talking about? There are some 1,233 sites under article 17 with unadopted sewers; what are we into there?

**Ms Venning:** In both the submission and the presentation, we said that if we had to do everything on those sites, it would cost £8 million. You do not know what needs done until you look at this on a site-



by-site basis. So, there are 1,233 sites. We might have to spend £300 or £400 on each site to produce a set of drawings and that would allow the site to be adopted. Alternatively, we may have to go onto that site and completely replace all the sewers and the pumping station and that could run to anything up to — Frank, will you jump in here?

**Mr McNarry:** It is OK. I see the picture that you are painting. What would help me are facts. It might be £400, it might be something else. That does not tell me anything to be quite honest. What I need to see — I do not need it now, Chair — is whether you can back that up and tell us really what we might be into. If we have an inquiry into something, we obviously want to lick it and have some solutions. Is it something really major? Is there something terrifying out there? You said earlier that there were 3,000 sites. You hint at something terrifying, but we do not know about it. Can you elaborate on it for us — or is there not something out there?

**Ms Venning:** In the submission, we gave five examples of five sites where we needed to go in and do some work. The remedial work in those examples ranged from £800 to £350,000. It would be nice for me to say that I can give you the definitive answer, but I cannot. I can tell you that, on those 30 sites, the cost of replacing everything would be £8 million. We know from experience, and we only ask for a 40% bond, so 40% of £8 million is £3.2 million, and, if we escalate that up to the 1,200 sites, it will cost anywhere in the range of £41 million to £105 million to go in and effect remedial work.

**Mr McNarry:** Let me just play stupid.

**Mr Dallat:** Not a problem.

**Mr McNarry:** Economically stupid. I haven't a baldy. I am not able to grasp that, so, maybe just for me and those on the Committee who share my view, you might give us some actual details. You are terrifying me with what you are saying, and you are not actually telling me where we are with it. Can you say or quantify what the problem is with unadopted sewers and how much it will cost to fix? Do you know the answer?

**Ms Venning:** I think that the short answer is that it would not be possible for us to quantify it. There are sites whose builders did not come to us for any approval for the sewers, so we were in no position to quantify how much it would cost to adopt them.

**Mr McNarry:** How many of those are there?

**Ms Venning:** I cannot quantify that. Those people did not come to Northern Ireland Water in any way.

**Mr McNarry:** Yet you know about them.

**Ms Venning:** No. I am saying that there have been instances. Recently, there was a site in Coalisland where the developer had gone ahead, built on the site and moved people into that site, but we were not consulted on that in any shape or form.

**Mr McNarry:** I understand, and I can see that, but is there one of them, or are there 100? That is what seems important. You cannot raise the issue and suggest that it is a problem without quantifying it and then give us one example. I really need to know whether there are any more. How would I find out?

**Mr Stewart:** It falls into two categories. I will try to give some reassurance on this. There are older sites that have been in existence for 10, 15 or perhaps upwards of 20 years where the developers have not submitted the application for final adoption. By now, we would have known if there were any serious issues in those sewers. We can say that those sewers probably do not have many issues.

**Mr McNarry:** That is reassuring.

**Mr Stewart:** Think of some of the more recent ones, where developers have gone ahead and, through no fault of their own, because of the economic climate, have not been able to sign the agreement and get it to us. I am aware of a developer who was working through the process. He submitted his detailed design, he was going ahead with the process, he provided all the statutory agency approvals, and, within two weeks of signing the agreement, he went into administration. There are no agreements and no bonds for that development. I am aware of another development where the developer has constructed a number of houses, probably around 10% of his overall approval amount, and he has not constructed a pumping station. Those situations become more serious. There are six sites in administration that we know of. We are working our way through that process, but I am sure that there are more out there that we do not know about. Those are the ones that we need to be thinking about.

**Mr McNarry:** I agree, Frank. What I am trying to tie down is how many there are. Finally, from what you do know, is the National Asset Management Agency (NAMA) playing a role in any of the problems?

**Mr Stewart:** There are some developments in administration where NAMA is involved. We are working with those to see whether there is a resolution.

**Mr McNarry:** There is a time, Chairman, when, I think that discretion may be suitable, contrary to what I said earlier about Translink and silence. I wonder whether we can be told discreetly what sites Frank is talking about. I do not want him to say it in public and on record for the Hansard report, because what Frank has just said is quite contrary to what we heard in a previous session about NAMA.

**The Deputy Chairperson:** Are you making such a request now?

**Mr McNarry:** I do not want to put Frank in that position, but he said there is a number of sites where NAMA is involved.

