



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:  
Dr John McPeake

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

Mr Mickey Brady (Deputy Chairperson)  
Mr Jim Allister  
Ms Paula Bradley  
Mr Stewart Dickson  
Mrs Dolores Kelly  
Mr Fra McCann

**Witnesses:**

Dr John McPeake

**The Deputy Chairperson (Mr Brady):** You are welcome, Dr McPeake. I know that you have given us a written submission. Is there anything that you want to add before I bring members in for questions?

**Dr John McPeake:** Yes, thank you, very briefly. I am happy to help the Committee in any way I can. You will note from my written submission that I do not have access to the diaries and other written documents and therefore do not have the detail, and I have relied on my memory in producing the written submission. Of course, memories are not always complete or reliable, and, yesterday, when I was reviewing it, I realised that, under item 6, I included reference to the telephone call to Jenny Palmer. That is really a reference to the meeting of 5 July. I am satisfied that the other points around item 6 are, to the best of my knowledge, an accurate recollection of events. Apologies for that memory oversight. I will do my best to answer whatever questions that you have.

**The Deputy Chairperson (Mr Brady):** That is fine; thanks very much. I will start by asking you a couple of questions. In your submission you say that you accompanied the chair and the chief executive to a meeting on 28 April 2011 to discuss the termination of the Red Sky contract. You stated that the political delegation was not happy with the idea of terminating the contract. Did you get the impression that they were aware of all the background to the Red Sky issues?

**Dr McPeake:** It would be fair to say that they certainly had knowledge of the shortcomings of Red Sky, and I did not get the impression that the political representatives were unhappy with us terminating the contract because their workmanship was poor. They were more concerned about the fact that the decision happened in the heels of an election and were worried because the timing of it seemed to be of some concern to them. Equally, they expressed worries about the effect of the termination on employment. We spent quite a bit of time at the meeting explaining the Transfer of Undertakings

(Protection of Employment) Regulations 2006 (TUPE) implications and what steps we had taken to mitigate that.

**The Deputy Chairperson (Mr Brady):** I have one other question before I bring members in. You mentioned that the Housing Executive had concerns that the former Minister's request to extend the Red Sky contract beyond the original termination date may not have been feasible, practical or legal. Can you elaborate on those concerns?

**Dr McPeake:** Yes. The committee had asked me to offer a comment on that issue. I was not present at the meeting that Brian Rowntree and Stewart Cuddy had with the Minister and, therefore, I have no direct knowledge of what was discussed at that meeting. My observations reflect what I was advised when colleagues from the Housing Executive returned from the meeting, and the view that was expressed to me was that the Minister had a desire to see the contract run on so that that would give him time to arrange for a forensic — I think that that was the word used — investigation of the other contractors that we were proposing to hand the work across to. We had many concerns, the first of which was that the contract had already been terminated and so this was happening within perhaps a week of the actual end date of the three-month notice.

We had concerns about whether it was legal to allow a contract to continue when it had been formally terminated. We were also concerned that adjacent contractors with whom we had extensive discussions and with whom we had entered agreements to take on the work and the workforce would legally challenge any decision. However, in recognition of the Minister's request, I recall that Declan Allen, who was the assistant director responsible for procurement, contacted BDO. You have to remember that, at that point, Red Sky was in administration and trading in administration under the auspices of BDO. Declan Allen approached BDO to see whether, from its perspective, if push came to shove and it was asked to continue managing the contract for an extended period, it would be possible. The response from BDO was less than clear. Ultimately, however, Declan's advice and interpretation, and what was accepted by the Housing Executive, was that it was not a practical proposition, setting aside the issues that we also had with the legal aspects of it.

**The Deputy Chairperson (Mr Brady):** Since the contract had already been terminated, is there an issue that, if it had been extended, it would, in effect, be a new contract?

**Dr McPeake:** We could not even reconcile the terms. I am not sure how you extend a contract that has already been terminated. That is the legal quandary that we had. We did not think that there was a way in which you could extend the contract. I do not recall the detail, but there was certainly some legal advice taken at the time, and my recollection of it was that we had no legal route to extend that. Nevertheless, given the Minister's request, we still asked the administrator whether it would be possible for it to do it if the eventuality arose.

**The Deputy Chairperson (Mr Brady):** You also stated that you are involved in negotiations with Red Sky administrators.

