



Northern Ireland  
Assembly

Committee for Social Development

# OFFICIAL REPORT (Hansard)

Inquiry into Allegations Arising from a BBC NI  
'Spotlight' Programme Aired on 3 July 2013 of  
Impropriety or Irregularity Relating to NIHE-managed  
Contracts and Consideration of any Resulting Actions:  
Mr Stewart Cuddy

25 September 2014

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

Mr Alex Maskey (Chairperson)  
Mr Mickey Brady (Deputy Chairperson)  
Mr Jim Allister  
Mr Gregory Campbell  
Mr Trevor Clarke  
Mr Michael Copeland  
Mr Stewart Dickson  
Mrs Dolores Kelly  
Mr Fra McCann  
Mr Sammy Wilson

**Witnesses:**

Mr Stewart Cuddy

**The Chairperson:** Stewart, you are very welcome to the meeting.

**Mr Stewart Cuddy:** Thank you.

**The Chairperson:** I remind members that this is in relation to phase 3 of the Committee's inquiry and that the submission provided by Stewart Cuddy is in your packs.

OK, Stewart. Again, I remind members and you that you have been invited here to provide evidence to the Committee for its inquiry. You were asked to give us a submission, and you kindly agree to do that. Are you happy enough that you understand the remit of this phase of the inquiry and the reason you are here? You have given a submission, and you are content that that submission is appropriate. Do you want to add anything or make any opening remarks or whatever?

**Mr Cuddy:** No, the only other thing that I want to say, Chairman — so that the Committee is aware — is that I understand that you have already had some witnesses and some evidence. I believe that that may be in the public domain. I have not seen that and am not aware of it, so I am coming really on the basis of what I have prepared and the fact that I retired about 18 months ago.

**The Chairperson:** OK. I hope that you are enjoying your retirement.

**Mr F McCann:** Stewart, you are welcome to the Committee. We have gone over the information that you provided.

A meeting took place on 30 June 2011, at which you asked the Minister why he was so interested in the Red Sky contract and were accused by the Minister's special adviser of making allegations. As a result of that meeting, you asked for the permanent secretary to be present at any further meetings. Will you explain why? Did you feel under pressure?

**Mr Cuddy:** No. Maybe I did not make it sufficiently clear. I think that there were two meetings. There is a draft minute of one of those meetings, and I think that I said in my briefing that, when the papers were given to me several months ago, it was the first time that I had seen that minute. The minute says that I had asked for the permanent secretary to be present at that meeting as he was not there. If you read the draft minute you will see that he came to the meeting later.

Also at that meeting, I asked for the Minister's request to extend the Red Sky contract, which he asked us to do at that meeting, to be put in writing. The reason I did that — I have spelt it out in quite a lot of detail — was that I was very concerned that a Minister was asking us to do something about a public contract. I had had over 30 years' experience in the public sector, and that was the first time that a Minister or a senior manager had asked me or my colleagues to get involved in a public procurement. As everybody knows, in public procurement and contracts there are codes of ethics and protocols and procedures that you do not breach. I was very concerned. I thought that surely the Minister was aware of that and that, if he was not, his permanent secretary should be advising him. That is why I asked for the permanent secretary to be there.

As I went on to explain in my briefing, the permanent secretary is the senior accounting officer. I was the accounting officer of the Housing Executive, but as the senior accounting officer he also had overall responsibility for the Housing Executive. I felt that it was absolutely vital for him to advise the Minister that he needed to be very careful and that he was getting involved in a very detailed operational contract issue, particularly when that contractor was subject to an investigation, had been found to have been providing a service that was of poor quality and was overcharging. That was the one thing that I was really very concerned about.

**Mr F McCann:** There are two points arising from that.

**Mr Cuddy:** Sorry, can I just clarify that I was not quite clear whether it was at that meeting or the other meeting that I was accused of making an allegation. It may have been that meeting, but it was not minuted. It is clearly not in the draft minute. Even in the most difficult meetings there can occasionally be a bit of humour. When I was told that I was making an allegation it was reinforced by the special adviser saying to me that a fool would know that it was an allegation. I felt like saying, "I am not a fool; therefore it is not an allegation, it is a question", but I thought that perhaps that was inappropriate bearing in mind the tension in that meeting.

**Mr F McCann:** I am just going over some of the stuff. There were two meetings, one on 30 June and one on Tuesday 28 June. The 28 June one refers to the question about the Minister. First of all, did you feel that you were being put under pressure by the Minister's special adviser or whoever else to rescind the decision to take the contract away from Red Sky? Secondly, what was the attitude to the permanent secretary when he went along to the meeting to deal with the question that you had raised?

**Mr Cuddy:** Obviously we are talking about some time ago, so my recall of the detail may not be 100% accurate. Both the chairman and I felt under an awful lot of pressure. Of course we did. That is why I felt that it was important that the permanent secretary should be there, because, at the end of the day, he is the adviser to the Minister in that sense in matters relating to ethics, policy, procedures and protocols. I do not know if this is in your papers, but following that meeting the chairman and I went back and drafted a letter. There was a letter dated 1 July sent to the permanent secretary. I do not know if that letter is in your papers or not. I kept a copy of it, because I felt that it was such an important letter. It set out all of our concerns. I have a copy here that I can refer to. It is dated 1 July, and on the second page there are something like 5 bullet points. I do not know if the Committee members have this letter or not.

**The Chairperson:** Just a wee second; we are going to check.

**Mr Cuddy:** It details all of our concerns and why we felt that what had been asked for at that meeting was really unacceptable. We were hoping at that stage that perhaps the Civil Service would speak to the Minister and explain, if it had not done already. Of course, nobody had done. We were not aware of any discussions or written advice that may have come from the permanent secretary. In fact, I am

still not aware if the permanent secretary had given the Minister advice in writing or orally, or what the content of that was.

We were making it very clear, saying, "There is a major issue here, and really you need to back off and let us get on with what we are doing". We had a contractor who had performed very poorly. In fact, although I have not said it in my briefing, he was referred to the PSNI for potential fraud in that overcharging. For a Minister to request us to extend a contract involving that type of contractor was not acceptable. It would be unacceptable from anybody. If I went as a senior manager to any of my staff for a procurement and asked them to do that, the first thing they would do would be to report me. I would be subject to disciplinary procedure and I would probably be sacked.

**The Chairperson:** Thank you. We are still trying to locate the letter.

**Mr F McCann:** Can I ask a final question while we are waiting on that? Suggestions and allegations have been made that the reason for the cancellation of the Red Sky contract, or part of the reason, was sectarianism against the company in some areas. In your documentation, you said that that was not the case and that it was because of poor work and overcharging.

**Mr Cuddy:** Absolutely. I will not say that I was shocked, because I am not naive; I was very, very surprised at that allegation. If you look at the composition of our board, you will see that it was made up of members from different backgrounds and different communities, and yet the decision of the board was unanimous. There was no question. In fact, if I thought that it had been tainted in any way with sectarianism, I would have had no party with it whatsoever, and I would have recorded that concern in writing.

**The Chairperson:** If anyone has a hard copy, that last correspondence is at tab 10. Annex A is on page 99, and then page 100 after that, annex B.

**Mr F McCann:** There is a response from the Minister, but I cannot see a response from the permanent secretary.

**Mr Cuddy:** No. When I was looking at the correspondence with fresh eyes having been away for so long, I saw that the Minister wrote on 1 July. I cannot remember whether that letter came in before the chairman wrote his letter. My recollection was that the chairman was writing a letter based on our concerns at the meeting that we had just had the previous day or two days before. If you go to the fourth paragraph on the first page of the letter of 1 July from the chairman, you will see that he talks about it being "incomprehensible". That is not overstating it. We were absolutely stunned at the request to extend the contract. On the following page, we list five reasons why we could not understand how you could justify such a request. In the last paragraph, the chairman tried to defuse the situation by saying, "Look, here are the reasons why we feel this is totally inappropriate. Can you now back off?" He is making the point that it is the Minister, and he also refers to the Department for Social Development, because we believe that there is a role there. I do not want to be unfair to the Department for Social Development. I have not seen its evidence or advice, and it may have tried to advise the Minister. Therefore, I do not want to criticise the Department at this stage.

**Mr F McCann:** What I am trying to find out is this: there was a request from you that the permanent secretary should attend the meeting. What was his attitude to the allegations that were being made during the meeting with you?

**Mr Cuddy:** To refer back to the minute of that meeting, the permanent secretary's attitude — from recollection — was that we needed to try to address the issues. I do not think that he wanted to open this up, because he realised that there had been a very tense and heated discussion. I think that his reaction was that he wanted to try to calm it down. It was probably at that meeting that I was accused of making an allegation, and I was insisting that it was not an allegation. Therefore, I think that the permanent secretary's attitude was, "Look, the issues are out. The Minister has made his request to you. We have heard your response. Let us see how we take it from here." When we got back, we said that we needed to put it in writing, and then, of course, the Minister wrote to us.

**Mr F McCann:** Did you write to the permanent secretary after the meeting?

**Mr Cuddy:** The letter of 1 July is to Will Haire, the permanent secretary. That was directly after the meeting where we had been asked to extend the contract. I think that that is the timeline.

**Mr F McCann:** Did he not respond at all? I cannot see any —

**Mr Cuddy:** I cannot see anything.

**Mr Allister:** On 31 August.

**The Chairperson:** I am told here that at tab 9 we have minutes of a meeting and the DSD briefing prepared for the minute.

**Mr Cuddy:** I do not know whether he responded to that, but I could not see that in the papers that were sent to me. Is there a letter dated 1 August?

**Mr Allister:** There is a letter to Mr Rowntree from Mr Haire dated 31 August at tab 10, page 109.

**Mr Cuddy:** I do not know what is in that.

**Mr F McCann:** While there is a letter from you to Will Haire, there is no response from Will Haire on some of the difficulties that you were facing.

**Mr Cuddy:** Sorry, say that again.

**Mr F McCann:** There was no written response from Will Haire to the letter that you sent off.

**Mr Cuddy:** Unless this letter that the members have referred to deals with those issues.

**Mr F McCann:** It is commented on, but the response came from the Minister.

**Mr Cuddy:** I think that those two letters —

**The Chairperson:** Stewart, if you do not mind, Claire is going to give you a folder that contains some information.

**Mr Cuddy:** The letter from the Minister and the chairman's letter passed at the same time, so I imagine that it was not in response, but that it was in response to the meeting. I remember, before I look at this, that there was a letter from Mr Haire sometime afterwards, but at that stage, the denouement had occurred and the matter had been put to bed. The Minister had already written saying, "Look, in light of what you have been said, Red Sky or the administrators cannot extend the contract and manage it. Therefore, go ahead and proceed to allocate to the adjacent contractors." A letter then came in after that from the permanent secretary, who I think was quite annoyed that the chairman had written in very strong terms to him. That may be the letter that you have now referred me to.

The permanent secretary seemed to be saying that he could proffer advice but, at the end of the day, that is up to the Minister. Now, I have worked in the public sector for 37 or 38 years. All of that time, except for a short period, has been within the public sector as opposed to the Civil Service, but my understanding is, and the Committee may want to check this out, that there are protocols and policies whereby if a Minister is not prepared to accept advice, there is recourse for the Civil Service to refer that matter up the line in some way. Now, I do not know what that protocol or procedure is, but there is a way of dealing with this. I would be surprised, in such a serious matter as public procurement — which is a taboo issue, because everybody knows that you do not get involved in public contracts because there are protocols that have to be followed. There are people who are dealing with those, and if they step out of line they will be subject to disciplinary action. In a situation like this, therefore, I would have thought that the advice needed to be very forceful and in writing so that the permanent secretary can cover his back — if for no other reason.

