

Public Accounts Committee

**Report on the
Northern Ireland Housing Executive:
Management of Response
Maintenance Contracts**

**Together with the Minutes of Proceedings of the Committee Relating to
the Report and the Minutes Of Evidence**

**Ordered by the Public Accounts Committee to be printed 20 February 2013
Report: NIA 99/11-15 (Public Accounts Committee)**

**REPORT EMBARGOED
UNTIL 00:01AM ON
20 MARCH 2013**

Powers and Membership

Powers

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

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

Membership

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

Ms Michaela Boyle³ (Chairperson)

Mr John Dallat (Deputy Chairperson)

Mr Trevor Clarke⁷

Mr Michael Copeland

Mr Sammy Douglas⁸

Mr Paul Girvan

Mr Ross Hussey

Mr Mitchel McLaughlin

Mr Dathí McKay⁶

Mr Adrian McQuillan¹

Mr Seán Rogers⁵

- 1 With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew
- 2 With effect from 23 January 2012 Mr Conor Murphy replaced Ms Jennifer McCann
- 3 With effect from 2 July 2012 Ms Michaela Boyle replaced Mr Paul Maskey
- 4 With effect from 1 July 2012 Mr Conor Murphy resigned from the Public Accounts Committee
- 5 With effect from 10 September 2012 Mr Seán Rogers replaced Mr Joe Byrne
- 6 With effect from 11 September 2012 Mr Dathí McKay was appointed to the Public Accounts Committee
- 7 With effect from 1 October 2012 Mr Trevor Clarke replaced Mr Alex Easton
- 8 With effect from 1 February 2013 Mr Sammy Douglas replaced Mr Sydney Anderson

Table of Contents

List of abbreviations used in the Report	iv
Report	
Executive Summary	1
Summary of Recommendations	3
Introduction	4
Managing Response Maintenance Contracts	5
Whistleblowing, Investigations of Breaches of Discipline and Reporting of Suspected Frauds	12
Corporate Governance and Accountability	14
Appendix 1:	
Minutes of Proceedings	21
Appendix 2:	
Minutes of Evidence	35
Appendix 3:	
Correspondence	93
Appendix 4:	
List of Witnesses	235

List of Abbreviations Used in the Report

the Committee	Public Accounts Committee
C&AG	Comptroller and Auditor General
DFP	Department of Finance and Personnel
the Department/DSD	Department for Social Development
the Housing Executive/NIHE	Northern Ireland Housing Executive
KPIs	Key Performance Indicators
PSNI	Police Service of Northern Ireland
RIU	Repairs Inspection Unit

Executive Summary

1. The Northern Ireland Housing Executive (the Housing Executive) has played a pivotal role in the provision of social housing over the past 40 years, often in difficult and challenging circumstances. It continues to spend substantial sums each year improving and maintaining its stock of 90,000 houses. Annual expenditure on response maintenance, which covers day-to-day repairs, minor adaptations and immediate repairs, is in the region of £50 million.
2. The Committee acknowledges that most Housing Executive staff involved in response maintenance are diligent and hard working. However, the Committee found that the management and oversight of this service has been abjectly poor. As a result these dedicated staff have been let down by the actions of a small number of their colleagues and management, particularly at a senior level. Despite serious problems with the management of response maintenance contracts being evident to the Housing Executive's senior management for many years, nothing was done to address them.
3. Oversight by both the Board of the Housing Executive and the Department for Social Development (the Department) was also inadequate. As a result significant failings within the organisation were not identified and therefore left unchallenged.
4. Since 2010, the Department has initiated a number of reviews within the Housing Executive. The Committee welcomes the Department's recent actions to improve its oversight in light of the findings emerging from these reviews. However, the Department's hands-off approach, which was evident in its failure to exercise proper oversight and challenge, contributed to the historical problems within the Housing Executive.
5. In July 2011, the Housing Executive terminated its response maintenance contracts with the Red Sky company. This followed allegations of overcharging and subsequent investigations into the company's performance. The Red Sky case is a stark illustration of how the failure to address weaknesses in the management of contracts can lead to a loss of taxpayers' money and a poor service for tenants. The Housing Executive had been aware of problems with this contractor for many years but failed to address them.
6. In the Committee's view, a culmination of basic failures in governance and management exposed the Housing Executive to a very significant risk of fraud, impropriety and poor value for money over many years in relation to its response maintenance expenditure.
7. The Committee is also very concerned that the weaknesses and failings in the management of response maintenance contracts extend into other areas of Housing Executive activity, such as planned maintenance and land deals. Many, though not all, of these activities fell within the remit of the Housing Executive's Housing and Regeneration Division. In the Committee's opinion, this Division had been out of control for many years.
8. The Committee welcomes the Department's and the Housing Executive's commitment to introduce the substantial changes needed to improve governance, accountability, contract management and value for money. However, in the Committee's view it is unacceptable that those who carry the lion's share of responsibility for what went wrong have been allowed to retire, transfer or move on without being held to account.
9. In its evidence to the Committee, the Housing Executive commented that there was no room for complacency. The Committee considers that the Housing Executive has nothing to be complacent about; action is required to tackle the systemic weaknesses in governance and contract management that have been exposed.
10. Although proposals to restructure the Housing Executive have been announced, this should not be seen as an opportunity to slow down or suspend the essential programme of change that is under way. Irrespective of what permutation unfolds, the serious issues which have been identified need to be sorted out before the reforms take place. For example, it is vital

that the organisational culture within the Housing Executive is transformed to prevent a recurrence of these problems in the intervening period. Cultural change can take time but, in this case, the need for change is urgent. This will present a significant challenge for the Chief Executive and management at every level within the Housing Executive. However it is paramount that this is done if public confidence in the Housing Executive is to be restored and the organisation is to regain its credibility.

11. The Committee expects to see the necessary changes implemented quickly. The Department clearly has an important role to play in ensuring that this happens.
12. The Committee also looks to the Department of Finance and Personnel (DFP) to ensure that the lessons from this report, alongside those identified by the Comptroller and Auditor General and through the DSD reviews, are promulgated to, and acted upon, by Boards, Audit Committees and senior managers across the public sector.

Summary of Recommendations

1. **The Housing Executive let new contracts for response maintenance in August 2012. In the Committee's opinion it is vitally important that both the Department and Housing Executive use the bedding-in period for these new contracts to critically evaluate how they are working in practice. The Committee recommends that emerging lessons are shared with the Housing Executive's Board and the wider public sector through the Central Procurement Directorate within the Department of Finance and Personnel and the Northern Ireland Procurement Board.**
2. **The Committee recommends that detailed information on the results and timeliness of inspections is reported to the Housing Executive Board and Audit Committee who must also assure themselves that payments are being made promptly to all contractors.**
3. **This is not a recommendation that the Committee should have to make. However, given what has taken place the Committee is compelled to recommend that senior management within the Housing Executive, together with the Board, recognises and upholds the Corporate Assurance Unit's independence from the operational divisions, and ensures that it continues to be protected and that its work is not undermined.**
4. **In light of what has transpired within the Housing Executive, the Committee recommends that the Central Procurement Directorate's review of the accreditation process for Centres of Procurement Expertise should also address the need to improve the level of contract management skills within the public sector in Northern Ireland.**
5. **The Committee recommends that the Housing Executive and the Department undertake the necessary investigations across the Housing Executive's business areas to establish the full extent of the contract management problems and the potential exposure in financial terms; and ensure that weaknesses are identified and eradicated. This must be completed as a matter of urgency. The Committee was pleased to receive the Comptroller and Auditor General's assurance that he will report on the progress of these investigations as part of his audit of Housing Executive's 2012-13 accounts.**
6. **The Committee recommends that senior management in the Housing Executive must send out a clear message to staff that the organisation is not a cold place for whistleblowers and demonstrate that concerns raised will be taken seriously and properly investigated.**
7. **The Committee recommends that the Housing Executive should be alert to former employees taking up employment with a firm or contractor providing services to the Housing Executive, and should ensure that there are no conflicts of interest or inappropriate working relationships involving former employees and current Housing Executive employees.**
8. **The Committee reiterates that it is the responsibility of a sponsor department to regularly review its processes for gaining assurance on sponsored bodies' management of risks to ensure that effective controls are in place. The Committee recommends that departmental Governance Statements provide confirmation that this has been done.**
9. **The Committee recommends that the Department publicly reports on the outcome of its review of the progress being made to implement the recommendations from its governance review as soon as it is completed. The Committee also expects the Department to continue to monitor progress and report annually on this.**
10. **The Committee recommends that the Department of Finance and Personnel ensures that the lessons from this report and those identified by the Comptroller and Auditor General and through the DSD reviews, are promulgated to, and acted upon, by Arm's-Length Bodies, Boards, Audit Committees and senior managers across the public sector.**

Introduction

1. The Public Accounts Committee (the Committee) met on 12 September 2012 to consider the Comptroller and Auditor General's report on 'NIHE Management of Response Maintenance Contracts'. The witnesses were:
 - Mr Will Haire, Permanent Secretary, Department for Social Development (the Department);
 - Dr John McPeake, Chief Executive, Northern Ireland Housing Executive (NIHE);
 - Mr Jim Wilkinson, Director of Housing, DSD;
 - Mr Gerry Flynn, Director, NIHE;
 - Mr Kieran Donnelly, Comptroller and Auditor General (C&AG); and
 - Ms Fiona Hamill, Treasury Officer of Accounts, Department of Finance and Personnel (DFP).

The Department provided the Committee with further information on 24 September 2012, 2 October 2012, 30 November 2012, 9 January 2013 and 22 January 2013.
2. This report is about the management of response maintenance contracts and governance of the Housing Executive. The report raises very serious concerns about the capability and competence of management within the Housing Executive over a number of years, particularly at a senior level. It also highlights significant and serious breakdowns in corporate governance and accountability within and of, arguably, Northern Ireland's major non-departmental public body.
3. The serious problems that have come to light reveal the need for fundamental changes in the culture and practices within the Housing Executive. They also demonstrate the need for more effective board and departmental oversight. These shortcomings must be put right quickly if the services provided by the Housing Executive are to be delivered with due regard to propriety and value for money.
4. The Committee acknowledges that work has begun to address these failings. However, there is clearly a great deal of work to be done to implement all the changes that are needed. The Committee expects both the Department and the Housing Executive to report regularly on the outcomes of this work and demonstrate that the major improvements which are needed are in place and are working.
5. In taking evidence, the Committee focused on three main areas:
 - managing response maintenance contracts;
 - whistleblowing, investigations of breaches of discipline and reporting suspected fraud; and
 - corporate governance and accountability.

Managing response maintenance contracts

Contract management within the Housing Executive needs to be taken seriously and must become more robust and professional

6. The Committee found that there had been serious weaknesses in contract management within the Housing Executive over many years and that these had been evident to senior management. However, this same management regime failed to take the necessary and timely action required to deal with them. For example:
- contracts were inappropriate, out of date and not fit for purpose;
 - recommendations from the Comptroller and Auditor General aimed at addressing shortcomings in contract performance were ignored;
 - management placed too much emphasis on a partnership approach and not enough on scrutinising the work done by contractors;
 - senior management failed to equip staff with the right skills and knowledge to effectively manage response maintenance contracts;
 - as a result, with a few notable exceptions, many District Maintenance teams were not delivering the required standard of service and were failing to challenge the poor performance of contractors;
 - there were also serious flaws in how jobs were selected for inspection; how inspections were carried out; the timeliness of these inspections and how the results were recorded and reported;
 - there were widespread and systemic weaknesses in the setting and use of Key Performance Indicators to evaluate contractor performance;
 - it is very likely that performance data was being manipulated¹;
 - reports were actively withheld from, or not reported fully, to the Board or Audit Committee;
 - although the Housing Executive terminated its contracts with Red Sky in July 2011, it had numerous opportunities to do so prior to this but failed to take these;
 - it also failed to issue a strong rebuttal to Red Sky in response to the company's clear attempt to have a Housing Executive employee moved from their post;
 - despite a clear warning from the PSNI in 2006 about the inadequacies and weaknesses of its systems, the Housing Executive did nothing; this undermined its ability to effectively manage its contracts and guard against and tackle fraud; and
 - there is a very real concern that the weaknesses and failings identified in response maintenance are systemic and extend into other areas of Housing Executive activity, such as planned maintenance, kitchen replacement, heating schemes and land deals.
7. The Committee is astounded by the Department's admission that the contracts being used by the Housing Executive were inappropriate and out of date and that opportunities to strengthen them were missed as far back as 2007 when they were being retendered. The Committee is alarmed that senior management, both within the Housing Executive and Department, ignored recommendations from the Comptroller and Auditor General in 2004² which were aimed at addressing shortcomings in contract performance.
8. In 2010, the Department initiated a review of the response maintenance contracts operated by the Housing Executive. This review found that the Housing Executive was behind the game in relation to best practice and that the contracts it was operating were not fit for purpose.

1 Para 1.12 fig 1, NIAO report 'NIHE Management of Response Maintenance Contracts'

2 Installing Gas Central Heating in Housing Executive Homes, NIAO: NIA 43/03, HC 725 Session 2003/04 1 July 2004.

It is astonishing that it took an external review by the Department to bring these matters to the attention of the Housing Executive and force it to update its contracts and contract management arrangements.

9. The partnership-type contracts for response maintenance services were introduced by the Housing Executive almost 10 years earlier, in 2001. However, no-one in the organisation saw the need to review and update them. This raises serious concerns about the capability and competence of management within the Housing Executive over this period. Belatedly, the Housing Executive has accepted that its management of these contracts put too much emphasis on partnership and not enough on scrutinising the work done by contractors.
10. The Committee's findings of weak contract management relate primarily to response maintenance. However, the evidence presented in the Comptroller and Auditor General's report and to the Committee by the Department and Housing Executive, raises a very real concern that these same weaknesses and failings are systemic and extend into other areas of Housing Executive activity, such as planned maintenance, kitchen replacement, heating schemes, window replacement and land deals.

The new response maintenance contracts must be critically evaluated to ensure they are working in practice

11. New contracts for response maintenance were let in August 2012. Both the Department and Housing Executive told the Committee that they are confident that improvements have been made, both in the structure of the contracts and the way they are managed. In particular, both highlighted that financial penalties can be applied when contractors do not perform to the standard expected and that these changes will lead to improvements in performance and value for money.
12. Furthermore, based on the evidence made available it is not clear to the Committee whether the 2007 and most recent response maintenance procurement exercises complied with best practice. The Housing Executive told the Committee that its Central Procurement Unit is now fit for purpose but accepts that there had been weaknesses in contract management that were damaging. Additional professional staff have been appointed to strengthen the Central Procurement Unit which now has the role of letting procurements which comply with best practice and managing contracts to ensure value for money is maximised.
13. While the Committee considers that public sector bodies must become more hard-nosed and business-like in their dealings with contractors, it is concerned, in this instance, about contractors' ability to deliver a good quality response maintenance service at the prices tendered. Failure to secure contracts at sustainable prices increases the risk that contractors may attempt to cut corners or look for additional payments from the contracts; there is also a danger that contractors run into financial difficulty and in some cases go out of business.

Recommendation 1

14. **The Housing Executive let new contracts for response maintenance in August 2012. In the Committee's opinion it is vitally important that both the Department and Housing Executive use the bedding-in period for these new contracts to critically evaluate how they are working in practice. The Committee recommends that emerging lessons are shared with the Housing Executive's Board and the wider public sector through the Central Procurement Directorate within the Department of Finance and Personnel and the Northern Ireland Procurement Board.**

There needs to be greater clarity and understanding of what is required from each party to these contracts

15. The Committee acknowledges that most Housing Executive staff are diligent and hard working. However, it is clear from the evidence available that the Housing Executive needs

to improve the performance of its district maintenance teams: with a few notable exceptions teams in many districts were not delivering the required standard of service and were failing to challenge the poor performance of contractors. The Housing Executive has accepted that, on occasions, its staff had not done what they were supposed to have done.

16. District maintenance teams inspect a sample of work carried out by contractors. This is an important control in ensuring that work is being done to the required standard and that payments are only made for work actually carried out. However, it is evident that there were serious flaws in how jobs were selected for inspection; how inspections were carried out; the timeliness of these inspections; and how the results were recorded and reported.
17. The Committee is appalled at senior management's failure to equip staff with the right skills and knowledge to effectively manage response maintenance contracts. Extensive and effective training throughout the organisation and with contractors is fundamental to securing improvements. Overall there needs to be greater clarity and understanding of what is required from each party to these contracts.
18. The Committee welcomes the Department's acknowledgement that contract management skills within the Housing Executive need to be improved. The Committee also welcomes the Department's acknowledgment that this may have wider public sector implications and the steps it has taken to draw this important issue to the attention of the Central Procurement Directorate for consideration.
19. The Committee considers that there were widespread and systemic weaknesses in the Housing Executive's use of Key Performance Indicators (KPIs). For example:
 - window replacement - the Department told the Committee that, when the new contract was put in place in January 2008, the Housing Executive had anticipated using nine KPI measurements including time and cost comparisons against the contract specification. However, the Housing Executive subsequently discovered that it was impossible to measure these two elements and has only provided performance data on the other seven KPIs. The Committee considers that the reasons given by the Housing Executive for this lack credibility;
 - kitchen maintenance – contractor performance is supposed to be assessed against nine KPIs, including time and cost. However, the performance data provided to the Committee omits time and cost; and
 - heating contracts – based on the information made available by the Housing Executive, a KPI for cost was not in place before 1 April 2011; a KPI for time which had been included prior to 1 April 2011 would appear to be no longer used.
20. The Committee is astonished that the Housing Executive cannot provide it with accurate and reliable information on the timeliness of the inspection process. On the basis of what has been provided the Committee is alarmed at the wide variation in District performance - in the period from April 2011 to September 2012, the percentage of inspections carried out by District maintenance teams within the 5-day target ranges from 33% to 95.5%. Delays in carrying out inspections impact directly on how quickly contractors' invoices are approved and passed for payment. In the Committee's view the Housing Executive, as a public body, has a duty, particularly in these tough economic times, to ensure that its systems operate efficiently and effectively so payments are processed in a timely manner.
21. The Committee is particularly concerned that in 2011-12, one in five jobs inspected failed compared with one in twenty jobs in 2009-2010. The Committee is sceptical of the Housing Executive's claims that it was failing high numbers of jobs in the past but did not record the information. In the Committee's opinion there is a strong possibility that, prior to 2010-11,

management within the Housing Executive was deliberately and actively manipulating performance data³.

Recommendation 2

22. **The Committee recommends that detailed information on the results and timeliness of inspections is reported to the Housing Executive Board and Audit Committee who must also assure themselves that payments are being made promptly to all contractors.**

The Repairs Inspection Unit reports are an important resource and full use must be made of them to drive up the performance of both contractors and District maintenance teams

23. The Committee is deeply concerned that reports produced by the Repairs Inspection Unit (RIU) were actively withheld from, or not reported fully to, the Board or Audit Committee. The RIU provides an important second-tier check, carrying out annual technical and management inspections of the maintenance functions across all 35 District Offices. Its reports consistently highlighted significant variations in performance across the District office network, particularly in relation to on-site inspection. However, the Committee found that insufficient weight was given to this aspect of performance. As a result “substantial” or “satisfactory” assurance was taken from the performance of a significant number of districts even though they scored poorly (in some cases zero) for this aspect of their work. In addition, no one within the Housing Executive made the connection, never mind challenged the inconsistencies, between RIU’s assessments and Key Performance Indicator reports prepared by District offices which gave a much more favourable assessment of performance.
24. The Housing Executive told the Committee that a gap in its procedures had been “inadvertently” created which allowed the management of KPI data to fall between two areas. In the Committee’s view this is further evidence of the absence of joined-up thinking within the Housing Executive. These gaps should also have been obvious to senior management.
25. In the Committee’s view Repairs Inspection Unit reports are an important resource and full use must be made of them to drive up the performance of both contractors and district maintenance teams. The Committee welcomes assurances that the Repairs Inspection Unit now forms part of the Housing Executive’s Corporate Assurance Unit whose reports are scrutinised at Board level.

Recommendation 3

26. **This is not a recommendation that the Committee should have to make. However, given what has taken place the Committee is compelled to recommend that senior management within the Housing Executive, together with the Board, recognises and upholds the Corporate Assurance Unit’s independence from the operational divisions, and ensures that it continues to be protected and that its work is not undermined.**

27. In the Committee’s view staff rotation plays an important role in managing the risk of over-familiarity, impropriety and fraud in contract management. The Committee welcomes the Housing Executive’s decision to introduce new arrangements for regular rotation of key staff; it is important that the Housing Executive reports to the Board on the implementation of these arrangements and their effectiveness.

Other sources of information, including complaints, should also be used to evaluate the performance of contractors and effectiveness of the maintenance inspection process

28. Complaints are an important source of information on the performance of contractors and Housing Executive district maintenance teams. The Committee considers that the Housing

3 Ibid, note 1

Executive should be making greater use of this information, together with information from other sources such as Key Performance Indicators, RIU and Corporate Assurance Unit inspections and Internal Audit to help identify areas where improvements are needed. The Housing Executive also needs to provide clearer reasons for the level of tenant satisfaction which has remained around 75 per cent and set out what action it is taking to increase satisfaction levels.

The process of accreditation for Centres of Procurement Expertise must be overhauled as a matter of urgency; the review should also address the need to improve the level of contract management skills within the public sector in Northern Ireland

29. It is evident that the Department took some assurance from the status of the Housing Executive as a Centre of Procurement Expertise and the fact that it had gone through the accreditation process. However, the Committee has raised serious concerns about the accreditation process for Centres of Procurement Expertise on a number of occasions. This is yet another example which calls into question the credibility of that process and highlights the need for it to be overhauled. The Department of Finance and Personnel told the Committee that, following the Committee's previous concerns, it is carrying out a review of the accreditation process which will be completed in 2014.

Recommendation 4

30. **In light of what has transpired within the Housing Executive, the Committee recommends that the Central Procurement Directorate's review of the accreditation process for Centres of Procurement Expertise should also address the need to improve the level of contract management skills within the public sector in Northern Ireland.**

The Housing Executive was badly let down by Constructionline⁴

31. Constructionline has an important role to play in providing information to assist public sector bodies assess the financial status of prospective suppliers and their capacity to deliver services. While the Housing Executive had raised a number of issues about the information that was supplied by Constructionline in relation to Red Sky, ultimately it relied on Constructionline carrying out a proper and robust evidence-based assessment of Red Sky's financial position. In this respect it was badly let down by Constructionline who appear to have based their assessment on oral conversations with Red Sky's auditors and unaudited management accounts.
32. The Committee welcomes confirmation provided by the Treasury Officer of Accounts that Constructionline will now take into account only formal written advice from company auditors when assessing the financial standing of potential suppliers. The Committee notes and welcomes that the lessons learned from this case will hopefully lead to improvements in the standard of service provided by Constructionline to the entire UK public sector.

Red Sky: senior management within the Housing Executive was only too ready to brush matters under the carpet until it was forced to face up to the seriousness of the issues through the pressure of independent, external scrutiny

33. In July 2011, the Housing Executive terminated its response maintenance contracts with Red Sky, following extensive investigations into the company's performance and allegations of overcharging. Prior to this the Housing Executive had numerous opportunities to draw a line in the sand, including terminating its contracts with Red Sky. However, it failed to take these. The Committee can only conclude that senior management within the Housing Executive was only too ready to brush matters under the carpet until it was forced to face up to the seriousness of the issues through the pressure of independent, external scrutiny by this Committee and the Comptroller and Auditor General.

4 Constructionline is a Public-Private Partnership between Capita and the Department for Business, Innovation and Skills.

34. The Committee was astonished to be told that the Department was unaware of these serious issues despite them being evident for more than 10 years. This raises serious concerns about the Department's oversight of the Housing Executive.
35. The Committee is concerned that the systems operating within the Housing Executive have contributed to its inability to tackle fraud. In 2011, the Housing Executive submitted a file to the Police Service of Northern Ireland (PSNI) to consider whether a criminal prosecution could be pursued in relation to over-charging by Red Sky. The PSNI advised that a prosecution would be difficult to sustain as there had been systematic errors within the Housing Executive.
36. This however, was not the first occasion that the Housing Executive had reason to refer issues relating to Red Sky to the PSNI. A previous referral in 2006 resulted in a similar response. Despite this clear warning about the inadequacies and weaknesses of its systems, the Housing Executive did nothing. In the Committee's opinion, management's failure to act provided sufficient grounds for disciplinary action against those responsible. Instead the Housing Executive continued to operate for another five years with systems that undermined its ability to effectively manage its contracts and guard against and tackle fraud.
37. The Committee is also concerned about the involvement of a former non-Executive member of the Housing Executive's Audit Committee — who resigned from the Audit Committee prior to its March 2007 meeting and became Chairman of the Red Sky Group in April 2007 — in negotiations with Red Sky to recover sums which had been paid to the company as a result of it overcharging for work⁵. While it is unclear as to which side he was representing at these negotiations, in the Committee's view, his involvement was totally unethical and could and should have been avoided. It also highlights a fundamental breakdown of governance and proper accountability in that his involvement was not discussed by senior management at any stage with the Audit Committee, Board or the Department.
38. In the Committee's view the perception that contractors can influence staffing decisions within a public sector body must be robustly challenged. The Committee is astonished that the Housing Executive failed to issue a strong rebuttal to Red Sky in response to its clear attempt to have a Housing Executive employee moved from their post. Their subsequent move, against their will, sent out entirely the wrong message. In the Committee's view, the action taken undermined the Housing Executive's position and authority. While the Committee welcomes the Housing Executive's acknowledgment that the employee should not have been moved, this is too little, too late.

Problems in contract management are likely to extend beyond response maintenance

39. The Committee is concerned that the problems identified in the management of response maintenance are likely to be replicated in other areas of the Housing Executive's business. For example, the Housing Executive told the Committee that it has evidence of substantial overpayments in a number of kitchen replacement schemes and is working to establish the value of these. The Committee is deeply concerned that these overpayments have been allowed to arise in the first instance. The resources required to subsequently investigate and recover overpayments is a drain on valuable public funds. Over-claiming and poor performance by contractors must be identified and tackled before payments are issued. Key to this is timely and effective inspection.
40. The Committee is also astonished at the cost of kitchen replacement schemes. Although costs appear to be reducing, the Committee is not convinced that the system for developing specifications and approving schemes has delivered value for money.

5 "A possible association" had been declared by the member at the Housing Executive's December 2006 Audit Committee. He resigned from the Audit Committee prior to its March 2007 meeting and became Chairman of the Red Sky Group in April 2007. (Paragraphs 1.17.12 and 1.17.13, C&AG's Report, NIHE Management of Response Maintenance Contracts, 4th September 2012).

Recommendation 5

41. **The Committee recommends that the Housing Executive and the Department undertake the necessary investigations across the Housing Executive's business areas to establish the full extent of the contract management problems and the potential exposure in financial terms; and to ensure that weaknesses are identified and eradicated. This must be completed as a matter of urgency. The Committee was pleased to receive the Comptroller and Auditor General's reassurance that he will report on the progress of these investigations as part of his audit of Housing Executive's 2012-13 accounts.**

Whistleblowing, investigations of breaches of discipline and reporting suspected frauds

Organisational culture, processes and procedures must be open to, and supportive of, whistleblowers and others who have concerns about wrongdoing or poor practice

42. The Committee is deeply concerned that the culture within the Housing Executive discourages staff from raising concerns. Discouraging whistleblowing or creating the perception that whistleblowers are not protected is unacceptable. Where employees feel unable to raise concerns about wrongdoing or poor practice, there is a serious risk that opportunities to make improvements are missed, poor performance is perpetuated and public money is wasted.
43. Practices, such as those adopted by the Housing Executive including the use of IT to attempt to identify an anonymous whistleblower, give the impression that staff who raise concerns in the course of their work or in a whistleblowing capacity, will not be supported or protected. Such action undermines confidence in this process and is unacceptable. The Committee welcomes the assurances from both the Housing Executive and the Department that this will not happen again.

Recommendation 6

44. **The Committee recommends that senior management in the Housing Executive must send out a clear message to staff that the organisation is not a cold place for whistleblowers and demonstrate that concerns raised will be taken seriously and properly investigated.**

Staff must be clear on what constitutes breaches of discipline and expected standards of conduct

45. In the Committee's view where there are breaches of discipline and expected standards of conduct, disciplinary action must be timely, equitable, consistent and robust. The Housing Executive must demonstrate its commitment to ensuring that breaches of its code of conduct will not be accepted.
46. The Committee welcomes the Housing Executive's acknowledgment that there were clear deficiencies in the training it provided to its staff. This led to the position where staff could claim that they are not adequately trained for the roles they had to undertake. This must be addressed as a matter of urgency – it should never be an option for staff to be absolved from poor or improper performance on the grounds that they were unaware of the standard of conduct that was expected of them.
47. The Housing Executive told the Committee that those responsible for some of the most significant failings had subsequently left the organisation without facing disciplinary action. The Committee is very concerned that the Housing Executive has been unable to take action against these staff, including senior management, who appear to have been able to act with impunity and commit serious breaches of expected standards of conduct. It is essential that the Housing Executive and the Department learn lessons and act swiftly to investigate any suspected breaches of the code of conduct and complete relevant disciplinary action in a timely manner.
48. The Committee acknowledges that it may not be possible to prevent former employees of the Housing Executive from later providing services to the Housing Executive.

Recommendation 7

49. **The Committee recommends that the Housing Executive should be alert to former employees taking up employment with a firm or contractor providing services to the Housing Executive and ensure that there are no conflicts of interest or inappropriate working relationships involving former employees and current Housing Executive employees.**

Reporting of suspected frauds to the Comptroller and Auditor General is a key step in the accountability chain

50. Reporting of suspected frauds to the Comptroller and Auditor General is a key step in the accountability chain. Failure to report suspected frauds has the potential to undermine the audit process and the effectiveness of Departmental oversight. This is unacceptable.
51. The Committee was told that the Department and Housing Executive have taken steps to ensure reporting requirements are complied with. The Department must monitor this closely as part of its oversight of Housing Executive.

Corporate governance and accountability

Good governance is more than documentation and paper processes; it is practical and requires a strong culture of transparency and accountability

52. In the Committee's view, there has been a total breakdown in corporate governance and accountability. This has come to light through various reviews which have been undertaken since 2008 and following this Committee's intervention on foot of concerns raised by a whistleblower. The nature and quantum of the evidence raises serious concerns about the capability and competence of management within the Housing Executive over many years, particularly at a senior level. In addition, it would appear that some members of senior management actively undermined the systems of control that had been put in place.
53. The Committee considers that oversight by the Department, the Board of the Housing Executive and senior management has been totally ineffective. For example:
- the Department was not alert to the problems in Housing Executive, which were evident over many years;
 - although structures of governance were in place, these were not working in practice;
 - the Department and Board relied on assurances from Housing Executive management about the operation of these structures without appropriate challenge or work to validate the substance of those assurances;
 - information provided by senior management within the Housing Executive to the Board on important issues was inadequate;
 - in some instances key information that should have gone to the Board was deliberately held back by senior management or was presented in a superficial way that glossed over problems;
 - fundamental financial management information for proper and effective oversight was not readily available and it would appear that its unavailability went unchallenged by the Board; and
 - the Housing Executive's Housing and Regeneration Division had been, for many years, out of control.
54. This failure in corporate governance has only served to dent public confidence in a major public body. While there has been frantic activity in the past few years to address the problems, these could and should have been identified and remedied much earlier.
55. In its evidence to the Committee, the Housing Executive frequently commented that there was no room for complacency. The Committee considers that the Housing Executive has little to be complacent about; action is what is required to tackle the systemic weaknesses in governance and contract management that have been exposed.

Departments must regularly review their processes for gaining assurance on sponsored bodies' management of risks to ensure that effective controls are in place and operating as intended

56. There were clear failings in the Department's oversight of the Housing Executive. The Committee is concerned that the Department was not alert to the problems in Housing Executive, which were evident over many years. The Department has a responsibility to provide an independent, external view on the Housing Executive.
57. The Department has accepted that there was insufficient co-ordination of the different contacts it had with the Housing Executive and that these had not been fully documented. However, in the Committee's view its report, "Good Governance - Effective Relationships

between Departments and their Arm's-Length Bodies"⁶, makes clear that it is for the sponsor department to regularly review its processes for gaining assurance on sponsored bodies' management of risks to ensure that effective controls are in place. On the basis of evidence provided by the Department, the Committee concludes that for many years before 2010, the Department did not do enough to adequately test the assurances it received from the Housing Executive.

Recommendation 8

58. **The Committee reiterates that it is the responsibility of a sponsor department to regularly review its processes for gaining assurance on sponsored bodies' management of risks to ensure that effective controls are in place. The Committee recommends that departmental Governance Statements provide confirmation that this has been done.**

59. The Committee welcomes the Department's introduction of new arrangements which will provide for closer scrutiny and are essential to ensuring that the Housing Executive delivers on its commitments.

60. It is essential that evidence provided to the Committee is accurate and complete. The Committee expects the Accounting Officer to have fully researched all matters and, where appropriate, to have discussed with his predecessor any issues that are pertinent to the Committee's enquiries. The Committee is disappointed by the Department's Accounting Officer's admission that, in preparing for the Committee's evidence session, he had not researched back beyond 2010 when he took up post. Furthermore, it is disappointing that some additional information provided by the Department at the request of the Committee, was also incomplete and not as comprehensive as it should have been.

To properly fulfil its responsibilities in holding management to account a Board must understand the business and demand that the right information is provided to it

61. The Committee was told that although structures of governance were in place, these were not working in practice. Documentation and paper processes are not sufficient – good governance is practical and requires a strong culture of transparency and accountability. In the Committee's report on governance of arm's-length bodies, this point was made very strongly. It is evident that some departments and their arm's-length bodies are slow to learn this lesson.

62. At Board and senior management level within the Housing Executive many things were not being done correctly and important issues were not being addressed. Indeed, the Housing Executive admitted that key issues were not being given due attention; information provided to the Board on important issues was inadequate and in some instances key information that should have gone to the Board was deliberately held back by senior management or was presented in a superficial way that glossed over problems. This is unacceptable and should not be allowed to happen again. The Committee expects the Housing Executive Board to hold management to account; the Board has a duty to understand the business, ask for the right information to be provided and when it is not getting this to demand it from management so it can properly fulfil its responsibilities.

63. The Committee is very concerned that, at the time of the Audit Office's investigation, information was not readily available on the number and value of contracts and expenditure on response maintenance contractors. This is fundamental financial management information for proper and effective oversight and yet it would appear that its unavailability went unchallenged by the Board. While the Committee welcomes the steps being taken by NIHE to improve financial reporting and monitoring, the Committee is astonished that such weaknesses existed in a major public body.

6 http://archive.niassembly.gov.uk/public/2007mandate/reports/report28_07_08r.htm

64. While the Committee acknowledges that for the period covered by the report the Board and Audit Committee had the wool pulled over their eyes, this is no excuse. The Committee considers that the Housing Executive Board should have exercised a more robust challenge function but too readily accepted management's view.
65. The Committee takes some assurance that the way Board business is conducted has been reviewed and a new committee structure put in place which should ensure that sufficient time is set aside to scrutinise key issues. Reporting to the Board is also to be improved. This is crucially important. However, the Department must monitor progress to ensure the Board is operating effectively.
66. Many of the failings uncovered by the recent reviews fell within the remit of the Housing Executive's Housing and Regeneration Division. In the Committee's opinion, this Division had been, for many years, out of control. For example:
- there was a catalogue of breaches of standing orders;
 - there were fundamental weaknesses in the implementation of contracts;
 - the Division persisted with these contracts even after it became apparent that they were flawed and outdated;
 - Key Performance Indicators that were put in place to assess contractor performance were flawed, lacking in objectivity and not subject to independent validation; as a consequence poor performance was difficult to pursue against contractors; and
 - independent critical reports from the Housing Executive's Internal Audit and Repairs Inspection Unit were, in effect, revised, suppressed or ignored by the Division.
67. In the Committee's opinion it is vital that the organisational culture within the Housing Executive is transformed so that these problems do not arise again. Changing culture can take time but, in this case, the need for change is urgent. This will present a significant challenge for the Chief Executive and management at every level within the Housing Executive. However, it must be done and is paramount if public confidence is to be restored.
68. The Department told the Committee that it will be carrying out a review in one year's time to evaluate progress in implementing the recommendations of its governance review. The Committee expects to be kept informed of the outcome of this review as soon as it is completed.

Recommendation 9

69. **The Committee recommends that the Department publicly reports on the outcome of its review of the progress being made to implement the recommendations from its governance review as soon as it is completed. The Committee also expects the Department to continue to monitor progress and report annually on this.**

Internal Audit is a key governance and management control and can play an important role in ensuring high standards of accountability

70. Internal Audit is a key governance and management control and can play an important role in ensuring high standards of accountability. The Committee was shocked at the attempts by management to suppress some internal audit reports and exert pressure to have audit opinions watered down. Institutional resistance such as this is unacceptable. The Committee expects to see the culture of stifling any form of criticism turned around. A key attribute of a mature and open organisation is that where mistakes are made these are recognised and improvements made as a result.

71. The Committee expects the Housing Executive's Board and Audit Committee to uphold the independence of Internal Audit and ensure that its annual programme of audits is completed. The Department must also ensure through its oversight that the Housing Executive's Internal Audit is properly resourced and that its work complies with Government Internal Audit Standards.
72. The Committee considers that what has been exposed in the Housing Executive and lessons emerging from it, should act as a timely reminder to all public bodies that this could happen elsewhere, particularly where a strong culture of transparency and accountability is absent.

Recommendation 10

73. **The Committee recommends that the Department of Finance and Personnel ensures that the lessons from this report and those identified by the Comptroller and Auditor General and through the DSD reviews, are promulgated to, and acted upon, by Arm's-Length Bodies, Boards, Audit Committees and senior managers across the public sector.**



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings Relating to the Report

Wednesday, 5 September 2012

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr Sydney Anderson
Mr John Dallat
Mr Alex Easton
Mr Paul Girvan
Mr Ross Hussey
Mr Mitchel McLaughlin

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Joe Byrne (Deputy Chairperson)
Mr Michael Copeland
Mr Adrian McQuillan

2:00pm The meeting opened in public session.

5. Briefing on Northern Ireland Audit Office Reports on NIHE Management of Response Maintenance Contracts

Mr Kieran Donnelly Comptroller and Auditor General; Mr Brandon McMaster, Director; David Murdie, Audit Manager; and Joe Campbell, Audit Manager briefed the Committee on the report.

3:15pm Mr Easton declared an interest stating that he is a member of the Committee for Social Development.

3:18pm The meeting went into closed session after the C&AG's initial remarks.

3:35pm Mr Hussey left the meeting.

3:54pm Ms Boyle, Mr Anderson and Mr Dallat declared an interest stating that they each had formerly been members of the Housing Council.

3:58pm Mr McLaughlin left the meeting.

4:02pm Mr Dallat left the meeting.

4:05pm Mr Dallat entered the meeting.

The witnesses answered a number of questions put by members.

[EXTRACT]

Wednesday, 12 September 2012

The Senate Chamber, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Sydney Anderson
Mr Alex Easton
Mr Paul Girvan
Mr Ross Hussey
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Supervisor)
Miss Allison Ferguson (Clerical Officer)

Apologies: Mr Michael Copeland
Mr Adrian McQuillan

2:00pm The meeting opened in public session.

4. **Evidence on the Northern Ireland Audit Office Report ‘Northern Ireland Housing Executive Management of Response Maintenance Contracts’.**

The Committee took oral evidence on the above report from:

- Mr Will Haire, Accounting Officer, Department for Social Development (DSD);
- Dr John McPeake, Chief Executive, Northern Ireland Housing Executive (NIHE);
- Mr Jim Wilkinson, Director of Housing, Department for Social Development (DSD); and
- Mr Gerry Flynn, Director – Housing and Regeneration, Northern Ireland Housing Executive (NIHE).

2:05pm The Chairperson, Mr Anderson and Mr Dallat declared an interest stating that they had each formerly been members of the Housing Council.

2:36pm Mr Girvan left the meeting.

2:38pm Mr Girvan entered the meeting.

2:48pm Mr Dallat and Mr Easton left the meeting.

2:55pm Mr Dallat and Mr Easton entered the meeting.

3:28pm Mr McKay left the meeting.

3:33pm Mr McKay entered the meeting.

3:57pm Mr Girvan left the meeting.

3:59pm Mr Dallat left the meeting.

4:01pm Mr McKay left the meeting.

4:03pm Mr Girvan entered the meeting.

4:09pm Mr Dallat entered the meeting.

4:23pm Mr McLaughlin left the meeting.

4:30pm Mr McLaughlin entered the meeting.

4:31pm Mr Rogers left the meeting.

4:39pm Mr Anderson left the meeting.

5:10pm Mr Dallat left the meeting.

5:16pm Mr Dallat entered the meeting.

5:18pm Mr Easton left the meeting.

The witnesses answered a number of questions put by the Committee.

Mr Ross Hussey submitted in evidence correspondence between Mr Haire and the former Chairman of the Housing Executive, Brian Rowntree, and an NIHE minute of a meeting between Mr Rowntree and elected representatives.

Agreed: The Committee agreed to request further information from the witnesses.

[EXTRACT]

Wednesday, 19 September 2012

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Sydney Anderson
Mr Michael Copeland
Mr Alex Easton
Mr Paul Girvan
Mr Ross Hussey
Mr Dathí McKay
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Supervisor)
Ms Andrienne Magee (Clerical Officer)

Apologies:

2:21pm The meeting went into closed session.

4. Issues Arising from the Oral Evidence Session on ‘NIHE Management of Response Maintenance Contracts’

The Committee considered an issues paper relating to the previous week’s evidence session.

2:51pm Mr Hussey left the meeting.

2:53pm Mr Easton left the meeting.

2:57pm Mr Hussey entered the meeting.

3:07pm Mr Copeland left the meeting.

The Committee also considered FOI material introduced by Mr Hussey and Mr Haire’s commentary on the correspondence included in the material.

Agreed: The Committee agreed to continue to consider calling additional witnesses in this inquiry.

Agreed: The Committee agreed to seek from DSD an additional document mentioned in the correspondence.

Agreed: The Committee agreed to factor this discussion into the drafting of its report and to reconsider the issues paper when written evidence is received.

Agreed: The Committee reflected on feedback from the Public Accounts Committee of Wales and agreed to seek proposals for scrutiny development work from the Secretariat.

[EXTRACT]

Wednesday, 3 October 2012

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Sydney Anderson
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Ross Hussey
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Supervisor)
Ms Andrienne Magee (Clerical Officer)

Apologies:

2:03pm The meeting opened in public session.

5. Inquiry on ‘NIHE Management of Response Maintenance Contracts’

Correspondence from the Department for Social Development

The Committee noted correspondence from Mr Will Haire, Accounting Officer, Department for Social Development enclosing a letter requested by the Committee at its meeting on 19 September 2012.

Correspondence from the Department for Social Development

The Committee noted correspondence from Mr Jim Wilkinson, Director of Housing, Department of Social Development providing the additional information requested by the Committee at its evidence session on 12 September 2012.

Note of Meeting with a Whistleblower

The Committee considered a note of a recent meeting between the Clerk, the Assistant Clerk and a whistleblower relating to its inquiry.

Mr Clarke proposed that given that the Department says that the whistleblower owes monies to the Housing Executive the allegations made could not be objective and should be disregarded.

Agreed: The Committee agreed not to reflect the content of this note in its inquiry.

Next Steps

Agreed: The Committee agreed to consider a paper at a future meeting setting out options for developing this inquiry.

[EXTRACT]

Wednesday, 24 October 2012

The Senate Chamber, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr Sydney Anderson
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Ross Hussey
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Officer)
Ms Andrienne Magee (Clerical Officer)

Apologies: Mr John Dallat (Deputy Chairperson)

2:14pm The meeting opened in public session.

3. **Matters Arising**

Inquiry on 'NIHE Management of Response Maintenance Contracts'

Agreed: The Committee agreed to consider this item in closed session.

5:15pm The meeting went into closed session.

5:15pm Mr Rogers left the meeting.

3. **Matters Arising**

Inquiry on 'NIHE Management of Response Maintenance Contracts'

The Committee considered an options paper setting out the options available to it in relation to its ongoing inquiry on 'NIHE Management of Response Management Contracts'.

5:16pm Mr Rogers entered the meeting.

Agreed: The Committee agreed to write to the individuals detailed in the paper seeking additional supporting information and to consider on the basis of the response received whether to have another evidence session.

[EXTRACT]

Wednesday, 21 November 2012

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Sydney Anderson
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Ross Hussey
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Officer)
Ms Andrienne Magee (Clerical Officer)

Apologies:

2:00pm The meeting opened in public session.

3. Matters Arising

Correspondence from the Department for Social Development

The Committee noted correspondence from Mr Will Haire, Accounting Officer, Department for Social Development indicating that the information sought by the Committee pertaining to its on-going inquiry on 'NIHE: Management of Response Maintenance Contracts' could not be provided by the specified date.

Mr Haire undertook to ensure that the information would be provided by the week commencing 26 November.

[EXTRACT]

Wednesday, 5 December 2012

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr Sydney Anderson
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Officer)
Mr Christopher McNickle (Clerical Officer)

Apologies: Mr John Dallat (Deputy Chairperson)
Mr Ross Hussey

2:03pm The meeting opened in public session.

3. **Matters Arising**

Correspondence from DSD

The Committee noted correspondence from Mr Will Haire, Accounting Officer, Department for Social Development providing the additional information sought following the evidence session on 'NIHE: Management of Response Maintenance Contracts'.

2:10pm Mr McQuillan left the meeting.

Agreed: The Committee agreed that the detail should be factored into its draft report for consideration at a future meeting.

2:17pm The meeting went into closed session.

[EXTRACT]

Wednesday, 12 December 2012

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Sydney Anderson
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Ross Hussey
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Mr Darren Weir (Clerical Officer)

Apologies: Mr Adrian McQuillan

2:05pm The meeting opened in public session.

6. Issues Arising from the Oral Evidence Session on ‘NIHE: Management of Response Maintenance Contracts’

3:19pm Mr Anderson declared an interest stating that he was a former member of the Housing Council.

The Committee considered and added to an issues paper relating to the evidence session held on ‘NIHE: Management of Response Maintenance Contracts’.

[EXTRACT]

Wednesday, 23 January 2013

Room 144, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Sydney Anderson
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Miss Maria Magennis (Clerical Supervisor)
Mr Darren Weir (Clerical Officer)
Ms Tara Caul (Assembly Legal Services)

Apologies: Mr Ross Hussey
Mr Adrian McQuillan

2:03pm The meeting opened in public session.

5. PAC Inquiry on 'NIHE: Management of Response Maintenance Contracts'

Correspondence from DSD

The Committee considered correspondence from Mr Will Haire, Accounting Officer, Department for Social Development providing additional information it had requested.

3:57pm Mr McLaughlin left the meeting.

4:07pm Mr Dallat left the meeting.

4:08pm Mr Anderson left the meeting.

Agreed: The Committee agreed to factor the information received into its draft report.

[EXTRACT]

Wednesday, 20 February 2013

Room 29, Parliament Buildings

Present: Ms Michaela Boyle (Chairperson)
Mr John Dallat (Deputy Chairperson)
Mr Trevor Clarke
Mr Michael Copeland
Mr Paul Girvan
Mr Daithí McKay
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Seán Rogers

In Attendance: Miss Aoibhinn Treanor (Assembly Clerk)
Mr Phil Pateman (Assistant Assembly Clerk)
Miss Maria Magennis (Clerical Supervisor)
Mr Darren Weir (Clerical Officer)

Apologies: Mr Sammy Douglas
Mr Ross Hussey

2:02pm The meeting opened in public session.

6. Consideration of Draft Committee Report on ‘Northern Ireland Housing Executive: Management of Response Maintenance Contracts’

The Committee considered its draft report on ‘Northern Ireland Housing Executive: Management of Response Maintenance Contracts’.

Paragraphs 1 - 5 read and agreed.

Paragraph 6 read, amended and agreed.

Paragraphs 7 – 10 read and agreed.

3:45pm Mr Copeland left the meeting.

Paragraph 11 read, amended and agreed.

Paragraphs 12 – 20 read and agreed.

Paragraphs 21 – 22 read, amended and agreed.

Paragraphs 23 – 29 read and agreed.

Paragraphs 23 – 25 read and agreed.

3:52pm Mr Dallat left the meeting.

Paragraphs 23 – 29 read and agreed.

Paragraphs 26 – 29 read and agreed.

Paragraph 30 read, amended and agreed.

Paragraphs 31 – 33 read and agreed.

Paragraph 34 read, amended and agreed.

Paragraphs 35 – 36 read and agreed.

Paragraph 37 read, amended and agreed.

Paragraphs 38 – 40 read and agreed.

Paragraph 41 read, amended and agreed.

Paragraphs 42 – 43 read and agreed.

4:09pm Mr Rogers left the meeting.

Paragraphs 44 – 46 read and agreed.

4:11pm Mr McKay left the meeting.

Paragraphs 47 – 48 read, amended and agreed.

Paragraphs 49 – 54 read and agreed.

Paragraph 55 read, amended and agreed.

Paragraphs 56 – 59 read and agreed.

Paragraph 60 – 62 read amended and agreed.

New paragraph added.

Paragraph 63 read, amended and agreed.

Paragraphs 64 – 71 read and agreed.

Paragraph 72 read, amended and agreed.

Consideration of the Executive Summary

Paragraph 1 – 7 read and agreed as per the main report.

Agreed: The Committee agreed the correspondence to be included within the report.

Agreed: The Committee ordered the report to be printed.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

12 September 2012

Members present for all or part of the proceedings:

Ms Michaela Boyle (Chairperson)
 Mr John Dallat (Deputy Chairperson)
 Mr Sydney Anderson
 Mr Alex Easton
 Mr Paul Girvan
 Mr Ross Hussey
 Mr Daithí McKay
 Mr Mitchel McLaughlin
 Mr Sean Rogers

Witnesses:

Mr Will Haire	<i>Department for Social Development</i>
Mr Jim Wilkinson	<i>Department for Social Development</i>
Mr Gerry Flynn	<i>Northern Ireland</i>
Dr John McPeake	<i>Housing Executive</i>

In attendance:

Ms Fiona Hamill	<i>Department of Finance and Personnel</i>
Mr Kieran Donnelly	<i>Northern Ireland Audit Office</i>

1. **The Chairperson:** We are considering today the Comptroller and Auditor General's (C&AG) report on NI Housing Executive's (NIHE) management of response maintenance contracts. Does any member wish to express an interest in these matters?
2. **Mr Anderson:** I am a former member of the housing council. Does that need to be registered?
3. **The Chairperson:** Yes. I think that we had this discussion briefly last week. As chair of my council, I am also a former member of the housing council. Mr John Dallat?
4. Mr Will Haire, the accounting officer for the Department for Social Development (DSD), is here to respond to the Committee today. Mr Haire, you are very welcome. Will you introduce your team?
5. **Mr Will Haire (Department for Social Development):** Thank you very much. I

am joined by Gerry Flynn, who is director of housing and regeneration in the Housing Executive; Dr John McPeake, the chief executive of the Housing Executive; and Jim Wilkinson, who is head of the housing division in the Department.