**Dr McPeake:** That is correct.

**The Deputy Chairperson (Mr Brady):** According to evidence that we received from Mr Cuddy in his submission, there are some difficulties in ensuring the TUPE transfer of Red Sky employees. What difficulties were experienced in the TUPE transfer?

**Dr McPeake:** The real issue was the time needed in order to give the adjacent contractors an opportunity to properly price for the work that they were going to take on and to understand what liabilities and commitments they were going to inherit, because TUPE protects the rights of those employees, including their terms and conditions of employment. So, it would be fair and reasonable for an incoming contractor to be given as much notice as possible about what liabilities they were taking on before they signed on the dotted line. We found getting that information out of BDO quite difficult. I do not know why that was, and, to be truthful, I do not know a tremendous amount about the administration process; however, I am sure that BDO had a lot of other issues on its plate around Red Sky at the time. I would not suggest for a moment that it was being deliberately difficult about it, but we were certainly frustrated that it seemed to take an inordinate amount of time to generate that information.

**Mr F McCann:** John, thank you very much. You are very welcome. You have listened to the evidence. Some members, rather than looking at the totality of what happened with Red Sky and the difficulties that arose in relation to contracts and poor workmanship, have tried to focus on a sectarian attack on a company from east Belfast. Given your experience over a lengthy period, will you comment on that?

**Dr McPeake:** The Housing Executive is not a perfect organisation — I am not the first to say that, and I will certainly not be the last — but one thing about the Housing Executive that I think most people accept is that it is an organisation that is conscious of its roots in the civil disturbances of the '60s and the widespread claims of discrimination that existed in public housing at that time. It has guarded that record very carefully. It is proud of its achievements. The notions of fairness, equity and impartiality are in the DNA of the Housing Executive. That does not protect it from making mistakes, of course, or from every incident that might happen. It is an organisation of over 3,000 employees, but as a corporate body the Housing Executive strives to be fair and impartial in everything that it does. I do not accept that the decision was sectarian in the sense that somebody made a conscious decision to remove the contract for that reason. In fact, I would find that quite offensive, but the Housing Executive's record speaks for itself in that regard.

**Mr F McCann:** Just one other thing; I asked Jenny Palmer the same question. An impression has been given, from the announcement of the £18 million in the Assembly last year, that the Housing Executive was in chaos, there was poor leadership, it did not know where it was going and that it had a poor track record. Do you recognise that organisation?

**Dr McPeake:** The Housing Executive is not perfect; it has certainly made mistakes in the management of contracts. I think that the issue that you are referring to specifically had to do with planned maintenance. Through its own internal work and through the investigation conducted on behalf of the board, the Housing Executive accepts and recognises that it did not put in place the proper structures for the management of some of the Egan contracts. However, that said, if you look at the quality of the maintenance service produced by the Housing Executive and compare it with what existed 20 or even 10 years ago, you can see that it is a sea change for the better. I am not using that in any way as an excuse, because I know that there have been serious shortcomings. However, I do not believe that we can categorise the work of the Housing Executive from those examples, embarrassing though they are. We started the process of reform before I retired, but I am confident that the colleagues who are there now will continue that process and address those issues.

**Mr F McCann:** I have one final question. Again, I go back to a comment that I made earlier. All of this has been put at the door, as you say, rightly so, and there were difficulties and problems. Again, I will just quote the Public Accounts Committee. It said that it was:

*"astounded by the Department's admission that the contracts being used by the Housing Executive were inappropriate ... and that opportunities ... were missed as far back as 2007".*

I have always been trying to work out what the relationship was between the Housing Executive and the Department in terms of overseeing. Do you believe that responsibility, besides it lying with the Housing Executive, also lay with the Department?

**Dr McPeake:** All I can really comment on that is that, when I was the accounting officer of the Housing Executive for that period, I found the relationship with the Department to be robust. When I was a director in the Housing Executive, I would not have had direct contact with the Department as an accounting officer, so I cannot say for sure how it has changed, but my impression is that it was a much more robust relationship in the past several years than it may have been in the past. I know that Will Haire, at the Public Accounts Committee that you refer to, made an observation along those lines.

