

**Committee for Social Development**

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – Phase 3  
Volume 1**

**Together with the Minutes of Proceedings, Minutes of Evidence, Correspondence and Written Submissions relating to the Report**

**Ordered by the Committee for Social Development to be printed 16 April 2015**

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UNTIL COMMENCEMENT OF THE DEBATE IN PLENARY**



# Powers and Membership

The Committee for Social Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister for Social Development.

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:

- Mr Alex Maskey (Chairperson)
- Mr Mickey Brady (Deputy Chairperson)
- Mr Jim Allister <sup>7</sup>
- Mr Roy Beggs <sup>14</sup>
- Ms Paula Bradley <sup>1</sup>
- Mr Gregory Campbell <sup>3</sup>
- vacant <sup>8,12,13,15</sup>
- Mr Stewart Dickson <sup>11</sup>
- Ms Dolores Kelly <sup>10</sup>
- Mr Fra McCann
- Mr Sammy Wilson <sup>2,4,5,6,9</sup>

- 1 With effect from 20 February 2012 Ms Paula Bradley replaced Mr Gregory Campbell
- 2 With effect from 26 March 2012 Mr Alastair Ross replaced Mr Sammy Douglas
- 3 With effect from 01 October 2012 Mr Gregory Campbell replaced Mr Alex Easton
- 4 With effect from 01 October 2012 Mr Sammy Douglas replaced Mr Alastair Ross
- 5 With effect from 11 February 2013 Mr Sydney Anderson replaced Mr Sammy Douglas
- 6 With effect from 07 May 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
- 7 With effect from 09 September 2013 Mr Jim Allister replaced Mr David McClarty
- 8 With effect from 16 September 2013 Mr Trevor Clarke replaced Ms Pam Brown
- 9 With effect from 16 September 2013 Mr Sammy Wilson replaced Mr Sammy Douglas
- 10 With effect from 30 September 2013 Mrs Dolores Kelly replaced Mr Mark H Durkan
- 11 With effect from 01 October 2013 Mr Stewart Dickson replaced Mrs Judith Cochrane
- 12 With effect from 06 October 2014 Mr Sammy Douglas replaced Mr Trevor Clarke
- 13 With effect from 17 November 2014 Mr Maurice Devenney replaced Mr Sammy Douglas
- 14 With effect from 09 February 2015 Mr Roy Beggs replaced Mr Michael Copeland
- 15 Mr Maurice Devenney resigned as an MLA on 25 March 2015

## List of Abbreviations Used in the Report

(The) Committee	Committee for Social Development
BBC NI	British Broadcasting Corporation Northern Ireland
CPD	Central Procurement Directorate
DFP	Department of Finance and Personnel
DSD / The Department	Department for Social Development
DUP	Democratic Unionist Party
MLA	Member of Legislative Assembly
MP	Member of Parliament
NDPB	Non Departmental Public Body
NIAO	Northern Ireland Audit Office
NIHE / The Housing Executive	Northern Ireland Housing Executive
QC	Queen's Counsel
RIU	Repairs Inspection Unit of the NIHE
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
UK PAC	UK Public Affairs Council

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# Executive Summary

In a BBC NI Spotlight programme, which aired on 3 July 2013, allegations were made of wrongful political interference in the Northern Ireland Housing Executive (NIHE), potential breaches of the Ministerial Code of Conduct and misleading of the Assembly and the Committee for Social Development (the Committee).

On 3 October 2013, the Committee agreed the Terms of Reference for its Inquiry. The Terms of Reference contain three distinct strands and this Report deals with strand i:

*Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate*

The Committee took evidence on the actions of Minister McCausland in relation to the termination of the Red Sky contracts and the discussions regarding a possible extension of the Red Sky termination date. The Committee agreed that the former Minister's actions were the central issue to be considered during phase 3 of the Inquiry.

The Committee also heard extensive evidence in relation to the actions of Minister McCausland's Special Adviser; the role of the Department for Social Development; claims of political lobbying in favour of Red Sky; and allegations of unfair and sectarian treatment of Red Sky. The appropriateness of the actions of other former Ministers for Social Development in relation to the Red Sky contracts were also considered.

The Committee showed considerable flexibility throughout the Inquiry in accommodating witnesses who were not available to attend the evidence sessions as scheduled which resulted in delays to the inquiry process.

The Committee also encountered serious difficulty in its engagement with the BBC. While the Committee acknowledges that the organisation provided a significant amount of written material to the Inquiry it regretted that the BBC would not attend the Inquiry to provide oral evidence.

The Committee was also concerned at Minister McCausland's refusal to inform it of any of the details of the outcome of a fact-finding exercise that was conducted in response to allegations made against the Special Adviser, Stephen Brimstone, in the Spotlight Programme until a year after the exercise had concluded. While the Committee was notified on 25 September 2013 that the exercise, which had commenced on 20 August 2013, had been completed, the Committee was only informed of Minister McCausland's decision not to initiate any further action in September 2014 despite several letters to the Department over this period seeking clarification.

When Minister Storey released a redacted version of the report in a response to a notice compelling its release under Section 44(7) of the Northern Ireland Act 1998, the Committee noted that the report recommended a formal disciplinary investigation into the behaviour of Mr Brimstone. The Committee expressed concern in relation to this evidence, having already been informed that Mr McCausland, after considering the report, had decided no further action was required.

The Committee believes that this decision should be reviewed by the current Minister. The Committee has made every effort to understand why information may have been justifiably redacted but has been unable to establish this and calls on the Minister to publish the report in full.

The Committee considered evidence concerning a meeting Minister McCausland attended with East Belfast MLAs and the former Managing Director and former independent Financial Director of Red Sky on 27 June 2011. The Committee noted that Departmental officials had advised

him against attending this meeting which was to discuss the Red Sky contracts, on the basis that it was an on-going contractual matter between the Housing Executive and Red Sky.

The Committee concluded that the Minister was free to meet whomever he chose and that the decision to attend the meeting was not in itself inappropriate but it was imprudent, particularly as Red Sky was in administration and the Administrator, BDO, was not present at this meeting.

The Committee agreed that the Minister's statement, as indicated in the note of the meeting, that he would *'like to have the administrator in place until the 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'* was inappropriate. Whether it was his intention or not, the Minister's decision to seek to have the termination deadline of the Red Sky contracts extended impacted on the existing arrangements to transfer contracts to adjacent contractors and potentially provided commercial advantage to a newly reconstituted Red Sky ('Newco').

The Committee also considered evidence in relation to meetings the Minister attended on 28 and 30 June 2011 with senior members of the NIHE and a subsequent written request that was sent to the former Chairman of the NIHE Board on 1 July 2011.

In his letter Minister McCausland confirmed that he had asked officials to carry out a forensic investigation of other contractors including those to whom the Red Sky contracts would be assigned. He then went on to request that the Chairman put to the Housing Executive Board that the termination date of the Red Sky contracts should be extended from 14 July 2011 to allow an open procurement competition, subject to the Administrator stating that it could continue to service these contracts. He stated that these contracts should be for a period of six months or until new contract procedures could be put in place.

The actions of the Minister, subsequent to the meeting of 27 June 2011, are considered by the Committee as evidence that the Minister became involved with contractual matters that, as advised by his officials were outwith his responsibility, and which rested solely with the NIHE and the Administrator, BDO. The Committee therefore concluded that the Minister acted inappropriately in seeking to have the termination date extended.

The Committee concluded that had the NIHE Board acceded to the Minister's request this would have effectively reinstated the contract to an organisation that had lost the trust and confidence of the NIHE necessary for the satisfactory operation of its contracts. In effect, this would have facilitated the interests of a private organisation in securing a public contract and, rather than protect the public purse, the request had the potential to undermine value for money service provision to tenants.

The Committee heard extensive and conflicting evidence in relation to a phone call that was made by the Minister's Special Adviser, to DUP Councillor Palmer on 1 July 2011 in respect of her participation at the special NIHE Board meeting on 5 July 2011. This meeting was called to discuss the Minister's request that the termination date for the Red Sky contracts should be extended. The Committee concluded that it was reasonable to assume that the former Minister was aware that Mr Brimstone was going to call Councillor Palmer on this matter.

The Committee noted Mr Brimstone's proclaimed inability to recollect certain details surrounding this phone call and his refusal to answer related questions. In contrast to Mr Brimstone's evidence the Committee found Councillor Palmer's evidence on this matter to be consistent, convincing and compelling. In particular, the Committee considered that Councillor Palmer had provided supporting evidence in the form of 5 redacted drafts of an apology. While Mr Brimstone refuted the evidence Councillor Palmer had provided, he did not provide any further material to support his position on the basis that this related to "internal party matters". The Committee noted that during his evidence session Mr Brimstone had been

advised by the Chair that “internal party matters” was not a legitimate reason for refusing to answer questions.

The Committee concluded that, in calling Councillor Palmer, Mr Brimstone was attempting to influence the board’s discussions on behalf of the Minister in relation to the termination of the Red Sky contracts and that this was inappropriate.

The Committee also expressed concern about an email sent by the Department to the Chairperson of the NIHE Board on the morning of the special NIHE Board meeting of 5 July 2011. This email stated that the Minister’s Special Adviser believed that the proposed 6 month extension was too long and should be 4 months (3 months as per advice received by the Department from the Central Procurement Division plus an additional month for associated administration).

The Committee received conflicting evidence from Mr Sands and Mr Brimstone as to how it was decided to send this email and who made this decision. Both witnesses did agree however that the email had been sent following discussion between them. Mr Brimstone also indicated that others from the Department may have been present. This raised concerns as to the full extent and appropriateness of the role of the Department in the revised request to Mr Rowntree.

The Committee received no evidence to suggest that there had been lobbying by political representatives, or Ministerial pressure brought to bear on the NIHE on behalf of Red Sky, or other companies, before the decision to terminate the Red Sky contracts was taken.

However, the Committee also considered whether political motivation underpinned the Minister’s actions to seek to have the termination date extended. Noting Mr McCausland’s actions following his meeting with party colleagues, and the former Managing Director and former independent Financial Director of Red Sky and, in particular, the evidence given by Mr Brimstone in his fact-finding interview, the Committee has been driven to the conclusion that the decision to seek to extend the termination date of the Red Sky contracts was politically motivated.

The Committee concluded that there is no evidence that the decision to terminate the Red Sky contracts was a sectarian one and that the NIHE Board legitimately terminated the Red Sky contracts based on the trust and confidence necessary for the satisfactory operation of the contracts having been undermined. Indeed the Committee noted the evidence of former and current NIHE Senior Officials and the findings of the 2012 NIAO report into response maintenance, that there had been a long history of problems with Red Sky stretching back to 2000.

The Committee also considered the actions/interventions of other former Ministers for Social Development and concluded that there was no evidence of impropriety or irregularity on the part of Minister Ritchie. It also concluded that Minister Attwood’s intervention in relation to Red Sky was not politically motivated.

The Committee, in adhering to its procedural fairness guidelines, provided Mr McCausland and Mr Brimstone each with a draft report for comment. However, the Committee only received a response from Mr Brimstone and this can be found in appendix 6. The Committee considered Mr Brimstone’s response at its meeting on 16 April and, in particular, discussed whether changes should be made to its draft report as a result of his comments. The Committee did not accept the points raised by Mr Brimstone in his response to the Committee and agreed that no further substantive changes to its Report were required.

The Committee also agreed to consider an alternative draft report by a minority of members who fundamentally disagreed with the Committee’s Report. For this draft report which was not agreed by the Committee, see appendix 8 to the report.

## Recommendations

It is the Committee's view that, in the case of an inquiry into the actions of a Minister, there is a clear conflict of interest where that Minister is required to authorise the release of evidence to the Committee. The Committee is of the view that these procedures should be reviewed.

The Committee considers it entirely inappropriate that the decision on whether to take forward a formal disciplinary investigation into the actions of a Special Adviser rests with the appointing Minister and recommends that this procedure be urgently reviewed.

The Committee is also of the opinion that the existing civil service guidelines and mechanisms for challenging Ministers in relation to their becoming involved in operational or contractual matters are not sufficiently robust and should be urgently reviewed.

The Committee notes that there is currently no existing mechanism for independent investigation of allegations of inappropriate conduct made against Ministers. As part of its terms of reference the Committee agreed

*“Should the committee identify any evidence of fraud or corruption in relation to the operation of NIHE maintenance contracts and/or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.”*

If such mechanisms existed the Committee would be referring its report to the 'appropriate authorities' for consideration.

The Committee believes that procedures for establishing a mechanism for investigation and the consideration of the findings of any subsequent report into such allegations should be taken forward as a matter of urgency by the Assembly.

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# Introduction

1. Strand One, paragraph 9 of the Belfast Agreement states the following:
2. The Committees will have a scrutiny, policy development and consultation role with respect to the Department with which each is associated and will have a role in the initiation of legislation. They will have the power to:
  - Consider and advise on Department budgets and Annual Plans in the context of the overall budget allocation;
  - Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
  - Call for persons and papers;
  - Initiate enquiries and make reports; and
  - Consider and advise on matters brought to the Committee by its Minister.
3. In a BBC NI Spotlight programme, which aired on 3 July 2013, allegations were made of wrongful political interference in the Northern Ireland Housing Executive (NIHE), potential breaches of the Ministerial Code of Conduct and misleading of the Assembly and the Committee for Social Development (the Committee). A transcript of the Spotlight programme can be found at appendix 11.

## The Committee's Approach to the Inquiry

4. At its meeting of 3 October 2013, the Committee agreed the Terms of Reference for the Inquiry. The Terms of Reference contain three distinct strands:
  - (i) *Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate;*
  - (ii) *Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double-glazing;*
  - (iii) *The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management;*

And

*Should the Committee identify any evidence of fraud or corruption in relation to the operation of NIHE maintenance contracts and/or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.*

5. The Committee drew on extensive procedural and legal advice throughout its Inquiry.
6. At its meeting of 14 November 2013, the Committee considered and agreed an approach that reflected the principles of procedural fairness. This was subsequently updated and the updated version of the agreed approach is included in appendix 6.
7. The Committee published its Report on its findings in relation to phase 1 of its Inquiry on 3 July 2014. Phase 1 dealt with stand ii of the Terms of Reference for the Inquiry above.
8. The Committee's Report on phase 2 of the Inquiry (strand iii of the Terms of Reference above) was published on 13 March 2015.
9. This Report deals with phase 3 of the Inquiry - strand i of the Terms of Reference above.
10. The Committee commenced its evidence sessions under phase 3 of the Inquiry on 18 September 2014. The Committee received oral evidence from witnesses at its meetings of 18 September 2014, 25 September 2014, 2 October 2014, 9 October 2014, 16 October 2014, 6 November 2014, 13 November 2014, 8 January 2015 and 15 January 2015. Witnesses providing evidence on 8 and 15 January 2015 did so under oath or affirmation.
11. The Committee heard evidence from:
  - Senior officials from the Department for Social Development (DSD / The Department)
  - Former and current senior officials from the NIHE including the former Chairman
  - Councillor Palmer
  - Special Adviser to Minister McCausland, Mr Brimstone
  - Former Managing Director of Red Sky
  - Minister McCausland
12. The minutes of evidence from these sessions are at appendix 2.
13. The Committee held a number of meetings to review and consider the evidence received under phase 3 of the Inquiry. These meetings were held in closed session on 22 January, 29 January, 19 February and 26 February 2015.

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## Process Challenges

### Attendance of witnesses

14. The Committee showed considerable flexibility throughout the Inquiry in accommodating witnesses who were not available to attend the evidence sessions as scheduled.

### Requests for written evidence

15. In addition to oral briefings, a significant volume of documents have been placed before the Committee by the Department and the BBC as part of its consideration of evidence throughout the Inquiry. These documents were collated and analysed for relevance prior to each of the witness sessions and formed the basis for the initial questioning of witnesses.
16. The Committee made its initial request for evidence to the Department for phase 3 on 26 February 2014. When the Committee staff began to review and collate the evidence supplied by DSD it became apparent that the Department had not supplied papers on the behalf of NIHE. The Committee was aware that relevant NIHE papers were available as these had been provided by NIHE to the BBC who subsequently provided them to the Committee. The Committee's request to the Department for evidence can be found at appendix 4.
17. The Committee noted that current procedures require that all Departmental evidence in relation to a Committee Inquiry must be authorised for release by the relevant Minister. It is the Committee's view that, in the case of an inquiry into the actions of a Minister, this presents a clear conflict of interest. The Committee is of the view that these procedures should be reviewed.

### Fact-finding report into Special Adviser

18. The Committee expressed its concern that the former Minister did not inform it of any of the details of the outcome of a fact-finding exercise that was conducted in response to allegations made against the Special Adviser, Stephen Brimstone, in the Spotlight Programme aired on 3 July 2013 until a year after the exercise had concluded. While the Committee was notified on 25 September 2013 that the exercise, which had commenced on 20 August 2013, had been completed, the Committee was only informed of Minister McCausland's decision not to initiate any further action in September 2014, despite several letters to the Department over this period seeking clarification.
19. The issue of the fact-finding report was particularly frustrating as the Committee had sought and received assurances from the Permanent Secretary that all relevant information would be disclosed fully and on a timely basis. The Committee is concerned that the Department has not lived up to this commitment.
20. Given that the terms of reference of the fact-finding exercise sat squarely within the Committee's Terms of Reference for phase 3 of the Inquiry, the Committee had sought updates in relation to the status of the report on several occasions. The Committee wrote to Minister Storey on 10 November 2014 requesting a copy of the report. Minister Storey responded on 26 November 2014, stating that the report contained personal information, and asked the Committee to set out how the disclosure of the information was necessary for the Committee's task in relation to strand (i) of its Terms of Reference.
21. Having sought legal advice, the Committee responded in some detail to this request on 2 December 2014. The Committee subsequently received a response from Minister Storey on the 11 December 2014 which stated that, on the basis of the reasoning provided by the Committee, he had been advised that the report does not meet the 'test of necessity applied

in discovery in the courts’ and so the Department would not be obliged to produce the document in proceedings in a court in Northern Ireland.

22. The Committee noted that this was a different reason from that given in the Minister’s initial response. The Committee received further legal advice on the matter and agreed on 15 January 2015 to compel the release of the report under section 44(7) of the Northern Ireland Act 1998. The Speaker subsequently issued a notice to the Minister on 28 January compelling him to provide the Committee with the report by 5pm on 4 February 2015 which was subsequently extended by the Speaker until 5pm on Thursday 5 February – the day of the Committee meeting.
23. Following correspondence from the Minister on 5 February the Committee agreed to an extension to the deadline for the production of the report until 12 February 2015.
24. Further correspondence from the Minister was received on 11 February. Minister Storey maintained his position that he was not obliged to release the report and proposed to release interview statements taken during the fact-finding process instead. The Committee agreed that the findings of the report were key to its considerations and wrote to the Minister in those terms. This correspondence resulted in the Committee extending the deadline for production for a second time, until 18 February.
25. The Minister subsequently released a redacted copy of the fact-finding report on 18 February.
26. The Committee was not content that the conclusions of the report and almost all the recommendations had been redacted. However, the Committee also noted that the Minister stated in his accompanying letter that he was:

*‘also prepared to release sections of the report of a factual nature provided the Committee agrees to respect the confidentiality of the report and not to refer to it in public or in its report without my agreement’*

In light of this the Committee agreed to further extend the deadline until 26 February.

27. The Minister wrote to the Committee on 25 February indicating that the Committee had misunderstood the letter and that the material that was referenced in his letter of 18 February was that which was submitted on that date.
28. At its meeting of 26 February the Committee agreed that the Chair should offer to meet the Minister to discuss the possibility of arbitration, facilitated by a High Court judge, as a resolution to this issue.
29. The Minister wrote to the Chair on 4 March noting that while he was willing to meet, he could not accede to this request. The Chair subsequently responded to the Minister stating, in light of this decision, there was little merit in proceeding with a meeting. The Committee agreed to consider if, on the basis of the evidence presented to the Inquiry, members could proceed to draw conclusions and complete the Committee’s Report.
30. Documentation regarding the Committee’s efforts to establish the outcome of the fact-finding exercise can be found in appendix 5.

### Request for witnesses to be accompanied by legal advisers

31. During the course of phase 3, the Committee agreed that certain witnesses should provide evidence under oath or affirmation in an attempt to clarify conflicting evidence from previous sessions.
32. The Department requested that departmental witnesses be accompanied by a legal adviser and that the Inquiry should be conducted on the basis of the Salmon principles which relate to the conduct of a Public Inquiry.

33. The Committee did not accept that that the Salmon principles were appropriate to an Assembly Inquiry and rejected this proposal.
34. The Committee was also concerned that allowing witnesses to be accompanied by legal advisers would possibly result in an adversarial approach to the Inquiry and further delay progress.
35. However, the Committee did agree to accept individual requests from witnesses to be accompanied by a legal adviser which it would then consider.
36. The Committee subsequently rejected generic applications from the Department for their officials to be accompanied by a legal adviser. (see appendix 1)

### Refusal of BBC to attend to give evidence

37. The Committee also encountered serious difficulty in its engagement with the BBC. While the Committee acknowledges that the organisation provided a significant amount of written material to the Inquiry it regretted that the BBC would not attend the Inquiry to provide oral evidence. Correspondence from the BBC setting out their reasons for non-attendance can be found in appendix 11.

## Background

38. The BBC NI Spotlight programme, which aired on 3 July 2013, made allegations of potential wrongful political interference in the NIHE, potential breaches of the Ministerial Code of Conduct and potential misleading of the Assembly and the Committee for Social Development.
39. Minister McCausland appeared before the Committee on 4 July 2013, of his own volition, to respond to the allegations made in the Spotlight programme. The Committee agreed at that meeting to hold an Inquiry into the allegations made in the programme.
40. Phase 3 of the Inquiry relates to strand i of the Terms of Reference for the Inquiry i.e. *(i) Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.*
41. The BBC Spotlight programme made allegations around political interference surrounding the termination of the Red Sky contracts by the NIHE in April 2011. It called into question the representations and actions of several politicians but in particular, the actions of the former Minister for Social Development, Nelson McCausland.
42. An allegation was made in the programme that Minister McCausland became involved in contractual matters relating to Red Sky that were the responsibility of the NIHE. The programme also stated that his actions may have constituted a breach of the Ministerial Code and Ministerial guidelines. It should be noted that the Terms of Reference for the Inquiry do not refer to the Ministerial Code.
43. A timeline of key events related to phase 3 of the Inquiry is presented below though a more detailed description of these events can be found in the Memorandum provided by the Department at appendix 4. Documentation relevant to events in this timeline can be found in appendices 9 and 10.

## Timeline of Key Events to Phase 3

- During the period 2006 – 2010, concerns were raised in relation to the delivery of the Red Sky contracts and a series of NIHE investigations were undertaken.
- On 13 April 2011, the NIHE Board terminated the Red Sky contracts.
- On 19 April 2011, Red Sky Group went into voluntary administration.
- On 28 April 2011, senior officials including the Chair of NIHE, met with DUP MLAs from East Belfast to discuss the Red Sky termination.
- In April/May 2011, Minister McCausland corresponded with a DUP MLA and the MLA and MP of the Alliance Party for East Belfast in relation to the decision to terminate the Red Sky contracts.
- In June 2011, former management of Red Sky were forming a new company (referred to in discussions/communications as 'Newco'), potentially in the hope of taking over the Red Sky NIHE contracts.
- On 27 June 2011, Minister McCausland, accompanied by DSD officials, met with 'representatives of Red Sky' and 3 East Belfast DUP MLAs to discuss the termination of the Red Sky contracts. The Administrator BDO, which was the legal representative of Red Sky, was not present at this meeting.
- On 28 June and 30 June 2011 Minister McCausland, accompanied by DSD officials, met with the NIHE to discuss response maintenance contracts and the termination of Red Sky. On 30 June, the Minister advised the NIHE that he had asked the Department for a forensic examination of other contractors and therefore it would be inappropriate to issue or change contracts until this examination was completed. This would take in the region of 8 weeks and on the basis that the Administrator could continue to service the contracts.
- On 1 July 2011
  - The Minister wrote to Mr Brian Rowntree, the Chairman of the NIHE Board. In his letter he confirmed that he had asked officials to carry out a forensic investigation of other contractors. He went on to request that the Chairman put to the NIHE Board that the termination date of the Red Sky contracts should be extended beyond 14 July 2011 to allow an open procurement competition, subject to the Administrator stating that it could continue to service the contracts. He stated that this should be for a period of 6 months or until new contract procedures could be put in place.
  - Mr Rowntree wrote to the Permanent Secretary expressing serious misgivings in relation to the Minister's request.
  - The Permanent Secretary wrote to the Minister recommending that he should not issue a Ministerial Direction to the NIHE on the matter.
  - DUP Councillor Palmer received a telephone call from Minister McCausland's Special Adviser, Stephen Brimstone, in relation to her participation in the upcoming special NIHE Board meeting on this issue.
- On 4 July 2011
  - The Permanent Secretary and a DSD Housing Official met with the Chairman of NIHE to discuss the Minister's letter of 1 July 2011.
  - A further email was sent to the Administrator by NIHE stating that the Department had asked the Chairman to ascertain whether the Administrator could continue to service the contracts for 6 months rather than the 8 weeks originally communicated. Further communication established that the Administrator could not continue without the assistance of 'Newco' acting as managing agent.

- On 5 July 2011
  - An email was sent to the Chairman of NIHE by a DSD official advising that the Minister's Special Adviser thought 6 months was too long a timeframe for continuation of the contracts. The Chairman was asked if the question could be put to the Administrator to see whether it could continue to service the Red Sky contracts for 4 months instead of 6.
  - Councillor Palmer declared an interest as a member of the DUP and absented herself from the NIHE Board meeting. The board considered Minister McCausland's request but unanimously decided to reaffirm its position and proceed with the termination of the Red Sky contracts as planned on 14 July 2011. The board wrote to the Minister that day regarding its decision.
- On 7 July 2011, (following a briefing with the Permanent Secretary on 6 July) the Minister wrote a detailed response to the Chairman, ultimately confirming that the NIHE should proceed to termination of the Red Sky contracts on 14 July 2011 and move forward with the proposals to reassign contracts to adjacent contractors.
- On 15 July 2011 the Chairman wrote to Minister McCausland to confirm that the contracts had been reassigned to adjacent contractors with effect from 14 July 2011.

## Key Issues and Points of Evidence

44. The Committee took evidence on the actions of Minister McCausland in relation to the termination of the Red Sky contracts and the discussions regarding a possible extension of the Red Sky termination date. The Committee agreed that the former Minister's actions were the central issue to be considered during phase 3 of the Inquiry.
45. The Committee also heard extensive contextual evidence in relation to: the actions of Minister McCausland's Special Adviser; the role of the Department for Social Development; claims of political lobbying in favour of Red Sky; and allegations of unfair and sectarian treatment of Red Sky. The appropriateness of the actions of other former Ministers for Social Development in relation to the Red Sky contracts were also considered.

## Committee's Consideration of Evidence in Relation to the Actions of Minister McCausland

46. In considering the Terms of Reference for the Inquiry, the Committee agreed that the central issue to consider was the actions taken by the Minister following his decision to meet with East Belfast DUP MLAs and 'representatives of Red Sky' (former Managing Director and former independent Financial Director of Red Sky).
47. It was acknowledged by Minister McCausland that he sought to have the termination notice extended (the period varied: from 8 weeks initially, to 6 months, to finally 4 months). Therefore, the fundamental issue for the Committee to consider was whether Minister McCausland's discussions on the matter with the Chairman of NIHE and his subsequent correspondence with him requesting that the board consider extending the termination notice constituted "impropriety or irregularity", or whether the actions of the Minister were "appropriate".

### Minister McCausland's meeting with East Belfast MLAs and the former Managing Director and former independent Financial Director of Red Sky – 27 June 2011

48. Documentation relevant to this meeting is at appendix 10.6.
49. The DUP MLA, Mr Robin Newton, wrote to the Minister on 17 May 2011 requesting a meeting with him to discuss the decision of the NIHE Board to terminate the Red Sky contracts.
50. DSD officials advised the Minister to decline this meeting on the basis that it was an on-going contractual matter between the Housing Executive and Red Sky. The Permanent Secretary, Mr Haire, was clear however in his evidence to the Committee that a Minister may choose not to follow the advice of officials.
51. The Permanent Secretary also told the Committee that:
- "legally a Minister has an absolute right to attend such meetings. They just need to be very clear about what they can say and what their role is".*
52. In addition, Mr McCausland told the Committee that he sought legal advice that informed him that:
- "Ministers may meet with whom they choose."*
- The Committee agreed that it could not rely on this excerpt since the former Minister had exercised his right not to disclose the full legal advice and therefore the Committee had no way of verifying or contextualising this comment.
53. The formal note of the meeting of 27 June 2011 refers to a meeting Minister McCausland and his officials had with 3 East Belfast DUP MLAs and 'representatives of Red Sky'. The issue for discussion was the termination of the Red Sky contracts. The 'representatives of Red Sky' referred to in the note were in fact the former Managing Director and a former independent Financial Director of Red Sky. However, by this time Red Sky was in administration and under the control of BDO who had been appointed as the Administrator. BDO was therefore the legal representative of Red Sky in administration.
54. The Committee has noted that the Administrator (BDO) and the NIHE were not invited to or present at this meeting. NIHE did however provide an input to the briefing prepared for the Minister by DSD officials.
55. The former Chairman of the NIHE, Mr Brian Rowntree, told the Committee:

*"There were no representatives of the administrators, yet I believe that matters relating to the extension, or to Housing Executive contract provisions, were noted. I wondered why someone would be discussing an NDPB's business to a Newco that had not been identified, but, more importantly, where there might have been extensive conflicts in relation to that grouping having those discussions. If this was an organisation that was looking to potentially acquire the assets and the on-going provisions of Red Sky, then that would have left them with an obvious commercial advantage from those discussions. I hope that that was not the case, but, afterwards, I was shocked to see the note and quite shocked to see that the meeting had taken place."*

56. When, during oral evidence, the former Managing Director of Red Sky (Mr Peter Cooke) was asked to remind the Committee of how the meeting came about, Mr Cooke said:

*"Norman Hayes had contact with one of the local MLAs, Robin Newton, and prevailed upon him to see if he could bring any influence to bear in political circles for the termination to be delayed while we made the case, which we wished to make to the Housing Executive but that they did not want to listen to at the time, that the problem that it was referring to was not a problem that related to Red Sky in particular but a problem with the Housing Executive contracts that applied across its different contractors."*

57. DSD officials had provided a briefing for the Minister in advance of the meeting which included advice and a 'line to take'. The advice related to being cautious in relation to 'contractual matters'. It referred to the termination of the contracts as a matter between the NIHE and Red Sky and that 'matters in relation to the future of the company' being in the 'hands of the Administrator'. Furthermore, it stated that 'These matters are subject to on-going legal processes in which the Department has no role'.

58. The note of the meeting indicates that the Minister said that he had asked officials to instruct the NIHE to review all existing contracts to the same level of scrutiny as Red Sky had been subject to and that he would:

*'like to have the administrator in place until the 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.'*

59. The Committee in particular noted the Minister's reference that 'during this time the proposed new company might also be able to progress matters.' and considered whether this statement was evidence that the Minister went beyond the advice provided to him and that he facilitated a scenario which potentially assisted the commercial interests of a company at that meeting. When questioned by the Committee about the statement, the former Minister said:

*"I cannot recall the exact significance of that; I do not know"*

*"If it were a full minute, it might explain exactly what was meant, but it is only a note".*

60. The note of the meeting also states that the Minister indicated early in the meeting that:

*'these matters were currently with the Administrator and the Housing Executive'*

61. This statement clearly reflected the advice provided in the briefing provided to him by officials. In oral evidence Mr Wilkinson (DSD) stated that the brief to the Minister was very clear in relation to contractual matters and that:

*"At the meeting, it was very much the Minister listening to reps."*

62. At the same evidence session Mr Haire said:

*"You might argue that MLAs often bring up those issues of concern to Ministers....the Minister felt that it was his duty to listen.....There was no decision at that meeting. The Minister listened and heard a concern, but there was no action at that meeting ..."*

63. When Mr Wilkinson was asked whether the statement regarding the new company was compatible with the advice given by DSD officials to the Minister, Mr Wilkinson stated:
- “The key thing is that the Minister expressed his view at the time”.*
64. When asked if that was compatible with the line the Minister had been advised to take, Mr Wilkinson said:
- “I followed up why that was the Minister’s view and what he would like to achieve. We were quite clear that the decision making would be entirely a matter between the Housing Executive and the Administrator.”*
65. Mr Wilkinson also said
- “I am content that the meeting began and ended with clarity as to with whom and where responsibility – [interrupted]”.*
66. As regards the concerns expressed in the meeting around job losses, it was put to the former Minister by the Committee that TUPE (Transfer of Undertakings – protection of employment regulations) was there to minimise job losses. Mr McCausland expressed the view that contract transfer through TUPE isn’t as seamless as one would think in terms of impact on service and employees.
67. In considering the evidence on this issue the Committee agreed that the former Minister had a right to attend the meeting and that a Minister is not required to follow the advice of officials. According to the Ministerial Code of Conduct, Ministers are accountable to users of services and the community. It is therefore important that Ministers listen to the views of those service users and the community.
68. The Committee concluded that the Minister’s decision to attend the meeting was not in itself inappropriate but imprudent particularly as Red Sky was in administration and the Administrator, BDO, was not present.
69. Ministers are also required to observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds.
70. The Committee agreed that the Minister’s statement as indicated in the note of the meeting that he would *‘like to have the administrator in place until the 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’* was inappropriate.
- Whether it was his intention or not, the Minister’s position clearly reflected the commercial interests and objectives of Red Sky’s former management at that meeting.
  - The Minister’s statement is considered by the Committee as evidence that the Minister went beyond the advice of DSD officials and became involved with contractual matters that were between NIHE and the Administrator, BDO.

### Minister McCausland’s meeting with the NIHE - 30 June 2011

71. On 28 and 30 June 2011 Minister McCausland, accompanied by DSD officials, met with the NIHE to discuss response maintenance contracts and the termination of the Red Sky contracts. Documentation in relation to the meeting on 30 June 2011 is at appendix 10.7.
72. The draft minutes of the meeting provided to the Committee indicate that the Minister advised that he had asked the Department for a forensic examination of other contractors and therefore it would be inappropriate to issue or change contracts until this examination was completed and this was expected to take in the region of 8 weeks.

73. In his written evidence to the Committee (appendix 3), Mr Brian Rowntree, former Chairman of the NIHE, expressed concerns about potential lobbying and the Minister becoming involved in operational matters that were for the NIHE and its executive team.

74. He also wrote that the:

*'Minister requested that his department seek to nominate contractors for further review and these nominations were not totally in line with the prioritisation and work plan in NIHE.'*

75. The draft minutes of the meeting indicate that Mr Rowntree objected to the Minister's proposal, raising concerns in relation to engaging with a contractor who has acted inappropriately. He also expressed concerns that this way forward would not allow for proper maintenance provision to be in place.