**Mr Allister:** Your statement of evidence is very clear as to what you thought about this. Just to stay, for a moment, with the meetings at the end of June and then the correspondence into July: the Minister, after the June meetings, wrote on 1 July expressly asking the board to extend the contract for a period of six months. What was your understanding of why he wanted it extended for six months?

**Mr Cuddy:** We did not know. We had no idea. That is why the question was asked at the meeting. Maybe it was, from me, inappropriately worded, because I was so taken aback. I said, "Why are you so interested in Red Sky?". The question really was "Why do you want us to do this with Red Sky?"

**Mr Allister:** Why did it seem to you that the Minister was so interested in Red Sky?

**Mr Cuddy:** We could speculate, with all respect. We also knew that there was a meeting, or there was going to be a meeting. When I gave my evidence to you, I could not remember the timeline. I think that perhaps the meeting had already taken place by the time that we met the Minister at the end of June or beginning of July. So we felt that there was clearly something happening — something going on. We did not have all the facts and figures. We also asked the Department if it was at the meeting. From memory, I think that it was, but it did not want to come up front and say, "Yes, we were there and everything was fine".

**Mr Allister:** I think that the Committee knows that there was a meeting attended by some politicians, some departmental officials and Red Sky.

**Mr Cuddy:** That concerned us even more, knowing that that was the case.

**Mr Allister:** The Housing Executive was not invited to that meeting.

**Mr Cuddy:** No, but we were asked to do a briefing for it. My understanding was that we were asked to provide some information on the size of the contract, when it started, when it would finish, etc.

**Mr Allister:** Nor was the administrator at that meeting. Is that your understanding?

**Mr Cuddy:** That is right. The administrator was not at the meeting. Again, that concerned us. I think that is laid out in Mr Rowntree's letter.

**Mr Allister:** So, at those meetings at the end of June, when you dared to raise concerns about the Minister meddling in public procurement, you got a pretty rash and robust response, particularly from the special adviser. Is that right?

**Mr Cuddy:** Yes, we did. Are you saying that we got a response from the special adviser?

**Mr Allister:** Yes. The special adviser responded quite angrily.

**Mr Cuddy:** Yes, he did, absolutely. That is where I was accused of making an allegation. I said, "No, it is a question". In fact, the permanent secretary at that stage was at the meeting, and he stepped in to try to cool things down.

**Mr Allister:** You say in your evidence:

*"I was extremely concerned that the Minister was getting involved not only in a NIHE operational matter but one relating to a specific contract and a particular contractor. This could readily be perceived as a Minister lobbying for that contractor and also directly influencing/compromising a public procurement process".*

Was that your perception of what was going on?

**Mr Cuddy:** Absolutely.

**Mr Allister:** That the Minister was lobbying for a particular contractor.

**Mr Cuddy:** My perception was that there was a danger that that would be how it would be perceived. I do not know what was motivating the Minister. Therefore, all I can say is that it seemed to me that he was lobbying and making a very forceful case for us to extend the contract. That is vindicated by the fact that I asked for his request to be put in writing, and we got his request in writing.

**Mr Allister:** Were you aware that there was a threat to use an article 10 ministerial direction to the board?

**Mr Cuddy:** There was. We thought that might happen.

**Mr Allister:** Yes. And the Housing Executive, we know from the papers, indicated very robustly that if that were to happen, you would be going to the High Court.

**Mr Cuddy:** Absolutely. The reason that we did that, again, to explain to the members, was that we saw this as an extremely serious matter. We could not understand how we had arrived at a situation in which a Minister was writing to us. I was absolutely astonished when we received the letter. When I asked at the meeting for it to be put in writing, I thought that that would put it to bed and would never see anything in writing. I thought that the Civil Service would say to the Minister, "Stand back. You are in a very difficult situation here. Do not go beyond the Rubicon here on this particular issue." Yet we received a letter asking us to extend the contract.

**Mr Allister:** Was that him going beyond the Rubicon?

**Mr Cuddy:** In my view, it is. In my view, if I or any of my staff had done that, we would have been going beyond the Rubicon. Absolutely.

**Mr Allister:** Was that the Minister abusing his position?

**Mr Cuddy:** My view is that there is a potential that he was in breach of his code. I have looked at the code and I know what it says.

**Mr Allister:** That was all focused on the meeting of the board that was coming up on 5 July. Were you aware of any lobbying that had been going of board members?

**Mr Cuddy:** I am aware of the Jenny Palmer issue. I am trying to remember if that was 5 July. Yes, that was the first meeting. That was the meeting when the decision was made.

**Mr Allister:** When the decision was made to reaffirm concluding the contract on 14 July.

**Mr Cuddy:** Yes.

**Mr Allister:** Can I take you back a bit? Paragraph 5 of your evidence states that, on 4 February and 6 February, there were meetings with Red Sky to discuss the issue of overpayment.

**Mr Cuddy:** Yes.

**Mr Allister:** The third paragraph says:

*"It was clear that RSG did not get the message or more likely were not prepared to accept it and terminated the meeting."*

**Mr Cuddy:** Yes.

**Mr Allister:** That obviously was another robust occasion.

**Mr Cuddy:** It was a very difficult meeting.

**Mr Allister:** Yes. To the point where Red Sky terminated the meeting.

**Mr Cuddy:** Yes, because —

**Mr Allister:** If I understand correctly, at that meeting you were looking for Red Sky to respond in a time frame to the report, the outcomes of which you had provided to it.

**Mr Cuddy:** Yes.

**Mr Campbell:** Chair, are we leading the witnesses here or what? It is a very unusual line of questioning.

**Mr Allister:** I am sure that the Chairman will preside over that.

**Mr Campbell:** I am sure he might, depending on who is asking the questions.

**The Chairperson:** I am keeping an eye on where we are going with this. We are dealing specifically with the submission from Stewart Cuddy.

**Mr Allister:** So, when you say that it was clear that Red Sky did not get the message or, more likely, was not prepared to accept it, that suggests to me a company that was used to getting its own way with the Housing Executive. Is that fair?

**Mr Cuddy:** Yes, I think there was a culture — I referred to it — in Egan contracts, and there was an idea that Egan was all about partnership. Partnership is one aspect of it, but the key issue of any contract is the contract, and he who pays the fiddler plays the tune. We were reaching a situation where, under Egan, some of the contractors — not only Red Sky; there were other contractors as well — thought that every decision that was made had to be made in partnership with them. To some extent, that had maybe been happening over a number of years, and I came in with a very clear remit from the board and the chairman that we needed to nip that in the bud. I think that there was a gateway review at about the same time. The gateway review also made the point that partnership is good but, at the end of the day, if you pay for the contract, you determine what you have to get from it, and I was trying to get that message across to Red Sky in light of a very damning report.

**Mr Allister:** Back in 2006-07, there had been an attempt to terminate a Red Sky contract, is that not right?

**Mr Cuddy:** I understand so. I recall that only in retrospect.

**Mr Allister:** And the Housing Executive backed down.

**Mr Cuddy:** My understanding is that it never went to the board, and the senior managers of the team were unaware of it. I think that I say in my evidence that I believe that it was the chief executive and the director of housing who dealt with that issue at that time. My understanding was that they were about to terminate the contract. There was a new chairman of Red Sky at that time. I think that there were meetings, and assurances were probably given at those meetings that the contractor would step up and address concerns, and I imagine that, on that basis, the contract was not terminated.

**Mr Allister:** And the meeting with the chairman was with Mr Cushnahan.

**Mr Cuddy:** It was Mr Cushnahan at that stage.

**Mr Allister:** Who had previously been a Housing Executive board member and member of the audit committee.

**Mr Cuddy:** That is right.

**Mr Allister:** And he was subsequently criticised by the Public Accounts Committee for his involvement in that matter.

**Mr Cuddy:** I am unaware that he was criticised by the Public Accounts Committee.

**Mr Allister:** Was there political lobbying at that time in support of Red Sky? Do you know that?

**Mr Cuddy:** I am totally unaware of that. Like a number of other senior officers, I was unaware of the discussion with Red Sky and Mr Cushnahan. We knew nothing about it. I knew nothing about it. It was only several years later when, I think, it came out as part of an audit report on Red Sky that we became aware of this.



**Mr Allister:** I was on the theme of Red Sky being a company that gave the appearance of being used to getting its own way with the Housing Executive.

**The Chairperson:** Jim, I am minded that you are characterising beliefs and perceptions. Some may share those, but the facts of the matter, on the record, are that there were overcharging allegations or realities regarding a number of contracts, which were negotiated down year on year. We dealt with that last week. I just ask people to be mindful and limit that kind of characterisation. We are in sensitive territory, so I am asking people to be a bit mindful about how they characterise their questions.

**Mr Allister:** I will ask it this way: was there an occasion on which Red Sky protested about the attitude of a staff member in a part of Belfast and that staff member was then removed from his post?

**Mr Cuddy:** I understand that that was the case.

**Mr Allister:** Is it right that that was someone who was trying to be a whistle-blower?

**Mr Cuddy:** My understanding is that that is correct. In fact, during my nine months, I had to deal with a request from that officer. The only way that I could deal with the request was to offer him back the post that he had been in. He was very annoyed at what had happened. He had been moved out of his role as district maintenance officer, where he felt that he had been doing an extremely good job. I must say that, when I came into the post and was presented with the evidence, I also felt that he had been trying to do a good job. I was very concerned that he had been transferred. I felt that it was a matter of justice and fairness to an employee. I asked him whether he wanted his post back because a vacancy was coming up. I asked him whether he would accept the post. He wanted to wait until the Red Sky issue had been resolved, and, from memory, he may have gone back to that post.

**Mr Allister:** He had been removed from that post at a time when Red Sky asked for him to be moved.

**Mr Cuddy:** I need to stress again that, at that time, I was not the acting chief executive. In fact, I had very little involvement with maintenance. The director of housing was involved with maintenance. I am aware that their view would be that there was a rotation policy and that this officer was moved as part of the rotation policy.

**Mr Allister:** Was it any of their business what staff were placed where by the Housing Executive?

**Mr Cuddy:** Sorry, whose business?

**Mr Allister:** Red Sky's.

**Mr Cuddy:** It goes back to the culture among Housing Executive senior management and contractors that this was a partnership. There is now a recognition that there are partnerships and partnerships. Partnerships do not mean that, on every decision, you consult a contractor, and they have to agree. At the robust meeting that we had, one of the things that I was trying to get across to Red Sky was that things had moved on, we were now asking for certain things to happen, and, if they did not happen, there would be consequences.

**Mrs D Kelly:** Mr Cuddy, thank you for your briefing. It has been very helpful. I admire the candid nature with which you are attempting to answer the questions.

At any of the meetings that you had with the Minister and his SpAd, did either of them ever raise their concerns about the allegations of overcharging and poor workmanship? Was that ever a feature?

**Mr Cuddy:** It was a feature of the overall maintenance programme. If it was applicable to Red Sky, presumably it was applicable or potentially applicable to other contractors. Our view at that stage was that we had an in-house audit review team that threw up issues for every contractor, and we try to resolve those issues. However, in our estimation and as validated by the external forensic report, this one was much, much more serious.