**Mr Allister:** Just remind us when you became chief executive.

**Dr McPeake:** September 2011.

**Mr Allister:** And you retired in —

**Dr McPeake:** March 2014.

**Mr Allister:** Was that always your anticipated retirement date?

**Dr McPeake:** No. I had always intended to retire early. I planned for that when I joined the Housing Executive; I made pension provision on the basis that I intended to retire early. I never had a particular date in mind, but what motivated me to take the decision to retire when I did was principally because of the reform programme. I do not like to give something up that I have started. I could see a road ahead of me: it was going to take a very long time to complete the reform programme. I felt that if I got bogged down in that, I would be stuck in that process and not feel able to leave it for perhaps 10 years or more. I decided that that would be an opportune time, before actually having to get into that restructuring around the reform programme.

**Mr Allister:** Was your retirement precipitated in any way by a poor relationship with the Department and its Minister?

**Dr McPeake:** No, not at all. I think that I had a good professional relationship with the Minister and the Department. In my time as a public servant, I have worked on the basis that you cannot be friends with politicians or public servants. You can have a respectful relationship, which is what I have tried to do. I do not believe that the acrimonious relationship that existed prior to my becoming chief executive existed after I became chief executive. There were certainly problems between the Department, the Minister and certain Housing Executive officials.

**Mr Allister:** There seemed to be problems with the previous chairman and the Minister.

**Dr McPeake:** I think that there was a fair bit of tension there, but I honestly believe that my personal and professional relationship with the Minister and the Department was much more positive and productive. As far as possible, we try to compartmentalise issues. You will notice from my statement that I had relatively peripheral involvement in the Red Sky issue. When Stewart Cuddy was acting chief executive and Brian Rowntree was the chairman and it was known that I was going to be the chief executive, having been interviewed and awarded the post in April but not taken it up until September, they worked to make sure that I was not contaminated by the issues that they were dealing with.

**Mr Allister:** Is that why you were at the meeting of 28 April with Mr Robinson, Mr Newton and Mr Douglas?

**Dr McPeake:** I was at that meeting principally because, at that point, I was the acting director/deputy chief executive of housing. It was sort of a dual function. That was the reason that I was there, and —

**Mr Allister:** You —

**Dr McPeake:** Sorry, just let me finish. It was principally because I was the person who was leading the discussions with the adjacent contractors about how to handle the transition. I think that Brian Rowntree and Stewart Cuddy felt that it would be useful for me to be there so that I could explain to the politicians what was happening around the TUPE issues, how staffing issues were being dealt with and things like that.

**Mr Allister:** You gave some explanation of the focus of discussion at that meeting, but your note to us includes something more. It says:

*"It would be fair to say that the political delegation was not happy with the NIHE's decision to terminate the contracts ... Mr Robinson in particular regarded it as a sectarian decision".*

**Dr McPeake:** That is the point that he made.

**Mr Allister:** What do you say to that?

**Dr McPeake:** As I said in my briefing note, the chairman at the time refuted it wholeheartedly. That was my view at the time, and it remains my view. I do not believe that the Housing Executive is a sectarian organisation, and I do not believe that that decision was in any way motivated by sectarian concerns.

**Mr Allister:** That was obviously a lobbying meeting, in the sense that the politicians were lobbying against the termination of the contract, and subsequent events were lobbying towards the extension of the contract. Is that fair?

**Dr McPeake:** I am not certain that it was ever explained to me. The meeting was requested, I believe, by Robin Newton or Sammy Douglas. I cannot recall.

**Mr Allister:** It was one or the other.

**Dr McPeake:** It was one or other of those two gentlemen. I do not recall hearing precisely what the purpose was, but the tone and the conversation were quite —

**Mr Allister:** Well, the catalyst was the termination of the contract.

**Dr McPeake:** There is no doubt about that, yes, and the fact that we were on the heels of an election, as you well remember. A number of the elected Members present were concerned that this was a contentious issue that was being handled by the Housing Executive during the period of purdah, which prevented those politicians from publicly commenting on it.

**Mr Allister:** And we know that it subsequently played out into quite an intensive lobbying campaign, as we were hearing some of it this morning. There was quite a vigorous attempt to extend these contracts.

**Dr McPeake:** Well, I am not sure about the terminology of "extension" because I have always struggled with that notion that the contract, having been terminated in April —

**Mr Allister:** Yes, I understand that.

**Dr McPeake:** — you cannot extend a terminated contract. However, it would be fair to say that the perspective was to see whether there was a way that this work could continue in the hands of Red Sky in administration until such times as there was either clarification about the bona fides of whoever was going to take the work on or a new procurement exercise was completed.