76. Mr Cuddy, former Acting Chief Executive, told the Committee that he had over 30 years' experience in the public sector and:

*"...that was the first time that a Minister or senior manager had asked me or my colleagues to get involved in a public procurement....I was very concerned...that is why I asked for the permanent secretary to be there."*

77. Indeed Mr Haire, Permanent Secretary to DSD said:

*"I had not come across something like that in my career previously."*

78. As regards Minister McCausland's concerns that the issues with Red Sky may be present in other contractors, Mr Cuddy said:

*"...Our problem was that that might have been the case — as it turned out, it was the case — but two wrongs do not make a right. We were quite happy to say, "Yes, we will look at those contracts and if there are overpayments and overcharging, we will deal with those as well."*

*"..The problem was Red Sky was off the Richter scale; it stood out because of the scale of this. And the scale was identified through the forensic report."*

79. When asked by the Committee whether he had been able to offer any assurance to the Minister about the performance of other contractors Mr Cuddy replied:

*"I remember one question, and I responded by saying, "I have one query on my desk at the moment with a particular contractor .....but I made the point that I did not believe that it was material in terms of the wider cost of the contract."*

80. The Permanent Secretary wrote to the Committee on 4th November 2014 to clarify that:

*'there were two contract related response investigations in relation to another company dating back to October 2010. This information was provided at that time by the Housing Executive who also advised that a preliminary investigation suggested that there were serious issues to be addressed and a full investigation was underway.'*

81. In relation to his concerns that the issues being experienced with Red Sky may be present in other contractors, Mr McCausland told the Committee:

*"I wanted to be sure that we were not in a position where the Housing Executive removed contracts from one company and then transferred one of those contracts to another company in which similar issues might exist. No other company had been subjected to the same level of forensic scrutiny as Red Sky. There had been some work done on Leeway Maintain by the RIU (Repairs Inspection Unit) and in view of the whistle-blowing evidence about it, but I wanted to have an assurance that we were not in a position of simply moving contracts from a company where there were issues — certainly, serious issues — to another company where there might also be serious issues."*

82. In his evidence session, Mr McCausland was asked if he was operating outside his parameters in the action he was taking. He responded:

*“...this issue emerged within weeks — in fact, within days — of my arriving in the Department in May 2011. I wanted to have an opportunity to explore what the options might be so that, if there was a better option, it could be considered by the Housing Executive.”*

### Minister McCausland’s written request to the NIHE – 1 July 2011

83. Documentation relating to this section is at appendix 10.8.
84. Minister McCausland wrote to Mr Rowntree on 1 July 2011. In his letter he confirmed that he had asked officials to carry out a forensic investigation of other contractors. He then went on to request that the Chairman put to the Housing Executive Board that the termination date of the Red Sky contracts should be extended beyond 14 July 2011 to allow an open procurement competition, subject to the Administrator stating that it could continue. He stated that this contract should be for a period of six months or until new contract procedures could be put in place.
85. The Committee noted that Mr Rowntree wrote to the Permanent Secretary the same day expressing serious misgivings in relation to the Minister’s request. In the letter he expressed concerns and reservations about ‘the road you are pushing us down’. As well as reminding Mr Haire of the outcome of NIHE investigations into Red Sky, he highlighted concerns over a major conflict of interest, should its senior management be awarded a contract as a reconstituted company. Mr Rowntree also made references to meetings that may constitute canvassing and lobbying for government contracts. He asked Mr Haire to step back and withdraw DSD’s involvement and that of his Minister in what was an operational issue for NIHE and stated that he would seek legal advice if Mr Haire was not disposed to do so.
86. In written evidence Mr Rowntree stated (the Minister’s request):

*‘effectively was a request to suspend or remove the notice of contract termination... This effectively reinstated the original contract... to a non-viable entity... which would clearly breach the monitoring and procurement provisions within NIHE.’*

87. The Committee considered written and oral evidence regarding a detailed briefing provided to the Minister by the Permanent Secretary which stated that he did not believe ‘that the reasons and any supporting evidence is sufficiently rigorous in this matter to justify the issue of a direction to the Northern Ireland Housing Executive.’

88. Mr Haire also told the Committee that he met with the NIHE Chairman on 4th July 2011, the day before its special board meeting, to ensure that he was clear about exactly what the Minister was requesting.

*“It was not a direction that he had been given, it was a request to look at this issue and put it to the board, and it emphasised the point about the role of the administrator.”*

*“It seems to me that he has a right to ask the board, but he does not have the right to direct it.”*

89. Mr McCausland stated in oral evidence that:

*“the letter is there. It is quite clear. It makes a request, and that is all.”*

And

*“.....The role of the Department with regard to a public body under its ambit is one that needs to be carefully considered. I did not do anything that was untoward, and, as you can see quite clearly from the correspondence, in the end, when the Housing Executive took its decision, I endorsed that decision.”*

90. The Committee concluded that whereas the Minister had clearly contemplated issuing a formal direction to the board, in the end he stopped short of doing so.
91. The Committee acknowledges that it is appropriate for Ministers to make requests in relation to the stewardship of public funds for which they are ultimately responsible to the Assembly. However, the Committee concluded that the Minister's request related to a contractual matter that was for the NIHE to deal with and not a matter for the Minister.
92. The Committee concluded that the Minister's request to the NIHE Board to extend the termination date would have effectively reinstated the contract to an organisation that had lost the 'trust and confidence' of the NIHE necessary for the satisfactory operation of its contracts and which had significantly overcharged the NIHE for work it had done.
93. The Committee concluded that his request, rather than protect the public purse, had the potential to undermine value for money service provision to tenants.
94. The Committee has therefore concluded that the Minister's request would not have protected the public purse but would have facilitated the interests of a private organisation in securing a public contract. In these circumstances the Committee concluded that the Minister acted inappropriately.

### Minister McCausland's Engagement of Councillor Palmer – 1 July 2011

95. The Committee heard extensive, conflicting evidence in relation to a phone call made by Minister McCausland's Special Adviser, Mr Brimstone, to DUP Councillor Jenny Palmer, a member of the NIHE Board, on 1 July 2011.
96. This was a difficult and time intensive part of the Inquiry due to conflicts in evidence, even when witnesses were under oath or affirmation. In an attempt to clarify matters, the Committee used its powers under Section 44(7) of the Northern Ireland Act 1998, to compel the release of a report of a fact-finding exercise conducted by DFP into the allegations made in the Spotlight programme about the actions of Mr Brimstone.
97. The redacted report of the fact-finding exercise and related documentation can be found at appendix 5.

#### **The decision to contact Councillor Palmer**

98. In oral evidence to the Committee Mr Brimstone said that it had been he and the Minister together and no one else who decided that Councillor Palmer should be contacted, although he couldn't recall whose idea it was.
99. The Committee has since had sight of the (redacted) fact-finding report into the allegations made by Councillor Palmer against Mr Brimstone on the Spotlight programme aired on 3 July 2013. The Committee notes that Mr Brimstone was asked if he discussed the need to make the call with anyone else. Mr Brimstone's response is recorded in the report as:

*'The whole process was two and a half years ago and he couldn't specifically recall who he had conversations with around calling JP. However, there would have been strategic discussions within the party around such issues but that he couldn't recall the detail. The telephone call wasn't intended to take place at that time as he was just looking JPs details from Alan Ewart.'*

100. The Committee noted the conflict in the oral evidence presented to the Committee and that provided in the fact-finding report. Specifically, when Mr Brimstone was interviewed as part of the fact-finding exercise he noted that there would have been 'strategic discussions within the party' but when he gave evidence to the Committee he stated that only he and the Minister would have discussed whether Councillor Palmer would have been contacted. The Committee found this unexplained conflict in evidence unsatisfactory.

101. The former Minister did not dispute in oral evidence that the phone call to Councillor Palmer was made as a product of discussion between him and Mr Brimstone:
- “I have no real recollection of it, but that would have been the normal practice.”*
102. However the Committee has subsequently had sight of a transcript from The View programme (see appendix 11) aired on 4 July 2013 in which Minister McCausland denied that the call was made at his behest and denied knowing that Mr Brimstone was going to make the phone call. The Committee wrote to Mr McCausland seeking clarification on the clear contradiction between his evidence given to the Committee and his interview on The View in July 2013.
103. Mr McCausland replied to the Committee stating that he believed that there was no difficulty in a reasonable person reconciling the statements he made to the Committee and his statements on The View. (appendix 4)
104. However the Committee is not satisfied that Mr McCausland has credibly explained this conflict in his own statements.
105. The Committee is clear that Mr McCausland has not denied that the call was made at his behest in his oral evidence to the Inquiry and that he had further pointed out *“that would have been the normal practice.”*
106. The Committee concluded that it was reasonable to assume that Minister McCausland was aware that the call was going to be made, even though he has stated in evidence to the Committee that he has no real recollection of the discussion between himself and Mr Brimstone ahead of the call being made. The Committee found the lack of clarity surrounding the evidence of Mr Brimstone and Mr McCausland to be unsatisfactory and believes that Mr Brimstone and Mr McCausland could have been more candid on the matter.

#### **The phone call to Councillor Palmer and related events**

107. Councillor Palmer told the Committee that during the telephone conversation Mr Brimstone said:
- “I need you to go into the boardroom on Tuesday, go against the decision of the board to terminate the contract and ask for an extension to the contract.”*
- “..he became aggressive. ....he said, “Look, there is no point in you being on the board of the Housing Executive unless you are prepared to do what the party needs you to do.”*
- She confirmed that he told her *“the party comes first”*.
108. Councillor Palmer confirmed this account of the conversation when giving evidence under oath on 8 January 2015.
109. The Committee heard that Councillor Palmer raised her concerns in relation to the phone call with Mr Rowntree, ahead of the NIHE special board meeting which had been called to discuss the Red Sky termination. He confirmed to the Committee that Councillor Palmer was distressed and traumatised that she had been separated out from the board as a special member. He went on to remind the Committee that Councillor Palmer is not appointed to the board by her party. She is appointed to the Housing Council by her local authority and to the NIHE Board by the Housing Council. Mr Rowntree told the Committee that he told Councillor Palmer:
- “...given that the request from the Minister was a ministerial consideration, it went beyond a consideration in my view, if someone was attempting to make sure that a representative of the Minister — as the Minister’s SpAd saw them — was being instructed to take a party line in the boardroom.”*

He also said

*"...the implication of her words was "We do not have confidence in you unless you do this, and you must do what is required of you". However, in her view, she was doing what was required of her because the Housing Council was also supporting our motion not to accept the extension of the contract, because the Housing Council members on the board were unanimous in that regard."*

110. Councillor Palmer also told the Committee that Michael Sands (DSD) relayed a conversation that he said he had with Mr Brimstone about the phone call. Councillor Palmer alleged Mr Sands said to her:

*"Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board."*

111. Mr Sands has, under affirmation, denied Councillor Palmer's assertion that Mr Brimstone told him about the phone call. He told the Committee that he only became aware of the phone call when it was brought to the attention of the Department by the Permanent Secretary. Mr Brimstone also said that he does not believe he told Mr Sands about the phone call.

112. In support of her account of the nature of the phone call, Councillor Palmer told the Committee that Mr Brimstone had said at a party meeting with Mr Peter Robinson MLA and others, which took place after the Spotlight programme had aired, that her account of the phone call was essentially correct. She provided the Committee with redacted copies of 5 draft apologies that were issued to her following the meeting (see appendix 5). Councillor Palmer stated that the drafts demonstrated that the only issue discussed during the phone call was Red Sky.

113. Mr Brimstone did not accept that he said that Councillor Palmer's account of the phone call was essentially accurate but he refused to discuss the party meeting he attended with Peter Robinson MLA, Councillor Palmer and others, or the draft apologies, any further, because they related to "internal party matters". Mr Brimstone did however point out that the draft apologies were redacted and so did not present the full picture. The Committee noted however that Mr Brimstone did not provide any further material to support his assertions. The Committee also noted that during this evidence session Mr Brimstone had been advised by the Chair that "internal party matters" was not a legitimate reason for refusing to answer questions from Committee members.

114. The Committee also noted that Mr Brimstone, during his interview as part of the fact-finding exercise, had referred to, but not gone into any detail on, "strategic discussions within the party" and "Minister McCausland's position which was reflective of the overall party position." (appendix 5)

115. Mr Brimstone's recollection of the phone call, confirmed under affirmation, was based on notes he said he made after the Spotlight programme aired, and was as follows:

*"I outlined the issue regarding the Red Sky contract, including some of the allegations that had been made publicly. In light of the special board meeting in the next week, which we had been made aware of, at which the board would vote on terminating the Red Sky contract, I said that the Minister wanted me to brief her on his concerns and ask if she would reflect those concerns to the board in an accurate fashion."*

*"The Minister did not have confidence in the then chairman to accurately reflect his position — his concerns about the handling of contracts by senior management and the chairman of the board — to the wider board. He believed that he had received no convincing assurance from the chairman that the Red Sky issues were not prevalent among other contractors, particularly adjacent contractors who would automatically get the Red Sky contracts post-termination, if the board voted that way."*

*“My recollection is that I outlined how the Minister wanted a clear and transparent tendering exercise, as had been indicated in writing to the chairman, which would also allow time to get assurances that the same Red Sky issues were not happening with other contractors as well. There was no issue with terminating the Red Sky contract early, due to the issues identified, but the Minister wanted the termination to take place when there could be some degree of assurance that the new contracts could be properly delivered. To date, he had not been given any evidentially based assurance by the then chairman.”*

*“Councillor Palmer, from my recollection, became very defensive regarding the then chairman and strongly contested any suggestion that he was not carrying out his duties appropriately. Councillor Palmer went on to tell me about her role on the board’s audit subcommittee and said that, in her view, all of the fault lay with Red Sky, the issues were solely limited to Red Sky and the management of the Northern Ireland Housing Executive was appropriately managing the response maintenance contract.”*

*“I responded by asking about Leeway Maintain, another response maintenance contractor in Belfast about which the housing Executive internal audit department was raising concerns regarding overcharging etc — the same issues as with Red Sky. Councillor Palmer refused to accept that. I again asked that she reflect the Minister’s concerns to the board. She said she could not do that. I believe that the phone call ended after this point, and I did not pursue the issue with Councillor Palmer any further.”*

116. In considering the issue of the engagement of Councillor Palmer in the process, the Committee also explored what effect Councillor Palmer could have had on the outcome of the board meeting had she not declared an interest and absented herself from the meeting.

117. Councillor Palmer has told the Committee in oral evidence:

*“I had to have evidence to disagree with the board, and the evidence that was presented to me throughout my time on audit was quite clear that there were serious issues. So, I believe that the only reason — the only conclusion that I can come to — is the fact that I would’ve been used as a pawn in the game of politics to say that the sectarian card was alive at the Northern Ireland Housing Executive.”*

118. The Committee expressed concern at the proclaimed inability of some witnesses to recollect the circumstances surrounding a series of key events as well as the contradictory nature of evidence presented by witnesses even when given under oath or affirmation.

119. While the Committee accepts that witnesses providing evidence voluntarily may refuse to answer any question, it believes that Mr Brimstone was deliberately evasive in his answers to the point of obstructing the Committee in carrying out its statutory function.

120. The Committee notes that Mr Brimstone took the following affirmation:

*I, Stephen Brimstone do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be truthful and honest, and that I will give the Committee/Assembly all such information and assistance as I can to enable it to discharge its responsibilities.*

It is the Committee’s belief that Mr Brimstone did not give the information and assistance which the Committee expected in view of the content of his affirmation.

121. The Committee considered the conflicting accounts of the content of the telephone call made by Mr Brimstone to Councillor Palmer and related events to resolve this issue.

122. The Committee noted that while Mr Brimstone gave evidence that the conversation covered a number of issues, the redacted copies of the draft apology provided by Councillor Palmer indicate that only one issue was discussed – the termination of the Red Sky contracts. While the Committee noted Mr Brimstone’s comment that this was a redacted draft the Committee also noted that he did not take the opportunity to provide the Committee with the unredacted version in order to verify his account.

123. The Committee noted that Mr Brimstone accepted in his interview for the fact-finding exercise that his defence was weak if he couldn't recall exactly what was said during the phone call.
124. In contrast to Mr Brimstone's evidence the Committee found Councillor Palmer's evidence to be compelling, consistent and convincing and therefore the Committee accepted Councillor Palmer's account of the phone call. The Committee therefore concluded that Mr Brimstone was inappropriately attempting to influence the board's discussions on behalf on the Minister.

### Email from DSD official to the NIHE Chairman

125. The Committee heard evidence in relation to a conversation between Mr Brimstone and Mr Sands (DSD) that led to an email being sent by Mr Sands to Mr Rowntree in advance of the board meeting on 5 July 2011, in which he outlined the views of the Special Adviser on the timeframe for continuation by the Red Sky Administrator. (see appendix 10.9)
126. Mr Rowntree states in his written submission that the email referred to matters that were operational to NIHE and not the concern of DSD officials.
- '...there appeared to be a dedicated attempt to lobby for this extension in support of Red Sky. Why?'*
127. In oral evidence Mr Rowntree said that the option had not been appraised financially or substantiated and further:
- "the email failed to clarify that the administrators, the evening before, had emailed our procurement department to say that they were in no position to continue with the contract to Red Sky and that the discussions on extending the contract were, in point of fact, defunct at that stage."*
128. The Committee has had sight of the NIHE Board minutes in which concerns are recorded that the Minister may be directing the board (appendix 10.9).
129. During his evidence session Mr Brimstone read the email to the Committee and said that he couldn't see any instruction in it and that he couldn't understand how the NIHE Board or Chairman could interpret it that way.
130. This email is considered in more detail in the contextual issues section of the report as regards the appropriateness of the actions of the Special Adviser and the Role of the Department.
131. The Committee concluded that it is not clear that the email had the imprimatur of Minister McCausland although it was a revision of the Minister's original request that the Committee has concluded was inappropriate.

### Minister's response to the decision of the NIHE Board

132. Documents relating to this section are at appendix 10.10.
133. Following the board meeting of 5 July 2011, Mr Rowntree issued a response to the Minister that the board had, that morning, reconfirmed its view that the trust and confidence necessary for the satisfactory operation of the contracts by Red Sky had been profoundly undermined.
134. After setting out the board's concerns, Mr Rowntree went on to advise that:
- 'in the event that your office issues a statutory direction pursuant to article 10 without the matter having been placed before the Executive Committee ...the Board ...will immediately challenge the legality of such a direction in the High Court.'*

135. Mr Rowntree's written submission asserts that the Minister described his response as a "Declaration of War" and that the resulting relationship was '*challenging from hereon*'.
136. The Minister wrote to Mr Rowntree expressing grave disappointment and concern with how the matter had been dealt with and emphasised that his primary concern had been to ensure value for money service provision. As such he had instructed officials to carry out investigations into other contractors. The Minister also emphasised the need for expediency in relation to the implementation of the new contract management regime.
137. The Minister went on to state that, because of the concerns he had, moving quickly to open procurement was the most appropriate way to assign the Red Sky contracts. However, given that the Administrator could not assure services beyond the end of July without a new company acting as "managing agent" for the Administrator and that the head of procurement had advised that a 4 month contract would not be viable, the Minister confirmed:
- '...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 ...'*
138. As previously noted Mr McCausland said in oral evidence
- ".....The role of the Department with regard to a public body under its ambit is one that needs to be carefully considered. I did not do anything that was untoward, and, as you can see quite clearly from the correspondence, in the end, when the Housing Executive took its decision, I endorsed that decision."*
139. The Committee concluded that while it was content that Minister McCausland was not formally directing the board, his actions were nevertheless inappropriate. This conclusion is supported by the fact the Permanent Secretary of DSD, the former Acting Deputy Chief Executive of NIHE and the former Chairman of NIHE have told the Committee that they have never come across such an intervention previously in their careers.
140. The Committee considers it entirely inappropriate that the decision on whether to take forward a formal disciplinary investigation into the actions of a Special Adviser rests with the appointing Minister and recommends that this process is urgently reviewed.
141. The Committee is also of the opinion that the existing mechanisms for reviewing the conduct of Ministers against the Ministerial Code of Conduct are not sufficiently robust and should be urgently reviewed by the Assembly/Executive.

## Committee's Consideration of Evidence in Relation to Contextual Issues

### The actions of Minister McCausland's Special Adviser

142. The Committee understands that the conduct of a Minister's Special Adviser in his office cannot be easily separated from that of a Minister, given the particular nature of the relationship enjoyed between Minister and Special Adviser who only holds office at the behest of the Minister.
143. Mr Brimstone has told the Committee:
- "in my role as special adviser within a Department, it's seeking information, and I don't go to the Minister every time I seek information ..."*
144. The Committee had to consider whether it was content that there was sufficient evidence to indicate that certain actions of Mr Brimstone were taken with the knowledge and agreement/ imprimatur of the former Minister or indeed whether this was required.
145. The Committee has considered papers and extensive oral evidence in relation to Mr Brimstone's actions including the redacted report of a fact-finding investigation, initiated by the Permanent Secretary, into the allegations made against Mr Brimstone in the Spotlight Programme in July 2013. Of note, Minister McCausland considered the report and concluded that no further action needed to be taken, in spite of a recommendation by the independent author that a formal disciplinary investigation should be commenced.
146. Key actions of the Special Adviser that were considered by the Committee were: an amendment to a response to Mr Newton's request for a meeting with the Minister; a telephone call to Councillor Palmer; a telephone call to the Red Sky Administrator BDO and an email from a DSD official to Brian Rowntree on the morning of the NIHE Board meeting of 5 July 2011.

#### **Amendment to Robin Newton's Request for a meeting**

147. The Committee is aware that Mr Brimstone made an amendment to the response to Robin Newton's request for a meeting between the Minister, East Belfast DUP MLAs and 'representatives of Red Sky' in relation to the Red Sky termination. The response drafted for the Minister by Department officials stated that a meeting would not be beneficial as the matter was a contractual one between NIHE and Red Sky. The final letter, whilst still stating clearly that this was a contractual matter, was amended by the Special Adviser to conclude with the line *'If you feel that a meeting would still be beneficial, please contact ...'*
148. The Committee is content that written evidence has been provided by the Department to demonstrate that the amendment was made with the knowledge and agreement of the Minister. As noted earlier, the Committee agreed that the Minister was entitled to attend the meeting but his attendance was considered by the Committee to be imprudent as Red Sky was in administration and the Administrator, BDO, was not present.

#### **Telephone call to Administrator, BDO**

149. The Committee considered written evidence from the Administrator BDO that a brief call was received from Mr Brimstone on 28 June 2011 (the day after the Minister met with East Belfast DUP MLAs and the former Managing Director and former independent Financial Director of Red Sky ('Representatives of Red Sky')). The Administrator's written submission states that Mr Brimstone was seeking a letter of comfort in relation to the Administrator's

ability to meet the terms of the contract until 14th July 2011 or for an additional number of weeks.

150. The Committee is content that Mr Brimstone was seeking information in relation to the Minister's request and therefore this phone call did not require the agreement of the Minister.
151. The Committee however is concerned that this was further evidence of a concerted effort at the time in relation to the Minister's request, an inappropriate request which stood to support the commercial interests of 'Newco'.

**Telephone call to Councillor Palmer**

152. This issue is covered in the Committee's consideration of evidence relating to the actions of Minister McCausland in paragraphs 98 – 124.

**Email from Michael Sands (DSD) to Brian Rowntree – 5 July 2011**

153. The Committee was provided with a copy of an e-mail that was sent to Brian Rowntree by DSD official, Michael Sands, at 7.40 am on 5 July 2011, the morning of the NIHE special board meeting. This meeting was called specifically to address the Minister's request regarding an extension of the termination date of the Red Sky contract. A copy of the email is contained in appendix 10.9.

154. Regardless of the conflicting evidence (even when witnesses were under oath or affirmation) surrounding this email, it was nevertheless sent as a result of a conversation Mr Brimstone had with Mr Sands (and possibly others within the Department for Social Development).

155. In written evidence Mr Rowntree has stated that the email referred to matters that were:

*'operational and not the concern of DSD officials' ...there appeared to be a dedicated attempt to lobby for this extension in favour of Red Sky. Why?'*

He also said that in his opinion the email was:

*"a continuation of the discussion that Jenny [Councillor Palmer] had with me."*

156. On the face of it, the email suggests that it was Mr Brimstone who asked for the termination period to be extended by 4 months (as opposed to 6). Mr Brimstone did not accept Mr Sands' account of the genesis of the email in that he did not recall having a conversation with him in Mr Sands' office at 7.30 that morning whereas Mr Sands maintained this conversation did take place. Mr Brimstone said that he could not recall the conversation however he accepted that it was clear from the official record:

*"that I had a conversation with Mr Sands and that the outcome of that conversation was that he would send an email to the Chairman to ask if certain things were possible."*

157. Mr Brimstone told the Committee that he saw no instruction in the email and further, he did not believe that one can read into the email that he requested that it be sent.
158. He also said that the conversation may well have been instigated by him and it may not have just been between Mr Sands and himself. He drew the Committee's attention to the fact that the email says "our advice" in reference to the CPD guidelines. "Our advice" he said, refers to Department's advice from CPD. Mr Brimstone also said that he would have assumed that the Minister would have been aware that the NIHE was to be asked about a change from 6 months to 4 months but not that a specific email was going to be sent.

159. Indeed Michael Sands told the Committee:

*"We had taken advice from CPD on the time that it would take to undertake a procurement exercise."*

160. In contrast the Permanent Secretary said that he:
- "...did not understand why this request had gone in the process, but the key issue was the letter from the Minister."*
161. In correspondence to the Committee, Mr McCausland said that the email was sent over three and a half years ago and he could not recall any conversations about the matter.
162. The Committee also considered extensive, conflicting evidence between Councillor Palmer, Michael Sands and Mr Brimstone in relation to whether Mr Sands said that Mr Brimstone was "going mad" trying to locate the email in the Department around the time of the 2013 fact-finding exercise. The Committee was concerned that, following its enquiries, it transpired that the email was not on the Department's TRIM system and therefore not discoverable around that time.
163. The Committee's conclusions on the role of the Department in the sending of this email are included in paragraphs 173-177.
164. The Committee has expressed concern that the former Minister had decided that no further action needed to be taken in relation to the outcome of the fact-finding exercise, even though the independent author of the report recommended that a disciplinary investigation should be commenced.
165. The Committee was concerned by the conflicts in the evidence, even under oath or affirmation, given by witnesses in relation to this email.
166. The Committee concluded that it considers the Minister's letter of 1 July to be the central issue to its Terms of Reference for phase 3 of the Inquiry. The email proposing a reduction of the original requested extension of the termination from 6 months to 4 months is accepted by the Committee as a modification of that request.

## The Role of the Department for Social Development

167. The Committee has considered extensive evidence from the Department about its role in the matters being considered in phase 3 of the Inquiry.
168. The Committee has heard that Department advised Minister McCausland to decline an invitation to meet with East Belfast DUP MLAs and 'representatives of Red Sky'. When the Minister decided to attend the meeting however, the Department provided him with a briefing and departmental officials also attended the meeting which was held on 27 June 2011 to provide support to the Minister. The Department also provided a briefing and support for the Minister's meeting with the NIHE on 30 June 2011, advice on the letter the Minister sent to Mr Rowntree on 1 July 2011 and finally, advice in relation to the appropriateness of issuing an Article 10 Direction under the Housing (Northern Ireland) Order 1981.
169. Mr Haire, the Permanent Secretary for the Department for Social Development told the Committee:
- "...one puts advice to Ministers but it is the job of Ministers to decide."*
- Mr Haire also referred to a mechanism called a Ministerial Direction which Permanent Secretaries can request, should a Minister ask for something to be done involving public money that a Permanent Secretary cannot justify.
170. In considering the actions taken by the Department in the context of the DFP Guidelines "Managing Public Money Northern Ireland" the Committee concluded:

171. The Committee is content that the guidelines clearly indicate that officials *should* still provide advice and guidance going forward, even if a Minister makes a decision against their previous advice.
172. The Committee is content that the Department was consistent in their advice around proceeding with caution in relation to contractual matters and, in the end, appropriately recommended that an Article 10 Direction under the Housing (Northern Ireland) Order 1981 should not be issued. As noted above the Minister, in the end, followed this advice. The Committee notes that the only recourse to challenging an Article 10 direction is legal action. The Committee suggests that where it is clear that a Minister intends to issue a Direction, a formal intermediate step is taken in an attempt to seek an agreed way forward.
173. As noted in the Committee's consideration of the actions of the Minister's Special Adviser (at paragraphs 153-162), the Committee agreed that it was inappropriate for the Department to issue an email to Mr Rowntree on the morning of the NIHE Board meeting, setting out the Special Adviser's opinion that 6 months was too long a time frame for continuation and '*could the question of 4 months be put to BDO ... rather than 6.*'
174. The Committee received conflicting evidence from Mr Sands and Mr Brimstone as to how it was decided to send this email and who made this decision. This raised concerns in the Committee as to the full extent and appropriateness of the role of the Department in the revised request to Mr Rowntree.
175. The Committee notes that the fact-finding report refers to this email stating that '*In any further investigation it would probably be important to establish the facts around this matter, including who set up the meeting.*'
176. The Committee wrote to the Department to ascertain whether it had carried out any such investigation. Subsequently, the Committee received correspondence from the Department on 9 March 2015 which states:
- 'The Department has not undertaken any investigation in relation to the email being sent or in relation to any meeting that took place that led to the email being sent. In relation to this matter, the Department would refer the Committee to the evidence already provided by Mr Michael Sands and Mr Stephen Brimstone.'*
177. The Committee found the Department's inaction on this matter unacceptable.
178. The Committee is also of the opinion that the existing civil service guidelines and mechanisms for challenging Ministers in relation to their becoming involved in operational or contractual matters are not sufficiently robust and should be urgently reviewed and that the terms of reference for this review should include Non Departmental Public Bodies.

### Evidence of Political Lobbying in favour of Red Sky

179. The UK Public Affairs Council (UKPAC) promotes and upholds effective self-regulation for those professionally engaged in public affairs. It defines lobbying as:
- ..in a professional capacity, attempting to influence, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence.*
180. Senior NIHE officials, past and present have told the Committee that they were unaware of any history of political lobbying on behalf of Red Sky.
181. In written correspondence, the NIHE has confirmed what it told the Committee in oral evidence that it:

*'Has no evidence of any political lobbying on behalf of Red Sky, nor have they been able to locate any correspondence or records of meetings on this issue. Current employees of the Housing Executive are not aware of any lobbying taking place.'*

182. In regard to a meeting of 28 April 2011 (see appendix 10.3) between the NIHE and DUP MLAs, the Permanent Secretary Mr Haire said:

*"The Housing Executive is a major organisation and meets many MLAs on many issues. Obviously, this was a significant issue, and it felt that it was an important meeting, because the issue of Red Sky had come into the political sphere."*

183. In oral evidence relating to this meeting Dr John McPeake said:

*"I did not get the impression the MLAs were unhappy with us terminating the contract because their workmanship was poor. They were more concerned about the fact that the decision happened in the heels of an election..... Equally, they expressed worries about the effect of the termination on employment."*

He said he was of the impression that the political representatives left the meeting more reassured in relation to the employment position.

*"I left the meeting ...with ...the view that we had done a decent job of explaining what was happening and what the next steps were."*

184. The Committee believes that it is reasonable and, indeed, expected, that public representatives should meet Ministers to discuss major issues in their constituency such as possible job losses.
185. Dr John McPeake told the Committee that he was not conscious of having picked up any history of political lobbying. He also stated that *"within a relatively short period, quite a lot of concerns were raised by local politicians, members of staff who were managing the contracts, and by tenants. I would not categorise that as "political lobbying"; I would categorise it as dissatisfaction with the quality of service."*
186. The Committee agreed that acceptable political representation included advocacy by an elected representative on behalf of his/her constituents in respect of services provided by public and private agencies. In the context of the Inquiry this refers to representation made by elected representatives to the NIHE and DSD about the poor standard of workmanship by Red Sky.
187. There is no evidence to suggest that there had been lobbying by political representatives on behalf of or against Red Sky before the decision to terminate the Red Sky contracts was taken.
188. The Committee also considered the importance of the subsequent meeting between the Minister, three East Belfast MLAs (Peter Robinson, Robin Newton and Sammy Douglas) and the former Managing Director and former independent Financial Director of Red Sky on 27 June 2011, in influencing the Minister's decision to request the NIHE Board extend the termination date of the Red Sky contracts.
189. The Committee understands, based on a letter Minister McCausland wrote to Naomi Long MP shortly after taking up office in May 2011, (appendix 10.4), that he was assured that the Housing Executive firmly believed that its management of what was a very serious matter was fair, reasonable and robust.
190. The Minister met the three MLAs and the former Managing Director and independent Financial Director of Red Sky on 27 June 2011. At this time Red Sky was in administration. Documentation in relation to this meeting is at appendix 10.6.

191. The Committee acknowledges that the MLAs may have been concerned about the potential job losses associated with the termination of the contracts and wished to raise their concerns with the Minister on this matter. However, as noted in Mr Brimstone's interview statement to the fact-finding exercise *'Although there were initial concerns about job losses this would not be a major issue either as TUPE regulations would apply and the jobs would have been handed over to other contractors'*.
192. The Committee also notes that this issue had been addressed by NIHE officials at the meeting of 28 April 2011, attended by the same three political representatives, who explained the TUPE arrangements that would come into effect following the reallocation of the Red Sky contracts to adjacent contractors. (see appendix 10.3)
193. Also, as noted above in paragraph 56 when asked how the meeting of 27 June 2011 came about the former Managing Director of Red Sky stated:
- "Norman Hayes (the owner of Red Sky) had contact with one of the local MLAs, Robin Newton, and prevailed upon him to see if he could bring any influence to bear in political circles for the termination to be delayed while we made the case, which we wished to make to the Housing Executive but that they did not want to listen to at the time, that the problem that it was referring to was not a problem that related to Red Sky in particular but a problem with the Housing Executive contracts that applied across its different contractors."*
194. The Minister stated in his evidence that he did not seek to have the termination of the contracts rescinded but rather the termination notice extended to allow for issues relating to the handover of contracts to be considered. In particular, he stated that he was concerned that the problems identified with Red Sky may also present in other contractors including those to whom the Red Sky contracts were to be allocated.
195. However, the Committee noted that in the Minister's letter to the Chairman of the NIHE on 1 July 2011 (appendix 10.8) the Minister also included reference to the proposed extended period being for 6 months or until 'the new contract procedures can be put in place'.
196. Therefore, while further clarification may have been sought on TUPE arrangements at this meeting, overall the evidence indicates to the Committee that the key aim of the meeting of 27 June 2011 was to obtain the Minister's commitment to bring influence to bear on the NIHE in order to have the termination date of the Red Sky contracts extended.