6. **The Chairperson:** Thank you, Mr Haire. I know that, through their constituents' experiences, many members have considerable knowledge of and interest in this area. That will no doubt inform the discussion. I will begin, and members will want to put their own questions to Mr Haire and the panel in order.
7. Mr Haire, paragraph 2 of the executive summary of the report lists a number of reviews. Will you outline briefly to the Committee the key findings that are emerging from those reviews and the action that the Department is taking on foot of them?
8. **Mr Haire:** Yes, and, as you said, a number of issues were arising around 30 months ago when I was relatively new in the Department. You may remember that something to do with land deals and various other issues came around, and that the Housing Executive suspended a senior member of staff at one stage, as it was concerned about that. Those issues, as well as some ongoing investigations into contracts that were taking place even at that time, raised concerns with my then Minister. In discussion with him, I felt that we needed to put in a major governance review to look at the issues of how well the governing structures and the organisation were progressing both at board level and in the senior executive team. There were questions about how well the culture and structure of the organisation were dealing with issues of public value, and, finally, there was a key issue about how contracts were being managed. I asked for advice

- on that from the Department of Finance and Personnel and got an expert group that we found through the Office of Government Commerce (OGC) to come in to review the response contracts. That group reported in the autumn of 2010 and detailed a range of issues.
9. My governance review was done by my head of internal audit and a team, including someone from the Department of Environment, who dealt with the HR side, and one of my governance experts from the Department. That review raised some issues that showed us, as the report indicates, that there are strengths in the governance of the organisation and that the process was there but that a lot of things were not being done. The structures were there on paper, but when you got to board level and, more importantly, senior level, a lot of things were not being done correctly and a range of issues were not being addressed properly. The Office of Government Commerce came back and made the point that those contracts were wrong and that they were not fit for purpose. They included contracts coming from the early phase of Egan, which the Audit Office report gives you a sense of. They were not the tight, clear contracts that need to be put in place, and, therefore, a lot of the implementation problems came from those poor contracts. So, a key element and focus was on ensuring that we got a change in the contracts that were written over the past while. That has taken longer than we would have liked, and, as often happens with contracts, we have had contested processes. However, I am glad to say that new, much tighter contracts have been in place since August. Throughout that time, we worked to implement the governance review and to make sure that there were improvements in the organisation.
10. The review into Red Sky, which started at the request of the Audit Office, concluded in 2011. However, the Housing Executive had also carried out a number of other reviews. In the spring of 2011, the Housing Executive board decided that it had to end the contracts with Red Sky, and that was done.
11. When my new Minister came in, he was also concerned to look at what the lessons were, whether there were other issues in other contracts and whether there were the same management problems. So, a new piece of work was done for the same company. That is just being completed now, so we have a better sense of all the other contracts.
12. There has been a wide range of external reviews, but, at the same time, the Housing Executive conducted its own very important repairs inspection unit (RIU) reports. It raised those reports to a much higher status and used them to drive change. I have pursued the Housing Executive to make sure that it best uses those reports to force the change that I think is essential.
13. I hope that that gives you some background to what was quite a complex structure of reports.
14. **The Chairperson:** Thank you, Mr Haire. You mentioned tighter contracts being in place, and maybe, at a later stage in the meeting, members might want to discuss those tighter contracts. It would also be helpful if you could provide an insight into the findings of the departmental review that is referred to in paragraph 1.22 of the C&AG's report and inform members when that will be published.
15. **Mr Haire:** As I said, we received initial responses from the Housing Executive to that report, and we will continue those discussions before it is finalised. I think that it will take some time to do that. We also have to work with the contractors to make sure that it is right.
16. The report states that the departmental review' findings are "consistent" with the Northern Ireland Audit Office's (NIAO) findings. I think that that is still being borne out.
17. **The Chairperson:** Thank you, Mr Haire. I want to turn to paragraph 4.5. As members will have read, that depicts what can only be described as a

complete breakdown in control at the top of the organisation. Indeed, there are serious questions about a number of points, such as:

“the nature and quality of information going to the Board”,

18. the handling of internal audit and repairs inspection unit reports; the over 280 identified breaches of standing orders; and significant issues not being drawn to the attention of the board or being presented in a way that was not appropriate. My question to the panel is: where does the buck stop with this? Did you know about all that and, if so, when? Who has been held to account for this whole debacle? There are a lot of questions, but, finally, is anybody who was responsible for that still in position?
19. **Mr Haire:** I will pass over to John McPeake in a moment. We became aware of those issues when our governance review found them in 2010, and my head of internal audit reported them to me in late autumn 2010. A range of questions clearly had to be asked about the quality of information that was going to the board. The Housing Executive board has been pursuing the issue of what information it was getting in the process. I have been getting reports from the board on how it has gone through the full range of the issues. The range of areas, for example, where there were breaches in variations in contracts is now being worked through. We have been monitoring that closely, and a system of oversight is in place.
20. I will ask Dr McPeake to give us some sense of the Housing Executive’s perspective.
21. **Dr John McPeake (Northern Ireland Housing Executive):** Thank you. We accept that mistakes have been made. We are not here to make excuses about that. I was appointed to the post of accounting officer of the Housing Executive last September, and I am here to account for the organisation’s actions. I hope that I will have the opportunity to explain that my focus is principally on taking this forward, addressing the shortcomings and
- making it right. However, I will offer a number of observations on the specific issues that you raised.
22. We accept that there have been problems in the level and detail of information going to the board. In the past six months, we have conducted a significant review of the reporting of information in various levels of the organisation. As Mr Haire indicated, we accept the governance review’s findings, which showed very clearly that we had been reporting information on key things at too superficial a level for the board. We accept that, and we have taken steps to fundamentally change our reporting arrangements.
23. We have introduced a new risk and performance committee. One of the issues that the Audit Office points out, which we also accept, is that the agendas of the board and the audit committee were very long and detailed. That meant that there were occasions when the right amount of attention was perhaps not given to key issues. With the senior management team’s support, the board has restructured the agendas for those important meetings and introduced a new committee structure to give proper time for the scrutiny of those key issues. It does not take away from the fact that mistakes were made in reporting information to the board, but we believe that we have a way forward.
24. It may be worth explaining breaches of standing orders. To give an easy example, we may have an adaptation scheme where we are going to build an extension on a property. A scheme is designed and has an estimated cost of, let us say, £30,000. When the contractor goes on site to do the work and opens up the ground to put foundations in, he may find that he has a problem with ground conditions. If the on-site supervisor gives him the authority to proceed with that work and supervises it but does not close the circle of approval on the internal system, that would be a breach of our control arrangements. To address those issues, we have conducted a fundamental review of the organisation’s standing

- orders. We have new standing orders, which remove any ambiguity around this. We have put in place training arrangements for our project managers to make sure that they understand exactly what they are supposed to do at each and every stage.
25. I have introduced a new arrangement for the technical schemes so that the chief executive's business committee, which meets every Monday morning, gets a regular update on breaches of standing orders. In keeping with one of the governance review's recommendations, we will be providing an analysis of breaches to the board. The intention there is to identify whether there is any pattern and whether it is associated with any particular types of schemes, locations, contractors or individuals. At the end of the day, our belief is that if we can put in place a system — I am confident that we can — whereby we can ensure that the officers know what they are supposed to do and are properly equipped to do it, we will take appropriate disciplinary action if they do not do it.
26. The last point that I wanted to make is about clearing internal audit reports. It is regrettable. I am embarrassed to be here before this Committee, and I can see a couple of examples in the report where audit reports were not dealt with in a timely way. Since becoming chief executive, I have made very clear to my colleagues that although it may be acceptable to challenge a recommendation from inspection or audit, it is not acceptable to use that challenge as a means for not progressing the report to the audit committee. That is one of the important lessons that I think that we have learned from this. I do not offer an excuse, but, as the accounting officer, my focus is to move forward and address those issues.
27. **The Chairperson:** Thank you, Mr McPeake. Since this situation came to light, a number of people have moved on and retired. However, I will ask the question again: are any of those who were responsible still in position in the Housing Executive?
28. **Dr McPeake:** Yes. Several people have been disciplined on a number of occasions for different things. In each case where there is wrongdoing or we feel that someone has done something that they should not have, we look at it in the context of whether there should be disciplinary action. As you rightly said, a number of people have left the employ of the organisation in recent years. In fact, we terminated the employment of a senior member of staff for a breach of the code of conduct that related to those sorts of issues.
29. I have asked my director of human resources to make sure that the Housing Executive adopts a consistent approach when it is addressing these issues and shortcomings on the part of staff. One of the problems that we have is that if the organisation has not provided the appropriate training for employees, it is difficult, in all honesty, to deal with poor performance, because the organisation is partly culpable. As chief executive, my focus is on making sure that we do not put ourselves in that position again, as I said. I will make sure that there is absolute clarity about what is expected from my employees, and they have to be absolutely clear about what they are supposed to do. In those circumstances, there is no place to hide.
30. **The Chairperson:** You mentioned the fundamental review that is in place, particularly that of the standing orders. You will appreciate that that would not have to happen if things were right and that there would not need to be a fundamental review if things were being carried out properly. The board and the audit committee seem to feel that the wool has been pulled over their eyes for a number of years. You talked about the lessons that can be learned from this. Indeed, I hear that a lot, but the Committee will be looking at the lessons learned and the recommendations that you have put into place.
31. **Mr Girvan:** Dr McPeake referred to an area that I am concerned about. For argument's sake, if a contractor comes and digs foundations but cannot locate

- the finds, quite a bit of expense is incurred in trying to go deeper or to pile or put in a raft. Therefore, that is something that was not scheduled for. You mentioned the figure of £30,000. If that £30,000 were the cost of total build and the local manager or whoever is in charge of maintenance comes out and says that they have to do that work to allow them to continue, that is not necessarily followed through. Therefore, the contractor ends up getting the blame for not delivering on the contract, and the local maintenance manager or inspector ends up in trouble because the audit department or your finance department, which is making the final payment, says that it is a breach.
32. The report states that there was £924,000 of overpayments. When it was investigated, the figure that was stated was £35,000. How can that sort of discrepancy appear after negotiations end up at the point where there is £35,000 as opposed to almost £1 million? That indicates to me that the contractor is not to blame on every occasion but that a reporting process is definitely not working.
33. **Dr McPeake:** I have to say that I agree. I do not want to give the impression at all that we are saying that, where we have issues with contract management, those are solely down to the contractor. It would be wrong to give that impression. I thought that I had been clear in making the point that, on occasion, our staff have not done what they are supposed to have done.
34. One of the issues with overpayments comes down to estimating the scale. Whenever we look at a large number like that, what often happens is that a sample is taken, and, on that basis, it is extrapolated to a larger figure. However, our belief and approach to overpayments is simple: in every case where there is an identified overpayment, we seek to analyse it, seek an agreement with the contractor about it and to recover those moneys. We identify those overpayments in a variety of ways, and I have no doubt that, in due course, we will get a chance to explore that. So, I believe
- that we have a rigorous approach to overpayments, and a number of examples that are quoted in this important audit report illustrate that. We cannot be complacent, however, and when you have bodies before you, they make lots of promises about what they will do. One of the lessons that I have emphasised to my colleagues — the Chair made this point — is that, after we leave here, the key is that you judge us by our actions. We have a programme of work in hand, but we are not naive about it. We realised that solving this problem is not just about initiatives. It is not just about doing this today or something else tomorrow; it is about being vigilant and moving forward. I accept that the Housing Executive has perhaps not put the effort into making sure that it has always remained vigilant to these tasks. My personal belief and philosophy is that that is what I expect from my colleagues. That is what I expect of myself, my colleagues and my team.
35. I have taken steps to strengthen the corporate assurance arrangements in the Housing Executive. I have made it independent of the operational divisions. So, there is no way in which an operational division can have an issue and try to keep the light from shining on that. We have an independent assurance process that gives me, as the accounting officer, confidence that the job is being done right.
36. I do not yet have the confidence to say to you that we have got this completely solved, but I have the confidence to say that we are moving in the right direction. We will be subjecting ourselves to further independent scrutiny, and, as I say, I believe that the truth is here. We are committed to solving these issues, but you should judge us by our actions.
37. **Mr Haire:** In about six months' time, I will be sending my team from the Department in again to check out these issues independently. That is one of the key things, because, being outside the organisation, the Department can help by coming in with an external view and by shining lights on issues. We will do that not only on this issue but on a

- range of Housing Executive expenditure issues.
38. **The Chairperson:** Before members come in, I will go back to my question about those responsible still being in position. Is there any way that the Committee can have a memorandum of staff moves and retirements? Is that possible?
39. **Mr Haire:** We should be able to provide something of that sort. That is no difficulty.
40. **The Chairperson:** Again, Dr McPeake, I commend you for your honesty in telling the Committee that you do not have the confidence at this point to say that this situation has been completely resolved. From today on, we will judge you by your actions and outcomes.
41. A number of members have questions. I ask them to keep their supplementaries brief. You have a list of questions to ask.
42. **Mr Hussey:** Dr McPeake, you made reference to breaches that would be referred up to the board at certain times. How often does the board meet? How often are you aware of breaches? What steps do you take where breaches are recorded? Can you, in effect, reverse a decision where there has been a breach?
43. **Dr McPeake:** Let me answer that in two ways. Along with our finance colleagues, the first thing that we have done is introduce a new control into the finance system. So, it is no longer possible to pay a contractor any money above the approved contract sum. So, if there were a breach of standing orders that would take the contract expenditure above the approved limit, the payment could not be made until the breach were resolved. That is an important control that has been introduced.
44. On the frequency with which we know about these things and what happens, breaches of standing orders are required to come through what is called the clearing-house process. The clearing house comprises a group of technical staff at area levels, and the action depends on the value of the scheme. A low value scheme is under £100,000 and is dealt with at area level. Schemes that are above £100,000 come to a central clearing house, which meets once a week. That meeting is chaired either by my colleague here, Mr Flynn, the director of housing regeneration, or by the recently appointed director of design and property services, Siobhan McCauley. They meet weekly to clear all the schemes that are there for approval, including the breaches of standing orders. In addition, I have asked that when there are breaches, we add those to a register that comes forward to the chief executive's business committee on a regular basis for analysis. The intention there, as I mentioned in my previous answer, is to seek to identify whether there are any common themes emerging or any trends that would cause us to change the way in which we do our business or introduce new controls.
45. I have also asked my operational colleagues, when there is a breach of standing orders involving a Housing Executive contract, to make clear to the director responsible that they have to seek an explanation for that breach from the officers involved. I believe that we now have a much more robust process for challenging officers where there has been a breach of standing orders. In most cases, I have to say, the breach comes about because formal instructions have been offered and work has been supervised on site, but the officer in question has not managed to get the internal approval arrangements to catch up with his decisions. In a lot of cases, there are very good reasons for that happening, because of the urgency of it, but we believe that the internal systems of the Housing Executive are sufficient to ensure that if people follow them absolutely, they can avoid the breaches in the first place. That is my objective in introducing monitoring. I want to make sure that we reduce the number of breaches of standing orders to the lowest number possible.
46. **Mr Hussey:** How many have there been since you introduced the new rules?

47. **Dr McPeake:** I do not have the figure off the top of my head, but I can find that out for the Committee and respond. However, the new rules came into effect at the back end of last summer, so they have been in place for about 12 months. There have been a number of breaches since last year, but they are much fewer in number than in previous years. Each one is followed up, and we look for an explanation in each case. The key point we have made to our technical officers is that if we find a pattern where people seem to be making similar mistakes after having been advised about it, there will be consequences.
48. **Mr Hussey:** Chair, can we ask for a note of how many, and their value, since that was introduced?
49. **The Chairperson:** Yes. Dr McPeake, will there be disciplinary action for repeat offenders?
50. **Dr McPeake:** Yes. I have personally given the message to my staff that we have a tolerance for people making mistakes — everybody makes mistakes — but when people make repeated mistakes, particularly having been warned about it and where it has been made clear what the circumstances are, our tolerance is much less. The view is that if people make repeated mistakes on the same issues, there will be disciplinary consequences. We have made that very clear to our officers.
51. **The Chairperson:** Thank you. I remind members to switch off their mobile phones, as I can hear them interfering in the background.
52. **Mr McKay:** Just to follow up on a point that the Chair made, how many disciplinary procedures have there been and how many are ongoing?
53. **Dr McPeake:** I do not know the answer to that. We are a big organisation of 3,000-plus employees. Staff are disciplined for various things at various stages in an organisation of that size, but in the context, for example, of the Red Sky case study, I can tell you that 29 people have been interviewed and assessed through the disciplinary process at various stages, although we have not completed our work on that. I do not know the answer to the broader question because people are disciplined for a variety of different things.
54. **Mr McKay:** How many in Red Sky have come through the process and been disciplined?
55. **Dr McPeake:** Twenty nine people were considered. A number of different outcomes arose from that. Some people retired — I think five people retired — and eight people actually received formal disciplinary penalties.
56. **Mr McKay:** How serious are they?
57. **Dr McPeake:** The most serious is a final written warning, which means that if an issue happens again within a defined period, there will be an automatic dismissal. In each case, the Housing Executive does not decide the penalty. We identify the cases where we believe that disciplinary action is warranted, the case for disciplinary action is prepared, a panel is convened and hears that case, and the person being disciplined has a right to put their side of the story and offer points of mitigation. The panel will then decide, on the merits of the case, what the appropriate penalty is. There is, of course, a facility for the person being disciplined to appeal, and, ultimately, that could go to what is called a joint appeals board. The Housing Executive does not make the decisions; they are made by the disciplinary panel. That is the normal process. The reason in this case that final written warnings were determined to be the right outcome, as opposed to dismissal, came down to the panel accepting the argument that the Housing Executive, in a number of cases, had not properly trained some of the people involved in delivering the services, which is why I made that point at the very start. Since I took up my job last September, one of my top priorities has been to make sure that we can lock out that argument, to satisfy ourselves that we are doing everything possible to make sure that we have the right staff in the right jobs, that they have the right skills

- to do the jobs and that they know what is expected of them and that we have trained those people at the appropriate level. Once you have done that — and that is my intention — these issues become much more straightforward to deal with.
58. **Mr McKay:** I have one final question on that. If the workers on the ground were not trained appropriately, surely someone above them should have been sacked for that. Do you agree?
59. **Dr McPeake:** Our approach to the disciplinary action taken on Red Sky and on any contractor, when there has been an issue and staff have not done what they were supposed to have done, is to focus, first and foremost, on those people whose job —
60. **Mr McKay:** Surely it is a failure of management.
61. **Dr McPeake:** I was just going to make the point. We focus on those people whose job it is to manage the contract. So, in the case of maintenance staff, the disciplinary action is focused on the maintenance officers and their line managers, the district maintenance managers. They are the line management of the maintenance function. We have not yet finished that process. Having completed the work, we want to see whether there are any other further issues for the management tier beyond that. I am very conscious of your point, which is why I said explicitly that we have not completed our process of disciplinary action.
62. At the end of the day, I want to be in a situation in which people are clear on what is expected of them, are properly trained and skilled to do the job and are held to account. There are no excuses in those circumstances. At the moment, the weakness has been that we have not always maintained the level of training. It is not that there has been no training, but, in some circumstances, we have not maintained the level of skills that we could have or should have.
63. **The Chairperson:** Just going back on the panel that was there for the disciplinary process, can we have — you know I requested information earlier around staff movements and retirements. Can the Committee request the names of those people who were on the disciplinary panel? Is that possible?
64. **Dr McPeake:** Do you mean the panel that heard the —
65. **The Chairperson:** Yes.
66. **Dr McPeake:** I do not see why not.
67. **Mr Gerry Flynn (Northern Ireland Housing Executive):** There were a number of panels.
68. **Dr McPeake:** There was more than one panel; panels were convened for each case. However, I can pull that information.
69. **The Chairperson:** Typically, what is the composition of those panels?
70. **Dr McPeake:** Oh, generically? Sorry. I can tell you that now. Normally a senior member of staff from a different division would chair the panel. There would also be a senior person from within the division and a professional representative from human resources. That is the way we do it. Panels include individuals from outside the division of the person who is being disciplined.
71. **Mr Dallat:** Chairperson, I want to pick up on what Daithí said and, maybe, follow up on a remark that Dr McPeake made earlier. You said that, following the adverse report, you were embarrassed to come before the Committee. I share that with you, but I suspect that there are an awful lot of people in the Housing Executive who share it with you as well. Many of us, particularly those who have been in public life for a long time, remember the achievements of the Housing Executive — the slum clearances of the 1970s and the massive social building programme of the 1980s and 1990s. Those are all fundamentally important and are part of a social history that must be protected.
72. Are your disciplinary panels aware, not just of their direct jobs but of the fantastic history of the Housing

- Executive that needs to be protected? Does 29 people being disciplined reflect seriously the number of people who have, in a sense, brought a wonderful organisation into some kind of disrepute and attracted criticism to it that it should not have had? I know that you said that you would not make any, if you like, fundamental promises, but are you really aware of the tradition that you need to protect?
73. **Dr McPeake:** Yes, I am. I want to make it very clear to the Committee that when I say that 29 people came through the process, eight were given penalties. Therefore, in quite a number of cases, the decision was not to apply a penalty. I want to clarify that.
74. We are very acutely aware of that. That is one of the reasons why I am embarrassed to be here; there was a case to answer. There are examples in the report that I am embarrassed about because they should not have happened; I believe they are a stain on the record of the Housing Executive.
75. I have been an employee of the Housing Executive, in a variety of different jobs, since leaving university; I joined as a graduate trainee in 1982. I grew up as a tenant in a Housing Executive house. My parents bought that house and became homeowners, which would not have happened if it had not been for the Housing Executive. I share with you the belief that the Housing Executive has done great things, but I am the chief executive and accounting officer, and I do not believe that any organisation can solely rest on its laurels or its merits. I want to protect the things that we have done well. However, where we have made mistakes, I want the Committee to understand that I as accounting officer, and my management team and board, are absolutely committed to addressing those issues so that we protect what the organisation has done in the past and continue to provide a good service to the tenants we serve.
76. **Mr Dallat:** Finally, Chairperson, I was not suggesting for a moment that the organisation should rest on its laurels.
- Perhaps, to some extent, that might be what has happened. However, I am conscious that, down through the years, people have lost their lives working for the Housing Executive; they have been murdered on housing estates, work sites, and so on. I think, for all those people, we need to make sure that this tiny minority of people who have created the adverse elements of the report — and it is not the worst report that I have read. Nevertheless, it creates sensationalism. Are we sure that everybody in the Housing Executive understands that they belong to an organisation with a good history and that if they fail to meet the standards that you now say that you are setting, they know the results?
77. **Dr McPeake:** Yes. I believe that that is the case. The board, the senior management team and I have been pushing the argument that we need to make sure that we protect the organisation's service delivery record and provide the services that we are obligated to provide for tenants, but make sure that, in doing so, that does not come at the cost of good governance. I am going to promote the principle of personal responsibility, accountability and general good governance, and I believe that we are on the road to doing that.
78. **Mr Dallat:** That is good.
79. **Mr Gerry Flynn:** As a supplementary to what John has just said, in leading out that culture, in the past six months, John and I have met every single maintenance officer, maintenance manager, district manager and area manager to completely clarify for them what their role is in providing a maintenance service. We have encouraged all of them to make sure that although their job is to be out inspecting properties, they hold their managers to account. Our managers clearly have to manage the maintenance service. The maintenance officers are there to provide an inspection service, and they have clearly been put in place now to manage the monthly contract meetings with the contractors.

- Therefore, as we move forward, there is clarity in what is expected from people, and we will expect everybody to hold each other to account.
80. **Mr Dallat:** That is welcome.
81. **The Chairperson:** Thank you. It is paramount that public confidence is restored. Taxpayers out there have been asking the question, so it is of paramount importance that, going forward, you relay to the general public the fact that you are willing to work with the public on this also.
82. **Mr Anderson:** Thank you, gentlemen, for coming before the Committee. Dr McPeake, can we stay on the disciplinary topic? You told us that 29 people were identified. Is that on one contract alone?
83. **Dr McPeake:** No. It is the Red Sky contracts, so it relates to, I think, six contracts in total.
84. **Mr Anderson:** There may be other contracts that will need disciplinary action as well.
85. **Dr McPeake:** Absolutely. I used that simply as an example. Our philosophy here is that if we find that there is wrongdoing on any contract issue and that there are disciplinary matters, we will proceed with those.
86. **Mr Anderson:** With regard to those who have faced disciplinary action or who have come before the disciplinary board, what about their bosses or senior management who may have left the organisation? Is there any recourse or action that can be taken in relation to those individuals?
87. **Dr McPeake:** Sadly, no. If an employee leaves the Housing Executive, he is no longer in a contractual relationship with us. There is nothing that we can do about that.
88. **Mr Anderson:** So some of those people could have left with a big handout and said bye-bye, and we are now left in the position where others below them are facing disciplinary action for actions that those people above them should have taken. Is there fairness in that?
89. **Dr McPeake:** Let me explain it this way: our belief here is that people have made mistakes. We are looking at each circumstance in which that happened, and I have accepted already, and my colleagues accept, that there have been management failures. We have not completed our disciplinary approach. The organisation — there are people of an age, and if they are entitled to retire, there is nothing we can do to stop that. You could argue, perversely perhaps, that the fact that they have retired has, in a sense, solved the problem. I am not making an observation about any particular person; we are talking generically about it. However, in the Red Sky example, a number of staff who were involved retired, and we believed that there was a disciplinary case to answer. At the end of the day, the problem from the Housing Executive's point of view is resolved. I understand the point you make, but there is nothing I can really do about that.
90. At a previous time, to do with a different disciplinary matter, we did explore with our pension provider what scope existed if somebody was involved in a very serious issue and escaped a disciplinary penalty simply by retiring. It was made very clear to us that there are only very limited circumstances — treason, I believe, is one of them — where you will not get your pension, and the Northern Ireland Local Government Officers' Superannuation Committee, our pension provider, told me that they have people in prison who have committed serious crimes and who are still getting their pension.
91. Our belief is that we have to create the right culture where people take personal responsibility for their actions and are held to account for those actions when they go wrong. The organisation has to protect itself and make sure that it does everything it can to put the right people in the right jobs. It trains those people to make sure they can do those jobs, and if they do not do their job, there is nowhere else to go, and there is clearly a case for taking action. The weakness in the past was that we have not been

- able to properly lock out that issue, and that is my intention moving forward.
92. I am sure that we will talk about training later but I will make one point. On the maintenance side, we have introduced a new competency-based training arrangement that will be externally accredited by the Chartered Institute of Housing, and we want to make sure that we invest properly in that so that people cannot use an excuse of saying, “Well, I did not do that because I did not know about it”, or “I did not do that because you did not skill me up to do it or give me the right training.” We have accepted some weaknesses on our side, and we need to address those.
93. **Mr Anderson:** Just finally, then, what we are saying here is that those who are still in the organisation and those who have left and may have been more responsible than the ones who are now in situ, when they face disciplinary action, will that be taken into consideration? I know that you are not on the disciplinary board, but, surely, as a matter of fairness, if someone has left the organisation with a big handout, someone in a lower position should not carry the can for that person.
94. **Dr McPeake:** Let me be clear about this: if an officer is brought to the disciplinary panel, that officer is entitled to make their case, including any mitigation they may offer. That mitigation may include those issues. It will then be for the panel to decide what weight to give to those issues.
95. **Mr Anderson:** Will we see any of that information, if it does happen to come out in the disciplinary process, about who maybe is responsible? Will that be identified, and will we be able to see that?
96. **Dr McPeake:** I am not sure what the protocol is, but, normally, disciplinary matters are confidential. I do not honestly know the answer to that. I will check.
97. **Mr Anderson:** Everyone wants to see openness and transparency here in relation to all this.
98. **The Chairperson:** We can follow that up, Sydney, and try to get that information, if possible.
99. Members, we will now continue to go through the report. It will maybe be a long session, and I ask members to put their question and be brief. So, first is —
100. **Mr Anderson:** Number one.
101. **The Chairperson:** Yes, thank you. Your first question.
102. **Mr Anderson:** Can we have a look at the assessment of contractors’ bids, Dr McPeake? Paragraph 1.3 of the report provides some information on contractors’ bids for maintenance contracts and how the Northern Ireland Housing Executive assessed those. It appears to me that the Northern Ireland Housing Executive’s schedule of rates is the key to all this. As to the new contracts that came into operation in August, how did the Northern Ireland Housing Executive assess the reasonableness of its schedule of rates? How were these benchmarked?
103. **Dr McPeake:** I will let my colleague Mr Flynn make a number of points in a moment, but, as a general observation, I would say that the schedule of rates approach, as I am sure that members understand, is basically a very detailed list of all the possible jobs you might do. For example, if you were going to replace a door, there would be a schedule of rates code for that with a price. Those are priced by our quantity surveyors, who reflect the market prices. They do research in the supply chain, engage with the industry and look at the tender results that have come in from other exercises. Also available is the national schedule of rates, which is prepared in GB. That can be used as a point of comparison.
104. As a general rule, the schedule of rates is prepared locally to reflect local pricing and supply chain issues, and will take account of tender information that is available on the basis of recent competitions. That becomes the basis for the tender. As to the tender itself, the companies that bid against that

- schedule will offer either a discount or an increase against the schedule. The Housing Executive reserves the right, when evaluating the tenders, to call in any contractor where they believe the tendered price is so low that they could not do the job to the quality required, and they will not be accepted.
105. At the minute, the market is incredibly keen, so we are getting tender prices that are below those in the schedule of rates. We are not unique in that. We have checked with our colleagues in the housing association movement, and they are finding exactly the same thing. We have also checked with our colleagues in other parts of the public service and with our colleagues across the water and they are finding exactly the same thing. The issue for us here is that we challenge a contractor to demonstrate how he can deliver the service at the rates that he is offering, and if we are not satisfied with his explanation, we will not accept his tender.
106. I can give you an example, although it is not a maintenance example; it is to do with grounds activity. Tenders came in and were quite low by our initial assessment, but the tenderer was able to provide extremely comprehensive cash flow modelling for his business, and was able to convince us that his prices were reasonable. Now, we have taken the precaution in moving forward with these new contracts to ensure that they are a framework contract. Not all members of the framework are given what we call work packages, which are groups of districts, to work on at the start. If, under the new contract management arrangements, a tenderer is unable to deliver the service at the level that is required and at the quality required for the price tendered, we can escalate that contract determination in a short period and bring a second framework contractor on board.
107. We are very conscious of those issues and, at the end of the day, the market is one of the key factors that we consider, but we are not so blind that we decide to accept it without question. I do not know whether Mr Flynn wants to add anything.
108. **Mr Flynn:** That was the point I was going to make: we had what we thought was an abnormally low price submission so we had it thoroughly checked and the contractor had to demonstrate that he could deliver. The issue for us in managing those contracts on the ground is that if contractors come in with a keen price and the opportunity presents itself, they will look for additional works or try to get additional funds out of the contract and it will be much more difficult for the operatives on the ground to manage that contract. We challenge them at the very beginning as best we can to try to ensure that we have reasonable contracts in place with reasonable prices, recognising that, in many respects, the job of the contractor is to make a return on the work they are doing. We acknowledge that, but it has to be a reasonable return.
109. **Mr Anderson:** That was going to be my next question: how do you check the financial viability of companies? You tell us that they will not be accepted. Do you find that often in your contracts? With the difficulty of finance, you may have to say that you do not think that stacks up at all and not accept that. Is that happening?
110. **Dr McPeake:** It does happen from time to time. We do a financial assessment as part of the tender process, so most of our public procurement exercises go through a pre-qualification questionnaire or preliminary stage. Part of that stage of the tendering exercise is that we will have a viability exercise conducted on the contractor. We rely principally on Constructionline, which provides that service for all public sector bodies in Northern Ireland. However, as you will see in the Audit Office report, there was an issue with Constructionline and Red Sky, so we do challenge it. So, although we use Constructionline as our key source of information, it is not the only information that we rely upon.
111. We try to structure our contracts in such a way that they are amenable to the small and medium-sized enterprises that constitute the Northern Ireland construction industry. It is not designed

- in any way to be anticompetitive or to prevent anybody else applying. It is a recognition that we want to keep open, as public procurement policy requires us to do, opportunities for small and medium-sized enterprises to bid for the work. So, our work packages are, generally speaking, medium-range. However, what happens occasionally, Mr Anderson, is that some contractors bid for multiple packages, and when you bid for multiple packages, and depending on the keenness of your bids and the quality of your submissions, you may end up being offered more than you are really comfortable with. So, there is an opportunity before the contracts are finally agreed to take account of the genuine capacity that exists within the firms, financially and logistically, to do the jobs.
112. Our belief is that, at the end of the day, the contract has to be the main point of delivery for our maintenance function for our tenants. We have to be satisfied, because we have a tenancy obligation, that we have a system in place that tenants can get the repairs done that they need, and that we get that work done to the right quality and do not pay any more for it than we should.
113. **Mr Anderson:** Are you in a position to tell us what the successful bids were, in the particular instance here?
114. **Dr McPeake:** I do not know the details. The exercise is completed. If you had a particular question, we might know between us which district it is.
115. **Mr Anderson:** Well, if you had done that, maybe that could be —
116. **Dr McPeake:** We can certainly write to the Committee. What we call response phase 2 and 3, the most recent response contracts — that work is all now complete. We do have a challenge outstanding from one bidder who was unhappy with the process, but we proceeded to make the contract awards on the basis of legal advice. The final contracts are in place from September. We now know which contractors have
- which work packages across the whole of Northern Ireland.
117. The next issue for us, because response maintenance was divided into three groups, this most recent being phase 2 and 3, is that we need to go back and redo phase 1. That is necessary because this most recent procurement has taken advantage of the lessons from the gateway review that Mr Haire mentioned. We genuinely believe that we have a very good form of contract, very robust key performance indicators (KPIs) and an ability to hold contractors to account that we never had before, including applying what we call low-service damages — what you and I might refer to as penalties. If somebody does not perform to the standards expected, we will be able to penalise them financially. That is something we have not been able to do in the past, and I genuinely believe that will bring about a sea change in the attitudes of contractors and, in many ways, vindicate the work that my maintenance staff are doing. At the minute, they fail one job in five, so there is an issue about the contractors doing the job that they are paid to do and not having us bailing them out and doing their quality control work for them.
118. **Mr Flynn:** There are 21 work packages at the minute. Nineteen are external contractors and two are managed by our internal direct labour organisation. The four other work packages will be tendered before 14 August. Those 25 work packages are managed by 10 contractors, so there is a spread of work across the Province and the range of players, which provides us with cover if any particular contractor gets into difficulty.
119. **The Chairperson:** Thank you. Dr McPeake, you said that there are now opportunities for small to medium-sized enterprises to bid for those contracts. Was that the case previously? It has not been, and is that in place now? Is that opportunity there now?
120. **Dr McPeake:** We have always believed that our contract packages are of a scale that is suitable for the small and

- medium-sized enterprises that make up the Northern Ireland construction business. So, we have not gone to a situation, for example, where you group all our districts into one and seek one major contractor. I have colleagues who work in major authorities in England, for example, and that has been the model that they have applied. Organisations with 20,000, 30,000 or 40,000 properties have them all managed by one contractor. We have sought to reduce the number of contractors for reasons of standardisation of service and to make sure that we get a good-quality service that we can stand over across the Province, but not go so far as to prevent small and medium-sized enterprises successfully winning that work.
121. We also emphasise to our supply chain that we encourage firms to form groups and to bid as consortia if necessary. We have had a lot of success with small firms grouping together into consortia for our contracts.
122. **The Chairperson:** Thank you. I call Mitchel McLaughlin.
123. **Mr Mitchel McLaughlin:** Thank you very much, Chair.
124. **The Chairperson:** Apologies, Mitchel; Paul is next.
125. **Mr Girvan:** You have alluded to one of the questions that I was going to ask. It relates to the fact that two of the contractors who have been working for NIHE have gone into administration recently. I want to be sure that contractors are not being put in a position of having to tender for a contract at a price that will be impossible for them to deliver.
126. I have some experience, having worked with the Housing Executive for years. I have heard people saying that they did not get paid for a job. When you ask why a contractor was not paid for putting a new front door on a property, you can be told that although he laid out £200 for a front door and put on three hinges, he left out two screws on the top hinge. For the sake of 4p, 5p or whatever, and although he laid out £200, that is struck off. Granted, the guy will say that they specified that the contractor put on only a three-screw hinge and that he has put four-screw hinges on to the door. I use that as an example because that happened. There were four screws on each side of the hinge. There are eight screws per hinge and three hinges on the full length of a front door. However, instead of putting in eight screws, he put six into each of them. On that basis, he loses out on a payment and it becomes a dispute.
127. I wonder about the two contractors who have gone into administration. What mechanisms have been put in place to ensure that the contractor will not go into financial difficulty when inspections are done? Sometimes inspections are not done, but sometimes they are done because people want to find holes in certain contractors' work. I can give you examples of people saying, "We know who did a job; we'll go out and make his life as awkward as possible." I am not saying that that always happens, but it can happen.
128. **Dr McPeake:** Gerry wants to make an observation, but I will say something at the outset. Our belief — and it may be a very simple one — is that we have a specification for the work and we expect the contractor to do what is specified. Our internal corporate assurance people police my staff. They are my staff, too, of course, but they police the operative part of the business. That is what they expect. They hold us, as an organisation, to account. They provide me, as the accounting officer, with the assurance that the contractors on whom I am spending public money are doing what I am paying them for.
129. At the same time, if you are asking whether there is room for common sense, the answer is that, of course, there must be room for common sense. At the end of the day, a contractor must do what he is paid for. If he does what he is paid for, there will not be an issue; that is the truth of it. We also take very seriously our obligation to comply with the rules about prompt payments. Most of the issues that we have with making

- payments promptly are due to problems with the work.
130. For the Committee's information, it may also be worth mentioning at this juncture that we do not inspect every job. It is not possible to inspect every job. Each year, we do something like 330,000 repair jobs on our stock and maybe another 70,000 or 80,000 on our heating systems. We cannot inspect everything. The jobs that we inspect are pre-selected by the computer and there is no human intervention in that. Therefore, I do not accept the notion that someone might be vindictive and pick on a contractor. The computer determines randomly what jobs are inspected. That said, we are all living in the real world. We all have employees, and sometimes those employees have particular views. I want my employees to hold contractors to account because that is what I pay them for. I do not pay my employees to be vindictive, and I have no evidence that they are vindictive.
131. **Mr Girvan:** I want to go into the detail of when someone tenders for a job. Is consideration given to whether the pricing structure is adequate to make their business sustainable? Are any of the other 10 contractors that are up and running showing signs of financial hardship or difficulty?
132. **Mr Flynn:** It is very early in the new contracts. Some were let in August and the remainder in September.
133. To refer back to what John said earlier, under the new service credit system that we put in place, if contractors fail beyond our benchmarks, we will hit them with penalties: a 1% penalty for amber and a 3% penalty for red. It will hit them in their pockets. To allow them to get used to the new controls that are in place and the new way of working, we are running the contracts for three months. Therefore, for example, if contractors have a new contract in August, we will produce the performance data for the months of August and September. If they are failing on our KPIs, we will sit down with them to try to help them understand why they are not meeting our targets. By the time we get to October, they will be in the real game: if their performance continues below the bar, we will hit them with service credits. If someone fails a job in any given month and has an amber rating, they will lose 1% of their income for that month. Anecdotally, profit margins in any month are around 8%. Therefore, if you fail on 1%, you are losing around one twelfth of your profit. There are fine margins. It is not in our interest to penalise contractors every month. It is certainly in the interest of both parties, us and them, to understand what we expect.
134. To that end, we have done some root-cause analysis with contractors and our staff to determine why we fail on certain KPIs. As we said earlier, some of that falls on our part because we did not understand the complexity of the schedule of rates codes that we were using, made mistakes or were not detailed enough. On the contractors' part, their quality-assurance systems were not what they thought in some cases. They described what they were in a document, but, when it came to applying them, they did not do so. Again, in some cases, on their part, they misunderstood the schedule of rates. They used incorrect codes, which can happen.
135. Therefore, it is in our interests that both parties get a better understanding of what is required from each party, so that when we get into the real situation of applying live damages, we do not have to use that penalty. We do not want to apply damages and, ergo, fail jobs. It is in our interest to get the work that we expect because we are spending public money.
136. It is early days. Probably from October or November onwards, we will start to see the fruits of the application of the new contract arrangements.
137. **The Chairperson:** I call Mitchel. Apologies for earlier, Mitchel.
138. **Mr Mitchel McLaughlin:** Thanks again.

139. Paragraphs 1.9 to 1.11 deal with key performance indicators. As you will be aware, those were an integral part of the Egan-type contracts that were adopted in 2001. Given the stated or theoretical importance of KPIs, why did it take the Housing Executive nearly nine years to identify and address the fundamental problems that were highlighted in the internal audit report of 2010?
140. **Dr McPeake:** I have to say that there is no easy answer to that. I believe that what actually happened was that we missed an opportunity to make changes — improvements, I have to say — in the KPIs in 2007. Those contracts are actually multi-year contracts. Therefore, the early Egan contracts were let and ran for a period of time. We had issues with them. We worked with them and tried to improve them as they were live. However, in 2007, the first of the early Egan contracts were coming to an end. A number of things were changed at that stage. Unfortunately, some things were not.
141. The thing that I find particularly disappointing is that there had been an Audit Office report — a gas audit report — that made a number of important recommendations. Many of them were to do with procurement. We followed those up and actioned them. In particular, one related to low performance. We did not pick that up. We should have. There was an opportunity in those contracts to take a different approach. We did not do that. Hands up: mistakes were made at that stage.
142. The gateway review in late 2010 highlighted the issue that we were, in effect, doing the quality assurance work for the contractor. Therefore, we were paying him to do a job. He was obligated to deliver a service to a particular standard. We were doing an absolutely massive amount of inspection — something like 80,000 inspections a year. We had KPIs that were not particularly objective. As a result of that work, we have put significant effort into reviewing the KPIs. Twelve months ago, in September 2011, we had a second gateway review to look at what we have done and how we have got on with the KPIs. The review found that there is plenty of evidence that our new KPIs are relevant to the business, robust, well thought through, and are an example of best practice. As an accounting officer — I am almost talking against myself by saying this — I take that with a pinch of salt, because my belief is that the proof is in the pudding. Those new contracts are in place now, and I want to see them functioning and see the outworking of those before I feel confident in coming back to the Committee and saying that we have got this licked.
143. I believe that we have the right approach, and we have done a lot of work with colleagues in other organisations, subjected ourselves to external scrutiny and identified those weaknesses. We absolutely should have identified them earlier, but we have fixed those problems now. We will not be complacent about it because, as I said earlier, there is a risk in any organisation of our scale and complexity that you feel that because you have fixed one thing, it is fixed for good.
144. **Mr Mitchel McLaughlin:** Can I take it from that detailed answer that it did not even occur to people that there might be a weakness in the key performance indicators and that you missed an opportunity? I am keen to know whether any examination of the executive's records would reveal that there was a discussion on the subject and that it decided not to do it, or are we to accept that it did not even occur to anybody at that level in the Housing Executive that perhaps the key performance indicators needed to be reviewed and updated? It has to be one of the two, does it not?
145. **Dr McPeake:** I was not involved personally at that point, but I have reviewed the files, and that is what led me to the conclusion that an opportunity was missed.
146. **Mr Mitchel McLaughlin:** What was your role at that time in 2007?
147. **Dr McPeake:** I was on the design and property services side and had

- no role or responsibility in this. When I look back at what decisions were taken at that time and what papers were produced, I see that there was discussion about KPIs and changes were made. However, the changes were, for example, that whereas, in the past, we said that it was satisfactory to get 70%, they pushed those scores up to 80% or 85%, but the fundamentals of the KPIs did not receive the scrutiny that they should have.
148. **Mr Haire:** That certainly fits in with my experience. When we did the expert review in 2010, we told the Housing Executive that we needed to look at the issue, and it said that it was very happy to do so, but it did not raise issues. That happened when the independent experts came in. I remember the meeting where they said that the contracts were out of date. Everyone in the public sector had those sorts of contracts 10 years ago, but we should have moved on, so there is an issue. How did we fall behind? In about 2006 or 2007, when other people were moving on, why did we not keep on top of that knowledge and realise that we needed a different type of contract? For me, a key lesson was to question how we can always keep up to date with developments, as people are learning from processes, and keep on top of them. Clearly, we fell behind here
149. In relation to disciplinary issues, one point was that the original contracts were so general that they were very difficult to implement. They were too vague, and, therefore, it was very difficult for staff and everybody in the process. They were weak contracts, but, clearly, we were behind the ball.
150. **Mr Mitchel McLaughlin:** So, in the process leading to the preparation for setting a new round of contracts, that issue had not been addressed. It appears from what Mr Haire told us that an outside consultant realised that you were using outmoded definitions.
151. **Mr Haire:** We got people from GB who were experienced in looking at that type of contract.
152. **Mr Mitchel McLaughlin:** Were they brought in by someone to review the KPIs?
153. **Mr Haire:** The Office of Government Commerce got us a group of three experts who came and quizzed the system for a week and gave us a very quick, sharp and clear report, the recommendations from which are in the appendix to the papers.
154. **Mr Mitchel McLaughlin:** In that round of contracts, was there an updated set of KPIs and schedule for reports and visits?
155. **Mr Haire:** The ones that they looked at in 2010 were as John has indicated.
156. **Mr Mitchel McLaughlin:** So are we not talking about 2006 or 2007?
157. **Mr Haire:** I am sure that John is right that some were moved around. As the report makes clear, only two of the KPIs were really objective from the system, and most of them were fairly subjective in the process. That was the weakness. John has now put in place KPIs that are generated by the system, and they are objective in that sense. It is absolutely clear, and there is no question of judgement.
158. **Mr Mitchel McLaughlin:** One of the fundamental flaws — it appears to have been recognised since — is that it became quite difficult practically for the executive to rid itself of a contract that, on the basis of the KPIs, was underperforming.
159. **Dr McPeake:** That is a very fair observation. The KPIs were too subjective. We were able to terminate that contract, and it would be wrong to say —
160. **Mr Mitchel McLaughlin:** Sorry; did you say that you were able or unable to terminate contracts?
161. **Dr McPeake:** We were able to terminate contracts. I think that I am right that in the past 20 years, for example, we terminated 16 contracts. The report refers to one of those terminations as a big case study.

162. **Mr Mitchel McLaughlin:** Was that on the basis of the KPIs or outside of them?
163. **Dr McPeake:** That was on the basis of a range of different things. I am not seeking to defend the old KPIs, because we have accepted that they were not fit for purpose. However, it is indisputable that the gateway review that was carried out with the OGC was very important for us. It brought about a sea change in our thinking on the contracts. We should perhaps have realised that. We did not but we have learned that important lesson.
164. I want to make one important point. At that time, I was acting as director of housing — I did that for a few months before taking up this post — and I formed and chaired what is called a works procurement board. As chief executive, I continue to chair that board because I feel that it is critical that, having identified the shortcomings with response maintenance contracts and solutions for them, I make sure that those solutions are applied in our other works procurement activity. That new approach, with a new type of contract, stronger and more robust KPIs and low service penalties, has been applied to our heating contract, which was put in place in June. We are also well advanced on our planned maintenance contract, which will come into effect from January next year, and the dedicated double glazing contract.
165. My point is that we have sought to learn from the failures of the past and from the best practice that we got from the OGC. That was originally focused on response maintenance, but we have applied that across the board because we felt that it was work that needed to be done.
166. **Mr Mitchel McLaughlin:** I want to try to stay focused on a particular issue, and these very lengthy answers, which throw up other possibilities, make that very difficult. Dr McPeake, I am trying to establish whether there was a failure at board level to realise that the KPIs were failing and not delivering, whether the board was unaware that its staff and local managers did not have the tools to do their jobs and whether it could not ensure the quality of the work or performance. One of the main tools that we sent staff out with was the list of KPIs. If there was a failure in 2007, was that because the directors on the board were not asking the right questions? They have a heavy responsibility. The can may be carried at a local level, but surely someone at board level queried whether the KPIs were worth the space.
167. **Dr McPeake:** One of the other weaknesses identified in the Audit Office report was that we did not report KPI information to the board. So, the board would not have been fully sighted on that issue. That was a mistake and we addressed it. However, you are absolutely right: we have a professional procurement group in the Housing Executive and people who are technically qualified in procurement. Those things should have been identified.
168. **Mr Mitchel McLaughlin:** My next question is also on the reliability of the performance indicators that were used. The graphs on page 14 — figures 1a and 1b — show a very depressing and worrying picture. Paragraphs 1.12 to 1.14 are also quite astonishing and detail an error rate going from 5% to nearly 20%. The level of incorrect invoices is also recorded — I find “incorrect invoices” to be interesting language. If invoices were adjusted at the local level and not captured by you, there was something very seriously wrong with the systems you were using. There is also the question of whether incorrect invoices were being presented for work that was never done, or whether it was down to the incompetence of contractors who did not know how to accurately fill in claims for legitimate payments. Local officers making those kind of adjustments would have contributed to the blindsiding of senior management.
169. **Dr McPeake:** Gerry might want to make a couple of observations, particularly about the two charts. The chart really shows that we are failing. If you look, for example, at figure 1a, you will see that,

for 2010-11 to 2011-12, we have a new approach to the way in which we record the information on jobs that we fail. We are at the situation where, basically, we are failing one job in five. That happens when the contractor presents something to us, we say that we are not satisfied with that and the contractor will not be paid until it is right. We were failing high numbers of jobs in the past. The difference was that, before 2009-2010, we did not record the information in that way. We are a member of a national benchmarking club, and we have sought advice and peer review from our colleagues, and we are not aware of anybody who is recording that information. The key thing to emphasise here is that there is no weakness in us detecting the problem, and there is no weakness in us stopping that job before it is paid. The weakness is that we did not record the fact that we had to go back several times to the contractor to get it right. It is another example of what the gateway review highlighted, which was that the Housing Executive was, in a way, doing the quality assurance work for the contractor. Our approach is much more robust now. As the chief executive of this organisation, I am not happy having contractors about whom my professionals say that there is something wrong with one job in five that they submit. However, I am happy that my people are finding those and making sure that those jobs are fixed for the tenants —

170. **Mr Mitchel McLaughlin:** Yes, but at the time reflected in these reports and graphs, you had coming up to 30 years' experience.