I was trying to recollect why we had commissioned the report into Red Sky. It went back to an audit committee meeting. The chair of the audit committee — she had been on our board for quite a

number of years, and the Red Sky issue had been a recurring one — said, because there was, I think, a whistle-blowing letter, "We need to do something about this". On the basis of that, the forensic accounts report was commissioned. On the basis of an independent report, one has to act on the facts and the evidence presented.

**Mrs D Kelly:** I am struggling to understand why, if I were responsible for a Department, and evidence were brought to me by people in good standing, I was more concerned about Red Sky, which is the perpetrator, if you like, of the overcharging and the poor workmanship, than the public interest.

**Mr Cuddy:** I think that I said that we could not understand why the Minister was getting involved in something like this. That is why we reacted so strongly at the meeting at the end of June/beginning of July and in the letter that the chairman sent. Given that the following letter was very legalistic, we were fearful that we were going to get a direction. We tried to defuse that by the letter of 1 July to the permanent secretary, but nothing seemed to happen. We got a letter dated 1 July making the request, so we felt that, if there were a direction, we had to get our ducks in a row to deal with that.

**Mrs D Kelly:** Thank you.

In the third paragraph of the letter of 31 August from the permanent secretary to Brian Rowntree — it is on page 109 — it strikes me that, in response to the concerns expressed to the permanent secretary about his role in acting as a buffer, if you like, between the Housing Executive and the Minister and the concerns about the public interest, he said:

*"my role as Accounting Officer is at all times to act within the authority of the Minister to whom I am responsible and to support the Minister with clear, well reasoned, timely and impartial advice. It is, however, ultimately the Minister's decision to accept or reject that advice."*

That is as far as he seems to understand his role, which runs contrary to what I understand his role to be. As you outlined, Mr Cuddy, he had a clear role to take it up the line in the Civil Service.

**Mr Cuddy:** I am assuming that he would. I do not know the detailed protocols pertaining to that level of the Civil Service, but I would have thought that, in terms of what they call overall governance, there is bound to be very clear advice. There is bound to be a precedent for that when a Minister comes in with very clear views. I am talking about not only in Northern Ireland but across the UK. Such cases have happened before whereby a Minister has come in and wanted to do something, and the permanent secretary has said, "Sorry, you're going too far here, and I'm going to have to protect myself by putting this to you in writing. In fact, it is now so serious that I'm directing it up the line".

From memory, somebody told me many years ago that there is a policy that takes it up to the head of the Civil Service, and from there it can presumably go into whichever level it needs to go.

**Mrs D Kelly:** Mr Haire certainly did not suggest that he would take any such course of action in that letter. In fact, he went on to put Brian Rowntree on notice should he persist. Chair, I want some clarification on the permanent secretary's function, although I am sure that we will pick that up with Mr Haire at a later stage.

I have one further question. There was a meeting between the Minister, DSD, Red Sky and, I think, the Housing Executive. Who requested that meeting? I am trying to find out the date.

**Mr Cuddy:** Sorry, a meeting between —

**Mrs D Kelly:** In April 2011, you and the chair of the Housing Executive met senior DUP representatives, including Minister McCausland and Peter Robinson, to discuss the termination of the Red Sky contract.

**Mr Cuddy:** That is right.

**Mrs D Kelly:** Can you advise us what you understood to be the purpose of that meeting and who requested it?

**Mr Cuddy:** We had been advised that elected representatives had very serious concerns about the imminent decision to terminate a contract. There were also employment issues with the company

operating out of east Belfast and employing 300 to 400 staff. We assumed, therefore, that that was the main reason for the meeting. I cannot recall, but I think that it was one of the three elected representatives who asked for it.

**Mrs D Kelly:** I think that it was Mr Robin Newton.

**Mr Cuddy:** Yes, I think that it was Mr Newton who asked for the meeting. As it turned out, that was one concern at the meeting.

**The Chairperson:** Our advice is that the Minister was not at that meeting. I just wanted to make that point.

**Mrs D Kelly:** All right.

**Mr Cuddy:** The Minister was not at that meeting.

**Mr Allister:** He was not the Minister then.

**Mr Cuddy:** Was he not?

**Mrs D Kelly:** No, he was not. I think that Alex Attwood was the Minister.

**Mr Cuddy:** Right.

**Mrs D Kelly:** I do not think that Alex was there either.

**Mr Cuddy:** There was no Minister at the meeting. There were a number of concerns. That was one of them, and we tried to reassure them that, under TUPE, the employment issue would be mitigated to some extent. That would not be 100%, but at least not as many jobs would be lost if we proceeded down that line.

As I know, they felt that there was a sectarian element to the decision. We said that there was no way that that was an issue at all. We pointed out the background of board members from all communities.

The final point, which we had never thought about because it had never been an issue, was a suggestion that we timed this as part of the purdah period. That was the first time that that had been raised with us, and there was clearly no intention of that whatsoever. If that had been an issue, we would have raised it as such, but it happened in a time frame without any reference to elections or anything else. I think that, on balance, they were reasonably reassured by what we said.

**Mrs D Kelly:** I believe that, at that meeting, Mr Robinson put on notice the fact that any incoming Minister would widen the net of investigations on particular contractors. From my reading of it, it was quite a robust meeting and, I would have thought, threatening at times for officials.

**Mr Cuddy:** My memory of the meeting is that it was reasonably difficult, but, when we had explained a rationale for what had happened to the elected representatives, I got the impression that, although they were maybe not 100% satisfied, they could understand where we were coming from.

**Mr Wilson:** Mr Cuddy, maybe you could explain to us your role in supervising, having knowledge about and receiving information about these contracts before you became chief executive and during your period as chief executive.

**Mr Cuddy:** It would be helpful to explain that, particularly from my point of view. I was appointed as the director of corporate services/deputy chief executive of the Housing Executive. There was quite a difficult relationship between the chief executive and me because, as deputy chief executive, I felt that I had a role as a deputy whereas the chief executive felt that I deputised for him when he was not there, if he so requested. There was always a tension between the chief executive and me.

That is not to say that we did not get on and work effectively. However, the maintenance contracts were the responsibility of the director of housing and regeneration, who was Mr Colm McCaughley at that time. He dealt with most issues, and the only issues that bubbled up to the top, which came

through the management team, were very difficult issues that had not been resolved or that required a resolution, which the chief executive decided needed to be on the agenda or which were brought to the meeting by the director of housing and regeneration. In many ways, I had virtually no input at all to contracts except when something came up at the management team meeting, and I felt that I had a contribution to make with constructive criticism or maybe supporting what was being done and how to do it.

**Mr Wilson:** Are you telling me that, during all that time, despite the allegations that finally came to the surface that there had been overcharging and bad supervision and delivery of those contracts, especially in certain areas — letters presumably went to the chief executive's office — you knew nothing about any of that?

**Mr Cuddy:** What I am saying is that the only time that this became a major issue that merited the type of investigation that eventually happened was when it went to the audit committee. Indeed, not only —

**Mr Wilson:** When was that?

**Mr Cuddy:** That was just before we commissioned the forensic accounts report, which I think was around 2010. I am not too sure about the time frame. Again, that is not surprising, because we had a very active audit committee. Representatives from the Department and the Northern Ireland Audit Office sat on the audit committee, as did all the directors who attended. We were all there, and none of us — except, presumably, the chief executive, possibly, and the director of housing and regeneration — would have known whether there were major issues. I do not know whether they knew at all. I assumed that the contracts were being operated satisfactorily. We had an in-house review team that produced management reports that went to the director of housing. Those went to the audit committee. By and large, everything seemed to be OK. There would have been an occasional adverse report. When that happened, action was taken and reported back to the audit committee.

**Mr Wilson:** For years, or certainly for a long time, complaints were coming from ground level. According to what you say, people were being removed from their jobs because of the actions of a particular contract. There was overcharging and poor delivery. Given the culture of secrecy or division in the Housing Executive — the silo mentality — all that went under the radar of senior management. Is that what you are saying?

**Mr Cuddy:** What I am saying is that one member of staff was transferred? I am trying to put this in context. It is not as though 10 or 15 members of staff were moved, and it was an issue for everybody. I was unaware of that person being moved until after it happened, when it became an issue, because it was deemed to be an ongoing management issue. It was an operational matter that I was unaware of. Questions about poor delivery and overcharging were going through a number of contracts. Once overcharging was discovered, whether intentional or not — in most cases, it was deemed to be not intentional — an adjustment was made to the next payment to deal with that. All these issues seemed to be being managed. The only complaint that I was aware of and that bubbled up to senior level — that is not to say that there were not others that did not bubble up and may have been kept secret; I do not know — was that of the whistle-blower, and it came to the audit committee. I was a member of the audit committee and was well aware of that complaint and the audit committee's reaction.

**Mr Wilson:** I am trying to get the picture. This is very important when we come to look at the reaction of the Housing Executive to any investigation into the way that it behaved. We have this picture: this went on for a long time, and senior management was kept unaware of it. When it did become aware —

**Mr Cuddy:** I am not saying that. Senior management comprised the chief executive, the director of housing and regeneration, the director of corporate services — that was me — the director of consultancy services, the director of personnel and the director of finance. If there were issues, I have no doubt that the director of housing and regeneration and probably the chief executive would have been aware of them. I am unaware that there were issues.

**Mr Wilson:** Clearly, there were issues, because you have told us that there were; they have all been well documented to us. However, the Housing Executive allowed this to trundle on for some time, to the point at which people were paid for work that they did not do and so on. Do you accept that there

must have been a certain amount of embarrassment in the Housing Executive's senior management team, inasmuch as the Housing Executive can be embarrassed by anything, at the debacle that it had overseen?

**Mr Cuddy:** Absolutely.

**Mr Wilson:** From my point of view, this is where the difficulty comes in. Up until the 2011 election, you had a Minister who was unaware of this or, because of how he was disposed towards the Housing Executive, was quite happy for the Housing Executive to trundle on and do this. As far as you are aware, was the previous Minister aware of any of this, given that the audit committee had identified the issue in 2010? Was he aware of this at any time before he left his post in 2011?

**Mr Cuddy:** My memory is that he was aware, because we met the former Minister. I cannot remember the exact time frame, but it was just before he left. I am trying to remember whether that coincided with this report. I would need to look at the time frames to see whether the report came out during his tenure. I think that the report came out during the previous Minister's tenure, he left, and then the new Minister came in. There definitely was a meeting. In fact, the reason why I remember at least one meeting is that the Minister wanted us to terminate the contract, and we said that a contract cannot be terminated unilaterally without evidence and information to support that action.

**Mr Wilson:** Tell me this: did you write the same kind of letters to the previous Minister? You talked about your disgust and alarm at the interference that Nelson McCausland wished to exercise over this contract. Was the same kind of message conveyed to the previous Minister?

**Mr Cuddy:** No. The permanent secretary and/or the deputy secretary, Barney McGahan, attended those meetings. I remember that because Barney and I were colleagues in the health service, so I knew him from that background. When we put it to them that you cannot terminate contracts willy-nilly, they understood, and I think that they were able to get the Minister to understand that and to understand that you have to take certain steps to terminate a contract, otherwise the organisation would be left in a vulnerable legal position.

**Mr Wilson:** Nevertheless, the previous Minister — I want to get to one of your central points — did not see any curtailment on him in questioning public sector contracts, in asking you to terminate a public sector contract or in making representations about a public sector contract. Is that right?