**Further motivation for requesting an extension to the termination date**

197. The Committee noted that the fact-finding report (appendix 5) records that, when asked if he discussed the need to make the call to Councillor Palmer with anyone else, Mr Brimstone replied that *'he couldn't specifically recall who he had conversations with around calling JP'* but goes on to say *'there would have been strategic discussions within the party around such issues but he couldn't recall the detail'*.
198. The Committee also noted Mr Brimstone's response to question 5 of the fact-finding exercise which asked what he recalled about the conversation he had with Councillor Palmer. Mr Brimstone is noted to have stated that he made the telephone call to Councillor Palmer *'in order to fully brief JP on Minister McCausland's position on the matter which was reflective of the party's overall position'*.
199. He is also recorded as stating that when Councillor Palmer was asked *'to consider and reflect the party position to the Board so that they understood and were aware of the Minister's position, she was not happy to do so'*.
200. The Committee also noted in the fact-finding report that Mr Brimstone said he was initially unaware who Red Sky were *'however just prior to joining the Department it had become a big issue for elections in East Belfast'*. The description of the Red Sky termination as a *'big issue*

for elections in East Belfast' is supported by evidence given by Dr John McPeake regarding the meeting with East Belfast MLAs on 28 April 2011 (paragraph 183).

201. Noting Mr McCausland's actions following his meeting with party colleagues, and the former Managing Director and former independent Financial Director of Red Sky and, in particular, the evidence given by Mr Brimstone in his fact-finding interview, the Committee has been driven to the conclusion that the decision to seek to extend the termination date of the Red Sky contracts was politically motivated.

## Evidence of any sectarian element or unfair treatment of Red Sky

### **Performance and overcharging**

202. Documentation regarding investigations into Red Sky Group (2006 – 2010) can be found at appendix 9.
203. NIHE Officials past and present have accepted there were performance issues on the part of NIHE including competence and conduct of some staff, contract management processes and organisational structure. The Committee has considered and reported on the well-documented failings of the NIHE as part of phase 2 of its Inquiry.
204. The Committee has also heard extensive evidence as regards relationship issues between Red Sky and the Housing Executive and a difficult and volatile history in relation to contract delivery. Peter Cooke (former Managing Director of Red Sky) has accepted that there were a number of issues that were the responsibility of Red Sky.
205. In written evidence Mr Rowntree referred to on-going reviews in line with Repairs Inspection Unit (RIU) and NIHE audit reports. In oral evidence he stated:
- “Red Sky was not the only contractor under investigation, but it was the most difficult contractor in its relationship with the organisation and its adherence to standards. They were way ahead in negative indicators, and, as an organisation, we were duty-bound to respond.”*
206. In late 2010, NIHE asked Red Sky to respond to the findings of its Newtownabbey RIU and ASM Howarth Reports of investigations into Red Sky's performance.
207. The Committee has heard of some very difficult and tense meetings and correspondence between NIHE and Red Sky in relation to the findings contained in these reports. Ultimately, the NIHE Board agreed to terminate the contracts in April 2011. The Committee has had sight of the notification of termination and termination notices (appendix 10) which indicate:
- ‘Although there is no requirement to give reasons for the notice, the Board has taken the view that the trust and confidence necessary for the satisfactory operation of these contracts has been undermined to the extent that the Northern Ireland Housing Executive has decided to service notice and terminate the above contracts’*
208. In his written evidence, Mr Rowntree stated that the board received a comprehensive briefing on the options including contract termination. He maintained that the board took time over its deliberations and consideration of evidence and agreed unanimously to terminate the Red Sky response maintenance contracts with the maximum 13 week notice period.
209. Allegations have been made that Red Sky had been treated unfairly by NIHE. Peter Cooke, former Managing Director of Red Sky said:
- “I would use the word “victimisation”, but I cannot give you the reason behind that because I do not know.”*
210. Mr Cooke stated in written evidence that Red Sky was treated inequitably compared to other response maintenance contractors and that the NIHE action was a gross breach of contract.

In oral evidence Mr Cooke accepted that he had no evidence of how other contractors conducted themselves.

211. On this issue the Committee noted that Mr Cooke's evidence was based on assumption and supposition and allegations which could not be substantiated.

### **The question of sectarianism**

The Committee heard extensive evidence on whether or not there was a sectarian element to the termination of the Red Sky contracts. This was widely refuted by NIHE Senior Officials.

212. John McPeake stated

*"The notions of fairness, equity and impartiality are in the DNA of the Housing Executive"*

*"I do not accept that the decision was sectarian"*

and in written evidence in relation to the meeting between NIHE and DUP representatives in April 2011:

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

213. In his written submission Peter Robinson stated that *'..while there might have been circumstantial inferential details suggesting there was sectarian motivation I have seen no conclusive evidence to prove this particular accusation.'*

214. Mr Cooke said

*"...I have no evidence whatsoever that there was sectarianism."*

He described difficult relationships at ground level and at a much higher level in NIHE.

215. Of sectarian motive, Mr McCausland stated:

*"I cannot comment on that. I have no evidence, other than to say that it is totally inconsistent on the part of the chairman and the acting chief executive, when they were aware of the issues with the other company — Leeway Maintain — to not bring it to the attention of the board at that point."*

216. When asked about the allegations of sectarianism underpinning the decision to terminate the Red Sky contracts Councillor Palmer said:

*"I would have to say that, in all the time that I was involved in the investigations with audit, internal audit and all the external bodies associated with the investigations around Red Sky's contracts, I never, ever heard any suggestion about sectarianism in the boardroom, from management or in audit."*

217. The Committee concluded that there is no evidence that the decision to terminate the Red Sky contracts was a sectarian one.

218. The Committee concluded that the NIHE Board legitimately terminated the Red Sky contracts based on the trust and confidence necessary for the satisfactory operation of the contracts having been undermined.

## The appropriateness of the actions of previous Ministers

219. The Committee has also considered correspondence from Margaret Ritchie and a note of a meeting with Alex Attwood in relation to the Red Sky contracts. The Committee considered whether the actions of these Ministers in relation to Red Sky were appropriate.

### **Minister Ritchie**

220. Minister Ritchie stated in her correspondence to Mr Rowntree in October 2009 that she was concerned that the inquiry NIHE had initiated did not go back far enough to answer all the questions. (appendix 9.6).

221. Brian Rowntree told the Committee:

*“That was the Minister confirming that we had made her aware of the inquiry. She confirmed that complaints had been raised but she had no intention to direct the board to do anything.”*

222. The Committee concluded that it was content that the evidence considered did not constitute impropriety or irregularity on the part of Minister Ritchie because her comment was in relation to the terms of reference for an inquiry and not directly related to contractual matters.

### **Minister Attwood**

223. The Committee also considered whether there was evidence that Minister Attwood was applying political pressure to have the Red Sky contract terminated. It considered the note of the meeting of 5 November 2010 (appendix 9.8) in the context of a letter from a QC to NIHE on 26 November 2010 that referred to strong political pressures.

224. The Committee in turn considered the comments of the QC in the context of the media stories about Red Sky at the time. In oral evidence Mr Rowntree said that NIHE had supplied its QC

*“with reports that we had made and the various political commentaries that had taken place. We copied him in on political commentaries from the media around the Red Sky intervention. There were numerous political commentaries around Red Sky.”*

225. He went on to give the opinion that the ‘political pressures’ were from political individuals and from the parties:

*“...People in west Belfast; some people in Lisburn; people in Poleglass.”*

226. The former Managing Director of Red Sky, Mr Cooke said:

*“The media, and the BBC in particular, enjoyed bringing Red Sky to the front as often as possible. I cannot believe that, when I went to Red Sky, I had never heard of it before. That is because when you start reading this stuff afterwards, you find that it was clearly an issue that stirred the public imagination for some considerable period of time. I was not aware of it other than that it appeared in the media to be a bit of a political football. I know nothing that justifies why that would be the case, other than perhaps that it was a company from east Belfast winning a contract in west Belfast. However, that is supposition.”*

227. The Committee has previously noted that Mr Cooke’s evidence on this issue was based on assumption and supposition and allegations which could not be substantiated.

228. As well as media coverage at the time, the Committee took into consideration Assembly Questions and Departmental announcements in relation to the Housing Executive at that time.

229. The Committee also considered the oral evidence of Mr Haire in relation to Minister McCausland’s intervention to be helpful in drawing conclusions on the appropriateness of Minister Attwood’s actions:

**Mr Allister:** *So, in your experience, you had never before encountered such a proposed ministerial intervention.*

**Mr Haire:** *I had not come across something like that in my career previously. That is all that I can say.*

230. And that of Mr Cuddy (then Acting Deputy Chief Executive of NIHE)

*“The difference was that the civil servants at a senior level who accompanied the Minister to those meetings were echoing to the Minister the advice that we were giving. Where there is bad press around a contract, we can understand any Minister saying, “For goodness’ sake, what are you doing? Are you not going to get this sorted out? I want this contract terminated”. We put the view logically to him that there were certain steps that we had to take....”*

231. Mr Cuddy went on to confirm that there had been no subsequent intervention from Minister Attwood.

232. The Committee concluded that Minister Attwood’s intervention was not politically motivated.

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## Conclusions

233. A prerequisite for holding public office is to accept that one must be accountable for one's actions in that role. To underpin this fundamental requirement there must be appropriate mechanisms in place to ensure that holders of public office can be *held* accountable. While there is currently a mechanism to investigate allegations in relation to the conduct of MLAs and to determine any action to be taken as a result of the findings of an investigation, there is no such equivalent mechanism for investigating allegations of misconduct against Ministers.
234. The questions posed in the Spotlight programme in 2013 regarding the actions of then Minister McCausland and his Special Adviser Stephen Brimstone were of a very serious nature, with the potential to undermine public confidence in the political institutions if left unanswered.
235. The Committee recognised this and decided to initiate an inquiry into the issues raised in the programme. In doing so the Committee was committed to comprehensively analysing all available evidence to ascertain the veracity of the allegations made in the programme and to do this in an open and transparent manner. The length of time taken to conclude the Inquiry is testament to the methodical approach adopted by the Committee to achieve this. Indeed, this is the third and final report produced in the course of the Committee's Inquiry.
236. However, the lack of an investigative process, independent of the political institutions, is a glaring gap in the Assembly's ability to ensure ministerial accountability in the face of charges of misconduct and one which needs to be addressed as a matter of importance. This is a key recommendation of the Committee.
237. The Committee has drawn a number of conclusions throughout the report but on the *key* issue of whether the Minister acted inappropriately the Committee concluded, based on the evidence it received, that he did. Indeed, it is clear from Mr McCausland's own evidence to the Committee that he sought to have the date for the termination notice for the Red Sky contracts extended despite being aware of the adverse findings of NIHE Newtownabbey RIU and ASM Howarth reports of investigations into Red Sky's performance.
238. The NIHE Board subsequently terminated the Red Sky contracts on the basis that the trust and confidence necessary for the satisfactory operation of the contracts had been undermined. Indeed, the Committee noted the evidence of former and current NIHE Senior Officials and the findings of the 2012 NIAO report into response maintenance, that there had been a long history of problems associated with the performance of Red Sky in the operation of its contracts stretching back to 2000.
239. Mr McCausland explained that his rationale in seeking to have the length of the termination notice extended was to protect the public purse by ascertaining, through forensic examination, whether other companies were also engaged in similar practices before the transfer of contracts to adjacent contractors went ahead as per the contract framework. The Committee noted evidence which indicated that this would also have given time for Red Sky to be reconstituted as a new organisation (referred to in evidence as 'Newco') which could then bid for new maintenance contracts that were due to be awarded in February 2012. As already noted the Minister was aware of the findings of the reports into Red Sky's performance, therefore the Committee concluded that the Minister's request would not have protected the public purse but would have potentially facilitated the interests of a private organisation in securing public contracts.
240. Furthermore, in considering the large volume of evidence provided by individual witnesses, organisations and from the fact-finding exercise into the special adviser, the Committee also concluded the decision to seek an extension to the termination notice was politically motivated. It is evident to the Committee that regardless of a minister's views, or that of his

party, these should not be enacted by seeking to change public contracts that are outwith the authority of the Minister - as the Committee believes happened in this case.

241. The Committee believes there are issues to be addressed and lessons to be learned from this Inquiry by the individuals concerned, the Department for Social Development, the wider civil service, and the political institutions in order to underpin public confidence in the accountability for those in ministerial office. The Committee believe that this report will help contribute to how that is to be achieved.



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings of the Committee Relating to the Report



## Thursday 18 September 2014

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Michael Copeland MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly  
Mr Fra McCann MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Ms Charis Anderson (Clerical Officer)

**Apologies:** Mr Sammy Wilson MLA

**10.02am** The Chairperson declared the meeting open to the public.

#### **5. Matters Arising**

5.1 The Committee considered a letter from the Department of 16 September applying for departmental officials to be accompanied by legal representatives when giving evidence in respect of the Committee's Inquiry.

The following motion was proposed:

*'Having considered the request from the Department in a letter dated 16 September 2014, that the Committee for Social Development is in favour of agreeing to the Department's application for legal representation at Inquiry evidence sessions'.*

The Committee divided:

Ayes 2;  
Noes 7;  
Abstentions 0.

#### **AYES:**

Ms Paula Bradley  
Mr Gregory Campbell

#### **NOES:**

Mr Jim Allister  
Mr Mickey Brady  
Mr Michael Copeland  
Mr Stewart Dickson  
Mrs Dolores Kelly  
Mr Alex Maskey  
Mr Fra McCann

*The motion fell.*

The Chairperson noted that the meeting would move into closed session for the purpose of agreeing the Committee's End of Session Report for the period 1 September 2013 – 31 August 2014.

**12.17pm** Proceedings were suspended.

**Proceedings recommenced in public session at 1.06pm, in Room 21 Parliament Buildings.**

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Trevor Clarke MLA  
Mr Michael Copeland MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly  
Mr Fra McCann MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Ms Claire McCanny (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Ms Charis Anderson (Clerical Officer)

The Chairperson declared the meeting open to the public.

**8. Committee Inquiry into allegations, arising from a BBC NI 'Spotlight' programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE-managed contracts and consideration of any resulting actions, Phase 3 – evidence session with DSD Officials**

**1.08pm** The following officials joined the meeting:

Mr Will Haire, Permanent Secretary, DSD  
Mr Jim Wilkinson, Director of Housing, DSD  
Mr Michael Sands, Deputy Director of Housing, DSD  
Ms Heather Cousins, former Deputy Secretary, DSD

The officials briefed the Committee on Phase 3 of the Inquiry and took questions from members.

The Committee expressed concern about failure to provide update on fact-finding exercise into the alleged actions of the Minister's Special Adviser, which was completed in September 2013.

*Agreed:* The Committee agreed to write to the officials, as required, seeking clarification on any outstanding issues.

**2.54pm** The officials left the meeting.

*This session was recorded by Hansard.*

**9. Committee Inquiry into allegations, arising from a BBC NI 'Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE-managed contracts and consideration of any resulting actions, Phase 3 – evidence session with NIHE staff**

**2.54pm** The following officials joined the meeting.

Mr John McVeigh, Head of Internal Audit, NIHE  
Mr Declan Allen, Head of Procurement, NIHE  
Mr Clark Bailie, Former Acting Head of Corporate Services, NIHE  
Mr Raymond Kitson, Former Repairs Inspection Unit Manager, NIHE

Mr Clark Bailie noted that he had been invited to the Committee as 'former Director of Corporate Services'. He clarified that his current role in the NI Housing Executive is Director of Finance, and that he had previously held the post of Acting Head of Corporate Services from February to September 2011.

The officials briefed the Committee on Phase 3 of its Inquiry and took questions from members.

*Agreed:* The Committee agreed to write to the officials, as required, seeking clarification on any outstanding issues.

**3.56pm** The officials left the meeting.

*This session was recorded by Hansard.*

**3.57pm** The Chairperson adjourned the meeting.

**Alex Maskey**

Chairperson, Committee for Social Development  
25 September 2014

**[EXTRACT]**

## Thursday 25 September 2014

### Room 29, Parliament Buildings

**Present:**

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

**In Attendance:**

- Dr Kevin Pelan (Assembly Clerk)
- Ms Claire McCanny (Assistant Assembly Clerk)
- Mr Stephen Todd (Assistant Assembly Clerk)
- Mr Stewart Kennedy (Clerical Supervisor)
- Ms Charis Anderson (Clerical Officer)

**Apologies:** Ms Paula Bradley MLA

**10.06am** The Chairperson declared the meeting open to the public.

**1. Committee Inquiry into allegations, arising from a BBC NI ‘Spotlight’ programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE-managed contracts and consideration of any resulting actions, Phase 3 – evidence session with DSD Officials**

**10:30am** The following witness joined the meeting.

- Stewart Cuddy, Former Acting CEO, NIHE

The Committee took evidence from the witness.

**11:21am** Trevor Clarke MLA joined the meeting.

**12:46pm** The witness left the meeting.

**[EXTRACT]**

## Thursday 2 October 2014

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Stewart Dickson MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Ms Claire McCanny (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)

**Apologies:** Mrs Dolores Kelly MLA

**10.00am** The Chairperson declared the meeting open to the public.

**1. Inquiry into allegations, arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions, Phase 3 – evidence session with Paddy McIntyre, Former Chief Executive, NIHE**

**10:09am** The following witness joined the meeting.

- Paddy McIntyre, Former Chief Executive, NIHE

The Committee took evidence from the witness.

**11:27am** The witness left the meeting.

This session was recorded by Hansard.

**2. Committee Inquiry into allegations, arising from a BBC NI 'Spotlight' programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE-managed contracts and consideration of any resulting actions, Phase 3 – evidence session with Colm McCaughley, Former Director of Housing and Regeneration, NIHE**

**11:28am** The following witness joined the meeting.

- Colm McCaughley, Former Director of Housing and Regeneration, NIHE

The Committee took evidence from the witness.

**11:59am** Stewart Dickson MLA left the meeting.

**12:22pm** The witness left the meeting.

This session was recorded by Hansard.

**Agreed:** The Committee agreed to follow up with the Department and the NIHE regarding issues that were raised during these two evidence sessions.

**[EXTRACT]**

## Thursday 9 October 2014

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)

**Apologies:** None

**10.04am** The Chairperson declared the meeting open to the public.

**1. Inquiry into allegations, arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions, Phase 3 – evidence session with Councillor Jenny Palmer**

**10:17am** The following witness joined the meeting:

- Cllr Jenny Palmer, Board Member, NIHE

The Committee took evidence from the witness.

**10:30am** Dolores Kelly MLA joined the meeting.

**12:46pm** The witness left the meeting.

**12:46pm** Proceedings were suspended.

**12:46pm** The Chairperson left the meeting.

**1:04pm** Proceedings recommenced in public session in Room 29 Parliament Buildings.

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

The Deputy Chairperson declared the meeting open to the public.

**2. Committee Inquiry into allegations, arising from a BBC NI 'Spotlight' programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE-managed contracts and consideration of any resulting actions, Phase 3 – evidence session with Dr John McPeake, Former Chief Executive, NIHE**

**1:04pm** The following witness joined the meeting:

- Dr John McPeake, Former Chief Executive, NIHE

The Committee took evidence from the witness.

**1:32pm** The witness left the meeting.

**[EXTRACT]**

## Thursday 16 October 2014

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)

**Apologies:** Mr Michael Copeland MLA  
Mr Stewart Dickson MLA

**10.03am** The Chairperson declared the meeting open to the public.

**1. Inquiry into allegations, arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions, Phase 3 – evidence session with Mr Stephen Brimstone**

**10:19am** The following witness joined the meeting:

- Mr Stephen Brimstone, DSD Special Adviser

The Committee took evidence from the witness.

**10:24am** Dolores Kelly MLA joined the meeting.

**10:29am** Sammy Wilson MLA joined the meeting.

**10:39am** The Chairperson adjourned the meeting.

**[EXTRACT]**

## Thursday 6 November 2014

### Room 29, Parliament Buildings

**Present:** Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Stewart Dickson MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Alex Maskey MLA (Chairperson)  
Mr Michael Copeland MLA  
Mr Sammy Douglas MLA

**10:06am** The meeting began in closed session.

The Committee discussed issues relating to the attendance of witnesses to give oral evidence and the release of relevant documents to the Committee.

*Agreed:* The Committee agreed to write to Brian Rowntree regarding his decision not to give oral evidence to the Committee.

The Committee discussed the former Minister's decision not to release the fact-finding report into the DSD Minister's Special Adviser.

The motion was proposed: *That the Committee write to the current Minister for Social Development requesting that he provides the Committee with the fact-finding report into the DSD Special Adviser.*

**Ayes** 3;  
**Noes** 4;  
**Abstentions**; 0

**AYES:**

Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Sammy Wilson MLA

**NOES:**

Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Stewart Dickson MLA  
Mr Fra McCann MLA

The motion fell.

The motion was proposed: *That the Committee write to the Minister for Social Development requesting that he provides the Committee with the fact-finding report into the DSD Special Adviser and advising the Minister that should he not release the report the Committee is minded to obtain its release by issuing of a section 44 notice.*

**Ayes 4;**  
**Noes 1;**  
**Abstentions 0.**

**AYES:**

Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Stewart Dickson MLA  
Mr Fra McCann MLA

**NOES:**

Mr Sammy Wilson MLA

The motion was carried.

*Agreed:* The Committee agreed to write to the Minister for Social Development as per the agreed motion.

**11:53am** The meeting opened in public session.

**1. Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Michael Sands, DSD**

**12:06pm** The following witness joined the meeting:

- Michael Sands, Deputy Director, Housing Group, DSD

The Committee took evidence from the witness.

**12:32pm** Stewart Dickson MLA left the meeting.

**12:40pm** The witness left the meeting.

**12:40pm** Proceedings were suspended.

**12:40pm** Gregory Campbell MLA left the meeting.

**1:15pm** Proceedings recommenced in public session in Room 29 Parliament Buildings.

**Present:** Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

The Chairperson declared the meeting open to the public.

**2. Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Peter Cooke, former Red Sky Managing Director**

**1:42pm** The following witness joined the meeting:

- Peter Cooke, former Managing Director, Red Sky Group

The Committee took evidence from the witness.

**2:49pm** The witness left the meeting.

**[EXTRACT]**

## Thursday 13 November 2014

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Michael Copeland MLA  
Mr Sammy Douglas MLA

**10:05am** The meeting began in closed session.

The Committee discussed issues relating to Inquiry processes and conduct.

**10:29am** The meeting opened in public session.

**1. Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Nelson McCausland MLA**

**10:30am** The following witness joined the meeting:

- Nelson McCausland MLA, former Minister for Social Development

The Committee took evidence from the witness.

**12:31pm** The witness left the meeting.

This session was recorded by Hansard.

**12:31pm** Proceedings were suspended.

**12:38pm** Proceedings recommenced in public session in Room 29 Parliament Buildings.

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

The Chairperson declared the meeting open to the public.

**2. Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Stephen Brimstone, DSD**

**12:38pm** The following witness joined the meeting.

- Stephen Brimstone, DSD Special Adviser

The Committee took evidence from the witness.

**1:26pm** Gregory Campbell MLA left the meeting.

**1:34pm** Stewart Dickson MLA left the meeting.

**1:52pm** The witness left the meeting.

**[EXTRACT]**

## Thursday 27 November 2014

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Michael Copeland MLA

**10:07am** The Chairperson declared the meeting open to the public.

**11.20am** The meeting moved into closed session.

The Committee considered evidence in relation to Phase 2 of its Inquiry.

*Agreed:* The Committee agreed that Committee Staff should begin drafting a report in respect of Phase 2 of its Inquiry.

The Committee considered correspondence from the Department in relation to Phase 3 of its Inquiry.

*Agreed:* The Committee agreed to seek legal advice to assist in a response to the Department.

*Agreed:* The Committee agreed to defer all inquiry evidence sessions scheduled for 4 December until the New Year.

The Committee considered the Minister's letter in relation to the disclosure of the report on the fact-finding exercise into the DSD Special Adviser

*Agreed:* The Committee agreed to seek legal advice to assist in a response to the Department.

*Agreed:* The Committee considered correspondence from Brian Rowntree noting he was unable to attend to give evidence on 4 December. The Committee agreed to invite Mr Rowntree to give evidence at its meeting on 11 December.

*Agreed:* The Committee agreed to postpone the review of evidence in respect of Phase 3 of the Inquiry to the New Year.

**11:57am** The Chairperson adjourned the meeting.

**[EXTRACT]**

# Thursday 11 December 2014

## Room 29, Parliament Buildings

**Present**

Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:**

Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Michael Copeland MLA

**10:07am** The meeting commenced in closed session.

### 1. Inquiry Process Issues

The Committee took legal advice in respect of its Inquiry.

*Agreed:* The Committee agreed to write to the Department to reschedule postponed Inquiry briefings of 4 December to 8 January 2015.

*Agreed:* The Committee agreed to respond to the Department's recent letter on procedures relating to the Inquiry as per its received advice.

**10:40am** The Chairperson declared the meeting open to the public.

### 2. Apologies

Apologies were as noted above.

### 3. Inquiry into allegations, arising from a Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions, Phase 3 – evidence session with Brian Rowntree, former NIHE Chairperson

**10:42am** The following witness joined the meeting:

- Brian Rowntree, former Chairperson of the NIHE

The Committee took evidence from the witness and held a question and answer session on the evidence.

*Agreed:* The Committee agreed to discuss whether issues in relation to the Rinmore stock transfer should form part of its Inquiry.

**11:17am** Mickey Brady MLA left the meeting.

**11:39am** Maurice Devenney MLA left the meeting.

**12:20pm** Gregory Campbell MLA left the meeting.

**12:35pm** The witness left the meeting.

This session was recorded by Hansard.

**[EXTRACT]**

## Thursday 8 January 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Michael Copeland MLA  
Mrs Dolores Kelly MLA

**10.02am** The Chairperson declared the meeting open to the public.

*Agreed:* The Committee agreed to move into closed session to discuss issues arising in relation to the Committee Inquiry.

**10.02am** The meeting moved into closed session.

*Agreed:* The Committee agreed to reject the Department's application for departmental officials to attend with legal advisers when giving evidence to the Committee on the basis that a witness giving evidence voluntarily, whether under oath/affirmation or not, may refuse to answer any question including answering questions that may expose him/her to civil, disciplinary or criminal proceedings.

The Committee also noted that it had advised the Department in a letter of the 18 December 2014 that this was a matter upon which the witnesses, if they attend voluntarily, have the option to seek their own legal advice before attending the meeting, and can answer or decline to answer questions accordingly. It was the Committee's view that the witnesses have had time to seek such legal advice and prepare accordingly for evidence sessions.

**10.06am** Sammy Wilson MA joined the meeting.

**10.09am** Gregory Campbell MLA joined the meeting.

The Committee then discussed advising Mr Sands that, should he decide not to give evidence voluntarily, that the Committee was minded to compel him to attend a subsequent meeting using powers under section 44 of the NI Act 1998.

The motion was proposed: Should Mr Sands decide not to attend voluntarily without a legal adviser the Committee will seek to compel him to attend.

Mr Wilson proposed an amendment as follows:

Following 'attend' insert: 'and in seeking to treat all witnesses who refuse to attend voluntarily equally and fairly, the Committee will use its powers under section 44 to compel all witnesses who refuse to attend voluntarily to give evidence relating to the ongoing Inquiry'.

■ The Committee voted on the amendment:

**Ayes;** 3

**Noes;** 5

**Abstentions;** 0

**Non-voting;** 1

**AYES:**

Ms Paula Bradley MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**NOES:**

Mr Alex Maskey MLA (Chairperson)

Mr Mickey Brady MLA (Deputy Chairperson)

Mr Jim Allister MLA

Mr Stewart Dickson MLA

Mr Fra McCann MLA

**NON-VOTING:**

Mr Gregory Campbell MLA

The amendment fell.

■ The Committee voted on the motion as originally proposed:

**Ayes;** 5

**Noes;** 3

**Abstentions;** 0

**Non-voting;** 1

**AYES:**

Mr Alex Maskey MLA (Chairperson)

Mr Mickey Brady MLA (Deputy Chairperson)

Mr Jim Allister MLA

Mr Stewart Dickson MLA

Mr Fra McCann MLA

**NOES**

Ms Paula Bradley MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**NON-VOTING**

Mr Gregory Campbell MLA

The motion was carried.

The Chair advised the Committee that the Clerk would advise Mr Sands of the Committee's decisions.

**10.15am** Proceedings were suspended.

**10.16am** Proceedings recommenced in public session in Room 29 Parliament Buildings.

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**Apologies:** Mr Michael Copeland MLA  
Mrs Dolores Kelly MLA

**1. Apologies**

Apologies were as noted above.

**2. Matters Arising**

2.1 The Chairperson noted that the Committee had considered, in closed session, the Department's request for witnesses to be accompanied by legal advisers and had agreed that witnesses would not be permitted to attend evidence sessions with legal advisers.

The Chairperson noted that, during the adjournment, the Clerk advised Mr Sands of the Committee's decision and that Mr Sands agreed to attend today's meeting voluntarily, without legal representation.

2.2 The Committee noted correspondence dated 6 January 2015 stating that Stephen Brimstone was unavailable to give evidence at today's meeting. The Committee noted subsequent correspondence dated 7 January 2015 stating that Stephen Brimstone would attend the Committee's meeting on 15 January 2015.

*Agreed:* The Committee expressed its dissatisfaction at being informed of Mr Brimstone's unavailability at such short notice and that no explanation was given for his unavailability.

2.3 *Agreed:* The Committee agreed to take legal advice on compelling the release of the fact-finding exercise into the DSD Special Adviser.

2.4 *Agreed:* The Committee agreed to seek legal advice in respect of documents in evidence that may be subject to legal privilege.

2.5 *Agreed:* The Committee agreed to meet at 9.30am on Tuesday 13 January to take evidence from the Commissioner for Older People in respect of the Pensions Bill.

*Agreed:* The Committee agreed to take evidence from Cruse Bereavement Care in respect of the Pension Bill at its meeting on 22 January 2015.

**3. Inquiry into allegations, arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Michael Sands, DSD**

**10.29am** The following witness joined the meeting:

- Michael Sands, Deputy Director of Housing, DSD

Mr Sands read the affirmation as follows:

I, Michael Sands, do solemnly, sincerely and truly declare that the evidence I shall give shall be truthful and honest, and that I will give the Committee all such information and assistance as I can to enable it to discharge its responsibilities.

Mr Sands took questions in relation to the Committee's Inquiry.

**11.24am** Mr Sands left the meeting.

This session was recorded by Hansard.

**4. Inquiry into allegations arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Councillor Jenny Palmer**

**11.25am** The following witness joined the meeting.

- Cllr Jenny Palmer, Board Member, NIHE

Cllr Palmer read the oath as follows:

I, Jenny Palmer, swear by Almighty God that the evidence I shall give shall be truthful and honest, and that I will give the Committee all such information and assistance as I can to enable it to discharge its responsibilities.

Cllr Palmer took questions in relation to the Committee's Inquiry.

Cllr Palmer also offered additional written evidence to the Committee.

*Agreed:* The Committee agreed that Jenny Palmer should forward these additional evidence documents to the Committee Clerk for distribution to Committee members.

Following a series of questions Cllr Palmer requested a short break.

*Agreed:* The Committee agreed to suspend for a few minutes.

**12.04pm** Proceedings were suspended.

**12.07pm** Proceedings recommenced in public session in Room 29 Parliament Buildings.

**Present:**

- Mr Alex Maskey MLA (Chairperson)
- Mr Mickey Brady MLA (Deputy Chairperson)
- Mr Jim Allister MLA
- Ms Paula Bradley MLA
- Mr Gregory Campbell MLA
- Mr Maurice Devenney MLA
- Mr Stewart Dickson MLA
- Mr Fra McCann MLA
- Mr Sammy Wilson MLA

Cllr Palmer took further questions in relation to the Committee's Inquiry.

**1:00pm** Gregory Campbell MLA left the meeting.

**1:03pm** Cllr Palmer left the meeting.

This session was recorded by Hansard.

**[EXTRACT]**

## Thursday 15 January 2015

### Room 29, Parliament Buildings

**Present:**

- Mr Alex Maskey MLA (Chairperson)
- Mr Mickey Brady MLA (Deputy Chairperson)
- Mr Jim Allister MLA
- Ms Paula Bradley MLA
- Mr Gregory Campbell MLA
- Mr Stewart Dickson MLA
- Mrs Dolores Kelly MLA
- Mr Fra McCann MLA
- Mr Sammy Wilson MLA

**In Attendance:**

- Dr Kevin Pelan (Assembly Clerk)
- Mrs Ashleigh Mitford (Assistant Assembly Clerk)
- Mr Stephen Todd (Assistant Assembly Clerk)
- Mr Stewart Kennedy (Clerical Supervisor)
- Mr Richard Reid (Clerical Officer)

**Apologies:**

- Mr Michael Copeland MLA
- Mr Maurice Devenney MLA

**10:04am** The meeting began in closed session.

- The Committee took legal advice in respect of its powers to compel the release of the fact-finding report into the DSD Special Adviser.

**10:11am** Sammy Wilson MLA joined the meeting.

The motion was proposed:

That the Committee for Social Development asks the Speaker to issue a Section 44 notice compelling the Minister for Social Development to release the DFP fact-finding report into the alleged actions of the Minister's Special Adviser.

The Committee divided:

**Ayes; 6**

**Noes; 3**

**Abstentions; 0**

**AYES:**

- Mr Alex Maskey MLA (Chairperson)
- Mr Mickey Brady MLA (Deputy Chairperson)
- Mr Jim Allister MLA
- Mr Stewart Dickson MLA
- Mrs Dolores Kelly MLA
- Mr Fra McCann MLA

**NOES:**

- Ms Paula Bradley MLA
- Mr Gregory Campbell MLA
- Mr Sammy Wilson MLA

The motion was carried.

*Agreed:* The Committee agreed to issue a letter asking the Speaker to issue a Section 44 notice compelling the Minister for Social Development to release the DFP fact-finding report into the alleged actions of the Minister's Special Adviser.

- The Committee discussed issues raised in the BBC NI Spotlight programme of 3 July 2013.

*Agreed:* The Committee agreed to discuss the issue of Rinmore again once further information on this matter has been received from the Department.

- The Committee considered the report on the LCM relating to the Westminster Pensions Schemes Bill, considered at the meeting of 8 January 2015.

*Agreed:* The Committee agreed to publish its report on the LCM relating to the Westminster Pensions Schemes Bill.

**10:37am** The Chairperson declared the meeting open to the public.

**1. Apologies**

Apologies were as noted above.

**2. Draft Minutes**

*Agreed:* The draft minutes of the meeting held on 8 January 2015 were agreed.

**3. Matters Arising**

3.1 *Agreed:* The Committee noted the proposed schedule for remaining sessions in relation to the Inquiry.