171. **Dr McPeake:** Yes, you are exactly right. However, over the course of that period, the nature of contracts have changed many times. A lot of the issues around these particular contracts stem from the partnering ethos. The Housing Executive accepts, and the board is of the view, that we put far too much emphasis on partnership, far too much trust in the contractors, and not enough scrutiny over the work that they have done. We have sought to learn that

lesson. However, the key point is that we were doing that work and identifying the errors that the contractors were submitting and stopping those jobs before they were paid. It was costing us a lot of extra money to do that. Therefore, we believe that the new contract arrangements will solve that entirely. If you get a contractor who is submitting a high level of failures like that, he will get financial penalties. It is important to note a key point: we are still only doing a sample of inspections; we will be doing about 14% of jobs. However, if you are the contractor in a fictitious district — Ballygomuck — and have done 1,000 jobs that month in that district and my inspectors do their 14% inspections and come back and say that you have failed your KPIs, I will be taking money off you for all those 1,000 jobs, not just for the 70 or 100 jobs that I inspected. I really believe that that will solve that problem.

172. At the end of the day, we must ensure that we put the risk where it appropriately rests. The contractor is obligated to do the job that he is tendered to do, and our job is to make sure that he does it. I have to have a system that gives my board and, ultimately, Will, as the senior accounting officer, the assurance that we are managing those contracts effectively.

173. **Mr Mitchel McLaughlin:** Colleagues might move on — I think they will — to examine the kind of institutional resistance that we found when, in fact, audit reports were filling up with evidence that there were problems. It raises this very important question: given the circumstances that I have addressed, who is held primarily responsible? Is it the contractors or the Housing Executive? In fact, was that the management culture? Was it a case of, “We did not want to know, we did not ask the questions, so we are not looking for the information”?

174. **Dr McPeake:** I think that it is a bit of both, to be honest. Contractors have not done the job that we require of them, but we have not covered ourselves in glory in the way in which we managed

- those contracts. I come back to the point that I made earlier: I really, genuinely believe that we have a way forward on this that will address those concerns. If you come back to that issue again, I believe that we should be in the position where I expect every member of staff, regardless of whether that person is a clerk in an office or a director of the organisation, to do what they are supposed to.
175. **Mr Mitchel McLaughlin:** OK. I have some further questions for a later stage of the meeting, but I want to make one reference to the earlier discussion. Has every staff member of the Housing Executive received a staff handbook that details the disciplinary procedures, processes and sanctions?
176. **Dr McPeake:** In the modern world, it is done electronically. We have fundamentally reviewed the governance arrangements. We have so far completed governance training for every member of staff from the board down to what we call our level 5 grade, the middle managers. Between now and the end of the year, we will complete that training programme for the remaining staff. So every member of staff will have had it.
177. **Mr Mitchel McLaughlin:** So the staff handbook —
178. **Dr McPeake:** The staff handbook and the code of conduct are available on our internet site for every member of staff, and just today a fresh version of that was issued.
179. **Mr Mitchel McLaughlin:** Has it been reviewed?
180. **Dr McPeake:** It has been fundamentally reviewed and reissued.
181. **Mr Mitchel McLaughlin:** That is good. In light of these ongoing enquiries — not just that which is dealt with specifically in the report, but the ongoing process, which I welcome and support — is it still possible under the reviewed disciplinary procedures for people to offer themselves for voluntary early retirement if they might be the subject of an investigation, or do your new procedures prevent that happening?
182. **Dr McPeake:** To be honest with you, I am not aware of anybody offering themselves up for voluntary early retirement to avoid disciplinary action. I am genuinely unaware of any instance of that.
183. **Mr Mitchel McLaughlin:** I am interested to know whether that is possible. I do not know of any instance of that either, by the way. It is a possibility, or so it seems to me. Do your procedures now prevent that?
184. **Dr McPeake:** I will have to confirm this, but my understanding is that if we have someone who is under disciplinary review, we will not allow them to retire with a package. However, there will be some people who are of an age to retire and are entitled to by virtue of what is called the 85-year rule. If they are aged 60 or over and the combination of their age and their length of service comes to more than 85, they can retire. There is no enhancement in that, they can just leave. A few people have done that.
185. **Mr Hussey:** The Chair is quite right: the Housing Executive have not covered themselves in glory, as this goes on. Mitchel's questions specifically went back to 2006 and 2007. At that time, there were reports by ASM Horwath and VB Evans, and you would be aware of the findings of those reports. You would have been aware of the situation as far back as 2007. Why are we in this position today? In 2007, you had a report that, basically, pointed out an awful lot of errors, and there appears to have been nothing done. Or was something done?
186. **Dr McPeake:** Indeed something was done. VB Evans and ASM Horwath did a piece of work for us in connection with the Red Sky contracts, and on the basis of that work, we believed that there was sufficient evidence for our internal repairs investigation unit to do a detailed study. So they went in and did a detailed study of all the work of Red Sky over a 30-month period. It was on foot

- of that investigation that we terminated that contract.
187. **Mr Haire:** Let me just clarify that it was in 2010 that VB Evans and Horwath were operating, not 2007.
188. **Mr Hussey:** The reports go back to 2007.
189. What is the involvement of the PSNI and the Serious Fraud Office? Where are you with that?
190. **Dr McPeake:** If we find that there is any evidence of fraud or an allegation of fraud, we will investigate it. We have a specialist anti-fraud team that works in the Housing Executive, and they are all highly experienced officers. They will produce the fraud information or the evidence pack, as it is called, and submit it to the police. It is then up to the police to decide what to do in those circumstances.
191. In the case of the Red Sky contracts, I believe that I am right in saying that certain materials were provided to the police on two occasions and, at that stage, the police believed that there was not sufficient evidence to warrant fraud at a criminal standard. Let me be very clear here: that did not absolve us of our obligations to deal with those issues. So, although we could not produce evidence to a criminal standard that would have resulted in a fraud prosecution, we had sufficient evidence to a civil standard that allowed us to discipline the staff involved and terminate the contract.
192. **Mr Hussey:** When was that evidence given to the PSNI?
193. **Dr McPeake:** I do not know the precise dates but it would have been after the RIU investigation and prior to the termination of the contracts. I can confirm the exact details for you afterwards, if you wish.
194. **Mr Hussey:** I know that on 1 July 2011, Mr Haire was advised that there was a possibility that that would be happening:
- “...active consideration is being given to referring the matter to PSNI for possible criminal investigation in relation to suspected fraud.”*
195. **Dr McPeake:** An earlier case was referred to the police in and around 2006. In the most recent investigation, there was a second referral to the police, but I do not have the precise date for that. In both cases, the police took the view that there was insufficient evidence to a criminal standard that would have warranted a fraud prosecution. Our approach is that every time we believe that there is evidence of fraud, we investigate it thoroughly. We use our anti-fraud specialists, and when warranted, we refer cases to the police. However, it is up to the police to decide whether there is sufficient evidence to proceed.
196. **Mr Hussey:** Chair, may we ask for details of when that information was provided to the PSNI and also, perhaps, a copy of the police response?
197. **The Chairperson:** Yes.
198. **Mr Girvan:** I will come back to Mitchel's earlier point on key performance indicators. Paragraph 21 of the executive summary states:
- “In some cases there has been a long history of poor workmanship and performance and one company's work was classified as Unacceptable over a four-year period.”*
199. It took four years, even though the work was unacceptable. The Audit Office has been good enough to name one company throughout the report, but the reference here is to “one company”. I want to know the name of that company and whether it still has a contract with the Housing Executive. My understanding is that only one contract was terminated and one company has gone into administration. The report states that it is based on information held by the NIHE and is compiled in light of that. Four years is mentioned, and I want to find out the company's name.
200. **Dr McPeake:** I can do that. I believe that I know which company it is, but I would rather check and make sure rather than quote wrongly. We can certainly do that.

201. **Mr Girvan:** Will you bring that to the Committee?
202. **The Chairperson:** Yes.
203. **Mr Rogers:** As my colleague said earlier, one of the most annoying things about this is the legacy that has been the Housing Executive. So many people have got onto the housing ladder through the Housing Executive. As a public representative, I have dealt with local Housing Executive staff and their work over the years. I can think of one district manager who, when there was terrible snow one Christmas, worked on Christmas Day and was always available. That makes these failures in senior management even more alarming, because they are really letting the organisation down.
204. Dr McPeake, paragraphs 1.15 to 1.21 deal with Red Sky. As far back as 2000, the Housing Executive — indeed, everyone — knew that there were problems with Red Sky. Northern Ireland Water also had problems with Red Sky. Just read the report about the catalogue of things that were going wrong. We have already heard about repeat contracts being awarded, extensions to existing contracts, and so on. Senior management seemed to go out of its way to keep internal audit and the audit committee completely in the dark. Page 17 outlines overpayments of £264,000 to Red Sky. After negotiations, that was whittled down to £20,000, and a former member of the independent audit committee was on the negotiating committee. How could that happen?
205. **Dr McPeake:** I share your concern about that. I do not think that the Housing Executive did a particularly good job in dealing with the Red Sky contract over the years. At the start, our belief was the same as it would be with any contractor, which is to give people an opportunity to fix what is going wrong. We are conscious that many people's livelihoods are at stake in those firms and that they deliver a service to local districts. Continuity of service has to be maintained, so when there is a contract dispute, our approach is to give the contractor an opportunity to fix it. In hindsight, it is clear that our belief was mistaken. In the early part of the last decade, we gave Red Sky an opportunity to sort out the issue. It turned it round for a time, and the situation improved, but, unfortunately, that was not sustained, and a series of other issues arose.
206. Looking back, I think that a key issue from our point of view, and from my point of view in particular, is that it took too long to sort out the problems with that contractor. We accept that. Some of that stems from the fact that perhaps we were a little generous in offering opportunities, but that was the nature of the Housing Executive. We wanted to try to be fair to everybody and give people an opportunity to fix the problem. There is the issue of natural justice, and that would be our approach with any contractor, even Red Sky, which was giving us a poor service in that district. The company was doing decent work elsewhere, so that at least gave us cause to believe that it could turn the situation around. We were wrong in that sense.
207. With regard to your specific points about the settlement, I do not know what was in the mind of Gerry's predecessor and mine when this case was considered. However, I can say that the Housing Executive took legal advice on the situation at that stage; that is very clear from the files. A large part of the £157,000 potential overpayment was down to a failure of our staff, who overspecified. They specified a kitchen that they should not have specified. In fairness to Red Sky, it provided that kitchen. There is no question of the specified work not being done. The error was that staff should not have specified that, and, following legal advice, the view was taken that it would be unfair to Red Sky to hold that money against it because our staff had ordered work at that standard.
208. That said, it still left a situation in which the view was, as paragraph 15 of the executive summary states, approximately £81,000 was due. After discussions and agreement, that was

- reduced to £61,000, and a settlement was reached at £20,000. I do not know the ins and outs of how that settlement was reached, but it is clear from the files that our senior barrister said that we would spend more than that in fees fighting it at a commercial court. There was a risk that we would pay more than that in a commercial court. So, at that stage, a judgement was made by the director involved that the settlement was reasonable.
209. Would we do that now? I suspect not. If we take the most recent Red Sky example, whereby we identified potential overpayments in the order of £650,000, we are holding overpayments in the order of £650,000 against Red Sky in administration. There was a dispute with the administrator about that, but the point is that our more recent approach is informed by our experience. When there are overpayments, we have taken a much more hard-nosed approach to our contractors. We have sought to recover money at the earliest opportunity. We still give contractors an opportunity to put their side because we accept that it is a complex business. It is not absolutely black and white; a judgement is involved. People have to be given an opportunity to put their case, but that evidence is then weighed up and a decision is formed.
210. In this case, the evidence was weighed up and a decision reached. Looking back, I think that whether we agree with the decision is almost a moot point. In the heat of the moment, the people involved made a decision on the best basis of the information available to them and following legal advice. Our approach now is probably much firmer and more hard-nosed than was the case then.
211. **Mr Rogers:** In addition to the problem with district maintenance officers not having the authority to authorise that particular work, and granted that it takes £157,000 off and the irregularities are now down to £81,000, another £26,000 has been lost somewhere as well.
212. **Dr McPeake:** I do not know the answer. The Audit Office, in writing the report, would have had the information from the files available. My understanding is that all those work categories and individual price issues were gone through, and an agreement was reached that the level of overpayment was £81,000. There seems to have been a second stage of discussion and engagement that reduced the figure to £61,000. That figure was then subject to the meeting to which you referred that was attended by a former member of the audit committee. He rightly stepped down from the audit committee because he was approached by Red Sky to be its new chairman. Personally, I do not know the circumstances of his involvement. I understand that he indicated that he was asked by the former chief executive and director of housing and regeneration to attend the meeting because they thought that it would be helpful. I wrote to them, after having been encouraged to do so by the Audit Office, and their recollection of the event is that he made the offer to meet and to help to mediate. Whatever the circumstances of that, I have no reason to doubt that the motivation was to try to reach a solution. Whether they went about that the right way is clearly an important question. If I were in that situation now, what would my perspective be? I would say that the potential conflict of interest would outweigh the benefit that might be had from the negotiating skills of that individual. I am not suggesting that anything wrong was done. It is a matter of judgement, and an argument could be advanced to say that, in the circumstances, the judgement that was exercised in the past was exercised here. I do not believe that, contemporaneously, the Housing Executive would approach the issue in that way.
213. **Mr Rogers:** Mr Haire, do you think it ethical that somebody who declared a possible association with Red Sky was then involved in the negotiations of the settlement at the end?

214. **Mr Haire:** Like John, I do not know the full details other than what I have read. Given the issue of perception, and for the sake of public confidence, I would not encourage anybody to go down that route again. In perception terms, whatever the motivation, it just does not work.
215. **Mr Rogers:** Was the previous permanent secretary aware of the issue?
216. **Mr Haire:** I do not think so. I have no record of his being aware. I certainly would be against this judgement.
217. **Mr Rogers:** Are you saying that the previous permanent secretary was not even made aware of the issue?
218. **Mr Haire:** I have no evidence to that effect. I have not searched every file in the process. However, it is something I would not encourage.
219. **Mr Rogers:** Dr McPeake, could we go to paragraphs 16 to 18 of the executive summary, which still deal with the Red Sky issue? What happened to staff who challenged poor contractor performance is very disturbing. Appendix 4 shows that, in 2007-08, district maintenance inspection reports showed dissatisfaction levels of 30% in west Belfast 1 and 17.1% in west Belfast 3. It was evident that, in that role, the Housing Executive person was doing his job. It is very concerning that, in the previous year, a dissatisfaction level of 4.1% rose to 30%. However, from what we read here, the Housing Executive member of staff was doing his job. When staff challenged poor contractor performance, the contractor wrote to complain about staff, and a staff member was subsequently moved on. I know that you refute that, but there was an opportunity for the Housing Executive to respond. Paragraph 18 of the chronology of events states:
- “NIHE subsequently told us that a robust reply was drafted but this appears not to have been sent and that this oversight or misjudgement was regrettable.”*
220. Was it an oversight, or was it a misjudgement?
221. **Dr McPeake:** I do not know how to answer that question. All I can say is that there is file evidence that shows that that letter was drafted and prepared for signature to be released. It was not released, and I do not know why, which is why, in our response to the Audit Office, we have accepted that our failure to refute is the nexus of the problem that we now face in the report. I agree completely that the member of staff was doing a good job for us, and the fact that the contractor complained about that member of staff and we did not refute that is a major weakness and a great disappointment to me. One thing that I have learned in my career in housing is that you cannot afford to be careless about dealing with correspondence. Perhaps it is to do with the fact that I started as a graduate trainee. If a good simple administrative process had been in place, it would have solved the problem.
222. I am struck by two things about the member of staff being moved. First, we had two offices in west Belfast, which were referred to as Belfast 1 and Belfast 3. Those offices were being merged, and we ended up with a surplus member of staff. The area manager began a process and had negotiations and discussions with both officers. By agreement, that officer was moved to manage a centralised function, with a promise that he would return to the office in due course. The move was not immediate, and it did not happen until almost a year later. However, I accept completely that the fact that we did not challenge that at the start created the wrong impression, despite the fact that the evidence shows that the two things were unrelated. Secondly, from a common sense point of view, it would have been more sensible to have left that officer in the office. He was clearly doing a good job, and I really do not understand why that happened.
223. Genuinely, although there was pressure from the contractor, the Housing Executive did not accede to that pressure. If that had been the case, surely the officer would have

- been moved right away rather than a long time later. However, from a business point of view, it would have been more appropriate and sensible if the officer had remained. He was seen to be doing a good job and had the confidence of the organisation in holding the contractor to account. The two things are unrelated, but the fact that we did not refute that letter was a major weakness, and it left us open to claims that we bent to pressure from a contractor. I assure you that that did not happen.
224. **Mr Rogers:** Finally, is it common practice to rotate managers?
225. **Dr McPeake:** For various reasons, we have tried to introduce a policy of rotation. I would not say that it is common in the sense that it happens every week, but it is a feature that we are trying to make more use of. In districts in which we have had poor performance, one of the ways in which we deal with that is to rotate the manager out and bring in a better-qualified or more experienced manager. We then use that opportunity to build the skills of officers who have been challenged or who have not performed as well as they might have. We use rotation as a means of skills development, but we are not in the same situation as civil servants. We do not have mobile contracts, and our employees are, generally speaking and at least historically, appointed to a very specific job. As we have moved on, we have tried to make contracts more location-orientated, which gives us the facility to move people about. There is a real benefit in being able to do that.
226. **Mr Hussey:** They say that a red sky in the morning is a shepherd's warning, and you totally overlooked that warning. You said that, from a business point of view, perhaps that manager should have been kept where he was, but, also from a business point of view, the Housing Executive should have taken a more robust approach to this company in 2000.
227. You are here today and, with all due respect, you apologised and took what
- happened in the past on the chin. However, I am afraid that you have not hit it hard enough. You had concerns in 2000, yet you have told me that the permanent secretary in DSD did not know about the issue. This is public money. It is not my money; it is everyone's money. If this was a public company, whoever did this would have been sacked. For well over 10 years, we had a situation in which it was apparent that no one seemed to know what was going on. You told me that the permanent secretary in DSD was not aware of the issue. I am appalled at that. Are you telling me that, as far back as 2000 when there were concerns and warning lights were flashing, the permanent secretary in DSD was not aware of the issue? Is that what you are saying?
228. **Mr Haire:** I have seen no evidence to that effect. I have not been able to search all the files on the issue, but the point is —
229. **Mr Hussey:** I have seen several papers that go back as far as 2000, and the Housing Executive was aware of this issue in 2000. The Housing Executive may be an arm's-length body, but, in this circumstance, it appears to have been an arm, a leg and a head away from the Department. You cannot sit there and say that you did not know. You should have known. That is the role of DSD. This is public money. I can see no justification for sitting here today and saying that you are sorry for what happened. Alarm bells were ringing in 2000, 2005, 2007, and so on. It appears that no action was taken and that no business plan was put in place to tighten things up. Staff were moved about. An innocent man was moved, but the people responsible got away with this. If you are telling me that DSD did not know as far back as 2000, DSD must have been totally ineffective in 2000.
230. **Mr Haire:** I have not been able to go back to the history of the files in 2000.
231. **Mr Hussey:** Why not?

232. **Mr Haire:** The range of the issues that are just defined, we have not —
233. **Mr Hussey:** It is always amazing that the pieces of paper that we need to find for specific years are never available. This is a public body. Omagh District Council can find pieces of paper going back well over 100 years, and you are telling me that you cannot find papers from 2000.
234. **Mr Haire:** Sorry. I have not found a piece of paper in relation to the issue in this question. The point that I am making is that I think that there is a real issue. I recognise that the question is about the challenge the Department gives to the system. There are real issues. A lot of these issues are, rightly, given to a non-departmental public body to be in charge of. It has a board with responsibilities, and it has senior management. It is meant to report through report mechanisms. However, there is the role of the Department. I have to make sure that an assurance system is in place to assure you that public money has been spent there. The issue with the Housing Executive situation is whether good documents of assurance were in place, and it has been able to show me that. However, it was only when we went into the governance review in 2010 that we started to see that although information at a certain level came to the Department, it did not reflect some of the information that was really in the organisation. That is where it is absolutely crucial that we — the Department — have an active monitoring process and that we are not only taking the assurance from the Housing Executive but are going in and drilling into particular areas regularly to make sure that those assurance systems are there. That is what we are doing.
235. **Mr Hussey:** Are you telling me that, up to this point, somebody from the Housing Executive could have sent you a note to say that everything in the garden is rosy, and you would have accepted that? It is quite clear that, from 2000, Red Sky was ringing alarm bells. However, you are telling me that a note from the Housing Executive to say, “Don’t worry about us; everything is fine and is signed” is OK.
236. **Mr Haire:** What I am saying to you is that ever since I have been in the Department, I have not taken those things. When people have said to me, “I don’t think there is any question over that issue”, I have sent in my teams, asked questions and pushed those issues. I cannot tell you, and I have not been able to get a record of exactly what happened 10 years before I came into the process. However, the role of the Department is to challenge; I have challenged, and I will challenge.
237. **Mr Hussey:** Are you saying that that challenge role was not done in the past?
238. **Mr Haire:** I do not know how well that was done in this situation. In honesty, I cannot answer that.
239. **Mr Hussey:** You should have an opinion. After all, you are a senior civil servant. If you had been in that position in 2000, would you have accepted the note saying that everything in the garden was rosy?
240. **Mr Haire:** I would have been checking the system. I do not know what my predecessor was doing at that time.
241. **Mr Hussey:** It is quite clear that he was not doing enough.
242. **The Chairperson:** Before I bring in the Deputy Chair, I remind members to keep their supplementary questions brief. We have a list of questions to go through.
243. **Mr Dallat:** I am sure that all of us around the table will agree that we are conducting this inquiry today in an atmosphere that is completely different from 2000. I want to ask a question, which I know could be difficult to answer. Was there not a culture, or even a need, to try to work with contractors — I am not talking exclusively about Red Sky — who may have had paramilitary connections, and if there was not an ability to work with them, the work simply would not have been done? Chairman, I do not want anyone to quote me out of context. I am

- not saying that that was right. The files may not be available, but my memory is clear enough. There were horrendous problems in the Housing Executive in trying to get work done on the ground. Would that have had an influence on some of the decisions that were not right?
244. **Dr McPeake:** It is fair to say that in the early years of the Housing Executive, in the 1970s when the Troubles were at their height and, perhaps, into the 1980s, those issues would have bubbled to the surface from time to time. However, it would not be a reasonable conclusion to say that, as recently as 2000, we had significant concerns about paramilitaries involved in construction. That is not to say that there were not any because we worked quite closely with a number of initiatives designed to prevent racketeering and extortion. It was one of the big issues that we always faced. I do not believe that there is any evidence of it in the context of this case.
245. You made the point, and it is important to say that a culture issue was involved. Over the years, the Housing Executive approach has been to do everything that we possibly can to get the job done. It has had a strong delivery focus to get the job done, often in very difficult and trying circumstances. My board recently came to the view that one unintended consequence of that is that corners were sometimes cut. However, we are in a different era now. There is a normalisation in Northern Ireland that we all welcome, and the Housing Executive, in keeping with many other public bodies, has to move with the times. We are in an era in which there is a much greater level of scrutiny and a much higher level of expectation about the standards of public service. As an organisation, we are completely committed to ensuring that we live up to those standards. However, it is not fair to say that, as recently as 2000, the problems with Red Sky were down to those issues. Some of the problems stem from bad decisions made by individuals, bad decisions by some of my employees and bad decisions by the contractor. It is not right to say that they were glossed over or ignored. Appropriate actions were taken at various stages.
246. Mr Hussey mentioned the year 2000. We took action in those circumstances. The individual in the first example was dismissed, and the individual in the second circumstance was also dismissed. Therefore, we took appropriate action. In retrospect, we were perhaps too generous in giving that contractor an opportunity to turn his act around. However, that was not because we were unwilling to deal with the issues; it was because we had a service culture, and we wanted to make sure that we were as fair as we possibly could be to everyone. It is easy to look back now and say that we should have been firmer, but we have a different approach now.
247. **Mr Dallat:** I accept that, and I will not argue with it, but if you permit me the luxury of saying that I am not so sure that it was rosy in the garden in 2000.
248. **Mr McKay:** I want to go back to the issue of the district manager in Belfast west who was moved. There is a reference to a letter that was sent. What did the letter say?
249. **Dr McPeake:** I cannot remember the detail of the letter, but it refuted the claims and said that we would not be moving the officer. If the Committee is interested in the letter, we can get it.
250. **Mr McKay:** Surely you must have some idea of what it said, given that it is a big issue today.
251. **Dr McPeake:** I cannot tell you the content of the letter. I do not have it to hand, but I can get it for you.
252. **Mr McKay:** What did Red Sky insinuate in its letter?
253. **Dr McPeake:** It complained about the officer in question and said that he was difficult to work with, was finding problems that did not exist and, essentially, was making Red Sky's life

- miserable. To be frank, he was doing what we expected of him. He was holding a contractor to account.
254. **Mr McKay:** Was that all that the letter said? Was it just making a complaint, or was something else sticking out like a sore thumb?
255. **Dr McPeake:** It wanted him to be moved and was encouraging him to be moved. The organisation made a mistake. A letter was drafted for the relevant director to sign and issue, but I do not understand why that was not done. The officer concerned is no longer in the employment of the Housing Executive, so I have no way to get an answer to that question. However, the file shows that a letter was drafted but not sent. The issue was raised in the report, and it creates an impression that the Housing Executive was prepared to move an officer at the request of a contractor, but I assure you that that is not what happened.
256. **Mr McKay:** Have you spoken to the district manager who was moved?
257. **Dr McPeake:** I have not spoken to him. However, as part of the investigation at the time, there was a period of engagement with the various people involved. Indeed, an external consultant also looked at the matter. Therefore, the district manager was spoken to.
258. **Mr McKay:** What was his view?
259. **Dr McPeake:** He was not happy that he was moved.
260. **Mr McKay:** Did he hold the Housing Executive in any way responsible?
261. **Dr McPeake:** He was of the opinion that there was influence from the contractor. I have to say that he is back in that office now. I must also say that he has always had the confidence of the Housing Executive. There is no question about his integrity.
262. **Mr McKay:** Did he hold the director of housing and regeneration responsible?
263. **Dr McPeake:** I do not know who he held responsible. However, he believed that the Housing Executive should not have moved him.
264. **Mr McKay:** Did he hold somebody personally responsible?
265. **Dr McPeake:** I do not know who he held responsible. However, I am sure that he believed that —
266. **Mr McKay:** Can you check that in your records and get back to us?
267. **Dr McPeake:** I can, yes.
268. **The Chairperson:** Dr McPeake, is there any way that we can get a copy of the letter to which you referred?
269. **Dr McPeake:** Yes. We can do that.
270. **The Chairperson:** OK. Thank you.
271. Mr Girvan had indicated that he wished to ask a question. However, he has left the room. I call Mitchel.
272. **Mr Mitchel McLaughlin:** Was the process of negotiation with Red Sky that eventually arrived at the settlement figure, and the very interesting involvement of the former member of the audit committee who took up the post of chairperson, also reported to the Department under accountability arrangements?
273. **Dr McPeake:** Not at that stage, as far as I can determine. The matter fell to the director of housing and regeneration. He was responsible for negotiation. That was permitted under the Housing Executive's standing orders at the time. We have changed those standing orders. That is not permitted now. I believe that it was done within the confines of the housing regeneration division, with the support of the contract claims department, which is a different part of the Housing Executive, and legal services, which had commissioned external legal advice. However, the decision on the issue rested with the director of housing and regeneration. There is evidence on file that, in reaching that decision, he consulted with the former chief executive at the time. I do not see any evidence on file

- that there had been any engagement with the Department.
274. **Mr Mitchel McLaughlin:** Were those legal services the same legal services that were available to the Department?
275. **Dr McPeake:** No. The Housing Executive has its own internal legal department. For most routine matters, our internal legal people provide legal advice. When it comes to matters of a more specialist or contentious nature, we use external counsel. In that case, we used an external QC to provide advice.
276. **Mr Mitchel McLaughlin:** Therefore, at that time, there was no line-of-sight, or reporting, mechanism, but that has now been rectified.
277. **Dr McPeake:** Yes. Indeed, given our recent experience with that particular audit and the other levels of scrutiny that we are under, for issues that relate to contract terminations or settlements, depending on the value of the contract, our standing instruction to my colleagues is to go forward.
278. **Mr Mitchel McLaughlin:** Was it not an issue given the quantum of that, which started off at £800,000-odd and was reduced down to a settlement figure of £20,000?
279. **Dr McPeake:** I think that it started at around £200,000 and came down. Yes; that is precisely why I say that the approach that we would take now is that matters of settlement of a contract nature such as that would come through the CXBC — the chief executive’s business committee — and, ultimately, to the board.
280. **Mr Mitchel McLaughlin:** Could we come back to the report — paragraphs 26 and 27 on page 22? Those paragraphs suggest that the Housing Executive was less than happy with the role played by Constructionline, which actually gave a clean bill of health to Red Sky’s finances based on an unaudited management account and telephone conversation with the auditors. Will you outline Constructionline’s role with regard to public-sector contracts and what action the Housing Executive is taking to draw its concerns to other centres of procurement expertise (COPEs)?
281. **Dr McPeake:** In brief, earlier in the session, the Committee asked me about the financial capacity of contractors. The way in which that is assessed is through Constructionline. It is a service that looks at the published audited accounts of construction firms and determines what is called the “notation value”; in other words, the level of business that firms could reasonably compete for given their financial health. That service is provided to all public procurement bodies in the construction field in Northern Ireland.
282. We raised a number of issues that are detailed in the report, and the Audit Office has been very faithful in reporting our concerns. We drew those issues to the attention of our colleagues in the Central Procurement Directorate (CPD) and wrote to them to make clear our concerns. We also met them. Stewart Cuddy, who at the time was the acting chief executive, met Constructionline to raise his concerns and seek their assurances. Our particular worries were that Constructionline seemed to place reliance on rather informal sources of information in reaching what was a manifestly significant decision. So we drew the attention of CPD to our concerns.
283. **Mr Mitchel McLaughlin:** As a follow-up to that, I put two questions to Ms Hamill, the Treasury Officer of Accounts. What steps has CPD now taken to alert other public sector contracting bodies, both here and in Great Britain, to Constructionline’s actions in this case? What has been their response?
284. **Ms Fiona Hamill (Department of Finance and Personnel):** Constructionline is the UK’s largest online database for registered construction contracts. It is a public-private partnership between the Department of Business, Innovation and Skills and Capita. It works with one of the large credit assessment companies

- to provide online information across the public sector.
285. Constructionline has confirmed to us that it has taken on board the discussions and the conversations with the Housing Executive on the specific issue of taking informal advice. It has confirmed that it will now take into account only formal written advice from auditors when it revises the assessment. So, I think that we have seen a definite improvement in the standard for the entire UK public sector as a result of the lessons learnt here.
286. **Mr Mitchel McLaughlin:** You will recall that the question of COPEs has been discussed in this Committee previously. I think you were in attendance. However, based on the principles that are set out in appendix 1, page 64 of the report and the contents of the report, are we expected to accept that the Housing Executive is really an exemplar? The obvious question that flows from that is this: what steps are being taken to review the accreditation process?
287. **Ms Hamill:** I acknowledge that the process of accreditation of COPEs has been a matter of concern for this Committee on more than one occasion, and, certainly, the response that we make on COPEs was set out in the memorandum of reply on procurement and governance in Northern Ireland Water, where we committed to a full review and a new accreditation process for COPEs that would now include external independent assessment of them. That process has commenced. The plan is to fully review the accreditation of COPEs in 2014. That seems a long distance away, but it is to allow them to gather the necessary evidence that we will expect them to provide to external assessors.
288. In the interim, we have moved to strengthen the relationship between the COPEs, CPD and the procurement board, by requiring them to start formal compliance reporting to the procurement board from November. We have also required each COPE to appoint a head of procurement who will be personally responsible for ensuring that the governance, compliance and professional standards in that specific COPE are addressed.
289. So, these are the measures that we have taken in response to the Committee's previous concerns, and we hope that they will deliver the improvements and provide the Committee with the assurance that it expects. The Committee will appreciate that the concerns arising with this COPE are similar in time frame to those that the Committee has already looked at in Northern Ireland Water, so it is a part of the same response.
290. **Mr Haire:** Can I just add one point? In the light of this report, and with the experience of the past couple of years, I have been in discussion with CPD. Procurement excellence is one issue, but this seems to me to demonstrate the problem of contract management skills in the public sector; our ability to manage the contracts once we have them; and the necessity of ensuring that there is continuity between people writing the contracts and getting into the management skills.
291. Des Armstrong has agreed that we should run a seminar to look at best practice and experience on this issue, and also to look at how to get the management skills of the systems; to look at how to get the right sort of contract skills as well as managerial skills to get on top of this and use key performance indicators to mine the information. I feel that is an important issue. Being on the procurement board, I have been bringing that to other Departments' attention because I think there are lessons to be learned.
292. **Mr Mitchel McLaughlin:** Are there worrying indicators of a less than appropriate relationship between Housing Executive officials and contractors? Does that go to the heart of the question of the Housing Executive being classified as exemplar when it comes to procurement?

293. **Mr Haire:** We often look at the process of procuring and we focus a lot of attention on that. You are right; it is about looking at how you manage. It is the management of the contracts —
294. **Mr Mitchel McLaughlin:** I think you have to deal with both.
295. **Mr Haire:** Exactly, that is my point. Our COPE debate has been about whether you get the contracts and whether you navigate the European regulations to get those things right. The key issue is how you use that effectively and ensure that it is really worked through.
296. **Mr Mitchel McLaughlin:** Capture the data. Thank you very much.
297. **Mr Anderson:** Can we look at the reliability of the repairs inspection unit? Mr Haire, according to appendix 8 on page 74 of the report, jobs with a value of less than £100 made up 81% of all response maintenance jobs. If my reading of paragraphs 2.2 and 2.5 is correct, it is the contractor who specifies the work that is to be done in those jobs. However, prior to January 2011, the work was never physically inspected by the districts. Are you shocked by that?
298. **Mr Flynn:** Our general approach to inspections has been that, in working closely with the audit commission and taking a risk-approach base to looking at inspections, we have always looked at inspecting high-value jobs. As a general rule, probably 80% of our jobs are worth less than £100, which was the point you were making. However, 3% of our jobs are worth over £750 but account for over half the value of the contract. Assuming that around £50 million a year is spent on response maintenance, 3% of the jobs generated spend of around £25 million of that. That tends to be around our big change of tenancies, so that is where our inspectorate invested our resource; in genuine advice. That is where your risk should be. However, assuming that there are 300,000-plus jobs and 80% of those are worth less than £100, we did not look at them unless they were a new item.
299. For example, if a tenant rang up and asked us to fix their lights or their cooker, the contractor who would have looked at it would have completed that job as long as its value was less than £100. If he was going to replace something, we would send an inspector out. That was our focus in the past. It is not random, so, therefore, the contractors would have known what jobs were being inspected, generally. If the jobs were less than £100, we would not have been looking at them.
300. We now take a more systematic approach to inspecting jobs by using our resources across the spectrum. Therefore, the value of the job no longer matters. For example, instead of inspecting every job over £750, our approach now is that we will do half of those. We will be doing 20% of those that fall between £100 and £750, and 5% of those that are less than £100. We have a completely random approach to doing inspections now that will still provide us with robust assurance that, depending on what you find in the sample, you can be fairly certain that the general trends will be pretty similar if you were to inspect all the jobs. We would be 95% sure that the results we were getting would be plus or minus 1% or 2%. We are now moving to a situation whereby if the contractors get it wrong, and we inspect them and find they are wrong, we will penalise them. It is in their interest now to make sure that the work is got right first time.
301. In the past, we did roughly one in five inspections and failed one in five jobs. You could argue that the contractors were using our resources. Our inspectorate is a quality assurance mechanism, so we are moving away from that. You would be right to say that in 80% of those jobs worth less than £100, the contractor would have gone out and decided what work was required because most of them were to fix something.
302. **Mr Anderson:** It was open to abuse.
303. **Mr Flynn:** There is a view that it was open to abuse but, as I said, there has

- been a move forward. Our inspection system now is that if we find errors in jobs worth less than £100, we will apply penalties against all the income for that month for that contractor. We talked earlier about the pricing approach by contractors, and the prices are very keen. It is not in their interest for us to be failing jobs and them losing money as we move forward.
304. **Mr Anderson:** That should have happened. Contractors should have been checked. The job may have been worth £30 and the contractor said £90, so it was really open to abuse.
305. **Mr Flynn:** Our resources were looking at those areas that we felt were the greatest risk, based on the general advice across the UK about having a risk-based approach to doing response maintenance, which was to focus your energy on high-value jobs.
306. **Dr McPeake:** It is important to make the additional point that although we did not physically inspect any jobs under £100, we had a telephone follow-up with tenants in 6% of those cases asking them what exactly was done. However, we have accepted that if we want to have a more robust assurance arrangement —
307. **Mr Anderson:** Six per cent is quite low.
308. **Dr McPeake:** It is sufficient to provide a reliable figure. If you look at that category of work under £100, the actual average cost of a job is £25 to £30. It costs me about £40 to send somebody out to check it, so I have to make sure that I use my resources wisely. That is why, with this new arrangement, we have a physical inspection of a random sample of jobs in all category values. In the past, we did not have a physical inspection of low-value jobs, so we have closed that potential gap where a contractor may be minded to think that there is a very low risk here that he might get caught doing something he should not be doing. We have now closed that gap because he will not know whether that job will be checked. He gets no advance warning; the job is just checked under the new system. I believe we have closed that gap.
309. That was one of the issues that emerged from the work that we took on from the Gateway review. It was not highlighted by the review but occurred to us as we worked through its recommendations.
310. **Mr Anderson:** Appendix 2 sets out some response maintenance values, touching on jobs valued at less than £100. Do you have figures to hand for the number of jobs valued at under £100 or could you forward them to us?
311. **Dr McPeake:** Do you mean the numbers by district?
312. **Mr Anderson:** Yes. I would be interested in those.
313. **Mr Flynn:** We can give you that.
314. **Mr Anderson:** Mr Haire, without any form of timely inspection, how can you assure this Committee about value for money and propriety of this expenditure?
315. **Mr Haire:** The key point, as Gerry indicated, is that the inspection regime had weaknesses. The first question you asked me was whether I was shocked about the issue. I must admit I was surprised when I heard about the Housing Executive's non-use of random statistical analysis.
316. **Mr Anderson:** I am shocked and surprised.
317. **Mr Haire:** The big business of the Department is social security, and we use much more statistical analysis to do our analysis and use data to risk-manage that process. So, when I came in new to the organisation, I presumed that that approach would have been used in the Housing Executive. We find that that is a robust system in chasing money inasmuch as it gives you a good analysis, as Gerry said, of the risks. With the contracts there, you have a good handle. So, I am satisfied that the new contracts have the potential to nail this one.
318. I agree with the report. The system the Housing Executive was running laid it

- open to the potential for fraud. That is the major issue. The system was too broad. You could not, however, under the old system have inspected every job. That would have been impossible. You are already spending £5 million each year doing the inspection as it is at the moment. So, that is why it is really important to get much sharper contracts, and it is why we placed a priority on the Housing Executive to get the contracts right.
319. **Mr Mitchel McLaughlin:** We are talking about 81% of a £50 million overall response maintenance budget. Is that the quantum of the figures?
320. **Mr Flynn:** Eighty per cent of the jobs are less than £100, but the value is about 20% of that.
321. **Mr Mitchel McLaughlin:** That is what I wanted to know.
322. **Mr Flynn:** It is the Pareto principle. The bulk of the expenditure is spent on the small numbers.
323. **Mr Anderson:** I will move to paragraph 2.36, which sets out very sensible recommendations. Could we focus on the second bullet point on page 36? From a departmental perspective, are you surprised that response maintenance of heating systems has not been subject to inspection? Why did that slip through the net? What assurances can you give the Committee about the value for money and propriety of expenditure in that area?
324. **Mr Haire:** That was an issue in the Housing Executive, and we were surprised about that. There was an issue of the skill set that has, I understand, now been rectified. John can explain that.
325. **Dr McPeake:** The response maintenance repairs to heating systems are carried out by the heating contractors and not by the all-trades contractors. Red Sky did not do the heating repairs; the heating contractor for the district did that work. Those contracts are set up to provide the specialist resource needed to do the work and the servicing and maintenance. Our maintenance inspectors, by and large, are general building tradespeople. We have some specialist building folk. As part of the day-to-day inspection activity — the sample inspections — that work is done. My maintenance inspectors inspect a job and send a maintenance officer out to it.
326. That bullet point refers to the second level. In the Housing Executive, we have a corporate assurance unit, which is a unique feature of public service in Northern Ireland. We have created that independent assurance unit in the organisation. That unit is outwith the operational division and is not part of housing and regeneration. It provides me, as the accounting officer, with assurance on key activities. It had not been resourced to look at the heating systems as part of its corporate assurance role. That issue has now been addressed and we are recruiting a specialist mechanical and electrical (M&E) engineer for it. However, it is important to recognise that heating inspections were being done by the operational business.
327. **Mr Anderson:** How can you assure us that they were being carried out? You do not have any record of that, do you?
328. **Dr McPeake:** We have the records of the inspections carried out by the operational staff, but the corporate assurance unit is an additional level of assurance, and that is what I expect to have.
329. **Mr Anderson:** That is only recent.
330. **Dr McPeake:** We have only created that corporate assurance unit; it came fully into operation last September. It was an initiative of the former chairman of the Housing Executive and it emerged from the governance reviews that Mr Haire mentioned a moment ago. You are right to draw attention to that because the corporate assurance group did not have the M&E resource to do that additional level of assurance, but the original inspections of the activity were

- being done and we have taken steps to address that issue now.
331. **Mr Flynn:** We had a front line inspectorate that looked at the heating jobs. It is very similar to what we have for the general maintenance jobs in our properties.
332. **Mr Anderson:** As a matter of interest, when you say front line inspections were taking place, what was the level of the workmanship found through those inspections? What was the level of rejection or poor workmanship? Do we have that feedback? You say that it was done, but we need to get into this to see the level of workmanship with those heating systems.
333. **Mr Flynn:** We have the same broad set of KPIs that we hold for our general maintenance contracts. It is similar for the heating contractors as well. As we move forward, the systems are virtually identical, and the key issues for heating and maintenance are in four areas: cost; quality; how quickly we get the jobs done; and tenant satisfaction. That applies across all contracts.
334. **Dr McPeake:** It is worth mentioning that we have had issues with the quality of work on behalf of our heating contractors, which is all the more reason why it has been important to address this corporate assurance deficit to make sure that we bring the corporate assurance look to bear on heating-type work as well as on the normal maintenance activity.
335. **Mr Anderson:** Mr Haire, I will move on to paragraph 2.7, which is on page 27. The RIU was, primarily, a business improvement initiative. There does not seem to have been much improvement in the way in which districts performed, if we look at figure 5 and figure 7. I have a number of questions about that. Did districts know what level of performance they were expected to achieve and by what date?
336. **Dr McPeake:** I am going to let Mr Flynn handle the questions in this part.
337. **Mr Flynn:** Generally, on performance, districts are very clear about what is expected of them. For example, we set a very challenging level of acceptable performance for management contractors. There are two things that we need to look at here. For management contract and performance outside, we talked about the KPI issue earlier, and that is one side. We then have an internal mechanism whereby we manage the contract management aspect of that; in other words, how well our staff manage the contract. With regard to looking at the internal standards, when we look at on-site inspections for contractors, the benchmark is 99%. In other words, we expect our staff to ensure that the contractors deliver a performance at 99%. When we come later on, no doubt, to talk about the performance in the tables, you will see green and red performances, and those reds are offices that have fallen outside the tolerance. When we set a bar of 99%, the band between being successful and being unacceptable is 0.6%. In other words, if you operate in and around 98%, it will appear as red in the table. We make no apology for that. At the end of the day, you are talking about £50 million of public money overall.
338. **Mr Anderson:** You are saying that there is a fine tolerance level.
339. **Mr Flynn:** There are very fine tolerances but, at the end of the day, you could say to me; "Look, 2% is equivalent to, potentially, £1 million of public money every year". Therefore, we set a very high internal benchmark. Ultimately, those internal inspections are, in many respects, a potential trigger for the performance of contractors. For example, if you had a sea of green internally as regards the quality of the inspections, you would, therefore, assume that the contractors must be doing all right. However, if you have a sea of red, where our inspector comes along and finds that our maintenance officers are not doing their inspections properly, you could say that, first, they are failing internally and, secondly, if

- they are not doing their inspections properly, there could be a problem with the external KPIs. For example, if a maintenance officer is passing a job that he should not pass, ergo the contractor is, potentially, not being failed and, therefore, not being penalised. There are two aspects as to how we handle maintenance performance: one is the external, or the KPIs, which are at a benchmark of 90%; and the other is the internal one, which is a very high threshold. Critically, we will look for two aspects: the quality of the work that the maintenance officer inspects, and the value for money. It is that whole issue about invoices coming from contractors.
340. If you look at the tables, you will see that, over the past number of years, our performance on quality regarding the nature of the work that contractors give us and the levels of satisfaction from tenants is pretty good. We have issues to address regarding the quality of the invoices that we get from contractors, and no doubt you will want to refer back to that later.
341. **Mr Anderson:** I have a couple of questions in relation to the senior management in the housing and regeneration division. Did they set any targets in relation to this, and did they pay attention to any reports? We are talking about the senior management. What was their input?
342. **Dr McPeake:** Again, Gerry might want to come in as he is the director for the housing division at the moment. However, just to give you the general perspective on it, the RIU, as you rightly pointed out in your initial question, started as a business improvement tool within housing regeneration division and, therefore, at that stage, the reports from the RIU work stayed, principally, within housing regeneration division. Therefore, other parts of the organisation did not get to see them in detail. Summary information was certainly presented to the audit committee, for example, and there were annual reports but the detailed reports were largely kept within housing and regeneration. The director's aspiration was for the relative balance between offices deemed to be unacceptable and those deemed satisfactory to change, and it did change for the better over years. However, it was seen primarily as an activity within the division.
343. Since the emergence of our recent round of scrutiny on the governance review, the gateway review and this audit report, a number of key things have happened. One is that we have taken the RIU out of the division, so it is no longer a divisional activity but part of the corporate assurance unit that I mentioned. We have introduced new arrangements whereby all draft inspection reports, whether part of the corporate assurance unit or internal audit, are copied at the first stage to the relevant director, the chief executive in my case, and Jim Wilkinson as the representative of the Department.
344. We also have in place a monitoring arrangement to make sure that when those draft reports are issued, those charged with responding to them do so in a timely fashion. So, long story short: initially, focus on housing regeneration; then mostly manage the current arrangements within the division, subject to a much greater level of scrutiny and use.
345. **Mr Anderson:** Were any district staff held to account if they were not performing, and what role did the chief executive's business committee play in that?
346. **Dr McPeake:** When districts were not performing, our approach was to try to turn them round. You referred to the chart that is figure 5 in the report. RIU's interpretation of that is that, over those three years, you can see a gradual improvement in services, although not as quick as anyone would want. However, a number of things strike me on looking at it; namely, the same offices appear in the bottom group the whole time. So, there is a conclusion that is not difficult to reach: those things are not happening quickly enough.