**Mr Cuddy:** All I can say is that the Minister was keen that we terminate the contract. I cannot remember whether the report was out at that stage, but he wanted us to terminate the contract.

**Mr Wilson:** This is where I have a difficulty with you, Mr Cuddy, and with the balance of your evidence. You said that you were concerned that any public representative would even think about interfering in a public sector contract, yet you are also saying that the previous Minister thought that it was OK, his permanent secretary was in attendance at meetings, so —

**Mr Cuddy:** There was a difference, Mr Wilson. The difference was that the civil servants at a senior level who accompanied the Minister to those meetings were echoing to the Minister the advice that we were giving. Where there is bad press around a contract, we can understand any Minister saying, "For goodness' sake, what are you doing? Are you not going to get this sorted out? I want this contract terminated". We put the view logically to him that there were certain steps that we had to take. From recollection, those views were echoed at the meeting, maybe not in a very strong way, but we knew that we had the senior civil servants on board. If we had been getting that sort of feedback from the meetings with the other Minister, this issue would not have escalated.

**Mr Wilson:** We will come to whether there is a difference in one situation and another. I take it that you are now clarifying your earlier remarks, when you seemed to be indicating that there was something suspicious and certainly unsavoury about any Minister daring to query a public sector contract. You are saying now that, although you would qualify it, there would be grounds when a Minister may ask officials about a public sector contract.

**Mr Cuddy:** No, what I am saying is that I can understand a Minister getting very uptight about contracts in an organisation that he has overall responsibility and oversight for. We can understand a Minister at times being very upset and suggesting and indicating that a contract should be terminated. It is a different matter, however, when it is clear that advice — our advice — was not being accepted.

We said that performance on this contract had been poor, we had received a very damning report and that, therefore, our view was that he should not get involved, the contract needed to be terminated and that he should stand back from that. Notwithstanding that, we were told, "We want this contract extended". I think that the two situations were different. I can understand a Minister coming in and his first reaction being that he wants a contract to be terminated. A Minister has not spent 20 or 30 years in the public sector and does not necessarily understand all the protocols, but, when he is told something by his senior managers, and is presumably told the same by the permanent secretary and senior civil servants, and he does not accept that, I think that there is a major concern.

**Mr Wilson:** So —

**The Chairperson:** Sammy, can we ask the question, because it may be helpful: was there any subsequent intervention by that particular Minister?

**Mr Cuddy:** No.

**The Chairperson:** I think that that helps us to work out a response.

**Mr Wilson:** You are saying that it would not be unusual for a Minister to ask about a public sector contract. It certainly would not be unusual for him to receive representations from other MLAs who had had concerns raised with them about a public sector contract. That is a normal part of a Minister's job and a public representative's job if concerns were drawn to their attention.

**Mr Cuddy:** From my perspective — maybe I come with more information, having spent so long in the public sector — if I were an adviser to a Minister, my advice to him, whether as a Civil Service adviser or a special adviser, would be that he should not meet contractors when there has been a damning report on their work in case that it misrepresented as lobbying, whether or not that perception is there. My clear advice would be: "Don't go near it".

**Mr Wilson:** That is not the question that I asked you, Mr Cuddy. You made a very definite statement to the Committee that you would have been concerned about any representations that a Minister would have taken about a public sector contract. You are now qualifying that by saying that, if other MLAs asked to speak to him about concerns, that is part of a Minister's job and that, if concerns about a contract were drawn to a Minister's attention and he asked questions about it, that is also part of a Minister's job, and that there is nothing unusual in him asking officials and talking to officials about the contract.

**Mr Cuddy:** I agree with that. There is a process whereby, as you very well know, a Minister asks a question about a contract — about anything — and he is obviously entitled to do that. During that process, which may involve one meeting at which we provide a response and tell him the position, if that Minister appears to insist on going down a road, that, to me, is unacceptable in public procurement.

**Mr Wilson:** Let me come to the next part, because it is quite clear why the Minister was concerned. I note that you said — again, maybe you want to qualify this in the way that you have qualified your bald statement —

**Mr Cuddy:** I do not know that I have qualified it. With all due respect, I hope that I have explained it.

**Mr Wilson:** You made a bald statement that has now been considerably modified as a result of the answers that you have given. The second thing that you said was that you did not know why the Minister had raised concerns about the termination of the contract. Is that right?

**Mr Cuddy:** Are we talking now about Minister McCausland?

**Mr Wilson:** Yes, Minister McCausland.

**Mr Cuddy:** I raised concerns at the meeting. I asked why he was so interested in Red Sky in the context of the Minister wanting the contract extended, because it seemed totally illogical. If you have a damning report on a contractor, why would you ask for the contract to be extended?

**Mr Wilson:** This is what you said. Maybe you want to think about this one again. You said that you did not know why he would want the contract extended. You did not.

**Mr Cuddy:** I did not know.

**Mr Wilson:** Did you see the letter that he sent to Mr Rowntree on 1 July?

**Mr Cuddy:** I did.

**Mr Wilson:** It is in the pack that has been handed to you.

**Mr Cuddy:** Is it the short letter?

**Mr Wilson:** Yes. Let us just look at that letter. You say that you had read it.

**Mr Cuddy:** Yes.

**Mr Wilson:** He makes a number of points in it. At the end of the first paragraph, he asks for:

*"a forensic investigation ... including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination."*

Why would he have asked that question?

**Mr Cuddy:** I assume that he would have asked that question for a number of reasons. Whether there were problems with those particular contractors would be one reason presumably. As a comparison with Red Sky.

**Mr Wilson:** Had he asked officials that question previously?

**Mr Cuddy:** The question about problems with other contractors.

**Mr Wilson:** Yes.

**Mr Cuddy:** I am sure that he would have raised that. He may have asked —

**Mr Wilson:** Did he ever raise it with you?

**Mr Cuddy:** At the meeting, he would have asked about the performance of other contractors.

**Mr Wilson:** Right. So he had raised it with you. Had you been able to give him any assurance about the performance of other contractors?

**Mr Cuddy:** I remember one question, and I responded by saying, "I have one query on my desk at the moment with a particular contractor". It was quite an unusual query. I do not want to name the contractor at the moment.

**Mr Wilson:** It was named in the documentation anyway. You knew the name of the contractor at that stage, but go ahead.

**Mr Cuddy:** I said, "I have an invoice query on my desk at the moment", but I made the point that I did not believe that it was material in terms of the wider cost of the contract.

**Mr Wilson:** And yet, within nine months of this, Housing Executive officials were informing the Minister that this was not confined to Red Sky but applied to all the companies to the tune of £18 million.

**The Chairperson:** Sorry, I have to intervene.

**Mr Cuddy:** I think that there are two different contracts here.

**The Chairperson:** Sorry, I am going to make a ruling on this. They are two separate contracts entirely, Sammy.

**Mr Wilson:** No.

**The Chairperson:** They are. I have to say this to you: we are not dealing with that set of contracts. That was the response maintenance contracts; the planned maintenance contracts are entirely separate. We have been dealing with that. So, that is not relevant to this issue.

**Mr Wilson:** The point that I am making —

**The Chairperson:** You cannot make it.

**Mr Wilson:** I know that there were two separate contracts.

**The Chairperson:** Sorry, Sammy, I am making a ruling on this. You cannot make that suggestion because it is factually incorrect. It is an entirely separate matter.

**Mr Wilson:** I know that there were two separate contracts, but what I am trying to illustrate is that —

**Mr Cuddy:** I know the very point that you are making.

**Mr Wilson:** — there was a culture —

**The Chairperson:** Sorry, I am directing the meeting. You will not respond to that question because it is not relevant. It is erroneous.

**Mr Wilson:** Do you accept that the Minister was increasingly aware of a culture of slack management in the Housing Executive where the potential for overpayments could extend to more than just one company?

**Mr Cuddy:** I think that he had a concern. There was the start of a concern at that stage. I do not think that he did prior to that. He might not have been in office that long anyway, but, yes, clearly, he had raised concerns that if it had happened with Red Sky, it could happen with other contractors. Our problem was that that might have been the case — as it turned out, it was the case — but two wrongs do not make a right. We were quite happy to say, "Yes, we will look at those contracts and if there are overpayments and overcharging, we will deal with those as well".

**Mr Wilson:** So, first, the Minister would have been concerned that it was a case of assigning contracts to somebody who may have been guilty of even more than Red Sky —

**Mr Cuddy:** But there was no evidence, with all respect, of that. The other view could be that this was a fishing exercise. We had no evidence on those other set of contractors.

**Mr Wilson:** Well, you did, because allegations were made. In fact, you have told me that you had one piece of paper on your desk about another contractor.

**Mr Cuddy:** Yes, but with all respect, I also made the point to the Minister, when he pushed me on that, that it was a one-off incident at that stage. The word that I used was "material", and he asked me what I meant by "material". I suppose that I was using an accounting term. In the overall size of the contract — I think that the invoice at that time was maybe £400 or £500, I cannot remember, for a piece of work — it was not a "material" consideration, but it was still being addressed. I was trying to make the point that one query on one piece of work should not be the reason to start a full-scale investigation.

**Mr Wilson:** No, but, Mr Cuddy, I know that you are trying to underplay this, because this is a significant point. The fact is that, before 1 July, the Housing Executive was aware that there were other potential overpayments to contractors, some of whom might have been assigned the work that was going to Red Sky. You say that you did not know why the Minister wanted you to consider this, but that is one reason, and he had given you that reason: you could have been assigning work to firms that might have been guilty of even more than Red Sky.



**Mr Cuddy:** With respect, I told members earlier that the Housing Executive has an in-house review team. That review team looks at samples of work by all the contractors. What it does is find examples of poor workmanship in isolated cases. It also finds examples of overcharging and, indeed, sometimes undercharging, and there is an ongoing monthly adjustment to the contract to reflect that. For years, that would have applied to a number of contracts. The problem was that Red Sky was on the Richter scale; it stood out because of the scale of this. And the scale of it was identified through the forensic report. We are aware that there were overpayments and underpayments; of course we were —

**Mr Wilson:** And subsequently some of the other ones were off the Richter scale as well.

On my reading of the second paragraph of the letter, to reassign the contracts in this way would have required that you did not go out to tender: is that correct — to reassign the contracts quickly?

**Mr Cuddy:** From memory, within the terms of those contracts, we are obliged to reassign the work to adjacent contractors. I think that there is a contractual responsibility that, because they have already gone through the tender process, if a contractor, for whatever reason, pulls out or a contract is terminated, that contract is reallocated to adjacent contractors. That precludes, as you say, the need, at that stage, to go out for competitive tender.

**Mr Wilson:** So, when you said that you did not know why the Minister wanted you to consider extending the contract, you were not really correct, because you have read the letter and identified the two reasons in the letter. First, the work might have been reassigned to people who were as guilty, if not more guilty, than what had been alleged in Red Sky; secondly, there would not even have been a tender process.

**Mr Cuddy:** With all respect, if you were to go to a competitive tendering process and bring in new contractors, there is always the potential for overcharging. How do I prove something that I do not know is out there?

**Mr Wilson:** Well, why do you tender at all then?

**Mr Cuddy:** What I am saying to you, with all respect, is this: why would we assume that there is massive overcharging with adjacent contractors at that stage? And there was no evidence of that, at that stage. Why would we want to do that and go out to a competitive tendering exercise and probably end up with the same situation?