**The Deputy Chairperson:** Frank, would you be able to answer that in closed session?

**Mr McNarry:** He could even put it to the Committee Clerk.

**Mr Stewart:** Not off the top of my head; I could not give you the actual figures.

**The Deputy Chairperson:** Could you, even in a week or so, relay that back to the Committee Clerk?

**Mr Stewart:** Yes, I could.

**Mr Dallat:** Just to get my head around what we have heard from the panel, Sarah, you are the director of customer services delivery.

**Ms Venning:** Yes.

**Mr Dallat:** Liam, you are the head of customer services. That is very confusing. Did somebody make these titles up?

**Ms Venning:** Yes, someone did make those titles up; we just try to do our job. In my remit, I have the whole operations side of Northern Ireland Water: the people who produce the water; people who treat the waste; the guys who go out to look at the blockages; the guys who go out to re-zone and to examine water distribution issues; and the people who look after leakage as well as the billing area and the contact centre. The developer services team falls under that customer service leg with Liam. That is where the distinction sits.

**Mr Liam Mulholland (Northern Ireland Water):** You are probably wondering why I am so quiet this morning. I have just taken over developer services, so I am slightly new to this job.

**Mr Dallat:** Please, Liam, do not confuse me even further. I know it is difficult not to stray into individual cases, and we are trying to put an inquiry together. Nobody would have wanted to inherit the sewerage

system that you inherited. But some of it has been fairly recent. You did an excellent scheme in Ballykelly a couple of years ago. It is a pity, though, that the senior citizens' gardens are washed out with overflows every winter. They spend six months of the year tottering off to the garden centres to buy their plants, but somebody was not on the balcony looking down. When I met your representatives, it was a question of finances, prioritising and stuff like that. How much of what comes out of this inquiry to clear up the unadopted sewers and so on will be dependent on your finances?

**Ms Venning:** The onus for dealing with unadopted infrastructure and bringing it up to standard does not lie within the remit of Northern Ireland Water. Northern Ireland Water is not funded for that work. Northern Ireland Water absolutely works with the Roads Service identifying certain things. In the first instance, we identify to the developer what a development needs to look like. We set all of that out, and we reach an agreement with them. We check that it has been constructed to the standard that the developer agreed in the first instance, and we issue them with a defects list. We work through those defects with them, and if none of those measures is successful, we can invoke the enforcement action. The money to carry out the remedial work comes from the bond. It is not, therefore, reliant on Northern Ireland Water's funding; Northern Ireland Water is not funded to carry out the remedial work.

**Mr Dallat:** To confuse my simple mind even further, rural areas are dotted with little treatment works that need to be replaced to bring them up to European standards. In fact, other major schemes are being held up pending the availability of money to link those together, or whatever happens, to convert them into proper sewerage treatment works. Is that not dependent on funding?

**Ms Venning:** Yes. We carry out that work under our capital works programme, but that is distinct and separate from the issue of unadopted infrastructure.

**Mr Dallat:** It would be useful to know what legacy you have inherited. At the end of the day, I am only interested in the environment, to be honest. I am not interested in your title or things like that, even though I asked about it. I am interested in when we can have an overall sewerage system that is fit for purpose and which does not bring infraction proceedings from the European Union. Is that part of this inquiry? Or, have I gone outside it, Chairperson?

**The Deputy Chairperson:** I think that you have gone a bit outside it.

**Mr Dallat:** Oh well; I tried.

Finally, you know that there have been a number of tragedies relating to sewers on unfinished sites. There was certainly one case in which a child drowned. What legislation is necessary to stop developers, regardless of whether they are cowboys — I do not care — and to enable you to identify the sites that are posing a danger? Furthermore, what legislation is needed to stop developers doing the sort of thing you described and going ahead and doing work. I would be caught if, as an unemployed person, I went out to do two days' work. What legislation is missing that allows developers to do that. In Portstewart, for instance, houses were built, but there were no sewerage works.

**Ms Venning:** I think that we need to be tied into article 32 of the Private Streets Order and the planning process. I apologise for all of the numbers, but we see the tying in of article 161, which is the sewerage infrastructure, with article 32, which is to do with the streets, as a way of preventing this problem.

**Mr Dallat:** I have a final question. Who is going to bring forward this legislation that is fit for purpose? You probably know that the Assembly is beginning to get a reputation for not bringing forward legislation, despite the fact that we are called Members of the Legislative Assembly. Frank said earlier that he did not think about things like this. Maybe I am misquoting you, Frank.

**Mr Stewart:** I was asked a specific question about bond systems and something that might replace those.

**Mr Dallat:** I was just wondering, so that this inquiry does not gather dust somewhere in the bowels of this place, where will the Bills — the legislation — come from? Does NI Water have input?

**The Deputy Chairperson:** I think that I will call the Committee Clerk in on the next step; it is a very relevant question.