**4. Inquiry into allegations, arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – evidence session with Stephen Brimstone, DSD**

**10:42am** The following witness joined the meeting:

- Stephen Brimstone, Special Adviser, DSD

Mr Brimstone read the affirmation as follows:

I, Stephen Brimstone, do solemnly, sincerely and truly declare that the evidence I shall give shall be truthful and honest, and that I will give the Committee all such information and assistance as I can to enable it to discharge its responsibilities.

Mr Brimstone took questions in relation to the Committee's Inquiry.

**12:14pm** Mr Brimstone left the meeting.

This session was recorded by Hansard.

**12:14pm** The meeting was suspended.

**12:21pm** The meeting resumed in public session.

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

A member referred to evidence given by Cllr Jenny Palmer at its meeting of 8 January 2015.

*Agreed:* The Committee agreed to write to write to Alderman Brown for clarification on this matter.

**12:23pm** Paula Bradley MLA joined the meeting.

**[EXTRACT]**

## Thursday 22 January 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Jim Allister MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Michael Copeland MLA

**11:56am** Proceedings recommenced in closed session.

The Committee conducted an initial review of evidence in relation to Phase 3 of its Inquiry.

The Committee was updated on the action taken to secure release of the fact-finding report into the special adviser.

*Agreed:* The Committee agreed the key issues to consider in respect of Phase 3 of its Inquiry.

*Agreed:* The Committee agreed that no further witnesses would be required at this time.

*Agreed:* The Committee agreed to write to the former Minister for Social Development seeking clarification in respect of an apparent contradiction in evidence.

*Agreed:* The Committee agreed to write to the BBC requesting that representatives attend to give evidence to the Committee.

**12:52pm** The Chairperson adjourned the meeting.

**Alex Maskey**

Chairperson, Committee for Social Development

29 January 2015

**[EXTRACT]**

# Thursday 29 January 2015

## Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Michael Copeland MLA

**10:06am** The Chairperson declared the meeting open to the public.

### 1. Matters Arising

1.1 The Chairperson noted that following today's regular business the Committee would convene in closed session to take legal advice and review evidence in relation to its Inquiry.

1.2 The Chairperson noted that the Speaker confirmed a Section 44 notice has been issued requiring the Department for Social Development to release the fact-finding report into the DSD Special Adviser to the Committee.

**10:08am** Gregory Campbell MLA joined the meeting.

1.3 The Chairperson noted that a response had been received from the Department regarding stock transfer at Rinmore.

*Agreed:* The Committee agreed to write to DSD requesting access to the content of an audit report referred to in correspondence and for a timeline related to this and other associated correspondence.

*Agreed:* The Committee agreed to write to Brian Rowntree seeking clarity on comments he made in respect of Rinmore.

*Agreed:* The Committee agreed to write to the Permanent Secretary to seek clarification on the reason for his communication with the NIO regarding Mr Rowntree's actions relating to Rinmore.

**10:45am** The meeting moved into closed session.

The Committee took legal advice in relation to the privilege afforded to legal advice provided to the Committee in error.

*Agreed:* The Committee agreed to seek clarification on legal advice that was provided to it erroneously.

*Agreed:* The Committee agreed to return to this issue when it considered its draft report into Phase 3.

The Committee considered evidence in respect of Phase 3 of its Inquiry.

*Agreed:* The Committee agreed an initial way forward in the development of the report relating to Phase 3 of the Inquiry.

**12:17pm** The Chairperson adjourned the meeting.

**Alex Maskey**

Chairperson, Committee for Social Development

5 February 2015

**[EXTRACT]**

## Thursday 5 February 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stephen Todd (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Clerical Supervisor)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Michael Copeland MLA  
Mr Sammy Wilson MLA

**10:09am** The Chairperson declared the meeting open to the public.

#### **1. Matters Arising**

1.1 The Chairperson noted that following clause-by-clause consideration and evidence sessions, the Committee would move into closed session for its initial consideration of the draft report into Phase 2 of its Inquiry.

1.2 The Committee received correspondence in relation to its Section 44 notice requiring the release of the fact-finding report into the DSD Special Adviser.

*Agreed:* The Committee agreed to write to the Speaker advising that it had agreed to an extension to the deadline for the production of the fact-finding report to 5pm on 12 February 2015.

*Agreed:* The Committee agreed to write to the Minister for Social Development to inform him of this extension and to advise that he and/or his officials may make representations to the Committee on this matter at its meeting on 12 February.

1.3 *Agreed:* The Committee agreed to convene a meeting at 11.00am on Monday 9 February 2015 to take a briefing from DSD officials on the Minister's proposed amendments to the Welfare Reform Bill.

1.4 *Agreed:* The Committee agreed to seek clarity from DSD on the £12m 'headroom' included in the Spring Supplementary Estimates in advance of the debate on Supply Resolutions on Monday 9 February 2015.

**1:17pm** The meeting moved into closed session.

The Committee considered the draft report on Phase 2 of its Inquiry.

*Agreed:* The Committee agreed to bring forward any suggested amendments to the report in advance of the meeting on 12 February 2015.

**1:21pm** The Chairperson adjourned the meeting.

**Alex Maskey**

Chairperson, Committee for Social Development

12 February 2015

**[EXTRACT]**

## Thursday 12 February 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Gregory Campbell MLA

**10.02am** The Chairperson declared the meeting open.

**10.02am** The meeting moved into closed session.

**10.03am** Paula Bradley MLA joined the meeting.

**10.04am** Roy Beggs MLA joined the meeting.

**10.08am** Maurice Devenney MLA joined the meeting.

#### **1. Committee Inquiry – Procedural Issues**

The Committee considered correspondence from the Minister for Social Development in relation to its Section 44 notice requiring the release of the fact-finding report into the DSD Special Adviser.

The Committee discussed whether to extend the deadline for the production of the fact-finding report.

The motion was proposed:

*That the deadline for the production of the fact-finding report is extended to 5pm on Wednesday 18 February 2015 and should the report not be provided by that time the Clerk should liaise with Legal Services on referring the matter to the Director of Public Prosecutions for Northern Ireland.*

**Ayes;** 7

**Noes;** 3

**Abstentions;** 0

**Non-voting;** 0

#### **AYES:**

Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Mr Stewart Dickson MLA

Ms Delores Kelly MLA  
Mr Fra McCann MLA

**NOES:**

Ms Paula Bradley MLA  
Mr Maurice Devenney MLA  
Mr Sammy Wilson MLA

*Agreed:* The Committee agreed to write to the Speaker and the Minister and advise them of its decision.

**Alex Maskey**

Chairperson, Committee for Social Development  
19 February 2015

**[EXTRACT]**

# Thursday 19 February 2015

## Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Maurice Devenney MLA

**10.03am** The Chairperson opened the meeting in closed session.

### **1. Committee Inquiry – Procedural Issues**

**10.09am** Mr Sammy Wilson MLA joined the meeting.

The Committee considered correspondence from the Minister for Social Development which included a partially redacted version of the Special Adviser Fact-Finding Report.

The Committee noted in the Minister's correspondence that he was prepared to release sections of the report of a factual nature provided the Committee agrees to respect the confidentiality of the report and not to refer to it in public or in its report without his agreement.

*Agreed:* The Committee agreed the deadline for the release of the full report under section 44 (7) of the 1998 Act be extended until 5 pm on Thursday 26 February 2015.

*Agreed:* The Committee agreed to receive a written submission from the Minister in relation to the further sections of a factual nature for consideration at its next meeting on 26 February 2015.

*Agreed:* The Committee agreed to write to the Minister and the Speaker to advise them of its decision.

**11.15am** Ms Dolores Kelly MLA and Mickey Brady MLA left the meeting.

**11.15am** The Chairperson declared the meeting open.

**Alex Maskey**  
Chairperson, Committee for Social Development  
26 February 2015

**[EXTRACT]**

## Thursday 26 February 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Ms Alice McKelvey (Legal Services)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Fra McCann MLA

#### **Closed session**

#### **1. Committee Inquiry – Phase 3**

The Committee considered correspondence from the Minister for Social Development regarding the DFP fact-finding report into the alleged actions of the Minister's Special Adviser.

The Committee noted that the Minister did not intend to share further material in relation to the Report.

**12.46pm** Ms Paula Bradley MLA re-joined the meeting.

**12.48pm** Mr Sammy Wilson MLA re-joined the meeting.

*Agreed:* The Committee agreed to invite the Minister to meet with the Chairperson to agree to a mechanism of arbitration. This would involve inviting the Lord Chief Justice to appoint a High Court Judge to examine the fact-finding report in the context of the section 44 notice and to determine if further information should be disclosed.

*Agreed:* The Committee agreed to write to the Speaker to request that the notice issued under section 44 (7) of the 1998 Act be extended until 5pm on Thursday 5 March 2015.

**13.39pm** Mr Gregory Campbell MLA, Mr Maurice Devenney MLA, Mr Sammy Wilson MLA and Mr Stewart Dickson MLA left the meeting.

The motion was proposed:

That the Committee for Social Development publishes the redacted version of the DFP fact-finding report into the alleged actions of the Minister's Special Adviser on its website.

The Committee divided:

Ayes; 4

Noes; 1

Abstentions; 0

Did not vote; 1

**AYES:**

Mr Alex Maskey MLA (Chairperson)

Mr Jim Allister MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

**NOES:**

Ms Paula Bradley MLA

**DID NOT VOTE:**

Mr Roy Beggs MLA

The motion was carried.

**2. Committee Inquiry – Review of Evidence Phase 3**

The Committee noted a number of items of evidence in relation to Phase 3 of its Inquiry.

The Committee was content to consider a first draft report at its meeting on 5 March 2015.

**Alex Maskey**

Chairperson, Committee for Social Development

5 March 2015

**[EXTRACT]**

## Thursday 5 March 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** None

**10.04am** The Chairperson declared the meeting.

**11:29am** The meeting moved into closed session.

#### **1. Committee Inquiry – Phase 3 Report**

The Committee considered a first draft report on Phase 3 of its Inquiry.

One member stated that report was biased and did not take the minority view into consideration.

Other members noted that the report was based on evidence and, while it largely reflected the majority view, the Committee was engaged in a process of drafting and the report was therefore subject to amendment.

12.01pm The Chairperson suspended the meeting to allow discussion.

12.15pm The Committee reconvened in closed session.

The Committee then moved to consider the draft report.

A number of amendments were proposed to the draft report and Committee decisions on these are outlined below.

The motion was proposed to amend paragraph 18.

The Committee divided.

Ayes; 6

Noes; 3

Abstentions; 0

Did not vote; 1

**AYES:**

Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Mr Mickey Brady MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA

**NOES:**

Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion was carried.

The motion was proposed to amend paragraph 19.

Ayes; 6

Noes; 3

Abstentions; 0

Did not vote; 1

**AYES:**

Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Mr Mickey Brady MLA  
Mr Stewart Dickson MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA

**NOES:**

Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion was carried.

The motion was proposed to amend paragraph 41.

The Committee divided.

Ayes; 4

Noes; 6

Abstentions; 0

Did not vote; 1

**AYES:**

Ms Paula Bradley MLA

Mr Gregory Campbell MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**NOES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Mickey Brady MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion fell.

The motion was proposed to amend paragraph 44.

The Committee divided.

Ayes; 3

Noes; 6

Abstentions; 0

Did not vote; 2

**AYES:**

Mr Gregory Campbell MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**NOES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Mickey Brady MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

Ms Paula Bradley MLA

The motion fell.

**13.20pm** Mr Gregory Campbell MLA left the meeting.

The motion was proposed to amend paragraph 67.

The Committee divided.

Ayes; 6

Noes; 3

Abstentions; 0

Did not vote; 1

**AYES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Mickey Brady MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**NOES:**

Ms Paula Bradley MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion carried.

The motion was proposed to amend paragraph 69.

The Committee divided.

Ayes; 3

Noes; 6

Abstentions; 0

Did not vote; 1

**AYES:**

Ms Paula Bradley MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**NOES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Mickey Brady MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion fell.

The motion was proposed to amend paragraph 75.

The Committee divided.

Ayes; 3

Noes; 6

Abstentions; 0

Did not vote; 1

**AYES:**

Ms Paula Bradley MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**NOES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Mickey Brady MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion fell.

The motion was proposed to amend paragraph 89.

The Committee divided.

Ayes; 6

Noes; 3

Abstentions; 0

Did not vote; 1

**AYES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Mickey Brady MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**NOES:**

Ms Paula Bradley MLA

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

The motion carried.

**13.43pm** Mr Mickey Brady MLA left the meeting.

The motion was proposed to amend paragraph 92.

The Committee divided.

Ayes; 5

Noes; 2

Abstentions; 0

Did not vote; 1

**AYES:**

Mr Jim Allister MLA

Mr Roy Beggs MLA

Mr Stewart Dickson MLA

Mrs Dolores Kelly MLA

Mr Fra McCann MLA

**NOES:**

Mr Maurice Devenney MLA

Mr Sammy Wilson MLA

**DID NOT VOTE:**

Mr Alex Maskey MLA (Chairperson)

Ms Paula Bradley MLA

The motion carried.

**13.47pm** Mr Sammy Wilson MLA left the meeting.

Ms Paula Bradley MLA and Mr Maurice Devenney MLA left the meeting at 13.49pm

The Committee considered amendments to a number of paragraphs of the draft report.

*Agreed:* The Committee agreed to consider a revised draft report at its meeting on 12 March 2015.

**2. Committee Inquiry Procedural Issues**

The Committee considered correspondence of the 4 March 2015 from the Minister. The Committee noted that the Minister was willing to meet with the Chairperson but was unable to accede to the proposal for arbitration as outlined in the Chairperson's letter of 26 February.

*Agreed:* The Committee agreed that given the Minister's clarification on this matter, a meeting would have little or no merit.

*Agreed:* The Committee agreed a press release on this matter.

The Chairperson adjourned the meeting at 15:06pm

**Alex Maskey**

Chairperson, Committee for Social Development

12 March 2015

**[EXTRACT]**

# Thursday 12 March 2015

## Room 29, Parliament Buildings

**Present:** Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mr Stewart Dickson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mrs Dolores Kelly MLA  
Mr Alex Maskey MLA (Chairperson)  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**10:06am** The Deputy Chairperson declared the meeting open.

**11:32am** The meeting moved into closed session.

### **1. Committee Inquiry – Phase 3 Report**

The Committee noted a revised draft report on Phase 3 of its Inquiry.

*Agreed:* The Committee agreed to consider the report and to provide the Clerk with suggested amendments by 5pm on Monday 16 March 2015.

*Agreed:* The Committee agreed to seek advice in relation to the draft report.

**11:51am** The Deputy Chairperson adjourned the meeting.

#### **Alex Maskey**

Chairperson, Committee for Social Development

19 March 2015

**[EXTRACT]**

# Thursday 19 March 2015

## Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mr Maurice Devenney MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Stewart Dickson MLA

**10:04am** The Chairperson declared the meeting open.

**11:50am** The meeting moved into closed session.

### 1. **Committee Inquiry – Phase 3 Report**

The Committee considered a third draft report on Phase 3 of its Inquiry.

*Agreed:* The Committee agreed in principle to the inclusion of a minority report as an appendix to the committee report.

**12:31pm** Mr Sammy Wilson MLA left the meeting.

**12:34pm** Ms Paula Bradley MLA left the meeting.

**12:54pm** Mr Gregory Campbell MLA and Mr Maurice Devenney MLA left the meeting.

**13:36pm** Mr Roy Beggs MLA left the meeting.

*Agreed:* The Committee agreed a number of amendments to several paragraphs of the draft report and agreed to consider a revised draft of the report at its meeting on 26 March 2015.

**Alex Maskey**  
Chairperson, Committee for Social Development

26 March 2015

**[EXTRACT]**

## Thursday 26 March 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Mr Gregory Campbell MLA  
Mr Fra McCann MLA  
Mr Sammy Wilson MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Jonathan McMillen (Legal Services)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Ms Paula Bradley MLA  
Mrs Dolores Kelly MLA

**10:08am** The Chairperson declared the meeting open.

**12:13pm** The meeting moved into closed session.

#### **1. Committee Inquiry – Phase 3 Report**

**12:13pm** Mr Jonathan McMillen joined the meeting.

The Committee took legal advice on some of the text within its draft report.

**12:24pm** Mr Jonathan McMillen left the meeting.

The Committee noted a minority report.

**12:29pm** Mr Sammy Wilson MLA left the meeting.

**12:32pm** Mr Gregory Campbell left the meeting.

The Committee considered a revised draft report and agreed some amendments.

**Agreed:** In accordance with agreed procedural fairness principles, the Committee agreed for the amended draft report to be issued to two individuals for comment. The Committee also agreed that any comments should be received by 5pm on Monday 13 April 2015.

**12:55pm** The Chairperson adjourned the meeting.

#### **Alex Maskey**

Chairperson, Committee for Social Development

16 April 2015

**[EXTRACT]**

## Thursday 16 April 2015

### Room 29, Parliament Buildings

**Present:** Mr Alex Maskey MLA (Chairperson)  
Mr Mickey Brady MLA (Deputy Chairperson)  
Mr Jim Allister MLA  
Mr Roy Beggs MLA  
Ms Paula Bradley MLA  
Mr Gregory Campbell MLA  
Mrs Dolores Kelly MLA  
Mr Fra McCann MLA

**In Attendance:** Dr Kevin Pelan (Assembly Clerk)  
Mrs Ashleigh Mitford (Assistant Assembly Clerk)  
Mr Stewart Kennedy (Assistant Assembly Clerk)  
Mr Richard Reid (Clerical Officer)

**Apologies:** Mr Sammy Wilson MLA

**1. Inquiry into allegations, arising from a BBC NI Spotlight programme, aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions – phase 3 Report**

*Agreed:* The Committee agreed to include a minority report in the appendices of the Committee Report.

The Committee discussed a response from Mr Brimstone in relation to the draft report.

*Agreed:* The Committee agreed to take Mr Brimstone's comments into account when agreeing its final Report.

*Agreed:* The Committee agreed to include Mr Brimstone's comments in the appendices of its Report.

*Agreed:* The Committee agreed the introductory and background sections of its report.

*Agreed:* The Committee agreed the outline of central and contextual issues of phase 3 of its Inquiry.

*Agreed:* The Committee agreed its consideration of evidence in relation to the actions of Minister McCausland section of the Report.

*Agreed:* The Committee agreed its consideration of evidence in relation to contextual issues section of the Report.

The Committee noted a draft conclusion of its Report

A member proposed that the conclusion should be forwarded to two individuals for comment.

The Committee divided

**Ayes**

Paula Bradley  
Gregory Campbell  
Dolores Kelly  
Fra McCann

**Noes**

Jim Allister  
Mickey Brady

**Not voting**

Alex Maskey

The motion fell

- Agreed:* The Committee agreed the Conclusion of its Report
- Agreed:* The Committee agreed the Table of Contents of its Report as amended
- Agreed:* The Committee agreed the appendices of its Report.
- Agreed:* The Committee agreed the Executive Summary and Recommendations of its Report as amended.
- Agreed:* The Committee agreed that the Report be the 12th Report of the Committee for Social Development.
- Agreed:* The Committee agreed a draft extract of the minutes of 16 April 2015 be included in the appendices of the Committee's Report as amended.
- Agreed:* The Committee agreed that the Report remain embargoed until commencement of debate in plenary.
- Agreed:* The Committee agreed that the Report be printed.
- Agreed:* The Committee agreed its Motion for debate.
- Agreed:* The Committee agreed that the chairperson will move the motion and the Deputy Chairperson will do the wind.

**Alex Maskey**

Chairperson, Committee for Social Development,

**[EXTRACT]**





Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence



# 18 September 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Trevor Clarke  
 Mr Michael Copeland  
 Mr Stewart Dickson  
 Mrs Dolores Kelly  
 Mr Fra McCann

## Witnesses:

Ms Heather Cousins	}	<i>Department for Employment and Learning</i>
Mr Will Haire	}	<i>Department for Social Development</i>
Mr Michael Sands		
Mr Jim Wilkinson		

1. **The Chairperson:** I formally welcome everybody to this session on phase 3 of the inquiry. We have a number of witnesses to call this afternoon: Will Haire, Heather Cousins, Jim Wilkinson and Michael Sands. You have been made aware of what we are specifically dealing with today. I appreciate that these are wide-ranging and sometimes complex matters, but we are addressing specific terms of reference. You have been advised of them have been asked to deal with specific elements of the concerns that the Committee raised during the inquiry.
2. Will, I understand that you are going to make some opening remarks.
3. **Mr Will Haire (Department for Social Development):** Yes.
4. **The Chairperson:** Members, you will find a list of items in your electronic Committee pack for your attention. I remind members to be mindful of the protocols around the use of electronic devices.
5. Without any further ado, Will, if you are happy, you can make your opening statement, as can Heather, Jim and Michael.
6. **Mr Haire:** I would like to make some opening remarks on phase 3 of your inquiry which will hopefully assist you in setting the scene for some of the key events in this particular phase. Although the terms of reference for this phase obviously relate to the decision-making process relating to the award, modification and cancellation of NIHE maintenance contracts, the key events and decisions that you have focused on in your questions and written requests are mainly events and decisions relating to the termination of the Red Sky contracts in July 2011. The memorandum we gave you sets out the full background to the whole maintenance issue as well, and the details in that. I hope that it is useful to the Committee in what is a complex phase. I will give a quick reference of some of the key events, but I am not going to be comprehensive.
7. On 13 April that year, the Housing Executive board considered a proposal to terminate the response maintenance contracts held by the Red Sky Group Ltd. The board papers sought the board's agreement — on the basis that the Housing Executive considered that it had lost all trust and confidence in the Red Sky Group — to issue a three-month termination notice in respect of all the response maintenance contracts held by it. That was approved by the board, and a three-month termination notice became effective from 14 April that year. It was, obviously, widely reported at that time.
8. On taking up post in May 2011, Minister McCausland expressed his concerns about the issues relating to the Housing Executive's management of contracts on foot of a briefing that officials gave in relation to the review of governance in the Housing Executive in 2010 and on the issues leading to the termination

- of the Red Sky contracts. In particular, he was concerned that contract management failings might exist across contracts and not just in one particular contract, namely that of Red Sky.
9. On 17 May, Robin Newton MLA wrote to the Minister requesting an urgent meeting, along with Sammy Douglas MLA and representatives of Red Sky, to make the Minister aware of their concerns regarding the termination of the Housing Executive's contracts and the implications for the company and its employees.
10. On 27 May, departmental officials advised Minister McCausland that he should decline the invitation, as it was an ongoing contractual matter between the Housing Executive and Red Sky. However, the Minister decided not to decline the meeting, and it was held on 27 June 2011.
11. Subsequent to that, the Minister had a number of meetings on 28 June with officials, the chairman and the acting chief executive of the Housing Executive to discuss concerns about contract management and the termination of the Red Sky contract.
12. From a departmental official point of view, there were four key issues to be addressed at the time: first, ensuring the provision of appropriate response maintenance services to tenants — to make sure that that service was there; secondly, that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) arrangements in relation to the employees of Red Sky were progressing — clearly, they are essential in employment terms; thirdly, addressing the Minister's concerns that the issues that led to the termination of Red Sky contracts could be present in other contracts that might not have been the subject of any full investigation; and, finally, that the issues relating to the termination of the contracts with Red Sky by the Housing Executive were contractual matters between the Housing Executive and the administrators.
13. As you will see from the written documentations that we have given you — I am afraid that we have been able to provide you with vast tomes of those — we have been consistent and clear on the advice in relation to these matters. Of equal importance to us was that the new contracts, which addressed concerns about the overall response of maintenance contracts, should be in place as soon as possible. That is a rather key issue behind all this and some of the dating of the issue, because we were trying to get new contracts in place that would be much more robust in response maintenance and would address the needs of tenants and customers. Those are the themes that will come out again and again in our briefing.
14. At a meeting on 30 June 2011 with the chairman and the acting chief executive of the Housing Executive, the Minister advised that he wanted to ensure that he had public and personal confidence with the Housing Executive contracts. He also advised that he had received information from the Housing Executive indicating that there were some emerging issues with another company. He therefore had asked his Department — those of us here — for a forensic examination to take place on the management of contracts and that, in his view, it was inappropriate to issue or assign contracts until that examination was complete. At that time, it was thought that the examination could take place in around eight weeks.
15. The Minister asked the Housing Executive to take this proposal to the board and recommend it, provided that the administrator could guarantee to conduct the work. The Housing Executive representatives — the chairman and acting chief executive — expressed concerns about this and I, having arrived late to the meeting, advised that officials would need to work through the issues highlighted and report back to the Minister. I also noted that both the officials in the Department and Northern Ireland Housing Executive would face challenges, but would need to look at

- the Minister's request in taking forward the investigation and would also need to look at all the implications.
16. You will also be aware from the documents released by the Department to the Committee that, on 1 July 2011, I wrote to the Minister on the issue of a direction under article 10(1) of the Housing (Northern Ireland) Order 2003 and gave him advice on that issue in the situation that the Housing Executive did not fulfil his request.
17. Minister McCausland had indicated that his reason for seeking an extension to the termination of the Red Sky contracts and a proposal to assign these to neighbouring contracts was to allow our officials to carry out a forensic investigation of a sample of contractors, including those who would be taking forward the Red Sky contracts, in order to give an assurance that the problems identified with Red Sky were not endemic across the Northern Ireland Housing Executive contractors. However, in that advice, I set out a number of factors to be taken into account in relation to the issue of a direction. I recommended that a direction should not be issued to the Housing Executive in relation to this matter as I did not believe that the reasons and any supporting evidence were significantly rigorous to justify the issue of a direction. Indeed, I indicated, should the Minister believe a direction was required, that I, as accounting officer, would need a ministerial direction to direct me.
18. In the event, as the Committee will be aware, the Minister did not issue a direction. On 1 July 2011, he wrote formally to the Housing Executive chairman in relation to his requests. He confirmed that he had asked officials to carry out a forensic investigation and formally asked the chairman to put it to the Housing Executive board that the termination date of the Red Sky contracts should be extended from 14 July 2011, subject to the administrator stating that he could continue to allow an open procurement competition for the Red Sky contracts to be undertaken with immediate effect.
19. The extension to the contract with the administrator would be for a period of six months or until new contract procedures could be put in place. I will point out that there was a question of trying to renew the whole set of contracts. This procurement exercise would have meant that Red Sky contracts would be subject to open procurement rather than reassignment, but it was subject to the administrator confirming that he could continue to service the contracts until that time: nobody else could do that.
20. I also arranged to meet the Housing Executive chairman on Monday 4 July to discuss the Minister's letter of 1 July and to ensure that the nature of the Minister's request in his letter was fully understood both by the Housing Executive and the Department. The Committee will be clear from the evidence it has received, as well as from members' own knowledge of events, that this was a really complex issue that attracted a high level of media attention and significant debate at that time. It had also been subject to a lot of discussion between Housing Executive officials and Departments. It was therefore really important to me that the chair of the Housing Executive was clear about exactly what was being asked. It was not a direction that he had been given; it was a request to look at this issue and put it to the board, and it emphasised the point about the role of the administrator.
21. You will be aware that the Housing Executive board met on 5 July to discuss the situation and the Minister's letter to the chairman on 1 July. Following that, the chairman wrote to the Minister that day and advised that the board had asked him to express its deep concern at the stance that had been taken in relation to the termination of the Red Sky contracts. The chairman stated that the contracts had been terminated through thorough and extensive forensic investigations. The board formed the view that the trust and confidence

- necessary for satisfactory operation of the contracts had been profoundly undermined and that Red Sky had been advised of that on 13 April 2011. The board, on that morning of 5 July, reconfirmed that view in respect of Red Sky in administration.
22. The chairman's letter went on to advise that the board had resolved that, if a direction was issued, it would immediately challenge the legality of such a direction in the High Court. It had instructed legal representatives to take the necessary preparatory action and had put the High Court on notice that it may be necessary to convene an urgent judicial review hearing at short notice.
23. You will note that the Minister's letter to the chairman of 1 July did not refer to the issue of a direction. Also, the chairman's reply of 5 July did not, in fact, answer the Minister's specific request about the ability of the administrator to service the contracts while an open procurement exercise was undertaken. Further clarity on that aspect was received by email from the Housing Executive's head of procurement on 6 July 2011 — the next day. Having got that, I briefed the Minister on the board's response to his request and on the information provided. I recommended that the Minister should advise the Housing Executive to move forward with its proposal to reassign contracts to adjacent contractors to ensure the continued provision of services to tenants. I also recommended that the Minister should seek assurances from the chairman that the neighbouring contractors had the appropriate TUPE arrangements in place for the affected Red Sky employees and that the Housing Executive would put in place robust and appropriate contract monitoring arrangements. The Minister wrote to the chairman on 7 July on that basis and confirmed that the Housing Executive should proceed with the termination of the Red Sky contracts from 14 July and move forward with a proposal to reassign contracts to adjacent contractors to ensure the continued provision of services to tenants.
24. Chairman, you will remember that the Minister met you on 6 July to brief you on those issues. So, the termination took place on 14 July.
25. As I said, I hope that this has given you a quick overview of the key issues around that time. It is all set out in more detail in the memorandum. We are happy to take questions.
26. **The Chairperson:** Thanks for that. Before I bring in other members, I want to make a couple of points. First, that table is very noisy.
27. **Mr F McCann:** I do not have my arms on it. It is Mickey.
28. **Mr Brady:** And Stewart.
29. **Mr Dickson:** It is a different table.
30. **The Chairperson:** OK. People should be conscious of that. It is affecting the microphones and other people's ability to hear what is going on.
31. To remind ourselves, we are dealing with phase 3 of the inquiry. We have a particular term of reference. We are not reinvestigating contracts or any of that business. That is not part of our remit, whatsoever. We will take what was there, and what has happened with contracts being terminated, reissued or whatever else, as matters of fact. As I said, we are investigating whether there was any political or inappropriate dealings with regard to the matter. We do not need to rehearse that, but we should remind ourselves of the kind of parameters within which we are dealing with this.
32. Will, in the memorandum you presented to us, you referred to a meeting with a number of MLAs who requested to meet the Minister. Officials clearly advised the Minister to decline that meeting, but, in paragraph 13, you advise that the special adviser amended the draft response, which, in effect, advised that the meeting would go ahead. Do you feel, as accounting officer and permanent secretary, that the advice should have been adhered to? You obviously set out

- all the legal and procedural implications for doing otherwise, given that the contract in question was subject to legal and contractual issues between the Housing Executive and the contractor. What I am basically putting to you — and it is clearly pertinent to this phase of the inquiry — is that you and other officials gave clear advice to the Minister to decline the meeting but that that advice was not adhered to and that, in fact and according to your memorandum, the special adviser redrafted the response and said to the MLAs in question that if they felt that a meeting would still be beneficial that they should make contact and so on. On the basis of what is in front of us, I suggest that that is a stark contradiction to the advice given. That is the kind of thing that we have to look into.
33. **Mr Haire:** I may ask Jim to come in, as he was involved. The point is that one puts advice to Ministers but it is the job of Ministers to decide. They have the right to decide. Throughout my career as a civil servant, I have given advice to Ministers. They have sometimes taken it, but they have sometimes taken a different view. The key issue for me is to give the best professional advice and set out the issues. For example, we presented legal advice, and very clear advice was given in the briefing when the meeting was set up, which defined the limits of what the Minister could do in that area. The key point was that contractual issues are the responsibility of the Housing Executive, and the Minister has roles in relation to the Housing Executive, but not in relation to the contracts in that formal process. It is fairly normal. Ministers must always make their decisions.
34. There was an issue. You will see that in some of the documentation, and somebody rightly raised the issue about changing or not changing the advice. We always say that special advisers have a total right and duty to give their views to Ministers. That is part of their job. However, the Minister must always decide, and we always make sure that it is the Minister who makes the decision.
35. **The Chairperson:** I appreciate that. Obviously, you cannot speak for somebody else, and they will presumably have to answer for themselves at some point. The point I am making is, against very specific advice from you and other senior officials, and the knowledge that the Housing Executive was about to go to court on the issue, and had already alerted judges and all the rest, that not just the Minister but his special adviser came back — you have told the Committee that in your evidence and in your memorandum. Did you not feel that you needed to go back to him and say, “Excuse me, let me remind you of the advice that I gave to the Minister.”? It is very difficult for us to understand how a person in your position, with your status and statutory role could be overruled, effectively, by a SpAd.
36. **Mr Haire:** There are certain roles that I, as accounting officer, fulfil — I am responsible to you and the Assembly for money. In my role as principal adviser to the Minister, I have a role to make sure that that advice is given, but it is the right and duty of the Minister to make the decision. That is how it is set out.
37. You spoke about a legal challenge at the time. There was not. The legal challenge we discussed was later, obviously when the Housing Executive board felt it should pursue that. There was no question of legal challenge when the request for the meeting was received. We are very clear that, legally, a Minister has an absolute right to attend such meetings. They just need very clear advice about what they can say and what their role is. You have seen that, and the briefing that was given to them. You have seen the line that they should take, which set out very clearly what the Minister could say. My understanding is that the Minister made those points and that you, Jim, remade those points at the meeting.
38. **Mr Jim Wilkinson (Department for Social Development):** Just for clarification, the briefing from officials in relation to the request for a meeting was clear, and the Committee has seen the advice that was given. The Minister

- had that briefing, and he had the special adviser's comments.
39. **The Chairperson:** For the record, will you state what that advice was, Jim? We have it, but the record does not show that.
40. **Mr Wilkinson:** The advice from officials in relation to the request for a meeting was to decline it as this was a contractual matter between the Housing Executive and the contractor and might be subject to ongoing legal proceedings. That advice was with the Minister. The special adviser added his advice, the Minister considered both and, as you said, the letter was issued offering the meeting if it was felt to be appropriate.
41. As Will has described, the role of officials is to provide advice. Ministers take decisions, and the role of officials is to support Ministers in those decisions. That culminated in the second briefing, which was clear advice to the Minister about how the meeting should proceed. That is the sort of process that happens. That is quite common.
42. **Mr Brady:** Thanks very much for the presentation. On the Red Sky contract and the notification by the chair of the Housing Executive that it was to be terminated, did the Department take any steps to satisfy itself that this was the correct course of action? Obviously, you got notification of that. Did you, as permanent secretary of the Department, or your officials take any cognisance of the fact that there may be something to investigate from your point of view rather than just accept what the Housing Executive was saying?
43. **Mr Haire:** It is the job of the Housing Executive to run those contracts and make sure that everything is done following due process. I knew that there had been some debate and concerns in the Housing Executive about Red Sky and how to handle the contracts. I remember that the chairman rang me just beforehand, and I asked whether he had got legal advice and was absolutely clear on that point. He confirmed to me that he had, and I thanked him for notifying me. It is not the role of the Department to investigate every decision or to micromanage the board. It is the responsibility of the board to handle its contracts.
44. **Mr Brady:** Was there no discussion with the Housing Executive as to its reasons for wanting to terminate the contract?
45. **Mr Haire:** As I said, we did not go into detail on the issue. I knew that the Housing Executive had been considering the issue. It made very clear in that part of the contract its confidence in the contractor. The evidence on which it felt it had the right to terminate the contract had been put to the board, and the board agreed it. It was not the role of the Department to investigate that.
46. **Mr Brady:** On 28 April 2011, there was a meeting between senior Housing Executive officials, including the chair and the chief executive, and members of the DUP. Was DSD management briefed on that?
47. **Mr Haire:** No.
48. **Mr Brady:** Were you briefed either in advance of the meeting or after it?
49. **Mr Haire:** No. After the meeting, we would have heard about it, but we certainly were not briefed before it. That was dealt with by the chair.
50. **Mr Brady:** Would you normally expect to get a briefing on a meeting of that magnitude?
51. **The Chairperson:** Sorry, but was it not the case that you, Jim, were at that meeting?
52. **Mr Wilkinson:** No.
53. **Mr Haire:** That was a different meeting.
54. **Mr Wilkinson:** You are talking about the meeting on 28 April, held in the Housing Executive. The Department did not receive a briefing in advance. After the meeting, I was advised that a meeting had taken place. That was done some time thereafter, at the next performance meeting.