**Mr Wilson:** Because, at that stage, you already had allegations and you were already looking at another company with which you had queries about invoices.

**Mr Cuddy:** I had one invoice. It was not —

**Mr Wilson:** I was going to say, Mr Cuddy, that I hope that you are not making an argument for not going to open tender, to competitive tender. To take the argument that you are making to its conclusion, you would not go out to tender anyway.

**Mr Cuddy:** No, not at all.

**Mr Wilson:** You have got five contractors —

**The Chairperson:** Sorry, Sammy, let him finish.

**Mr Wilson:** No, but —

**The Chairperson:** I know, but let him finish the answer and then you can have all the time in the world here. We are here all day to ask the questions that we need to ask.

**Mr Cuddy:** Reassigning the contracts is part of the normal tendering process in contract management. It is written into the contracts, and it is done for a number of reasons. In particular, if you have contractors who are already doing the work and have the capacity, you can get them to do it at the

rates that they tendered for. There are very pragmatic and practical reasons for doing that, but I am 100% behind competitive tendering.

**Mr Wilson:** But not if there is a cloud of suspicion hanging over those contractors, which the Housing Executive — do not forget that it was not too long after that that you asked Horwath to conduct an investigation into the rest of the contractors and found that there was the same degree of overcharging.

**Mr Cuddy:** I do not know if there was the same degree of overcharging. Those reports were not out by the time that I left. I have no idea what they found. I am sure that they found some level of opportunity, whether it was to the same degree —

**Mr Allister:** It was £3,000. I heard it last week.

**Mr Cuddy:** — whether it was to the same degree, I do not know.

**Mr Wilson:** There was a cloud of suspicion, hence —

**Mr Cuddy:** With all respect, you are —

**The Chairperson:** Stewart, Stewart.

**Mr Cuddy:** — you are making this out to be a much greater issue than it was.

**The Chairperson:** Mr Cuddy, just a wee second, please. I asked people earlier to be very mindful of how they are characterising their remarks. Let us stick to the facts that we know and probe the questions that we want answered, and let us try and do it in as professional a way as possible. We can be here as long as we need to be to ask whatever questions we want relevant to the issue. There is no panic and no rush. Let people ask the questions, and let people answer the questions.

**Mr Wilson:** It was not only the Minister who came in for the ire of the Housing Executive on this; it was also the permanent secretary. Is that correct? He dared to give advice.

**The Chairperson:** Again, I am advising on the use of language here and characterisation of relationships.

**Mr Cuddy:** I must say that, from my recollection of the situation, my concern was that senior civil servants, including the permanent secretary, could have moved to defuse the situation. We were very concerned. The one thing that I have said in my written evidence is that I was at pains to point out the role of the permanent secretary as senior accounting officer and adviser to the Minister. That said, perhaps the permanent secretary had given that advice orally or in writing, but he did not share that with us. A telephone call to clarify issues may have helped, but the letter that we wrote on 1 July was a genuine attempt to try and defuse the situation. The words in the letter were, "We are asking you to step back." The chairman did not have the next letter, which was the very legalistic letter that followed that, threatening to take it to the High Court. That letter would not have been written if the Minister and the permanent secretary had acted on that first letter of 1 July.

**Mr Wilson:** Yes, but the permanent secretary, as the accounting officer — this is the point that I am getting to — felt that the Housing Executive was being overly defensive and, first of all, using incendiary language, such as, "We do not like the road that you are pushing us down". He believed that you were questioning his integrity in that respect and was going to seek legal advice on the matter. So, the Housing Executive not only took objection to the Minister, which is your view and you have expressed it, querying what it was doing and asking for a forensic examination of the other contract, but took exception to the accounting officer in the Department.

**Mr Cuddy:** With all respect, it was not about taking exception. We felt that we were —

**Mr Wilson:** He felt that you were.

**Mr Cuddy:** We were confronted with a major organisational issue, and we could not understand how something like this could come about. There is no question of us taking umbrage at anything. I am

well aware that in big, public sector organisations many things can go wrong, and the one thing that you learn is to be humble because you do not know what could be underneath. So, our concern was that something was going to happen out of this, and we wanted to stop it. It was something that was not going to be very good for the Housing Executive, the Department and the wider public. We tried genuinely to defuse that situation. The letter was robust, but we felt that that was required under the circumstances.

**Mr Wilson:** But you can see that the other interpretation, Mr Cuddy, is that the Housing Executive, having made a mess of this and because of its culture of dealing with these issues in silos, did not really want any scrutiny from the Minister or the permanent secretary and took exception to both.

**Mr Cuddy:** That may be an interpretation. I can assure you from my point of view that it was far, far from that. My motivation —

**Mr Wilson:** But, even in your evidence here this morning, you have queried the right of the Minister to ask robust questions about the contract —

**The Chairperson:** I do not think that that is fair.

**Mr Wilson:** Well, I have quoted him on a number of occasions.

**The Chairperson:** I do not think that that is fair, Sammy, because Mr Cuddy —

**Mrs D Kelly:** Misquoted, more like.

**The Chairperson:** Sorry, let us take one at a time. Mr Cuddy has made it clear that he accepts and acknowledges the rights of representatives, including the Minister, to ask questions. Mr Cuddy made the point that it is where people were going beyond where they should — as he was advised — that we get into muddy territory. That is what we have to deal with. At no point did Mr Cuddy say —

**Mr Wilson:** Well, all that I would say —

**The Chairperson:** Do not be unfair. For the record, you are misrepresenting evidence.

**Mr Wilson:** I am glad that, during questioning, he clarified some of that and nullified some of his earlier language. The first answer that he gave to Mr Allister indicates the mindset that there was within the Housing Executive. The fairly angry letter from the Housing Executive to the permanent secretary, which drew the angry response, was an indication that the Housing Executive did not like the investigation of this. I suggest to you, Mr Cuddy, that —

**The Chairperson:** Sammy, you are experienced enough to realise that — although there is a certain amount of cut and thrust, people will use a certain amount of colourful language, and I will give as much latitude as possible — you really need to stop characterising things wrongly.

**Mr Wilson:** I just want to ask one last question. The Minister was aware that he did not have it quantified and asked for you to quantify it. He was aware of other allegations of overcharging. He was concerned that a single tender action might actually benefit those who may have been overcharging. The people who were being complained about, ie Red Sky staff — do not forget that it was about not just overcharging but the quality of workmanship — were going to be TUPE'd over to the firms that were going to take on the new contract anyway. Given all of that, would you not accept that the Minister had reasonable grounds for asking for the contract to be extended to allow some brand-new contractors to apply for the work?

**Mr Cuddy:** If he had asked for the contracts to be re-tendered without extending the Red Sky contract, we would have found that quite difficult but would have strived to achieve it. What we could not accept was extending the contract of a contractor who had been found to be overcharging, whose workmanship was very poor, and — we did not say — who had been referred to the PSNI on the basis of potential fraud.

**Mr Wilson:** But the alternative to not extending the contract was to run the risk of, for a period of time, giving contracts to firms about which there was some doubt.

**Mr Cuddy:** But there would be potential doubt about a whole range of different contractors. How can you be sure that somebody is overcharging if you do not have the proof and evidence to support that?

**The Chairperson:** You said that that was your last question, Sammy. If you are happy enough, we will move on.

**Mr Dickson:** Mr Cuddy, thank you for coming today and for the information that you have brought to us. I will look at an aspect of your written submission that is followed up on in correspondence. You say that such interventions from the Minister:

*"could be readily perceived as the Minister lobbying for a contractor and influencing a public procurement process which is a flagrant breach of public sector conduct and ethics and also a violation".*

You go on to say:

*"As far as I am aware no explanation has been received as to why the Minister wanted the Red Sky contract extended".*

On the one hand, we have the Minister attempting to extend the Red Sky contract, but on the other hand, in a letter of 25 May to the Member of Parliament for the constituency of East Belfast, he made no reference to wishing to extend the contract. Rather, he was entirely supportive of the position of the Housing Executive.

**Mr Cuddy:** Absolutely.

**Mr Dickson:** Do you believe that the Minister was trying to mislead the Member of Parliament for East Belfast when he did not explain that he was trying to extend the contract but, rather, was backing the Housing Executive's position?

**Mr Cuddy:** Not at all. We thought that he was accepting the analysis that we had provided to the Department to enable him to respond to that letter.

**Mr Dickson:** You must have been very surprised when he came back and said that that was not what he was going to do and that what he wanted to do was to extend the contract.

**Mr Cuddy:** I was absolutely shocked. That was why we were so taken aback.

**Mr Dickson:** Why do you think he did that? Was this a change of mind or was it that he deliberately did not want the Member of Parliament to know what his real intent was?

**Mr Cuddy:** I think that it was a change of mind.

**The Chairperson:** You need to be mindful that you are not interpreting anybody else's motivation. We have to stick to what we know happened or did not happen.

**Mr Cuddy:** The letter to Naomi Long reflected the analysis as we felt it and he accepted that. Clearly, his advisers, when we provided the evidence for him to respond to the letter, accepted that what we were saying was true and legitimate.

**Mr Dickson:** So, why do you think the Minister went on to change his mind and view on this matter?

**The Chairperson:** Stewart, I do not think that Mr Cuddy can interpret why someone changed their mind. It is not his job to do that.

**Mr Dickson:** He may not be able to interpret anyone's mind, but can he point us to any evidence that demonstrates why the Minister would want to change his mind? Where were the influences coming from to want to change that view? Can you point us to any evidence as to why this change of mind took place?

**Mr Cuddy:** Probably not.

**The Chairperson:** Mr Cuddy, in your submission, you provide responses to the bullet points contained in a letter from the Committee Clerk. Under the last one, you state that:

*"The Administrators appeared not to be dealing expeditiously with the transfer of TUPE data"*

on the basis that, as is in inverted commas in your submission, there was a:

*"decision by the Minister to defer terminating the contract".*

I am just trying to follow up on Stewart Dickson's question, because you are attributing that, I presume, to the administrators. Will you elaborate on that?

**Mr Cuddy:** Yes. We had a number of concerns with the administrators. Clearly, to protect the jobs, there had to be a fairly slick TUPE transfer, and we were putting a lot of resources into that. We had had the representations from the various MLAs in the meeting, and we were keen that there would be no problems with the transfer. However, we found, in fact, that the administrators, despite the fact that we were providing all the information, were very slow in dealing with the TUPE issues. Then, in some of the correspondence, they were saying that we needed first to confirm that this was not contrary to the decision taken by the Minister. At that stage, there was no decision taken by the Minister, as far as we knew. We had concerns that, perhaps, there were other conversations going on that we were not party to.

**Mr Dickson:** When they say:

*"decision by the Minister to defer terminating the contract"*

how would the administrators be aware of those decisions? Where would they be getting that information from?

**Mr Cuddy:** Again, that is why we felt, maybe, that discussions and negotiations were going on that we were not privy to. Somebody pointed out the fact that we were not invited to the meeting with Red Sky where the Minister met Red Sky. Again, in a situation like that, under a lot of pressure and trying to find out what is going on, you think of all possibilities.

**Mr Dickson:** But the Housing Executive has not shared the Minister's view or request to extend the contract with the administrators, has it?