**The Committee Clerk:** Obviously, if the Committee makes a recommendation in respect of legislation, there are a number of ways that that can be done. Probably the easiest way, from the Committee's perspective, is to ask the Executive Department responsible for the legislation to bring forward the amendment. If the Executive Department feels that it does not wish to do that, or if it does not accept that recommendation, the Committee can bring forward the legislation to amend. However, we seek to have the agreement —

**Mr Dallat:** Has that ever happened in the past?

**The Committee Clerk:** Not that I am aware of.

**The Deputy Chairperson:** It has been threatened.

**The Committee Clerk:** As the Deputy Chair said, it has been threatened in the past. However, from the Committee's perspective, obviously it would want to consult and negotiate with the Executive Department or Departments and to have their agreement to bring forward an amendment.

**Mr Dallat:** I hope that that will be reflected in our report.

**The Committee Clerk:** It will.

**Mr Dallat:** We cannot sit idly by and do nothing without at least suggesting what might happen if others fail.

Finally, it is probably outside the report, but there was an awful problem for years and years about road openings. I have to say that that is largely cleared up because utilities go out and do the work. Hopefully, in the terms of unadopted roads and sewers there will be some mechanism — too simple to understand — that can be put in place that will solve the problem.

**Mr Hussey:** The comment "developer-led" has been sticking in my head since this process began. It appears that once somebody gets planning permission, they can go ahead, for example, and put up a 50-house estate, and you are not really involved until they have finished with it and they bring you in and show you the drains and the sewers. Is that the way it works out?

**Ms Venning:** No. The process should be that, as a developer is planning his estate, he will plan the sewerage and the road network. In most instances, they will come to us and show us their plans, and we will approve them or suggest some amendments and reach an approved set of sewerage infrastructure plans, which the developer then constructs. He then comes to us and tells us that he has constructed those plans and asks whether we will adopt them.

**Mr Hussey:** But he can bypass that?

**Ms Venning:** Potentially he could install a sewerage system that we have not approved. However, if we are aware of that happening, we make it clear that that is done at the developer's own risk, because the system cannot be adopted until it is approved by us. If it is not adopted, the onus for maintenance would remain with the developer. Therefore, it is not in the developer's interest to do that.

**Mr Hussey:** However, that "if" makes it possible for somebody to slip that through. John mentioned legislation, and legislation would need to be enforced or brought in to ensure that statutory requirement.

**Ms Venning:** Yes.

**Mr Hussey:** To go back to David's mathematics and his economics —

**Mr McNarry:** Are you going to call me stupid now?

**Mr Hussey:** I would never even consider doing that. You may come back.

In relation to the stages of adoption, in the preliminary adoption you release 70% of the bond when you have 50% occupancy, which, obviously, means that there is 50% non-occupancy. You have 40%, and you give back 28% and, therefore, have 12%. That was good, was it not — and that was all off the top of my head. You have 12% of the 40%, and if this person does not proceed, you then have a possible massive shortfall. I am going to come to a question about bonds. Who holds the bond, and where is the cash? You have to enforce it, so how do you enforce it? Do you go to the builder and say, "Right, do you want the bond?" How much is there in the ether in respect of bonds? How much is committed to bonds that Northern Ireland Water is aware of?

**Ms Venning:** I will answer the first part of your question. To release the 70% of the bond following the —

**Mr Hussey:** When your 40% becomes 12%?

**Ms Venning:** Yes, in that instance. The sewer infrastructure has to be up to standard, so we will have inspected it. We will have said that the site is half occupied, and the reason it needs to be half occupied is that we need the sewers to function and be in operation in order to ensure that they are fit for purpose. At that point, we say that, on the balance of risk, 70% of the bond is fit to be released because we can see the sewer operating and that there are only minor defects.

**Mr Hussey:** But that is a gamble, because you only have one end of the development finished. The developer could then move up to the other end and make a complete hash of it.

**Ms Venning:** That is why we talked about splitting developments into phases. We can work with the developers to ensure that each phase has its own bond. If you keep the development in a large chunk, it will take longer to get to the point at which that 70% of the bond can be released. Frank can answer the questions about where the bond sits and how much of it we have.

**Mr Hussey:** Can we come back to the chunks, then? If we are going to do it in chunks, is it 40% per chunk?

**Ms Venning:** Yes.

**Mr Stewart:** When we release the preliminary certificate of adoption, the sewers will have been fully checked and inspected, and only minor defects will have been identified, such as step irons or cover slabs being displaced, for which, we estimate, the 12% would cover the cost of remedial work.

Who holds the bonds? Bonds can come under three headings: a guarantee bond, a cash bond, or a guarantee bond provided by a bank or an insurance company. The bonds are held by us. We have kept bond documents for sewer-only sites since April 2007. Prior to that, they were held by Roads Service under the Private Streets (Northern Ireland) Order 1980, and those were departmental bonds that covered sewers and streets.