347. My initiative was to create what I have called a response maintenance intervention team. On the foot of an adverse audit, and by adverse I mean one that is classified as unacceptable or limited, whether from the inspection side of the business or internal audit, I put, through Gerry, the response maintenance intervention team into that office. That work is in order to understand what went wrong, what resulted in the negative classification and what the problems and errors of the district were. It helps the district to diagnose what went wrong. My belief is that you cannot do this for somebody; you have got to get them in a situation where they understand themselves where they went wrong so they will not do it again. That is the philosophy of the response maintenance intervention team. It is made up of experts in the field who are respected within the business, have the confidence of senior management and, most significantly, have the confidence of the corporate assurance part of the organisation. Those people, who are respected, go in, work with the districts, produce an improvement plan, help them through that process, come back after three months to make sure it is happening, and then we expose the office again to the formal scrutiny of corporate assurance. We have taken —
348. **Mr Anderson:** Was that all lacking in the past?
349. **Dr McPeake:** That rigour was certainly not there. There were examples in the past of when the director and area manager would have relocated managers. Managers who did not perform well in successive RIU investigations or reports were rotated, as I mentioned earlier, but there was not the rigour that we have now put in place. The approach we have taken is beginning to show signs of bearing fruit but the proof, again as I mentioned earlier, will be in the eating. We have to make sure. We have this mechanism in place, and I believe it is making a difference, but the real test comes when the corporate assurance people go back and go through and are able to demonstrate that we are getting improvements.
350. **Mr Anderson:** By going in there and maybe having to revisit, do we see that as a problem area?
351. **Dr McPeake:** I created the response maintenance intervention team just earlier this year, so, at this point, we have been through, I think, nine offices. The cycle, Mr Anderson, works on a three-month basis, so the first of those offices will come up for the revisit, as it were, in October, and we will be able to see then. However, yes, that would be a logical conclusion. If you go in, do this piece of work, help them to understand what went wrong, show them what they need to do, encourage them to do it, and if they fail to do it, clearly, a more —
352. **Mr Anderson:** The ball is in your court.
353. **Dr McPeake:** Well, let us say a more robust approach is required.
354. **Mr Flynn:** I have gone to some of the offices and sat down with people. It is about understanding why people are failing. Some of it is down to people having missed the obvious, which happens in some cases. However, in some cases, you are dealing with over 2,000 schedule of rates codes. Maintenance is a complex business and people make mistakes. Some staff members have asked us to try to help them to make fewer mistakes by simplifying the system. So, for example, if they are only meant to use one code in a particular part of a house and they try to use two, the system would stop them, or, at least, alert them that they have already used that code and cannot use it again. To support management, we have created new reports, and people can run those to identify trends that should not be happening in offices. Those are things that we did not have in the past.
355. We have been more proactive in trying to help staff to deal with the complex situation of managing maintenance on the ground. We have given them increased control reports and have

- recalibrated the whole approach to training. A lot of our offices have new staff and there could be between 15 and 20 agency staff in an office. The first course those staff members go on will show them how to use the system, but they may not be clear what their role is within the inspectorate. So, we are going back to recalibrate the whole approach to training.
356. **Mr Mitchel McLaughlin:** Is that programmed interrogation, or do we rely on the expertise of the individual to know what questions to ask?
357. **Mr Flynn:** There are two things. Part of the system is about the use of duplicate codes. If you have used the code before, the system will prompt you, and if you override that, you will have made a conscious decision to do so. The general reports are available and have been constructed by experts. Someone just has to run them; they do not have to compose them.
358. **Dr McPeake:** Of course, you have to read the reports and make use of them. That is one of the compliance issues that we are conscious of. It is all very well putting those tools in place to help people, but they have to make use of them. We are focused on making sure people know what is available and how to do it, and then giving them the opportunities to get on and do it.
359. **Mr Haire:** The key and important shift has been the movement of the business improvement system, which was, frankly, hidden in one of the divisions, to become an assurance system for the chief executive and the accounting officer. It is about consistently using that, having the support systems in place to help raise people to that level and us being able to use that information rapidly. Connected to that, there will be contract managers for the new contracts. They will look at the work that each contractor does and the quality of that work. Better assurances on the quality of the districts and the contracts will provide John and the board of the Housing Executive with much better data. Their ability to mine that data, understand it and keep on it is important. It is about having a relentless focus on reaching above that 99% to get value for money out of the system.
360. We have the tools but, as John said, we have to see this work. From the Department's point of view, the processes look right, but we have to make sure they work. We will come back next year to go through that. As John emphasised, there are also of other bits of business in the Housing Executive for which we have to make sure there is exactly the same clarity of approach.
361. **Mr Anderson:** Thank you.
362. **Mr Girvan:** Thank you. I want to come back in on that point. Quite a bit of emphasis will be placed on those who are involved in carrying out inspections. I appreciate that 150 staff members in the organisation are involved in that area, and that there is £5 million to administer it. On that basis, are there satisfactory staffing levels in the districts to deal with that, and are the staff who will be involved in that sufficiently skilled and trained in that aspect? Some members alluded to the fact that people came into the organisation having not been previously involved in the industry at all, yet they were undertaking those roles in some of the local offices.
363. **Mr Flynn:** There are a couple of points in relation to that. I will deal with the training aspect first. As I said, we completely recalibrated the approach to training. We are hoping to start the first of the pilot schemes in October. The two major focuses of the training programme will be pre-inspections and post-inspections. That will take approximately five days. Over the next period of time, every maintenance officer will go through a completely new comprehensive approach to maintenance inspections, and it will be competency based. Part of that will involve being in the field doing inspections, as opposed to just sitting reading manuals. They will be taken to a property and tested on their understanding of what is required in

- an inspection. That is one part of the training.
364. There is a change in the approach to inspections. Earlier, we talked about doing a 100% inspection of everything that was over £750. Change of tenancies tend to be our big jobs. Our approach to inspections is that we will do one in two of those now. Therefore, we are freeing up a maintenance resource to spend more time on a detailed change of tenancy. A change of tenancy can have anything from 100 to 150 different codes in it. They could be completely revamping a property. So, they have more time to be more thorough in their approach to the inspection. They are more versed having been put through a more comprehensive approach to training.
365. On the other side, we have done two things to get the work right first time round. We sat down with contractors so that they can understand why we are failing their work. They thought that they had good quality assurance systems, but, in some respects, they were not fit for purpose, so they changed those systems. They also have a better understanding of our schedule of rates.
366. Lastly, it is a bit like the carrot and the stick, as we have service penalties now. If they do not get it right and we fail them in any one month, they get an amber rating, and we will take 1% of their income off them. That is the last resort. So, it is a combination of a range of factors in the Housing Executive and external to the Housing Executive. That should take us in the direction of getting an improved level of inspection, improved quality of work and an improved quality of invoicing from contractors. However, as John mentioned, the proof of the pudding will be in us demonstrating as we move forward that we have that.
367. **Mr Girvan:** Are inspectors expected to complete a number of inspections daily or weekly? How soon after a contractor has finished a job is the inspection to take place?
368. **Mr Flynn:** There is a standard set, and the system will generate the inspections for our maintenance staff daily. When the contractors complete their work, the standard is that we have five days to turn that round. However, bear in mind that there is a twin-track approach to dealing with contractors. There are those who are selected for inspection whose work we ultimately signed off on and pay, and there are those who come through the system and are presented to us daily to allow the contractors to generate income. So, there are standards set for each of our district offices, and the system can generate reports in respect of who is doing what inspections, the level at which they are doing the inspections and the time that they are taking to do the inspections.
369. **Dr McPeake:** One of the things that we have changed in the inspection regime, apart from the obvious issue of moving from a risk-based approach, which was not random, to this statistical method that Mr Haire mentioned, is a key part of it. However, the second part is that we have split the inspection regime into two tiers. Therefore, the statistical part, which is generated by the system, is what we call tier-one inspection. That is to give us reliable measures to hold a contractor to account and to assess any service penalties that are required to be applied. So, it is really about the contractual compliance issue.
370. Tier-two inspections, on the other hand, are what we have described as being “use your head inspections”. We are saying to maintenance officers that they are out on the field daily, they see things that are happening, they are analysing KPIs and doing their statistical inspections, so they begin to get a feel for themes or trends that are emerging. We have worked to create a capacity for maintenance staff to do tier-two inspections where they use their brain and their intelligence to find something. For instance, one contractor may seem to be using a lot of doors one month or another may seem to be doing a lot of work on replacing toilet seats, for example, but the idea behind it is that

- they should use their intelligence to identify trends and issues that would warrant further follow-up. With the old method, they were running to stand still and almost fighting fire the whole time. We believe that this new approach is a more intelligent use of the resource that we have.
371. To come back to the first part of the question that you asked: we think that we have the right balance between the demands that are being placed on our staff and the resource that we have. Notwithstanding the issue, we are under a bit of pressure at the moment because we are in transition between the old contracts and the new, and that has put staff under a lot more pressure. So, we are going through a difficult phase at the moment because of the start-up contracts, but once we get over that hurdle, we believe that we will have a decent balance between the resource that we need and the demands being placed on the staff. However, we will keep that under constant review.
372. It is also fair to say that I do not want to be in a situation where I have to rely on agency staff to support core functions, but being able to use an agency resource can give you significant benefits where required. There can be sudden upsurges in demand. When we had the floods in the summer, for example, we had a sudden increase in repair requests for certain types of work, so our belief is that maintenance inspection should be a core function of the Housing Executive. The vast majority of that resource should be delivered by core employees and a small amount of it should rely on additional resource that we bring in. They should be properly trained to do the job of a two-stage inspection process: a statistical inspection to hold contractors to account; and a second stage where they use their intelligence to pick up themes. I think that would give a much greater assurance to the organisation, not just on the quality of the work of the contractors, but on the overall value-for-money framework that we operate in.
373. **Mr Girvan:** I appreciate that. Different district offices seem to have completely different performance figures on that matter, and that is where we want to see real consistency across the board. We want to see like-for-like inspection, not oranges being tested as apples. I think that is key.
374. Some areas seem to have performed very well when other areas have not. I am not naive enough to say that there must be an exceptionally good contractor working in one area. I know from having worked with them many times that there are good and bad contractors. It can be hit and miss; it depends who is on the job. I appreciate that those areas need to be looked at.
375. Paragraph 1.22 on page 23 of the report states that further investigations are being undertaken by the Housing Executive and Departments into the working of a number of contractors and that the Department has commissioned a wider report. Can we have the name of those contractors and a copy of that report when it has been completed? I know that it is to be completed in the autumn, but it is vital that we have that information fed back to us. A lot of the focus was on one contractor around this matter, but I am not stupid enough to think that it was the only contractor there. There were others.
376. **Dr McPeake:** That is absolutely right. We were treating the investigation that is under way as a confidential process because it raises issues around the commercial viability of the contractor. Our first port of call is to produce what we believe to be the evidence and get it to the contractor so that he can consider it and give us his view. We do the same thing for the staff who are managing the contract as they are part of the issue. When that process ends and the contractor comes back with his responses, the district staff come back with theirs and we close the thing out. I have no issue with providing it at that point.
377. **Mr Jim Wilkinson (Department for Social Development):** The report is

- active. It is in draft form and it is being considered. There are two stages to it. On the one hand, we will certainly look to see what we can take from the report about general lessons learned, but the specifics about individual contractors have to go through the Housing Executive's appropriate contract management process.
378. **Mr Girvan:** I understand that the Minister, when he took up post, commissioned a forensic investigation into this process prior to this report coming about. Is that correct?
379. **Mr Wilkinson:** Yes, that is what this report refers to. It is the outworkings of that forensic investigation that we have passed to the Housing Executive. That is why I am saying that we can share some of the general lessons that have been learned, including the recommendations, but there are also specific issues that the Housing Executive will have to take forward with its contractors after having tested the evidence.
380. **Mr Girvan:** There are major areas that we need to focus on. I want to know what is deemed acceptable procedure between the contractor and the staff and what is deemed to be unacceptable behaviour. That would relate to acceptance of excessive hospitality or the splitting of a contract because it was going to be above the level where they had to go in, and, therefore, they would do it two or three times to cover it. There was the duplication of orders that were making their way through and payments were being issued. There was approval of work for buildings that were not even there. How was that sort of thing allowed to slip through? Staff also have to have a code of conduct by which they should abide. Will that be followed through? We recognise that these practices existed in the past and we want to be sure that they do not exist in the future.
381. **Dr McPeake:** We find completely unacceptable all the examples that you have given. We will not tolerate them in any circumstance. I will go through them. It is quite telling that, of the two examples of excessive hospitality mentioned in the report, one was 12 years ago and the other was seven years ago. In both cases, we took disciplinary action against the officers concerned. We have very substantially tightened our policy on gifts and hospitality. In fact, we probably have one of the strictest policies on hospitality in the public service. Our standing instruction to staff involved in the operational business is to refuse all hospitality from contractors. That is the only safe way forward. People are allowed to take a token issue, so if the contractor gives them a diary or whatever the case may be, that is permitted. To give you an example: the Northern Ireland Civil Service code on gifts allows officers to take a gift of up to £50. The Housing Executive allows £10, but we frown upon it. We really do not encourage people to accept gifts or hospitality.
382. **Mr Girvan:** Christmas dinners?
383. **Dr McPeake:** We will not accept any of those; none whatsoever. We are very clear about that. In fact, we are very clear about that. It did happen in the past, and we disciplined people on that basis. You will see that we are very strict about that issue at Christmas and we issue guidance at Christmas to remind people about it.
384. You asked about the code. We have completely overhauled the code of conduct for staff. Indeed, I think I am right in saying that the most recent version was issued today. I picked it up this morning by e-mail. We have a new code, and this issue of hospitality is included in it. We reviewed the policy on gifts and hospitality on several occasions since those examples were highlighted back in the early 2000s. We have a strict approach to that now.
385. We have no tolerance for people who would do those other things that you mentioned, such as splitting an order into several groups to keep it within their approval limits. For the examples that were cited, staff were disciplined. We introduced new controls in our

- systems to avoid and stop the problems of duplicate orders. From the evidence that we have to date, although we found those problems happening earlier in the period, we are not seeing those issues emerging now. We still see problems with incorrect schedule of rates codes being used. We still occasionally see issues. For example, there is a schedule of rates code for cleaning gutters. It should only be used once. So, you get a code to clean the gutters of a house, which means front and back. There have been examples of where contractors have used the code twice, once for the front gutters and once for the back. So, we have made changes in the systems of the organisation that prevent those codes being abused.
386. I come back to the point that I made at the start of the session. One of the key lessons for us as an organisation is that we cannot be complacent about those things. We must remain vigilant. We cannot lull ourselves into a sense of security and think that, because we have done x, y and z, we have solved these problems. We must keep vigilant and keep on at it. However, I have no tolerance for any of the issues that you mentioned.
387. **Mr Girvan:** One of the areas that you alluded to earlier was staff rotation. I am not saying that rotation deals with all those points, because sometimes, people who are creating no problem end up being moved for no reason. Is there a policy on that? You mentioned that there was a way of dealing with that and it was through staff rotation. How could that work? Is there a policy for it?
388. **Dr McPeake:** Yes. There is now a policy on staff rotation. One of the recommendations of the governance review that Mr Haire mentioned was to introduce a more formal approach for staff rotation. One of the weaknesses that we have in our circumstances, which I mentioned previously, is that we do not have mobile contracts. We cannot tell Housing Executive employees who work in Bangor that, next week, they will be working in Ballymena. We do not have the ability to do that. However,
- we now have the ability, especially with more recent contracts, to relocate people within reasonable distances.
389. **Mr Girvan:** I want to make sure that those contractors who have signed up and are working their way forward on recent contracts have been properly briefed on this matter.
390. **Dr McPeake:** Yes, we call that process the enabling meeting. Although I have talked a lot in the session about training, and the focus on training is, rightly, on us training our staff —
391. **Mr Girvan:** There is also the training that needs to be given to contractors.
392. **Dr McPeake:** Absolutely; I was just going to make that point. When you look at it, you see that it is increasingly obvious that part of these problems arise because contractors do not fully understand what is expected of them. So, we are committed to making sure that we get off on the right foot, particularly as part of these contracts. We are committed to making sure that contractors are clear on what we expect from them, know how to use the systems and have clarity about the schedule of rates codes. We are seeing some early issues, which we are trying to work through. As we mentioned earlier, at the start of new contracts, we have a grace period of three months. In that time, we work intensely with the contractors to make sure that we start the process as we mean to go on, because we are in with these guys for four years.
393. **Mr Girvan:** You alluded to a three-month contract in which you would suck it and see. Is it correct that the contracts of those people who are not coming up to the mark within that period will be up for retender?
394. **Dr McPeake:** They do not go out to retender. We have what is called an escalation process. Assuming that we are in the normal running mode, and not necessarily in the three-month transitional period, KPIs are produced for that month's performance and assessed. There might be some

- indicators that performance is not up to standard. In such a case, there is a meeting with the contractor, and the contractor is required to explain what is going on and put in place arrangements to correct that; there is an improvement plan. That might happen at month 2 or month 3. We expect to see evidence that things improve. If they do not improve, it is escalated through the organisation to a point at which the contract can be terminated. The contractors are part of a framework, and we have other businesses that have been through our procurement process, and which have a slot on that framework contract, but which have not been allocated a work package. If we find ourselves in a situation in which we have to terminate one of the new contractors early, and I hope we do not, there will be another contractor on the framework to whom we can go immediately without having to go to retender. Those contractors have been through the procurement process, and prices are already there and available to us. We will be able to go through a transition from one to the other.
395. Our belief is that termination is an absolute last resort. It should be entered into only if all other reasonable measures have been exhausted. The difference from our approach now and our approach in the past is that contractors enter this relationship knowing exactly what we will do if certain circumstances arise. In the past, there was not that clarity. So we have this clear timeline, a clear cycle of escalation and clear consequences for failure to perform.
396. **Mr Dallat:** We are three hours into this, but I am finding it to be extremely worthwhile. I am also tempted to say that, on this occasion, the accounting officer has got off lightly. I think that is because the witnesses are clearly focused on what should happen. That message will be warmly received by good contractors, and certainly by the 90,000 tenants of the Housing Executive. If that happens, the hearing has been well worthwhile.
397. I have questions to ask about the past, because we must deal with it. My first question relates to paragraphs 2·10 to 2·19 of the report, and it is addressed to you, Mr Haire. Figure 8 shows that 11 of the 35 districts had an unacceptable rating and that that covered £25 million of expenditure. Surely, it must have been obvious to anyone in the Housing Executive, before the Audit Office pointed it out, that there was something fundamentally wrong, when a district's performance could be rated as satisfactory even though, in some cases, scores of zero were awarded for the quality of the work and the accuracy of invoicing. I know you have covered this, Dr McPeake, but it would be useful to get the official answer for the record.
398. **Mr Haire:** I think that this was a very useful way to look at these questions by the Audit Office. A lot of this is about data mining and getting that focus. As John and Gerry have indicated, there are very high standards. Rightly, they expect a 99% level. They are experts in the area, and they know that that should be achievable, and that is what they are determined to get to. Clearly, there are areas where the level of service in that process is not good enough. The key point for me is to hold John, Gerry and the Housing Executive to the standards that they have set themselves and to ask whether they have used the data and whether they will achieve those outcomes. I have been in fairly robust discussion with them about the issue over the past six months, and I have told them that this is the real opportunity for them to focus on this and that they have to get the system right.
399. There is also the question about the balance of the score and the quality that the customer is getting. In some stages, it varied over a while. Now, rightly, they have set it at about 30%, which is a reasonable level. At one stage, it was down to nearly 10%. It is clearly about the customer and the tenant and making sure that they are getting it right.
400. **Mr Dallat:** So, in a nutshell, what appeared to happen in the past will not happen again: we will not have the

- contractors scratching the back of the Housing Executive and vice versa. The new systems, as outlined, will prevent that. Am I right?
401. **Mr Haire:** The new contract is much better in that way. There is a clear understanding in the Housing Executive that this is what it is about. You made a point, Mr Dallat, and, quite clearly, there were staff in the Housing Executive who were trying to enforce what was a difficult contract to enforce and were standing up to contractors on the issue. Here we have a clearer system where everyone can stand up. At the same time, the point is being made that a lot of this is about training, quality, understanding and making sure that the skill is there. There were failures in the past to get that in place, and I am very glad that John, Gerry and the team are taking this very fundamental view on this process and working it through. There are a lot of other contracting issues, and we have to go across all the contractors of the Housing Executive to make sure that it works well.
402. **Mr Dallat:** Finally, I want to cover whistle-blowers. It seems that there have been very few whistle-blowers, and it was extremely disturbing to find that somebody fed a whistle-blower's letter into a computer to try to identify common phrases so that they could find out who it was. We had the experience recently in the Northern Ireland Fire and Rescue Service where similar things happened. I am not suggesting that that was exclusively a Housing Executive issue. However, does Mr Haire agree that whistle-blowers are essential and that they need to be protected?
403. **Mr Haire:** As the report said, the Housing Executive explained why it did that process. It thought that it was an important case and wanted to try to get better information from the individual, but it has recognised that that is the wrong thing to do because it undermines the culture. If somebody chooses not to go public in that process, you must let them use the anonymous route and have it open so that people can feel confident that they can use that route and that there will be no comeback on the issue. The Housing Executive put its hands up and said that it got that wrong; its predecessors called it wrong and that it is not the policy of the Housing Executive now.
404. The key thing for all organisations is how to get openness in their organisation so that staff feel confident that when they see issues that they think are wrong or things that can be improved, they can use that process and help with the continuous improvement. That is the challenge that all of us as leaders of organisations have to get right. It should not be whistle-blowers only; staff should naturally come and say that something is not working right, that they could do it better or that they are unhappy with it. That is the challenge that John has to deal with.
405. **Mr Dallat:** Chairperson, for the record, I was referring to paragraph 3.2 and the associated case study.
406. In 2010-11, of the 22 ongoing fraud investigations in the Northern Ireland Housing Executive, only two had been formally notified to the C&AG. In 2005, a significant suspected fraud, in my opinion, appears not to have been reported at all. Why was the Audit Office not informed?
407. **Dr McPeake:** With regard to paragraph 3.2, there was a misinterpretation on our part about the point at which we were supposed to inform the Department of such cases. Our belief — and we accept that we were mistaken — was that we should draw a distinction between allegation and suspicion. Perhaps it is a very fine point. We have very experienced fraud investigators in the Housing Executive. At the time, the fraud unit was headed by the former head of the fraud squad in Northern Ireland. That gives you an indication of the quality of the people involved in it.
408. It was our practice at the time, when we got an allegation of fraud, to do some pre-investigative work to determine whether there was any merit in the allegation. At that point, we would inform

- the Department. It has been drawn to our attention, through the helpful report of the Audit Office, that that is a breach of 'Managing Public Money Northern Ireland'. We had not appreciated that; and we put our hands up. We have regularised our arrangements with the Department and there is absolutely no ambiguity about it.
409. One thing I want to say is that no one here is saying that we did not investigate these cases. Every case was investigated thoroughly, and appropriate actions were taken. The failure on our part was not to notify the Department at the appropriate time. That is an issue that we accept and have addressed.
410. **Mr Dallat:** Yes. I accept the response, and I am glad that we now have an assurance that Dr McPeake understands fully that the Department and the Audit Office must be notified immediately of any suspected fraud. I assume, therefore, that you understand what is required and why reporting is important. How many more unreported cases of fraud or suspected fraud may there be, given that you did not understand the procedure?
411. **Dr McPeake:** All I can say is that, from the point at which we clarified this with the Department, we have reported every allegation that comes our way on the day we receive it.
412. **Mr Wilkinson:** I also should say, from the Department's perspective, that the Department had to tighten up its procedure as well. In October 2011, we did a full reconciliation of all investigations and whistle-blowing cases that the Housing Executive had and ensured that the Comptroller and Auditor General had been notified of them. He now has a full record and it is being updated regularly.
413. **Mr Dallat:** Finally, out of interest, what was the outcome of the investigation referred to in the case study?
414. **Dr McPeake:** The report indicates at the bottom of that section that there was no evidence, and that we did not report it. My understanding is that they did not find evidence of fraud in that particular case. I would need to check the case files just to be precise about it.
415. **Mr Dallat:** That is fine. Thank you.
416. **Mr Easton:** I will touch on the issue of whistle-blowing, if that is OK. My question is to Dr McPeake. Can you explain why, in the case referenced in paragraph 3.7, the Northern Ireland Housing Executive considered it appropriate to try to identify the whistle-blower? Do you also accept that practices such as that, and the sudden transfer of staff or decisions to terminate employment, can create the perception that whistle-blowers are not welcomed in your organisation?
417. **Dr McPeake:** I agree with the tenet of your question. As Mr Haire mentioned previously, it should not have happened. At the time, the Housing Executive took the view that the public interest would be served by this action, but the truth is that, in the cold light of day, the public interest is not served by it. So we have taken a clear decision that there will be no instances in which we will make an effort to identify a whistle-blower. I agree completely that the integrity of the process rests on the belief that a person can raise an issue with us without any fear or favour. I assure you that that is the approach we are taking.
418. As to whether staff may be relocated as a result of this, our belief is that we owe a duty of care to whistle-blowers, regardless of whether they are internal or external. We need to ensure that we apply the highest standards we possibly can in dealing with such cases.
419. **Mr Easton:** What grade was the individual who sanctioned the attempt to locate the whistle-blower?
420. **Dr McPeake:** At the time, the view was that it could be approved by the director of personnel and management services or by the chief executive. It was on the advice of the head of the counter-fraud group that it was done.
421. I am aware of that happening in only that case. In fact, I believe there

- have been two cases in the life of the Housing Executive when an effort was made to do that. We have stopped that in order to make certain that it will not happen again.
422. The decision was taken at the time. It was believed — in retrospect, I think we accept it was mistakenly believed — that it was in the public interest because the issue raised was potentially a life-threatening question of health and safety. The organisation was conflicted about what it should do in those circumstances because there was not enough information to investigate it properly.
423. We accept that the decision to try to identify the person was incorrect. For the record, it is worth saying that we did not identify the person. Although an effort was made, it was unsuccessful.
424. **Mr Easton:** What steps have you taken to implement the Audit Office recommendations? Have you done them all?
425. **Dr McPeake:** We accept all of them. A number are already well-advanced, but our commitment is to implement all the recommendations of the Audit Office report. We are also expecting in due course to receive the Public Accounts Committee (PAC) report and we will be giving that our due attention as well.
426. **Mr Easton:** OK, next question. Dr McPeake, I am looking at paragraph 3.9, which deals with the Housing Executive's disciplinary policy. However, it is important to consider that issue in conjunction with the Red Sky case study on pages 15 to 24. Your policy on fraud and corruption is very clear: both are unacceptable. Yet, clear breaches are met with written and verbal warnings according to paragraphs 3.9, 1.17 and paragraph 1.17 sub-paragraph 25, and reinstatement, albeit on appeal, in paragraph 1.17. Are you satisfied that the disciplinary action taken in those cases adequately reflects and supports the zero-tolerance approach of your policy? What more needs to be done to ensure that the punishment fits the crime? For example, are your systems robust enough to identify where breaches have occurred and where the faults lie, and are your investigations sufficiently thorough to support the applications of the strongest sanctions in every case?
427. **Dr McPeake:** As regards the first broad issue you raised, which was about whether I am satisfied that the disciplinary sanctions are appropriate, I will answer that in two ways. First, I asked my director of personnel and management services to review the way in which the Housing Executive handled disciplinary issues where there were allegations of fraud. A lot appears to come down to whether there is evidence to support a fraud claim. Our belief is that when we have fraud, we have a zero-tolerance approach, as you rightly say. Where we believe there is evidence of fraud, we pursue that to the highest levels we can. If we think that a criminal issue is involved, we will bring it to the police. We have done that on a number of occasions.
428. I asked my director of personnel to review and satisfy me that we have taken a consistent approach. One difficulty we have with any disciplinary process, of course, is that the only thing we really have in our control is the investigation of the issue, making the case and bringing the person to a panel. The panel looks at the evidence presented on the day, the way in which the person being disciplined presents his case, his representation, and any mitigation offered. As an organisation, our belief is that it is right and proper for us to have zero tolerance. If there are cases where there is evidence of fraud, we will pursue them rigorously.
429. The second part of your question was really about whether I am satisfied, moving forward, that we have appropriate and robust systems in place. Our fraud response approach is under review, and that review is due to be completed in December. There are two major strands to it. The first is prevention, which is the key to dealing effectively with fraud. You have to have appropriate systems in place to prevent fraud from happening

- in the first place. The second is the arrangements we have for detecting fraud that has happened. Again, we have introduced a number of key changes to our systems to help us to identify where those sorts of issues may arise. Our belief is that it is right and proper that we focus on bringing these matters to the highest level when there is evidence of fraudulent behaviour.
430. **Mr Easton:** My last question is to you again. Paragraphs 3.11 to 3.25 deal with the complaints process. If I were a member of the Housing Executive board or a reader of the annual report, I would conclude, based on paragraphs 3.12 and 3.14, that the Housing Executive is doing reasonably well as it gets around only 500 complaints a year. However, that is far from the truth, is it not? Taking into account informal complaints and recalls to contractors, the figure in paragraph 3.20 is close to 19,000. Why is that figure not reported to the board or included in your annual report? Is this just a mechanism to obscure the true scale of tenants' dissatisfaction with the service or standard of work being provided? Are you covering up the true amount of complaints? I think that you are because I report quite a few of them.
431. **Dr McPeake:** Yes, I know that. In our complaints system, there is a distinction between informal and formal complaints, and when we report, we mostly focus on the formal complaints. Our organisation's approach is to try to avoid complaints coming into the formal system because it is a measure of failure to an extent. Our approach is pretty much industry standard.
432. There is a distinction between informal and formal complaints, and, for example, the ombudsman's office has commented favourably on the Housing Executive's willingness to address issues through complaints and to take action on them. To be frank, there is no attempt to hide the issues at all. We probably do not get to keep a record of some complaints because, for example, particularly in the construction business, the tenant might raise an issue on site that is solved there and then. There is no real easy administrative arrangement to be able to record that, but every informal complaint is recorded and stored in the housing management system. We do not regard recalls as complaints because they often turn out not to be a complaint as such. However, we still analyse every one of them. Every single informal or formal complaint is analysed to attempt to draw lessons from it.
433. We had about 150-odd complaints in the formal system to do with the repair side, and when you think that we do 330,000 repairs a year, that is a very low number. Even when you add the 9,000 or so informal complaints, it is still a very small percentage. However, we are not complacent about that. Every complaint is examined, and we use the complaints data from tenants to hold the contractor to account. The vast majority of complaints, whether informal or formal, that we get that relate to maintenance are about timing. They are about the fact that, for example, a tenant was supposed to have a job finished by Thursday but it was not done until Friday. We get only a very small number of complaints about the quality of work, and the timing issue is the one that most tenants are exasperated about.
434. We are not complacent about complaints, and we see them as a way in which we can drive up the standards of service. In light of the Audit Office report, I have asked that our formal and informal complaints arrangements are reviewed. Those are managed in the information department, and my colleagues there are conducting a review of the complaints system at the minute. I want to make sure that we make the very best use of all information that we have, and complaints are a valuable tool for improving service.
435. **Mr Flynn:** For further validation, outside of that we also do the continuous tenants' omnibus survey, where we ask people what they think of the maintenance service. That has been improving over the past five years. We sample tenants through our customer service unit. We ring them when the job

- is completed and ask for their views, and that is recorded as a KPI. The satisfaction rate is in the high 90%.
436. We meet every month with the Housing Community Network, and one aspect that is discussed is maintenance performance. There are a number of elected representatives around the room here, and I remember 10 years ago when we were inundated with complaints from public representatives and the public about our maintenance service. We have improved, and although we still get complaints, they are certainly not on the scale that they used to be.
437. **The Chairperson:** Members, you will be glad to hear that we have two members left: Mr Ross Hussey and Mr Mitchel McLaughlin.
438. **Mr Hussey:** They will not be glad to hear that I am one of them, but here we go. I will move on to the effectiveness of governance arrangements. Mr Haire, we will stay with the complaints process. Paragraph 1.8 states that one of the benefits obtained from the Egan partnership approach includes increased levels of tenant satisfaction. Yet, if you look at figure 13 on page 47, one in four of your tenants is dissatisfied with the repair service provided by the Housing Executive. From a departmental perspective, what are your views on the overall satisfaction level of 75% for the repair service? Is it acceptable that one in every four tenants is dissatisfied? What would you consider to be an acceptable level of performance for an organisation such as the Housing Executive?
439. **Mr Haire:** I am not an expert on how the overall satisfaction levels benchmark against other organisations. I am satisfied that the Housing Executive has in place a number of survey activities to try to probe the issue. They take the matter seriously. The point is that it has set itself very high standards in delivery, as outlined in the RIU report. It has not achieved those levels, and I want to hold it to account and get those levels correct up to the very high levels of the process.
440. On public confidence levels, I do not know whether the public will give you answers. If you peak at 80%, there will always be a certain proportion of the population that will say that it is not good enough. I do not know whether it is 80% or 85% or 90% in that process, but a key point is that the Housing Executive has to focus very clearly on getting these contracts right and ensuring that they are delivered to the right specification. I think the new contracts will give it that base.
441. **Mr Hussey:** I disagree. I feel that if there is a tenant situation, which there is here, and that one in four of them is clearly stating that they are not happy with the service that they are receiving, then that is not right. That is not an acceptable standard. The benchmark should be a lot higher than that. When I worked in the insurance industry, if my office received complaints from one in four people, I would not be a very happy person, and the person who was receiving the complaints would receive more than the sharp end of my tongue. I believe that the figure should be at least 85%, leaning towards 90%, and I believe that 75% is a low figure.
442. **Dr McPeake:** Can I just make a brief comment on that?
443. **Mr Hussey:** I am going to move on to your question, and you can comment on that as well, because it is getting late and even I get tired occasionally.
444. Paragraphs 3.21 and 3.22 state that you have made some progress in attempting to use complaints information to assess contractor performance. What is your target score for customer service, and how many improvement plans have been put in place to date? Have they had the desired effect?
445. **Dr McPeake:** If you will forgive me, I will just add a brief comment to Mr Haire's answer a moment ago. Figure 13, which you referred to, shows information from our continuous tenant omnibus survey. That survey runs every day of the week throughout the year.

- It is non-specific to particular repair jobs, so when we ask a tenant about it, they are offering a generic opinion. I think you said that overall satisfaction was at 75%, but it is not correct to say that 25% were dissatisfied. That is because the next category in the survey is “neither satisfied nor dissatisfied”, or in other words ambivalent, and the next is “dissatisfied”. It is a well-known feature of retrospective surveys that around 75% or 80% seems to be a natural level of satisfaction. We rely on contemporaneous recording, polling, of tenants on specific jobs for our customer measures, so our customer service units telephone tenants on a random basis after work is done, and the figures there show that 98% are satisfied. That is the sort of level of satisfaction that I expect to get. It is very difficult to get anything above that in retrospective surveys because of the way they are designed and the way the questions are framed. The way the samples are structured makes it very difficult to get much above 89%.
446. **Mr Hussey:** Who designed the questions?
447. **Dr McPeake:** They are designed by research specialists, but —
448. **Mr Hussey:** Clearly, research specialists believe that those are the questions that they want the answers to and, therefore, if they are the specialists, the answer is still 75%. I accept that the number of people who are neither satisfied nor dissatisfied can put your figures out slightly, but at the same time, if that is what the research specialists are advising you to ask, then surely that is the line you should follow.
449. **Dr McPeake:** I agree completely. What we find from these types of surveys is the trend. That is very important as well and we are pushing that up, but we are not complacent about it. We want to provide the very best service we can to our tenants because we are obligated to do so and because we would not be in business if it were not for those tenants. We use a method called triangulation. We use a range of different sources of customer satisfaction data to inform us about what our customers think. Retrospective customer surveys are one of those methods and the contemporaneous telephone-based survey that is directly linked to specific jobs is another. We also do quite a bit of qualitative research with tenant groups. We look at all those things in the round. The key thing is that when tenants give us direct feedback that services have been unsatisfactory, we follow up on that.
450. **Mr Hussey:** Mr Haire, paragraphs 4.16 to 4.18, starting on page 55, show that the Housing Executive is a very important public body and, indeed, one of the largest. How would you describe the relationship between the Department and the Housing Executive?
451. **Mr Haire:** I think that it is a good relationship. It has also been quite a challenging one over the past while and since the governance review commenced. Through that process, we have tried to look at some of the key issues, such as what the outcomes were, what the Housing Executive has achieved and how it deals with the challenges that it had with contract management, land disposals and the range of governance issues.
452. We have worked well together in oversight groups to see that the Housing Executive has the basic processes in place. We have also changed the accountability arrangements, and John and I work face to face. At times, I have made that contact more regular, and because of the size of the issues that we are dealing with at the moment, we meet monthly. We will continue to meet monthly until I am assured that all those things are in place. However, although it is challenging, I think that we have a very open and good relationship. That is the right way to be; it must not be too cosy.
453. **Mr Hussey:** You will have been aware of the suspected contract fraud in the Belfast Education and Library Board, into which the Committee conducted an inquiry. As accounting officer in the Department of Education at the time,

- you would have been familiar with the problems that maintenance contracts can throw up. Given that you had that insight, did it strike you that there might be a similar problem in the Housing Executive? If so, what did you do?
454. **Mr Haire:** Absolutely; it was a similar business. When I came into post, an investigation into the Red Sky contracts was already being undertaken. That started before my time and arose after a whistle-blower contacted the Audit Office. My key tasks were to make sure that it was pursued and that we processed and analysed the information. However, even before the reports on Red Sky were completed, I was concerned about the land deals and some other issues, and I asked for a governance review. That looked more widely than just contract management and took in the entire governance process. I think that that review was unique, in that it asked about those very big governance issues. Of course, it came at the same time as PAC had carried out its inquiry into the Department of Culture, Arts and Leisure's arm's-length bodies. In light of that, we took a very broad view, and looked more widely than the contracts and took in the whole governance issue. That is why we got the governance report by the end of 2010.
455. My experience in the Department of Education and of dealing, more generally, with some of the governance challenges in the education and library boards made me feel that we had to look at those issues. On a related issue, I felt very strongly that there were issues with the culture and organisation of the Housing Executive and my governance review also looked at those elements. I think that that was a useful exercise, because it helped to frame the agenda. In fact, in many ways, the NIAO report reflects many of the same themes that I was trying to investigate at that time.
456. **Mr Hussey:** Staying with that theme; prior to the reviews listed in paragraph 4.1, when was the last major review of the Housing Executive by the Department? What did it conclude?
457. **Mr Haire:** As you know, we are fundamentally reviewing the structure and future direction of the Housing Executive, and, over the past couple of years, work has been done on that. PricewaterhouseCoopers has also produced a variety of reports. Those are sitting with Ministers at the moment, and they will take a view on the structure and future direction of the organisation. There has been a useful and wide dialogue between the housing sector and the Housing Executive on many of those issues, together with a very useful discussion on the question of where it would be best to locate the Housing Executive's landlord function if it were to be split from its strategic side. We await ministerial decisions to take that forward. The key point that John and I are focusing on is that even though that structural change will be a very important part of our work, any structural change takes several years to put through. The key question is how to make sure of the quality of these services. Whatever politicians decide to do with the Housing Executive structure, how do we make sure that these services are protected and that we do not lose the quality of the day-to-day business? That is the importance of this sort of report and the focus of this sort of question.
458. **Mr Hussey:** That particular issue is one of the most important things: the integrity, I suppose, of the Housing Executive. In light of what has emerged, are you satisfied that the Department's oversight of the Housing Executive was up to the mark? Clearly, I have made my comments in relation to the past. What do you see as being the wider lessons for the relationship between the Department and the Housing Executive?
459. **Mr Haire:** When I came in, I did not think that it was as formalised as I wanted it to be. I have ramped up the formalisation of the process. I can get written assurances from John and from other people that they have assurance systems in place, but I actually think that I have to independently go into different areas every year or so and

- actually test that. That is a fair thing for a Department to do. I am not trying to second-guess, but I think it is important that an objective individual comes in to ask whether actually that is operating in the system. That is the form of governance that is appropriate here, but it is also important that there is openness and transparency in the process. That is what John and I are trying to work towards.
460. **Mr Hussey:** We have covered the structure and the organisational structure. Appendix 9 of the report contains the raft of recommendations. Rather than go through all that in detail, perhaps you would write to the Committee setting out how each of the recommendations has been implemented.
461. **Mr Haire:** Yes, we have done work on that. I am very happy to give you our full report on all that. We monitor that very carefully.
462. **Mr Mitchel McLaughlin:** Paragraphs 4.7 to 4.9 deal with the critical issue of the independence of internal audit. We have two clear case studies in which critical internal audit reports have been suppressed, or pressure has been put on internal audit to change its opinion. What comes across and what worries me in reasonably contemporaneous time frames is the culture in the Housing Executive of stifling any form of criticism. What is your view on that?
463. **Mr Haire:** It is totally unacceptable. It is also very foolish, because internal audit is the best process an organisation has to get information out there to deal with issues. These case studies are very clear. The issues that were there maybe did not come up well enough, and it came back to bite the organisation. It is very clear. It is absolutely fair that management is allowed to quickly comment on an internal audit report to make sure of the other factual issues, or something like that. Two or three weeks, you know; give comments. Ultimately, though, it must be the job of the internal auditor to take that into account and to make his or her decision. If they stand by their report, it goes to the chief executive. That must be the way it is, because it is the only way to improve quality in an organisation. It can be very painful for us in that process, because internal audit reports are going to come up, but that is the right thing.
464. **Mr Mitchel McLaughlin:** I agree that it is painful, but has anyone experienced pain? Has anyone been disciplined?
465. **Dr McPeake:** Let me reinforce the point that Mr Haire has made. I agree entirely with that assessment. There is no excuse for this having happened. The officers that were involved in both these case studies are no longer in the employ of the Housing Executive. At the start of the session, I mentioned that since taking up my post as chief executive last September and having to work through these issues over the past 12 months, I have made very clear to my colleagues, particularly this year, the importance of having an independent internal audit and the appropriateness of challenging any recommendations in a measured and meaningful way. In no circumstances — and I repeat that: in no circumstances — is it acceptable for a report to be stymied or for it not to proceed.
466. **Mr Mitchel McLaughlin:** You were part of the chief executive's business committee at that time. Did you go along with that practice, or were you supportive of internal audit's role and function?
467. **Dr McPeake:** From my own point of view, I have always regarded internal audit as an important tool for senior management. You will see that one of the case studies mentioned related to land issues, and that land-related matter was one of housing regeneration. What has happened is that the Housing Executive has actually taken all responsibility for the land and property function out of the housing division, and placed it in a different division. In the case of the kitchen scheme, the audit again highlights the actions of the former director of housing regeneration and the chief executive.

468. At the end of the day, the report is correct in saying that the organisation had an approach to internal audit that has not been acceptable. When I met Mr Donnelly's auditors who were doing this work, there was a view that the Housing Executive was a cold house for some of those issues with internal audit — and, indeed, you might argue, potentially with the corporate assurance role.
469. **Mr Mitchel McLaughlin:** I am trying to work out from that long answer whether you supported the audit committee's position or whether you were part of the culture of trying to change the report or suppress it?
470. **Dr McPeake:** As I say, these particular —
471. **Mr Mitchel McLaughlin:** Sorry. Just as a supplementary question, I am also anxious to know whether you have changed your opinion now that you are chief executive?
472. **Dr McPeake:** It is fair to say that my position on internal audit, as chief executive, is different to what it was when I was a director. That is absolutely true. As to those particular reports, the specific issues were raised by the operational directors. If you are asking me whether there have been internal audit reports, which came to me in my role as a director, and whether I would have challenged recommendations by internal audit earlier in my career, it would be fair to say yes. There would have been occasions on which the organisation's approach at the time was that it challenged audit findings that it did not believe were correct. I do not think, and I genuinely do not believe, that there was evidence that said that senior management or others challenged recommendations because they were awkward, or because they made them feel uncomfortable. I genuinely do not believe that that was the case. However, I accept that perhaps the level of challenge that was seen to be in place at that time was beyond what we would now regard as acceptable.
473. **Mr Mitchel McLaughlin:** We are only talking about a few years ago.
474. **Dr McPeake:** I understand that, but a lot can happen in two years.
475. **Mr Mitchel McLaughlin:** Yes. You could become the chief executive. [Laughter.]
476. **Dr McPeake:** I am very acutely aware of that.
477. **Mr Mitchel McLaughlin:** Right. I suppose that it is absolutely vital to establish that you would defend, and depend on, the absolute independence of the audit committee.
478. **Dr McPeake:** Absolutely. As I have said, I have made that point very clear to my management team.
479. **Mr Mitchel McLaughlin:** Mr Flynn, this is probably the question that you are anticipating. You were the deputy director of the housing and regeneration division when that was going on. Were you supportive of the internal audit's role and position?
480. **Mr Flynn:** I never had any issue with the objectivity of internal audit in carrying out its work. Naturally, as a manager, I might at times have disagreed with some of the recommendations, particularly if they did not understand what we were trying to explain.
481. **Mr Mitchel McLaughlin:** Did you disagree with those particular reports that have been mentioned, the two case studies that we have in front of us?
482. **Mr Flynn:** With reference to the land one, I do not think I disagreed. On reflection, one of the issues was a misunderstanding of an interpretation of what we felt was required in the area of economic appraisal. That was the only issue.
483. **Mr Mitchel McLaughlin:** OK. You are now director. Is your position on the internal audit's independence absolutely crystal clear?
484. **Mr Flynn:** Absolutely. As it always was. As a manager, and as John has said earlier, we reserve the right at times —

485. **Mr Mitchel McLaughlin:** You might have said that, but I did not hear you say it when you were the deputy director.
486. **Mr Flynn:** No, I did.
487. **Mr Mitchel McLaughlin:** I think you told me that you had an issue.
488. **Mr Flynn:** I had no issue with internal audit's objectivity, but you take issue as a manager, at times, with conclusions, if you find that they are not based on an understanding of the business. That still remains the position, but there is unequivocally no issue with its independence. Absolutely none.
489. **Mr Mitchel McLaughlin:** We have heard during the evidence session about what I think was a positive development in the absolute separation of the corporate and operational functions. You could see how it could be difficult to keep that balance. Mr Haire gave us some assurance that the Housing Executive can manage the situation going forward, and I will give you the opportunity to restate, if it is your view, that those situations will not happen again.
490. **Mr Haire:** The answer is that great progress has been made in the past while, and it has been a robust and difficult time for the process. We have the basics in place, but this is about culture and about how people act and how they operationalise the issue. That is the big issue, and the jury is out on that. I believe that they are going to do it, but I will test it in a year's time because that is the right thing to do. John accepts that that is very much the right thing to do because he wants to test the contracts. I want to ensure that the governance is right and that all the systems are in place, and, in due course, I will put people in. I have said, right from the beginning, that I have done a governance review, and, in due course, the team will be back to check these things out. That is a positive thing to do. The team is very clear about what is expected of it. From talking to the board, I think that it is very clear about it as well, and the answer is that we have to work it through and, through the process, get people's confidence that we actually have got these things nailed.
491. **Mr Mitchel McLaughlin:** Paragraph 4.11 has comments from the Housing Executive that all previous reports and assurances to the board and the audit committee from a variety of sources indicated that contract management in the organisation was satisfactory. Based on the evidence presented in the report — the report is referred to in paragraph 2 — do you still believe that to be true? I will remind you, but I am sure you recall, that, in an earlier answer, you talked about a deficit in project management skills.
492. **Dr McPeake:** Yes, I accept that observation, and I think the point that is being made here in the report is that key information that should have gone to the board and the audit committee earlier in the life of some of the contracts did not go, and when information did go, it was at a fairly superficial level and did not highlight the issues that the report highlights. We have accepted that that is a major weakness.
493. Since taking receipt of the report and dealing with the other issues, we have reviewed the way in which we report information on major contractual issues to the board. For the first time, we are introducing a process whereby the KPIs associated with the contract will go through the performance review committee, which reports to the board. It will also go to the risk and performance committee. I have taken steps to introduce a contractor review report. We have a number of contractors that work in a number of different bits of our business. They might do all trades, repairs, planned maintenance or adaptations, and, for the first time, we will also bring that sort of information to the board. We accept wholly, and the board accepts, that we did not provide the right information to the board, and so the board was not as well sighted on the issues as it should have been. The board has accepted that its agendas were too long and has worked with the senior management team to review that, and, moving forward, we are confident

- that we will have addressed those issues.
494. However, we will not be complacent about it because we want to make sure that once the new reporting arrangements are up and functioning, we touch base with the board, the audit committee and risk and performance to make sure that they are satisfied that they are getting the right information to give them a view on the organisation to enable them to fulfil their job of holding senior management to account.
495. **Mr Mitchel McLaughlin:** I am actually going to come on to that. Mr Haire, paragraphs 4.12 and 4.13 deal with the board and audit committee agenda. Was that issue addressed in the Department's governance review, and what is your view of the Audit Office comments about the content and length of the agenda and the difficulties that creates in getting down to the core?
496. **Mr Haire:** This was one of the things that my team brought up. You are absolutely right; there was an issue about having too large agendas and not enough focus on issues. To make a general point, where there is a duty on the executive team to get the right information to the board, it is the duty of the board to demand information and not stand idle. If they are not getting it, it is their job to demand it and keep on demanding it. As we get a new chair and vice-chair, that is one of the key issues in the briefing from a departmental point of view. I think it is a fundamental thing for a new chair coming in to start asking for what he or she wants. They need to be very clear that they have this material.
497. I welcome the fact that the board has created a risk and performance committee. I think that is good, because at least it is starting to look, not just at the issue of risk, but more strategically at performance. Here was a classic: in the past, the Housing Executive board was talking about lots of detailed issues but it was not asking about key issues such as the outcomes it wanted to achieve and the performances it wanted.
- As a board, it needs to strategically focus on that.
498. **Mr Mitchel McLaughlin:** I think we as MLAs have some sympathy because we get swamped with paperwork as well. It can be difficult to see the wood for the trees. That is if there are any woods left by the time we finish reading the papers. Who is responsible for compiling the agenda, Dr McPeake?
499. **Dr McPeake:** We have a standard agenda in the sense that there are broad headings. So the papers come, depending on — for example, there will be a governance section, but there are things in the board agenda that the board has to consider under the scheme of delegations, so we need formal board approval for certain decisions. Those things are mandated, but the agenda is governed largely by the board's own forward work plan. It also has a brought-forward list or matters outstanding list, whereby the board makes known to the senior management team the key issues that it is interested in. There is an agreement about what —
500. **Mr Mitchel McLaughlin:** So, you plan your way into these topics.
501. **Dr McPeake:** We plan our way into it. It follows a broad structure and it is informed by the board's own issues. Issues will come to the board that are of importance that emerge in a month. For example, since becoming chief executive, I have taken the initiative of preparing what I call an emerging issues paper, which I write each month for the board. I will draw to the board's attention any specific things that are of concern to me or a worry to me in the organisation that I feel the board should be aware of. I have taken that practice forward, so I do the same thing for the audit committee that meets quarterly as well as for the risk and performance committee. A number of different factors influence that. The meeting agenda is controlled by the board secretary as well, and the papers go through a pre-board process.

502. **The Chairperson:** John, the deputy chair, wanted to come in there.
503. **Mr Dallat:** Finally, let us end where we began. A number of us —
504. **Mr Mitchel McLaughlin:** I have not finished yet.
505. **Mr Dallat:** Apologies. I am sorry.
506. **The Chairperson:** Sorry, Mitchel.
507. **Mr Dallat:** Carry on, Mitchel. [Laughter.]
508. **Mr Mitchel McLaughlin:** I am an oppressed and threatened minority. [Laughter.] I do have one other question. You can tell that the level of interest in my questions from the Committee is very low.
509. Mr Haire, paragraphs 4.31 to 4.37 deal with the monitoring of expenditure. I am surprised at what appears to be the hands-off approach of the executive's senior management and the board. Considering the level of spend involved and the inherent risks associated, how could the Housing Executive's senior management and the board hope to properly discharge their responsibilities if they do not have sufficient information in front of them?
510. **Mr Haire:** There is an issue there, and I have been talking about that to the acting chair. There is an issue about the quality of the financial data information that the board is getting. The issue is on our agenda, and there is a meeting to get a tightening around that process. This is a very important issue. The Housing Executive deals with complex budgets and a wide range of issues, including the tightening financial environment. Like all organisations, we really need to make sure that we have got this data and that it is monitored very tightly.
511. **Mr Mitchel McLaughlin:** Dr McPeake, paragraph 4.37 is very succinct but it contains some very sound advice. Have you considered, or have you already implemented, that advice?
512. **Dr McPeake:** Yes, we have. It is part of the point that I made earlier about the fundamental review of reporting arrangements. Our plan is to bring a regular report to the board. We are hoping to bring the first of the restructured reports this month. It also coincides with a change in the financial reporting to bring information on the response maintenance contracts and expenditure by contractor to the board for the first time this month also.
513. **The Chairperson:** Thank you, Mr McLaughlin.
514. **Mr Mitchel McLaughlin:** I hand over to the Deputy Chair.
515. **Mr Dallat:** I will not preface my remarks this time, in case I cut somebody off. Three of us declared our previous membership of the housing council. It is that long since I was on it that I do not remember much about it other than that the lunches provided by the district councils were always of a very high standard. Is there an opportunity for the housing council to receive information on the type of material that is internal or which just comes to light occasionally when the Public Accounts Committee meets? Is there an opportunity for that body, in the future, to be more inquisitive in terms of performance and how the Housing Executive is doing?
516. **Dr McPeake:** It is coincidental, perhaps, but I will be at the housing council tomorrow. It has asked me specifically about this issue, so I will be talking to the housing council tomorrow about this in a generic sense. As you might imagine, we have not engaged with it prior to this, because it has been a confidential report until the point where it reaches the council. Our ability to comment publicly on it remains highly constrained until the Committee reaches its own report stage. Like you, my engagement with the housing council goes back quite a number of years. Because of the loss of functions originally from local government, the housing council styles itself as being a body that is holding the Housing Executive to account. My experience of it in the past several years has been that that has become more challenging than

- would have been the case, perhaps, in the past. Local politicians provide a useful insight. They always bring local colour to any situation, and you often understand that that is the way in which politicians very often engage directly with our business. It is why those issues and points that members made about complaints are so critical to us. We believe that local politicians bring a value to helping us understand our service, and we value that connection with them. There is always scope to consider a thing moving forward, and, no doubt, as Mr Haire mentioned, as part of the wider structural review, some people will be thinking about what happens with the housing council in the long term.
517. **Mr Dallat:** I welcome the fact that the housing council has expressed an interest, and that should be part of the ongoing process. I am very aware that our Welsh colleagues have been with us for so long. I hope that they have found it interesting. I have found this hearing quite different from some of the previous ones in that I am fairly clear where we leave it and where we go. Hopefully, we will see the Housing Executive again, perhaps in a shorter period of time, to review the plans that were laid out here today.
518. **The Chairperson:** Thank you, Deputy Chairperson. Do members have any further questions? No?
519. **Mr Hussey:** Mitchel probably has six more, but he does not want to use them.
520. **The Chairperson:** Mr Ross Hussey has submitted several papers relevant to the inquiry. These were obtained under freedom of information. The Committee will have an opportunity to consider the papers next week. Obtained under that freedom of information request are a series of letters between former Housing Executive chairman, Mr Brian Rowntree, and Mr Haire, and minutes of a meeting between Mr Rowntree and elected representatives about Red Sky. Mr Haire, do you wish to make on any comment on the letters or are you happy enough?
521. **Mr Haire:** It would be useful if we could give a note, because those are only a small part of a wider correspondence. It is more important to see the full flow of issues around that, and I am very happy to make sure that you see that correspondence in that process. The stuff that has appeared, particularly, presumably, on the detail, covers certain aspects of the issue, but there are wider elements that the Committee will want to get an understanding of.
522. **The Chairperson:** OK. Thank you, Mr Haire. Members will have an opportunity to consider those matters next week.
523. I will conclude, Mr Haire, Dr McPeake, Mr Flynn and Mr Wilkinson, by saying that this has been a very sorry episode in the long history of the Housing Executive here. It is a public body tasked with keeping people's homes in order, but it has let its own house fall into disrepair. That has to be acknowledged here today.
524. We acknowledge that you accept the report's recommendations and that steps have been taken to improve contracting arrangements. As we see from paragraph 8 of the report's executive summary, the deficiencies identified in the report have implications for other areas of expenditure. What investigations have been initiated by the Department to determine the full extent and impact of those deficiencies in the Housing Executive?
525. **Mr Haire:** There is clearly an issue with following up in relation to those contracts. There is a clear issue that the Housing Executive, once it detects issues where it can recover money, has to recover funds. There is a wider report, which we have described and which is coming towards completion, dealing with other contract issues, and there will be resource issues in that regard, in making sure that any funds that can be recovered are being appropriately recovered.
526. The other point is that there is a wider range now looking at other forms of contracting. John has already indicated that he is doing some work on that.