55. **Mr Brady:** Following a meeting like that, or prior to a meeting like that, would it not be normal to get a briefing?
56. **Mr Haire:** The Housing Executive is a major organisation and meets many MLAs on many issues. Obviously, this was a significant issue, and it felt that it was an important meeting, because the issue of Red Sky had come into the political sphere. It would have reported on the meeting in that context, but there is no rule to say that the Housing Executive has to report on every meeting. Certainly, that would be strange —
57. **Mr Brady:** The point is that it was a particular meeting about a particular issue.
58. **Mr Haire:** As I said, I think that we did get some feedback that such a meeting had taken place, but after the event and not before it.
59. **Mr Wilkinson:** Not before it, and we got no copies of the minutes.
60. **Mr Brady:** Are you at liberty to disclose the nature of the feedback that you got?
61. **Mr Wilkinson:** As I recall, there was a performance review meeting at which we were told that a meeting had taken place on what was an important issue. It was nothing more significant than that.
62. **Mr Allister:** There was a meeting on 27 June between the DUP, the Minister and representatives of Red Sky, if that is who they were representing. You, the officials, gave clear advice against the holding of that meeting because you took the view that the matters to be discussed were contractual issues for the Housing Executive. It was also a meeting involving representatives of a company, if they were representing that company, that was in administration. Had you any concerns about that dimension?
63. **Mr Haire:** Jim, I do not —
64. **Mr Wilkinson:** The issue is that, having provided advice on the meeting, once the meeting was taking place, our role was to provide the most appropriate advice and recommendations for the Minister. We sought legal advice on that. So, we were content with the briefing that we provided for the Minister in advance of the meeting, both about whom he was meeting and, more importantly, the role of the Department and the role of the Minister, which was fairly clear. We were content that the briefing for the meeting made quite clear the position on any matters that might fall into the contractual area.
65. **Mr Allister:** In what capacity were the two gentlemen, Mr Rooney and Mr Cooke, attending the meeting?
66. **Mr Wilkinson:** My understanding of their capacity was from the original invitation letter, which referred to representatives from Red Sky and MLAs.
67. **Mr Allister:** Red Sky was then Red Sky in administration.
68. **Mr Wilkinson:** Yes. The company was in administration.
69. **Mr Allister:** But there were no representatives from the administrator.
70. **Mr Wilkinson:** No. Or from the Housing Executive.
71. **Mr Allister:** That is the second point. Was it not a little odd that, at a meeting held to discuss the termination of a contract by the Housing Executive with Red Sky, Red Sky is there, although in administration, but the Housing Executive is not? Had you any reservations about that?
72. **Mr Wilkinson:** I think that the important element through the briefing was that we were quite clear that the matters relating to the termination of the contract and any contractual matters were between the Housing Executive and the administrator. First, the briefing request and the update were passed on to the Housing Executive. So, we were quite clear who was meeting, and the Housing Executive was asked to provide input to the meeting. If the Department's advice is that any contractual matters have to be discussed, not having the parties who were discussing the contractual

- matters meant that they could not be discussed at that meeting.
73. **Mr Allister:** Was the discussion at that meeting about the formation of a new company?
74. **Mr Wilkinson:** I need to refer to the minutes, but I think that the minutes cover a wide variety of issues.
75. **Mr Allister:** Who was going to form that new company?
76. **Mr Wilkinson:** My understanding, again if I can refer to the minutes, is that a number of the —
77. **Mr Allister:** I do not know whether your pages are numbered the same as mine.
78. **Mr Wilkinson:** I do not think that they are.
79. **Mr Allister:** It is on page 495, if that is any help.
80. **The Chairperson:** I refer members to pages 495 and 496 of the electronic pack.
81. **Mr Allister:** The minutes state:  
*“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.”*
82. What did you understand from that meeting of what was being said and of what they would have liked to do with that new company?
83. **Mr Wilkinson:** My understanding is, in as much as the minutes record, that those individuals were aspiring to set up a new company and to acquire the Red Sky business.
84. **Mr Allister:** And take over the Red Sky contracts with the Housing Executive.
85. **Mr Wilkinson:** To acquire the Red Sky business —
86. **Mr Allister:** Which, at that point, included the contracts.
87. **Mr Wilkinson:** It may or may not have included them. The contracts were to terminate on 14 July.
88. **Mr Allister:** Yes. If they did not terminate, which, of course, was the further thrust of what the Minister was advocating hereafter, they would be there to be acquired.
89. **Mr Wilkinson:** The acquirement of the contracts would be a matter for the Housing Executive and its procurement arm.
90. **Mr Allister:** But Red Sky’s representatives were making it clear that they wanted to form a new company to supersede Red Sky and take over the various Red Sky contracts.
91. **Mr Wilkinson:** Yes.
92. **Mr Allister:** Did they put a name to that company?
93. **Mr Wilkinson:** No.
94. **Mr Allister:** Do you recall the name Totalis?
95. **Mr Wilkinson:** No.
96. **Mr Allister:** You never heard that.
97. **Mr Wilkinson:** No.
98. **Mr Allister:** Right.
99. **The Chairperson:** Are you moving on to a further question, Jim?
100. **Mr Allister:** Yes. So, at the meeting, there was a discussion of that nature. Did the Minister express any view about that?
101. **Mr Wilkinson:** As I said, we were quite clear in the briefing to the Minister for the meeting that any matters relating to contracts and the awarding of contracts would be a matter for the administrator and the Housing Executive. At the meeting, it was very much the Minister listening to reps.
102. **Mr Allister:** Did the Minister follow the advice that he was given in the briefing?
103. **Mr Wilkinson:** As you will see from the third paragraph of the minutes of the meeting, the Minister made it clear:  
*“these matters were currently with the Administrator”.*

104. **Mr Allister:** The Minister had been advised:

*“Issues regarding the termination of the contract ... are contractual matters between the two parties concerned. An Administrator has been appointed to oversee the affairs of the company and their activities and role is governed by the laws of insolvency. These matters are subject to ongoing legal processes in which the Department has no role.”*

105. That was the advice to the Minister.

106. **Mr Wilkinson:** Yes.

107. **Mr Allister:** The minute records that, at that meeting, the Minister suggested that he wanted the administrator in place until the end of August. Was that compatible with the advice? Was he following the advice that he had been given?

108. **Mr Wilkinson:** The key thing is that the Minister expressed his view at that time.

109. **Mr Allister:** Was that compatible with the line that he had been advised to take?

110. **Mr Wilkinson:** Yes, I am quite content. I followed up why that was the Minister's view and what he would like to achieve. We were quite clear that the decision-making would be entirely a matter between the Housing Executive and the administrator.

111. **Mr Allister:** Yes, but, in making that proposition, how far was he crossing a line, if at all, in trying to shape and rewrite what the executive had already decided on a contractual matter?

112. **Mr Wilkinson:** Again, as I indicated, the meeting involved listening to issues and hearing about the intentions of a company. I am quite content, and it was quite clear at the end of the meeting that, irrespective of those discussions, decision-making was entirely a matter for the Housing Executive.

113. **Mr Allister:** Yes, I understand that, but, Mr Wilkinson, the advice given to the Minister was, “Yes, you are having this meeting, but here are guidelines, and the guidelines are that we do not interfere in the contractual

arrangements of, or the termination of contracts by, the Housing Executive”.

The Minister went along to that meeting and seemed to make a proposition that would involve such interference; namely, that the contracts would not expire on 14 July but would continue thereafter.

114. **Mr Wilkinson:** The Minister made his position clear, and I think that it was one of the consistent points that Will referred to. The Minister addressed the fact that he had concerns that existing contracts should be subject to the same level of scrutiny. At the meeting, he referred to his view that that would allow some activity until the end of August. Again, our position has been quite clear. The Minister has a responsibility for and an interest in issues that are brought to his attention, but the method of handling them is through the Housing Executive.

115. **Mr Allister:** In fact, what he did next was write a letter asking for a six-month extension — not even until the end of August, but for six months. He wrote that unknown to the Department, is that what we are to understand?

116. **Mr Wilkinson:** No.

117. **Mr Allister:** Will you clarify that?

118. **Mr Haire:** There were a number of meetings and discussions with the Minister, and we obtained advice. I think that the Minister was particularly concerned at that time. His concern was whether he could be sure that the same practices in Red Sky would not be found in the work of the contractors to whom the work was being assigned. His argument was to get the new contracts in place and then let an open competition take place. My understanding is that Red Sky in administration would not have been able to compete in that area. It would not have had the track record. There would be new contracts so that the Minister could be sure that the tenants were getting a service from contractors who were all effective and good at using the new contracts. The six months came from that issue, is that right?

119. **Mr Wilkinson:** The context would have been that, following the meeting, the Minister followed through on his concerns that the issues relevant in Red Sky might be prevalent elsewhere. There was a series of meetings on how that might be addressed. The Minister indicated his idea that it might be addressed by a forensic investigation and by extending the contracts to allow new recruitment to take place.
120. **Mr Allister:** The purpose of making that suggestion is revealed, is it not, in the minutes of 27 June. They state:
- “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.”*
121. What did that mean?
122. **Mr Wilkinson:** That was the Minister’s comment.
123. **Mr Allister:** I suggest to you that it is pretty clear what it means. It would give Red Sky time to reform itself.
124. **Mr Wilkinson:** That could be the case, but I think —
125. **Mr Allister:** If that is what it meant, was that not a Minister involving himself in promoting the commercial interests of a company?
126. **Mr Wilkinson:** I go back to the key point —
127. **Mr Allister:** Was it not?
128. **Mr Wilkinson:** The key point that was made at the meeting and in the briefing was that any decision relating to the award of contracts, the extension of contracts or the termination of contracts is a matter for the Housing Executive as the contracting authority and its contractors, or, in this case, the administrator. That point has been very clear in all our briefings.
129. **Mr Allister:** I am not faulting your briefing.
130. **Mr Wilkinson:** The decision-making point was always with the Housing Executive.
131. **Mr Allister:** I am not faulting your briefing whatsoever. I am asking you to apply the advice in the briefing to what actually happened at the meeting and answer the question of whether or not it would appear that the Minister went beyond that advice and, in fact, ended up setting a scene to assist the commercial interests of a company at that meeting.
132. **Mr Wilkinson:** I am content that the meeting began and ended with clarity as to with whom and where responsibility —
133. **Mr Allister:** Are you content that the minute that I read to you is an accurate record of what the Minister said?
134. **Mr Wilkinson:** The minute of the meeting is the best recollection that I have come across —
135. **Mr Allister:** So, you do not quibble with this whatsoever: the Minister said that this might also be able to give the proposed new company time to progress matters.
136. **Mr Wilkinson:** Absolutely. I could not recall every word of the discussion. I look at the minutes of the meeting, and there is nothing that I would dispute.
137. **Mr Allister:** I come now to the meeting of 30 June, which you were at, Mr Haire.
138. **Mr Haire:** Yes.
139. **Mr Allister:** The Minister said that it would be inappropriate to terminate the contract until the forensic examination had been completed. That is the point that he made to the Housing Executive. Did you give him that advice or did you concur with that advice?
140. **Mr Haire:** You will see from the minutes that I arrived after all that discussion. The answer is —
141. **Mr Allister:** OK. Does the Department concur with the advice that it would have been inappropriate to terminate the contract on the scheduled date of 14 July until the forensic examination had been completed? That was the

- Minister's contention. Was that on advice from your officials or was that him acting on his own?
142. **Mr Haire:** I think that you have a copy of the advice. It should be in your papers. I think that Heather gave the advice on 30 June, and that would be the advice —
143. **Mr Allister:** Well, it does not embrace, I suggest to you, the Minister suggesting that we could push back the termination by six weeks. That would be interfering in a contractual matter, would it not?
144. **Mr Haire:** All that I am saying is that all that I can give you is the record of —
145. **Mr Allister:** Let us not quibble over that. You advised him that he should not interfere in a contractual matter. However, the Minister contending with the Housing Executive that the termination should be pushed back six weeks is him interfering in a contractual matter. Is that not right?
146. **Mr Haire:** The argument would be that the Minister has advice to make sure that the quality of service is right for the tenant. Therefore, he has a right to put the question to the Housing Executive board to consider whether it could put the termination back there and still fulfil its contractual processes, and he does that on 1 July. It seems to me that he has a right to ask the board, but he does not have the right to direct it.
147. **Mr Allister:** You advised against the terms in which the letter of 1 July went out, did you not?
148. **Mr Haire:** No, no. In the letter of 1 July, we accepted that advice comes from the Department to say that you can go so far. You can ask, you can put it to the board, but you cannot —
149. **Mr Allister:** You very strongly advised him that he could not or should not issue an article 10 direction.
150. **Mr Haire:** Absolutely, but the letter is not an article 10 direction.
151. **Mr Allister:** No, but it was moving in that direction.
152. **Mr Haire:** As for putting that issue to the board, and, of course, the board does look at some of those issues, a key issue in this, which is key to the 1 July letter, is the fact that any idea of pushing it back only works out if Red Sky in administration can continue to hold the contract. If it cannot do that, if it cannot secure support, any question of it selling its business to anyone else brings it totally to the end. Declan Allen makes that absolutely clear, and we support that process.
153. **Mr Allister:** In your experience, have you ever encountered such an anticipated ministerial intervention in a contractual matter?
154. **Mr Haire:** Sorry. Have I had other Ministers ask questions about the executive's —
155. **Mr Allister:** No. Have you ever before encountered a situation in which a Minister wanted to make such an intervention in a contractual matter?
156. **Mr Haire:** It may be more to do with my experience when I say that it has never before happened in the process, but this is the first time that it has come up in my experience in DSD. That in itself may not be significant.
157. **Mr Allister:** So, in your experience, you had never before encountered such a proposed ministerial intervention.
158. **Mr Haire:** I had not come across something like that in my career previously. That is all that I can say.
159. **The Chairperson:** OK. You have answered that.
160. **Mr Allister:** Thank you. I will have a couple more questions later.
161. **The Chairperson:** That is not a problem. I want to bring in other members.
162. Sticking to this point, it is clear from the evidence that we have heard today, as well as from the written submissions, that advice was given to but not accepted by the Minister to decline the meeting. The meeting went ahead. It had already been brought to

- our attention that the administrators, for example, were not at that meeting. How appropriate did you feel it was for you to be at that meeting since you had advised against it and given very clear reasons why it should not go ahead, in that it was potentially interfering in contractual matters? The minute of the meeting shows, in my view, that it strayed very close to that, because it shows that the Minister advised certain things that were clearly at variance with your advice.
163. I want to ask you a specific question. Do you believe that the action as written and recorded in that minute is at variance with the advice that you gave, and, on that basis, do you feel that it was appropriate for senior members of the Department to be at that meeting?
164. **Mr Haire:** The minute records what the Minister said and thought at that meeting and the process, and the Minister can answer for that.
165. **The Chairperson:** Absolutely, yes.
166. **Mr Haire:** The key issue is that the meeting was not about contractual arrangements, in the sense that it was not one at which there was any negotiation about contracts by the Housing Executive, the contracting authority or the housing administrator. It was a representation about issues of concern about the handling of a termination of contract issue. You might argue that MLAs often bring up those issues of concern to Ministers. That was brought to the Minister's attention, and the Minister felt that it was his duty to listen to MLAs. There was no decision at the meeting. The Minister listened and heard a concern, but there was no action at that meeting, and the issue that you are exploring is what the Minister subsequently did. As for the actual meeting, that was the one. The Minister made his decision. I have been in situations in which I felt that contracts or things were being discussed. Sorry, I can imagine being in a situation in which I would say, "This is not appropriate. Please stop".
167. **The Chairperson:** Most people would presume that, if they are at a meeting with a Minister, and the Minister advises that something be done, a lot of weight would be put on what that Minister said, because you would like to think that a Minister has influence on issues. That is why people want to speak to Ministers, which is very often an entirely appropriate thing to do. People would probably like to meet Ministers more often to get their point of view across. I am not taking issue with that, but I am trying to establish how much variance there was from the advice given not to interfere in contractual matters and then someone telling people at a meeting, "I am advising that I want this course of action followed", or, in other words, the contract to continue. That suggests to me that, at the very least, you are leading somebody up the garden path.
168. **Mr Haire:** The key issue, as Jim referred to, is that, at the end of the meeting, the Minister makes it quite clear that it is an issue for the Housing Executive. He is absolutely clear about that process. So, he left everybody in that meeting absolutely clear that that is where the decision-making takes place.
169. **The Chairperson:** Jim, did you make it clear to people at the meeting?
170. **Mr Wilkinson:** Yes.
171. **The Chairperson:** The Minister had his say, and then you came in and said, "By the way, ignore that".
172. **Mr Wilkinson:** No. To put it in context, I am quite clear that the role of officials is to support Ministers and implement their decisions, and our role was to support the Minister at that meeting.
173. **The Chairperson:** How was it communicated at the start and the end of the meeting? The Minister made a comment. The Minister may well be right, but you are telling us that, notwithstanding what the Minister said, according to the record, the meeting was left in no doubt that the decision would be taken by the Housing Executive. How was that communicated? Did you, as a senior officer, say, "The Minister has just

- said that, but, by the way, here is the reality”? Is that what happened?
174. **Mr Wilkinson:** The minutes record it. A number of issues were discussed at the meeting, one of them being new information contrary to the briefing that we had from the Housing Executive regarding termination dates. The minutes conclude:
- “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 consideration of contractual matters is between the Housing Executive and the Administrator.”*
175. It is quite clear that the Minister was giving his view and opinion, but it is very clear that the route for pursuing that view was through the Housing Executive. The subsequent submissions and letters are about recognising the role of the Housing Executive in taking those decisions.
176. **The Chairperson:** Thank you, Jim, for that.
177. **Mr Copeland:** I am not a lawyer; I just want to get a bit of background to this. In awarding contracts that are subject to tender — the contracts that we are discussing were previously won by Red Sky and, presumably, would have gone to it again in the future — is past performance taken into account?
178. **Mr Haire:** Questions have been asked about that previously. You have experts before you in the next session. Declan Allen will be able to clear that up. It has been a contentious issue. At that time, I am not sure that it was possible, but now there is a process. In fact, a new EU directive will make it even more possible. It is quite a contentious and complex issue. You will see that there was correspondence, and I responded to some issues. We tried to tighten up — within what was legitimate and within the law — how that is done, but it is difficult.
179. **Mr Copeland:** Is it taken into account or not?
180. **Mr Wilkinson:** It depends on the nature of the contract that was awarded.
181. **Mr Copeland:** Would it have been taken into account in the awarding of the contracts that followed on from the ones that we are discussing?
182. **Mr Wilkinson:** You will have a chance to talk the experts in that area after this session. My understanding is that it would not have been taken into account for the previous contracts but will for many future contracts.
183. **Mr Copeland:** I understand that, but I want to get my mind around the legal entity. The meeting was attended by people previously connected with Red Sky, which was a separate legal entity because it was in administration. Were they there as people formerly connected with Red Sky or as people possibly connected to a new company that might rise from the ashes?
184. **Mr Wilkinson:** As I said before, they were identified for officials by the nature of the letter that requested the meeting with MLAs and representatives from Red Sky. That is how they were noted on the attendance at the meeting. It is quite clear from the minutes of the meeting that there are also people talking about funding a new company.
185. **Mr Copeland:** Did Red Sky exist as a legal entity at that stage?
186. **Mr Wilkinson:** No, it was Red Sky in administration.
187. **Mr Copeland:** That is a different legal entity, as far as I am aware. Did no one pick up on the fact that they were there representing something that did not exist?
188. **Mr Wilkinson:** The advice is clear that decisions on the operation of the Red Sky in administration contract rested with Red Sky in administration. That is very clear throughout the briefing, but this was not Red Sky in administration. The people at the meeting were not able to take decisions in relation to activity under the contract.

189. **Mr Copeland:** That, perhaps, could give you a road map for a potential destination that they were trying to reach, which is quite acceptable.
190. At the meeting of Wednesday 30 June, which the Minister chaired, the chief executive of the Housing Executive advised that he had asked for a forensic investigation to be undertaken into other contractors. Had a forensic investigation into the original company, which I think was Red Sky, been undertaken at that stage?
191. **Mr Wilkinson:** Yes, by the Housing Executive.
192. **Mr Copeland:** Did the Housing Executive of its own volition decide to have a forensic investigation into the other companies or did that come from the Minister?
193. **Mr Wilkinson:** That came from the Minister.
194. **Mr Copeland:** Right. Could there have been a possibility — I am just thinking out loud — that at some stage in the future when contracts became available, people with the experience and structures, perhaps bought from an administrator, could have gone forward with a clear record? Might they have been in a position to accept a tender for new contracts when other companies under investigation would not have been able to do so, or would that not have been taken into account?
195. **Mr Wilkinson:** That is a complex question and, again, I defer to someone who knows more about it. From what you described and what we have indicated, whether or not you were under investigation would not have any bearing on whether you could apply for a new contract relating to the existing contracts.
196. **Mr Copeland:** There was also discussion, which Mr Allister referred to, about extending the contract for six months initially. They then came back, I think through the SpAd, wanting to reduce that to four months. Was there any particular reason? What is the difference between six months and four months?
197. **Mr Haire:** I think that you would have to ask the SpAd about that. It was a request that he asked be passed on.
198. **The Chairperson:** Specific references in the papers outline the difference between four months and six months. It is do with procurement, the timing for awarding new contracts and so on. Trevor?
199. **Mr Clarke:** My point has been covered, thanks.
200. **The Chairperson:** Your points have been covered, Trevor.
201. **Mr Clarke:** Yes. For the minute, anyway.
202. **The Chairperson:** It is not very often that a member relinquishes the right to do battle.
203. **Mr Clarke:** I have not relinquished my right. *[Laughter.]*
204. **The Chairperson:** No problem.
205. **Mr F McCann:** I have a couple of questions. A meeting took place with Red Sky representatives on 27 June. You said that the Minister had been advised that any dealings in and around contractual arrangements should be directly with the Housing Executive. Why were DSD officials at the meeting on 27 June?
206. **Mr Wilkinson:** I will just clarify and restate that the role of the officials is to provide advice to the Minister, which was done on two occasions, and their role thereafter is to support the Minister in his decision. He decided to attend the meeting, and officials support their Ministers at meetings and provide the appropriate advice. We also attended the meeting.
207. **Mr F McCann:** So you attended even though you had advised him that the meeting should not go ahead.
208. **Mr Wilson:** Yes. That is very common.
209. **Mr F McCann:** At the start of the session, Will, you said that you advised the Minister against the meeting. Did

- the Minister or the SpAd go directly to the Housing Executive or was it all done through DSD officials?
210. **Mr Haire:** Do you mean the meeting on 27 June?
211. **Mr F McCann:** Yes.
212. **Mr Wilkinson:** Once the decision was taken to hold a meeting and it was in the Minister's diary, a briefing would have been requested in the normal manner, in this case from the housing division. We sought input directly from the Housing Executive to provide us with an up-to-date position, which was included in the brief provided.
213. **Mr F McCann:** Some of the information that we have goes back as far as 2001 and shows that Red Sky was in existence under a different name then. I think that three companies amalgamated to form Red Sky. I am trying to get my head around this: should that not have raised concerns when Red Sky was going for a major contract? There had been serious problems in the Shankill area, which is where the former company was.
214. **Mr Haire:** That is historical. I do not know the industry well enough —
215. **Mr F McCann:** The information that we have is historical. It goes back quite a way.
216. **Mr Haire:** The experts in the Housing Executive could best advise on how they handle contracts of this sort.
217. **Mr F McCann:** Let us bring it forward, then. Your briefing mentions the Housing Executive and states that it was open to Red Sky to take legal action over the withdrawal of the contracts. If that was the case, and it did not take legal action, obviously it was admitting that there was a problem. Why did the Minister, the SpAd or whoever ask the Housing Executive to withdraw its contracts?
218. **Mr Haire:** You have the advice on exactly what the Minister asked on 1 July. He was asking about a slightly different aspect: the process of transferring it to other contractors.
219. **Mr Wilkinson:** It is also important to reflect that the issue that officials were pursuing, and on which they were providing advice to the Minister, was how he could get assurance about other contractors. The extension of the contract was with Red Sky in administration. A company in administration has a specific activity, which is to maximise any returns to creditors. It was quite clear that the extension request was for the administrator, if it could run the company. It was not for any new company or for Red Sky as it existed.
220. **Mr F McCann:** The meeting of 27 June was with Red Sky representatives. Were any of them a part of the new company?
221. **Mr Wilkinson:** The titles assigned to the attendees were the titles given in the invitation request. At the meeting, it was quite clear that those people had been involved in Red Sky. They also made it clear that they wished to establish a new company and acquire elements of what had been Red Sky.
222. **Mrs D Kelly:** I am looking at the events chronologically. The Red Sky issue came about through a whistle-blower. The Northern Ireland Audit Office and then ASM Horwath became involved. Independent factual evidence presented to the board of the Housing Executive resulted in the decision to terminate the Red Sky contract. There was then a series of correspondence requesting a meeting with the Minister, which we have been discussing. I believe that I am right in saying that an annual contract of Red Sky's was worth some £7 million. That was among the findings in the report. The Horwath report discovered an overpayment of £1 million. I do not know whether that was a £1 million overpayment in one year: are any of you able to throw light on that?
223. **Mr Wilkinson:** I do not have the detail of those particular —
224. **Mrs D Kelly:** We could seek clarification on that.
225. **Mr Wilkinson:** The memorandum gives some facts and figures on the ultimate

- overpayment pursued, which, I think, was in the region of £500,000 or £600,000. The details of that will be with the Housing Executive.
226. **Mrs D Kelly:** Yes, but there is a difference between pursued and actual, as we know.
227. **Mr Wilkinson:** My understanding — I could be incorrect — is that the final figure was determined by the Housing Executive. I am not clear on it, but I think that the ASM report to the Housing Executive extrapolated from a sample. Its own teams then did much more detailed analysis and came up with the figure that was put to Red Sky as being owed, which, I think, was in the region of £600,000.
228. **Mrs D Kelly:** Do you have any idea how much Red Sky has paid back?
229. **Mr Wilkinson:** I cannot go into detail, but I am fairly certain that the memorandum details the amount that was to be recouped, the amount repaid and the amount written off because it could not be recouped. I do not have the figures, but —
230. **Mrs D Kelly:** We will look those out. I was just wondering whether Red Sky went into administration without having paid back any of the moneys that were overpaid.
231. **Mr Wilkinson:** That is a matter for the Housing Executive.
232. **Mrs D Kelly:** We will pick that up with the Housing Executive.
233. On the basis of the evidence, which was independently verified by the Audit Office and ASM Horwath, the meeting was set up against your better advice. The Minister went ahead, against your advice, with the meeting. In the run-up to the meeting, the Minister and his colleagues cried foul and tried to distort the reason for the Red Sky termination by saying that it was sectarian, whereas people in west Belfast had concerns about the roof falling in on top of them — I think that for the pregnant woman involved in one episode, it was the fourth time — never mind the historical and widespread failings of Red Sky right across the city. Will you tell me whether the Minister, in the brief, was given the same understanding that I have, which is that independent, factual, evidence-based concerns about poor workmanship or overcharging were, rightly, being addressed by the Housing Executive board? Even a block of flats that did not exist had been billed for. Did you get a sense that the Minister, having listened to Red Sky’s “poor me” approach and the victimisation that it tried to establish had taken place, took account of the glaring facts, as opposed to the accusations and false allegations by his colleagues about why the Red Sky contract was terminated?
234. **The Chairperson:** We will try to keep this discourse as non-subjective as possible.
235. **Mr Clarke:** Dolores would never stray from that.
236. **Mr Wilkinson:** The briefings provided to the Minister, updating him on the position in relation to the contracts, were very comprehensive. The Committee has those briefings, which go back through the history and rationale of the decision.
237. **Mrs D Kelly:** So the Minister was fully aware of the evidence trail.
238. **Mr Wilkinson:** Perhaps not the extensive level of detail that you have quoted. A lot of that came out in the NIAO report, which post-dated this, but, yes, the background and what led up to the determination was fully marked in the briefing.
239. **Mrs D Kelly:** The Horwath report was established before —
240. **Mr Wilkinson:** Yes, but the Minister did not have the Horwath report —
241. **Mrs D Kelly:** Did he not have it in advance of this meeting?
242. **Mr Wilkinson:** No, that was the Housing Executive’s report.
243. **Mrs D Kelly:** Did you not have any knowledge of it either?

244. **Mr Haire:** We knew about it. You have the records of our written briefing, and that was the best way of recording what the Department was saying at the time. It is not possible for us to remember what was said in previous —
245. **Mrs D Kelly:** That is fair enough.
246. **Mr Haire:** You have a very full record of what —
247. **Mr Clarke:** Dolores will make it up anyway, do not worry
248. **Mrs D Kelly:** There is some chattering going on here.
249. **Mr Wilkinson:** Officials were not asked to pursue issues regarding the termination of the Red Sky contract. They were asked to pursue how assurances could be found that the issues that led to the termination of the Red Sky contract were not present in other contractors. We were not asked that in relation to the Red Sky people mentioned. This was extending the administrator's oversight while similar investigations took place for other contractors. There was no challenge to any of the information presented on Red Sky.
250. **Mrs D Kelly:** There was a view, and there is a view, that the other contractors have now been brought into this scenario to cover up and muddy the waters.
251. **The Chairperson:** As I said, Dolores, try to stick to fact-based questions, if you do not mind.
252. **Mrs D Kelly:** OK, Chairperson. I am interested in what happened in July 2011, when the then chairman of the Housing Executive wrote to the permanent secretary asking him to step back. What does that mean? Why?
253. **Mr Haire:** You would have to ask the chairman of the Housing Executive. As you can see in the letter, the Minister had a concern about moving to a direction. In that letter, I see a chairman who is very concerned about the issue. He sent a letter to me, and I wrote back at the end of August. In fact, I met him beforehand and explained the situation to him at the end of August. I had given advice, which you can read. Of course, I could not share my advice with the chairman of the Housing Executive at the time because that is not my role, but I had been giving advice, and I do not know why he felt that I was going beyond my bounds on that issue.
254. I was trying to explain very carefully what was being asked. I had a separate meeting with him on 4 July to make sure that he understood exactly what the limits were and to reassure him that it was not a direction; it was a request to look at this issue. The Housing Executive looked at that and came back to say very clearly that it was impossible because the administrator was unable to continue. The letter came as something of a surprise to me, but, on the other hand, it was a very tense time. There was a lot of tension in the process, and maybe I got a bit of backwash on that issue.
255. **Mrs D Kelly:** I want to make one final point. I know that the officials are quite right to point out that it is their role to give advice and support. However, as the permanent secretary, do you not have a responsibility to be a bulwark when a Minister does not do the right thing in the public interest and in line with the Nolan principles? What is your resort? If you are put in an invidious position, what can you do?
256. **Mr Haire:** If my Minister asked me to do something illegal, or was doing something illegal or something that breaks the rules of public accounts and finances, I have a duty to make that point to him, but the Minister has to be responsible for his action. I give advice, but nobody expects permanent secretaries to be minders who have control of Ministers. You would not expect that of civil servants; it is a political act.
257. **Mrs D Kelly:** If the Minister refuses to accept your advice, have you any safety net? Can you report that to the head of the Civil Service? I am curious about how this works.
258. **Mr Haire:** If a Minister asked me to do something involving public money that I

- feel that I cannot justify, I have a formal position of writing to ask for a personal direction. If a personal direction is given to me, I will notify the Minister of Finance and Personnel and the Comptroller and Auditor General. If I may say, directions are often given for very good reasons, too. They are for political needs and issues where I cannot find value for money, but where there may be good political reasons. You have to be careful in what you say about directions. If it was a moral issue, or something like that, I suppose that I would have questions, and one might talk to the head of the Civil Service. However, on this issue, advice was given clearly and the Minister made his decision.
259. **Mrs D Kelly:** Was that the end of the matter?
260. **Mr Haire:** The process went through. In the end, the Minister concluded that he did not agree and the contracts were terminated on the date chosen.
261. **The Chairperson:** I want to follow on from that with a question to Will and Michael. According to the record, the flow is around 5 July and what were obviously another frenetic couple of days. I have a question about your respective roles. The chair of the Housing Executive wrote to the Minister advising him of his concerns about the Minister's actions in this matter. Did you share the chair's view — the briefings that you provided to the Minister show that you did — that, if you did not act, or, rather, if the Minister did not act appropriately, it would contravene your obligations in managing public money?
262. According to the record, Michael, you contacted Brian Rowntree and told him the views of the SpAd. Clearly, that contradicted the advice that you were giving to the Minister about any prospect of modifying, or seeking to modify, contractual arrangements between the Housing Executive and any contractor. In reading these reports, it seems to me that both of you acquiesced in giving advice to the Minister — or perhaps you did not. What I really want to know is this: in both circumstances involving
- the chair and the chief executive of the Housing Executive telling you that they had concerns about the Minister and the SpAd's involvement, did you continue working with the Minister and the SpAd on that basis? In your case, Michael, you went to Brian Rowntree, I think with an email, putting to him the business of four months as opposed to six months. I suggest to you that that would certainly be a potential modification of a contract, which would be outside the legal advice. I will give you a second or two to come back on that.
263. **Mr Haire:** If you read my advice to the Minister of 1 July, you will see that it makes very clear my position. Once we got the letter on 5 July, I made a submission to the Minister on 6 July, which you can see. It makes absolutely clear my position. The Minister followed that and agreed. I was absolutely clear about my position on public money etc. You have it on record. Obviously, there are bits of legal advice that I cannot share with you, but you will see the position clearly from those notes.
264. I will let Michael come in and answer the question to him, but I want to make one point. The key issue that the Housing Executive was, rightly, addressing on 5 July was the Minister's letter, which said six months. As I understand it — I heard about it only subsequently — Michael received a request from the SpAd to ask the Housing Executive to ask the administrator whether, if the period was four months, its position would be different. The key is that the Housing Executive and its board were being asked to look at those issues. Michael, do you want to comment?
265. **Mr Michael Sands (Department for Social Development):** Yes, Chair, that is correct. The Housing Executive board meeting was being held that day, as you said, and we explained in the briefing why the letter changed the period from 80 days to eight weeks, to six months and then back again to four months. It was a request. Six months did seem quite long. We had taken advice from CPD on the time that it would take to undertake a procurement exercise. We