Does that answer the question so far?

**Mr Hussey:** Do we know how much in pounds, shillings and pence is held in bonds by Northern Ireland Water?

**Mr Stewart:** Yes. Under the article 161 process, we have something of the order of 460 bonds in place, which have a total value of about £14.6 million. Of those, 352 were still sitting with a 100% bond and 108 have been reduced to 30%.

**Mr Hussey:** How often would you enforce a bond?

**Mr Stewart:** We do not want to have to do so, but we would wait until we have been informed that the developer has defaulted. There may be several ways in which a developer would do that. Generally, in today's economic climate, a developer will have gone out of business.

**Mr Hussey:** How many months or years are we talking about? Mention was made earlier of some estates that were built 20 years ago. In Donemana, in my constituency, one estate was sitting for quite a while, and some action had to be taken. How long do you wait before you would enforce a bond?

**Mr Stewart:** There is no clear answer to that. In most of the recent cases, we have acted within six months after having had discussions with the administrator or the assignees or successors. Generally, we like to move things forward by agreement, so that we can agree that someone — a successor or an assignee, or someone who has a responsibility — will pick up on the defects and complete the remedial works. If we find that that is not happening, we will issue the trigger letters to begin the process.

**Mr Hussey:** Finally, do we know how much it has cost the public purse to remedy the cases that you have dealt with in, say, the past five years?

**Mr Stewart:** That is question to put to the Department. Under the article 161 procedure, there has been no expenditure from the public purse.

**Mr Ó hOisín:** As elected members on councils, MLAs or both, we have often seen misunderstanding about the relationship between NI Water and DRD Roads Service in relation to dealing with issues on the ground, because mixed systems and mixed legislation responsibilities have been prevalent here over the years. Like Stewart, I am slightly clearer about that after today.

I have only a couple of short questions. I am more used to the Jimmy Spratt school of allowing questions. The number of enforcement actions taken under article 11 of the private streets order was 14 two years ago and 32 last year. Given the numbers involved, is that an adequate enforcement response?

**Mr Stewart:** It is not a quick fix or a quick procedure. There are measures that have to be worked through. We have worked with our colleagues in the private streets department of Roads Service to deliver that in the past year. There are others under process at the minute, and we are moving forward with Roads Service as appropriate.

**Mr Ó hOisín:** Do you have any idea how many?

**Mr Stewart:** We are asked questions weekly about potential article 11 enforcements. It may be something simple, such as constructed drawings or the paperwork having never been completed, or it may be something major. We are working through one at the minute where there are serious issues with the sewers. We reckon that it could be two to three months before we have identified all the problems in that because it is a work in progress.

**Mr Ó hOisín:** Are those all part of the anticipated 110 applications that have come through?

**Mr Stewart:** We have had requests for what may be potential article 11 sites. Not all of those will go the distance and become article 11 enforcements.

**Mr Ó hOisín:** I will pre-empt the Construction Employers Federation's presentation. It wanted the NI Water policy of 80% occupancy prior to the adoption of sewerage to be reduced to 51%. Will that create issues such as those Mr Hussey outlined?

**Ms Venning:** That was an example of us working in tandem with the Construction Employers Federation. The Construction Employers Federation asked for us to help it through this time. We feel that we can accommodate that without additional risk of the site becoming unsustainable or unadoptable. We do not feel that we have put the public at risk by moving from 80% to 50%. We are trying to help the developers in this instance. There are things that we can do. We absolutely want to be involved in finding solutions where we can and not in throwing up problems.

The other area in which we have worked is to say, "Consider your site in smaller phases. If things are unaffordable for you, we are happy to facilitate and approve your site in smaller phases." That allows developers to get a smaller bond to construct the approved piece of infrastructure. It allows us to release the bond and adopt that piece of infrastructure, which is a win for the people of Northern Ireland and for the developer.

**Mr Ó hOisín:** Would the latter approach of releasing it in smaller batches be more prudent?

**Ms Venning:** It is a combination of both. What we are saying is that, in the smaller phase, once you get greater than 51% occupancy, that proves the infrastructure. If it is more than 51% occupied, the sewers are operating. We can prove that the sewers are operating. We test and inspect them and identify any defects in an operational sewer as opposed to a sewer that is not operating.

**The Deputy Chairperson:** Thanks very much for your presentation. We normally allow only one or two questions per member, but, as this is an inquiry, we are trying to drill down a wee bit. Thanks very much. Frank, perhaps you will write to me and the Committee Clerk on the questions that you could not answer today, particularly the one about having a blank sheet and rewriting the system.