We will follow through on that to make sure that we can have confidence in all elements and that public money is being protected.

527. **The Chairperson:** Are members content?

Members indicated assent.

528. **The Chairperson:** Thank you for your contribution; it has been a long day. The Committee will consider the oral and written evidence that has been given and will issue its report and recommendations in due course. We may ask witnesses to come back. Mr Haire mentioned his predecessor, and we may want your predecessor to come here as well. The Committee will consider that and report back in due course.

529. I have nothing else to add to that. I thank the witnesses on behalf of the Committee. I thank Hansard for its coverage of today's discussion, and the Comptroller and Auditor General and his team. I thank the visitors and other members in the Public Gallery for their patience.



Northern Ireland
Assembly

Appendix 3

Correspondence

Chairperson's Letter of 13 September 2012 to Mr Will Haire

**Public Accounts Committee**

Room 371
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: pac.committee@niassembly.gov.uk

aoibhinn.treanor@niassembly.gov.uk

Will Haire
Accounting Officer
Department for Social Development

13 September 2012

Dear Will,

PAC inquiry into NIHE Response Maintenance Contracts

As you will recall, at yesterday's meeting, Ross Hussey MLA introduced into evidence correspondence between you and the former Chairman of the Housing Executive, Brian Rowntree; and the minute of a meeting between Mr Rowntree and elected representatives.

You agreed to comment on the wider correspondence which includes the letters submitted, namely those of July 1 2011 and September 2 from Mr Rowntree and your reply on 31 August 2011.

Points i) and ii) of Mr Rowntree's letter of July 1 stand out. He wrote that

"Although the Administrators are overseeing Red Sky in Administration a number of its previous senior management continue to manage the NIHE contract. Some of these are the same people who were responsible for the overcharging and poor workmanship which led us to give notice to terminate the contract and give rise to a consideration of referral to the PSNI for suspected fraud.

"It is understood that the senior management of Red Sky have mounted a successful buy-out of that part of Red Sky in Administration which was responsible for delivery of the contract and that they anticipate that their new company will inherit the contract from the Administrators following the sale of Red Sky in Administration."

Please set out how you responded to this concern, and what measures were put in place to ensure that members of the Red Sky senior management responsible for overcharging and poor workmanship did not inherit the Housing Executive contract.

I would appreciate receipt of this commentary by Monday 17 September.

Yours sincerely,

A handwritten signature in black ink that reads "Michaela Boyle". The signature is written in a cursive style with a large initial 'M' and 'B'.

Michaela Boyle
PAC Chairperson

Chairperson's Letter of 17 September 2012 to Mr Will Haire



Public Accounts Committee

Room 371
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: pac.committee@niassembly.gov.uk

aoibhinn.treanor@niassembly.gov.uk

Mr Will Haire
Permanent Secretary
Department for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST BT7 2JB

17 September 2012

Dear Will,

PAC Evidence Session on NIHE Management of Response Maintenance Contracts

Thank you for your participation in the Committee's evidence session for this inquiry on 12 September.

As agreed in the course of your evidence, I would be grateful if you could provide the following information to the Committee:

- 1) A memo detailing the staff moves, retirements, sanctions and other outcomes which have resulted from the investigations and disciplinary processes undertaken in response to a) the Red Sky contract and b) across mismanaged response maintenance contracts. Please show at what grade and role each move, retirement or sanction was effected.
- 2) Who were the 8 officers to receive sanctions as an outcome of Red Sky related disciplinary processes?
- 3) An assurance that no member of the disciplinary panels convened in relation to response maintenance contracts was himself subject to disciplinary process/ investigation in relation to this matter.
- 4) The number and value of breaches of standing orders since the implementation of the updated rules.
- 5) Details of the successful contractors following the completion of the response phase 2 and 3 contracts.
- 6) The number and percentage of computer-selected works subject to sample inspection and whether there is any seasonal variation to the sample size.

- 7) Confirmation that the updated disciplinary procedures restrict an individual's ability to opt for early retirement in order to avoid a disciplinary investigation/sanction; and whether any mechanism has been introduced to ensure a meaningful sanction for individuals who can choose immediate retirement under the 85-year pension rule.
- 8) Dr McPeake indicated that these updated policies are available in an electronic format for individuals to refer to. Please outline what steps the organisation has implemented or intends to implement to validate awareness and understanding of the required standards and behaviours.
- 9) In relation to information referred on two occasions to the PSNI relating to the Red Sky contract please confirm the date of each referral, and a copy of each response from the PSNI.
- 10) Paragraph 21 of the Audit Office report states:

"there has been a long history of poor workmanship and performance and one company's work was classified as unacceptable over a four year period".

Please confirm the name of the contractor referred to and whether it still holds a contract to undertake work on behalf of NIHE.
- 11) Please provide a copy of the letter from the contractor which relates to the issues highlighted at paragraphs 16 – 18 of the Red Sky chronology of events and the letter drafted from the NIHE as its response.

As discussed, please indicate whose responsibility it was to sign off the response and issue it to the contractor.
- 12) A breakdown by district detailing the number and value of jobs undertaken by contractors under £100.00, which were not subject to any inspection.
- 13) A description of the introductory 'enabling meeting' that is conducted with contractors and a summary of the issues identified through these meetings.
- 14) Paragraph 3.2 of the Audit Office report refers to a case study relating to an investigation of suspected contract fraud. Please provide a summary of the outcome this investigation.
- 15) A summary of the action taken by the Department/NIHE to implement the recommendations following the Gateway Review as detailed at Appendix 9 of the Audit Office report.
- 16) A copy of the NIHE staff rotation policy.

I would appreciate receipt of this information by 2 October 2012.

Yours sincerely,



Michaela Boyle

Chairperson
Public Accounts Committee

Correspondence of 18 September 2012 from Mr Will Haire



From: **The Permanent Secretary**
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Michaela Boyle (MLA)
Chair of the Public Accounts Committee
Room 371
Parliament Buildings
Ballymiscaw
BELFAST BT4 2XX

18 September 2012

PAC Inquiry into NIHE Response Maintenance Contracts

Thank you for your letter of 13 September seeking comments in relation to matters raised in a letter dated 1 July 2011 from the former Chair of the NIHE to me about the termination of the Red Sky contracts on 14 July 2011.

As I mentioned at the hearing this letter is part of a series of correspondence about these contracts which I think need to be considered in order to clarify the context of Mr Rowntree's comments and how these matters were progressed.

On 1 July 2011 (Annex A) Minister McCausland wrote to the Chair of the NIHE, advising that he wished to carry out a forensic investigation of a sample of NIHE contracts (including of those contractors to whom it was proposed to reassign the Red Sky contract). This was on foot of concerns the Minister had that the issues of contract management and failings that were present in the Red Sky case might also be prevalent in other contracts. The Minister went on to ask that subject to the Administrator confirming he can continue to service the contracts that the Chair put it to the NIHE Board that the termination date should be extended to allow an open procurement to take place.

Mr Rowntree wrote to me on 1 July 2011 (Annex B) expressing his concerns about this approach, highlighting a number of issues including the two you have referred to. Mr Rowntree's letter also refers to what he considered to be actions by the Department or intended actions by the Department and Minister with regard to potential directions. These are matters I will return to later.

Mr Rowntree also formally responded to the Minister on 5th July 2011 (Annex C) he expressed the Board's concern about the Minister's stance and any extension of the Red Sky contract. He again referred to a potential ministerial direction on this matter and indicated the Board's intention to take legal action to challenge any such direction.

The Minister responded to Mr Rowntree on 7th July 2011(Annex D), referring to his original query, and concerns he had around contract management. He also noted the advice from the NIHE Head of Procurement that the Administrator could only assure services up to end of July, after which it was intended to sell the company and the contract, could only be serviced by the new company acting as “managing agent”. As the contract could not be serviced by the Administrator the Minister agreed to the termination and re-assignment as planned by NIHE.

I think this sequence of correspondence clearly shows:-

- The Minister had requested that NIHE explore an extension by the “Administrator” given his concerns about contract management in general, and to allow for a forensic investigation;
- Neither the Department nor Minister indicated an intention to issue a direction to the NIHE to extend or reassign the contract to a new company;
- In the event and given that the Administrator could not guarantee service delivery, NIHE terminated the contract as planned.

Mr Rowntree’s letter to me also, in my view raised concerns about my role as Accounting Officer, and the quality of advice provided to Minister to inform his decision making. I responded to this letter on 31 August 2011 (Annex E). As you will see I robustly assert my role as Accounting Officer and the advice provided to Minister. I also restate both the Minister’s analysis of the issues and the concerns he wished to see addressed. Mr Rowntree’s response of 2 September 2011 (Annex F) acknowledges both my conduct and propriety as Accounting Officer.

In relation to the specific extracts that you refer to, I recognise the concern expressed but trust that the Committee will understand that the administration of the company, including the delivery of its services prior to sale, were strictly a matter for the Administrator and it would have been inappropriate for the Department to seek to influence that legal relationship in anyway. For clarification, whilst Mr Rowntree’s letter did raise this concern there was no Departmental request to extend or reassign the Red Sky contract to the Senior Management of Red Sky or any new company.



Will Haire

Annex A



Department for
**Social
Development**
5th Floor
Lighthouse Building
**1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB**
Fax: (028) 9082 9548
e-mail:
private.office@dssni.gov.uk
Tel: (028) 9082 9034

Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

1 July 2011

Dear Brian

I refer to our meeting on 30 June 2011 to discuss response maintenance contracts. As I indicated I have asked officials to carry out a forensic investigation of a sample of Housing Executive contracts including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination.

Following our discussions and subject to the Administrator stating that he can continue I would now ask you to put to the Housing Executive Board that the termination date of the Red Sky contract should be extended from 14 July 2011 to allow an open procurement competition for the Red Sky contracts to be undertaken with immediate effect. This contract would be for a period of six months or until the new contract procedures can be put in place.

*Yours sincerely
Nelson McCausland*

**NELSON MCCAUSLAND MLA
Minister for Social Development**

EMailed to all but
MBUS + posted to
Jim Speers -
EMailed to SMT

Housing

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB

Will Haire
Permanent Secretary
Department for Social Development
Lighthouse Building
1 Cromac Place, Gasworks Business Park
Ormeau Road, Belfast BT7 2JB

1st July 2011

Dear *Will*

NIHE Contract – Notice of Termination Red Sky in Administration

I am writing to you in your position as Senior Accounting Officer to register my serious concerns and misgivings and that of my Board and Senior Management Team in relation to the above matter.

As you know the NIHE Board approved the termination of the Red Sky contract on 13th April 2011 to take effect from 14th July 2011. The termination was a direct result of findings of very significant overcharging and poor performance as set out in the independent forensic report carried out by accountants, ASM Horwath, supported by VB Evans, Quantity Surveyors. In addition our internal Repairs Inspection Unit has conducted a series of detailed reviews/inspections in districts covered by the Red Sky contracts.

You were also advised that active consideration is being given to referring the matter to PSNI for possible criminal investigation in relation to suspected fraud.

It is therefore incomprehensible why Minister McCausland and your Department for Social Development would seek to direct the NIHE to allow BDO, the Administrators to continue to deliver the contract past the termination date of 14th July 2011. This is all the more surprising given that we are reaching agreement with existing adjacent contractors to take over those contracts in line with public procurement procedure and to enact the relevant TUPE provisions.

I have during a number of meetings repeatedly advised you why my Board and I believe such an approach would compromise, not only the Housing Executive, but also your Minister and Department. The reasons for this are:-



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



-
- i) Although the Administrators are overseeing Red Sky in Administration a number of its previous senior management continue to manage the NIHE contract. Some of these are the same people who were responsible for the overcharging and poor workmanship which led us to give notice to terminate the contract and give rise to a consideration of referral to PSNI for suspected fraud.
 - ii) It is understood that the senior management of Red Sky have mounted a successful buy-out of that part of Red Sky in Administration which was responsible for delivery of the NIHE contract and that they anticipate that their new company will inherit the contract from the Administrators following the sale of Red Sky in Administration. We believe such an outcome would be contrary to sound public sector procurement principles, not to mention the likely public confusion and outcry of the reinstatement of a contractor who had only just been terminated for serious malpractice.
 - iii) There is likely to be a clear presumption of a major conflict of interest in that the senior management of the company in Administration is to be awarded a contract as a reconstituted new company. This would be further exacerbated since such an award would be without any public procurement or competition.
 - iv) We understand that meetings have taken place with the senior management of Red Sky in Administration and the Minister, First Minister and other DUP elected representatives. We further understand that the Administrators were not present. This raises the question of did these meetings constitute canvassing and lobbying for government contracts and in breach, not only of public procurement principles, but basic Codes of Conduct in Public Life.
 - v) We have also made you aware of our concerns regarding Construction Line and the removal of Red Sky from their notation list and the subsequent reinstatement of Red Sky on the basis of unaudited management accounts and a phone call from a Red Sky Director and a partner of a leading accounting firm. Such reinstatement was at the higher notation level and within months the company was insolvent and placed in Administration.

This matter is presently the subject of a review by NIHE.

Hopefully you can see why we have serious concerns and reservations about the road you are pushing us down. I would respectfully ask that you step back and withdraw Department for Social Development involvement and that of your Minister in this matter and thereby allow the Housing Executive to proceed to manage what is an operational business issue (albeit an important one). If you are not disposed to do this I will have no other choice but to seek legal advice as to how the Housing Executive should proceed in order to protect and not compromise its integrity and contractual/procurement obligations in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bri', written in a cursive style.

Brian Rowntree CBE
Chairman

Annex C

Housing

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB

Mr Nelson McCausland
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

PRIVATE OFFICE

05 JUL 2011

SOCIAL DEV'TMENT

C.B. 16.15.

5th July 2011

Dear Minister

NIHE Contract: Notice of Termination Red Sky (now in Administration)

As Chairman of the Board I refer to your recent correspondence in relation to the termination of the Red Sky contract on 14th July 2011. The matters raised by your office were given full consideration by the Board of the Northern Ireland Housing Executive at our meeting this morning.

The Board has asked that I express their deep concern at the stance that has been taken by your office with respect to the termination of the Red Sky contract. The contract was terminated following thorough and extensive forensic investigations that identified serious failings in contract performance and significant levels of overpayments of public funds. Upon careful consideration of those investigations the Board formed the view that the trust and confidence necessary for the satisfactory operation of these contracts had been profoundly undermined and so advised Red Sky on 13th April 2011. The Board has, this morning, reconfirmed that view with respect to Red Sky in administration.

It is notable that Red Sky did not mount any public or private law challenge to the Board's decision to terminate the contract on 13th April 2011. Indeed, on 25th May 2011 you wrote to Naomi Long MLA in terms the Board considered wholly supportive of the decision to terminate the contract. The Board have had difficulty reconciling that expression of support with the fact that some six weeks later the indications are that the issue of a direction pursuant to Article 10 of the Housing (Northern Ireland) Order 1981, ordering NIHE to extend the Red Sky contract for a period of six months, is under consideration.

The Board has given serious consideration to your stance on this matter. The Board also noted that to the best of our knowledge there has never, to date, been



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



INVESTOR IN PEOPLE

a statutory direction issued to the Northern Ireland Housing Executive. The Board also noted that this unprecedented step is being contemplated in order to secure a benefit for a particular contractor and /or purchaser thereof.

I have previously advised your office that in order to discharge NIHE's obligations to our tenants we have put in place arrangements to enable our adjacent contractors to take over those Red Sky contracts subject to termination with effect from 14th July 2011. Those arrangements are regulated by the relevant TUPE provisions to enable lawful transfer of affected staff. The adjacent contractors have accrued liabilities in preparation for the assumption of that additional work on 14th July 2011. The proposed intervention by your office will lead to losses for those contractors who may seek redress for breach of their legitimate contractual expectations from NIHE and/or your Department. The Acting Chief Executive, as Accounting Officer for NIHE, has reminded me of his obligations under Managing Public Money Northern Ireland (MPMNI). Accordingly, I have advised the Board that compliance with any such direction will expose NIHE to a risk of incurring novel and contentious expenditure in circumstances where the Comptroller and Auditor General has qualified the NIHE accounts for 2010/11 for reasons connected to the Red Sky contracts.

More fundamentally, the Board considered that it would be an abdication of the responsibility owed to thousands of our tenants to reinstate the Red Sky contracts a matter of months after reaching a firm resolution to terminate on grounds of serious performance issues (including financial irregularity). Public confidence in the Board's ability to discharge its statutory function would be eroded in the absence of a coherent rationale for extending those contracts. The Board considers that the issuing of a statutory direction pursuant to Article 10 of the Housing (Northern Ireland) Order 1981, in the circumstances of this case, for the purpose of securing the continuity of contract for a single discredited contractor, amounts to an unwarranted and improper interference in an operational matter.

The Board recognises the scope of the power afforded to the Department by Article 10 of the 1981 Order. It is, however, a power that must be exercised for a proper purpose in accordance with public law principles. The Board considers that the unprecedented issuing of an Article 10 direction to NIHE in this context is a "significant and controversial matter" as defined in paragraph 2.3 of the Ministerial Code provided for in paragraph 4 of Schedule 1 to the Northern Ireland (St Andrews Agreement) Act 2006.

It is also a "cross-cutting" issue as defined in paragraph 2.4 of the Ministerial Code that is likely to engage MPMNI. It is the considered view of the Board that you have, therefore, a duty pursuant to section 28A of the Northern Ireland Act 1998, read in conjunction with the provisions of the Ministerial Code, to bring the



proposed decision to issue an Article 10 direction before the Executive Committee for approval. The Board understands that the Executive Committee will next meet on 7th July 2011 and that there is, therefore, an opportunity to ensure that any Article 10 direction complies with the requirements of the Northern Ireland Act 1998.

In the event that your office issues a statutory direction pursuant to Article 10 without the matter having been placed before the Executive Committee for full consideration and approval, the Board of NIHE have resolved that they will immediately challenge the legality of such a direction in the High Court. The basis of that challenge will be:

- (i) breach of the Ministerial Code and section 28A of the Northern Ireland Act 1998;
- (ii) the *ultra vires* nature of the statutory direction;
- (iii) the improper use of the Article 10 power to secure a benefit for a single contractor.

The Board has instructed our legal representatives to take the necessary preparatory steps to present a challenge to the legality of any Article 10 direction. We have put the High Court on notice that it may be necessary to convene an urgent judicial review hearing at short notice over the coming days to seek a declaration as to the legality of your actions. I am advised that given the urgent nature of this matter it will not be possible to issue a pre-action letter in accordance with the usual High Court protocol. I am, therefore, copying this letter to Philip Gunn in the Departmental Solicitor's Office to afford notice of our intended course to your legal representatives.

The Board has directed that the adjacent contractors should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14th July 2011 to discharge our primary statutory function of ensuring adequacy of provision for our tenants. In the event that you, or the Executive Committee, determine that an Article 10 direction is not appropriate, we would invite you to confirm that position to NIHE as soon as is practicable.

Yours faithfully



Brian Rowntree CBE
Chairman

cc Will Haire Permanent Secretary
Philip Gunn Departmental Solicitor



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



INVESTOR IN PEOPLE



Department for
**Social
Development**

**5th Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB**

Fax: (028) 9082 9548
e-mail: private.office@dndni.gov.uk

Tel: (028) 9082 9034

Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
2 Adelaide Street
BELFAST
BT2 8PB

Our ref: SUB/1238/2011

7 July 2011

Dear Brian

I refer to your letter dated 5 July 2011 responding to my letter of 1 July 2011.

I feel I must state at the outset that I am gravely disappointed and concerned at the manner in which this matter has been dealt with.

There has been what I consider a lot of unhelpful debate and discussion around this issue and I think it is important that I state again my position in relation to this matter. My primary concern has been to ensure that the best possible value for money services are provided to tenants.

When I took up Office initially I was briefed on the issues surrounding the Red Sky contract and also the Gateway Review completed by my predecessor which contained recommendations that were being taken forward to ensure that an appropriate procurement and contract management regime is in place in relation to response maintenance contracts.

I have become increasingly concerned that the issues which led to the termination of the Red Sky contract may be present in other contracts which have not been the subject of any full forensic investigation.

As you are aware, due to my concerns, I have instructed officials to carry out a forensic investigation of a sample of Housing Executive response maintenance contracts and the management of them in order to provide me with reassurances in relation to the other contracts, the services to tenants and the use of public funds. This is an action I am sure you will agree is fully justified and which I know you will support.



In parallel to this is the implementation of the recommendations from the Gateway Review must be taken forward as a priority to ensure that a new procurement and contract management regime and new contracts are in place later this year. I consider this to be essential to put contracts on a sound basis for moving forward. I understand that you advised my officials, at a recent Oversight Group meeting, there might be a slight delay in relation to the completion of the new contract management regime. I am aware that since then you have written to Will Haire suggesting a delay until February 2012. However, I consider it is of critical importance that robust contract arrangements are in place and we move to that position without delay and I would ask that you now review the position again and advise me urgently if the timescales for the implementation can be earlier.

Turning to my letter on 1 July, I was explicit in my request to you that, subject to the Administrator stating that he can continue to service the contract, you put to the Housing Executive Board that the termination of the Red Sky contracts should be extended to allow an open procurement exercise for the Red Sky contracts to be undertaken. Open procurement was, in my view because of the concerns I had, the most appropriate way forward to assign these contracts. Implicit in my request was the need to move to this position quickly.

It is therefore regrettable that your reply does not cover these matters but in fact focuses on a potential future issue of a Direction under Article 10 of the Housing (NI) Order 1981.

However, regardless of that fact, I have now fully considered your response to my letter and also the advice from the Housing Executive's Head of Procurement which states that you have only received assurance that the Administrator can provide such services up to the end of July, thereafter it is intended that the Company will be sold. The Administrator has indicated the contracts could only be serviced thereafter only through the new company acting as "managing agent" / "facilitating" the Administrator. The Head of Procurement further advises the letting of a new contract, that would deliver a response maintenance service until your main procurement is complete, would take in the region of four months and such a contract period would not be commercially viable.

Therefore, aligning this advice with my original request to you, I can now confirm that the Housing Executive should proceed to the termination of the Red Sky contract on 14 July and move forward with the proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants.

In taking this action I would ask that you seek assurance from the adjacent contractors as to the application of TUPE arrangements and you provide me with detailed briefing on this issue. Further my concerns as regards contractual arrangements remain and I therefore want your assurance that you have in place robust and focused contract monitoring arrangements for these and all response maintenance contracts and I want you to provide me with details of those arrangements.

Finally, in taking this action I must reiterate that the primary concern must be to ensure that tenants receive the best possible service in relation to response maintenance. My duty as the Housing Minister is to ensure that this is the case and so I now intend to ensure that the Performance Review meetings are held monthly initially and the focus of reporting by the Housing Executive at these meetings will be on the progress in relation to the implementation of the recommendations from the Gateway Review and also on the monitoring of the response maintenance contractors performance until the new contracts are in place.

I will now ask my officials to arrange the next meeting.

Yours sincerely

Nelson McCausland

NELSON McCAUSLAND MLA
Minister for Social Development

Annex E



From: **The Permanent Secretary**
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Mr Brian Rowntree CBE
Chairman
Northern Ireland Housing Executive
2 Adelaide Street
BELFAST BT2 8PB

31 August 2011

Dear Brian

I refer to your letter dated 1 July 2011 in relation to the notice of termination of the Red Sky contract.

Your letter sets out the serious concerns of the Housing Executive Board and Senior Management Team in relation to the continuation of the Red Sky contract past the termination date of 14th July. You also asked that I step back and withdraw the Department's involvement and that of the Minister in this matter. I am therefore responding to you as I am concerned about statements in your letter, particularly in relation to my role in this matter. While the key issue is now to move on and together focus on service delivery, it is however important that I put my position clearly on the record.

The standard expected of me in 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. Also, in practice, whilst the Housing Executive, as a Non Departmental Public Body, operates with some independence under its Board, the Minister is nevertheless, ultimately accountable to the Assembly for the Housing Executive's efficiency, effectiveness, activities and performance. This is because the Minister is responsible – inter alia - for the founding legislation; has influence over your strategic direction and appoints your Board.

In the first instance, as you know, I was well aware of the serious concerns of the Housing Executive Board and the Senior Management Team in relation to this matter and can assure you the Minister was fully briefed on these issues. That said the Minister quite clearly stated that his primary concern was to ensure that the best possible value for money services are provided to tenants. Therefore, in his role as Minister, he wrote to you on 1 July, following your meeting on 30 June, advising that he had asked officials to carry out a forensic investigation of a sample of Housing Executive maintenance contracts and, subject to the Administrator stating that he could continue to service the contract, that you put to the Housing Executive Board that the termination of the Red Sky contracts should be extended to allow an open competition for the contracts to be undertaken with immediate effect.

Against this backdrop you will understand that I am very concerned about the tone and references in your letter such as:

“it is therefore incomprehensible why Minister McCausland and your Department for Social Development would seek to direct the NIHE” and “the road you are pushing us down”. As you are aware a direction on this issue was not issued.

I believe that I acted appropriately in my role as Accounting Officer in relation to this matter, but the substance of your letter calls that into question along with my integrity. In that respect, I believe that you should withdraw the remarks you made, particularly as your final sentence advised that if I did not do as you requested you would seek legal advice on the matter.

Finally, I understand that excerpts from your letter have entered the public domain. That part of the content of a letter from you to me should have made its way to the media is highly regrettable. It is important that this does not recur.

Yours sincerely



Will Haire

Annex F

Doc 11-8053

RECEIVED

- 7 SEP 2011 09/09

PERM SEC DSD

Northern Ireland
Housing Executive

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB

M. Scott 09/09/11

Will Haire
Permanent Secretary
Department for Social Development
Lighthouse Building
1 Cromac Place, Gasworks Business Park
Ormeau Road, Belfast BT7 2JB

RECEIVED
08 SEP 2011
11:51 AM

Jim Williams 09/09/11
John 09/09/11

2 September 2011

Dear *Will*

7/9

John 7/9

I refer to your letter of 31st August 2011 in which you raise concerns about the tone and content of my letter to you dated 1st July 2011. I have reviewed the correspondence again in light of your recent letter and I am satisfied that the tone of the letter reflects the challenging circumstances which the Department for Social Development and Northern Ireland Housing Executive faced with respect to the termination of the Red Sky contract.

I can assure you that in no way was there any direct or implied intention to impugn the propriety of your conduct as Senior Accounting Officer or your personal integrity. I note your observations with respect to excerpts from my letter to you having entered the public domain. I agree that it was undesirable that any aspect of this dispute between our organisations came to be publicly ventilated. I trust that when we face future challenges our organisations can endeavour to reach resolution without such media exposure.

I look forward to continuing to work with you in the spirit of co-operation and understanding that has served us so well to date.

Kind regards.

Yours sincerely

Brian Rowntree CBE
Chairman



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no: 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



INSTITUTION OF PUBLIC HEALTH

Correspondence of 2 October 2012 from Mr Jim Wilkinson



From: **The Permanent Secretary**
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Michaela Boyle MLA
Chairperson
Public Accounts Committee
Room 371
Parliament Buildings
Ballymiscaw
BELFAST BT4 3XX

2 October 2012

Dear Michaela

Thank you for your letter dated 17 September 2012 to Will Haire. I am replying on his behalf as he is currently on leave. The Housing Executive's Accounting Officer has provided the following in relation to the information you requested.

- 1) A memo detailing the staff moves, retirements, sanctions and other outcomes which have resulted from the investigations and disciplinary processes undertaken in response to a) the Red Sky contract and b) across mismanaged response maintenance contracts. Please show at what grade and role each move, retirement or sanction was effected.
- 2) Who were the 8 officers to receive sanctions as an outcome of Red Sky related disciplinary processes?
A *Please see Appendix 1 attached.*
- 3) An assurance that no member of the disciplinary panels convened in relation to response maintenance contracts was himself subject to disciplinary process/investigation in relation to this matter.
A *An assurance has been provided by the Housing Executive that the officers involved in the disciplinary process were not themselves subject to disciplinary action or investigations in relation to this matter.*
- 4) The number and value of breaches of standing orders since the implementation of the updated rules.
A *Since the new Standing Orders were introduced in July 2011 there have been five recorded instances of breaches that have to be reported to the Clearing house. The total value of the five breaches was £25,297.*

- 5) Details of the successful contractors following the completion of the response phase 2 and 3 contracts.

A *Please see Appendix 2 attached.*

- 6) The number and percentage of computer-selected works subject to sample inspection and whether there is any seasonal variation to the sample size.

A *The new Post Inspection Selection regime will consist of a two strand approach.*

- *Tier 1 – Post Inspections generated by HMS and carried out by Maintenance Officer dependent on value and which will provide an estimate of Contractor compliance.*
- *50% of Jobs with a claimed value in excess of £750.00*
- *20% of Jobs with a claimed between £100.00 and £750.00*
- *5% of Jobs with a claimed value of less than £100.00*
- *Tier 2 – Quality Inspections, influenced by areas of risk, trends, policy objectives and other local concerns which are designed to drive down overall failure.*

There is no seasonal adjustment, it is fixed throughout the year.

- 7) Confirmation that the updated disciplinary procedures restrict an individual's ability to opt for early retirement in order to avoid a disciplinary investigation/sanction; and whether any mechanism has been introduced to ensure a meaningful sanction for individuals who can choose immediate retirement under the 85-year pension rule.

A *The Disciplinary Procedures set out the process for undertaking disciplinary action do not refer to pension provisions.*

The following points, however, can provide assurance and clarification in relation to the questions posed:

- Any early retirement package must be based on a sound business case and requires DSD/DFP approval. The Housing Executive does not offer such packages to individual staff in order to avoid disciplinary action.
- For clarification it should be noted that, under the pension provisions (NI Local Government Officers' pension scheme) staff aged 60 and above can opt to retire and request payment of pension from NILGOSC.

This is not a matter for the employer as the employee is entitled to retire on their own contributions with no added financial assistance from the organisation.

- 8) Dr McPeake indicated that these updated policies are available in an electronic format for individuals to refer to. Please outline what steps the organisation has implemented or intends to implement to validate awareness and understanding of the required standards and behaviours.

A *A number of actions are ongoing:*

- *The new Code of Conduct has been issued to all staff through an individual hard copy and through on-line access.*
- *Training courses relating to the Code have been completed for all staff from middle to Senior Management. Training for all other staff is ongoing and will complete in this financial year.*
- *Training courses are to commence in the Autumn for supervisory and management tiers in respect of managing staff performance.*

- 9) In relation to information referred on two occasions to the PSNI relating to the Red Sky contract please confirm the date of each referral, and a copy of each response from the PSNI.
- A** *The dates of referral to the PSNI in relation to the Red Sky contract were 24th May 2006 and 8th September 2011. A copy of the responses from the PSNI are attached at Appendix 3. However, these should be treated as confidential as we are awaiting PSNI advice on the restriction to be applied.*
- 10) Paragraph 21 of the Audit Office report states:
- “there has been a long history of poor workmanship and performance and one company’s work was classified as unacceptable over a four year period”.
- Please confirm the name of the contractor referred to and whether it still holds a contract to undertake work on behalf of NIHE.
- A** **THIS INFORMATION IS CONFIDENTIAL AND MUST NOT BE DISCLOSED**
- The Contractor in question is ██████████. This contract has ended and the Company is now in administration. Recovery action is underway on overpayments.
- 11) Please provide a copy of the letter from the contractor which relates to the issues highlighted at paragraphs 16 – 18 of the Red Sky chronology of events and the letter drafted from the NIHE as its response.
- As discussed, please indicate whose responsibility it was to sign off the response and issue it to the contractor.
- A** *A copy of the letter from the contractor is attached at Appendix 4. The NIHE has been unable to locate the draft letter from NIHE as its response. The Chief Executive has advised that the evidence in respect of the letter comes from advice received from the Senior Personnel Officer who drafted the letter for signature. The Director of Personnel and Management Services has also corroborated that a letter was drafted. It made it clear to Red Sky that they had no role in any decisions on staffing matters within the organisation. Unfortunately that letter was never sent. The Chief Executive was briefed on the content of this letter prior to attending the PAC.*
- It was the responsibility of the Director of Housing and Regeneration to sign it off and issue to the Contractor.
- 12) A breakdown by district detailing the number and value of jobs undertaken by contractors under £100.00, which were not subject to any inspection.
- A** **Please see Appendix 5**
- 13) A description of the introductory ‘enabling meeting’ that is conducted with contractors and a summary of the issues identified through these meetings.
- A** **Please see Appendix 6**
- 14) Paragraph 3.2 of the Audit Office report refers to a case study relating to an investigation of suspected contract fraud. Please provide a summary of the outcome this investigation.
- A** *This case study relates to a review initially carried out by the Housing Executive’s Repairs Inspection Unit (RIU) in 2006 which identified suspected overpayments. As a result of suspicions raised through the RIU work, NIHE’s Counter Fraud Unit undertook an investigation surrounding an ex member of staff and his alleged associations with a contractor based in Londonderry.*
-

The investigative outcomes can be summarised as follows:-

- The 2006 case file was closed and not submitted to the PSNI for the following reasons:
- Under Regulatory of Investigatory Powers Act authorised covert surveillance did not discover any signs of criminal behaviour.
- Preliminary financial enquires (carried out by DSD Corporate Investigations Unit) did not reveal any evidence suggesting a link between the two named individuals.
- The RIU review in 2007 did not disclose any evidence of fraud or loss and indeed concluded that the contractor's performance had been satisfactory.
- There had been two earlier separate investigations in 2001, following receipt of an anonymous letter alleging fraudulent activity and inappropriate relationships with the same contractor. One of these investigations was carried out by PSNI and did not produce any evidence of wrongdoing. The second, internal, investigation highlighted procedural and control issues which were followed up by the then Director of Housing and Regeneration.
- Director of Finance therefore concluded that there was no reason to keep the 2006 case file open and that any management and control issues discovered were to be raised separately with Director of Housing and Regeneration.

The Audit Office report notes that the total value of overcharging detected in 2006 was £7,667. At that time, the company was asked to provide a response to the alleged overcharging and, following discussions, the company made a refund payment of £5,372.31 by cheque in September 2006.

- 15) A summary of the action taken by the Department/NIHE to implement the recommendations following the Gateway Review as detailed at Appendix 9 of the Audit Office report.

A Please see attached Annex 7.

- 16) A copy of the NIHE staff rotation policy.

A Please see attached Annex 8.

I trust this answers your queries.

Yours sincerely

Jim Wilkinson

Appendix 1

The following information outlines the outcomes in respect of disciplinary action taken in relation to the management of response maintenance contracts.

Red Sky Contracts

	Final Warning	Written Warning	Verbal Warning	Total
District Maintenance Managers			1	1
Maintenance Officers	5	1	1	7
Total	5	1	2	8

Other Contracts

	Final Warning	Written Warning	Verbal Warning	Total
District Maintenance Managers	1 And moved to another location			1
Maintenance Officers			1	1
Total	1		1	2

29 Staff were considered under the disciplinary process and 10 disciplinary penalties were issued. Disciplinary action was not merited in 13 cases.

In addition a number of staff retired prior to any disciplinary action being instigated

Staff Retiring

District Maintenance Managers	1
Maintenance Officers	5
Total	6

Appendix 2

All Trades

Contract/Districts	Contractor	DOP	Pre Contract Meeting
South Belfast	Mel Davison Construction	1 August	9 July
East Belfast	Garrivan & O'Rourke	1 August	4 July
North Belfast	Garrivan & O'Rourke	1 August	4 July
North Belfast	DLO	1 Sept	3 August
West Belfast	Mel Davison Construction	1 August	9 July
Shankill	Mel Davison Construction	1 August	9 July
N'Abbey 1 & 2	Combined Facilities Management Ltd	6 August	30 July
Antrim	PK Murphy Construction LTD	Existing	
B'Mena/Carrick/Larne	H&A Mechanical Services Ltd	Existing	
Coleraine	DLO	Existing	
Ballymoney/Ballycastle	Combined Facilities Management Ltd	27 August	14 August
N'Ards & Bangor	H&A Mechanical Services Ltd	Existing	
Castlereagh	Engineering Services Electrical Ltd	1 Sept	8 August
Lisburn (AS)	Garrivan & O'Rourke	1 Sept	22 August
Lisburn (DF)	Mel Davison Construction	1 Sept	8 August
Downpatrick	Engineering Services Electrical Ltd	1 Sept	8 August
Strabane	Robinson Ferry Construction Co Ltd	6 August	27 July
Limavady/Magherafelt	Combined Facilities Management Ltd	27 August	10 August
Omagh/Cookstown	Combined Facilities Management Ltd	27 August	10 August

Newry	Bayview Contracts	1 Sept	21 August
Lurgan/Brownlow	Mel Davison Construction	1 Sept	20 August
Armagh/Banbridge	PK Murphy Construction LTD	1 Sept	20 August
Fermanagh	PK Murphy Construction LTD	1 Sept	20 August
Dungannon	PK Murphy Construction LTD	1 Sept	20 August

Appendix 3

Request to Treat as Confidential



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

Headquarters Fraud Unit
Strandtown Police Station
1-5 Dundela Avenue
BELFAST
BT4 3BQ

Telephone No: (028) 90650222
Extension: 15109
FAX: (028) 9090 1760
e-mail: fraud@psni.police.uk

Mr David Moss
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

Please reply to: D/Chief Inspector

Your Reference:

Our Reference:

Date: 28 September 2006

Dear *David*,

RE: RMU AUDIT – BELFAST DISTRICT 7

First and foremost, thank you for the excellent reports you forwarded in respect of this matter. Following on from our meeting and discussion on Tuesday 26th September 2006 I have now had the opportunity to review the latest report. While appreciating the time and effort that has gone into this report I would submit that there is little in the way of evidence (to a criminal standard) to link a specific individual to a criminal offence. However, it is clear from the report that there are areas of concern on both sides of this contractual arrangement that would in my opinion undermine any potential criminal investigation from the outset. It is however the lack of evidence, despite a comprehensive audit of the case, linking an individual to a specific offence that suggests to me this matter is not suitable for a criminal investigation at this juncture.

In conclusion, as there is insufficient evidence to establish an identifiable individual who could be held to account for their criminality and in the circumstances I would not be of a mind to consider this case suitable for investigation by the Police Service of Northern Ireland, Fraud Unit. I do however appreciate the work that has gone into this case and this is not wasted as the findings/recommendations contained with the latest report can be implemented to ensure this situation does not develop again.



Request to Treat as Confidential

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Cherry', written in a cursive style.

J CHERRY
D/C/Inspector
Head of Fraud Unit

Request to Treat as Confidential

Personal, Professional, Protective Policing



20 December 2011

Mr Larry Cheshire
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
BELFAST
BT2 8PB

Dear Larry

RE: RED SKY

We recently attended a meeting with ACC Harris and the Chairman of NIHE, Brian Rowntree, in relation to the investigation previously referred to this Branch relating to Red Sky.

During our discussions we agreed that there had been systematic errors within NIHE in relation to accounting and supervision procedures relating to contracts for maintenance involving Red Sky.

The matter was the subject of extensive enquiries by this Branch. As a result of the enquiries I am of the opinion that there is insufficient evidence of criminality to warrant further investigation and I do not believe that the systemic failings in the NIHE would be conducive to achieving the burden of proof required in a criminal prosecution.

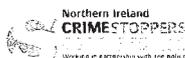
In the circumstances no further action will be taken by this Branch.

If you require any further information please do not hesitate to contact this office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roy McComb'.

ROY McCOMB



Detective Chief Superintendent
Head of Organised Crime Branch
Knocknagoney House, 29 Knocknagoney Road, Belfast, BT4 2PP
Tel (028) 9092 2400

Colm Ross

Colm
18/11



www.redskygroup.com

Colm McCaughey
Director of Housing & Regeneration
Northern Ireland Housing Executive
The Housing Centre
2 Adelaide Street
Belfast
BT2 8PB



17th November 2008

Dear Colm,

I am writing to confirm meeting with yourself, Frank and myself on 5th December 2008 at 11am, as arranged with your assistant. As we progress towards Christmas it is hoped the 'Season of Goodwill' will extend to relationships between Red Sky Group and West Belfast District Office, and our first KPI meeting, scheduled for Wednesday, should be a good indicator of this!!

On a positive note, we much appreciate the assistance that has been provided by both Ross Campbell and Peter Craig over the past few months, and we hope that Peter will progress the jobs prior to 22 October, as agreed, and bring all outstanding issues to satisfactory closure in a timely manner.

It is also considered necessary to re-iterate our deep concern in relation to certain personalities who remain working in the West Belfast District Office, and we trust appropriate actions will be taken to address this in the near future.

We look forward to meeting you on the 5th December,

Yours sincerely,

Pauline Gazzard

Pauline Gazzard
Group Development Manager

BELFAST

Grove Street East
Belfast BT5 5GH
Tel: +44 (0) 28 90 45 45 44
Fax: +44 (0) 28 90 45 25 45
email: belfast@redskygroup.com

DUBLIN

Unit 9 North Park
North Road Finglas Dublin 11
Tel: +353 (0)1 808 1482
Fax: +353 (0)1 808 1483
email: dublin@redskygroup.com

SCOTLAND

41 McSeven's Street
Rasley, Renfrewshire FAS 10J
Tel: +44 (0) 141 826 0086
Fax: +44 (0) 141 889 2056
email: scotland@redskygroup.com

95 Colinton Drive
Riesborough Park
Tel: +44 (0) 117 921 0000
Fax: +44 (0) 117 921 0001
email: belfast@redskygroup.com

Red Sky Group Limited

Company Registration Number NI025773. Registered Office: Grove Street East, Belfast BT5 5GH



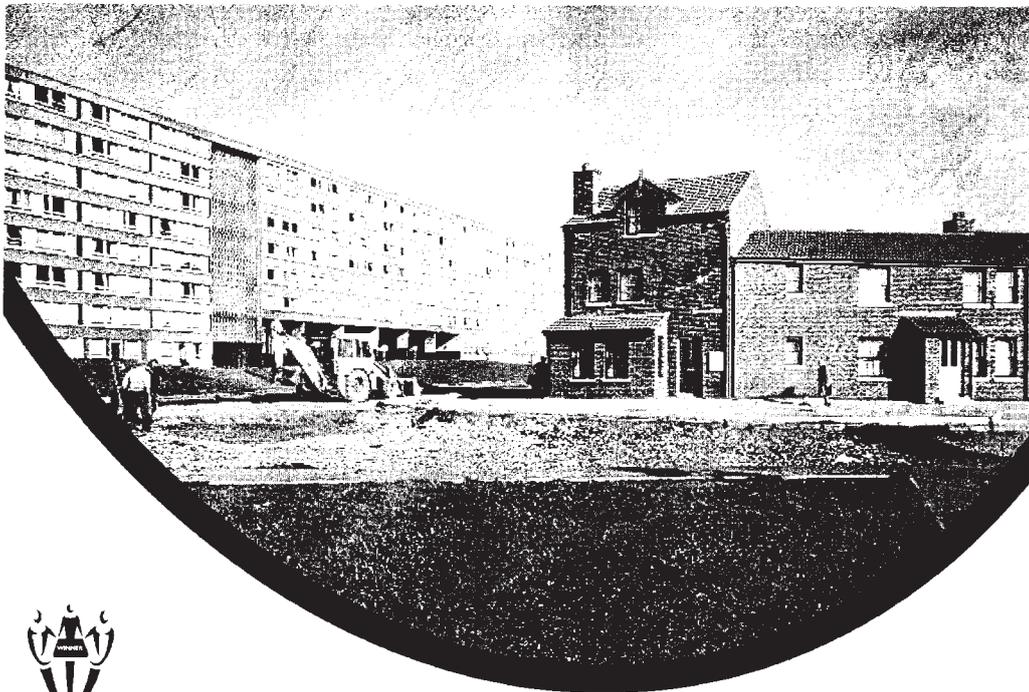
Appendix 5

Finanacial Year April/Mar 2011/12

District	Total Jobs < £100 value
ANTRIM	9,600
	£280,094
ARMAGH	8,523
	£234,512
BALLYCASTLE [A609]	1,922
	£78,943
BALLYMENA	9,127
	£305,768
BALLYMONEY	3,327
	£140,006
BANBRIDGE	5,024
	£195,662
BANGOR	9,408
	£302,395
BELFAST NORTH-4	13,970
	£409,592
BELFAST NORTH-6	7,908
	£303,688
BELFAST Shankill	8,761
	£342,847
CARRICKFERGUS	6,713
	£236,086
CASTLEREAGH [A404]	12,576
	£386,311
COLERAINE	9,176
	£333,594
COLLON TERRACE D.O.	8,684
	£311,965
COOKSTOWN	2,901
	£83,303
Craigavon (Por)	6,482
	£200,337
Craigavon (Lur)	11,010
	£332,157
DOWNPATRICK [A410]	9,749
	£336,322
DUNGANNON	4,496
	£146,043
EAST BELFAST DISTRICT C	8,223
	£321,854
FERMANAGH	5,651
	£202,192
LARNE	4,290
	£146,780
LIMAVADY	4,575
	£173,378
LISBURN ANTRIM STREET	13,254
	£429,418
LISBURN DAIRYFARM	5,119
	£182,069
MAGHERAFELT [A707]	3,856
	£134,338
NEWRY	7,817
	£300,468
NEWTOWNABBEY 1	7,684
	£259,845
NEWTOWNABBEY 2	6,885
	£240,486
NEWTOWNARDS	11,099
	£374,867

OMAGH	5,297
	£186,711
South Belfast	11,328
	£415,328
SOUTH EAST Area	23
	£551
STRABANE	7,098
	£282,125
WATERLOO PLACE D.O.	7,077
	£250,379
WATERSIDE D.O.	6,722
	£244,474
WEST BELFAST DISTRICT (7,946
	£306,537
WEST BELFAST OFFICE	6,912
	£258,354

Appendix 6



Housing

Pre Contract Meeting Agenda

9.00	Coffee and Registration
9.30	Introductions
10.00 – 10.45	Roles and Issues District Office Overview Role of the CSU Contractor Presentation
Coffee	
11.00 – 11.30	Detail Changes in Prelims
11.30 – 12.30	Key Performance Indicators Monthly Management Communication
12.30 – 1.30	Lunch
1.30 – 2.00	Review/Discussion
2.00 – 3.00	Schedule Changes
Coffee	
3.15 – 4.00	Good Practices



Housing

Contract Documentation

- Preliminaries and General Conditions
- Schedule of Rates
- Specification
- The Contractors Quality Statement



Housing

Preliminaries and General Conditions

- Normal Working Hours
- Arranging Access
- Harmful Items
- Maintenance Back Up Service
- Two types of Job Requests
- No Access Process
- Immediate Call out Jobs



Housing

Preliminaries and General Conditions

- Job Authorisation Value
- Completion of Work
- Quality of Materials
- Competent Supervisor
- Valuation of Work
- Defects after Completion
- Coding Job Requests



Housing

Preliminaries and General Conditions

- Overpayments
- Records and Reports
- Contractor Pre-Inspections
- Working At Height
- KPI's



Housing

Key Performance Indicators

- KPI 1. Client Satisfaction with Quality of Service
- KPI 2. Predictability of Costs
- KPI 3. Customer Satisfaction with Service from Contractor
- KPI 4. Customer Satisfaction with Quality of Work
- KPI 5. Jobs Completed within Contractor Target Date
- KPI 6 Customer Perceived Service Failure
- Less than 75% Fail, 75% to less than 90% *Acceptable*, 90% to 100% *Acceptable*.
- Target 90%



Housing

KPI 1 Client Satisfaction with Quality of Service

Measures Client satisfaction with the completed works in terms of;

- Quality and standard of workmanship and materials.
- Incomplete work not claimed for.
- Each Inspection receives 10 points
- Each unsatisfactory result has 15 points deducted



Housing

Example of Weightings

10 post inspections, 9 satisfactory 1
unsatisfactory for poor workmanship.