- were reducing the period, but it had already been changed twice.
266. **The Chairperson:** Given the concerns expressed formally by the chief executive and the chair of the Housing Executive — you were well aware that it was their legal responsibility not yours or the Department's — did you think that it was appropriate for you to pass on a question from the SpAd? If you thought that it was appropriate, did you discuss it with any of the other senior officials? It seems to me, on reading that, that that would have been an inappropriate action because it clearly borders on seeking to modify an existing contract. By the way, I am addressing the issue because it is one of the terms of reference that we are addressing this afternoon.
267. **Mr Sands:** With the passage of time, Chairman, I cannot remember whether I discussed it. It was 7.30 am when the SpAd made the approach. I think that I checked with someone, but I cannot honestly remember. We sent it off because we needed to make that approach before the board meeting.
268. **The Chairperson:** Why did you need to make the approach when you knew that it was against the advice that you had previously given to the Minister? We are trying to get to the bottom of where the fault lies, because it seems that there was fault; we know that. I am trying to establish this with Michael because I suggest that getting a phone call or whatever at 7.30 am might not happen that often. Maybe you get such calls every morning; I do not know.
269. **Mr Sands:** He came down to see me in my room.
270. **The Chairperson:** You cannot recall whether you discussed it with anybody else after that, but you forwarded it to the Housing Executive?
271. **Mr Sands:** No. I cannot remember. I may have done, but I cannot honestly remember.
272. **The Chairperson:** If you may have done, can you speculate on whom you may have contacted?
273. **Mr Sands:** No. I really cannot remember.
274. **The Chairperson:** Would it have been the door person in the Lighthouse Building, the permanent secretary or Jim?
275. **Mr Sands:** It would have been someone above my pay grade.
276. **The Chairperson:** Who would that be, then?
277. **Mr Sands:** It would have been line management.
278. **The Chairperson:** Can you name the person for the record?
279. **Mr Sands:** I cannot remember.
280. **The Chairperson:** You cannot remember who your line manager was.
281. **Mr Sands:** No. I cannot remember whether I spoke to someone. I said that I may have done.
282. **The Chairperson:** I know, and I appreciate that, but I am trying to work out who. If it was someone above you, there cannot be too many people who were above you.
283. **Mr Sands:** The line of command
284. **The Chairperson:** We might be able to ask those individuals whether they can recall it.
285. **Mr Sands:** The line of command is sitting along this table, so I —
286. **Mr Haire:** Sorry. At some time, I heard about the issue, whether it was that day or after the board met. I do not know when I heard it. I do not think that I was there at 7.30 am. However, the key point for me is that I did not understand why this request had gone in in the process, but the key issue was the letter from the Minister. As I say, you would need to ask —
287. **The Chairperson:** Can I interpret from what you have just said, Will, that you did not think that contacting the Minister on the back of the request from the

- SpAd would have been the right thing to do?
288. **Mr Haire:** What I did not understand was why the request was made. The Minister's letter said six months. That was what the board was looking at, and I could not understand it.
289. **The Chairperson:** I think that it is a serious enough comment to make. Fair enough, one can deal only with what you can recall and what you are giving evidence on to the Committee. I infer from what you say that it was certainly flagged up in your mind as an unusual thing to do.
290. **Mr Copeland:** I have a couple of small points. In the meeting on 30 June 2011, reference was made to a meeting that had taken place two days earlier with the Minister and the chair of the Housing Executive, following receipt of further information from the Housing Executive about concerns with another contractor. The Minister had no choice other than to request a forensic investigation. Who was present at the meeting, in so far as you are aware, on 28 June 2011, and what issues were discussed? Did any of the contractors that were referred to as contractors in the meeting of 30 June resurface later on as being included by name in the ministerial statement that we spoke about this morning?
291. **Mr Wilkinson:** I will put this in context. A variety of meetings were taking place at this time; some were minuted, some were ad hoc, and some were not. However, from recollection and looking at diaries, I cannot confirm but I believe that there was a meeting on 28 June that was attended by the chair and the acting chief executive of the Housing Executive. I think that I was present and possibly Michael was. At this meeting, the Minister posed questions and asked whether there were issues about other contractors that may have difficulties. I think that he also maybe posed a question about what that means for the Housing Executive side: whether there are issues about how it manages contracts and whether there have been any disciplinary matters. I think that, at that stage, the chair said that there was another company and that there had been disciplinary action. We can get you information about that.
292. **Mr Copeland:** Was it one other company or several companies?
293. **Mr Wilkinson:** I cannot recall, but what I know is that, subsequent to that, the information provided by the Housing Executive and recorded in the briefing for the meeting on 30 June was the Housing Executive's response to that verbal meeting. They gave information on another contractor that it was looking at and on disciplinary procedure.
294. **Mr Copeland:** It was "a contractor" on 28 June and "contractors" on 30 June. That is my understanding. Were any of those companies named, and was there any correlation between the companies that were named or suspected on 30 June and those that were subsequently mentioned in the ministerial statement of 10 June some years later?
295. **Mr Wilkinson:** No.
296. **The Chairperson:** For the record, Michael, I remind you and others — I have just been reminded myself — that the four named contractors were planned maintenance contractors. We are dealing with response maintenance.
297. **Mr Copeland:** I understand. Did they not perform any of those duties?
298. **Mr Wilkinson:** Sorry, are you asking whether some of the planned maintenance contractors were response maintenance contractors? We would need to check. I think that they might have been. The Housing Executive will know more about that than I do. The Minister got additional information about investigations, and none of those companies was in that.
299. **Mr Allister:** I want to ask about a couple of things. I want to pick up on the point that the Chairman asked you about, Mr Sands. The email of 7.40 am on 5 July is from you to Maria McLaughlin. It actually opens with "Brian". Whom were you addressing?

300. **Mr Sands:** She is his PA.
301. **Mr Allister:** Right, OK. Brian who?
302. **Mr Sands:** Brian Rowntree.
303. **Mr Allister:** Brian Rowntree — the chairman. If you were asked at 7.30 am by the SpAd to do that, and you sent the email at 7.40 am, one thing that we can deduce is that, if there was consultation with anyone else, it was very short. We have certainly not been furnished with any emails that suggest that you emailed anyone else about it.
304. **Mr Sands:** I could have spoken to them.
305. **Mr Allister:** You cc'd Mr Wilkinson into it.
306. **Mr Sands:** Yes.
307. **Mr Allister:** But you still cannot remember whom you might have spoken to.
308. **Mr Sands:** No.
309. **Mr Allister:** Mr Haire, you gave very clear and appropriate advice against an article 10 direction. It was quite clear that that was in the Minister's mind. He took your advice, but it is quite clear that that was in his mind. Is that fair?
310. **Mr Haire:** I think that there is a reference in one of my submissions that the issue had been mentioned, so it must have come up in that discussion.
311. **Mr Allister:** He then desisted from that. With the board meeting coming up on 5 July, is there some evidence that a different tack was then approached — namely that of seeking to canvass opinion on the board?
312. **Mr Haire:** Sorry, I am not aware of that. Other than —
313. **Mr Allister:** Were you not aware of the statements by Councillor Jenny Palmer that she was lobbied by Mr Brimstone?
314. **Mr Haire:** Sorry, I am obviously aware of that and that that happened, but I was not aware of any sort of discussion about an approach to the board etc.
315. **Mr Allister:** Would it be OK or would it be wrong for a civil servant to seek to lobby an executive board member to seek him or her to change his or her position?
316. **Mr Haire:** It is not something that a civil servant would do.
317. **Mr Allister:** It is not something that you would expect a civil servant to do.
318. **Mr Haire:** No. In a certain situation, a Minister could ask for information to be sent, and the answer could be to go to the chairman and tell him or her the Minister's position. However, the position of officials is *[Inaudible.]*
319. **Mr Allister:** Yes, but a SpAd, of course, is a civil servant. A SpAd is a temporary civil servant who is subject to the same obligations.
320. **Mr Haire:** Yes, there are obviously issues that I am sure you will explore with the individual —
321. **Mr Allister:** To help us to explore those —
322. **Mr Haire:** — about this question of devilling on behalf of the party and all those issues that are in the —
323. **The Chairperson:** Jim, I do not want to interrupt your flow, but I want to make a point. We accept that these things are difficult. People are in awkward positions. They work with other people — colleagues, Ministers, advisers — and all those relationships are sometimes difficult and fraught with tension. Some of that is healthy and important. It is very clear that, if you are being asked questions, you need to give an answer as clearly and precisely as you can, regardless of relationships or anything of that nature. We have to set all that to one side even though we continue to work with the same individuals. We have a job of work to do here. We are expected to be professional in our manner of questioning, and everyone else is expected to be professional in their responses.
324. **Mr Allister:** We know that you instigated a fact-finding investigation. Has that concluded?

325. **Mr Haire:** The Minister is writing to the Committee on that issue.
326. **Mr Allister:** Are you not going to answer the question?
327. **Mr Haire:** The fact-finding has been concluded.
328. **Mr Allister:** When was it concluded?
329. **Mr Haire:** It was concluded last year.
330. **Mr Allister:** In the autumn of last year.
331. **Mr Haire:** That is all I know.
332. **Mr Allister:** Where is it being sent?
333. **Mr Haire:** It is being considered in the Department and with the Minister.
334. **Mr Allister:** Has it resulted in any disciplinary or intended disciplinary proceedings?
335. **Mr Haire:** That is an issue for the Minister. He is going to reply to the Committee.
336. **Mr Allister:** You are avoiding that question.
337. **Mr Haire:** It is an issue for the Minister to reply to.
338. **Mr Allister:** No. You are the permanent secretary. You have personnel responsibilities for civil servants in your Department, of which Mr Brimstone is one.
339. **Mr Haire:** I think that the Minister's letter will explain the situation.
340. **Mr Allister:** After the matter being with the Department since last year, when will the Committee see the Minister's letter?
341. **Mr Haire:** I would hope that you will get it in the next day or so. He has committed publicly to replying to you within the 10 days. I think that that is up today.
342. **Mr Allister:** I think that the Committee has been pushing for it for a lot longer than 10 days. I also think that individual MLAs, including me, have been writing to you for a lot longer than 10 days.
343. **Mr Haire:** Indeed.
344. **Mr Allister:** I think that you have correspondence from me that reaches back over a year.
345. **Mr Haire:** Indeed.
346. **Mr Allister:** Yes. So the Department has been sitting on this for a year.
347. **Mr Haire:** As I said, it is an issue that the Minister has been considering.
348. **Mr Allister:** What is it in the fact-finding investigation that you are trying to conceal from the public?
349. **Mr Haire:** The Minister will reply to you. It is an issue for the Minister.
350. **The Chairperson:** Jim, it is clear that Will is not going to go beyond that. However, the Committee has been corresponding with the Department over the last year on this matter and has had a variety of responses. I suggest that you reflect on those. A number of responses have been issued to us throughout the year that we have as part of our correspondence.
351. I remind people that this is an inquiry and that it will get to the bottom of these matters, no matter how long it takes. As I said, there is a trail of correspondence between us and the Department over the last several months. That is a matter of public record, so I ask you to reflect on that. It does not relate only to the documents or the report, which I understand and which was last confirmed to us as being with the Minister since last September. I want you to reflect on that as we will return to the litany of correspondence that we have.
352. **Mr Allister:** May I make this point to you, Mr Haire? Part of the area that the Committee has to investigate is the actions or whatever it was that Mr Brimstone did or did not do and say. Do you agree that it could be of assistance to the Committee to know what the fact-finding operation produced?
353. **Mr Haire:** I think that you will want to ask the Minister about that.

354. **Mr Allister:** I will want to ask the Minister? I want to ask you. You set it up.
355. **Mr Haire:** The point of fact-finding is to find out the facts —
356. **Mr Allister:** Yes, but you set it up, and the report goes back to you, does it not?
357. **Mr Haire:** It is a personnel report. That is the issue in that process.
358. **Mr Allister:** Yes, and Mr Brimstone is one of your personnel.
359. **Mr Haire:** The issue is the role of the SpAd and how it fits into departmental personnel issues.
360. **Mr Allister:** They are not, however, above the ethic requirements of the Department, are they?
361. **Mr Haire:** The issue, of course, is about who makes judgements on the issues of the ethics.
362. **Mr Allister:** You told us that you would regard it as unacceptable if a civil servant were to try to lobby members of the Housing Executive board.
363. **Mr Haire:** It is not for civil servants to lobby; the issue, of course, as the Minister explained, is about the devilling role of the special adviser. That is the issue.
364. **Mr Allister:** Finally, let me ask you one other thing. In the discovery that we have received from the BBC, there is correspondence back to Mr Thornton from Grainne McConnell, who is a civil servant in your work. It refers to you making a reference to the Northern Ireland Office pertaining to Mr Rowntree. When was that done?
365. **Mr Haire:** I cannot remember the date. It was a separate issue at the time.
366. **Mr Allister:** Was it about that time?
367. **Mr Haire:** It was, I think, around that time.
368. **Mr Allister:** Mr Rowntree wrote to you at the beginning of July. You took exception to some of the things he wrote. Is that right?
369. **Mr Haire:** The issue here is a totally different issue.
370. **Mr Allister:** I am just trying to get the chronology. You took exception to some of the things that he wrote to you. Is that right?
371. **Mr Haire:** I think that it was on 25 June, so it was before that time.
372. **Mr Wilkinson:** It was actually two years later.
373. **Mr Allister:** What is two years later?
374. **Mr Wilkinson:** The note from Grainne to the BBC was two years after the letter.
375. **Mr Allister:** I am back in 2011. In 2011, in or about the beginning of July, Mr Rowntree wrote to you in terms to which you took exception. Is that fair?
376. **Mr Haire:** I had to put on record my disagreement with him. However, as you will see from his correspondence, he accepted my point.
377. **Mr Allister:** Where, in date and time order, did you refer to the Northern Ireland Office his holding of the position of chairman of the Civil Service Commissioners? When did you do that?
378. **Mr Haire:** I think that that must have been in June 2013. It was before the Red Sky issue. Perhaps it was 2012.
379. **Mr Wilkinson:** I am almost certain that it was following an internal report from the Housing Executive that was received in 2013.
380. **Mr Haire:** Yes. Sorry, apologies —
381. **Mr Allister:** I am sure that you can confirm to us when that happened. Can you?
382. **Mr Haire:** I will come back to you on that in the process. I think that there is quite a distance in time. They are very separate issues in the process.
383. **Mr Allister:** I do not really want to go into that issue, but why were you doing that?
384. **Mr Haire:** An issue had come up about something in the Housing Executive.

- A PAC report stated that, in a public appointment, if you see something that needs to be answered by a public appointee and if they are in another Department, it is your duty to make the other Department aware of something that that new Department needs to be aware of. I felt that there was an issue that Mr Rowntree had not answered in the Housing Executive — it was nothing to do with Red Sky — that had to be answered. I felt that, in light of that, it was my duty to tell the Housing Executive that the NIO needed to look at that issue. I also felt that it was my duty to tell Mr Rowntree that I was making that reference. That went to the NIO.
385. **Mr Allister:** Did you think that you had the same public duty in respect of a special adviser who might have overstepped the mark in trying to lobby independent members of a Housing Executive board?
386. **Mr Haire:** It was only after the event, when the issue had been solved and the board had met, that I heard. A reference from Brian Rowntree advised me that he had concerns about lobbying issues. It emphasised very much that it was a political party issue; it was the whole question of the role of —
387. **Mr Allister:** When did Mr Rowntree advise you of his concerns about lobbying?
388. **Mr Haire:** I heard about that a day or so after the event.
389. **Mr Allister:** Did Mr Rowntree raise that with you?
390. **Mr Haire:** He mentioned it to me but indicated that nothing needed to be done on my part.
391. **Mr Allister:** He told you about it.
392. **Mr Haire:** He told me about it.
393. **Mr Allister:** Did he identify the lobbyist?
394. **Mr Haire:** He gave me a sense of the conversation that was subsequently [Inaudible.] I cannot remember the exact words that he used, but it was that something of that sort had taken place, but it was a party issue.
395. **Mr Allister:** Thank you.
396. **Mr Clarke:** I am sure, Will, that you have listened in and followed Committee proceedings. The Audit Office gave evidence last week, and it was interesting to hear about the trend of overcharging and how it was recorded. I will go back to Dolores's — Mrs Kelly's — comments. She suggested that people might say, in terms of the overcharging, that it was sectarian. With Red Sky, how much was the overcharging when it was finally calculated?
397. **Mr Wilkinson:** We may have to come back with some of the detail on that.
398. **Mr Clarke:** I will take an approximation.
399. **Mr Wilkinson:** Broadly, I think that the final figure that was put to Red Sky by the Housing Executive was around the £600,000 mark.
400. **Mr Clarke:** £600,000.
401. **Mr Wilkinson:** That is my understanding, but I am sure that we will come back with more accurate figures on that.
402. **Mr Clarke:** From the Audit Office's evidence, you will be aware that the Housing Executive did not start to record until 2010 or 2011. However, there was a problem with overcharging in the Housing Executive for many years, which has been recognised. I am paraphrasing, but I think that that is what was said last week.
403. **Mr Wilkinson:** The Audit Office report into response maintenance identified clear systemic failures that facilitated overcharging.
404. **Mr Clarke:** It is right that those should be addressed. No company should be overcharging. Given the systemic failures in the organisation over many years, suspicions about the east Belfast company would have been raised under the leadership of the SDLP's Alex Attwood, because he was the Minister for Social Development at the time. Something could be said about the

- sectarian nature of the way in which this one raised its head.
405. More recently, with the four companies and the issue of overcharging, there was a figure of £18 million, and some work was done. Was the same methodology used to try to establish the extent of the overcharging in that contract?
406. **Mr Wilkinson:** Questions about the details of the methodology applied to assess overcharging would be more relevantly put to the Housing Executive. However, I make the point that the recent overcharging related to planned maintenance.
407. **Mr Clarke:** It still —
408. **Mr Wilkinson:** Response maintenance was a different activity, and I can say —
409. **Mr Clarke:** Some of us outside the industry could describe it as a blank cheque.
410. **Mr Wilkinson:** The issue with response maintenance is that the methodology used by ASM Horwath for the Red Sky investigation was exactly the same methodology used by ASM for the forensic investigation subsequently commissioned by the Department.
411. **Mr Clarke:** Given the scale of the most recent overcharging, what did the final figure equate to?
412. **Mr Wilkinson:** Sorry, in relation to —
413. **Mr Clarke:** The final figure for overcharging of the most recent case.
414. **The Chairperson:** In the settlement?
415. **Mr Clarke:** Yes.
416. **Mr Wilkinson:** I do not have those figures with me. Was it £12 million and then £10 million underpaid? It was £2 million.
417. **Mr Clarke:** It was £2 million. I suppose —
418. **Mr Wilkinson:** There was a lot of debate about how those figures were reached, and I really do not want to go there.
419. **Mr Clarke:** Sure what is £2 million when we are talking about £500,000?
420. Many Members, including the honourable Member opposite, were very keen to lobby on behalf of the companies to make sure that the overcharging issue was resolved. Is there any suggestion that any of those four companies will have their contracts terminated?
421. **Mr Wilkinson:** We have made it quite clear that the contractual management was between the Housing Executive and its contractors. I think that those contracts were coming to an end anyway. There was a new contract process. The issue as well —
422. **Mr Clarke:** So it is acceptable to overcharge, and, in those cases, it is acceptable for Jim Allister and others to lobby for those contracts —
423. **Mr Allister:** *[Interruption.]*
424. **The Chairperson:** Trevor. Sorry, folks, hold on a wee second.
425. **Mr Clarke:** You are allowed to badger, and I am not.
426. **The Chairperson:** We are doing quite well. It is 2.45 pm, and it has been a long old day. Everybody expects there to be a certain amount of cut and thrust. By the same token, for as long as we need to be here and however many questions people want to ask — they are free to do that — let us try to keep the questioning as professional as possible. The less subjectivity there is in people's remarks, the less need there is for rebuttals from other members. All I am saying is that you should ask a question and allow time for a response, then ask another question. That is the way we will tease it out.
427. **Mr Wilkinson:** I was only going to make one point, Chair, which is that, in the evidence provided to the Committee, the reasons that the board terminated the Red Sky contract were not in relation to overpayments. It was in relation to trust and relationship. It did not relate to the overpayment figures.

428. **Mr Clarke:** Was there nothing in the report to say that its work was satisfactory?
429. **Mr Wilkinson:** I think that was one of the —
430. **Mr Clarke:** Satisfactory, as opposed unsatisfactory.
431. **Mr F McCann:** Far from it.
432. **Mr Clarke:** There is the sectarian card coming out again from west Belfast.
433. **Mr Wilkinson:** You will be able to explore that —
434. **The Chairperson:** Fra McCann, please be quiet.
435. **Mr Wilkinson:** As I said, you will be able to explore that further with the Housing Executive officials, who know the exact detail of the termination of the contract.
436. **Mr Clarke:** If overcharging is taking place, then it is public money and people should be held to account for that. I suppose it is about consistency. Since 2011, a company's name has been dragged through the quagmire for many years and still is. I can understand why it was raised at that time in terms of the sectarian attitudes towards that and where the genesis of it all came from.
437. **Mrs D Kelly:** Chair, we are all used to distortion of the facts from Mr Clarke.
438. **Mr Clarke:** Listening to you, Dolores, it is very easy to get distortion.
439. **Mrs D Kelly:** Empty vessels make the most noise.
440. **Mr Clarke:** Every time you open your mouth, there is distortion.
441. **The Chairperson:** Hold on a wee second. Trevor, we have been doing OK today. Everybody has their opportunity to ask whatever number of questions they need to ask. We are just trying to moderate this a wee bit so that we can get through the business as professionally as we can. If you have made your point and asked your question, fine, then let others come in and do likewise. If you need to come back in again, just ask and you will be brought in.
442. **Mrs D Kelly:** Chair, I would like to place it on record that the comments that I made earlier and my questions were based on the evidence before us in Hansard and elsewhere in terms of how the situation evolved.
443. **The Chairperson:** That is fair enough. The point is made.
444. **Mrs D Kelly:** Furthermore, just as a matter of record, too, Chair, I think that we owe a debt of gratitude to Minister Attwood for initiating investigations on back of evidence and concerns raised.
445. I will go back to my question. The Red Sky contract was terminated. What happened to those contracts? Were they reissued or re-tendered? It might be a Housing Executive matter.
446. **Mr Haire:** It is best to ask them. There was an entire re-tendering exercise, but you have got the experts coming.
447. **The Chairperson:** I think that the outstanding work was assigned to adjacent contractors, and workers brought across under TUPE where appropriate. I think that that is what happened, because they were nearing the end of those contracts.
448. **Mrs D Kelly:** Concerns were raised and an independent inquiry and investigation presented to the Housing Executive, and that resulted in a decision to terminate the contract. Do you regard that as appropriate action by one of your arm's-reach or independent organisations?
449. **Mr Haire:** It was totally within their power and right, and I understood that.
450. **Mrs D Kelly:** Was it the right thing to do?
451. **Mr Haire:** If they found that there was evidence of that, I totally support them.
452. **Mrs D Kelly:** On that basis, do you share my concerns that the Minister sought to overturn what was appropriate action by the Housing Executive that was based on evidence? Contrast that with how he treated other contractors.

453. **Mr Haire:** The Minister made a specific request, which was not overturning. We are on record on this issue.
454. **Mrs D Kelly:** I will come back to the point —
455. **The Chairperson:** We have a couple of, I hope, minor interventions.
456. **Mr Copeland:** Jim, you mentioned a figure of about £600,000 in relation to Red Sky. Was that net, including any compensation events that had been factored into it, or was that the gross amount?
457. **Mr Wilkinson:** Again, I trust that you will get a more detailed and knowledgeable answer from colleagues in the Housing Executive. My understanding of how response maintenance works, and of their attempt to recoup, is that they identify an overpayment and then recoup it from moneys due in other work to then get a net figure. I am sure that they will be able to give you more detail about how they attempted to recover that.
458. **Mr F McCann:** I have a couple of points. You said that procedures possibly facilitated overcharging in response maintenance; that was when you were talking about Red Sky. My question is about the termination of the Red Sky contract and the Minister ordering a forensic investigation or review of the response maintenance. What was the outcome of the forensic review? Did it find that there were other companies involved in overcharging and that there were poor maintenance records? If so, what happened to those companies?
459. **Mr Wilkinson:** Again, the findings of that forensic investigation were provided to the Committee. It was given a copy of what was referred to as the ASM report.
460. **Mr F McCann:** I am just asking you to remind me a bit.
461. **Mr Wilkinson:** It found aspects of overpayment.
462. **Mr F McCann:** What happened to those companies: did they lose their contracts?
463. **Mr Wilkinson:** To give a bigger picture of the response maintenance contract environment; the contracts were all up for recontracting anyway, so it was a different process. No contract was stopped. By the time the ASM 2 report came out, the new procurement exercise had commenced to secure the new contractors. By the time the report was published and provided, those contractors had gone, but the Housing Executive took the ASM 2 report, which identified elements of overpayment, but, more importantly, identified the causes of overpayment as an issue that still had to be addressed. Those causes had featured in work that the Housing Executive was already doing to improve response maintenance.
464. In effect, the ASM 2 report stated that, yes, there were elements of overpayment, quantum was different, issues that caused the overpayments were the same and the measures that needed to be taken to address it were very similar. Work was already progressing, and the report was published and is with the Committee. As to whether any of those contractors featured in new contracts, I think that the Housing Executive would have provided information and advice on that.
465. **Mr F McCann:** On that point, let us go back to the Red Sky contract. I take it that it was also terminated because of the poor maintenance record in many areas. Am I right?
466. **Mr Wilkinson:** The Housing Executive will give you the full detail of why. We knew that it was terminated. I think that there is an exact form of wording in the memorandum.
467. **The Chairperson:** Again, this is not particularly relevant to the phase 3 issue. We have terms of reference that we are dealing with; we are not re-investigating or re-examining the nature of contracts.
468. **Mr F McCann:** I understand that, Chair, but as part of the evidence, the Minister had said that he wanted to conduct forensic reviews on a number of other

companies. I take it that the information provided to the Minister to kick-start that came from Red Sky because it was making the complaints.

469. **Mr Wilkinson:** No; again, a series of information was provided, so the Minister was briefed about the issues that had given rise to the termination of the Red Sky contracts, including failings.

470. **Mr F McCann:** So, Red Sky.

471. **Mr Wilkinson:** He was advised of the governance review, which had identified potential failings, and he was aware of the qualifications of the Audit Office. So, there was a whole raft of issues. In addition, the Housing Executive alerted him to the fact that there was at least one other contractor and that there were significant disciplinary matters. It was a portfolio of information.

472. **The Chairperson:** OK. No other member has indicated to speak on this matter for now. Will, is there anything that you or any of your colleagues want to say for the record? If not, that is fine, but we will be keen to take any response if there is anything that comes to mind afterwards. As this is an open inquiry, we may want to revisit some of the matters we have raised today. It is a two-way process, so please feel free to come back to us at any time if you want to correct or add anything. Thanks very much for your attendance here this afternoon.

473. **Mr Haire:** Thank you.

# 18 September 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Trevor Clarke  
 Mrs Dolores Kelly  
 Mr Fra McCann

## Witnesses:

Mr Declan Allen	}	<i>Northern Ireland Housing Executive</i>
Mr Clark Bailie		
Mr Raymond Kitson		
Mr John McVeigh		

474. **The Chairperson:** I formally welcome John McVeigh, Declan Allen, Clark Bailie and Raymond Kitson to this afternoon's meeting. Thank you for your patience; I know that you have been here for a few hours. I advise members that a number of written submissions have been provided at pages 336, 342 and 347 of your pack.

475. As I said earlier, John, Declan, Clark and Raymond, you are here as part of phase 3 of the Committee's inquiry. We asked you to provide a briefing on the investigations into Housing Executive contractors, including the Red Sky Group. I remind people that we are not rehearsing particular contracts, their nature or why they were terminated. Suffice it to say that they were terminated in some cases, others were continually reviewed, and so on. We have very specific terms of reference. I remind people that you have given us submissions. Do you want to make any opening remarks — any one of you or all of you?

476. **Mr Clark Bailie (Northern Ireland Housing Executive):** Perhaps it falls to me, Chairman. Thank you for the invitation to come along today. I was invited as the director of corporate services. I feel obliged to advise the Committee that I was acting director

of corporate services for about eight months, from February to September 2011, when Stewart Cuddy was acting chief executive. My substantive role is director of finance, and I have been director of finance since December 2007 when I joined the Housing Executive from the health service.

477. You asked me and my colleagues a range of questions that reflects our different engagement and roles in the process that you are currently investigating. I was going to say my colleague on the extreme right, which is not an appropriate phrase in this building. My colleague to my right is John McVeigh, who is head of our audit and assurance unit; then there is Declan Allen, who is our head of procurement; and then there is Raymond Kitson, the gentleman to my right, who is the manager of the repairs inspection unit (RIU), which now falls within John's audit and assurance unit. We have submitted a briefing, which hopefully addresses the questions that you asked us. Rather than go over that in further detail, I suggest that we respond to whatever questions you have and try to answer them as best we can.

478. **The Chairperson:** OK, Clark, thanks very much for that. Members have the submissions in front of them.

479. Jim Allister, do you want in? It will be Mickey Brady afterwards.

480. **Mr Allister:** Yes, I have some questions. I will pick up on a point that you probably heard raised with the last witnesses. The Minister required an examination of the potential replacement contractors for Red Sky and how they had conducted themselves. I think it is in your brief, but could you remind the Committee of the findings in respect of those contractors?

481. **Mr Bailie:** I was not personally involved in ASM 2. I am not sure which of my

- colleagues would be best placed to respond to that.
482. **Mr John McVeigh (Northern Ireland Housing Executive):** It is probably Raymond, and I will give him a chance to get his thoughts together. At the time that the ASM 2 review was being carried out, the repair inspection unit had moved over to a different area of business. At one stage, it was attached to the internal audit department, which I had headed up. At that stage, the RIU had moved to a unit called the corporate assurance unit, and Raymond's team was invited to assess some of the work that the ASM Horwath team had produced and to allow Housing Executive to respond to the data that ASM Horwath had collated.
483. **Mr Raymond Kitson (Northern Ireland Housing Executive):** I am quite happy to continue. The director of housing regeneration at that time, now landlord services, requested us and repairs inspection unit to undergo a quality assurance exercise, because there were concerns arising from the findings. The districts and the central maintenance unit in the Housing Executive had concerns that perhaps some of the findings were not appropriate to be recovering money where certain elements of work were completed, albeit not fully to our satisfaction but, nonetheless, partly completed. We were asked to conduct an exercise — 20% exercise — of the findings. That we did, and we found in that exercise that there were certainly concerns regarding some of the findings.
484. We produced a report which suggested that 38% of the findings were basically exaggerating the overcharging, to a point. So, we revised that position to one that we believed to be more appropriate. Of the 20% that we looked at, the amount of work summed to around £9,000. The districts, however, conducted a complete review of all the jobs —
485. **Mr Allister:** You said £9,000. Was the ASM figure not £9,000? Surely your figure was £3,500.
486. **Mr Kitson:** Our figure, the revised figure, was £3,500, yes.
487. **Mr Allister:** So the final figure that emerged from this was £3,500.
488. **Mr Kitson:** Of our 20% check; but only of that.
489. **Mr Allister:** Yes, I understand.
490. **Mr Kitson:** However, I would say that the districts' review suggested that it was somewhere around 50% less than the ASM figure and, on reflection, that is what my understanding of the recovery was.
491. **Mr Allister:** Obviously, any overcharging is wrong and should not be happening; but, in the scale of things, the Minister had concerns about those further companies but the actual findings were relatively modest. Is that right?
492. **Mr Kitson:** Considering our benchmarks, once we conducted our review, we were asked to do further checks. You say there should not be any overcharging, but we have to be realistic: errors can happen. We, in the corporate assurance unit, have a benchmark under which that is acceptable. We will recover all moneys that have been identified as overpaid; that is without question. However, to put them in the same bracket as other contractors who were being substantially overpaid, we have to be realistic.
493. **Mr Allister:** Let us move on to Red Sky. What came to a head with Red Sky in 2011 had been the culmination of a number of concerns over a period of years, is that right?
494. **Mr Kitson:** That is correct.
495. **Mr Allister:** And during that period, quite substantial sums had been identified as alleged over-claims.
496. **Mr Kitson:** We had concerns with Red Sky, and Spectrum before that, for quite a few years.
497. **Mr Allister:** Was that running into hundreds of thousands of pounds?
498. **Mr Kitson:** That was certainly hundreds of thousands of pounds, yes

499. **Mr Allister:** And just to jump to the end of it, how much was written off after Red Sky went into liquidation?
500. **Mr Kitson:** My colleague to the right will confirm this. Any money that we owed Red Sky was withheld. A withholding notice was served on Red Sky, warning that we were going to withhold any moneys that we owed them. We were not going to pay them moneys while they owed us money. So, we went in that direction, on legal advice.
501. **Mr Allister:** So you withheld money at various periods. At one point you withheld £25,000 a month, during this period. However, in the end, did you not write off a figure of £375,000?
502. **Mr Bailie:** We had identified, through the work of ASM and Raymond and his team, that, in our estimation, there were overpayments of around £600,000. We then instituted a process to deduct those amounts from payments due to the company. However, as members know, shortly after the decision reached by the Housing Executive board to terminate the contracts, the company went into administration, and there followed a series of discussions between the Housing Executive and the administrator and we had to concede that we had, in fact, to pay an amount back to the administrator. That was the amount that was written off and which you have just referred to.
503. **Mr Allister:** That was £375,000. Over the years, when figures had been identified as overcharged by Red Sky, there seems to have been a pattern — correct me if I am wrong — where Red Sky would then come in, sit down with you, barter and negotiate down the figure. Is that a pattern that went on?
504. **Mr Kitson:** It was not actually a pattern, but there was an investigation in 2005 and 2006 where simply there were negotiations about the outcome of that figure.
505. **Mr Allister:** Remind me what the figure was then.
506. **Mr Kitson:** In 2006, I think it was £260,000.
507. **Mr Allister:** Was that eventually bartered down to £20,000?
508. **Mr Kitson:** That is correct.
509. **Mr Allister:** Who was involved in that?
510. **Mr Kitson:** At the time, the former director of housing regeneration.
511. **Mr Allister:** Who was that?
512. **Mr Kitson:** Colin McCaughley.
513. **Mr Allister:** Who was negotiating on behalf of Red Sky?
514. **Mr Kitson:** The chairman of Red Sky.
515. **Mr Allister:** And who was that?
516. **Mr Kitson:** That was Frank Cushnahan.
517. **Mr Allister:** Frank Cushnahan. Is that the same Frank Cushnahan who was criticised in the Public Accounts Committee for his involvement in those negotiations being totally unethical?
518. **Mr Kitson:** I cannot comment on that.
519. **Mr McVeigh:** I am not sure that that was the exact language that was used.
520. **Mr Allister:** Well, I think you will find that in its February 2013 report on the management of Housing Executive maintenance contracts, the Assembly's Public Accounts Committee said that Mr Cushnahan's involvement in these negotiations:  
*“was totally unethical and could and should have been avoided.”*
521. Was the unethical aspect the fact that he had been a serving member of the Housing Executive's audit committee?
522. **Mr Bailie:** I believe he served in that post, yes.
523. **Mr Allister:** He progressed from that position to chairman of Red Sky. Is that not correct?
524. **Mr Bailie:** That is correct.