**Mr Cuddy:** Well, there may have been some informal, throwaway line — "Well, do you know that the Minister wants us to ...". That could happen, because a number of our staff, such as our purchasing officer Declan — I cannot remember his surname — had correspondence —

**Mr Dickson:** I suppose that this is really a question for the administrators, but bear in mind that as professional administrators they will understand the law with regard to TUPE and the overall duty of care to employees in terms of transferring them. It seems to me that you are suggesting that they were trying to hold that back because there was something in the air about the Minister wanting to change his mind on this.

**Mr Cuddy:** I think that is a fair assumption, and we would have assumed that as well.

The other thing is that my understanding was that the administrators, when we asked them about being able to take on the contract for up to six months or whatever the period was, came back and said that Newco could do it on their behalf. If Newco had been doing it, that would have meant that there would have been formal TUPE at that stage. My understanding was that Newco was going to be a reorganisation and reconstitution of the old company and, therefore, the process would probably be much easier to transfer those staff to the new company. That may have been their issue as well.

**Mr Dickson:** I think, Chair, those questions are perhaps more for the administrators to answer, but it has certainly opened an interesting window that we need to further explore with the administrators.

**Mr Campbell:** Obviously, the relevant period is the period before and during 2011, during the discussions, the meetings and the contract award. In answer to a previous question, you talked about the people whom you perceived to be the most senior people in the Housing Executive in each of the

categories. Just so that I am clear: you said the chief executive, the deputy chief executive and the director of corporate services, is that right?

**Mr Cuddy:** The deputy chief executive and the director of corporate services. When I was there, both titles referred to my post. When I was acting, Clark Bailie, who was a finance officer, moved across to become the director of corporate services and John McPeake, who was the director of design and consultancy services, took the title of deputy chief executive. John had been there for a long time and had a lot of experience, which, with respect, Clark, who had just joined us from the health service, did not have. That was the rationale.

**Mr Campbell:** I understand that. Did you then describe the post of director of housing and regeneration as senior?

**Mr Cuddy:** Absolutely.

**Mr Campbell:** So, if we are looking at the most senior people within the Housing Executive as an organisation, even though there might be a bit of overlap, we are talking about four positions: chief executive, deputy chief executive, director of corporate services and director of housing and regeneration. Is that right? Whoever is in those posts at the appropriate time would be the most senior people, is that right?

**Mr Cuddy:** I would also include the director of finance, who was Clark Bailie, prior to him acting as director of corporate services. The final person would have been the director of human resources, because those people formed the management team.

**Mr Campbell:** There are quite a few people who seemed to act, particularly in housing and regeneration. I am on page 40 of the meeting pack. There is a whole series of names, the times that they were appointed and the times they ceased being in their position. If we start at the director of housing and regeneration, you will see a series of people who were acting, most of them for quite short periods. I take it those are all accurate. H Walker was only in for a few months; S Graham was only there for three months; John McPeake for six months; Helen Walker for a month; and G Flynn for six months. In that position, the only person who was there for quite a period of time was C McCaughley, is that right?

**Mr Cuddy:** Colm McCaughley.

**Mr Campbell:** Is that accurate on the time that he was there, by your recollection?

**Mr Cuddy:** No. Now that you have pointed that out to me, I think that Colm could not have been there to 30 November. The reason why the other people were acting was that he was not there.

**Mr Campbell:** Right.

**Mr Cuddy:** So, the reason why Helen Walker was acting was that Colm McCaughley had left the organisation.

**Mr Campbell:** Do you remember roughly when Mr McCaughley left?

**Mr Cuddy:** I assume that it must have been around the time that Helen Walker started to act. So, he must have left around the beginning of 2010 or the end of 2009.

**Mr Campbell:** OK. That is useful.

**The Chairperson:** For information, that chart was provided to us by the Housing Executive.

**Mr Campbell:** OK.

**Mr Cuddy:** Although Colm was still on the payroll as an employee, he would have resigned with effect from 30 November 2011, but he was not in post prior to resigning.

**Mr Campbell:** But Mr McCaughley was there up until about April 2010 and for quite some time before that, for about 11 years.

**Mr Cuddy:** Yes.

**Mr Campbell:** So, in that position, he was the longest-standing person, given that all the others were acting for quite a short time. Is that right? All the others seem to have been acting up for a few months.

**Mr Cuddy:** That is right. After he left, they were acting up in that position.

**Mr Campbell:** So, in the period up to the time that we are interested in, Mr McCaughley seems to have been the longest-standing, most senior person in that position. Is that accurate?

**Mr Cuddy:** Yes. He was the director of housing and regeneration up to —

**Mr Campbell:** OK. So, that is one person who was there for quite a long time in a very important post.

Now let us look at the director of corporate services. Again, a number of people seem to have acted there: John McPeake, who acted for a month; Mr Bailie, who acted for about seven months; and Colm McQuillan, who acted for about six months. Mr McCartney came much later and is currently in post, having only been appointed this year. So, for the period of time that we are talking about, you seem to be the longest-serving person in that position.

**Mr Cuddy:** That is right. By the way, I was director or corporate services and deputy chief executive together.

**Mr Campbell:** Yes, I am coming to that. Do not worry, I am coming to that.

Then let us move up to deputy chief executive. We have Mr McPeake and you. Mr McPeake was only there for a few months, but you were there for 12 years.

**Mr Cuddy:** That is right.

**Mr Campbell:** So, as deputy chief executive, again, you are very much in the frame, Mr Cuddy, given the length of time that you served for.

**Mr Cuddy:** Yes.

**Mr Campbell:** Then we move to chief executive. Mags Lightbody is currently there, having just been appointed. So, that leaves us with Mr McPeake, you and Paddy McIntyre.

**Mr Cuddy:** That is right.

**Mr Campbell:** Paddy McIntyre was there for a long time but left in 2010. So, he was there for quite a bit of the time that we are interested in, as you were, although for only a short time.

So, of all the positions that we have looked at, which you have said were held by the most senior people, given their seniority and the length of time in that senior position, we really come down to these three people: Paddy McIntyre; Colm McCaughley; and you.

**Mr Cuddy:** No. I mean —

**Mr Campbell:** Who else do we have, then?

**Mr Cuddy:** My definition of seniority was the definition that I gave you: the members of the senior management team. Included in the senior management team are the director of design and property services and the director of management and personnel. The lady there is Maureen Taggart. Maureen had been in the Housing Executive for 40 years.

**Mr Campbell:** OK. So, we will put Maureen Taggart in as well then.

**Mr Cuddy:** The other person is the director of finance. The final one then is —

**Mr Campbell:** Sorry, who are we talking about now?

**Mr Cuddy:** The director of finance at that time, until he acted up, was Clark Bailie. You can see that he came in from 2007 to 2011.

**Mr Campbell:** OK.

**Mr Cuddy:** The other senior person was the director of design and property services, John McPeake, who went to 2010 and then transferred over to act up in the corporate services post.

**Mr Campbell:** OK. So, we have Colm McCaughley, Stewart Cuddy, Paddy McIntyre, Maureen Taggart, Clark Bailie and John McPeake. Can we settle on that? They are the core people at an exceptionally senior level in the organisation who were there for much of the time in which we are interested. Do you accept that?

**Mr Cuddy:** If the time that you are interested in —

**Mr Campbell:** Up to and including 2011.

**Mr Cuddy:** As you say, Paddy left in December 2010, so he was not there for that critical period —

**Mr Campbell:** No, but he was there up to the very end of 2010.

**Mr Cuddy:** That is right, yes.

**Mr Campbell:** Do you think that we should take Paddy McIntyre off the list then?

**Mr Cuddy:** No, no. I am not nitpicking; I am just making sure. It seems to me that one of the critical periods that you are looking at is that six- to nine-month period around January 2011. The point that I am making is that Paddy had left in 2010 and there was somebody acting up, which was me. Then, John McPeake had moved across. He was still there. Although it says November 2011, Colm McCaughley actually left round about 2009-2010.

**Mr Campbell:** OK, but there are five or six people, of whom you are one, who would have been in one of the most senior positions for a prolonged period up to and including 2011.

**Mr Cuddy:** Yes.

**Mr Campbell:** OK, right. The current chairman of the Housing Executive has described in a very forthright way what he believes the position was in relation to vetting of contracts before he arrived. Are you saying that those five or six core people were unaware or aware of the position as he described it when he came into post?

**Mr Cuddy:** Sorry, how did he describe it?

**Mr Campbell:** He described it in a fairly forthright fashion as a bit of a shambles.

**Mr Cuddy:** My view is that his view was one that he gave in retrospect having found out what happened. When the chairman came into post, he would not have been aware of that.

**Mr Campbell:** No, but you and the other five would have been.

**Mr Cuddy:** No.

**Mr Campbell:** You were not?



**Mr Cuddy:** No, I was not aware. As I said to Mr Wilson, the first time that I became aware of the scale of this was when it was raised at the audit committee and the chair of the audit committee, who was the vice-chair of the board at that time, commissioned this report. I said that because the audit committee, believe it or not — I think this is quite ironic — was a very active audit committee. The Northern Ireland Audit Office was at it. DSD was present. The senior management team as we identified — the six senior directors including the chief executive — was there. Three or four board members were there. That committee had been very active for many, many years. It was only really with the whistle-blowing and the forensic report that the scale of this became known.

**Mr Campbell:** So, are you saying that those five or six people, including you, were totally unaware until that point? Is that the case?

**Mr Cuddy:** I am saying that I was unaware. I assume that the other directors —

**Mr Campbell:** Right. Well, I am glad that you said that. That is fair enough.

**Mr Cuddy:** That having been said, that is not to say that they did not think that there were any issues. Issues would have been thrown up by audit reports, but the view was that they were being managed on an ongoing, routine basis.

**Mr Campbell:** Yes, but let us stick with those five or six people who are the core, long-term, exceptionally senior people in the organisation. You say that you were not aware. We accept that you were not aware. Would you have expected any of the other four or five people, if they were aware, to have mentioned it?

**Mr Cuddy:** Yes. Sorry, let me qualify that. The director of housing and regeneration and the chief executive were very, very close, not only as senior officers but as friends. The view was that things would have been shared between those two officers that would not have been shared with other senior officers. For example, I gave an example regarding the meeting with Mr Cushnahan. I was totally unaware of that meeting happening at the time. I was also totally unaware of the fact that there was a threat to terminate the contract and that a decision was then taken. I was totally unaware of that. I would imagine that most of the directors other than the chief executive and the director of housing and regeneration would have known about that; possibly, I would think not.

**Mr Campbell:** But only you and Mr McPeake had served in multiple capacities in that senior position. You were the only two to do so, according to this sheet that we have.

**Mr Cuddy:** The only capacity I acted in was as chief executive. I had always been the director of corporate services and deputy chief executive; that is one post.