10 Inspections x 10 = 100 points

1 unsatisfactory for poor
workmanship/materials x 15

Result $15/100 \times 100 - 100 = 85\%$



Housing

KPI 2 Predictability of Costs

Measures Client satisfaction with the
completed works in terms of;

- Accuracy of measurements
- Use of appropriate schedule of rates codes to complete the repair reported.
- Claims for repairs that have not been completed and have been claimed for.
- Each Inspection receives 10 points
- Each unsatisfactory result has 15 points deducted



Housing

Example of Weightings

**10 post inspections, 8 satisfactory 2
unsatisfactory for incorrect
measurements/incorrect SOR usage.**

10 Inspections x 10 = 100 points

**2 unsatisfactory for incorrect
measurements & SOR's x 15**

Result $30/100 \times 100 - 100 = 70\%$ Fail



Housing

KPI 3 & 4 Customer Satisfaction

Measures the level of Customer satisfaction

- **With the Service from Contractor**
- **Quality of workmanship and materials used by the Contractor.**
- **Surveys are carried out by CSU and Maintenance staff.**



Housing

KPI 5 Work Completed within the Response Time

- Measures the percentage of repairs completed within the response times and has weightings applied as follows;
- Emergency x 2
- Urgent x 2
- Routine x 1
- COT x 3
- Adaptations x 2



Housing

KPI 6 Customer Perceived Service Failure

Measures the number of recalls issued to the Contractor by CSU

- Recall to Contractor for completed Job
- Poor workmanship
- Work not complete and Job beyond response time
- Job recorded as complete but not complete

Service Failure



Housing

Agenda for Monthly Progress Meeting

- KPI Performance
- Safety Report
- Skills Certification
- Contractor Completions Notification
- Contractors Satisfaction with service from Client
- Asbestos Records
- Recovery of Overpayments
- Improvement / Action Plan
- Contractor's Record Management



Housing

Records and Reports

- No Access Cards 1st & 2nd
 - Job Completion Receipt
 - Communal Lighting Sheet
 - Communal Cleaning Sheet
 - Communal Cleaning Card
 - Change of Tenancy Electrical Test
 - Smoke Alarm Certificate
 - Portable Appliance Test Certificate
 - Record of Job Certificate
 - Waste Management Documentation
- (Samples provided at the back of your booklet)



Housing

Communication

- **Regular Meetings**
- **Contractor has greater input into contract administration**
- **Accessibility of Staff**
- **Free phone for tenant contact**
- **Policy Items**
- **District responsible for managing the Contract – Budget Changes**



Housing

Tenant Responsibility Items

EXTERNAL WORKS

- **Care and upkeep of gardens and hedges.**
- **Cleaning out gully traps**

ELECTRICAL REPAIRS

- **Repairs to electrical appliances, fires and heaters not installed by the Executive.**
- **Door bells and plug.**
- **Fuses, except service fuses that are the responsibility of Northern Ireland Electricity**

HEATING APPLIANCES

- **Frets and baskets to open fires.**
- **All night burners**



Housing

Tenant Responsibility Items

PLUMBING REPAIRS

- Washers on taps.
- Stoppers and chains for baths, sinks and basins.
- Clearing air locks in domestic hot water systems.
- Replacement of wash-basins, WC bowls and seats, Baths and sinks (except where damaged or discoloured through fair and wear and tear or faulty installation).

DOORS/WINDOWS

- Internal doors, door hinges, locks and handles.
- Doors, door hinges, handles and catches on drawers on kitchen and bedroom units.
- Draught proofing of doors and windows.
- Replacement of broken glass.
- Internal tiles on window sills and splash backs.
- Curtain rails.
- Coat/hat hooks.

STRUCTURAL AND OTHER REPAIRS

- Internal plaster cracks



Housing

Clearing Dwellings at COT

- Remove all non H.Ex.items
- All Area's within the curtilage
- Disposal of Hazardous Waste
- Contractor Must not include items i.e. kitchen units, doors etc.
- Photograph items for removal & retain for Audit
- Measurements based on quantity not time taken to complete the work regardless of location
- Day works must not be used



Housing

Examples of dirty dwellings



Maintenance officers Role

- Survey the property internally & externally at COT stage
- Quantify rubbish that needs removed and photograph
- Select the appropriate SOR code

Example

- If M.O quantifies the rubbish to be the equivalent to 2nr Builders Skips he selects the SOR from the Schedule of Rates



- Waste with a **compacted** volume over 9 but not exceeding 12m³ (equivalent to two builders skips) C95BA25

Housing

Cleaning Section

- **Cleaning dwellings at COT**
(Must not be used for cleaning up after completion of work)
- **Cleaning Internal Communal Areas**
- **Measured by floor, ground and habitable**
- **Specification**
- **Tenants notified on completion**
- **Report any Maintenance Issues**



Housing

External Doors

- **Door types – Hardwood**
GRP Composite
Steel Composite
- **Door design – Hardwood, 2, 3, 4, 5, 6 panels**
Pre-finished Hardwood 2, 3, 4, 5, 6 panels
Composite, 3 or 4 panel
- **Sidelights – Softwood painted, pre-finished softwood,**
- **hardwood and uPVC selected from L10 section**



Housing

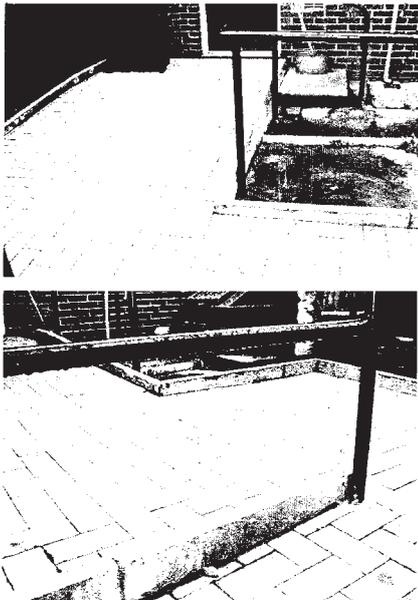
Ramped Access

- Ramps are measured by Maintenance Officer on referral from O/T
- No longer have composite codes
- Each item measured separately
- Must comply with H.Ex. Specification in terms of gradient, surface finish, handrails and mesh panels



Housing

Ramp which does not meet NIHE Spec

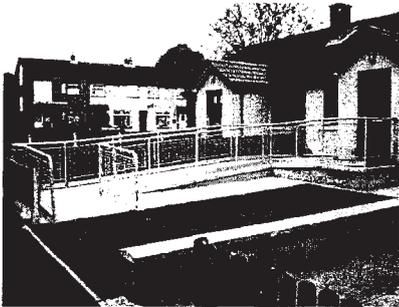
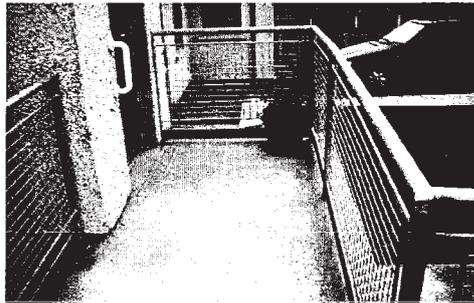
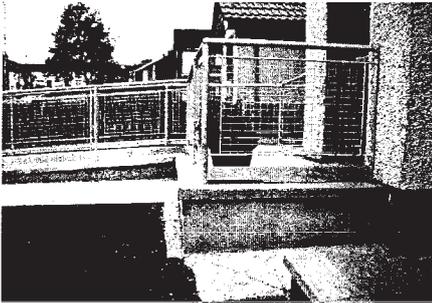
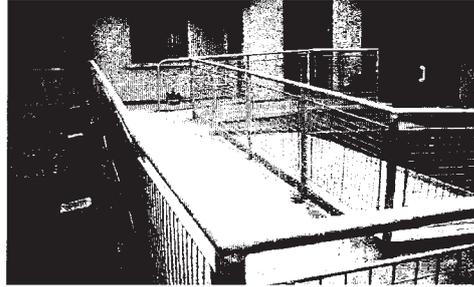
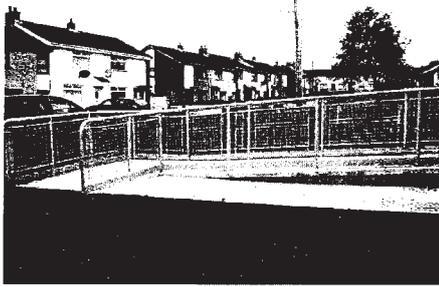


issues with this ramp

- There's no mesh panels which are health and safety requirement
- The contractor has used paving 600 x 600 flags as up stands which do not meet Housing Executive standards

Housing

Example of ramp that meets NIHE Specification



SOR Codes from Q21BJ Section

- Q21BJ05 Ramp Foundation
- Q21BJ10 200 thick block work
- Q21BJ30 Render to block work
- Q21BJ35 Hardcore fill under ramp
- Q21BJ40 Concrete bed to ramp
- Q21BJ50 Balustrade including mesh
- Q21BJ50 Steel channel grating

Samples of Deemed to be included for ramps

- Excavation of vegetation
- Breaking up any thickness of surface
- Formwork
- Compacting hardcore
- Laying to falls & cross falls

Housing

M20 Plastering/Rendering

Main change in the plastering section is in the measurement rules which are as follows

MTE Version 1 Measurement Rules

➤ Plaster/Render is measured in 10 thick stages as follows:

Area not exceeding 1m ²	nr
Area 1-5m ²	nr
Area exceeding 5m ²	M2

MTE Version 2 Measurement Rules

➤ Plaster/rendering is measured in m² (any thickness)



Housing

Replace Shower Units

Shower units will be the following 3 types

- Level Access Tray
- Easy Access Tray
- Wet Room Floor Former

The word shower unit shall apply to a complete shower unit comprising
The following

- | | |
|---|---|
| a | Shower base |
| b | Shower doors |
| c | Electric audio visual shower/mechanical shower (no extra cost to H.Ex.) |
| d | Curtain rail, curtain & grab rails |
| e | Shower trap & soap dish |
| f | Wall tiling within enclosure only |
| g | Slip resistant floor finish & PVC skirting |
| h | Chrome plate cold water supply pipe with isolating valve at ceiling level |



Housing

Extra over items

The following work will be paid additional to the Replacing of Shower Units

- Supply pipe work and fittings
- Waste pipe work and fitting
- Electrical supply circuits
- Extractor fan and splash proof lighting
- WBP plywood to stud partition walls within enclosure
- Shower seats & any fixing kits for stud walls

Deemed to be included

The following work is Examples of deemed to be included

- Taking out existing shower unit/bath including wastes and pipe work
- Recesses in floors to facilitate shower trays
- Various colours in relation to grab rails



Housing

Role of the Maintenance Officer

- Apply the relevant SOR codes to a Specified job
- Quality assure the completed work for, correct specification materials and workmanship, measurements and SOR usage
- The MO is not a 'Clerk of Works' to snag Contractor's work



Housing

Role of the Contractor

- Arrange access rather than cold call
- Complete the work **Right First Time**
- Repair/replace if necessary do not upgrade
- Apply the correct SOR codes to Unspecified Job Requests
- Clarify SOR code queries with MO for Unspecified and Specified Jobs Requests if necessary



Quality assure the completed work before notifying H.Ex. that work is complete

Housing

DRAFT CLAUSE 33.1 NOTICE NOTICE OF INTENTION TO RECOVER OVERPAYMENTS

Recorded Delivery / e-mail read receipt

[To: Contractor]

>

>

>

Your Ref:
Job Number Ref;

<Date>

Dear Sir

Re: Response Maintenance Repairs Service

In accordance with Clause 32.1 of the Conditions of Contract, I hereby give details of overpayments made to you in respect of work carried out or alleged to have been carried out under the contract.

Job number and details of overpayment

The purpose of this notice is to afford you with every opportunity on which to investigate said overpayments and to agree sums now due to the Housing Executive thereby allowing appropriate deductions to be made under Clause 33.1.

If you fail to respond to this notice within 5 days NIHE will commence the process of recovering the overpayment without further notice.

Yours faithfully

District Maintenance Manager

Cc: Area Manager
Contracts Manager Claims
Central Maintenance Unit



Housing

NOTICE OF INTENTION TO DEDUCT MONIES

Recorded Delivery / e-mail read receipt

[To: Contractor]

>

>

>

Your Ref:

Job Request Ref:

<Date>

Dear Sir

Re: Response Maintenance Repairs Service

I hereby give notice that the Housing Executive will deduct the a sum of £_____ exclusive of VAT under Job Request ref no. _____ dated _____.

Please add this job to your completions and add to next Contractor's invoice.

Yours faithfully



District Maintenance Manager

Cc Area Manager
Contracts Manager Claims
Central Maintenance Unit

Housing

Risk Management

- **Post Inspections**
- **CSU Surveys**
- **Annual Audit by RIU**
- **Desk Top Analysis**
- **Risk Inspections**
- **Quality checks by Contractor on their processes – If MO issues wrong codes/measurement notify and change**



Housing

Contract Management

- Don't leave Poor workmanship/materials
- Ensure that all work requested has been completed
- Ensure correct measurements are recorded
- Ensure that the correct SOR's are used
- Don't claim for work not done
- Over claims- ensure that no DTBI are claimed
- Don't carryout work over and above the reported repair without approval



Housing

DSD Oversight

7 October 2010

Following receipt of information about a series of allegations and investigations into how Housing Executive staff discharged their duties, the then Minister instructed that a Review be carried out to examine and report on:

- the information and structure available to the Board to ensure that it does and can; effectively identify and manage risk; prevent and detect fraud and error; hold senior managers to account; and ensure that the organisation operates and will operate at the highest standards of Corporate Governance;
- the adequacy of controls used to manage risk; the prevention and detection of fraud and error, performance, procurement and asset disposal, including in relation to land and property, the procurement of repairs, maintenance, miscellaneous works and adaptations;
- the organisation's access to appropriately skilled and trained staff to allow it to operate in its current form while preparing for and implementing both organisational and cultural change; and
- the extent to which the seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership – are being effectively implemented throughout the organisation.

Date	Action
25 Jan 2011	The then Minister made an oral statement in the NI Assembly on 25 January 2011 – Oversight arrangements to be put in place and an implementation plan to be provided by NIHE.
18 Feb 2011	<p>First meeting of DSD Oversight group chaired by the Permanent Secretary and included members from DETI, CPD and an Independent member. The remit was to:</p> <ul style="list-style-type: none"> • assess the realism of the implementation plan being put forward by the Housing Executive; • provide monthly examination of the implementation of the recommendations; • consider in-depth the Housing Executive's developing thinking in relation to key strategic issues, • confirm that the recommendations in relation to procurement and contract management are appropriately implemented; and • provide broad strategic advice and guidance. <p>7 meetings were held up to 16 November 2011.</p>
22 Feb 2011	Health check review team member reviewed the NIHE Implementation Plan and confirmed that he was reasonably satisfied there was an overall framework being put in place to deliver the recommendations.
02 Mar 2011	NIHE Implementation Plan forwarded to the then Minister
1 April 2011	Secretary held an Accountability meeting with NIHE – implementation of the governance audit and gateway review recommendations was on the agenda
07 July 2011	The Minister wrote to the Chair NIHE - sought assurance from Chair that they have in place robust and focussed contract monitoring arrangements for these and all response maintenance contracts and advising that Performance review meetings would be monthly.

Date	Action
29 September 2011	Gateway Health check carried out and advised "In summary this has been a well run project to date within a very testing project environment. Subject to the recommendations from this review we consider that the project will be in a good position to proceed to a successful conclusion. "
5 October 2011	Secretary held an Accountability meeting with NIHE – update on gateway review was on the agenda
16 Nov 2011	Final DSD Oversight Group meeting held. Oversight arrangements to continue with Director of Housing attending NIHE Oversight Board meetings and discussions at the Accountability meetings between Secretary and Chief Executive.
26 Jan 2012	Secretary wrote to Chief Executive asking him to confirm that the current contract management arrangements are being robustly applied
17 Feb 2012	Chief Executive replied and advised that the controls described in the Chair's letter on 15 July 2011 continue to operate. A series of spot checks had been completed as an indication that a more robust contract management regime is in place. Agreed improvement plans are in place in 16 districts
13 April 2012	Secretary wrote to Chief Executive and advised that accountability meetings would be held quarterly now instead of twice yearly.
27 April 2012	Secretary held Accountability meeting with Chief Executive. The implementation of the recommendations of the governance audit and gateway review was on the agenda.
8 May 2012	Secretary wrote to Chief Executive requesting copies of all draft Internal Audit and draft Inspection reports
28 May 2012	Secretary wrote to Chairman to advise the Head of Internal Audit is to undertake an independent review of the actions undertaken by NIHE in relation to the Governance Review recommendations
11 June 2012	Secretary wrote to Chairman bringing Performance Review Meeting forward to 26 June
26 June 2012	Minister's Performance Review meeting with NIHE – this focused on the NIHE's management of maintenance contracts
3 July 2012	Minister's Oral Statement in the Assembly
4 July 2012	Minister met with NIHE Board
24 July 2012	Secretary met Chief Executive for verbal update and discussed <ul style="list-style-type: none"> • Special measures • ASM report • DSD Internal Audit report
27 July 2012	Acting Chairman forwarded draft initial workplan in relation to the Minister's letter dated 4 July on the special accountability measures.
1 August 2012	Secretary held Accountability meeting with Chief Executive
6 September 2012	Secretary held Accountability meeting with Chief Executive.

NIHE Oversight

Within the Northern Ireland Housing Executive a full-time project team of six specialist staff led by an Assistant Director was established to implement the 14 Gateway recommendations. The primary role of this team was (as per the recommendations) to develop the new strategies, policies and procedures (for example, the new KPIs and inspection regimes) for the procurement of works contracts and to carry out the procurement of the new Response maintenance Contracts.

The Project team reports to a Project Board chaired by the Chief Executive, who in turn reports to the NIHE and DSD Oversight Boards. The 14 recommendations were completed in May 2012.

To provide consistency in approach the Project Team has subsequently been responsible for procuring all major works procurements with the Housing Executive. All major works procurements report to a Works Procurement Board chaired by the Chief Executive.

To provide assurance to the Chief Executive that the recommendations would be fully implemented, a member of the Gateway Team continued to provide advice to the Project team in the early stages of the project. A further Gateway review was carried out in September 2011. This review provided an amber/green delivery assessment and concluded that the project had made considerable progress in a short duration, has been diligent in its attention to ensuring the recommendations have been applied. The review advised that in summary this had been a well run project to date

To ensure that the new contracts are being managed and operated as per the new policies and procedures an action plan is currently being implemented and progress reported monthly to the Chief Executive.

Appendix 8

Personnel and Management Services
For Board Meeting
On 28th September 2011

FOR APPROVAL

STAFF ROTATION

1.0 Introduction

- 1.1 The Governance Review undertaken by the Department of Social Development (DSD) gave rise to a series of recommendations in regard to Personnel Policy within the Housing Executive. Included in these was the recommendation that the Housing Executive 'agree a policy on staff rotation'.
- 1.2 In the DSD Report, the context for the recommendation was the proposal in the Housing Executive's own Learning and Development Strategy to promote job rotation to "broaden individuals' skills and experience, to provide continuity and.... to address competence requirements for the longer term".
- 1.3 In taking forward this recommendation it is considered important to broaden the context for encouraging Staff Rotation to include promoting the contribution of Staff Rotation in ensuring Good Governance.
- 1.4 This paper considers the current position in regard to staff rotation; and, proposes an approach to promoting staff rotation in the context of the business needs highlighted.

2.0 Current Position

- 2.1 There is significant 'movement' of staff, or staff experiencing job/role changes, on the basis of promotion, internal secondment, external secondment, 'acting up' and transfer. Over the period April 2010 to August 2011 the numbers involved were as follows:-
 - Promotions - 302
 - Secondments (Internal) - 108
 - Secondments (External)- 7
 - Acting-Up - 261
 - Transfers - 80

- 2.2 This level of movement indicates that around 24% of staff changed job/role over the period in question. It is considered that this movement, or 'rotation' of staff, contributes to the development of organisational flexibility.

3.0 Staff Rotation Plans

- 3.1 The recommendation from the DSD Review, and the organisational imperatives arising from the need to enhance governance arrangements; and, to maximise the flexibility in the deployment of our staff resources in light of resource constraints, indicate that we need to consider a more formal approach to Staff Rotation. It is considered that such an approach would be encouraged by way of the preparation of Staff Rotation Plans.

- 3.2 In this respect the Divisions will be asked to consider the particular requirement for Staff Rotation in terms of Development and Good Governance.

3.3 Development

In order to ensure the development of individuals' skills and experience, to meet Divisional and Organisational competence requirements, and, to contribute to 'flexibility' of the workforce Divisions will be asked to

- (i) consider on a rolling yearly basis in which grades and across which functions staff rotation could be deployed as a means of developing people in a range of skills and functional settings.
- (i) develop pilot programmes, involving staff rotation, to assess the issues involved and the learning which can be gained.
- (ii) use the appraisal process to identify individuals in the affected grades and functions who would benefit from rotation. This information will inform the Staff Rotation Plans.

3.4 Good Governance

There are a range of measures which promote Good Governance including clear accountability, policy guidelines, robust systems of control and audit. Staff Rotation can also contribute to promoting Good Governance as one element of the overall process of control.

Divisions will be asked to

- (i) identify particular posts/grades where staff rotation can contribute, as one element in the overall control process, to the governance arrangements associated with that particular post/grade – due to the particular function concerned eg. contract management, District Management, etc.

3.5 'Staff Rotation Plans' will form part of the Succession Plans which Divisions are asked to develop as part of the Housing Executive's 'Workforce Plan' approved by the Board in March 2011 and should identify the scale of rotation to be undertaken in any particular year.

4.0 Securing Job Rotation

4.1 As indicated earlier staff rotation is achieved most readily on a voluntary basis by staff actively seeking promotion, secondment or transfer; or agreeing to 'act up' or take on another job role. It is considered that voluntary agreement to move/rotate will continue to be the prime means by which staff rotation is achieved.

4.2 However, it is considered that there will be occasions when the Housing Executive may have to rely on the provisions within its employment contract to secure staff rotation.

4.3 In this respect it is considered that the Housing Executive's 'Generalist' and 'Divisional' classification of posts assists the organisation in that officers in such posts/grades are appointed to a grade, which encompasses a range of duties associated with that grade. In addition, letters of appointment to the grade indicate that the officer will be "initially based in...." indicating that there is the potential for change of the place of work.

4.4 It is clear that any such rotation or movement of staff reliant on these provisions must be based on reasonableness in terms of distance to a new location; consultation being undertaken and due notice of any required move.

4.5 The employment contract could be made more explicit in terms of 'mobility'. To achieve such a change would require reaching a collective agreement with the recognised Trade Unions; or, alternatively, termination and re-engagement on new contracts. Either of these scenarios would have significant industrial relations

implications. Nonetheless, such a requirement will be kept under review in the light of experience in securing staff rotation.

5.0 Issues for Further Consideration

5.1 In asking Divisions to examine the requirement for Staff Rotation in their respective Divisions it is anticipated that issues will arise requiring further consideration. These are likely to include:-

- (i) Identification of functional areas/posts that should be particularly subject to staff rotation;
- (ii) Where Staff Rotation forms part of Good Governance arrangements, Divisions should carry out a risk analysis to determine the level of risk associated with particular posts with a view to identifying those posts/roles which will be subject to rotation. Divisions should also determine what is a reasonable period of time to remain in that post/role in a particular area – it is considered here that a 5 year period is a reasonable guide;
- (iii) The ability to rotate staff with the aim of securing good governance by minimising the time spent managing any one contractor will depend on the outcome of the tendering process and the dispersal of contractors around the province
- (iv) The scale of staff rotation in any one year will have to be managed and manageable in order to ensure that service provision is not affected.
- (v) Where staff rotation is triggered by Management there will be the need to ensure that equality of opportunity issues are addressed through an agreed set of non-biased criteria;
- (vi) A pilot scheme initiated on a voluntary basis. Some analysis has already been carried out in South Area. To build on this, it is suggested the pilot should be based in South Area and initially extend to Levels 6 and 7;

A review of the existing Transfer Policy will be undertaken in light of 'Staff Rotation'.

6.0 Trade Union Perspective

- 6.1 Initial consultation has been undertaken with Trade Union Sides. This has indicated that the Trade Unions are supportive of the movement or rotation of staff on a voluntary basis. The Trade Unions, however, are currently strongly opposed to staff rotation on a non-voluntary basis. This despite the Management Side indicating that any requirement for staff rotation on such a basis would be exercised on the 'reasonableness approach'.
- 6.2 Consultation with the Trade Unions will continue as Staff Rotation plans are developed; and, issues arising (anticipated at 5.1) are addressed.

7.0 Pilot

- 7.1 In order to develop this policy some work has been undertaken in South Area on a voluntary basis. It is proposed to develop this further based on rotation of posts at L6 and L7. A further report will be presented to the Board on the outcome of this exercise by March 2012.

8.0 Recommendation

- (i) The Board approves the general direction in relation to staff rotation and staff rotation plans.
- (ii) The pilot exercise is undertaken in South Area and the results/lessons learned reported to the Board by March 2012.
- (iii) Following this staff rotation plans to be introduced for the 2012/13 financial year.

M. Taggart
Director of Personnel and Management Services

Chairperson's Letter of 2 November 2012 to Mr Will Haire



Public Accounts Committee

Room 371
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: pac.committee@niassembly.gov.uk

aoibhinn.treanor@niassembly.gov.uk

Will Haire
Accounting Officer,
Department for Social Development
Lighthouse Building,
1 Cromac Place, Ormeau Road,
BELFAST, BT7 2JB

2 November 2012

Dear Will,

PAC Inquiry into NIHE Management of Response Maintenance Contracts

As a next step in this inquiry, the Committee has agreed to ask you some additional questions about the oversight of the Department in this case.

Accordingly, I would be grateful for your response to the points below.

- Long-standing guidance requires sponsor departments to carry out periodic reviews of their NDPBs, usually every five years. Prior to the reviews listed in paragraph 4.1 of the Comptroller and Auditor General's report how many departmental reviews of the NIHE were carried out in the last 15 years, and what did they come up with?
- During the evidence session (page 14 of the transcript) Dr McPeake expressed his disappointment that an important recommendation from an Audit Office report relating to low performance on gas heating contracts (Introducing Gas Central Heating in Housing Executive Homes – July 2004) had not been picked up. What action did the Department take on foot of this report, and in particular how did it monitor the implementation of all the report's recommendations?
- What action was taken by the Department on foot of that report to look at contract management across the Housing Executive? Are you satisfied that the Audit Office report was taken seriously by both the Department and NIHE at that time and that the Department did all it could to ensure that contract management was strengthened across NIHE?
- In response to a question from Mr McLaughlin (page 16 of transcript) Dr McPeake acknowledged that the problems with the contracts and KPIs should have been picked up. He also made reference to a professional procurement group in NIHE who are technically qualified in procurement. Why did this group not pick up on these problems?
- Are you satisfied that this professional procurement group was at that time and is currently fit for purpose? In addition, are you satisfied that the procurement exercises run to re-let the contracts in 2007 and the most recent response maintenance contracts complied with best practice?

- During the evidence session you indicated, in response to a question from Mr Hussey about the Department's oversight (pages 42 and 43 of transcript) that, when you came into the Department, the oversight was not as formalised as you wanted it to be. How was it deficient? How did this manifest itself? And why had these deficiencies not been identified and remedied prior to your appointment?
- Issues in relation to Red Sky were raised with the PSNI on two separate occasions. In the first of these (2006) the PSNI highlighted concerns about the nature of the contractual arrangement which, in their opinion, would undermine any potential criminal investigation. Was the Department aware that a report had been passed by NIHE to the PSNI and if so what action did it take? If it was not aware of this, why was this? Does it require such incidents to be reported to it?
- Still in connection with the 2006 PSNI letter, there were obviously lessons to be learned. What action was taken by NIHE to address the weaknesses in the contractual arrangements that had been identified by the PSNI, particularly before these contracts were re-let in 2007? Were the Board and Audit Committee made aware of the PSNI's observations?
- With regard to the 2007 settlement with Red Sky, what steps have you taken to review all relevant files and speak with your predecessor about this and can you confirm whether he was aware of this issue?
- Based on Mr Flynn's evidence (page 33 of the transcript) inspections by maintenance staff should be completed within 5 days of the work being completed. The system used by NIHE to identify work to be inspected **can** also generate reports in relation to these inspections, including time taken to do them. Please confirm whether these reports were being generated and used by management. Please also provide summary performance reports on time taken to complete inspections by district for the last three completed financial years.
- With regard to the inspection of heating contracts the Committee was told that the same broad set of Key Performance Indicators as apply to general maintenance contracts are used (page 30 of transcript). Please provide details of performance, by district, for the last three completed financial years.
- The C&AG's report makes several references to disciplinary action being taken against staff. The issue was also touched on at the evidence session (page 39 of the transcript). Where staff have been subject to disciplinary action, including dismissal, how can NIHE ensure that they cannot end up working for a firm/contractor providing services or carrying out work on its behalf? What guidance has been issued to staff, on retirement or dismissal from NIHE, about taking up employment with companies who are contracted with NIHE? How many cases have there been in the last five years and what companies are they working for?
- Problems with planned maintenance have been highlighted in both the C&AG's value for money report and in more detail in his report on NIHE's 2011-12 accounts. The latter drew attention to problems with:

kitchen replacement schemes (paragraph 33.2(b); major adaptation

schemes (paragraph 33.2(c); external maintenance schemes (paragraph 33.2(d); and the current specification for aspects of planned maintenance work (paragraph 34).

What is the latest position with each of these issues and when are they expected to be resolved? What assessment has been made of the likely financial exposure in terms of overpayments, underpayments and potential fraudulent claims? Is the Department satisfied that the processes for letting, monitoring and inspecting planned maintenance work is robust and reflects best practice?

- In respect of kitchen maintenance in particular, on what basis was the original specification for the scheme drawn up, and by whom? How did NIHE senior management satisfy themselves that the specification was the most appropriate and would deliver the best value for money solution? On what basis were tenders assessed and evaluated, and what weighting was given to quality and cost respectively? What has been the total cost of the scheme to date? Please provide a breakdown from scheme design through to the present, including payments to contractors and cost to NIHE of administering the scheme. How is contractor performance assessed and how does each contractor's performance compare against the quality standards specified in the contract? What penalties have been imposed where performance does not meet the expected standard?

I would appreciate your reply by 19 November 2012.

Yours sincerely,

A handwritten signature in black ink that reads "Michaela Boyle". The signature is written in a cursive, flowing style.

Michaela Boyle

Chairperson
Public Accounts Committee

Chairperson's Letter of 2 November 2012 to Mr Brian Rowntree



Public Accounts Committee

Room 371
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: pac.committee@niassembly.gov.uk

aoibhinn.treanor@niassembly.gov.uk

Brian Rowntree
Former Chairman, Northern Ireland Housing Executive

02 November 2012

Dear Brian,

PAC Inquiry into NIHE Management of Response Maintenance Contracts

The Public Accounts Committee has since 12 September been taking and considering evidence on its inquiry into the Comptroller and Auditor General's report, 'NIHE Management of Response Maintenance Contracts'.

As a next step, the Committee has agreed to ask you to assist it by providing your perspective on oversight by the Housing Executive Board of the contract problems raised by whistleblowers in 2009.

Accordingly, I would be grateful for your written response to the points below.

- What is the Board's role in relation to the letting of contracts? Was it aware that there was a problem with the response maintenance contracts that were being re-let in 2007?
- Pages 17 and 18 of the Comptroller and Auditor General's report provide details of the 2006 Belfast South investigation and settlement with Red Sky which was brokered by a former member of the NIHE Audit Committee. Did the NIHE senior management seek the views of the Board or the Audit Committee about the merits of this individual's involvement? If so, what was their advice?
- Pages 43 and 44 of the transcript of evidence focus on Internal Audit. When did the Board first become aware that Internal Audit reports were not going directly to the Audit Committee? Had the Audit Committee raised any concerns about this practice with the Board? If so, when did this happen, and what was the Board's response?

I would appreciate receipt of your reply by 19 November 2012.

Yours sincerely,

Michaela Boyle

Chairperson
Public Accounts Committee

Correspondence of 30 November 2012 from Mr Will Haire



From: **The Permanent Secretary**
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Michaela Boyle MLA
Chairperson
Public Accounts Committee
Room 371
Parliament Buildings
Ballymiscaw
BELFAST BT4 3XX

30 November 2012

Dear Michaela

PAC Inquiry into NIHE's Management of Response Maintenance Contracts

Thank you for your letter dated 2 November 2012 in which you requested further information in relation to the above. I am very grateful for the additional time provided to research these issues. I attach the relevant responses on behalf of the Department and the Housing Executive, in line with each query raised as follows:

- 1. Long-standing guidance requires sponsor departments to carry out periodic reviews of their NDPBs, usually every five years. Prior to the reviews listed in paragraph 4.1 of the Comptroller and Auditor General's report how many departmental reviews of the NIHE were carried out in the last 15 years, and what did they come up with?**

There have not been separate quinquennial reviews of NIHE in the period prior to the establishment of the existing Fundamental Review of the Housing Executive which commenced in 2010. Such reviews aim to identify if the functions of a NDPB are still necessary, that the NDPB model represents the best model for delivery of these functions and to identify any cost or quality improvements in the organisation and operation of the NDPB. The need for the Housing Executive was however examined in the original Review of Public Administration in 2002 and in the further consultation in 2005. The latter noted that there was the option of the transferring of responsibilities to new larger Councils, but it also noted that there was almost no support for change to the Housing Executive in the first RPA consultation and a widespread recognition that the Housing Executive had been successful. Therefore the RPA appears to have been used to look at the core issue which is normally examined by a quinquennial review.

There have however been several reviews of individual business areas within the Housing Executive – for example, the House Sales Scheme; the Special Needs Management Allowance and significant changes to the Social Housing Development Programme. Whilst

within the Housing Executive programmes have also been reviewed including; Housing Policy Review 1996; Modernising Services Programme 2004/05; Technical Services Review 2008/09. These reviews have therefore addressed issue of operational effectiveness.

- 2. During the evidence session (page 14 of the transcript) Dr McPeake expressed his disappointment that an important recommendation from an Audit Office report relating to low performance on gas heating contracts (Introducing Gas Central Heating in Housing Executive Homes – July 2004) had not been picked up. What action did the Department take on foot of this report, and in particular how did it monitor the implementation of all the report's recommendations?**

A paper summarising the findings of the 2004 report into Gas Central Heating was tabled at the November 2004 NIHE Audit Committee. Although there were a total of nine recommendations in the NIAO report, the paper summarised the main issues relating to the aggregation of contracts, financial capability, overdependence/risk and other issues such as the need for and evaluation of economic appraisals and recovery of costs arising from remedial works on three contracts.

The summary paper is silent on the application of low performance damages (recommendation 9) and Housing Executive records do not provide any information on the reason for exclusion. It was likely that it would not have been possible to implement this recommendation immediately given the duration of the contracts at that time – a number of contracts had just been let in 2004 and it was not until 2007 before the next procurement exercise was conducted.

In relation to the Department's action, the recommendations and agreed actions from the PAC report were monitored through annual Accountability Grid reports sent from DFP. The Housing Executive was asked for an update against the commitments for both this report and also quarterly Departmental Audit Committee meetings.

- 3. What action was taken by the Department on foot of that report to look at contract management across the Housing Executive? Are you satisfied that the Audit Office report was taken seriously by both the Department and NIHE at that time and that the Department did all it could to ensure that contract management was strengthened across NIHE?**

In relation to the Department's action, the recommendations and agreed actions from the PAC report were monitored through annual Accountability Grid reports sent from DFP. The Housing Executive was asked for an update against the commitments for both this report and also quarterly Departmental Audit Committee meetings.

The evidence available demonstrates that the Department and the Housing Executive took this Audit Office report seriously at that time. In addition the Housing Executive is one of eight public bodies designated as Centres of Procurement Expertise (CoPEs) and underwent two accreditation assessments in 2005 and 2009.

- 4. In response to a question from Mr McLaughlin (page 16 of transcript) Dr McPeake acknowledged that the problems with the contracts and KPIs should have been picked up. He also made reference to a professional procurement group in NIHE who are technically qualified in procurement. Why did this group not pick up on these problems?**

Historically the Housing Executive has had in place a professional procurement function, the Corporate Procurement Unit (CPU), which dealt mainly with procurement issues. That is, they were responsible for carrying out procurement exercises for all the divisions within the Housing Executive. These procurements covered all the Housing Executive's requirements for Works, Supplies and Services. In the main the requirement of the Unit was to ensure that all procurements were carried out in accordance with the EU Directives on Procurement, the transposition of those directives in to National law, namely the Public Contracts Regulations 2006 (as amended), Northern Ireland Public Procurement Policy (NIPPP) and procurement

best practice. The CPU was supported by other parts of the organisation by the provision of contract documents, specifications and construction of KPI methodologies. Specifically, this assistance was provided by construction professionals within the organisation.

It would appear that a gap in procedures was therefore inadvertently created which allowed the management of KPI performance data to fall between two areas. Following the Gateway review of December 2010 and the follow up in September 2011, the Housing Executive has now developed much more robust KPIs and in turn management processes to ensure that poor contract performance is now picked up much earlier and in turn dealt with accordingly. Major procurements and the associated KPIs are now considered by a Works Procurement Board which meets regularly under the chairmanship of the Chief Executive.

5. Are you satisfied that this professional procurement group was at that time and is currently fit for purpose? In addition, are you satisfied that the procurement exercises run to re-let the contracts in 2007 and the most recent response maintenance contracts complied with best practice?

The Housing Executive advises that the Corporate Procurement Unit was fit for the purpose it served at that time and is fit for purpose now. However, as mentioned, there clearly was a structural weakness in the system that was damaging. In recognition of the recommendations of the Gateway Review, in addition to the role of the Procurement Board, the Unit has been further strengthened by the recruitment of additional professionals to deliver the objectives of the new Corporate Procurement Strategy which now includes the Unit taking on the commercial management of contracts. Although it would be perceived that commercial management is a task for the procurement function, it was not a function carried out by the Housing Executive as a whole. As noted by the Gateway Review Team, similar problems were clear throughout public sector bodies throughout the UK. The more enhanced Unit now has the task of not just letting compliant procurements but also of ensuring, through commercial contract management, that maximised value for money for the public purse is achieved.

6. During the evidence session you indicated, in response to a question from Mr Hussey about the Department's oversight (pages 42 and 43 of transcript) that, when you came into the Department, the oversight was not as formalised as you wanted it to be. How was it deficient? How did this manifest itself? And why had these deficiencies not been identified and remedied prior to your appointment?

When I came into the Department, I found that there was a considerable amount of monitoring activity across the Department/NIHE boundary. There were six-monthly performance review meetings between the Minister and Chair and Chief Executive and a wide series of meetings at official level. Risk management and assurance systems were in place and the Department had access to the Board papers.

The Committee will be aware that in May 2007 the NIAO published a report entitled "Good Governance - Effective Relationships between Departments and their Arms Length Bodies". As you will note DSD was one of several Departments covered by that review. It contained no specific concerns about the way in which DSD was exercising its oversight functions but on the contrary cited six specific "case illustrations" of good practice, three of which related to the Housing Executive.

I should also note that a "Review of the Process of Sponsorship of the Northern Ireland Housing Executive by the Department of Social Development" was carried out in November 2009, prior to my arrival in DSD. That Review found that the Department's sponsorship arrangements and relationship with the NIHE was satisfactory but could be improved. It made 13 recommendations to that end (see Appendix 1 for details). These have been taken forward.

With the benefit of hindsight in my experience there were however two areas of weakness. First the assurance systems of the Housing Executive were not tested sufficiently, either

by the external or internal audit systems of the Housing Executive, and had not been checked independently by the Department. In addition, there was insufficient co-ordination of different contacts the Department had with the Housing Executive and there was not full documentation of contacts. These two issues created the risk that issues of concern might not be effectively identified and appropriately escalated.

As regards why this situation had arisen, I believe that this issue comes from a view that Arm's Length Bodies are exactly that – arms length. It is not the role of a Department to micro manage its bodies, rather to have an effective oversight role. The NIAO Report of 2007 commended a “strategic approach to risk management”. Boards are tasked with running their Organisations prudently and ensuring that appropriate governance structures and principles are in place to provide assurances to the Sponsor body. However this creates a difficulty, when receiving assurances that various actions have been taken and with no evidence to the contrary, to impose overly bureaucratic monitoring arrangements on such a body. I think that may have been the case in this instance, but I believe that our experience with the Housing Executive indicates that the Department has to regularly test the assurance systems of the ALBs thoroughly.

- 7. Issues in relation to Red Sky were raised with the PSNI on two separate occasions. In the first of these (2006) the PSNI highlighted concerns about the nature of the contractual arrangement which, in their opinion, would undermine any potential criminal investigation. Was the Department aware that a report had been passed by NIHE to the PSNI and if so what action did it take? If it was not aware of this, why was this? Does it require such incidents to be reported to it?**

The Red Sky case was discussed at the 6 December 2006 NIHE Audit Committee. A paper “Internal Fraud – Management Checklist” reviewed the management of the case and in the Board minutes of 13 December 2006 the Vice Chair reported that “...the Committee had been content with this very full investigation and the Housing Executive response”.

This paper states “The suspected fraud was advised to DSD by way of the June (2006) Fraud Progress Report. DSD subsequently reported the case to DFP and NIAO as per DAO (DFP 5/96).

- 8. Still in connection with the 2006 PSNI letter, there were obviously lessons to be learned. What action was taken by NIHE to address the weaknesses in the contractual arrangements that had been identified by the PSNI, particularly before these contracts were re-let in 2007? Were the Board and Audit Committee made aware of the PSNI's observations?**

The two main issues arising from the PSNI review of the Housing Executive's investigations were:

- there was insufficient evidence (to a criminal standard) to link a specific individual to a criminal offence, and,
- there were areas of concern on both sides of the contractual relationship which could have potentially undermined any potential criminal investigation.

A number of contract management weaknesses were identified as part of this investigation and steps were taken as a result. A meeting was convened and chaired by the Director of Housing at that time involving both maintenance managers and contractor representatives to ensure there were no misunderstandings in the application of the terms of the contract.

Further actions included:

- an additional control report was introduced to prevent duplicate payments;
- revised procedures, particularly in relation to the management of dayworks; and

- additional awareness seminars for all staff as a result of the findings from this investigation.

With hindsight it would have been much more effective had a value for money KPI been implemented at this time to assess the accuracy of invoices being submitted by the contractor. The focus remained on measuring the quality of the work and this was not changed until April 2011 on conclusion of the second investigation.

The Board and Audit Committee were advised of the outcome of the investigation at meetings in December 2006 (see previous comments above) and they were advised that the PSNI were not recommending pursuing the case as fraud. The Housing Executive is unable to confirm that Board or Audit Committee had sight of the PSNI letter of September 2006 but outcome is highly likely to have been discussed given the content of the paper presented to the Audit Committee in December 2006.

9. With regard to the 2007 settlement with Red Sky, what steps have you taken to review all relevant files and speak with your predecessor about this and can you confirm whether he was aware of this issue?

My staff have sought to interrogate our files but report that they cannot find any evidence to demonstrate that the Department was aware of this. Nor from my investigations is there evidence that the Department's Accounting Officer was aware of the issue.

10. Based on Mr Flynn's evidence (page 33 of the transcript) inspections by maintenance staff should be completed within 5 days of the work being completed. The system used by NIHE to identify work to be inspected can also generate reports in relation to these inspections, including time taken to do them. Please confirm whether these reports were being generated and used by management. Please also provide summary performance reports on time taken to complete inspections by district for the last three completed financial years.

A new Response Maintenance IT system was implemented incrementally across five areas between January and July 2010 and there are variations in the management reporting between the two systems. A summary of the management reports by system is as follows:

Pre 2010 System (PRAWL)

- Maintenance Officer Daily Inspection Report – this report provided a work list for maintenance officers including both pre and post inspections. Inspections outside the target time were highlighted on this report and reports were signed off on a daily basis by each maintenance officer.
- Inspections Complete Report – this ad hoc management report was extracted on a fortnightly basis and provided summary information on inspections carried out by each maintenance officer. This report would have highlighted inspections pending which were outside their target date.

2010 onwards (HMS)

- Inspections (Allocated) by Month – This report provides the maintenance manager with a summary of all inspections, including post inspections, by maintenance officer – both awaiting inspection and completed.
- Inspections Completed by month – This report provides the maintenance manager with a summary of outcomes from inspections and the number and percentage completed within and outside target times.

In addition, a monthly report is produced for the Director's Performance Review Group meeting which highlights the number of inspections and associated value by district that is outstanding at the month end. The report also highlights monies due to contractors from jobs awaiting inspection beyond their target time.

Information has been extracted on the Housing Executive's performance on speed of post inspection and this is attached in **Appendix 2**. This information has been extracted from the existing IT system and difficulties are being experienced in extracting similar data from the previous system. The new system was introduced incrementally between January and July 2010 and this "transitional data" may not be accurate. The Housing Executive's IT department are currently investigating the possibility of extracting data for the period 2009 to July 2010.

With regard to the inspection of heating contracts the Committee was told that the same broad set of Key Performance Indicators as apply to general maintenance contracts are used (page 30 of transcript). Please provide details of performance, by district, for the last three completed financial years.

See **Appendix 3**

- 11. The C&AG's report makes several references to disciplinary action being taken against staff. The issue was also touched on at the evidence session (page 39 of the transcript). Where staff have been subject to disciplinary action, including dismissal, how can NIHE ensure that they cannot end up working for a firm/contractor providing services or carrying out work on its behalf? What guidance has been issued to staff, on retirement or dismissal from NIHE, about taking up employment with companies who are contracted with NIHE? How many cases have there been in the last five years and what companies are they working for?**

The Housing Executive's legal advice is that they cannot ensure that staff leaving their employment, for whatever reason, cannot end up working for a firm/contractor providing services or carrying out work on the Housing Executive's behalf.

In the Housing Executive's Code of Conduct they have included the following provision:-

'Officers must continue to observe their duty of confidentiality after they have left the employment of the Housing Executive.'

However, it is unlikely that even this provision would be enforceable.

The Code of Conduct does contain provisions on taking up future employment, up to the point of leaving the Housing Executive, that is, staff who have been offered a job with a Housing Association, or a Contractor, who provides services to the Housing Executive. In such circumstances, the member of staff is required to declare the conflict of interest, and the Designated Manager is empowered to put arrangements in place to manage any conflict arising.

There is no legislative basis to apply restrictions to any grade within Local Government

The Housing Executive have had no cases of such declaration of interests being made in the last five years. For the reasons outlined above they have no means of knowing (apart from anecdotal information) whether ex-employees subsequently take up employment with a contractor/company supplying work or services to the Housing Executive.

- 12. Problems with planned maintenance have been highlighted in both the C&AG's value for money report and in more detail in his report on NIHE's 2011-12 accounts. The latter drew attention to problems with: kitchen replacement schemes (paragraph 33.2(b); major adaptation schemes (paragraph 33.2(c); external maintenance schemes (paragraph 33.2(d); and the current specification for aspects of planned maintenance work (paragraph 34).**

What is the latest position with each of these issues and when are they expected to be resolved? What assessment has been made of the likely financial exposure in terms of overpayments, underpayments and potential fraudulent claims? Is the Department satisfied

that the processes for letting, monitoring and inspecting planned maintenance work is robust and reflects best practice?

The Housing Executive advises:

Kitchen Replacement Schemes (33.2b)

Internal Audit has finalised their report on the Scheme identified in the C&AG's Report which highlighted a potential overspend of £90,000. Internal Audit has now confirmed the possible overpayment amount in relation to items not provided/work not done/not completed to specification as £61,120 and possible overpayment amount of £24,640 on the grounds of unclear/out of date policy.

The Housing Executive's Counter Fraud Unit is currently investigating a number of planned schemes to ascertain if there is any evidence of suspected fraud. A preliminary view will be brought to the Audit Committee at its December meeting.

In addition to the work undertaken by Internal Audit, the Housing Executive has, through its legal representative, appointed an external chartered surveyor company to provide an independent, sample based, assessment of a further 19 kitchen replacement schemes. The surveyors have selected schemes across all areas, including four of the five identified in the original SIU report (the fifth has been investigated by Internal Audit as noted above). The independent surveyors have been asked to identify any evidence of overpayment. Initial reports have been received for two areas and the evidence available at this time shows indicators of suspected overpayment.

On the basis of this information a solicitor's letter has been issued to the relevant contractor, enclosing the report and seeking repayment of the appropriate monies. Depending on the responses received from the contractors, the Housing Executive would reserve the right to issue proceedings which may involve engagement in an adjudication process. This will be carried out as a "test case" to establish the principle of recoverability. If evidence shows overpayment with the other contractors then similar procedures will be followed.

It is not possible to define a specific timeline at this stage as it will be determined by the position that contractors take in relation to the incidence of overpayment, the quantum, repayment and the nature of the resulting legal process. The Housing Executive is committed to reviewing all schemes completed under the current contract.

Major adaptation schemes (paragraph 33.2c)

The Housing Executive's solicitors have received the settlement cheque of £551,000 from the insurers. The Housing Executive is currently going through the professional fee for James Clark & Partners (JCP) to conclude this particular issue by December, 2012.

The Housing Executive has concerns about other schemes managed on its behalf by the same professional firm. A strategy will be brought to the Board to agree a way forward in investigating these matters.

External Maintenance Schemes 33.2d

There is a quantity surveyor in each of the areas dedicated to the closure of financial accounts. In addition, a Central Cost Group (CCG) is providing a quality assurance role on the monies prior to closure and reporting back any evidence to the areas. There has been evidence of overpayment in a number of the schemes and all contractors have been written to advising that there is potential of overpayment and that meetings would be set up with the area offices to provide counter evidence of this.

These meetings have been taking place with some of the contractors which slows down the process of closure as additional time is required to go through the evidence and any counter evidence. In the event of no counter evidence the scheme is finalised with the overpayment

amount. However, this must be understood in the legal context. If the contractors dispute that amount the onus will be on the Housing Executive to establish the incidence and quantum of the overpayment. It is unlikely given the practical realities, and, in particular, the very tight time scale allowed for adjudication and the number of possible disputes, that the Housing Executive would be in a position to provide independent expert evidence to satisfy the adjudicator.

This is part of the rationale grounding the decision to take forward the “test cases” referred to earlier to establish recoverability. The outcome of which will determine the approach to ultimately be adopted in respect of the potential overpayments as identified and whether a negotiated settlement can be reached on these schemes.

New controls have been introduced with the Assistant Director now required to sign off project managers preliminary reports and the Director of Design and Property Services required to sign off the Preliminary Report (not the project managers’ final report) in order to ascertain key recommendations at an early stage.