525. **Mr Allister:** He then negotiated down debts, allegedly, of the order of £250,000 to £20,000. Is that accurate?
526. **Mr Kitson:** Yes, that is correct.
527. **Mr Bailie:** To the best of our knowledge, yes.
528. **Mr Allister:** That is something that the Housing Executive obviously acquiesced in. The Housing Executive was a party to those negotiations.
529. **Mr Bailie:** Yes. The Housing Executive accepted that final outcome.
530. **Mr Allister:** Does that suggest that Red Sky was a company used to getting its own way with the Housing Executive?
531. **Mr Bailie:** From the company's perspective, I would suggest that the outcome was favourable to it. It was successful and, obviously, it was able to persuade the members of the Housing Executive at that time that it had a case. I was not personally involved, so I am trying to conclude on the basis of the information available to us.
532. **Mr Allister:** But you were also aware that there were concerns that Red Sky had complained about certain staff in west Belfast and that the key person against whom it complained was then moved in the Housing Executive. Is that not correct?
533. **Mr McVeigh:** That is accurate.
534. **Mr Allister:** So, was this a company that seemed to believe that it could bring pressure to bear and influence with the Housing Executive?
535. **Mr Bailie:** I cannot speak for the company about the way in which it perceived the situation. From what you have just said we are not disputing the accuracy of those remarks.
536. **Mr Allister:** There was, then, an attempt latterly — all this talk that you might have heard earlier — about the same people forming a new company. Is that right?
537. **Mr Bailie:** I was aware of bits and pieces but I would not claim to be an expert on this particular matter.
538. **Mr Allister:** Was anyone from the Housing Executive involved in discussions with the putative new company about —
539. **Mr Bailie:** To the best of my knowledge, no.
540. **The Chairperson:** Is that it for the moment?
541. **Mr Allister:** Yes, thanks.
542. **The Chairperson:** I just want to follow up on the pattern that Jim was suggesting. I would ask you to cast your mind back and give us an opinion on the fact that the same thing happened in 2007, in 2008 and possibly in 2009, if my quotes are correct; they may be wrong. It certainly happened in 2007 and 2008, when Colin McCaughley and Paddy McIntyre were involved in renewed discussions with Red Sky over contracts and discrepancies around payments. I use my words advisedly. On the third occasion, Mr McIntyre asked people to have a review of that and recalculate the figures. For me, reading this, I see that there has been a pattern. What has frustrated the Committee for so long is that there does not appear to be any personal accountability in all this. So, year on year, problems are identified, whatever they may be and whoever the contractor may be. Certainly, a number of issues have been identified in respect of one contractor. By my reading, those problems have been addressed, negotiated and renegotiated at all times to the benefit of the company. That, to me, is a familiar pattern and quite worrying. You were involved in investigating that and it is in your submission. Do you have any comment on that? To me, it is a clear pattern.
543. **Mr Bailie:** I think, Chairman, that you are referring to matters that generally predate most of us at this end of the table. I can assure the Committee that, in my experience of the Housing Executive, we deal with companies fairly and objectively. Where we

- believe that we have a case to recover overpayments, we pursue that. That is our obligation as public servants.
544. **The Chairperson:** I am not suggesting anything to the contrary. I am making the point that, in the submission we received in response to the inquiry, we have been provided with information that, in respect of the Red Sky company, for example, it happened in 2007 and 2008 — Jim dealt with 2006 — and went right through to the director and chair of the Housing Executive. It seems to me that it went to a very high level in the Housing Executive, but that at all times there were negotiations around moneys, and different figures were arrived at by the end of those discussions.
545. **Mr F McCann:** May I come in with one point on that?
546. **The Chairperson:** Is it to add to that point?
547. **Mr F McCann:** Yes. I am trying to get my head around how you recalculate from £250,000 to £20,000? Could you shed any light on how that was done?
548. **Mr Bailie:** I can explain in general terms, and maybe Raymond can fill in some of the detail. It is part of a dispute process, and there are two parties. Obviously, in the case of the Housing Executive, we do work and research to identify and quantify what we believe to be the problem. Those issues are then put to the contractor. The contractor would be given the opportunity to present an alternative, an explanation or a reason, which may or may not cause us to revise our opinion. That is the general approach, which we have applied to the more recent engagement with Red Sky. We accept that, sometimes, there can be different interpretations, or we are provided with information that we did not have at that particular time. What happened in that particular set of negotiations, I am not sure, because I was not party to it. Perhaps Raymond can give some examples of where the movement was.
549. **Mr Kitson:** Absolutely. I was involved in the negotiations but had no part to play in the decision-making. With regard to how the £264,000 was reduced to £20,000, the main bulk of that came from kitchen replacements. A substantial number of kitchens had been replaced by Red Sky. We have two types of kitchen in our schedule of rates: post-formed, which is a fairly expensive, elaborate-type kitchen, and a standard kitchen. What we were getting in west Belfast, north Belfast, east Belfast and the like were standard kitchens. However, we were paying for post-formed kitchens, which are substantially more expensive. We picked that up and brought it to the attention of management that they were not getting what they were paying for. There were two quotes and, of the two quotes, they were using the wrong one. That sum was £257,000, so kitchens alone were the substantial bulk of the money. From memory, I think that the whole figure of £264,000 was revised down to about £81,000. That £81,000 was negotiated down to £60,000 or £61,000. From that, it was negotiated down to £20,000, two thirds of that being the Housing Executive's responsibility and one third being the contractor's responsibility. That is where the figure ended up.
550. **Mr F McCann:** How did you establish that?
551. **Mr Clarke:** By tossing a coin.
552. **Mr Kitson:** It was not quite done by tossing a coin. A lot of it was put down to what is described as dead debt. That term was brought to us by Red Sky. The maintenance officers were quite often responsible for the overpayments, where they had post-inspected typical work. They said that it was not their responsibility but the Housing Executive's responsibility. So a lot of that was put across into our responsibility, and that is where, I believe, the director made the decision that we would bear the vast majority of the cost.
553. **The Chairperson:** That certainly comes across a lot in the various reports that we have. Am I hearing you correctly,

- Raymond, when you say that the difference in the price was between a better standard of kitchen and a lower standard of kitchen, and lower standard kitchens were fitted?
554. **Mr Kitson:** Yes. We were getting the standard kitchen, not the more expensive one, but we were paying for the more expensive one.
555. **The Chairperson:** You were billed for the higher price. I can understand that the logic was that it was determined that the maintenance officer signed off on the wrong unit. Obviously, somebody, knowingly or unknowingly, fitted higher spec kitchens. I presume that, at the end of this, none of the tenants got a better standard kitchen.
556. **Mr Kitson:** No.
557. **The Chairperson:** The public paid for it, and it was written off as a dead debt.
558. **Mr Kitson:** I should add that our tenants were more than happy with the quality of kitchen that was being fitted.
559. **The Chairperson:** The public, though, paid for a higher standard.
560. **Mr Kitson:** We were paying for a different type of kitchen.
561. **The Chairperson:** The tenants paid for it because they pay rent.
562. **Mr Clarke:** I am struggling to understand why there are two different kitchens. Whatever you call it — either a standard kitchen or, as I think you call it, post-formed — why is there not just one Housing Executive kitchen?
563. **Mr Kitson:** Just to muddy the waters even further, we have three types of kitchen: a foil-wrapped-type kitchen, along with the post-formed model and our standard kitchen. It is just that our policy and procedures change all the time. Our standards change, so, all of a sudden, this year, we are fitting foil-wrapped; next year, we could have a different product on the market.
564. **Mr Clarke:** I understand that, in different years, you might do different style kitchens, but let us take 2014. Are you telling me that, across Northern Ireland, three different types of kitchen could be fitted depending on where tenants live?
565. **Mr Kitson:** No. From here on in, we are fitting only foil-wrapped.
566. **Mr Clarke:** So let us go back to 2007. In 2007, could three different styles of kitchen have been fitted depending on where tenants lived?
567. **Mr Kitson:** At that time, there were two types.
568. **Mr Clarke:** Do you see the problem, Chair?
569. **The Chairperson:** As a matter of interest, is there any rationale as to why one area would get one standard while another area would get a different standard? You can see where we are coming from with these questions. I will let you think about that.
570. **Mr Brady:** Declan, you were involved in the negotiations with BDO about the transfer of former Red Sky employees under the TUPE arrangements to adjacent contractors. Obviously there was a request for the extension of the Red Sky contract. How and when did you get notification of that, and did you raise any concerns with your side of procurement? Secondly, from the papers we have received, it is clear that you had some difficulties with those transfer arrangements. Could you outline what the difficulties were? Also, do you feel that you had the support of senior Housing Executive officials and DSD management while you were negotiating to get the former employees transferred under the TUPE arrangements?
571. **Mr Declan Allen (Northern Ireland Housing Executive):** I will deal quickly with the extension of the contract. The issue was raised by the senior management team, and my line manager asked whether the contracts that Red Sky in administration was running for us could be extended. I explored that because I was asked to. On two occasions, I asked the administrator whether it was possible. On the first

- occasion, the reply that I got was not very clear, so I went back and asked for further clarification on whether Red Sky could provide us with a service post 14 July. They said that they could but only until 31 July. On that date, that was it; they were out. To go further than that, something else would have to have been done.
572. On the TUPE transfer position, I liaised extensively with the administrator. I would not say that I negotiated; absolutely not. I liaised with the administrator, BDO, to make sure that there was a smooth transition and to ensure that the service provision was maintained during the period 13, 14 and 15 July. You could say that there were negotiations with the contractors that were in the adjacent contracts in order to make sure that they were able to put that in place, but the involvement that I had with BDO was to make sure that any information transfer was there to ensure that those employees were not disadvantaged.
573. **Mr Brady:** Did you experience difficulties? Do you feel that you had the support of senior management?
574. **Mr Allen:** Yes.
575. **Mr Bailie:** There would be issues around TUPE transfers because it represents a period of uncertainty for the employees and the new employer. They have to be able to determine the responsibilities they are taking on board, what the associated costs are, and how it fits into their contract structure. We have found, unfortunately, perhaps, too frequently over the last couple of years, given the state of the economy, that we have had to devote quite a bit of time to getting a lot of detailed personnel information that has to be provided to the incoming contractor. There is always a fair bit of work around a TUPE transfer.
576. **Mr Allen:** Sorry, Mr Brady, was it those difficulties in particular that you were —
577. **Mr Brady:** Yes.
578. **Mr Clarke:** I want to get back to the kitchen thing. I need a wee bit of latitude. In terms of the most recent overcharging, it was announced in the House that it was £18 million. What was the main aspect of that contract where you trimmed it back?
579. **Mr Bailie:** Could you repeat the last bit of your question?
580. **Mr Clarke:** It was announced originally that it was £18 million, and it was negotiated down to £2 million. Where was that variance at?
581. **Mr Bailie:** I understand that that was discussed this morning. However, very quickly —
582. **Mr Clarke:** I apologise; I could not make it this morning.
583. **Mr Bailie:** Sorry, I was not criticising you. The original estimate of £18 million was the maximum potential overpayment exposure. It was based on an extrapolation, as probably was explained this morning. When we progressed the work undertaken by Moore MacDonald in our case and by another expert in the case of the contractors, we reached the point where we could estimate the level of overpayment in the schemes covered by the negotiated settlement. We then looked to see what the estimated value was of the compensation events associated with those schemes. That is where we moved from £18 million to £12.5 million to £10 million and something. The difference between £18 million and where we ended up was that the £18 million covered all schemes, and the negotiated settlement covered only a proportion of those schemes. With the passage of time and the effort and time invested to examine more schemes, we had a much better set of information to allow us to determine the figures. However, as I said, that, as I understand it, was discussed this morning.
584. **Mr Clarke:** Sorry, what portion was it?
585. **Mr Bailie:** Off the top of my head, I think that we took about £4 million out of it. I can come back with the exact figures.
586. **The Chairperson:** It is important to use exact figures. Clark is right, Trevor:

- this was discussed extensively this morning, although a substantial amount of that was explained as accountancy mechanisms whilst the settlement figure was reduced down to somewhere in the region of £600,000, if I remember correctly. We have to deal with the factual reporting of it.
587. **Mr Clarke:** I will come back in a minute.
588. **The Chairperson:** I appreciate that. Jim and then Dolores.
589. **Mrs D Kelly:** Thank you for your presentation.
590. **The Chairperson:** Sorry —
591. **Mr Allister:** That is OK.
592. **Mrs D Kelly:** Oh, sorry.
593. **Mr Allister:** Go ahead.
594. **Mrs D Kelly:** Thank you.
595. **The Chairperson:** We are all in a good mood now.
596. **Mrs D Kelly:** I am starting to flag a wee bit, Chair. I am trying to get the sequence right and to put some names to the people responsible. It seems very difficult to tie down just who is accountable in the whole scenario. I have some concerns that were raised last week, I think, by the Northern Ireland Audit Office and have been put forward in various reports, including, I think, by yourselves, where you gave some of your findings to the former chief executive and former director of housing and regeneration. I also understand that — I think that it might have been you, Mr McVeigh — concerns were made by a repairs inspection unit investigation, which obscured the facts from the board or the Housing Executive. Will you elaborate a wee bit further on that?
597. **Mr McVeigh:** Yes. For context, I was brought in in the summer of 2008. In the early part of 2009, I was asked to consider a whistle-blowing letter that had been received by Audit Office from a chairperson of a housing community association in west Belfast. It alleged problems with Red Sky in west Belfast.
- The Housing Executive had asked the repair inspection unit, Raymond's team, to do some testing of the work, particularly in west Belfast but in other areas for comparison purposes, and I was asked to quality-assure the report that Raymond's team had produced on that. Raymond's team had concluded that there were problems with Red Sky's contractual performance in west Belfast and had calculated an estimated overcharge — this is familiar terrain, I guess, for the Committee — and I was asked to have a look at that. That was my first involvement with Raymond and his team. At that stage, Raymond's RIU was embedded in the housing and regeneration division and so he was effectively working for the same director and division that had responsibility for managing Red Sky. I looked at the report and felt that the RIU team's work was sound. I made those observations and sent them to the chief executive in correspondence. My recollection was that Raymond was asked to go to a meeting with the chief executive and director of housing and regeneration and following —
598. **Mrs D Kelly:** It was Paddy McIntyre and —
599. **Mr McVeigh:** Colm McCaughley. Following that meeting, a second draft was produced, which I had been given sight of and had discussed with Raymond. Changes made to the draft were, in my understanding, at the instigation of the former chief executive and director of housing and regeneration. Having looked at the two drafts, I felt that the changes that had been suggested were not helpful. In my view, they obscured the clear analysis that had come out of RIU's initial draft, which indicated that there was some substance to the whistle-blowing letter's allegations. So, I went back to the chief executive and copied in the director of housing and regeneration and said that I did not agree with the changes. From memory, I think that the initial draft was the version that was sent to Audit Office along with my comments on the changes.
600. **Mrs D Kelly:** So, yours went to the Audit Office.

601. **Mr McVeigh:** It was Raymond's report, which I agreed with. The Audit Office got that report and my analysis, and I was then asked to go up to the Audit Office to meet the then lead Audit Office director, who had responsibility at that stage for the Housing Executive role. It was a chap called John Buchanan at that stage, and I discussed with him the RIU report, my quality assurance and my thoughts on the different drafts.
602. **Mrs D Kelly:** And the Audit Office picked it up from there.
603. **Mr McVeigh:** Yes.
604. **Mrs D Kelly:** I do not know who, if any of you, is able to help us out with which contractors picked up the work that had initially been Red Sky's when the contract was terminated.
605. **Mr Bailie:** That is the TUPE transfer.
606. **Mr Allen:** When the termination was finally effected, we put in place three adjacent contractors under a backup support clause that enabled us to do that in circumstances like that when either a contract is terminated or a company goes into insolvency. We put PK Murphy Construction, White Horse Facilities Management Ltd and H&A Mechanical Services into place in the Red Sky contracts.
607. **Mrs D Kelly:** So, they then became some of the contractors against whom we now know the Minister made spurious allegations in relation to an £18 million overpayment.
608. **Mr Bailie:** Leaving aside what you have just interpreted as what the Minister said, as a point of fact, the response maintenance contracts are different from the planned maintenance contracts.
609. **Mrs D Kelly:** I know. I appreciate all of that. The fact is that some of them got Red Sky's work.
610. **The Chairperson:** On a different type of contract. Fair enough.
611. **Mr Allister:** I want to take you back to the matter that we were discussing of the pattern, over the years, of Red Sky successfully negotiating down overcharging etc and getting a pretty good result for itself. Gentlemen, was there any pattern of political lobbying in support of Red Sky at those times when it was looking to get the figures reduced?
612. **Mr Bailie:** For part of that period, I was not employed by the Housing Executive, but I am personally not aware of any lobbying that went on.
613. **Mr Allen:** I am not aware of any, either.
614. **Mr McVeigh:** Raymond and I were never involved in any meetings or discussions with any political representatives.
615. **Mr Allister:** Not necessarily meetings; could there have been correspondence?
616. **Mr McVeigh:** There may well have been correspondence, but nothing that would have been directed to anyone at this table.
617. **Mr Allister:** Could that be checked?
618. **Mr Bailie:** Yes. I am not aware of anything, but we can check it.
619. **The Chairperson:** I will just ask two final questions, because no one else has indicated that they want to speak —
620. **Mr Clarke:** I have not finished, Chair.
621. **The Chairperson:** Go ahead.
622. **Mr Clarke:** To go back to the kitchens, if someone is overcharged, they should not pay it; I have no issue with that. What I am struggling with is that, given that it has been recognised that this has been going on since 2006 or 2007 right up to 2014, what has the Housing Executive been doing to check the work when these contracts are awarded and invoices are coming in? What are the inspectors doing about the quality of the work on the kitchens and what we are paying for? What is happening there?
623. **Mr Kitson:** Maybe I can answer that. We have several levels of inspection. The first level is our maintenance staff on the ground. When an invoice comes in, before it is paid, the work is checked.

- The quality of the work and the accuracy of the payments —
624. **Mr Clarke:** Let us stop there a second. So, the first of seven checks is when someone actually goes out and checks the quality of the work to see that you are paying for what you got. So, how in this case, Raymond, could Red Sky or any other contractor have charged you for a post-formed kitchen when they fitted a standard kitchen?
625. **Mr Kitson:** To clarify, when I say that we check, we do not check every job. We check a sample of jobs. At the time of Red Sky, for instance, the Housing Executive would have checked 20% of all jobs coming in. All change of tenancies (COTs) are mandatory; at that particular time, all of those were checked. For instance, if you had a new kitchen, it would have been checked.
626. Our staff are well trained, but we found issues where some staff had passed work that they should not have passed and recovered moneys that they should have. That is well documented in our various reports. We have invested a lot of time and you will have heard from other sessions with our chief executive that we have carried out extensive training for our staff. Moving forward, we should not see those same issues.
627. **Mr Clarke:** When did the training start?
628. **Mr Kitson:** We are closely monitoring —
629. **Mr Clarke:** When did the training start?
630. **Mr Kitson:** Training started immediately after the whole Red Sky situation. We reviewed exactly what the issues were; we brought it to the attention of our senior management; and those training developments took off from there.
631. **Mr Clarke:** Would you suggest that it is working?
632. **Mr Kitson:** Absolutely.
633. **Mr Clarke:** So, if it is working, how did we reach the most recent situation that was talked about prior to the summer? Reading this morning's report, I see that
- some of that was in relation to kitchens as well.
634. **Mr Kitson:** Are you talking about the planned maintenance?
635. **Mr Clarke:** I am trying to generalise this, Chairman. I am talking about maintenance; I am talking about public money; I am talking about contractors — whatever label you want to give that type of maintenance. I am talking about contractors going in and doing work and putting in invoices. What systems does the Housing Executive have in place to prevent public money being wasted?
636. **Mr Kitson:** I appreciate that. I am responsible for response maintenance with regard to the audit side of things, so I can give you an assurance that things have improved, certainly, in recent years.
637. **Mr Bailie:** In a general sense, a contractor is asked to do a piece of work, be it planned or response. We have systems in place that inspect and check that work using a sampling approach. For lower value items, we pick a small sample at random. As Raymond explained, with higher value items such as changes of tenancies, we go out and inspect. From our experience, we have found that, on occasions, those inspection processes did not work as they should have. We look to see whether the controls are adequate and robust, and we make changes to the controls from time to time. However, looking back, the procedures were there to be applied. When we looked back, on some occasions, unfortunately, we found that those controls were not applied properly. On some occasions, we have had to take disciplinary action against the members of staff concerned.
638. We then have a second line of review, as it were. Raymond and John's team come in to check whether that work has been completed. As Raymond said, on the response side, my understanding is that the indications are giving confidence that the controls and how they are applied operate effectively. However, we need to make sure that colleagues and maintenance officers in particular know

- what is required of them and that they are trained and equipped to do the job. Looking back, it would appear that, for varying reasons, those controls were not applied as appropriately as they should have been.
639. **Mr Allen:** Chair, can I just add to that? The contracts that Mr Clarke refers to are historical contracts. Since then, and since the DSD health check and review of procurement contract management in the Housing Executive, we reviewed our procurement strategies and contract management procedures. New contracts are in place. Response maintenance, for instance, was put in place in 2012. The new planned schemes procurement was started over a year ago and it went live earlier this year. So, we will see as we move along from now whether what we have put in place is better than what we had in place.
640. **Mr Bailie:** I can assure you that, given our recent experiences, we are not complacent. We take very seriously the need to have proper controls in place and make sure that those controls are applied. However, what we find in some cases, particularly with respect to response maintenance, is an issue about whether the controls are so rigorous that we are not getting an effective use of resources. That is something we are looking at. All the way through that, it is about making sure that we get the right quality of work, at the right price and the right time. It is about getting the right balance. So, while we trust the contractors we work with, we also test and inspect to make sure that those three things are being met.
641. **Mr Clarke:** You made a point earlier about picking the 20% sample. Do you pick them or are those identified to you?
642. **Mr Bailie:** I believe that, with response maintenance, the computer picks them at random.
643. **Mr Kitson:** Yes. The inspection regime has moved forward under the NEC contracts. A statistical sample is selected for the maintenance staff. It is not picked. It is randomly selected for them across the range of various priorities of work: building; plumbing; and electrical.
644. **Ms P Bradley:** I return to the £264,000 that was reduced to £20,000. Were any other companies afforded that luxury of having their overpayments reduced?
645. **Mr Kitson:** Not at that particular time.
646. **Ms P Bradley:** But there has been subsequently.
647. **Mr Kitson:** There has, yes.
648. **Ms P Bradley:** OK. I see that Leeway Maintain Ltd has also been highlighted. It had an overpayment of £243,000. Were any others being investigated?
649. **Mr Kitson:** There is currently one other company being investigated, which is a live case.
650. **Ms P Bradley:** OK. So we do not have a figure for that either.
651. **Mr Kitson:** No.
652. **The Chairperson:** Before I bring in Fra for a final point, I have a couple of wee niggling concerns. They are actually more than niggling; they are quite serious. You have conducted a range of investigations and reviews over the years. I referred to it earlier, and Jim referred to it extensively. They happened in 2006, 2007, 2008 and 2009. I am asking this question of John and Raymond. Were alarm bells not ringing when you were going to senior management, having identified a range of concerns, and you get draft letters changed, which, as you described, obscured the picture? Then you had interventions from the senior management team, who were saying, “OK, we will recalculate that”. Forgive me if I am wrong, but my reading of this is that, if the RIU was conducting a calculation using the failed jobs only — that is what is referred to here — and then you were advised to recalculate the figure using the entire inspected sample, you would get a more positive answer. I may be wrong.

653. **Mr Kitson:** You would get a more positive feedback, yes.
654. **The Chairperson:** If I was in your position, I would be saying, “Oh, Oh, what is the problem here? There is an issue”, because this is a recurrent thing over a number of years with the same people involved, the same problems and the same solutions. The solution being, “There is a problem; negotiate it downward”. At the very, very least, there is incompetence to some extent there, so somebody, somewhere along the line, has been failed. We are concerned about the public being failed, because it is public money. So, if a problem is identified, you assess that figure, and then you go and negotiate, and it is down to that figure. That might be very appropriate, but, from what I am reading, that is a familiar pattern that I would be very unhappy about if I was in your position. The question I put to you is this: if, having reviewed all those things, that concern was triggered in your mind, would you have gone to senior management and said, “Hold on, folks, there is a serious problem here and it needs to be addressed”? If that was done, who was it done with and what was the response?
655. **Mr McVeigh:** Maybe I should take this one. I answered the member’s question earlier about drafts 1 and 2. To give some context: I came into the Housing Executive in mid-2008, and Raymond and his team had been in their role for quite a bit longer. That said, structurally, one of the problems was with the work. Raymond’s team had a great technical knowledge. It had identified issues — as the presentation you received identified — over a period of time, but the difficulty was that, structurally, it did not help identify any problems when the RIU was embedded in the same division that was managing the Red Sky maintenance contract, and that has been recognised in the Department’s governance review 2010 and the Audit Office’s value-for-money report on contract management.
656. As RIU was identifying problems correctly and escalating them up the line — I think that you have seen that and you have seen Raymond’s technical knowledge — it was not going further beyond the senior management team into the board and beyond. That is one explanation as to why it has taken such time to address that particular contractor. The response that the Housing Executive’s audit committee and board took was that, after the response to the whistle-blowing letter of 2009 and further consideration of that issue, the RIU was detached from the housing regeneration division, and it was managed by me and the internal audit department for a period of time. That helped to get an independent voice to the inspection findings coming out of RIU, and that brought the attention of the audit committee and board to those issues, which had existed obviously in the Housing Executive for a period of time.
657. As other issues were examined, the planned maintenance inspection unit was similarly detached from the customer-facing division that it was attached to, and those inspection functions were centralised in a unit called the corporate assurance unit. That unit was independent of the operational management, and it ensured that there was better reporting. There has been a range of other governance structural changes during my six years in the Housing Executive. The corporate assurance unit was recently merged with the internal audit department in one audit and assurance department, which Clark referred to earlier. That is a major step change from where we were six years ago. I accept, looking at the narrative with hindsight, that one could wonder why it has taken so long to address what appeared to be systemic issues, but from an audit assurance inspection point of view, that evolution has changed things considerably, and I think that it has improved things.
658. **The Chairperson:** I appreciate that. I do not know whether you recall that we had the Auditor General in last week, who confirmed that that process is improving and ongoing, and that is very good news, but when I look at this, I see that, yes, there are structures and that, yes, it was probably appropriate to separate those

- structures but, in real terms, I would be separating out individuals, because people populate the structures. I might be wrong, but it would appear to me that, having listened to this over a long period of time, people were maybe working together too closely. That was not very healthy, so you separate out the various structures, and that is grand. However, I still see a glass ceiling in there somewhere that has gone on for too long. That is what I am saying to myself.
659. Obviously, you were in various positions at different times. From looking at the picture in front of us — that is why I am asking you — what would happen if you brought that to senior managers' attention, told them that there is a problem and asked them what they are doing about it? The glass ceiling did not actually move too far up.
660. **Mr Bailie:** As John has described, we have made important changes to give the audit and assurance team —
661. **The Chairperson:** I understand that, but that does not —
662. **Mr Bailie:** — a clear voice. As a senior manager — the director of finance — I assure the Committee that I and my colleagues in the new management team and our board are clearly and strongly committed to making sure that the Housing Executive delivers the highest quality service. We are also committed to having good governance and doing our business the right way and well.
663. I give a personal assurance that, if John brought any issue to me and thought that he was not being taken seriously, as the director of finance, I would take a personal interest and make sure that it was properly aired and discussed. I know that view is shared across the board and the current senior management team.
664. **The Chairperson:** I am entirely satisfied that that is the case, and I am not taking any issue with that. I am further encouraged by your passion in outlining that. However, my reading is that, clearly, that was not always the case. That is the point that I am trying to get at.
- Where that does not appear to have been the case, where were the pressure points? Who was reporting up and who was the saying, “Hold on a wee second, why is this happening?” I am not really getting much more of an answer to that. Maybe I cannot get one.
665. **Mr McVeigh:** I understand. I will try to directly answer your question, Chair. I came in in 2008, and Clark had come in only, I think, a number of months before me. You have talked about the people, and I can remember having a conversation with Clark at different times about the number of key people who came into the Housing Executive who were new to the organisation quite soon after each other. Clark, I and the then head of corporate assurance were examples of that. People came in from outside who had good experience and a background of good practice elsewhere. They brought that experience to bear.
666. For me, the step change to take the RIU out of housing regeneration took conversations with the chief executive, the chair of the audit committee and the chair of the Housing Executive board to brief them on why that would be important. Did that take too long? Perhaps with hindsight the organisation could have moved quicker, but that was the process that we went through at that stage, and I think that the benefits are now being felt throughout the organisation.
667. **The Chairperson:** Before I bring other members in, the last point that I would make is about the TUPE arrangements for the Red Sky workforce who transferred via BDO — we addressed that a wee bit earlier. Was there a problem with that? Clearly, BDO was working to what it probably believed to be the ministerial time frame, whereas the Housing Executive was working towards 14 July. Was there an issue at that time?
668. **Mr Allen:** The conversations that I had with BDO were clearly focused on 14 July. Several emails were sent to the administrator that made it quite clear that that was the agenda that we were

- working to and that the information needed to flow to those incoming contractors as quickly as possible to ensure that a smooth transition occurred.
669. **Mr Bailie:** That is exactly what happened. Was it not?
670. **Mr Allen:** Yes.
671. **The Chairperson:** Thank you for that. I appreciate that.
672. **Mr F McCann:** I remember the west Belfast end of the stuff. I know that Trevor tried to sectarianise the thing earlier on.
673. **Mr Clarke:** Dolores started it.
674. **The Chairperson:** We were getting on swimmingly without introducing any more subjects.
675. **Mr F McCann:** The fact was that it affected all four constituencies, including Newtownabbey 1 and 2. If you read through the report, you will see that they were all affected by Red Sky.
676. **Ms P Bradley:** They were not all Red Sky.
677. **Mr F McCann:** Well, on the maintenance contracts. The local district manager in my constituency was one of the people who raised the difficulties with Red Sky. I remember making individual complaints, and I was told that it was a battle a day with Red Sky over costs and that it had walked away from repairs until it could argue for an uprating of the price. Most of the people who I dealt with in the Housing Executive at a district level said that it was nearly impossible to deal with those people and that they just went in, said that they could not do it for a certain price and walked away from the house. That added to some of the problems around what has been portrayed as sectarianism.
678. **The Chairperson:** OK. I am not sure. That is a point you had made.
679. **Mr Clarke:** Thanks, Chairman. I want to come back to a point that you made. I have listened to what you said. How familiar was the audit committee with all the problems with the contracts?
680. **Mr McVeigh:** It would have received various reports that set out a narrative of inspection or audit in a particular area. Those tended to be summaries of issues and might not have dealt with some of the specific details that you would have heard about from Raymond, for example. Another issue was that, at that stage, the RIU reports were not properly escalated to the audit committee. There may have been perhaps one line but no detail of the inspection results.
681. That, again, has changed, and I would contrast that with what the audit and risk committee receives now. It receives detailed summary reports on each of the inspections that are carried out across response and planned maintenance. It also receives a summary of specific issues, such as where non-compliance of a contract has been identified, the result of that and recommendations. Having seen six years of what the audit committee does and what it receives by way of briefings and the reports, I think that it is fair comment that it now gets the necessary detail to brief it specifically about performance arising out of individual inspections and —
682. **Mr Clarke:** When did that change happen?
683. **Mr McVeigh:** There have been different changes at different points over the last six years. The most recent change was in June of this year when the newly merged audit and assurance unit was pulled together. I wrote my report as the single responsible officer for both those areas.
684. I have taken a view that the audit and risk committee need to see not just a traffic light analysis, with a red indicating a poorly performing scheme and a green indicating one that is performing well, but the narrative behind that and the details of the location of inspections, the findings, the implications in the form of any risk issues and any recommendations. That now goes to

- the audit and risk committee in detail. That is the most recent change, but, at different points over the last six years, the committee would have received incrementally more detail. My view is that the audit and risk committee is now getting the necessary detail to allow it to make the appropriate judgements and decisions on that asset management and maintenance area of our business.
685. **Mr Clarke:** In your response to the Chair, you spoke about the new unit that you are heading up. You also said that you had a conversation with the chairman of the audit committee. Is that what you said?
686. **Mr McVeigh:** That was before the new unit was formed and after the work with Raymond's team to quality-assure some of the work that was coming out of the RIU team.
687. **Mr Clarke:** Who is the chairman of the audit committee?
688. **Mr McVeigh:** The current chair?
689. **Mr Clarke:** Who did you have the conversation with?
690. **Mr McVeigh:** That was the former vice-chair of the board, Anne Henderson. She was the then vice-chair of the board and chair of the audit committee.
691. **The Chairperson:** OK, Trevor, fair enough? OK, members, time is up this afternoon. No members have any other additional matters to raise. Do any of you want to make any other points or to clarify or add anything? You can make any kind of statement you want. Obviously, the Committee will have to reflect on what we have heard today and maybe come back to some of the issues for further information or clarification. If you do not have anything that you want to add now, feel free to do that if you want to come back to us. We will keep it as a two-way process; the door is open to you to come to us if you want to change, correct or add anything. Likewise, we may want to come back to you.
692. **Mr Bailie:** As a general point — I am not going to dwell on individuals — I have been in the Housing Executive for seven or eight years and there has been a sea change in the last three or four years. We have made structural changes, and there is much greater transparency and visibility. I can assure you that all concerns and suspicions are taken extremely seriously, and we investigate them. We do not brush things under the carpet. We have a lot of people looking in at us, including this Committee, the Audit Office and our board. In my view, there is a very healthy atmosphere and climate, and people should not be afraid or reluctant to voice their concerns, because they will be taken seriously.
693. **The Chairperson:** Thank you, Clark. As you will appreciate, the Committee will be robust, but we wish you well in your job and we do not want to give you any added burden. Clearly, we have a public responsibility here. Thanks very much.