**Mr Campbell:** Yes, but it is three separate roles at three different times.

**Mr Cuddy:** No, no. The director —

**Mr Campbell:** Then this sheet is wrong.

**Mr Cuddy:** You see where the chart says, "Director of Corporate Services Post S. Cuddy".

**Mr Campbell:** Yes.

**Mr Cuddy:** From 1 March 1998 to 31 December, I was the director of corporate services/deputy chief executive.

**Mr Campbell:** Yes, and then after that you became the acting chief executive.

**Mr Cuddy:** Acting. I then reverted to my substantive post.

**Mr Campbell:** So, you held those different very senior roles at different times.

**Mr Cuddy:** Yes.

**Mr Campbell:** I take it from your evidence that you were not aware of others being aware.

**Mr Cuddy:** At that time, no. I would have been totally unaware.

**Mr Campbell:** You mentioned a couple of times that, when Red Sky was discussed, a "sectarian" issue had been raised.

**Mr Cuddy:** No, I was asked whether there was a sectarian issue with the decision to terminate the contract, and I said no. It had been raised at the meeting with the elected representatives, but, no, we said that there was no —

**Mr Campbell:** I understand that, but you did refer to the fact that it had been raised.

**Mr Cuddy:** Yes.

**Mr Campbell:** You were within this group of people at the top who had been there for such a long time. Were you aware that there was an issue about the actual composition of the Housing Executive itself, which had been put in the public domain by me and others?

**Mr Cuddy:** I was.

**Mr Campbell:** During all that time or just part of it?

**Mr Cuddy:** Just part of it.

**Mr Campbell:** Would that have been towards the end or when was that?

**Mr Cuddy:** I remember meeting you on the issue and describing to you what we were doing, but I was aware that, from time to time, the director of personnel and human resources had indicated that the composition of the Housing Executive had been raised by a number of people, including you. That composition appeared to be skewed towards one community rather than the other. In fact, it went to the board and audit committee, and the director of personnel and management services explained that, as far as she was aware, the issue was in getting the Protestant community to apply for jobs. Once they applied, the allocation and success of those jobs reflected the composition of the applications. The positive action plan was to try to get more applications from the Protestant community. When I met you, I introduced you to one of our staff whose role was to go round a number of schools etc promoting the Housing Executive as an employer so that we could get some equalisation in those applications.

**Mr Campbell:** To come to the nub of this: for a time, you were aware that there was significant under-representation of the Protestant community regarding people getting jobs with the Housing Executive. Is that right?

**Mr Cuddy:** I was aware that was an issue, yes.

**Mr Campbell:** Right, OK. Were your other colleagues — this senior set of people — aware of that as well?

**Mr Cuddy:** I would have thought so.

**Mr Campbell:** Right. So, when the alleged sectarian issue with Red Sky came along, would you have already been aware of an issue around the Housing Executive as an institution? Which came first?

**Mr Cuddy:** The first time —

**The Chairperson:** Sorry, Stewart. I think that we need to be very mindful of where this is going. If there is a specific question that needs to be asked of Mr Cuddy in relation to what is defined as the sectarian issue that you described it as and have referred to, that question needs to be put. We are now dealing with the community balance of the Housing Executive staff and so on, which is one issue, but the other issue raised was whether there was any sectarian influence in relation to how the

Housing Executive dealt with Red Sky. That is a separate issue. We need to put the question directly rather than mix two issues into one, which, I have to say, is really unhelpful. I will rule on it if it goes any further.

**Mr Campbell:** You can rule if you wish, Chairman. The issue is very clear, and they are directly linked.

**The Chairperson:** You need to ask a direct question.

**Mr Campbell:** I am.

Can you recall if the issue that some of us raised in terms of the overall composition of the Housing Executive institution, of which you and five others were at the core for a long period in the run-up to 2011, was before you started to get involved and interested in the Minister coming to you about Red Sky and the alleged inference of sectarianism about Red Sky? Which came before the other?

**Mr Cuddy:** The issue of employment was on the radar well before Red Sky because, as you know very well, the Equality Commission issues reports. Those reports came to the board and the audit committee. So, there was always a lot of discussion and, I might say, a lot of hard work to try to deal with that issue to boost applications so that we could get the balance that we wanted.

**Mr Campbell:** That is the point that I want to get to, Mr Cuddy. So, in 2011, when you were dealing with the issue of Red Sky and responding in correspondence, the five of you were aware of a perception in the wider community for a long period of time about the Housing Executive as an institution. You were aware of that before Red Sky hit the scene.

**Mr Cuddy:** Let me clarify. I was aware that there were a number of concerns amongst elected MLAs and probably amongst the community as well. But when I went around the Housing Council every month, which moved right across the Province, I was absolutely astonished at the support that the Housing Executive got from councillors of all backgrounds and denominations, and none of them has ever come up to me and accused us of being a sectarian organisation. Equally, I have met an awful lot of people in the public, including friends, relatives and acquaintances, and, again, while some will have a view that the Housing Executive only employs people from one sector, that is, by and large, a very small minority.

**Mr Campbell:** I want to summarise and conclude. With all these people in all these positions, we have managed to narrow it down to about five or six people who were in the very senior positions for a period of time before and during the Red Sky issue. They, according to your evidence, would have been aware of the issue in the community regarding the Housing Executive as a body and the difficulties that it was having in getting a more equitable workforce. Then, in 2011, the issue of Red Sky arose and an allegation was made to you, which you refute, that there may be a sectarian undertone to dealing with Red Sky. You, as the Housing Executive, refute that. Is that right?

**Mr Cuddy:** In any discussion around the contract, the pros and cons of that contract and then the decision to terminate the contract, there was no question whatsoever of any sectarianism. None whatsoever.

**Mr Campbell:** But you were aware, at that stage, that the other bigger issue was out there.

**Mr Cuddy:** I was, but I was also surprised, interestingly enough, that a link would be made at that time between the wider employment issue and that contract issue with that contractor.

**Mr Campbell:** Why were you surprised at that?

**Mr Cuddy:** Because I felt that they were totally separate issues, and I felt that there was an acceptance that we were bending over backwards and being very sensitive to the issue that we did not have the proper balance between the two communities and were striving to deal with that.

**Mr Campbell:** I am sorry to go on; I will finish with this one. Just to get it clear: you were surprised even though you accepted that, out there in the public domain, a number of public representatives had raised concerns about the recruitment practices and policies of the Housing Executive. You were well

aware of that and you said that all your senior colleagues were well aware of it. Then an issue of perceived religious bias in an individual contract came along and you, as an organisation, were surprised that that should be the case.

**Mr Cuddy:** Absolutely, because —

**Mr Campbell:** Even though you knew about the other issue for years.

**Mr Cuddy:** Maybe I was being very naive, Mr Campbell, but I saw the issue of the employment as a totally separate issue and one that, to some extent, had been outside our control as well. The issue was that we were not getting sufficient applications from the Protestant community, but, once those applications came in, the allocation and success of the jobs were in the proper and appropriate percentages. Our job was to try to get more applications. In fact, I met you and explained what we were doing. We had appointed a person to go round a number of schools to promote the Housing Executive as an employer. Perhaps naively, I assumed that most people would accept that we were genuinely trying to redress that issue, but it was not totally within our control.

**The Chairperson:** For the record, the suggestion that there may have been some sectarian undertones did not relate to the Housing Executive's decision-making process but rather to the source of complaints against Red Sky. That is where the sectarian issue was being alleged; not that the Housing Executive, which may have had a particular workforce balance, was acting in a sectarian fashion because it had that perceived workforce balance. I think that there are two separate questions. We will leave that particular issue. It has been well aired, and I think that we overextended on what we should have done on that. Nevertheless, it has been dealt with.

**Mr Allister:** I have a couple of points. Going back to the request by the Minister in the letter of 1 July to extend the existing Red Sky contract for six months, did you tell us that, in the basket of contracts that you had for that response maintenance, there was a contractual obligation that, if one contractor fell out of the scheme, the work would be redistributed to the others already contracted?

**Mr Cuddy:** My understanding was that, within the contract at that time — I do not know whether that is the case now — if a contractor, for whatever reason, was not able to meet the obligations of their contract, the work was first offered to what is known as the adjacent contractors, which were the contractors who were working in districts adjacent to the district that required the contract.

**Mr Allister:** So, when the Minister said that he wanted six months to allow an open procurement competition for the Red Sky contracts, was that even legally possible?

**Mr Cuddy:** I do not think that it was, and I will tell you why. If you look at the letter from our chairman to Will Haire, which is the letter of 1 July, I think you will see that he makes a point about us being potentially liable to other contractors if they took legal action. If it is not in that letter, it is in some letter.

**Mr Allister:** I certainly have read that.

**Mr Cuddy:** There is something in some of the correspondence that states that. It may be in the letter to the Minister, but I read somewhere that we could be liable to legal action if we did not offer —

**Mr Allister:** That is because it is your belief that there was a cross-contractual obligation to redistribute the work amongst those who had been successful in the previous procurement.

**Mr Cuddy:** That is my understanding, yes.

**Mr Allister:** Of course, it may be pretty elementary, but the effect of extending the contract for six months would mean that Red Sky, though in administration, would go on doing that work.

**Mr Cuddy:** That is right.

**Mr Allister:** And they were the ones you had the adverse findings against.

**Mr Cuddy:** Yes. My understanding was that Newco would take over from Red Sky and Newco would continue to employ the same staff and the same management team as previously.

**Mr Allister:** During those six months.

**Mr Cuddy:** Yes.

**Mr Allister:** Also, if there was fresh procurement at that time, Newco would then be in a position to bid for that.

**Mr Cuddy:** Yes. That would be my understanding, so long as it met the criteria under what they call Constructionline. There is an organisation called Constructionline, and you have to meet certain criteria regarding turnover etc.

**Mr Allister:** Last week, we had evidence from a departmental official whose understanding was that Red Sky was making it clear that it wanted to form a new company to supersede Red Sky and take over its contracts. Does that accord with what you understood?

**Mr Cuddy:** It also accords with an email between the administrators and Declan, the procurement manager, or me that talks about the only way that it could extend the contract would be by the administrators allowing Newco to do the work. However, the administrators would still nominally have had overall oversight. There is correspondence to that effect.

**Mr Allister:** Did it seem to you that that was what the Minister was seeking to facilitate?

**Mr Cuddy:** I do not know whether he would have been aware of that being the implication. The time frame of six months would have allowed that to happen.

**Mr Allister:** From the meeting of 27 June, which Mr McCausland attended with Red Sky representatives and departmental officials and from which the Housing Executive was excluded, we know that that was clearly the intent. Is that not right?

**Mr Cuddy:** Sorry, what are you reading from?

**Mr Allister:** I am reading from the minute at tab 8: the fourth paragraph on the first page.

**Mr Cuddy:** I do not think that I have seen this before.

**Mr Allister:** Right. OK. Take a moment.

**Mr Cuddy:** Yes, I see that they were talking about —

**Mr Allister:** That paragraph states:

*"Peter Cooke gave the Minister a brief history to the company and advised on how they were trying to establish a new company to acquire the entire Red Sky business including Bel Air from the Administrator. This latter company had already been sold and the focus was now on the maintenance side a large part of which included the housing contracts which are due to expire on 14 July. This created concerns for the future existence of the company as without the NIHE contract the business was not viable."*

**Mr Cuddy:** Yes.

**Mr Allister:** From that 27 June meeting, it was quite clear that Red Sky was trying to form a new company to take over where Red Sky had left off.

**Mr Cuddy:** That is right.

**Mr Allister:** Four days later, the Minister writes to you, asking for the extension of the contracts, the consequence of which would have been that Red Sky, or a renewed Red Sky, would carry on for those six months, and, in that time, be able to compete for new contracts.

**Mr Cuddy:** Yes.

**Mr Allister:** Thank you.

**Mr Cuddy:** I think that we set out in our letter of 1 July the concerns about the potential for a major conflict of interest, again going back to the issue of the Minister getting involved in this procurement.

**Mr Copeland:** I will be brief, because I know that you have been through a fairly arduous morning.

Would past performance have been taken into account in the issuing of any new contracts of this nature?