To ascertain the total financial exposure requires an assessment to be carried out of each of the schemes and establishing clear evidence of overpayment. It would be inaccurate to extrapolate as the Housing Executive are finding from evidence on each scheme to date, that the level of overpayment or underpayment can vary. This process is currently ongoing with the external Chartered Surveying Firm on a sample of 19 schemes and they are making an assessment of evidence of overpayment against all contractors in the framework.

To date, they have reviewed the Belfast Contractor and South Contractor but still have to close out on the West, South East and North West. This will be completed by March 2013 by which time the Housing Executive will have a more comprehensive picture of the level of potential overpayment. In parallel, as the evidence is provided we are issuing legal letters seeking repayment. If the contractor fails to respond, the Housing Executive will go to adjudication with these “test cases” seeking recovery of the overpayments specified in the expert reports. If this is successful it is anticipated that this would increase the possibility of achieving negotiated settlements across the schemes. However, the possibility of contractor challenges involving adjudication and litigation cannot be discounted. It is therefore too early to determine the exact exposure as it will be dependent on the legal process.

The fraud unit are investigating contractors in relation to any evidence of fraud but have not provided their closed out findings as yet.

It is my view that there is insufficient evidence at present to come to a conclusion on whether or not the new arrangements put in place by the Housing Executive are robust and represent best practice. Both the Housing Executive and the Department are closely monitoring all relative qualitative information coming from the Housing Executive’s Inspection Team to see if there is evidence that the new arrangements have taken hold and are having an effect on the quality of contract management.

- 13. In respect of kitchen maintenance in particular, on what basis was the original specification for the scheme drawn up, and by whom? How did NIHE senior management satisfy themselves that the specification was the most appropriate and would deliver the best value for money solution? On what basis were tenders assessed and evaluated, and what weighting was given to quality and cost respectively? What has been the total cost of the scheme to date? Please provide a breakdown from scheme design through to the present, including payments to contractors and cost to NIHE of administering the scheme. How is contractor performance assessed and how does each contractor’s performance**

compare against the quality standards specified in the contract? What penalties have been imposed where performance does not meet the expected standard?

Answer broken down into components

In respect of kitchen maintenance in particular, on what basis was the original specification for the scheme drawn up, and by whom?

Consideration would have been given to the existing specification plus current best practice, materials and products in the market place. In addition, any feedback or complaints from technical professionals on the ground and the end users (tenants) would have been taken into account.

The specification was drawn up by the Technical Standards and Central Design Services Depts.

Consideration would have been given to the existing specification plus current best practice, materials and products in the market place. In addition, any feedback or complaints from technical professionals on the ground and the end users (tenants) would have been taken into account.

The Housing Community Network were provided with sample kitchens and their views were taken into account in the final specification

The specification was drawn up by the Technical Standards and Central Design Services Departments and they would have taken into account national building specifications, British Standards, I.E.E. regulations, building regulations and the Housing Executive's codes of practice.

How did NIHE senior management satisfy themselves that the specification was the most appropriate and would deliver the best value for money solution?

Consideration would have been given to the various standards of kitchens available and the standards applied by other local authorities/ housing groups. The specification would have incorporated the comments and views of all relevant staff and end users.

The professional judgement and the Housing Executive's experience would have been applied on what was value for money for the organisation. It would have been normal for this to be endorsed by the Standards Clearing Group (Chaired by Technical Standards Manager), Policy, Practice and Procedure Committee (Chaired by Business Planning Manager Corporate Services), Housing and Regeneration Clearing House Committee and the Chief Executives Business Committee.

Consideration would have been given to the various standards of kitchens available and the standards applied by other local authorities/ housing groups. The specification would have incorporated the comments and views of all relevant staff and end users.

The professional judgement and the Housing Executive's experience would have been applied on what was value for money for the organisation.

It would have been normal for this to be endorsed by the Standards Clearing Group (Chaired by Technical Standards Manager), Policy, Practice and Procedure Committee (Chaired by Business Planning Manager Corporate Services), Housing and Regeneration Clearing House Committee and the Chief Executives Business Committee.

On what basis were tenders assessed and evaluated, and what weighting was given to quality and cost respectively?

The procurement process for the provision of the Revenue Replacement/External Cyclical Maintenance (RR/ECM) Framework was carried out in accordance with the Public Contracts

Regulations 2006, specifically Regulation 16 – the Restricted Procedure. This framework caters for the provision of kitchen replacements, window replacements, bathroom replacements and ECM. The procurement process involved a Pre Qualification stage to ascertain the capacity and capability of prospective tenderers. Once these tenderers were identified they were invited to submit their proposals for the provision of work under the RR/ECM Framework. The evaluation criteria used to appoint contractors to the framework was the Most Economically Advantageous Tender based on a quality/price split of 30% quality, 70% price. This split is consistent for works procurements of this level of complexity.

What has been the total cost of the scheme to date? Please provide a breakdown from scheme design through to the present, including payments to contractors and cost to NIHE of administering the scheme.

Scheme Costs 2008 – 2012

Year	No. of dwgs	Actual Scheme Costs** £,000s	Professional Fees*** £'000s
2008/09*	2551	15,699	1,256
2009/10	4041	16,513	1,321
2010/11	2595	12,693	1,015
2011/12	4257	14,887	1,191
2012/13	5344		

* Excludes payments made on kitchen replacement on schemes prior to new “Egan” contracts

** Actual cost of kitchen replacement including works assembly costs paid to contractor. Contractors have been paid £200 per dwelling since 2008 to survey and design works for each dwelling.

*** Based on 8% of revenue replacement budget and includes all project management services including inspectorate and administration. Fee rate reduced to 7% from 2012/13.

How is contractor performance assessed and how does each contractor’s performance compare against the quality standards specified in the contract? What penalties have been imposed where performance does not meet the expected standard?

Each contractor is assessed against a set of Key Performance Indicators (KPIs) which measure:

1. Client satisfaction with product
2. Client satisfaction with service
3. Quality – defect free
4. Cost Predictability (reliability of cost estimate)
5. Time Predictability
6. Safety –based on occurrence of accidents
7. Skills - % of workers with skills certificates
8. Environment – satisfaction with consideration for the environment
9. Environment – sustainability

Performance by Contractor is attached at **Appendix 4**.

The framework does not have any recourse to termination if the KPIs are not met but non compliance with the contract can be managed in line with the conditions of the contract. However, all contracts let since April 2012 now have robust KPIs included that include low performance damages if they are not met. In addition these newer contracts also include a provision to allow the Housing Executive to terminate contracts for persistent poor performance against KPIs which is seen as contract non compliance.

The procurement process for new revenue replacement contracts is well advanced and will be in place from 2013.

I trust that these answers address your questions. If there are further details needed, I of course will seek to supply additional information.



Will Haire

Appendix 1

Review of the Process of Sponsorship of Northern Ireland Housing Executive by the Department for Social Development

Summary of Recommendations

Para No.	Recommendation
1.	It is recommended that newly issued guidance is one of the topics included in the monthly performance meeting agenda.
2.	It is recommended that there is a collective Departmental approach to ALB sponsorship developed by Corporate Planning Unit and this is tailored by individual sponsor divisions / branches to reflect their own structures and those of the bodies they sponsor.
3.	In order to develop the relationship between the Department and the full Board, the Permanent Secretary and Deputy Secretary should attend at least one Board meeting per year. The Director of Housing should also attend this meeting. This would be in addition to the occasions on which the Deputy Secretary and the Director of Housing might attend Housing Executive Board meetings to discuss particular Departmental / Housing Executive issues. Consideration should also be given to the Minister meeting with the full Board.
4.	Informal meetings between the Permanent Secretary, Deputy Secretary, Housing Executive Chair and Chief Executive should be made more formal. Such meetings should be held 2-3 times per year to align with key stages in the business and financial planning cycle. Again the Director of Housing should be involved in these meetings so that feedback can be provided back to the wider sponsor team.
5.	Greater emphasis should be given to the Housing Executive by the Departmental Board. This could be achieved through periodic reports being provided to the Departmental Board by the Director of Housing. Consideration may also need to be given by the Departmental Board to whether this should be extended to include other bodies sponsored by the Department.
6.	The Departmental Audit Committee should consider the adequacy of its current arrangements in obtaining assurance on the Department's sponsored bodies.
7.	It is also recommended that the Housing Executive sponsoring arrangements become a quarterly standing item on the Housing Division SMT meeting agenda to ensure consistency of approach across the Division and to provide a mechanism for escalating significant issues to the Board.
8.	In order to develop and promote a greater understanding of the relationship between the Department and the Housing Executive we recommend that the Department should work closely with the Housing Executive in developing and providing input into any new Induction Programme being considered for new Board appointees.
9.	While Housing Division receives Board minutes from the Housing Executive, the review team recommends that in addition Housing Division receive the full Board Pack of papers as soon as possible after the meeting.
10.	It is recommended that Housing Division ensures that there is an appropriate balance of formal and informal communication with the Housing Executive, reflecting Minister's priorities. Proportionate and satisfactory arrangements will further enhance relationships.

Para No.	Recommendation
11.	While the Department currently receive Internal audit papers in the format submitted to the Housing Executive Audit Committee, the Division should liaise with the Housing Executive to arrange for the receipt of individual audit assignment reports, audit strategies etc. Consideration needs to be given to how these reports are dealt with when received within Housing Division. Reports should be accessible to and reviewed by key sponsor staff. The procedure for sharing these reports with Departmental Internal Audit for their own assurance purposes also needs to be defined.
12.	Housing Division should also liaise with the Housing Executive Head of Internal Audit to ensure that the Department's assurance requirements are taken account of when the Housing Executive audit plans / strategies are being developed.
13.	The Housing Executive Internal Auditor validates out turn information and this is reported to the Housing Executive Audit Committee. The Department should liaise with the Housing Executive to determine the extent of the validation work currently done to determine if it is sufficient to meet the Department's requirements. Alternatively the Department may wish to carry out its own validation exercise on key Housing Executive targets.
14	While Housing Division receive Board and Audit Committee minutes and papers it is recommended that the Division determine internally how these documents should be made circulated to key sponsor staff. It is important that those staff who receive such documents actively consider them in the context of the issues with which they are dealing and that this process within Housing Division is made more formal.

Appendix 2

% of Post Inspections Completed within 5 days

District	2011/2012	Apr 2012 to Sept 2012
Antrim	78.9	78.9
Armagh	77.6	88.2
Ballycastle	44.1	73.2
Ballymena	68.1	67.9
Ballymoney	35.4	86.0
Banbridge	65.2	81.7
Bangor	43.4	57.3
Belfast 4	58.0	65.3
Belfast 6	69.0	77.5
Belfast (Shankill)	49.6	54.0
Carrickfergus	33.2	51.3
Castlereagh	77.3	69.9
Coleraine	55.5	72.2
Collon Terrace (L'Derry)	69.2	86.3
Cookstown	84.6	89.0
Craigavon (Portadown)	87.9	95.5
Craigavon (Lurgan/B'low)	90.0	89.1
Downpatrick	58.3	75.1
Dungannon	88.4	87.5
East Belfast	50.7	60.4
Fermanagh	78.6	84.1
Larne	61.1	85.5
Limavady	60.4	72.1
Lisburn (Antrim St)	77.2	84.0
Lisburn (Dairyfarm)	57.1	74.1
Magherafelt	48.1	62.6
Newry	76.6	65.3
Newtownabbey 1	59.7	68.5
Newtownabbey 2	86.8	65.0
Newtownards	87.9	91.6
Omagh	69.9	86.3
South Belfast	81.8	63.6
Strabane	69.7	69.6
Waterloo Place (L'Derry)	57.8	62.7

District	2011/2012	Apr 2012 to Sept 2012
Waterside (L'Derry)	47.6	42.4
West Belfast (1)	66.0	72.7
West Belfast (3)	62.0	62.9

Appendix 3

Heating KPI Outcomes

KPI Summary Score Sheet - Response Maintenance

Contract : Heat

Financial Year : 2009/10

District	KPI 1	KPI 2	KPI 3	KPI 4	KPI 5	KPI 6	KPI 7
West Belfast	no return	no return	no return	no return	no return	no return	no return
East Belfast	9.00	7.30	100.00	100.00	100.00	92.00	10.00
South Belfast	9.00	7.50	96.70	87.70	89.70	94.00	10.00
North Belfast	9.00	8.50	99.00	100.00	100.00	94.00	10.00
Shankhill	9.00	8.00	93.00	100.00	100.00	100.00	10.00
Belfast Area	9.00	7.83	97.18	96.93	97.43	95.00	10.00
Bangor	9.00	9.00	100.00	100.00	100.00	96.70	10.00
Newtownards	9.50	9.50	97.70	100.00	100.00	96.00	10.00
Castlereagh	9.00	8.20	99.00	97.70	100.00	99.00	10.00
Lisburn	9.00	8.70	97.25	97.25	95.00	95.75	10.00
Dairy Farm	8.00	8.50	100.00	100.00	100.00	97.00	10.00
Downpatrick	9.30	8.50	100.00	99.70	99.70	99.60	10.00
South East Area	8.97	8.73	98.99	99.11	99.12	97.34	10.00
Banbridge/Armagh	9.00	8.80	100.00	100.00	100.00	98.70	10.00
Newry	8.61	7.53	96.50	100.00	100.00	94.25	10.00
Craigavon	10.00	10.00	100.00	100.00	100.00	98.50	10.00
Dungannon	9.00	9.00	91.75	100.00	100.00	99.80	10.00
Fermanagh	9.00	9.00	80.00	100.00	100.00	98.00	10.00
South Area	9.12	8.87	93.65	100.00	100.00	97.85	10.00
Ballymena	9.00	9.00	99.25	97.20	100.00	99.43	10.00
Antrim	9.60	9.25	100.00	100.00	100.00	99.90	10.00
Newtownabbey 1	9.00	9.00	99.50	95.75	95.75	99.00	10.00
Newtownabbey 2	9.00	9.00	100.00	95.75	94.00	99.30	10.00
Carrickfergus	9.00	8.72	99.40	100.00	100.00	97.90	10.00
Larne	9.00	9.00	99.00	99.20	70.00	99.90	10.00
Ballycastle	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Ballymoney	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Coleraine	9.87	9.57	100.00	100.00	100.00	99.20	10.00

District	KPI 1	KPI 2	KPI 3	KPI 4	KPI 5	KPI 6	KPI 7
North East Area	9.16	9.06	99.68	98.66	95.53	99.40	10.00
Waterloo Place	9.00	9.00	99.80	100.00	100.00	99.40	10.00
Waterside	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Collon Terrace	9.00	9.00	100.00	100.00	100.00	97.35	10.00
Limavady	9.00	9.00	100.00	100.00	100.00	96.50	10.00
Magherafelt	9.00	9.00	100.00	100.00	100.00	99.60	10.00
Strabane	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Omagh	9.00	9.00	99.67	100.00	100.00	99.10	10.00
Cookstown	9.00	9.00	99.70	100.00	100.00	99.70	10.00
West Area	9.00	9.00	99.90	100.00	100.00	98.96	10.00

Index of KPI's

KPI 1 - Contractor satisfaction with service from Client	Green > 7, Amber 4 - 7, Red < 4
KPI 2 - Client satisfaction with service from Contractor	Green > 7, Amber 4 - 7, Red < 4
KPI 3 - Client satisfaction with Quality of Workmanship	Green > 70, Amber 40 - 70, Red < 40
KPI 4 - Tenant satisfaction with Service	Green > 70, Amber 40 - 70, Red < 40
KPI 5 - Tenant satisfaction with Quality of Workmanship	Green > 70, Amber 40 - 70, Red < 40
KPI 6 - Time Predictability	Green > 70, Amber 40 - 70, Red < 40
KPI 7 - Safety	Green > 7, Amber 4 - 7, Red < 4

KPI Summary Score Sheet - Response Maintenance

Contract: Heat

Financial Year : 2010/11

District	KPI 1	KPI 2	KPI 3	KPI 4	KPI 5	KPI 6	KPI 7
West Belfast	no return	no return	no return	no return	no return	no return	no return
East Belfast	no return	no return	no return	no return	no return	no return	no return
South Belfast	8.00	7.00	99.00	99.00	99.00	95.00	10.00
North Belfast	8.00	7.90	100.00	95.00	98.00	93.00	10.00
Shankhill	9.00	8.00	90.00	100.00	100.00	100.00	10.00
Belfast Area	8.33	7.63	96.33	98.00	99.00	96.00	10.00
Bangor	9.00	9.00	98.00	98.33	97.00	100.00	10.00
Newtownards	8.70	8.70	100.00	98.50	98.50	97.00	10.00
Castlereagh	9.00	8.00	99.33	100.00	100.00	97.67	10.00
Lisburn	9.00	7.50	98.00	100.00	96.67	98.33	10.00
Dairy Farm	8.00	7.50	97.00	100.00	100.00	98.00	10.00

District	KPI 1	KPI 2	KPI 3	KPI 4	KPI 5	KPI 6	KPI 7
Downpatrick	9.00	9.00	89.00	99.00	89.00	100.00	10.00
South East Area	8.78	8.28	96.89	99.31	96.86	98.50	10.00
Banbridge/Armagh	9.00	6.90	93.00	97.00	97.00	96.00	10.00
Newry	8.00	6.40	96.50	100.00	100.00	96.25	10.00
Craigavon	10.00	10.00	94.70	100.00	100.00	98.00	10.00
Dungannon	9.00	9.00	94.70	100.00	100.00	97.50	10.00
Fermanagh	no return	no return	no return	no return	no return	no return	no return
South Area	9.00	8.08	94.73	99.25	99.25	96.94	10.00
Ballymena	9.00	9.00	100.00	100.00	100.00	98.70	10.00
Antrim	9.60	9.20	100.00	100.00	100.00	99.60	10.00
Newtownabbey 1	9.00	8.90	100.00	100.00	100.00	95.00	10.00
Newtownabbey 2	9.00	9.00	97.60	98.60	100.00	96.00	10.00
Carrickfergus	8.60	8.60	98.30	97.30	97.30	99.00	10.00
Larne	9.00	9.00	93.00	100.00	100.00	94.00	10.00
Ballycastle	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Ballymoney	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Coleraine	no return	no return	no return	no return	no return	no return	no return
North East Area	9.03	8.96	98.61	99.49	99.66	97.79	10.00
Waterloo Place	9.00	9.00	96.50	100.00	100.00	100.00	10.00
Waterside	9.00	9.00	94.50	100.00	100.00	100.00	10.00
Collon Terrace	9.00	9.00	100.00	100.00	100.00	97.50	10.00
Limavady	9.00	9.00	100.00	98.75	98.75	100.00	10.00
Magherafelt	9.00	9.00	100.00	100.00	95.30	100.00	10.00
Strabane	9.00	9.00	100.00	100.00	100.00	100.00	10.00
Omagh	9.00	9.00	99.00	100.00	99.00	100.00	10.00
Cookstown	9.00	9.00	95.70	100.00	100.00	99.00	10.00
West Area	9.00	9.00	98.21	99.84	99.13	99.56	10.00

Index of KPI's

KPI 1 - Contractor satisfaction with service from Client	Green > 7, Amber 4 - 7, Red < 4
KPI 2 - Client satisfaction with service from Contractor	Green > 7, Amber 4 - 7, Red < 4
KPI 3 - Client satisfaction with Quality of Workmanship	Green > 70, Amber 40 - 70, Red < 40
KPI 4 - Tenant satisfaction with Service	Green > 70, Amber 40 - 70, Red < 40
KPI 5 - Tenant satisfaction with Quality of Workmanship	Green > 70, Amber 40 - 70, Red < 40
KPI 6 - Time Predictability	Green > 70, Amber 40 - 70, Red < 40
KPI 7 - Safety	Green > 7, Amber 4 - 7, Red < 4

KPI Summary Score Sheet - Response Maintenance

Contract : Heat

Report : KPI

Financial Year : March 2012

District	KPI 1	KPI 2	KPI 3	KPI 4	KPI 5	KPI 6
Belfast West	92	81	98	95	93	86
Belfast East	100	98	100	100	94	94
Belfast South	100	97	100	97	92	81
Belfast North 4	100	89	97	97	95	92
Belfast North 6	98	94	95	95	96	87
Belfast Shankhill	97	91	97	87	96	87
Belfast Area	98	92	98	95	95	88
Bangor	85	97	100	100	89	88
Newtownards	100	88	97	97	92	91
Castlereagh	100	100	96	100	90	87
Lisburn	98	96	100	100	93	99
Dairy Farm	96	76	100	100	92	90
Downpatrick	93	97	97	94	86	87
South East Area	95	92	98	99	90	90
Banbridge/Armagh	94	93	100	100	98	96
Newry	96	77	100	100	96	no return
Craigavon	94	75	100	100	98	92
Dungannon	100	100	100	100	98	95
Fermanagh	100	95	100	100	95	98
South Area	97	88	100	100	97	95
Ballymena	100	92	100	100	100	51
Antrim	100	100	100	100	100	51
Newtownabbey 1	98	95	100	100	99	73
Newtownabbey 2	97	97	100	100	100	51
Carrickfergus	97	97	100	100	100	74
Larne	100	100	100	100	98	68
Ballycastle	97	93	100	100	100	89
Ballymoney	100	100	100	100	96	45
Coleraine	100	96	100	96	100	55
North East Area	99	97	100	100	99	62
Waterloo Place	100	100	100	100	100	94
Waterside	97	94	100	95	99	88

District	KPI 1	KPI 2	KPI 3	KPI 4	KPI 5	KPI 6
Collon Terrace	100	100	100	100	99	91
Limavady	93	93	100	100	99	86
Magherafelt	85	100	100	100	100	83
Strabane	100	100	100	100	100	88
Omagh	100	100	100	100	100	79
Cookstown	100	100	100	100	100	80
West Area	97	98	100	99	100	86
NI Total	97	93	99	99	96	84

Index of KPI's

"No return in KPI 3 and KPI 4=no customer satisfaction completed at inspection"	
KPI 1 - Client satisfaction with quality of service	Failed <75
KPI 2 - Predictability of costs	Unacceptable 75-90
KPI 3 - Customer satisfaction with service from contractor	Acceptable >90
KPI 4 - Customer satisfaction with quality of work	
KPI 5 - Jobs completed within contractor target date	
KPI 6 - Customer perceived service failure	

Appendix 4

ANALYSIS OF KPI SCORES BASED ON AREA UPLOADED TO E.CONTRACK FOR 2012-12 - 1ST APRIL 2012- 31ST OCTOBER 2012

	Satisfaction Product	Satisfaction Service	Defect Free Quality	Safety	Skills	Environment Process	Environment Sustain-ability
Operational Target	80.00	80.00	80.00	100.00	75.00	70.00	70.00
ECM/RR CONTRACTS							
Dixons	North-East						
ECM	74.55	74.55	80.00	100.00	100.00	89.09	89.09
RR	72.67	72.67	73.67	97.67	100.00	93.00	93.00
PK Murphy	Belfast						
ECM	80.00	78.33	85.00	100.00	100.00	90.00	90.00
RR	81.67	80.00	74.29	100.00	100.00	90.00	90.00
PK Murphy	West						
ECM	89.35	89.35	84.84	100.00	100.00	41.29	41.29
RR	83.68	83.68	82.63	98.95	100.00	46.32	48.89
BANN	South						
ECM	83.33	83.33	80.00	100.00	100.00	80.00	80.00
RR	No Input						
Mascott	South-East						
ECM	90.00	85.71	100.00	100.00	100.00	80.00	80.00
RR	90.00	90.00	100.00	100.00	100.00	80.00	80.00

ANALYSIS OF KPI SCORES BASED ON E.CONTRACK UPLOADS FOR 2011-12 - 1ST APRIL 2011- 31ST MARCH 2012

	Satisfaction Product	Satisfaction Service	Defect Free Quality	Safety	Skills	Environment Process	Environment Sustain-ability
Operational Target Scores	80.00	80.00	80.00	100.00	75.00	70.00	70.00
ECM/RR Contracts							
Dixons	North-East						
ECM	80.00	80.00	82.50	100.00	100.00	85.00	85.00
RR	71.74	71.74	75.00	92.61	100.00	87.73	87.73

	Satisfaction Product	Satisfaction Service	Defect Free Quality	Safety	Skills	Environment Process	Environment Sustainability
PK Murphy	Belfast						
ECM	85.67	83.00	84.67	100.00	100.00	89.67	89.67
RR	85.00	85.00	80.00	100.00	100.00	90.00	90.00
PK Murphy	West						
ECM	89.17	87.50	77.50	100.00	97.50	68.89	68.89
RR	85.71	86.43	76.79	100.00	100.00	62.86	62.86
Bann	South						
ECM	85.42	85.91	88.75	100.00	100.00	82.08	82.08
RR	90.00	90.00	100.00	100.00	100.00	90.00	90.00
Mascott	South-East						
ECM	90.00	85.80	99.80	100.00	100.00	80.00	80.00
RR	90.00	90.00	100.00	100.00	100.00	80.00	80.00

ANALYSIS OF KPI SCORES BASED ON E.CONTRACT UPLOADS FOR 2010-11 - 1ST APRIL 2010- 31ST MARCH 2011

	Satisfaction Product	Satisfaction Service	Defect Free Quality	Safety	Skills	Environment Process	Environment Sustainability
Operational Target Scores	80.00	80.00	80.00	100.00	75.00	70.00	70.00
ECM/RR Contracts							
Dixons	North-East						
ECM	80.67	80.67	82.86	100.00	100.00	71.00	73.67
RR	82.96	82.96	82.92	100.00	100.00	72.96	75.93
PK Murphy	Belfast						
ECM	88.24	88.24	85.88	100.00	100.00	80.59	85.88
RR	81.25	81.25	81.67	100.00	100.00	78.33	88.75
PK Murphy	West						
ECM	90.00	90.00	82.67	100.00	100.00	68.00	68.00
RR	84.62	82.31	80.00	100.00	100.00	70.00	70.40
Bann	South						
ECM	85.29	85.88	100.00	100.00	100.00	89.71	89.71
RR	88.55	88.55	100.00	100.00	100.00	90.00	90.00

	Satisfaction Product	Satisfaction Service	Defect Free Quality	Safety	Skills	Environment Process	Environment Sustainability
Mascott	South-East						
ECM	89.38	89.69	99.69	100.00	100.00	79.38	79.38
RR	90.00	87.86	100.00	100.00	100.00	78.57	78.57

Chairperson's Letter of 10 December 2012 to Mr Will Haire



Public Accounts Committee

Room 371
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: pac.committee@niassembly.gov.uk

aoibhinn.treanor@niassembly.gov.uk

Will Haire
Accounting Officer
Department for Social Development

10 December 2012

Dear Will,

Inquiry into Maintenance Contract Management in the NIHE

Thank you for your comprehensive reply of 30 November 2012.

I would be grateful if for completeness you could assist the Committee with a further inquiry, in respect of the NIHE window replacement scheme.

The Committee would like to know what the original basis was for the scheme, by whom the scheme specification was drawn up, and how management deemed the specification to be the most likely to deliver value for money. What was the basis on which tenders were assessed and evaluated? What weighting was given to quality and cost, respectively?

In respect of the cost of the scheme, please provide a total to date, and a breakdown from scheme design to the present, including payments to contractors and cost to NIHE of administering the scheme. Please set out how contractor performance is assessed and how each contractor's performance compares against the quality standards specified in the contract; and what penalties have been imposed in instances where performance does not meet the expected standard.

Two other items relating to context also arise as the Committee continues its inquiry.

First, it would be helpful if you could also indicate the progress made and any outcomes to date in the Housing Executive's legal pursuit via recovery action of the contractor mentioned at paragraph 21 of the Audit Office report; and the amount of associated legal cost you anticipate.

Secondly, further to my letter to you of 13 September, I would be grateful for sight of any further correspondence or minutes of meetings between senior DSD and/or NIHE officials in relation to the Red Sky issue.

I would appreciate receipt of your response by 21 December 2012.

Yours sincerely,

A handwritten signature in black ink that reads "Michaela Boyle". The signature is written in a cursive style with a large initial 'M' and 'B'.

Michaela Boyle

Chairperson

Public Accounts Committee

7 July 2011 - Email re Administrator & TUPE



McLaughlin, Maria

From: McLaughlin, Maria
Sent: 07 July 2011 08:51
To: 'will.haire@dndni.gov.uk'
Cc: 'michael.sands@dndni.gov.uk'
Subject: Red Sky in Administration
Sensitivity: Private

Will

We understand from conversations late yesterday with our adjacent contractor that BDO Administrators of Red Sky (In Administration) have confirmed that TUPE final interviews with staff transferring will be held in the next few days to achieve the targeted transfer deadline of 14th July 2011. We also understand from BDO Administrators that they have spoken with the relevant staff in Red Sky (In Administration) and confirmed that staff will be transferring to NIHE adjacent contractors.

These are a series of significant developments and further confirm that the Administrators to Red Sky (In Administration) are unable and unwilling to continue beyond 14th July 2011 termination date.

We are advancing the final TUPE discussions etc with the adjacent contractors to have in place a response maintenance service for the affected 10,000 homes in Greater Belfast from 14th July 2011.

Kind regards.



Brian Rowntree CBE
Chairman

Tel: 028 90318724
Fax: 028 90439803

Email: brian.rowntree@nihe.gov.uk

07/07/2011

Correspondence of 9 January 2013 from Mr Will Haire



From: **The Permanent Secretary**
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Michaela Boyle MLA
Chairperson
Public Accounts Committee
Room 371
Parliament Buildings
Ballymiscaw
BELFAST BT4 3XX

9 January 2013

Dear Michaela

Inquiry into NIHE's Management of Response Maintenance Contracts

Thank you for your letter of 11 December 2012, in response to my correspondence on 30 November 2012, in which you have sought further information and clarification. I am grateful for the Clerk's agreement that we could have more time to get full material from the Housing Executive. I now attach the relevant responses on behalf of the Department and the Housing Executive, in line with each query raised as follows:

In relation to the NIHE window replacement scheme, what the original basis was for the scheme?

Prior to April 2012, the NIHE had been carrying out cyclical planned external maintenance schemes to protect the fabric of our stock. Window replacement would have been included in these schemes where the condition and life expectancy of existing window frames warranted replacement. Where replacement was deemed necessary double glazed frames were installed and this has been NIHE policy from the mid-1990's.

Under the current Programme for Government, and as part of a wider fuel poverty initiative, the Minister has prioritised the installation of double glazing to all NIHE stock and has set a target for all NIHE dwellings to be double glazed by 2015. In response to this the NIHE are currently carrying out a number of double glazing schemes, as dedicated work streams, under the current planned schemes contracts but will be tendering for a new double glazing framework in the New Year with a commencement date of April 2013.

By whom the scheme specification was drawn up?

The specification was drawn up by the NIHE's internal Policy and Standards department.

How management deemed the specification to be the most likely to deliver value for money?

The specification was based on existing British Standards, current building regulations, products available, supplier capacity and research into window performance.

What was the basis on which tenders were assessed and evaluated and what weighting was given to quality and cost, respectively?

Double glazing schemes during the current financial year are being delivered through the NIHE Revenue Replacement/External Cyclical Maintenance Framework. However, a new double glazing procurement is being carried out in accordance with the Public Contracts Regulations 2006, specifically Regulation 16 – the Open Procedure, commencing in April 2013.

The procurement process will involve a Pre-Qualification stage to ascertain the capacity and capability of prospective tenderers. Once these tenderers pass the PQQ stage their tenders will be opened and evaluated on a quality and price basis.

The evaluation criteria used to appoint contractors to the framework will be the Most Economically Advantageous Tender based on a quality/price split of 30% quality and 70% price. This split is consistent for works procurements of this level of complexity.

With regard of the cost of the scheme, please provide a total to date, and a breakdown from scheme design to the present, including payments to contractors and cost to NIHE of administering the scheme?

The costs associated with the window replacement scheme are detailed below:

Actual Costs

Period	Actual Scheme Costs* £'000s	Professional Fees** £'000's
1 Apr 2012 to 30 Nov 2012	£9,019	£450

* Actual cost of window replacement including works assembly costs paid to contractor. Contractors have been paid £60 per dwelling to survey and design works for each dwelling. This has been increased to £75 in the autumn this year to include photographs of tenant décor prior to works commencement.

** Based on 5% of scheme cost and includes all project management services including inspectorate and administration.

How contractor performance is assessed?

Contractors are currently assessed against the following set of Key Performance Indicators (KPIs) which measure:

1. Client satisfaction with product
2. Client satisfaction with service
3. Quality – defect free
4. Cost Predictability (reliability of cost estimate)
5. Time Predictability
6. Safety –based on occurrence of accidents
7. Skills - % of workers with skills certificates
8. Environment – satisfaction with consideration for the environment
9. Environment – sustainability

A revised set of KPIs are scheduled to be implemented in the next financial year which will be based on the Gateway Review in 2010. These will be introduced with the new contracts. These are not yet available.

How each contractor's performance compares against the quality standards specified in the contract?

See table at Annex 1

What penalties have been imposed in instances where performance does not meet the expected standard?

The current framework does not have any recourse to specific penalties if the KPIs are not met but non compliance with the contract can be managed in line with the conditions of the contract. The new procurements will include damages for poor performance based on the procedures developed and introduced with response maintenance.

The progress made and any outcomes to date in the Housing Executive's legal pursuit via recovery action of the contractor mentioned at paragraph 21 of the Audit Office report; and the amount of associated legal cost you anticipate?

The legal process is ongoing and NIHE will advise on the outcomes and/or developments as soon as they are known. In relation to the anticipated legal costs involved, these will be forwarded after consultation with legal advisors before the end of January at the latest.

Sight of any further correspondence or minutes of meetings between senior DSD and/or NIHE officials in relation to the Red Sky issue?

In relation to the copies of correspondence I forwarded in September, I assume this relates to the April 2011 to July 2011 period and have attached separately a number of documents relating to the above. If anything further is required please let me know.

Finally, Jim Wilkinson previously wrote to you on 2 October with information you had requested. In his letter at para 9 he enclosed copies of the two responses from the PSNI in relation to the Red Sky contract. His letter advised at that time that these should be treated as confidential as we were awaiting PSNI advice on releasing these. The Housing Executive advised subsequently that PSNI were content that the letters were released.

I trust this answers your queries.

Yours sincerely



Will Haire

Annex 1

ANALYSIS OF KPI SCORES BASED ON E.CONTRACT UPLOADS FOR 2012-13 - 1ST APRIL 2012 - 31ST DECEMBER 2012

	Satisfaction Product	Satisfaction Service	Defect Free Quality	Safety	Skills	Environment Process	Environment Sustainability
Operational Target	80.00	80.00	80.00	100.00	75.00	70.00	70.00
Dixons	North-East						
Double Glazing Installation	74.44	74.44	73.33	100.00	100.00	86.67	86.67
PK Murphy	Belfast						
Double Glazing Installation	81.43	80.00	84.29	100.00	100.00	91.43	91.43
PK Murphy	West						
Double Glazing Installation	89.33	89.33	84.67	100.00	100.00	48.00	48.00
Bann	South						
Double Glazing Installation	79.23	79.54	80.15	98.46	100.00	80.00	80.00
Mascott	South-East						
Double Glazing Installation	90.00	90.00	100.00	100.00	100.00	80.00	80.00

Delivered by
Hand.



Housing

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB

CONFIDENTIAL

Will Haire
Permanent Secretary
Department for Social Development
Lighthouse Building
1 Cromac Place, Gasworks Business Park
Ormeau Road, Belfast BT7 2JB

13th April 2011

Dear *Will*

I enclose for your attention a copy of a restructured Board paper duly approved by the Board of NIHE at our special Board meeting today.

This notice of termination in respect of Red Sky Contracts is effective from 12.00 noon tomorrow and the contractor is being notified accordingly.

Kind regards.

Yours sincerely

Brian Rowntree
Chairman



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



03448 920 900

Chief Executive
For Board Meeting
On 13th April 2011

RESTRICTED

FOR APPROVAL

**PROPOSAL TO TERMINATE THE RESPONSE MAINTENANCE
CONTRACTS HELD BY RED SKY GROUP LTD**

1.0 Introduction

- 1.1 Red Sky Group Ltd (RSG) currently holds five contracts for response maintenance within Belfast and Newtownabbey. The value of these contracts is approximately £7m per annum (Appendix 1). The contracts were let in 2004 and 2007.
- 1.2 A number of response maintenance contracts, including those held by RSG, have been extended to facilitate the procurement exercise to renew them. It is planned to commence the renewal procurement during 2011.
- 1.3 Notwithstanding this wider procurement exercise, this paper seeks the Board's agreement, on the basis that the Housing Executive considers that it has lost all trust and confidence in the RSG, to issue a three month termination notice in respect of all response contracts held by them.

2.0 Background

- 2.1 Concerns with the service provided by RSG have existed for some time. These concerns have emanated from within the Northern Ireland Housing Executive (NIHE) itself, our tenants and from local representatives. The issue was so serious that in 2007 the NIHE took a decision to issue a Notice of Termination in respect of one of their contracts at that time. Discussions with RSG led to a Standstill Agreement to suspend potential litigation and to explore an agreed resolution. The contract was not terminated.
- 2.2 In early 2009 a Whistleblowing communication was received by the Northern Ireland Audit Office (NIAO). The whistleblower made assertions as to the performance of RSG. This matter was raised at the highest level within the NIHE and featured in a number of

Assembly Questions. Subsequently the Repairs Inspection Unit (RIU) commenced investigations relating to these assertions.

3.0 Audit Committee

- 3.1 In response to these concerns the Audit Committee commissioned forensic accountants ASM Horwath to undertake an independent review into the activities of RSG regarding their work on NIHE response maintenance contracts.
- 3.2 ASM Horwath was asked to consider a range of issues, including the quality of the work undertaken, the appropriateness of the invoices submitted, the effectiveness of the inspection regime operated by NIHE, and whether or not the contracts had been properly awarded. ASM Horwath employed a firm of quantity surveyors, VB Evans, to assist them with this commission.
- 3.3 ASM submitted its final report in October 2010 and, based on a sample of 472 site inspections, highlighted a number of significant findings and recommendations which included the following items:
 - “it is clear that Red Sky’s workmanship is not always to the required standard” with “45% by number and 13% by value, of all jobs inspected as having anomalies” (Para. 5.1);
 - “evidence of duplication of payments” (Para. 5.6) with further work required to determine if these “have arisen from “innocent” errors or deliberate duplication”;
 - timeliness of completion of work. significantly in West Belfast (Para. 5.7);
 - detailed schedules showing financial anomalies totalling £40,418.67, of which £25,967 was classified by VB Evans as ‘Category A’ i.e. work that the contractor has not carried out at all or which is not fit for purpose (Para. 5.23);
 - attention was drawn to jobs related to communal lighting, floor tiling and duplicate Schedule of Rates (SOR) codes.
- 3.4 RSG was provided with copies of the findings of the site inspections, but not the main ASM Horwath report, on the basis of legal advice, and invited to provide a response and explanation of these findings. RSG’s response has now been received and

evaluated (see 4.0). NIHE's view is that while some adjustments to the reported level of overpayment are justified, the RSG response is not acceptable.

- 3.5 RIU were asked to review samples of RSG work in all six Districts as a response to concerns regarding potential overpayment being claimed by RSG. These samples were of contemporaneous work of RSG. This report was issued in December 2010 to RSG relating to Newtownabbey 1 District Office. RIU's initial finding concluded that RSG had been overpaid to the sum of £64,624.06 (subsequently revised to £55,300.41 – see paragraph 4.1) for work either not done, deemed to be included or over specified. RSG were asked to respond to the findings and explain how each individual overpayment occurred.

3.6

~~(b) (5)~~

4.0 Responses from Red Sky

- 4.1 RSG responded to the Newtownabbey 1 report and acknowledged that they would repay £10,210.34 to the Housing Executive. RIU reviewed in detail their individual responses and have adjusted the £64k (see paragraph 3.5) figure down to £55,300.41. RIU have included an additional £3,174.36 which came to light relating to an overpayment for communal lights in Newtownabbey 1.
- 4.2 RSG failed to adequately address the issues raised as they attribute a large part of these overpayments to:
- “The Maintenance Officers failings.
 - Interpretation of the contract.
 - Occasional oversight and relatively minor errors.
 - Codes claimed were consistent with the ongoing conduct and performance established since the outset of the contract”.

- 4.3 Of the £10.2k referred to above, RSG is willing to refund to the NIHE £2.7k claimed for communal lighting inspections carried out to three blocks that were demolished some 10 years ago. RSG's explanation acknowledges that their system was not sufficiently robust to prevent the invoicing of these jobs. They confirmed a revised procedure is now in place.
- 4.4 In addition, RSG claims that duplicate communal lighting orders issued on the same day to the value of £2.5k were paid correctly due to the deficiencies in the HMS system and as such RSG completed the work as requested therefore payment received was fair and reasonable. In short, they claim that the work was ordered twice and completed twice.
- 4.5 RSG claims to be preparing a report for submission to the NIHE as a counter claim. They also allege that there have been some underpayments and this is accepted. Further, RIU can confirm that a high percentage of the identified overpayments were either pre/post inspected or authorised by NIHE staff. However these matters do not exonerate RSG of their contractual responsibilities particularly under Clause A32/540 (which requires the contractor not to include any unnecessary work).
- 4.6 RSG provided a response to the VB Evans findings at the beginning of April. RIU can confirm from the detail received that the £40,418.67 overpayments as identified by Horwath have been challenged by RSG. RSG responded by saying that they accept they owe the Housing Executive £1122.73 but claim the Housing Executive owes them £1917.00 giving an underpayment of £794.56 to RSG.
- 4.7 RSG have indicated in their responses:
- Work in dispute was ordered and/or approved by Housing Executive maintenance staff.
 - They are unhappy with the full deduction of money for what they see as minor quality issues.
 - Occasional oversight and relatively minor errors.
 - Measurement provision of the contract is ambiguous and open to interpretation.

-
- Acceptance that errors occurred in the communal light check and claim to have revised their internal procedures to avoid any potential recurrence.
- 4.8 RIU have reviewed all the individual responses from the details available from both parties and have removed minor quality issues from the recovery sum which adjusted the VB Evans' recovery figure of £40,418.67 to £29,085.58
- 5.0 Assessment by Chief Executive and Senior Management Team**
- 5.1 The Chief Executive and Senior Management Team met on Friday 8th April 2011 to discuss the matter in detail. Careful consideration was given to a number of factors including:
- a. The past and current difficulties with the contract;
 - b. The adverse findings of the Horwath and RIU Reports in relation to contractor performance and the scale of overcharging;
 - c. The unacceptable responses from RSG to report findings, particularly their continued failure to acknowledge their contractual responsibility not to bill for work which is not needed and unnecessary;
 - d. Their billing for work to buildings which no longer exist i.e. have been demolished;
 - e. Tenant and local representatives' dissatisfaction with contract performance.
- 5.2 The unanimous view of the Chief Executive/Senior Management Team, having had regard to all the relevant issues, was that all the above matters had led to an irrevocable breakdown in trust and loss of confidence in the contractor and that a recommendation should be made to the Board that the contract should be terminated as soon as possible.
- 6.0 Options**
- 6.1 The options for terminating a contract in circumstances where the employer under a contract has lost all trust and confidence are to

be found in the relevant contract and in the general law of contract as it has developed.

- 6.2 In the RSG situation the most relevant contract condition is to be found in clause A20/6.2 of the standard conditions of the Response Maintenance Service contracts. This clause on its face permits either party to terminate the contract on three months' prior written notice. There is no explicit requirement to provide reasons.

- 6.3 Apart from the contractual arrangements for bringing a contract to an end there is also in general contract law the concept of "fundamental breach" also referred to as "repudiatory breach". In summary, such a breach consists of conduct by one party which is so serious that it justifies the innocent party treating itself as discharged from further obligations under the contract. In other words it must go to the very root and essence of the contract.

- 6.4 As to what constitutes fundamental breach will depend on the specific facts and circumstances of each particular case. It is well established that the relevant test can be the quantitative value or ratio of the breach to the overall value of the contract. The greater that ratio the more likely it is that a court would uphold a fundamental breach.

- 6.5 The converse is equally true, the smaller the value of the breach to the overall contract the less likely or improbable that a court would sustain a claim of fundamental breach.

7.0

7.1

risk that the termination of all contracts will be challenged through the courts by RSG, who, by this action, will in effect lose all their Housing Executive business at one fell swoop. Such a challenge may present through public law (i.e. a Judicial Review) or private law (i.e. contract breach pursued through commercial court). Brief comments are offered on each in the following paragraphs.

Public Law Challenge

7.2 In November 2010 Solicitors acting on behalf of RSG served on the Housing Executive a “pre-action judicial review protocol letter” setting out the basis of a proposed challenge which was fundamentally concerned with the Housing Executive’s conduct of its review of RSG operations without providing them with an opportunity to participate. This is consistent with their stance that all Housing Executive decisions in relation to operation of the contract are matters of public law and therefore amenable to judicial review.

7.3

7.4 This assurance of fair procedure has also been made on behalf of the Housing Executive in previous exchanges of correspondence between the parties legal representatives. It is considered that in doing so the Housing Executive is in a stronger position in the event of a challenge on public law grounds.

Private Law Challenge

7.5 If not challenged by way of judicial review, RSG may well still seek to challenge any decision to terminate all contracts under private law asserting that the Housing Executive is acting in contravention of its obligations (either implied or explicit) under the contract.

7.6

7.7

7.8 An interim remedy available to RSG may well be to seek an injunction preventing the Housing Executive from implementing the termination of the contracts prior to any determination by the court of the disputed issues. Such an injunction, if granted, would prevent the Housing Executive from terminating the contracts until determination of the issues / case by the court.

7.9 One of the effects of terminating contracts for services for which there is clearly an on-going requirement is the application of TUPE whereby all the employees of RSG who are engaged mainly in the provision of the former contract services would by operation of law transfer to the replacement contractors as their employees. The significance of this effect cannot be understated.

8.0 Operational Issues

8.1 There are three potential operational issues to note:

- The management of the RSG contracts during the Notice period. Previous experience has indicated that additional contract management input will be required during the Notice period. However, the full provisions of the contract will still apply; RSG will continue to receive works orders for all relevant jobs, and they will be expected to complete the work in compliance with the terms of the contract. The districts involved may need additional support and this is being considered.
- The re-allocation of the Red Sky contracts at the end of the Notice period. Once the notice period has expired and the termination takes effect we will need to ensure that we have in place continuity of service provision through to the end of the current contracts. ~~Whilst th~~

... are eight adjacent contractors, including the NIHE DLO. It is thus likely that the reallocation of the work will require the cooperation of the contractors. Work will be required to clarify how this process may operate, but there are significant risks involved.

- The procurement process to renew the contracts. As noted in 1.1 above, it is planned to commence the renewal of response maintenance contracts during the current year. This includes those contracts held by the RSG.

9.0 Media and Communication

9.1 All communications regarding this issue need to be carefully considered, with particular attention required in terms of timing. There is a range of stakeholders who would need to be informed about in the event that the Board decide to terminate the contracts. These include:

- Contractor
- Other contractors
- Staff – those involved in managing contracts and wider staff
- Political representatives
- Tenants
- Media

9.2 The current position is that:

- Journalists have been keen to get access to investigation reports. They have a number of sources within the in NIHE, RSG and local communities.
- A key issue for journalists has been one of continuing poor contract performance while still receiving public money, and a perception that the NIHE has not acted to deal with this problem.
- The ongoing concerns of public representatives.

9.3 Other potential media issues include:

- Potential risk of reputational damage to NIHE.
- Potential job losses in RSG (mitigated by TUPE).

- Tenant and unauthorised NIHE staff testimony to the press.

10.0 Recommendations

- 10.1 It is recommended the Board approve the termination of the five "All trades" Response Maintenance contracts held by RSG on three months Notice and authorise officers to prepare and issue the relevant Notices as soon as practical following the Board meeting which will initiate the formal Notice period.

A handwritten signature in black ink, appearing to read 'Stewart Cuddy', with a large, stylized initial 'S'.

Stewart Cuddy

Chief Executive (A)

13.4.2011

Appendix 1 – Red Sky Contracts

Contract	Commencement Date	Duration	Value
Newtownabbey 1 & 2	5 th March 2007	4 Years	£1.5m
North Belfast	20 th March 2007	4 Years	£1.0
South Belfast	30 th June 2004	4 Years	£1.5m
West Belfast	5 th March 2007	4 Years	£1.5m
East Belfast	3 rd August 2004	4 Years	£1.0m

27

**MEETING TO DISCUSS RED SKY
CHAIRMAN'S OFFICE, NIHE, 2 ADELAIDE STREET, BELFAST
THURSDAY 28TH APRIL 2011**

PRESENT:

Alderman Peter Robinson MLA
Robin Newton, MBE, MLA
Mr Sammy Douglas

Mr Brian Rowntree Chairman
Mr Stewart Cuddy, Acting Chief Executive
Dr John McPeake, Director of Housing & Regeneration/
Deputy Chief Executive (A)
Mrs Maureen Lucas - Minutes

Mr Rowntree welcomed Alderman Robinson, Mr Newton and Mr Douglas to the meeting which was convened to discuss the termination by the Housing Executive of the Red Sky contract.

Mr Robinson made his opening remarks indicating that the decision to terminate the contract reflected a sectarian bias on behalf of the Housing Executive which stemmed from concerns with the West Belfast contract. He further indicated that the Housing Executive was treating Red Sky differently from other Contractors and had it not been for the ongoing election, there would have been an enquiry/investigation into the matter by the Assembly. He stated that the Housing Executive can expect such an enquiry/investigation after the election.

Mr Robinson expressed concern that there had been no consultation with local representatives and the whole issue reflected his belief that West Belfast elected representatives were out to get Red Sky. He also believed that the decision was a significant matter that should not have been taken during "purdah".

Mr Rowntree in response categorically denied any sectarian bias or political interference in what was a completely commercial and contractual decision and, in his opinion, was not in breach or subject to "purdah".

Mr Newton said he had been in discussions with Red Sky and it was their contention that the firm's overall performance in West Belfast, based on their KPI and contract measurement, had been more than satisfactory. The Group had therefore been surprised to learn that the contract had been terminated.

Mr Newton also referred to the letter sent by Peter Cooke to Stewart Cuddy in which he issued a strong rebuttal of the findings of the V B Evans Report. Further, in a meeting with representatives from Red Sky on 16th February Mr Rowntree had indicated that further discussions would be held as soon as Red Sky submitted their response to the Report's findings.

It was therefore of some surprise that a letter was then issued by the Housing Executive advising Red Sky that their contract had been terminated without any further dialogue having taken place.

Mr Douglas said he was aware that senior management from Red Sky had met with senior management in the Housing Executive on a regular basis. However, Peter Cooke advised him that at no stage was the question of fraud raised.

Mr Newton asked why Red Sky had been denied full access to the Horwath Report.