**Mr Allister:** It was not the first time that Red Sky was in trouble with the Housing Executive, so to speak.

**Dr McPeake:** That is correct.

**Mr Allister:** You had some experience of that in 2007, did you?

**Dr McPeake:** Not personally. The only reason I know something about that is because I had the not very pleasant duty of attending the Public Accounts Committee as the chief executive of the Housing Executive in which Red Sky was listed as a case study; therefore, I had to prepare for that by reading some of the material. I had no direct knowledge of what happened, but I read extensively around the records that the Housing Executive —

**Mr Allister:** In reading through those records, was there any history of political lobbying at that time?

**Dr McPeake:** I am not conscious of having picked that up. It would be fair to say that Red Sky itself as an organisation was formed in about 2006, but it had existed in an earlier form prior to that. However, the first Egan contracts were tendered in 2006 and it was appointed in 2007, and I think that, within a relatively short period, quite a lot of concerns were raised by local politicians, members of staff who were managing the contracts, and by tenants. I would not categorise that as "political lobbying"; I would categorise it as dissatisfaction with the quality of service.

**Mr Allister:** On the other side of the coin, was there any representation in support of retaining Red Sky?

**Dr McPeake:** I am not conscious of any, no.

**Mr Allister:** Either at that point or at any earlier point.

**Dr McPeake:** I am not conscious of that. I honestly cannot answer that question because I was not directly involved. However, I did not see, and I do not remember reading, anything that suggested that others lobbied to retain it.

**Mr Allister:** You were required to give evidence to the PAC, and one of the issues that were dealt with there was the role of Mr Cushnahan. Is that right?

**Dr McPeake:** That is correct.

**Mr Allister:** And the PAC was ultimately quite critical of that.

**Dr McPeake:** It was.

**Mr Allister:** Did you have a view on that?

**Dr McPeake:** My testimony is on the record from the Public Accounts Committee. I believe that I said that I did not doubt the motivation of the individuals who were involved in trying to reach a resolution, but that, if it were my decision to make, I would not have had him involved because the potential for a perceived conflict of interest — whether one exists or not — is serious. My own personal view is, had it been my decision, I would not have had that. However, my feeling is that the motivation of the individuals concerned was to resolve the matter; it was not anything untoward. I do not believe that the Housing Executive was in any way influenced by the fact that he had a former relationship. The very fact that we are discussing this now reinforces my view that perception of a conflict is just as, if not more, significant than an actual conflict.

**Mr Allister:** Were you involved in the repair inspection unit (RIU) reports in the run-up to the eventual termination of the Red Sky contract?

**Dr McPeake:** Very briefly. I had been the director of Land and Property Services and had responsibility for the newbuild side of the Executive's private sector grants, the direct labour organisation (DLO) and the planned investment programmes. However, in the month of December, because we had had a few problems with senior staff, including health issues, I acted temporarily as a director of corporate services/deputy chief executive. I had sight of the reports that had just been issued on the Newtownabbey 1 contract, as the director, because RIU would have been reporting as part of internal audit. Therefore it was only briefly at that stage. However, I will have seen information on the RIU reports by virtue of the fact that I was attending the audit committee. It usually had summaries of those reports.

**Mr Allister:** I do not know how far, if at all, you have been following the evidence to the Committee from Housing Executive staff and former staff. You may be aware of the confusion that was sown with us about whether in west Belfast the issue was of charging for higher spec kitchens than were provided or whether it was some other issue. Can you shed any light on that?

**Dr McPeake:** Again, I have no access to the documents, in fairness. My memory of this is that the briefing that I had received when I was chief executive is that Red Sky's argument was that an element of the work that had been done was to a higher specification than the specification than the contract required and that that had been ordered and authorised by the Housing Executive. As I said, I have no first-hand knowledge of the details.

**Mr Allister:** Did you read or hear the evidence?

**Dr McPeake:** Yes, I saw that there was some confusion between a former chief executive and, I think, Mr Kitson around that.

**Mr Allister:** You cannot really resolve that dilemma for us.

**Dr McPeake:** I would have thought that the reports should be readily available. That will have been at the time when RIU was part of the housing regeneration division. I believe that that was in 2007.