**Mr Cuddy:** That is an interesting point, because one of the issues that was flagged up, which, intuitively for me, did not make sense, was that we were told that you cannot use past performance as a basis for letting a new contract. My initial reaction on hearing that was, "That is absolute nonsense; it is not right, it should happen. Past performance should be a requirement for letting new contracts". However, I was told that, under EU procurement legislation, you cannot do that.

**Mr Copeland:** Would that have pertained to the issuing of any new contracts arising from this pot of stew — in other words, the next contracts that were to be issued?

**Mr Cuddy:** Yes, unless, presumably, a contractor had been found guilty of fraud or another criminal charge. However, we were told that we could not use past performance.

**Mr Copeland:** What would the case be if a company was under investigation for suspected criminal activity or fraud?

**Mr Cuddy:** Initially, the view was that you could not do anything, but I am aware that we challenged that. Subsequently, there was a contractor who was under investigation, and we decided that, irrespective of EU procurement, we would not let a contract to that organisation on the basis that it could challenge us in court. The company did not challenge. I think that it was a small disability-type contract. You might be aware of that one.

**Mr Copeland:** No. Just do not be surprised.

**Mr Cuddy:** On that occasion, we decided that we would test the principle, and the contractor did not challenge us.

**Mr Copeland:** In a case in which any contractor had ceased to trade, become insolvent or left the contract, and if any new company arose like a phoenix from the ashes, would that arise free of the incumbencies of the past?

**Mr Cuddy:** Yes. My understanding is that many of those companies have what is known as limited liability. They are limited companies, and therefore they would not —

**Mr Copeland:** They would not inherit the difficulties that may have resided in their previous form of existence.

**Mr Cuddy:** They would have no liabilities going back to the past.

**Mr Copeland:** In such a hypothetical scenario, would any other companies that may be under investigation for similar misdemeanours find themselves disadvantaged in any way in a procurement process?

**Mr Cuddy:** If a procurement was happening now or at that time.

**Mr Copeland:** At that time.

**Mr Cuddy:** My understanding is that, unless we had very good proof of malpractice, we would have great difficulties excluding them from re-tendering. I say that because, from memory, when we terminated this contract, the contractor was given three months' notice, which met the contractual responsibility. In other words, we did not say that we were immediately terminating the contract for whatever reason. We said that we were unhappy with the performance of the contract, and, in line with the contractual responsibility, we were giving them three months' notice. We went through a proper legal process, which meant that the contractor could not challenge the basis on which we were terminating the contract.

**Mr Copeland:** The obligations had been discharged.

At what stage, if you can remember, did you first become aware of Newco or whatever it was called?

**Mr Cuddy:** I think that I became aware of Newco when I saw the letter — I have it somewhere — from the administrators. We were trying to seek clarification on whether the administrators could continue to service the contract for six months. They wrote a letter — I will see if I can find it — that referred to Newco.

**Mr Copeland:** There is an email dated 23 June.

**Mr Cuddy:** It is an email.

**Mr Copeland:** Is it dated 23 June? Is it on page 1?

**Mr Cuddy:** Which tab is that?

**The Chairperson:** I am told that it is at tab 7.

**Mr Cuddy:** To be fair, Mr Copeland, that was the first time that I had formally seen the name Newco. There had been a rumour that, following the meeting with the Minister, a new company was to be formed. What struck me was that it was called Newco. Maybe "newco" was the abbreviation for "new company" and was not going to be the official name of the company, but that is why the whole question of Newco stuck in my mind.

**The Chairperson:** On the first page of tab 7 in the members' pack, there is a reference to Newco.

**Mr Cuddy:** The very first page?

**The Chairperson:** It is on the first page, at the third paragraph, which begins: "If successful, the management team". The email starts: "Good morning Stewart". Is that the email that you are referring to, at the third paragraph?

**Mr Cuddy:** Yes, although I thought that there was another memo from the administrator, whose name was Michael. I am trying to remember Michael's last name.

**The Chairperson:** Is it Michael Jennings?

**Mr Cuddy:** It was a memo from Michael Jennings either to me or to the procurement manager in the Housing Executive, Declan. What is Declan's last name?

**The Chairperson:** It is Declan Allen.

**Mr Cuddy:** Yes. We were writing to the administrators, asking them whether they could manage the contract after 14 July for six months. They wrote back and did not say no but said that they could service the contract only if Newco was able to manage it on their behalf. That was the first time that I can recall seeing the name Newco.

**The Chairperson:** I think that that is at tab 13. There is a series of pages from Declan Allen.

**Mr Cuddy:** Was the email to Declan Allen?

**The Chairperson:** There were emails to Declan Allen. If you are not sure and cannot find it, we need to —

**Mr Cuddy:** Yes, I see it now. It is at page 8 of tab 13. There is an email from Michael Jennings to Declan Allen. The penultimate paragraph states:

*"I can confirm that we did discuss the question as to whether trading for a further 8 weeks post 14 July or if necessary even longer for a 6 month period could be facilitated and this could be facilitated with the assistance of Newco acting as a management agent on behalf of the Administrators albeit the weekly payments from NIHE would still be made to the Administrators account & the Newco would be utilising the Administrators employees to fulfil the contract requirements."*

**The Chairperson:** Michael, are you happy enough? You asked the question.

**Mr Copeland:** Yes. I have now had the benefit of reading that letter, albeit at very short notice — it is on the first page of tab 8 — and I was going to ask Stewart —

**The Chairperson:** The minute.

**Mr Copeland:** The minute, rather —

**Mr Cuddy:** At tab 8?

**Mr Copeland:** — yes, on the very first page, regarding the meeting on 27 June 2011 —

**Mr Cuddy:** This is a meeting with —

**Mr Copeland:** I am asking you for an opinion, but in reading that, could you give a view as to what you think that meeting was actually about?

**The Chairperson:** In fairness, I do not think that Stewart should be expected to give an answer to that.

**Mr Copeland:** I understand.

**The Chairperson:** Stewart, you are not required to answer that.

**Mr Cuddy:** I am quite —

**The Chairperson:** No, you cannot speculate on behalf of other people about a meeting that you were not at. Michael, are you happy enough with that?

I want to ask a final question. It was raised earlier and rightly so. It was pointed out, Stewart, that you were a senior official who was part of the management team for a long time as the director of corporate services. I know that you mentioned this earlier, but it is important to clarify. At last week's evidence session, we also dealt quite extensively with something that most of us would say was the case, which is that, over a number of years, Colm McCaughley was directly engaged with matters around contract management and compliance with Red Sky. It has been pointed out that, as the director of corporate services, you were a senior official. You suggested that Colm McCaughley was the director with responsibility for line managing that. I want that to be explained. You were the director of corporate services, and most of us would think that you would deal with financial matters, but, in your evidence, you clearly said that Colm McCaughley was dealing with that line. The detailed evidence presented to us showed that, year on year, Colm McCaughley and, I think, Paddy McIntyre, at least on some occasions, were engaged in dealing with issues of concern around costs associated with Red Sky contracts. All of those engagements, year on year, resulted in a considerable settlement at a much reduced sum. It may well be entirely legitimate. Were you aware of that process? Were you involved in that process or had you any concerns?



**Mr Cuddy:** It is very, very interesting. When I was appointed director of corporate services/deputy chief executive, corporate services was meant to be quite a large department. It was meant to include a range of support services including finance, personnel, legal services and so on. For whatever reason, after I was appointed, a number of those functions did not come into my division. Therefore, I was left with a range of other functions, but I did not have personnel, finance or legal services, which normally would be part of the corporate services portfolio. I think that the reason why my post, before I applied, had the tag of deputy chief executive was to reflect that it was a very senior post with that range of functions. I can only speculate on why those functions never crossed over. I know for a fact that an external appointment at that time was not considered to be the way forward. When I was appointed, maybe there was a review of functions and services.

The answer to your question is no. The finance function and the personnel function remained separate as director posts, as reflected in the management structure that I discussed with Gregory Campbell.

**The Chairperson:** OK. Stewart, are there points that you want to make to add to anything that you have covered or been asked to cover today?

**Mr Cuddy:** There is just one thing that I would like to say. Shortly before I retired, a letter was sent from the Minister to the new chairman of the Housing Executive. It was quite a long letter in which he gave a history of the Red Sky issue, and, to me, it was a revisionist approach to what actually happened. I think that I was the only officer named in that letter. He referred to the chairman — I do not know whether he mentioned the chairman — but he mentioned me. The implication was that, by naming me, I was at least partially, if not significantly, responsible for what happened with Red Sky. I was so concerned about that that I raised it with the board. On the basis of that, there was correspondence between the new chief executive, John McPeake, and the permanent secretary.

At the time that I was leaving, it was still not resolved, so, before I left, I asked the chief executive, when he was pursuing this issue, to make a statement because I needed that statement for future reference. I retained a copy of that letter, and I am quite happy to give you a copy of it. The letter from the Minister stated:

*"Further, the then chairman, Brian Rowntree, and the then acting chief executive, Stewart Cuddy, pointed out that they had been aware of the failures of Red Sky for some years."*

The Minister used that to imply that we had been aware of this and done nothing about it. So, because of that, and because I was about to retire, I spoke to the chief executive and asked him to include the following in his letter of response, which he did. He wrote:

*"It is a matter of record that, in Stewart's time with the Housing Executive, it has never had any evidence, cause or reason to believe that he acted other than in an open, honest and professional manner in the best interests of the organisation."*

I felt that I had to have that included in light of the letter from the Minister, which, I believe, was targeted at me and misrepresents my role. I do not know what happened following that and whether there was further correspondence. I do recall that one of the letters that came back from the permanent secretary at that time seemed to suggest that what the Minister had said was fair game.

**The Chairperson:** OK. You have put that on the record at this meeting. We have not had any sight of that letter, but we will now take note of it. Members will consider it, and the Committee will deal with it in whatever way it thinks necessary. Is there anything else that you want to put on the record?

**Mr Cuddy:** I just want to clarify that the only reason that I raise that is that I do not know what evidence will be given to the Committee and whether I would ever have a chance of commenting on that or making a rebuttal. I think that it is important to have that on the record as an independent source from John McPeake, who was the chief executive at that time.

**The Chairperson:** Obviously, this will not be the end of the matter. We have to assess the evidence that we have heard so far and will continue to hear in the next wee while. This will be a two-way process. You can expect that we may well want to come back to you. You should feel free to come back to us at any time if you think that there is anything that needs to be added to or if you want to clarify or seek further information on something. It is an open door and a two-way process until the inquiry is concluded.

Stewart Cuddy, thank you for your attendance this morning. It has been a long enough session and a fair, open, honest and frank exchange. Thank you for that. It is likely that we will follow up on today with you, and the invitation for you to do likewise remains open.

**Mr Cuddy:** Thank you, Chair and members.

**The Chairperson:** Members, I suggest that we adjourn for 10 minutes for a comfort break.

**Mr Allister:** Before you do that, do we have the correspondence from the Minister etc that Mr Cuddy has just referred to?

**The Chairperson:** I do not think so.

**Mr Allister:** We should be looking for that.

**The Chairperson:** We will certainly follow it up.

**Mr Cuddy:** The date is shortly after the new chairman of the Housing Executive was appointed, probably near the end of 2012 or the beginning of 2013.

**The Chairperson:** We will follow that up.