Mr Rowntree in response explained that sections of the Horwath Report are of a confidential nature and contained information relating to Housing Executive staff who had been responsible for the supervision of the Red Sky contract. As there may be internal disciplinary action which potentially may need to be referred to the PSNI for further investigation, only the relevant sections of the Report were released to Red Sky.

Based on the findings of this Report, Mr Robinson asked if there have been any failings on the part of the Housing Executive in relation to the Red Sky contract.

Mr Rowntree said as previously stated there have been issues of concern about the management of the contract by Housing Executive staff and this is under investigation with the potential for disciplinary action.

Mr Rowntree said he welcomed the opportunity to put on record the fact that the Housing Executive's Board entered into detailed and prolonged discussion before reaching its decision to terminate the Red Sky contract and was fully aware of the consequences for the Group, particularly those from the 400 workers employed on Housing Executive contracts.

He assured those present that the provisions of TUPE, as contained within the contract documentation, will be applied to those workers and, although this information had been included in a statement released by the Housing Executive, it had been of some surprise that there had been no comment from Red Sky about TUPE in their recent public statement. Mr Rowntree added that, in advance of any action by the Administrator, the Housing Executive sought Legal Opinion in relation to TUPE and it was confirmed that the provisions of TUPE will apply in the case of Red Sky.

Mr Newton referred to a small company located in East Belfast which recently went into administration. Under the provisions of TUPE its employees were transferred to a new company based in Portadown. However, when they reported for work they were advised that there was no work for them and he sought an assurance that this will not be the case for Red Sky employees when they move to a new Contractor.

Mr Cuddy advised that Dr McPeake had made arrangements to meet with individual Contractors following this meeting and the question of TUPE and other issues will be discussed in detail with them.

Mr Douglas said it was confusing that the Housing Executive, while admitting to having lost confidence and trust in the Red Sky's employees because of allegations of overcharging and shoddy workmanship, is prepared to enter into the TUPE process with them.

Mr Rowntree in response explained that the contract is between the Red Sky Group and the Housing Executive and the issues which have arisen are with the management of the company and not its employees.

In answer to Mr Robinson's request for a definitive reason why the contract was terminated, Mr Rowntree confirmed that it was because of substantial overpayments, estimated (post the Horwath Report) to be around £340,000.

Mr Cuddy added that the investigative work carried out by Horwath (a firm of independent forensic Accountants) found that significant overcharging had occurred and, when the figures were extrapolated, would have amounted to around £1.5m. A report on the overpayments was sent to Red Sky who, in their response, contended that on the contrary the Housing Executive owed them in the region of £790. Mr Cuddy said, having looked at the response in detail, it was considered that Red Sky had not given serious consideration to the matter.

Following on from the Horwath Report, Mr Cuddy advised that further investigations were carried out into Red Sky's work in other Districts and, unfortunately, further significant levels of overcharging were uncovered.

Mr Robinson asked if the Housing Executive has carried out similar sample checks and/or investigations into any of its other contractors.

Mr Cuddy assured Mr Robinson that the Housing Executive closely monitors all of its Contractors. However, Red Sky had been very high "on the radar" for some time.

Mr Cuddy referred to a recent BBC interview in which Mr Cooke denied any problem with overpayments but, in an interview a few days later, conceded that there had indeed been overpayments and that these related to buildings which no longer existed.

Mr Robinson said in his opinion Housing Executive staff must bear some of the blame for the overpayments, given that it was their responsibility to check the invoices from Red Sky, particularly in the case of invoices relating to buildings which are no longer in existence.

On the basis of the findings, Mr Cuddy said it is possible that there will be disciplinary action in relation to Housing Executive staff with the potential for PSNI involvement.

He pointed out, however, that it is the responsibility of all Contractors to identify to the Housing Executive what jobs are required and to ensure that back-up documentation is provided, including a record of the time taken to carry out the work. Questions have obviously been raised about the records for work carried out by Red Sky on buildings which do not exist.

Mr Robinson sought an explanation as to why the Housing Executive gave Red Sky an extension to the contract when the findings of that Report were already known.

Mr Cuddy in reply explained that a healthcheck into Contract Procurement and Contract Management was carried out as part of the Housing Executive's Review of Governance. This review highlighted the need for all Egan contracts to be substantially reviewed and updated. All contractors, including Red Sky, were therefore written to extending their contract up to 31st October 2011 and explaining the timings for the new procurement exercise for NIHE contracts. Parallel to this the Red sky investigations were ongoing but no decision was taken to terminate their contract until the matter was discussed at the Housing Executive's Board meeting on 13th April 2011.

Mr Robinson sought an assurance that the rules of the partnership arrangement were correctly followed.

Mr Cuddy explained that the Department for Social Development arranged for an expert team of Gateway Reviewers to be commissioned to look at the Housing Executive's contracts and contract management system. The team concluded that, although the Egan system had been embraced by the organisation, it pointed out that Egan is a style of working and should not be viewed as a contract. The team found that the Housing Executive was deficient in its contract specifications in that they were not sufficiently specific in relation to KPIs, penalties etc. The team also pointed to the need to build up trust between the Housing Executive and its contractors and that this must be underpinned by having robust contracts in place. This was a criticism that applied across the whole public sector.

Mr Cuddy said difficulties with the Red Sky Group dated back to 2007 and unfortunately the Housing Executive's management team and the Board had lost confidence and trust in the relationship with the Group, mainly due to the consistent pattern of overcharging which has emerged.

Mr Robinson asked for an estimate of how often the Housing Executive had written to Red Sky about their concerns.

Mr Cuddy said that in his role as Acting Chief Executive he had met with representatives from the Group for the first time in January/February 2011. This had been a particularly robust meeting during which Peter Cooke was advised of the seriousness of the situation and of the possible outcome for the company.

Following that meeting Mr Hayes contacted Mr Rowntree to express his concern about what he perceived to be an unacceptable attitude displayed by Mr Cuddy during the discussions. He requested a further meeting with Mr Rowntree and during this meeting the seriousness of the issues were again underlined and Red Sky representatives were reminded of their contract obligations.

Mr Cuddy said initially Red Sky refused to provide the Housing Executive with a response to the findings of the Horwath Report but eventually agreed to do so. Following the meeting a letter was sent to Red Sky setting out the points agreed at the meeting and asking that a response to the Horwath Report be provided by 7th April 2011.

Mr Robinson said he had concerns that the Housing Executive had not entered into meaningful discussions with Red Sky in relation to the findings of the Report, particularly in relation to overpayments.

Mr Cuddy assured those present that Red Sky had been provided with a detailed job by job report and, in addition ongoing discussions had taken place with Pauline Gazzard, Head of Social Housing Unit in the Group, who had asked for additional information and clarification to enable a response to be provided.

Mr Newton commented on other areas of ambiguity as outlined to him by Red Sky. For example where a whole job was deemed to be overcharged because, for example, the value of one screw had not been included.

Mr Rowntree conceded that this had been commented on in the Horwath Report and the Housing Executive had acknowledged the anomaly.

Mr Newton said he had been advised by Red Sky that they had, at their own expense, employed the services of a specialist Quantity Surveyor who concluded that, in his opinion, the Group had performed well over the period of the contract.

Mr Rowntree referred to the meeting which had taken place in February and attended by Norman Hayes, Peter Cooke and Pauline Gazzard, the purpose of which was to seek their agreement to respond to the report findings by certain dates. During the meeting Mr Rowntree said he had emphasised to Mr Cooke and his colleagues that the obligations of their contract must be honoured in terms of controls and financial management. Unfortunately the meeting had become acrimonious for a short time as Mr Hayes refused to accept the Housing Executive's stance on the matter.

Mr Rowntree reminded those present of the substantial contract with Red Sky which is paid on average £150,000 per week for maintenance work it carries out on behalf of the Housing Executive.

Mr Rowntree referred to a recent claim for £500,000 submitted by Red Sky for a scheme in Carrickfergus. This figure was reached following an evaluation carried out by a Quantity Surveyor appointed by Red Sky to review the previous settlement of £40,000 paid to the Group some time ago in full and final settlement.

Mr Robinson said it was his understanding that Red Sky had not at any time agreed to the figure of £40,000 and he believed there were differences of opinion as to how the matter could be resolved.

In response to Mr Robinson's contention that this could be construed as Red Sky having been underpaid in this particular contract, Mr Rowntree said that, in his view, no two Quantity Surveyors would assess a particular scheme and reach the same conclusion in relation to its value.

Mr Rowntree outlined a number of critical issues which led to the breakdown in the relationship between Red Sky and the Housing Executive, particularly in relation to the Group's financial standing and its viability.

He explained that, as part of the normal process of tendering, preliminary enquiries with regard to all contractors are made through Constructionline. In the case of Red Sky preliminary enquiries revealed that the Group had been suspended from their system and this called into question their financial standing.

In order to get a clear understanding of the position, Constructionline were contacted and they advised that the financial standing allocated to Red Sky was £50,000 which would have prevented them from re-tendering for the contract. However this financial standing was subsequently increased to £2m and this enabled Red Sky to proceed to tender.



Mr Rowntree said obviously he and his officials had serious concerns about their reinstatement and also the fact that in a number of Districts Red Sky have been unable to secure credit from some merchants and suppliers.

Mr Robinson asked for a comment on the risk or consequences for the Housing Executive in relation to the actions of Red Sky.

Mr Rowntree in response said Red Sky's workmanship was found to be of a sub standard nature and there were concerns that they may have been using inadequate materials resulting in tenants expressing dissatisfaction with the quality of work carried out by the Group.

Mr Newton said he was surprised at this statement and could give an assurance that the materials used by Red Sky were of a high specification.

Mr Rowntree said it was important to point out that problems relating to the Red Sky Group date back to 2007. As a consequence of a number of concerns about the Group's activities investigations were undertaken by Horwath and V B Evans and the findings of both reports pointed to a pattern of overpayments and overcharging. The findings were of major concern to the Housing Executive as well as the Northern Ireland Audit Office who view instances of overcharging and overpayments as suspected fraud. Following the Audit Office's insistence that the allegations be addressed, a review of Red Sky's activities in all Districts was undertaken. This revealed a consistent pattern of overcharging. Mr Rowntree emphasised, however, that this does not reflect on the actions of Red Sky's employees but on the organisation's management which has not honoured its contractual obligations and who focused primarily on maximising cash flow. Mr Rowntree added that the Housing Executive has its own deficits which are being addressed and in this respect internal disciplinary procedures are under way in relation to the Newtownabbey Contract and activities in other Districts.

At a recent meeting with Red Sky representatives Mr Rowntree said an attempt was made to seek an acknowledgement from them that there was a problem and an assurance that any monies owed to the Housing Executive would be repaid.

In reply to Mr Newton's request for examples of overcharging, Mr Rowntree explained that these were in relation to communal lighting and work orders for buildings which no longer existed. He added that it was evident from investigative work that Red Sky were not updating their work orders as specified within their Contract and this led to questions about who was responsible for generating the invoices, who had authorised the work orders and who had taken the decision not to inform the Housing Executive.

Mr Douglas said Red Sky had undertaken to discipline any member of staff involved and that it was their understanding that a previous Contractor had been guilty of similar activities.

Mr Rowntree in reply said that the Housing Executive is fully aware of this allegation in relation to the previous Contractor and will be following this up in their investigations.

Mr Rowntree then outlined the sequence of events following the Housing Executive's decision to terminate the Red Sky contract.

At 12.00 o'clock on Friday 15th April 2011 it was announced that Red Sky was intending to appoint an Administrator.

On learning of the announcement the Group came under pressure from creditors and tradesmen and at 11.00 o'clock on Tuesday morning 19th April 2011 Red Sky went into voluntary Administration.

It was also confirmed that an Administrator had been appointed and was awaiting a Court Order. Mr Rowntree was advised of this action in a telephone call on Wednesday afternoon 20th April 2011.

As a follow up two meetings were held with Francis Martin of BDO (one in a Conference call and one face to face) to discuss issues relating to TUPE and the Housing Executive's wish to protect the jobs of those employees working on Red Sky's Maintenance Contracts. Mr Rowntree added that no representative from Red Sky was present at the meetings and to date there has been no contact from the Group in relation to TUPE issues.

In order to take forward the provisions of TUPE Mr Rowntree advised that Dr McPeake would be meeting with adjacent Contractors later in the day to discuss the transfer of Red Sky's contracts and working arrangements to ensure that the relevant details are passed from Red Sky to the new Contractors to facilitate a smooth transition.

Mr Newton asked if it was the case that, following the announcement that Red Sky had gone into voluntary administration, the Housing Executive was legally required to meet with not only the Administrator but also the management of Red Sky.

Mr Rowntree explained that the Administrator is the spokesperson for the Group for a 14 day period and, with effect from Tuesday 3rd May 2011, will take over responsibility for its employees and the payment thereof.

In explaining the procedure for terminating a contract Mr Cuddy said it is normal practice to give three months notice. The alternative is a fundamental breach i.e. termination of the contract immediately. The decision to terminate the contract by giving three months notice, was, therefore, to ensure the continuance of service to its tenants and as far as practicable, to protect the relevant jobs of those employed by Red Sky. Mr Cuddy added that it had not been expected that Red Sky would decide to go into voluntary administration and it was at this stage the Group's financial vulnerability in relation to its cash flow situation became clear.

Mr Cuddy said that in deciding on voluntary administration the Group has no liability to its creditors and is protected by the Court from having to pay those creditors. However, a voluntary breach of contract does not serve the Housing Executive's purpose of striving to provide a continuance of service.

Mr Cuddy added that the Housing Executive has acknowledged that Red Sky has a voluntary breach of contract in place and will be re-engaging with them with effect from Thursday 5th May to ensure that the provisions of TUPE apply.

Mr Robinson asked for an explanation of the timing of the Housing Executive's decision to terminate the contract. In his view it would have been more appropriate to have taken this action in say one month's time following the election.

Mr Robinson also referred to a statement made on the matter by the Minister for Social Development which confirmed to him that the decision in relation to the termination of the Red Sky contract is in breach of “purdah”

Mr Cuddy assured Mr Robinson that it was coincidental that the decision was taken during the run-up to an election and he was surprised that anyone would consider this action to be in breach of “purdah”.

Mr Newton referred to occasions during his presence at Committee meetings in Belfast City Council when objections had been raised by West Belfast Councillors in relation to the award of Contracts to Red Sky. Mr Newton confirmed that these were not NIHE Contracts. He believed these objections to be politically motivated. Mr Robinson added that it was his understanding that Red Sky consistently received low scoring for work carried out in the West Belfast area, compared to any other District in which they were working.

Mr Cuddy conceded that several years ago there had been a major issue with the work of Red Sky in West Belfast. However, control mechanisms were put in place and the problem was resolved. Mr Cuddy added that investigations looking at the pattern of overcharging in other Districts have, as explained earlier in the meeting, revealed major discrepancies.

Mr Robinson asked for an assurance that investigations on this scale are undertaken by the Housing Executive in relation to all of its Contractors where there are issues of concern



Mr Newton said he was concerned that in his opinion information is being leaked to the media by staff within the Housing Executive.

Mr Rowntree said the Housing Executive is mindful of this allegation and is currently looking at the potential relationship between its staff and its Contractors.

Mr Douglas said that, before reaching its decision to terminate Red Sky's contract, the Housing Executive should have entered into some form of arbitration with the Group's management, as is normal practice in the construction industry. It was of concern to him that the employees of Red Sky had learned of the termination of the contract from their colleagues in West Belfast who had read about the decision in the Andersonstown News. Mr Douglas believed this information could only have come from someone working within the Housing Executive.

Mr Cuddy assured Mr Douglas that, as soon as the Board reached its decision to terminate the contract, Management in the Housing Executive became fully aware of the potential public relations aspect particularly in relation to the consequences for the employees of Red Sky. Letters were, therefore, drawn up advising Red Sky of the Board's decision and these were hand delivered to Peter Cooke's office on the same day as the Board took its decision. An email was also issued to the Districts concerned notifying them of the decision and it was following this that Management learned of the Andersonstown News article.

Mr Cuddy emphasised that there could be no prior knowledge of what the Board's decision would be and the source of the information leaked to the Andersonstown News is not known.

Mr Rowntree assured those present that there was no "witch hunt" by the Housing Executive in relation to any contractor.

Mr Rowntree said it was of particular concern to him and his colleagues that the Chair of the Assembly's Public Accounts Committee, in his role as an MLA, had made a public statement in which he named a Contractor.

Mr Newton said in his opinion Red Sky would not be in the position they are today had they not bid for the West Belfast Contract.

Mr Rowntree said he disagreed with this view and explained that in 2007 Red Sky decided to terminate the West Belfast Contract but later withdrew their decision and continued to work in that area.

Commenting on ongoing problems with Red Sky dating back to 2007, Mr Cuddy advised that at that time the Northern Ireland Audit Office had brought to the attention of the Housing Executive an overpayment, originally calculated as £200,000 but which was subsequently reduced to £20,000. Mr Cuddy added that the findings of the Horwath Report have revealed a consistent pattern of overcharging in Newtownabbey and other parts of Belfast over a period of time.

Mr Cuddy assured those present that the expectation was that Red Sky's contract would be extended to November when all contracts would be re-let and it was not expected that a recommendation for termination would require to be considered by the Board.

Mr Douglas asked for an estimate of the amount of overcharging involved for (a) buildings which do not exist and (b) any other examples.

Mr Cuddy advised that the amount the Housing Executive is seeking to recover over the five controls is estimated to be over £300k.

Mr Robinson asked if the Red Sky contract would not have been terminated if they had admitted that this situation should not have happened, had given an undertaking to deal with whoever was responsible and offered to put in place a mechanism to ensure that it did not happen again.

Mr Cuddy in response reiterated comments made earlier in relation to the findings in the Horwath Report which pointed to a pattern of consistent and widespread overcharging and overpayments and the fact that the Northern Ireland Audit Office are closely monitoring the situation to ensure that the appropriate action is taken.

Mr Rowntree said it was disappointing that although Red Sky had been aware of the findings of the Horwath Report since November 2010 their response did not adequately address the issues and did not give any commitment to do so.

While Mr Newton accepted that Red Sky were required to provide a response by 7th April 2011 and that the seriousness of the situation had been made clear to them, he was at a loss to know why they did not respond giving the commitment required when he understood they had been willing to engage with the Housing Executive.

Mr Cuddy said it was clear that Red Sky did not accept what he had told them and had requested a meeting with Mr Rowntree to discuss the matter further. It was at this meeting that they agreed to provide a serious response within the timeframe of 7th April 2011. Unfortunately the letter received from Red Sky did not meet the requirements of a serious response.

Mr Newton said he believed political advantage had been taken of the situation, that the timing of the termination was ill-advised and that it should have been stalled until after "purdah".

He reiterated his view that leaks are emanating from within the Housing Executive and that there has been a politically-led, politically inspired campaign against the Red Sky Group. Mr Newton said he was also of the view that there are elements within the Housing Executive biased against the company and a report which appeared recently in the "Sunday World" confirmed to him that information is being leaked from within the Housing Executive.



Mr Cuddy assured Mr Newton that the decision to terminate the contract was not considered to be a breach of purdah. It was an operational matter affecting the delivery of a service to the Housing Executive's tenants and he was confident that the decision was taken in that context only.

Mr Rowntree assured those present that the Housing Executive is anxious to reach a satisfactory conclusion to this matter and will be assisting the Administrator in any way it can over the next 13 weeks. Dr McPeake added that he has emphasised to his staff that maintenance work will continue to be allocated to Red Sky during the period of notice.

Mr Newton asked why the Housing Executive had been reluctant to respond to the BBC who were running a news bulletin on the Red Sky developments.

Mr Rowntree in response advised that Red Sky had asked Kevin Magee of the BBC to run a feature giving their side of the story.

In pursuit of a comment Mr Magee contacted the Housing Executive and he was advised that an Administrator has been appointed and that discussions in relation to TUPE and the transfer of Red Sky's contract to adjacent contractors were a key consideration.

Mr Rowntree said that the Housing Executive's role now is to ensure a continuance of the contract during the period of administration and it will, therefore be important for Red Sky to engage not only with the Administrator but with other Contractors.

Mr Robinson at this point indicated that he had to leave the meeting to attend another engagement.

In bringing the meeting to a close, Mr Rowntree thanked Mr Robinson, in his absence, Mr Newton and Mr Douglas for their interest and concern. He undertook to provide Mr Newton with a copy of the Minutes of the meeting and an update on matters relating to TUPE.

CLLR.ROBIN NEWTON MBE
ASSEMBLY MEMBER FOR EAST BELFAST

PLEASE REPLY TO:

Constituency Office
13 Castlereagh Road
BELFAST BT5 5FB
Tel: (028) 90459500

e-mail: carole.newton@hotmail.co.uk

website: www.robinnewton.co.uk

Northern Ireland
Assembly

PRIVATE OFFICE
17 MAY 2011
SOCIAL DEV'MENT

Mr Nelson McCausland MLA
Minister
Department of Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Belfast
BT7 2JB

17th May 2011

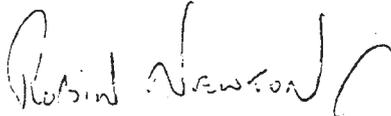
Dear Minister

RE: RED SKY

You will be aware from extensive press coverage about the controversial decisions of the Northern Ireland Housing Executive and the former Minister for Social Development, Alex Attwood, regarding the above company.

I would be grateful if you would agree to an urgent meeting with my party colleague, Sammy Douglas MLA and representatives of Red Sky so they can make you aware of their concerns regarding the termination of the Northern Ireland Housing Executive's contracts and the implications this will have for the company and the employees.

Yours very sincerely



CLLR. ROBIN NEWTON MBE
ASSEMBLY MEMBER FOR EAST BELFAST

IMPORTANT – Please quote our reference on all correspondence



Department for
**Social
Development**

5th Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Fax: (028) 9082 9548
e-mail: private.office@dssdnj.gov.uk

Tel: (028) 9082 9034

Councillor Robin Newton MBE MLA
Constituency Office
13 Castlereagh Road
BELFAST
BT5 5FB

Our ref: INV/1020/2011

31 May 2011

Dear Robin

Thank you for your letter on 17 May requesting a meeting with your party colleague, Sammy Douglas MLA, and representatives of Red Sky to discuss the termination of the Housing Executive's contracts.

I know you are aware that, in response to concerns raised in relation to the performance of Red Sky who held five Housing Executive contracts for response maintenance with a value of £7m per annum, forensic accountants ASM Horwath were commissioned to undertake an independent review of Red Sky activities. I understand Red Sky were provided with copies of the relevant findings and invited to respond. Following the Housing Executive's consideration of the matter, including Red Sky's response, the Board of the Northern Ireland Housing Executive in April agreed to terminate all Red Sky Group's response maintenance contracts and gave the company three month's notice with immediate effect. This is a contractual matter between the Housing Executive and Red Sky that I understand has been taken forward in line with the contract requirements.

However, like you I am concerned about the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. I have therefore advised the Housing Executive of my concerns and I have been assured that they are currently in discussion with other contractors to agree the arrangements to be put in place at the end of the three month notice period for Contract termination. As part of this process the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and how they will affect those Red Sky employees engaged on Housing Executive work are being actively considered.



I can assure you that I will be kept updated in relation to this matter. If you feel that a meeting would still be beneficial, please contact my Diary Secretary, Chris Barry on 9082 9033 to arrange a suitable date and time.

Yours sincerely
Nelson McCausland

NELSON McCAUSLAND MLA
Minister for Social Development

Lucas, Maureen

From: Pritchard, Gary
Sent: 21 June 2011 10:35
To: Cuddy, Stewart
Cc: McPeake, John; Blease, Jonathan; Allen, Declan; Lucas, Maureen; Gallagher, Frances
Subject: RE: Assembly Information Request MB1863 - INV/1020/2011 : REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY
Importance: High
Sensitivity: Confidential
Follow Up Flag: Follow up
Due By: 21 June 2011 10:35
Flag Status: Flagged

CX

Further to my email below - DSD have asked if we can include details of any previous court cases between the Housing Executive and Red Sky.

Jonny has advised that they may actually be referring to previous legal challenges by Red Sky.

Many thanks

Gary Pritchard

From: Pritchard, Gary
Sent: 20 June 2011 16:34
To: Stewart.Cuddy@nihe.gov.uk
Cc: John.McPeake@nihe.gov.uk; Jonathan.Blease@nihe.gov.uk; Declan.Allen@nihe.gov.uk; Harry.Dornan@nihe.gov.uk
Subject: Assembly Information Request MB1863 - INV/1020/2011 : REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY
Importance: High
Sensitivity: Confidential

CX

Please see email below from DSD - The Minister has agreed to meet with representatives from Red Sky as well as the First Minister Peter Robinson, Sammy Douglas MLA and Robin Newton MLA – could you please provide an update on the current position by Thursday 23rd June?

Many thanks

Gary Pritchard

From: Kerstens, John [mailto:John.Kerstens@dndni.gov.uk]
Sent: 20 June 2011 16:24
To: Pritchard, Gary
Cc: Hughes, Lynda; Finnegan, Colette; Mason, Wenda; Murray, Jim; Goodall, Roisin
Subject: INV/1020/2011 : REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Gary,
 Minister has agreed to meet Sammy Douglas MLA and representatives from Red Sky on Monday 27 June. Our Director has asked for an update on the Housing Executive's position in relation to your dealings with the Administrator please.
 We would need this by close of play on Thursday 23 June please.

21/06/2011

Thanks

2

John Kerstens
Director's Office
Housing Division
Level 2
Lighthouse Building
Gasworks Business Park
Belfast
Tel. no. 028 9082 9280
email john.kerstens@dndni.gov.uk

DEPARTMENT FOR SOCIAL DEVELOPMENT

INVITATION BRIEFING REQUEST - URGENT

Reference: INV/1020/2011
Invitation From: Cllr Robin Newton MBE
REFERRED TO: Housing Directors Office

Date: 20 June 2011

Subject: REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND
REPRESENTATIVES OF RED SKY

BRIEFING REQUIRED

Minister has agreed to this meeting request. Meeting to take place on Monday 27 June at 17.00 in the Minister's office, Parliament Buildings with a pre-brief at 16.45. Attending will be 3 representatives from Red Sky - Norman Hayes, John Rooney, Sam Moore - as well as the First Minister Peter Robinson, Sammy Douglas MLA and Robin Newton MLA. Please provide appropriate briefing and the names of any officials attending with the Minister..

Please return to Private Office by noon on 24/06/2011

Chris Barry
Private Office

Lighthouse Building Tel:- 38033

Copied To For Information:
Briefing Request List

21/06/2011




Lucas, Maureen

From: Pritchard, Gary
Sent: 23 June 2011 15:28
To: Cuddy, Stewart
Cc: Blease, Jonathan; McPeake, John; Lucas, Maureen; Allen, Declan
Subject: Assembly Information Request MB1863 - ** 2 Further Queries** - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY
Importance: High
Sensitivity: Confidential
Follow Up Flag: Follow up
Due By: 23 June 2011 15:28
Flag Status: Flagged
Attachments: 20110621 PRIOFF UPDATE ON RED SKY CONTRACT.DOC

CX

Please see 2 further queries below from DSD regarding our briefing note for the Minister's meeting with Red Sky.

Can you please advise?

Many thanks

Gary Pritchard

From: Kerstens, John [mailto:John.Kerstens@dsdni.gov.uk]
Sent: 23 June 2011 15:24
To: Pritchard, Gary
Cc: Finnegan, Colette; Hughes, Lynda; McCarty, Susan; Goodall, Roisin
Subject: FW: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Gary,
Please see Susan's email below.
can you provide urgent response to the 2 questions raised please.

Thanks

*John Kerstens
Director's Office
Housing Division
Level 2
Lighthouse Building
Gasworks Business Park
Belfast
Tel. no. 028 9082 9280
email john.kerstens@dsdni.gov.uk*

From: McCarty, Susan
Sent: 23 June 2011 15:21

23/06/2011

To: Kerstens, John
Cc: Goodall, Roisin
Subject: RE: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

John

In the attached brief it states;

BDO asked us to meet a potential bidder to provide information to inform their interest in the NIHE Contract. The bidder was an established well-known Company. This meeting took place but we understand the Company concerned is unlikely to bid for the NIHE Contract.

BDO asked us to meet a second potential bidder whom we understand comprised previous owners/managers of Red Sky Group who were hoping to set up a new Company. We agreed to meet if BDO would provide us with details of the potential buyer, including the names of the shareholders/investors. BDO undertook to provide those details for the meeting but subsequently informed us that the potential bidder was not in a position to provide the information requested and that the new Company had not yet been established.

Is it possible to advise of the name of the Company NIHE meet and if not can they explain why please.

Had NIHE placed the same conditions on a meeting with the well known company ie details of the potential buyer, including the names of the shareholders/investors as on the second potential bidder. If not can they explain why please

Susan McCarty
Housing Director's Office
Level 2
Lighthouse Building
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Phone x 38325/90829325

From: Kerstens, John
Sent: 23 June 2011 15:15
To: McCarty, Susan
Cc: Goodall, Roisin
Subject: FW: TRIM: MB1863 - REQUEST FOR A MEETING WITH SAMMY DOUGLAS MLA AND REPRESENTATIVES OF RED SKY

Susan,
NIHE input in relation to meeting with Red Sky.

John

John Kerstens
Director's Office
Housing Division
Level 2
Lighthouse Building
Gasworks Business Park

Meeting with MLAs and Red Sky Representatives – 27 June 2011

Attendees:

Minister McCausland MLA
Sammy Douglas MLA
Robin Newton MLA
Peter Robinson MLA
Jim Wilkinson DSD
Michael Sands, DSD
Stephen Brimstone, Special Adviser
Peter Cooke, Red Sky Rep
John Rooney, Red Sky Rep

Peter Robinson opened the meeting by stating that Red Sky considered that the Company has been treated unfairly and badly and the Housing Executive had failed to act upon opportunities that would have resolved the issues before the notice to end the contract.

The company provides a high level of employment in the east Belfast and does not operate any less satisfactorily to other companies in this business area. He enquired if there was still time to resolve the issues or if it was past the post.

The Minister indicated that these matters were currently with the Administrator and the Housing Executive.

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.

Some discussion took place around the current position with the contract that was due to end and arrangements for that contract to be passed on, and whether new contracts were due to be signed on Friday. The Department was not aware of this and sought clarity directly from the Housing Executive on this issue and also on the information received from Red Sky Reps that new contracts due to be in place for 1 November had indeed been extended and renewal of contracts would take place in March 2012.

The Minister indicated that he would seek clarification on these matters, and was concerned that current information appeared to be not entirely up-to-date.

Peter Cooke gave the Minister examples of 'irregularities' in terms of the Red Sky's performance. While he was embarrassed by these irregularities, he felt that the company was victimised for winning the West Belfast project and there was a clear campaign to remove the Company from that area.

The Minister advised that he has asked officials to instruct the NIHE to rigorously review all existing contracts to same level of scrutiny. He also advised that he would

like to have the administrator in place until end of August to allow all issues relating to the handover of contracts to be considered, during this time the proposed new company might also be able to progress matters.

Jim Wilkinson advised that further clarification needs to be sought from the Housing Executive and the Minister advised that this will be available tomorrow. He further indicated that the proper route for the consideration of contractual matters is between the Housing Executive and the Administrator.

Draft Minute
Meeting with NIHE Reps regarding Contract Management – 30 June 2011
Attendees:

Minister McCausland
Stephen Brimstone
Brian Rowntree, NIHE
Stewart Cuddy, NIHE
Jim Wilkinson
Heather Cousins
Michael Sands
Will Haire (latter part)
Barbara McConaghie

Following on from the previous meeting held on Tuesday 28 June the Minister advised that he had given consideration to the issue and wants to ensure he has public and personal confidence in relation to Housing Executive contracts. The Minister advised that after receiving information from the Housing Executive today which indicates there are emerging issues with another company he has cause for concern.

The Minister advised that he has asked the Department to for a forensic examination to take place on the management of contracts and, therefore, it would be inappropriate to issue/change contracts until this examination was completed; in the region of 8 weeks. The Minister asked the Housing Representatives to take this proposal to the Board and recommend his proposal on the basis that BDO can guarantee to conduct the work.

Brian Rowntree raised concern about this advising of the serious allegations against the current contractor. Stewart Cuddy advised that the Accounting Officer, Will Haire, should be at the meeting and asked for the request to be put in writing.

Brian Rowntree advised that the Administrator was put on notice today and had concerns that this way forward would not allow for proper maintenance provision to be in place.

Will joined the meeting and advised that officials would work through the issues highlighted and report back to the Minister in 24 hours.

Brian objected to engaging with the contractor who has acted inappropriately.

Will advised that officials and the NIHE would face challenges but needed to look at the Minister's request in taking forward the investigation and the implications.

6

McLaughlin, Maria

From: McLaughlin, Maria
Sent: 01 July 2011 16:27
To: 'will.haire@dndi.gov.uk'
Cc: 'O'Connor, Sheila'
Subject: Potential Implications
Sensitivity: Private

It is important to note that the arrangements to ensure the continued delivery of response maintenance services to tenants are at an advanced stage with certain adjacent contractors. Indeed in relation to at least one of the adjacent contractors there may arguably be a contract already in place by way of implication. It is believed that a decision at this late stage effectively preventing the reallocation of the relevant response maintenance services to those adjacent contractors has the potential to expose the organisation to significant financial and legal repercussions.



Brian Rowntree
Chairman

Tel: 028 90318724
Fax: 028 90439803

Email: brian.rowntree@nihe.gov.uk

04/07/2011

Page 1 of 1



From: Cuddy, Stewart
Sent: 05 July 2011 16:34
To: John.McPeake@nihe.gov.uk
Cc: Clark.Bailie@nihe.gov.uk;Peter.Craig@nihe.gov.uk;Declan.Allen@nihe.gov.uk
Subject: FW: Forensic Examination of other NIHE contractors

John,
Can we agree tomorrow who will provide the various information to respond. As you will see I have copied to Clark, Peter and Declan
So that they can begin to collate information.
Stewart

From: Sands, Michael [mailto:Michael.Sands@dndni.gov.uk]
Sent: 05 July 2011 16:15
To: Cuddy, Stewart
Cc: Lucas, Maureen
Subject: Forensic Examination of other NIHE contractors

Stewart,
To comply with the Minister's instruction that the Department is to carry out forensic examinations of a sample of NIHE maintenance contractors, similar to that completed by ASM Howarth on the Red Sky contract, I would be grateful for the following information:

- 1 Period covered by the Howarth investigation
- 2 Sampling methodology
- 3 No. of works orders investigated and their value
- 4 Cost of the Howarth contract
- 5 Details of all other maintenance contracts across NI including value of works for the same period as at 1 above, in descending order.

I would be grateful for a response at the earliest.

Michael

Michael Sands

Deputy Director of Housing
Department for Social Development
Level 2, Lighthouse Building
Gasworks Business Park
1 Cromac Place
Belfast BT7 2JB
Tel: 028 9082 9346
Mob: 07713652884
EM:michael.sands@dndni.gov.uk

file://C:\Documents and Settings\mccrickard_i\Local Settings\Temporary Internet Files\O... 20/12/2012

9

From: Lucas, Maureen on behalf of Cuddy, Stewart
Sent: 05 July 2011 08:53
To: Declan.Allen@nihe.gov.uk
Cc: Brian.Rowntree@nihe.gov.uk; Frances.Gallagher@nihe.gov.uk; John.McPeake@nihe.gov.uk
Subject: FW: NIHE Response Maintenance Contracts

Sensitivity: Private
Declan

Email from Michael Sands refers.

What are the implications, if any, of this latest request?



S Cuddy
Acting Chief Executive

From: Sands, Michael [mailto:Michael.Sands@dndni.gov.uk]
Sent: 05 July 2011 07:40
To: McLaughlin, Maria
Cc: Cuddy, Stewart; Wilkinson, Jim
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

Brian,

Minister's SPad thinks that six months is too long a time frame for continuation by the Red Sky Administrator. Our advice from CPD is 91 days (ie under the EU limit) to complete the tender exercise once all paperwork is prepared so if we allowed to the end of the month for paperwork, say 1 month + 3 for the tender exercise = 4 months in total. Could the question re 4 months be put to BDO as below rather than 6?
Regards
Michael

From: McLaughlin, Maria [mailto:Maria.McLaughlin@NIHE.GOV.UK]
Sent: 04 July 2011 16:11
To: Haire, Will
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

Dear Mr Haire

Mr Rowntree asked me to forward you this email from Declan Allen.

Regards
Maria

file://C:\Documents and Settings\mccrickard_i\Local Settings\Temporary Internet Files\O... 20/12/2012

From: Rowntree, Brian
Sent: 04 July 2011 16:00
To: McLaughlin, Maria
Subject: FW: NIHE Response Maintenance Contracts
Sensitivity: Private

From: Allen, Declan
Sent: 04 July 2011 15:19
To: Michael.Jennings@bdo.co.uk
Cc: Cuddy, Stewart; Rowntree, Brian; Gallagher, Frances; Taggart, Maureen; McPeake, John
Subject: NIHE Response Maintenance Contracts
Sensitivity: Private

Michael,

I have been discussing your reply to Stewart Cuddy dated 4th July 2011 with our Chairman. The Chairman has asked that I confirm the position in relation to whether current Red Sky (in administration) rates could be enhanced should the company in administration continue with the provision of Response Maintenance Services post 14th July 2011. Any work carried out post 14th July by Red Sky in administration will be as per the current percentage adjustment. There will be no enhancements to their rates.

I also require clarification of an additional point by return and certainly no later than close of business today. The Department for Social Development has asked our Chairman to ascertain if Red Sky in Administration would be able to continue with the Response Maintenance service for a minimum period of 6 months and not the 8 weeks as you may already be aware of. Any continuation would be in accordance with the current Terms and Conditions applying to the contracts and as stated above at the current rates outlined in the contract. I would request that you provide, by close of business, your express guarantee that should it be required, the company in administration could continue for a minimum period of 6 months. I would also confirm that the request relates to BDO as administrator for Red Sky in Administration and not to any new entity or buyer of Red Sky.

This request should not be taken to imply or constitute a contract offer or guarantee of additional work to Red Sky (in Administration) (nor sub contractors nor any new enterprise) post the 14th July 2011.

I would appreciate your reply by return or at least no later than 17:30 today.

Regards.

Declan

Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive

e-mail: declan.allen@nihe.gov.uk
Tel: 028 90318889
Mob: 07920 187969

***** IMPORTANT MESSAGE *****

The contents of this email from the Northern Ireland Housing Executive do not represent the expressed

file://C:\Documents and Settings\mccrickard_i\Local Settings\Temporary Internet Files\O... 20/12/2012



Cuddy, Stewart

From: Cuddy, Stewart
Sent: 06 July 2011 12:23
To: Haire, Will
Cc: Rowntree, Brian
Subject: FW:
Sensitivity: Private
Attachments: RE: FW: NIHE Response Maintenance Contracts; FW: NIHE Response Maintenance Contracts; RE: NIHE Response Maintenance Contracts; NIHE Response Maintenance Contracts; Re: FW: NIHE Response Maintenance Contracts; RE: NIHE Response Maintenance Contracts; Re: NIHE Response Maintenance Contracts; NIHE Response Maintenance Contracts

Will,

Please find below email to Michael Sands setting out responses to the questions raised and subsequently discussed by you and the Chairman. These conclusions fully informed the decisions taken by our Board yesterday,

Stewart

From: Allen, Declan
Sent: 06 July 2011 12:16
To: Michael.Sands@dndni.gov.uk
Cc: Cuddy, Stewart
Subject:
Sensitivity: Private

Michael,

Further to your recent discussion with Stewart, you have asked that we provide clarification on the ability of BDO (Appointed Administrator for Red Sky) to provide a response maintenance service to the NIHE post 14th July 2011 and also for a high level timeline on taking forward a procurement for a replacement service.

In regard to the first query I have attached several e-mail communications between myself and Michael Jennings, Administrator for Red Sky. As you can see from the responses there is a lot of equivocation and the only thing which is clear is BDO's intention to sell the Company by 31st July 2011. Therefore, it is our conclusion that BDO are only able to provide a service up to 31st July 2011. This does not meet our requirements or those specified by the Minister and the Board has, therefore, concluded that contracts must be in place by 14th July 2011 for an extended period until the new contracts are awarded.

In relation to providing a timeline for a procurement exercise that would deliver a response maintenance service until our main procurement is complete I would advise that in my opinion this would take in the region of 4 months commencing from an advert on 1 August 2011. This would provide some time to get the tender documentation together. Then using the restricted procedure and building in sufficient time for PQQ and Tender evaluations coupled with CXBC and Board approvals it may be possible to have a replacement contract in place for 1 December 2011 at the earliest. This would in effect allow a maximum contract period of two months to be let, ending 31st January 2012, so to align with the new main contract starts of 1st February 2012 which are going to tender imminently. I am not sure a 4 month procurement exercise that delivers a 2 month contract commencing only in

06/07/2011

December 2011 is commercially viable, in the interests of the public purse or meets the requirements of the 10,000 households that need a response maintenance service from July 2011, bearing in mind we are currently finalising tender arrangements for this very same service under the new contract formats.

Happy to discuss.

Regards.

Declan

Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive

e-mail: declan.allen@nihe.gov.uk
Tel: 028 90318889
Mob: 07920 187969

Declan

Declan Allen MCIPS
Head of Procurement
Northern Ireland Housing Executive

e-mail: declan.allen@nihe.gov.uk
Tel: 028 90318889
Mob: 07920 187969

06/07/2011

13

sent to all
for MIS/S
+ADW
release

Northern Ireland
Housing

Chairman Brian Rowntree CBE

2 Adelaide Street
Belfast BT2 8PB

Mr Nelson McCausland
Minister for Social Development
Department for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

15th July 2011

Dear Minister

Thank you for your letter dated 7th July 2011.

I share your commitment to ensuring that our response maintenance contracts and our management of them provide the best service to tenants and value for money in the use of public funds. I will of course facilitate and support the proposed forensic investigation.

With respect to the Gateway Review, I again share your view that the priority must be to have in place as soon as practicable a new procurement and contract management regime. You will be aware that, following a number of recommendations from the DSD Oversight Group, including the adoption of additional Key Performance Indicators (KPI's), we reviewed our timetable which already had little or no slack. Taking into account the additional time necessary to develop and validate these including legal opinion, and deal with additional matters raised by the Project Board, we proposed a revised date of 1 February 2012. This was to ensure that we were not awarding new contracts during the Christmas period bearing in mind the severe weather conditions we experienced in 2010. We can, if you insist, have the new contracts (and potentially new contractors) operational from 1 January 2012 but our risk assessment is that this would not be wise and that 1 February 2012 is the preferred date. This will allow us to provide proper training for any new contractors on the NIHE's works ordering and contract management arrangements.

I can advise you that our Board were advised that, based on discussions and correspondence with the Administrators over the last 3 months, they could not service the contract beyond 14 July 2011. Indeed, they refused to confirm in



Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: brian.rowntree@nihe.gov.uk



NIHE 0101 100011

writing that they could service the contract up to 14 July and were working with us on a week by week basis. The Board were also aware that, if they sought to revoke the termination notice, it could potentially leave the NIHE open to a legal challenge further down the road.

As requested in your letter, I can confirm that have reassigned the contract to adjacent contractor with effect from 14 July 2011.

The most recent position I have on TUPE, which you know is a matter between the Administrator and the adjacent contractors is, that to date, 138 employees will transfer. A further pool of 47 staff remains under review and some of these may transfer depending on the extent of their current involvement in NIHE contracts. I will be happy to provide an update in due course.

As regards contract monitoring arrangements, please find attached a short summary of our monitoring arrangements for response maintenance contracts which you can see are very thorough. Any recommendations for improvement from the Gateway Review Healthcheck are currently being implemented.

Finally, I note your intention to having the Performance Review meetings monthly so that you can gauge progress on these matters and I look forward to our meeting at the end of August.

Yours sincerely



Brian Rowntree
Chairman



Current Control Arrangements Response Maintenance Contracts

Background

- Sixteen contractors deliver an “All Trades” Response Maintenance service to NIHE’s thirty five District Offices through a total of twenty eight individual contracts (prior to the termination of RSG).
- The **Area Manager** acts as contract administrator for all the response maintenance contracts within his / her area, but day to day management responsibility rests with the District Maintenance Manager and District manager for each district.
- Tenants normally report repairs by telephone to one of the 6 Customer Service Unit (Belfast, Newtownards, Craigavon, Omagh, Londonderry, Ballymena), although repairs can also be reported at district level.
- Upon receipt of a repair call, the CSU enters the details of the repair job into the Repairs computer system which electronically passes the job directly to the relevant contractor.
- Jobs are classified into distinct categories depending on their nature:
 - Jobs with a significant health and safety risk are treated as **Immediate Call Out (ICO)** and contractors are required to drop everything and attend immediately.
 - Jobs which are serious but not life threatening are classified as **Emergency** and should be completed within 24 hours.
 - Jobs which are less serious but not routine are classified as **Urgent** should be complete within 4 days.
 - Remaining jobs (except Change of Tenancy Repairs) are classified as **routine** and should be completed within 4 weeks.
 - **Change of Tenancy Repairs** are associated with new allocations. The timescale available depends on the scale of the work, but in most cases should be completed within 6 weeks.



Clerk of the Committee's Letter of 18 January 2013 to Mr Brian Rowntree



Public Accounts Committee

Room 371
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX

Tel: (028) 9052 1208

Fax: (028) 9052 0366

E: pac.committee@niassembly.gov.uk

aoibhinn.treanor@niassembly.gov.uk

Brian Rowntree

18 January 2012

Dear Brian,

PAC inquiry into NIHE management of Maintenance contracts

I refer to my memo of 19 November by way of reminder.

If you wish to contribute to the Committee's inquiry, I would be grateful to receive your response by 1 February at the latest. Please do not hesitate to contact me if you need any more detail on the Committee's work.

With kind regards and best wishes for the New Year,

Aoibhinn Treanor

Committee Clerk

Public Accounts Committee

Correspondence of 22 January 2013 from Mr Will Haire



From: **The Permanent Secretary**
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Michaela Boyle MLA
Chairperson
Public Accounts Committee
Room 371
Parliament Buildings
Ballymiscaw
BELFAST BT4 3XX

22 January 2013

Dear Michaela

Inquiry into NIHE'S Management of Response Maintenance Contracts

I refer to my letter to you on 9 January providing further information and clarification on a number of issues mainly from the NIHE in relation to the above. However, I have sought further clarification from the NIHE on two specific issues as follows.

Issue 1

In my previous letter I provided a table at Annex A in relation to how each contractor's performance compares against the quality standards specified in the contract? The scoring for time and cost predictability was not included which I raised with the Housing Executive.

The Housing Executive has advised me that when the new framework was set up in January 2008 it was anticipated that the KPI measurements would include scoring for time and cost predictability. Unfortunately due to the nature of the work NIHE advise it was impossible to measure these two elements due to:

- In revenue replacement schemes NIHE tend to have a number of tenant refusals at the on site stage. Even though these would have been agreed at consultation stage NIHE would still have a number of tenants, who, for various reasons, refuse access at short notice.
- In the above circumstances NIHE seek to add additional dwellings into the scheme to compensate for the drop outs.
- When additional dwellings are added, the properties must be surveyed, recommendations made and approvals obtained.

- Overall this has impact on both cost and time predictability. In many instances the additional dwellings are being added at the end of the contract extending the contract period and adjusting the contract sum.
- This can occur more than once in any given project.

In order to manage the cost and time element of the contract the overall financial revision to the contract sum is managed under NIHE Standing Orders and the work carried out to each property is checked and valued on a house by house basis. On the time management side, the number of properties the contractor works on at any one time and the time taken to work in each property is managed under the terms of the contract. Measurements at this operational stage were not considered under the old contracts but are being included in the new contracts currently being procured.

Issue 2

In relation to the Committee's request for information on the progress made and any outcomes to date in the Housing Executive's legal pursuit via recovery action of the contractor mentioned at paragraph 21 of the Audit Office report, and the amount of associated legal cost anticipated, the Housing Executive has provided more information as follows.

Present position

The May 2012 RIU Report issued to the contractor identified £243,470.96 of overpayments. The Housing Executive sought comments from the contractor on the findings before arriving at a decision in the matter. The financial status of the contractor in or around June 2012 forced the Housing Executive to seek set off, having obtained external legal advice and issued a withholding / and or deduction notice. The Company were placed in Administration on 15 June 2012. At the time the Company challenged the deductions and instigated Adjudication proceedings. The Adjudicator found in favour of the Company and directed that the Housing Executive pay £169k plus interest.

The Housing Executive believed the Adjudicator did not consider the merits of the Housing Executive's counterclaim of overpayments and refused to pay until determination of the outstanding counterclaim. To have paid the Company the amount determined by the Adjudicator may have resulted in the Company having no ability to pay the Housing Executive back but rather on receipt of funds the Company will be placed in Liquidation and the Housing Executive left as an unsecured creditor.

An application for Summary Judgement has been served by the Company and the Application will be heard on Friday 25 January 2013. The Housing Executive will be requesting a stay to the enforcement pending the determination of the outstanding overpayment claim. Both the Company and the Housing Executive have appointed experts to determine the value of the overpayments. An interim report has been produced by the Housing Executive's expert identifying in their opinion that there has been an overpayment on the works in the region of £200,000. To date the Housing Executive has set off approximately £223k from monies due to the Company.

The likely outcomes of the Hearing for Summary Judgement could be:

- The Court may order the Housing Executive to pay the monies identified by the Adjudicator. (i.e. £169k + interest + costs)
- The court refuses application for Summary Judgement.
- The Court Orders Summary Judgement but with a stay on enforcement pending the outcome of the NIHE overpayment claim.

The costs involved (Housing Executive only) are:

- To end of Summary Judgement stage: costs estimate - £35k for legal costs and outlay on our side – to include all prior work on Adjudication etc and inclusive of solicitors, Counsel and expert – but exclusive of VAT;
- To full trial - £130k as previously estimated.

I hope this further information is helpful.



Will Haire



Northern Ireland
Assembly

Appendix 4

List of Witnesses who Gave Oral Evidence to the Committee

List of Witnesses who Gave Oral Evidence to the Committee

- 1) Mr Will Haire, Accounting Officer, Department for Social Development;
- 2) Dr John McPeake, Chief Executive, Northern Ireland Housing Executive;
- 3) Mr Jim Wilkinson, Director of Housing, Department for Social Development;
- 4) Mr Gerry Flynn, Director of Housing and Regeneration, Northern Ireland Housing Executive;
- 5) Mr Kieran Donnelly, Comptroller and Auditor General; and
- 6) Ms Fiona Hamill, Treasury Officer of Accounts, Department of Finance and Personnel.



Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

£21.00

Printed in Northern Ireland by The Stationery Office Limited
© Copyright Northern Ireland Assembly Commission 2013

ISBN 978-0-339-60468-1