**Mr Allister:** Before you became chief executive, you were part of the senior management team.

**Dr McPeake:** Correct.

**Mr Allister:** Was there a sharing of information to the degree that you might have engaged in when you became chief executive?

**Dr McPeake:** I think that it is fair to say no. I do not want that to sound overly critical, but I think that there was an awakening in the Housing Executive to a number of these issues. I think that the organisation had established itself in very strong silos with significant delegated responsibilities. That has certainly changed, not just under my term but when Stewart Cuddy was there in the acting role.

**Mr Allister:** What about before that in Mr McIntyre's time? I have forgotten the name of the person before that.

**Dr McPeake:** Mr Colm McCaughley. I have a lot of respect for both those individuals, and I do not want my comments to be seen as in any way critical of them, as they both achieved great things with the Housing Executive. However, they had a particular style of working and a particular culture. When I became chief executive and when Stewart was there in the acting capacity prior to me, we tried to do that in a different way to create a more collegiate style, where people had full —

**Mr Allister:** What about taking matters to the board? There seemed to be a reluctance to do that on occasions.

**Dr McPeake:** I am not so sure that it was reluctance. The board got a tremendous amount of information, but I think that the issue has been that it was not as focused as it could have been. So, again, in the more recent periods prior to my retirement as well, we reviewed what information we report to the board, how it is reported and what the relationship is between the board and the various committees. I think that we fundamentally addressed those issues, arising mostly, I have to say, from the experience initially with the Audit Office report and then the Public Accounts Committee report after the hearing. That included a lot of focus on making sure that the board had sight of the right information. As a final observation, since the new chairman has taken up post, he has also led a further review of the reporting to the board and how papers, agendas and so on should be prepared.

**Mrs D Kelly:** Apologies, I have to leave shortly for another meeting. Mr McPeake, from reading the minutes of the meeting with you and Mr Robinson and company, it seems to me that they were more concerned about Red Sky retaining the contract than actually addressing how expenditure from public funds was being spent on faulty workmanship and even on jobs that did not exist. Were you not surprised about that?

**Dr McPeake:** To be honest, I am not conscious of really thinking about it those terms. My desire when I was at the meeting was to explain to the political representatives how we were dealing with that transition. I did my best to assure them about how we would handle the TUPE issues. My concern was twofold: first, we had to deliver a service that was acceptable to tenants; and, secondly, where we could manage it, we needed to try to do something about the former employees, to the best of our ability. Truthfully, I did not read anything into that. I did not accept that it was a sectarian decision, in that sense; and, to be frank, I did not get a feeling that the DUP representatives who were there did not recognise that there were issues with Red Sky. I am not suggesting, in any way, that they thought the firm was perfect; that is not the impression that they gave. I think that they recognised that there were shortcomings.

**Mrs D Kelly:** And in relation to TUPE — the transfer of employees — there has been a lot of talk about 400 employees losing their jobs, etc. How many actually lost their jobs?

**Dr McPeake:** I cannot really say; you would need to speak to the administrator. However, Red Sky group was quite large and only about half of it, from memory, was associated with the Housing Executive. Although a large number of the operatives involved in Red Sky transferred to other contractors, a number of headquarters staff did not. Red Sky also had a number of teams spread across other contracts. Those of you who have dealt with TUPE issues will know that there is a rule of thumb that if an operative or a person is involved for at least half their time on a particular contract they come within the protection of the provisions, but if they spend less than half their time on it, they do not. That often happened, because Red Sky had seven contracts. So I think that there were some



people who did not transfer for that reason. Certainly, there were some people in the head office operations who did not transfer as well, but I cannot give you the precise number.

**Mrs D Kelly:** That is OK. Were the political representatives then reassured, because the number of people likely to lose their jobs was much smaller?

**Dr McPeake:** That was certainly the impression that I had: that they had not fully appreciated how it would work. I left the meeting or the meeting ended with my having the view that we had done a decent job of explaining what was happening and what the next steps were.

**Mrs D Kelly:** I am happy enough with that, Chair.

**The Deputy Chairperson (Mr Brady):** OK. No other members have indicated that they wish to speak. Thank you very much for your evidence. As with all witnesses, if you have anything to add at this point or in the future and you want to get back to the Committee, feel free to contact us.

**Dr McPeake:** Thank you very much.