## 25 September 2014

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

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

### Witnesses:

Mr Stewart Cuddy

694. **The Chairperson:** Stewart, you are very welcome to the meeting.
695. **Mr Stewart Cuddy:** Thank you.
696. **The Chairperson:** I remind members that this is in relation to phase 3 of the Committee's inquiry and that the submission provided by Stewart Cuddy is in your packs.
697. OK, Stewart. Again, I remind members and you that you have been invited here to provide evidence to the Committee for its inquiry. You were asked to give us a submission, and you kindly agree to do that. Are you happy enough that you understand the remit of this phase of the inquiry and the reason you are here? You have given a submission, and you are content that that submission is appropriate. Do you want to add anything or make any opening remarks or whatever?
698. **Mr Cuddy:** No, the only other thing that I want to say, Chairman — so that the Committee is aware — is that I understand that you have already had some witnesses and some evidence. I believe that that may be in the public domain. I have not seen that and am not aware of it, so I am coming really on the basis of what I have prepared and the fact that I retired about 18 months ago.
699. **The Chairperson:** OK. I hope that you are enjoying your retirement.
700. **Mr F McCann:** Stewart, you are welcome to the Committee. We have gone over the information that you provided.
701. A meeting took place on 30 June 2011, at which you asked the Minister why he was so interested in the Red Sky contract and were accused by the Minister's special adviser of making allegations. As a result of that meeting, you asked for the permanent secretary to be present at any further meetings. Will you explain why? Did you feel under pressure?
702. **Mr Cuddy:** No. Maybe I did not make it sufficiently clear. I think that there were two meetings. There is a draft minute of one of those meetings, and I think that I said in my briefing that, when the papers were given to me several months ago, it was the first time that I had seen that minute. The minute says that I had asked for the permanent secretary to be present at that meeting as he was not there. If you read the draft minute you will see that he came to the meeting later.
703. Also at that meeting, I asked for the Minister's request to extend the Red Sky contract, which he asked us to do at that meeting, to be put in writing. The reason I did that — I have spelt it out in quite a lot of detail — was that I was very concerned that a Minister was asking us to do something about a public contract. I had had over 30 years' experience in the public sector, and that was the first time that a Minister or a senior manager had asked me or my colleagues to get involved in a public procurement. As everybody knows, in public procurement and contracts there are codes of ethics and protocols and procedures that you do not breach. I was very concerned. I thought that surely the Minister was aware of that and that, if he was not, his permanent secretary should be advising him.

- That is why I asked for the permanent secretary to be there.
704. As I went on to explain in my briefing, the permanent secretary is the senior accounting officer. I was the accounting officer of the Housing Executive, but as the senior accounting officer he also had overall responsibility for the Housing Executive. I felt that it was absolutely vital for him to advise the Minister that he needed to be very careful and that he was getting involved in a very detailed operational contract issue, particularly when that contractor was subject to an investigation, had been found to have been providing a service that was of poor quality and was overcharging. That was the one thing that I was really very concerned about.
705. **Mr F McCann:** There are two points arising from that.
706. **Mr Cuddy:** Sorry, can I just clarify that I was not quite clear whether it was at that meeting or the other meeting that I was accused of making an allegation. It may have been that meeting, but it was not minuted. It is clearly not in the draft minute. Even in the most difficult meetings there can occasionally be a bit of humour. When I was told that I was making an allegation it was reinforced by the special adviser saying to me that a fool would know that it was an allegation. I felt like saying, “I am not a fool; therefore it is not an allegation, it is a question”, but I thought that perhaps that was inappropriate bearing in mind the tension in that meeting.
707. **Mr F McCann:** I am just going over some of the stuff. There were two meetings, one on 30 June and one on Tuesday 28 June. The 28 June one refers to the question about the Minister. First of all, did you feel that you were being put under pressure by the Minister’s special adviser or whoever else to rescind the decision to take the contract away from Red Sky? Secondly, what was the attitude to the permanent secretary when he went along to the meeting to deal with the question that you had raised?
708. **Mr Cuddy:** Obviously we are talking about some time ago, so my recall of the detail may not be 100% accurate. Both the chairman and I felt under an awful lot of pressure. Of course we did. That is why I felt that it was important that the permanent secretary should be there, because, at the end of the day, he is the adviser to the Minister in that sense in matters relating to ethics, policy, procedures and protocols. I do not know if this is in your papers, but following that meeting the chairman and I went back and drafted a letter. There was a letter dated 1 July sent to the permanent secretary. I do not know if that letter is in your papers or not. I kept a copy of it, because I felt that it was such an important letter. It set out all of our concerns. I have a copy here that I can refer to. It is dated 1 July, and on the second page there are something like 5 bullet points. I do not know if the Committee members have this letter or not.
709. **The Chairperson:** Just a wee second; we are going to check.
710. **Mr Cuddy:** It details all of our concerns and why we felt that what had been asked for at that meeting was really unacceptable. We were hoping at that stage that perhaps the Civil Service would speak to the Minister and explain, if it had not done already. Of course, nobody had done. We were not aware of any discussions or written advice that may have come from the permanent secretary. In fact, I am still not aware if the permanent secretary had given the Minister advice in writing or orally, or what the content of that was.
711. We were making it very clear, saying, “There is a major issue here, and really you need to back off and let us get on with what we are doing”. We had a contractor who had performed very poorly. In fact, although I have not said it in my briefing, he was referred to the PSNI for potential fraud in that overcharging. For a Minister to request us to extend a contract involving that type of contractor was not acceptable. It would be unacceptable from anybody. If I went as a senior manager to any of my

- staff for a procurement and asked them to do that, the first thing they would do would be to report me. I would be subject to disciplinary procedure and I would probably be sacked.
712. **The Chairperson:** Thank you. We are still trying to locate the letter.
713. **Mr F McCann:** Can I ask a final question while we are waiting on that? Suggestions and allegations have been made that the reason for the cancellation of the Red Sky contract, or part of the reason, was sectarianism against the company in some areas. In your documentation, you said that that was not the case and that it was because of poor work and overcharging.
714. **Mr Cuddy:** Absolutely. I will not say that I was shocked, because I am not naive; I was very, very surprised at that allegation. If you look at the composition of our board, you will see that it was made up of members from different backgrounds and different communities, and yet the decision of the board was unanimous. There was no question. In fact, if I thought that it had been tainted in any way with sectarianism, I would have had no party with it whatsoever, and I would have recorded that concern in writing.
715. **The Chairperson:** If anyone has a hard copy, that last correspondence is at tab 10. Annex A is on page 99, and then page 100 after that, annex B.
716. **Mr F McCann:** There is a response from the Minister, but I cannot see a response from the permanent secretary.
717. **Mr Cuddy:** No. When I was looking at the correspondence with fresh eyes having been away for so long, I saw that the Minister wrote on 1 July. I cannot remember whether that letter came in before the chairman wrote his letter. My recollection was that the chairman was writing a letter based on our concerns at the meeting that we had just had the previous day or two days before. If you go to the fourth paragraph on the first page of the letter of 1 July from the chairman, you will see that he talks about it being “incomprehensible”. That is not overstating it. We were absolutely stunned at the request to extend the contract. On the following page, we list five reasons why we could not understand how you could justify such a request. In the last paragraph, the chairman tried to defuse the situation by saying, “Look, here are the reasons why we feel this is totally inappropriate. Can you now back off?” He is making the point that it is the Minister, and he also refers to the Department for Social Development, because we believe that there is a role there. I do not want to be unfair to the Department for Social Development. I have not seen its evidence or advice, and it may have tried to advise the Minister. Therefore, I do not want to criticise the Department at this stage.
718. **Mr F McCann:** What I am trying to find out is this: there was a request from you that the permanent secretary should attend the meeting. What was his attitude to the allegations that were being made during the meeting with you?
719. **Mr Cuddy:** To refer back to the minute of that meeting, the permanent secretary’s attitude — from recollection — was that we needed to try to address the issues. I do not think that he wanted to open this up, because he realised that there had been a very tense and heated discussion. I think that his reaction was that he wanted to try to calm it down. It was probably at that meeting that I was accused of making an allegation, and I was insisting that it was not an allegation. Therefore, I think that the permanent secretary’s attitude was, “Look, the issues are out. The Minister has made his request to you. We have heard your response. Let us see how we take it from here.” When we got back, we said that we needed to put it in writing, and then, of course, the Minister wrote to us.
720. **Mr F McCann:** Did you write to the permanent secretary after the meeting?
721. **Mr Cuddy:** The letter of 1 July is to Will Haire, the permanent secretary. That was directly after the meeting where we

- had been asked to extend the contract. I think that that is the timeline.
722. **Mr F McCann:** Did he not respond at all? I cannot see any —
723. **Mr Cuddy:** I cannot see anything.
724. **Mr Allister:** On 31 August.
725. **The Chairperson:** I am told here that at tab 9 we have minutes of a meeting and the DSD briefing prepared for the meeting.
726. **Mr Cuddy:** I do not know whether he responded to that, but I could not see that in the papers that were sent to me. Is there a letter dated 1 August?
727. **Mr Allister:** There is a letter to Mr Rowntree from Mr Haire dated 31 August at tab 10, page 109.
728. **Mr Cuddy:** I do not know what is in that.
729. **Mr F McCann:** While there is a letter from you to Will Haire, there is no response from Will Haire on some of the difficulties that you were facing.
730. **Mr Cuddy:** Sorry, say that again.
731. **Mr F McCann:** There was no written response from Will Haire to the letter that you sent off.
732. **Mr Cuddy:** Unless this letter that the members have referred to deals with those issues.
733. **Mr F McCann:** It is commented on, but the response came from the Minister.
734. **Mr Cuddy:** I think that those two letters —
735. **The Chairperson:** Stewart, if you do not mind, Claire is going to give you a folder that contains some information.
736. **Mr Cuddy:** The letter from the Minister and the chairman's letter passed at the same time, so I imagine that it was not in response, but that it was in response to the meeting. I remember, before I look at this, that there was a letter from Mr Haire some time afterwards, but at that stage, the denouement had occurred and the matter had been put to bed. The Minister had already written saying, "Look, in light of what you have been said, Red Sky or the administrators cannot extend the contract and manage it. Therefore, go ahead and proceed to allocate to the adjacent contractors." A letter then came in after that from the permanent secretary, who I think was quite annoyed that the chairman had written in very strong terms to him. That may be the letter that you have now referred me to.
737. The permanent secretary seemed to be saying that he could proffer advice but, at the end of the day, that is up to the Minister. Now, I have worked in the public sector for 37 or 38 years. All of that time, except for a short period, has been within the public sector as opposed to the Civil Service, but my understanding is, and the Committee may want to check this out, that there are protocols and policies whereby if a Minister is not prepared to accept advice, there is recourse for the Civil Service to refer that matter up the line in some way. Now, I do not know what that protocol or procedure is, but there is a way of dealing with this. I would be surprised, in such a serious matter as public procurement — which is a taboo issue, because everybody knows that you do not get involved in public contracts because there are protocols that have to be followed. There are people who are dealing with those, and if they step out of line they will be subject to disciplinary action. In a situation like this, therefore, I would have thought that the advice needed to be very forceful and in writing so that the permanent secretary can cover his back — if for no other reason.
738. **Mr Allister:** Your statement of evidence is very clear as to what you thought about this. Just to stay, for a moment, with the meetings at the end of June and then the correspondence into July: the Minister, after the June meetings, wrote on 1 July expressly asking the board to extend the contract for a period of six months. What was your understanding of why he wanted it extended for six months?

739. **Mr Cuddy:** We did not know. We had no idea. That is why the question was asked at the meeting. Maybe it was, from me, inappropriately worded, because I was so taken aback. I said, “Why are you so interested in Red Sky?”. The question really was “Why do you want us to do this with Red Sky?”
740. **Mr Allister:** Why did it seem to you that the Minister was so interested in Red Sky?
741. **Mr Cuddy:** We could speculate, with all respect. We also knew that there was a meeting, or there was going to be a meeting. When I gave my evidence to you, I could not remember the timeline. I think that perhaps the meeting had already taken place by the time that we met the Minister at the end of June or beginning of July. So we felt that there was clearly something happening — something going on. We did not have all the facts and figures. We also asked the Department if it was at the meeting. From memory, I think that it was, but it did not want to come up front and say, “Yes, we were there and everything was fine”.
742. **Mr Allister:** I think that the Committee knows that there was a meeting attended by some politicians, some departmental officials and Red Sky.
743. **Mr Cuddy:** That concerned us even more, knowing that that was the case.
744. **Mr Allister:** The Housing Executive was not invited to that meeting.
745. **Mr Cuddy:** No, but we were asked to do a briefing for it. My understanding was that we were asked to provide some information on the size of the contract, when it started, when it would finish, etc.
746. **Mr Allister:** Nor was the administrator at that meeting. Is that your understanding?
747. **Mr Cuddy:** That is right. The administrator was not at the meeting. Again, that concerned us. I think that is laid out in Mr Rowntree’s letter.
748. **Mr Allister:** So, at those meetings at the end of June, when you dared to raise concerns about the Minister meddling in public procurement, you got a pretty rash and robust response, particularly from the special adviser. Is that right?
749. **Mr Cuddy:** Yes, we did. Are you saying that we got a response from the special adviser?
750. **Mr Allister:** Yes. The special adviser responded quite angrily.
751. **Mr Cuddy:** Yes, he did, absolutely. That is where I was accused of making an allegation. I said, “No, it is a question”. In fact, the permanent secretary at that stage was at the meeting, and he stepped in to try to cool things down.
752. **Mr Allister:** You say in your evidence:  
*“I was extremely concerned that the Minister was getting involved not only in a NIHE operational matter but one relating to a specific contract and a particular contractor. This could readily be perceived as a Minister lobbying for that contractor and also directly influencing/compromising a public procurement process”.*
753. Was that your perception of what was going on?
754. **Mr Cuddy:** Absolutely.
755. **Mr Allister:** That the Minister was lobbying for a particular contractor.
756. **Mr Cuddy:** My perception was that there was a danger that that would be how it would be perceived. I do not know what was motivating the Minister. Therefore, all I can say is that it seemed to me that he was lobbying and making a very forceful case for us to extend the contract. That is vindicated by the fact that I asked for his request to be put in writing, and we got his request in writing.
757. **Mr Allister:** Were you aware that there was a threat to use an article 10 ministerial direction to the board?
758. **Mr Cuddy:** There was. We thought that might happen.
759. **Mr Allister:** Yes. And the Housing Executive, we know from the papers, indicated very robustly that if that were

- to happen, you would be going to the High Court.
760. **Mr Cuddy:** Absolutely. The reason that we did that, again, to explain to the members, was that we saw this as an extremely serious matter. We could not understand how we had arrived at a situation in which a Minister was writing to us. I was absolutely astonished when we received the letter. When I asked at the meeting for it to be put in writing, I thought that that would put it to bed and would never see anything in writing. I thought that the Civil Service would say to the Minister, “Stand back. You are in a very difficult situation here. Do not go beyond the Rubicon here on this particular issue.” Yet we received a letter asking us to extend the contract.
761. **Mr Allister:** Was that him going beyond the Rubicon?
762. **Mr Cuddy:** In my view, it is. In my view, if I or any of my staff had done that, we would have been going beyond the Rubicon. Absolutely.
763. **Mr Allister:** Was that the Minister abusing his position?
764. **Mr Cuddy:** My view is that there is a potential that he was in breach of his code. I have looked at the code and I know what it says.
765. **Mr Allister:** That was all focused on the meeting of the board that was coming up on 5 July. Were you aware of any lobbying that had been going of board members?
766. **Mr Cuddy:** I am aware of the Jenny Palmer issue. I am trying to remember if that was 5 July. Yes, that was the first meeting. That was the meeting when the decision was made.
767. **Mr Allister:** When the decision was made to reaffirm concluding the contract on 14 July.
768. **Mr Cuddy:** Yes.
769. **Mr Allister:** Can I take you back a bit? Paragraph 5 of your evidence states that, on 4 February and 6 February,
- there were meetings with Red Sky to discuss the issue of overpayment.
770. **Mr Cuddy:** Yes.
771. **Mr Allister:** The third paragraph says: *“It was clear that RSG did not get the message or more likely were not prepared to accept it and terminated the meeting.”*
772. **Mr Cuddy:** Yes.
773. **Mr Allister:** That obviously was another robust occasion.
774. **Mr Cuddy:** It was a very difficult meeting.
775. **Mr Allister:** Yes. To the point where Red Sky terminated the meeting.
776. **Mr Cuddy:** Yes, because —
777. **Mr Allister:** If I understand correctly, at that meeting you were looking for Red Sky to respond in a time frame to the report, the outcomes of which you had provided to it.
778. **Mr Cuddy:** Yes.
779. **Mr Campbell:** Chair, are we leading the witnesses here or what? It is a very unusual line of questioning.
780. **Mr Allister:** I am sure that the Chairman will preside over that.
781. **Mr Campbell:** I am sure he might, depending on who is asking the questions.
782. **The Chairperson:** I am keeping an eye on where we are going with this. We are dealing specifically with the submission from Stewart Cuddy.
783. **Mr Allister:** So, when you say that it was clear that Red Sky did not get the message or, more likely, was not prepared to accept it, that suggests to me a company that was used to getting its own way with the Housing Executive. Is that fair?
784. **Mr Cuddy:** Yes, I think there was a culture — I referred to it — in Egan contracts, and there was an idea that Egan was all about partnership. Partnership is one aspect of it, but

- the key issue of any contract is the contract, and he who pays the fiddler plays the tune. We were reaching a situation where, under Egan, some of the contractors — not only Red Sky; there were other contractors as well — thought that every decision that was made had to be made in partnership with them. To some extent, that had maybe been happening over a number of years, and I came in with a very clear remit from the board and the chairman that we needed to nip that in the bud. I think that there was a gateway review at about the same time. The gateway review also made the point that partnership is good but, at the end of the day, if you pay for the contract, you determine what you have to get from it, and I was trying to get that message across to Red Sky in light of a very damning report.
785. **Mr Allister:** Back in 2006-07, there had been an attempt to terminate a Red Sky contract, is that not right?
786. **Mr Cuddy:** I understand so. I recall that only in retrospect.
787. **Mr Allister:** And the Housing Executive backed down.
788. **Mr Cuddy:** My understanding is that it never went to the board, and the senior managers of the team were unaware of it. I think that I say in my evidence that I believe that it was the chief executive and the director of housing who dealt with that issue at that time. My understanding was that they were about to terminate the contract. There was a new chairman of Red Sky at that time. I think that there were meetings, and assurances were probably given at those meetings that the contractor would step up and address concerns, and I imagine that, on that basis, the contract was not terminated.
789. **Mr Allister:** And the meeting with the chairman was with Mr Cushnahan.
790. **Mr Cuddy:** It was Mr Cushnahan at that stage.
791. **Mr Allister:** Who had previously been a Housing Executive board member and member of the audit committee.
792. **Mr Cuddy:** That is right.
793. **Mr Allister:** And he was subsequently criticised by the Public Accounts Committee for his involvement in that matter.
794. **Mr Cuddy:** I am unaware that he was criticised by the Public Accounts Committee.
795. **Mr Allister:** Was there political lobbying at that time in support of Red Sky? Do you know that?
796. **Mr Cuddy:** I am totally unaware of that. Like a number of other senior officers, I was unaware of the discussion with Red Sky and Mr Cushnahan. We knew nothing about it. I knew nothing about it. It was only several years later when, I think, it came out as part of an audit report on Red Sky that we became aware of this.
797. **Mr Allister:** I was on the theme of Red Sky being a company that gave the appearance of being used to getting its own way with the Housing Executive.
798. **The Chairperson:** Jim, I am minded that you are characterising beliefs and perceptions. Some may share those, but the facts of the matter, on the record, are that there were overcharging allegations or realities regarding a number of contracts, which were negotiated down year on year. We dealt with that last week. I just ask people to be mindful and limit that kind of characterisation. We are in sensitive territory, so I am asking people to be a bit mindful about how they characterise their questions.
799. **Mr Allister:** I will ask it this way: was there an occasion on which Red Sky protested about the attitude of a staff member in a part of Belfast and that staff member was then removed from his post?
800. **Mr Cuddy:** I understand that that was the case.

801. **Mr Allister:** Is it right that that was someone who was trying to be a whistle-blower?
802. **Mr Cuddy:** My understanding is that that is correct. In fact, during my nine months, I had to deal with a request from that officer. The only way that I could deal with the request was to offer him back the post that he had been in. He was very annoyed at what had happened. He had been moved out of his role as district maintenance officer, where he felt that he had been doing an extremely good job. I must say that, when I came into the post and was presented with the evidence, I also felt that he had been trying to do a good job. I was very concerned that he had been transferred. I felt that it was a matter of justice and fairness to an employee. I asked him whether he wanted his post back because a vacancy was coming up. I asked him whether he would accept the post. He wanted to wait until the Red Sky issue had been resolved, and, from memory, he may have gone back to that post.
803. **Mr Allister:** He had been removed from that post at a time when Red Sky asked for him to be moved.
804. **Mr Cuddy:** I need to stress again that, at that time, I was not the acting chief executive. In fact, I had very little involvement with maintenance. The director of housing was involved with maintenance. I am aware that their view would be that there was a rotation policy and that this officer was moved as part of the rotation policy.
805. **Mr Allister:** Was it any of their business what staff were placed where by the Housing Executive?
806. **Mr Cuddy:** Sorry, whose business?
807. **Mr Allister:** Red Sky's.
808. **Mr Cuddy:** It goes back to the culture among Housing Executive senior management and contractors that this was a partnership. There is now a recognition that there are partnerships and partnerships. Partnerships do not mean that, on every decision, you consult a contractor, and they have to agree. At the robust meeting that we had, one of the things that I was trying to get across to Red Sky was that things had moved on, we were now asking for certain things to happen, and, if they did not happen, there would be consequences.
809. **Mrs D Kelly:** Mr Cuddy, thank you for your briefing. It has been very helpful. I admire the candid nature with which you are attempting to answer the questions.
810. At any of the meetings that you had with the Minister and his SpAd, did either of them ever raise their concerns about the allegations of overcharging and poor workmanship? Was that ever a feature?
811. **Mr Cuddy:** It was a feature of the overall maintenance programme. If it was applicable to Red Sky, presumably it was applicable or potentially applicable to other contractors. Our view at that stage was that we had an in-house audit review team that threw up issues for every contractor, and we try to resolve those issues. However, in our estimation and as validated by the external forensic report, this one was much, much more serious.
812. I was trying to recollect why we had commissioned the report into Red Sky. It went back to an audit committee meeting. The chair of the audit committee — she had been on our board for quite a number of years, and the Red Sky issue had been a recurring one — said, because there was, I think, a whistle-blowing letter, “We need to do something about this”. On the basis of that, the forensic accounts report was commissioned. On the basis of an independent report, one has to act on the facts and the evidence presented.
813. **Mrs D Kelly:** I am struggling to understand why, if I were responsible for a Department, and evidence were brought to me by people in good standing, I was more concerned about Red Sky, which is the perpetrator, if you like, of the overcharging and the poor workmanship, than the public interest.
814. **Mr Cuddy:** I think that I said that we could not understand why the Minister

- was getting involved in something like this. That is why we reacted so strongly at the meeting at the end of June/ beginning of July and in the letter that the chairman sent. Given that the following letter was very legalistic, we were fearful that we were going to get a direction. We tried to defuse that by the letter of 1 July to the permanent secretary, but nothing seemed to happen. We got a letter dated 1 July making the request, so we felt that, if there were a direction, we had to get our ducks in a row to deal with that.
815. **Mrs D Kelly:** Thank you.
816. In the third paragraph of the letter of 31 August from the permanent secretary to Brian Rowntree — it is on page 109 — it strikes me that, in response to the concerns expressed to the permanent secretary about his role in acting as a buffer, if you like, between the Housing Executive and the Minister and the concerns about the public interest, he said:
- “my role as Accounting Officer is at all times to act within the authority of the Minister to whom I am responsible and to support the Minister with clear, well reasoned, timely and impartial advice. It is, however, ultimately the Minister’s decision to accept or reject that advice.”*
817. That is as far as he seems to understand his role, which runs contrary to what I understand his role to be. As you outlined, Mr Cuddy, he had a clear role to take it up the line in the Civil Service.
818. **Mr Cuddy:** I am assuming that he would. I do not know the detailed protocols pertaining to that level of the Civil Service, but I would have thought that, in terms of what they call overall governance, there is bound to be very clear advice. There is bound to be a precedent for that when a Minister comes in with very clear views. I am talking about not only in Northern Ireland but across the UK. Such cases have happened before whereby a Minister has come in and wanted to do something, and the permanent secretary has said, “Sorry, you’re going too far here, and I’m going to have to protect myself by putting this to you in writing. In fact, it is now so serious that I’m directing it up the line”.
819. From memory, somebody told me many years ago that there is a policy that takes it up to the head of the Civil Service, and from there it can presumably go into whichever level it needs to go.
820. **Mrs D Kelly:** Mr Haire certainly did not suggest that he would take any such course of action in that letter. In fact, he went on to put Brian Rowntree on notice should he persist. Chair, I want some clarification on the permanent secretary’s function, although I am sure that we will pick that up with Mr Haire at a later stage.
821. I have one further question. There was a meeting between the Minister, DSD, Red Sky and, I think, the Housing Executive. Who requested that meeting? I am trying to find out the date.
822. **Mr Cuddy:** Sorry, a meeting between —
823. **Mrs D Kelly:** In April 2011, you and the chair of the Housing Executive met senior DUP representatives, including Minister McCausland and Peter Robinson, to discuss the termination of the Red Sky contract.
824. **Mr Cuddy:** That is right.
825. **Mrs D Kelly:** Can you advise us what you understood to be the purpose of that meeting and who requested it?
826. **Mr Cuddy:** We had been advised that elected representatives had very serious concerns about the imminent decision to terminate a contract. There were also employment issues with the company operating out of east Belfast and employing 300 to 400 staff. We assumed, therefore, that that was the main reason for the meeting. I cannot recall, but I think that it was one of the three elected representatives who asked for it.
827. **Mrs D Kelly:** I think that it was Mr Robin Newton.
828. **Mr Cuddy:** Yes, I think that it was Mr Newton who asked for the meeting. As it

- turned out, that was one concern at the meeting.
829. **The Chairperson:** Our advice is that the Minister was not at that meeting. I just wanted to make that point.
830. **Mrs D Kelly:** All right.
831. **Mr Cuddy:** The Minister was not at that meeting.
832. **Mr Allister:** He was not the Minister then.
833. **Mr Cuddy:** Was he not?
834. **Mrs D Kelly:** No, he was not. I think that Alex Attwood was the Minister.
835. **Mr Cuddy:** Right.
836. **Mrs D Kelly:** I do not think that Alex was there either.
837. **Mr Cuddy:** There was no Minister at the meeting. There were a number of concerns. That was one of them, and we tried to reassure them that, under TUPE, the employment issue would be mitigated to some extent. That would not be 100%, but at least not as many jobs would be lost if we proceeded down that line.
838. As I know, they felt that there was a sectarian element to the decision. We said that there was no way that that was an issue at all. We pointed out the background of board members from all communities.
839. The final point, which we had never thought about because it had never been an issue, was a suggestion that we timed this as part of the purdah period. That was the first time that that had been raised with us, and there was clearly no intention of that whatsoever. If that had been an issue, we would have raised it as such, but it happened in a time frame without any reference to elections or anything else. I think that, on balance, they were reasonably reassured by what we said.
840. **Mrs D Kelly:** I believe that, at that meeting, Mr Robinson put on notice the fact that any incoming Minister would widen the net of investigations on particular contractors. From my reading of it, it was quite a robust meeting and, I would have thought, threatening at times for officials.
841. **Mr Cuddy:** My memory of the meeting is that it was reasonably difficult, but, when we had explained a rationale for what had happened to the elected representatives, I got the impression that, although they were maybe not 100% satisfied, they could understand where we were coming from.
842. **Mr Wilson:** Mr Cuddy, maybe you could explain to us your role in supervising, having knowledge about and receiving information about these contracts before you became chief executive and during your period as chief executive.
843. **Mr Cuddy:** It would be helpful to explain that, particularly from my point of view. I was appointed as the director of corporate services/deputy chief executive of the Housing Executive. There was quite a difficult relationship between the chief executive and me because, as deputy chief executive, I felt that I had a role as a deputy whereas the chief executive felt that I deputised for him when he was not there, if he so requested. There was always a tension between the chief executive and me.
844. That is not to say that we did not get on and work effectively. However, the maintenance contracts were the responsibility of the director of housing and regeneration, who was Mr Colm McCaughley at that time. He dealt with most issues, and the only issues that bubbled up to the top, which came through the management team, were very difficult issues that had not been resolved or that required a resolution, which the chief executive decided needed to be on the agenda or which were brought to the meeting by the director of housing and regeneration. In many ways, I had virtually no input at all to contracts except when something came up at the management team meeting, and I felt that I had a contribution to make with constructive criticism or maybe supporting what was being done and how to do it.

845. **Mr Wilson:** Are you telling me that, during all that time, despite the allegations that finally came to the surface that there had been overcharging and bad supervision and delivery of those contracts, especially in certain areas — letters presumably went to the chief executive's office — you knew nothing about any of that?
846. **Mr Cuddy:** What I am saying is that the only time that this became a major issue that merited the type of investigation that eventually happened was when it went to the audit committee. Indeed, not only —
847. **Mr Wilson:** When was that?
848. **Mr Cuddy:** That was just before we commissioned the forensic accounts report, which I think was around 2010. I am not too sure about the time frame. Again, that is not surprising, because we had a very active audit committee. Representatives from the Department and the Northern Ireland Audit Office sat on the audit committee, as did all the directors who attended. We were all there, and none of us — except, presumably, the chief executive, possibly, and the director of housing and regeneration — would have known whether there were major issues. I do not know whether they knew at all. I assumed that the contracts were being operated satisfactorily. We had an in-house review team that produced management reports that went to the director of housing. Those went to the audit committee. By and large, everything seemed to be OK. There would have been an occasional adverse report. When that happened, action was taken and reported back to the audit committee.
849. **Mr Wilson:** For years, or certainly for a long time, complaints were coming from ground level. According to what you say, people were being removed from their jobs because of the actions of a particular contract. There was overcharging and poor delivery. Given the culture of secrecy or division in the Housing Executive — the silo mentality — all that went under the radar of senior management. Is that what you are saying?
850. **Mr Cuddy:** What I am saying is that one member of staff was transferred? I am trying to put this in context. It is not as though 10 or 15 members of staff were moved, and it was an issue for everybody. I was unaware of that person being moved until after it happened, when it became an issue, because it was deemed to be an ongoing management issue. It was an operational matter that I was unaware of. Questions about poor delivery and overcharging were going through a number of contracts. Once overcharging was discovered, whether intentional or not — in most cases, it was deemed to be not intentional — an adjustment was made to the next payment to deal with that. All these issues seemed to be being managed. The only complaint that I was aware of and that bubbled up to senior level — that is not to say that there were not others that did not bubble up and may have been kept secret; I do not know — was that of the whistle-blower, and it came to the audit committee. I was a member of the audit committee and was well aware of that complaint and the audit committee's reaction.
851. **Mr Wilson:** I am trying to get the picture. This is very important when we come to look at the reaction of the Housing Executive to any investigation into the way that it behaved. We have this picture: this went on for a long time, and senior management was kept unaware of it. When it did become aware —
852. **Mr Cuddy:** I am not saying that. Senior management comprised the chief executive, the director of housing and regeneration, the director of corporate services — that was me — the director of consultancy services, the director of personnel and the director of finance. If there were issues, I have no doubt that the director of housing and regeneration and probably the chief executive would have been aware of them. I am unaware that there were issues.
853. **Mr Wilson:** Clearly, there were issues, because you have told us that

- there were; they have all been well documented to us. However, the Housing Executive allowed this to trundle on for some time, to the point at which people were paid for work that they did not do and so on. Do you accept that there must have been a certain amount of embarrassment in the Housing Executive's senior management team, inasmuch as the Housing Executive can be embarrassed by anything, at the debacle that it had overseen?
854. **Mr Cuddy:** Absolutely.
855. **Mr Wilson:** From my point of view, this is where the difficulty comes in. Up until the 2011 election, you had a Minister who was unaware of this or, because of how he was disposed towards the Housing Executive, was quite happy for the Housing Executive to trundle on and do this. As far as you are aware, was the previous Minister aware of any of this, given that the audit committee had identified the issue in 2010? Was he aware of this at any time before he left his post in 2011?
856. **Mr Cuddy:** My memory is that he was aware, because we met the former Minister. I cannot remember the exact time frame, but it was just before he left. I am trying to remember whether that coincided with this report. I would need to look at the time frames to see whether the report came out during his tenure. I think that the report came out during the previous Minister's tenure, he left, and then the new Minister came in. There definitely was a meeting. In fact, the reason why I remember at least one meeting is that the Minister wanted us to terminate the contract, and we said that a contract cannot be terminated unilaterally without evidence and information to support that action.
857. **Mr Wilson:** Tell me this: did you write the same kind of letters to the previous Minister? You talked about your disgust and alarm at the interference that Nelson McCausland wished to exercise over this contract. Was the same kind of message conveyed to the previous Minister?
858. **Mr Cuddy:** No. The permanent secretary and/or the deputy secretary, Barney McGahan, attended those meetings. I remember that because Barney and I were colleagues in the health service, so I knew him from that background. When we put it to them that you cannot terminate contracts willy-nilly, they understood, and I think that they were able to get the Minister to understand that and to understand that you have to take certain steps to terminate a contract, otherwise the organisation would be left in a vulnerable legal position.
859. **Mr Wilson:** Nevertheless, the previous Minister — I want to get to one of your central points — did not see any curtailment on him in questioning public sector contracts, in asking you to terminate a public sector contract or in making representations about a public sector contract. Is that right?
860. **Mr Cuddy:** All I can say is that the Minister was keen that we terminate the contract. I cannot remember whether the report was out at that stage, but he wanted us to terminate the contract.
861. **Mr Wilson:** This is where I have a difficulty with you, Mr Cuddy, and with the balance of your evidence. You said that you were concerned that any public representative would even think about interfering in a public sector contract, yet you are also saying that the previous Minister thought that it was OK, his permanent secretary was in attendance at meetings, so —
862. **Mr Cuddy:** There was a difference, Mr Wilson. The difference was that the civil servants at a senior level who accompanied the Minister to those meetings were echoing to the Minister the advice that we were giving. Where there is bad press around a contract, we can understand any Minister saying, "For goodness' sake, what are you doing? Are you not going to get this sorted out? I want this contract terminated". We put the view logically to him that there were certain steps that we had to take. From recollection, those views were echoed at the meeting, maybe not in a very strong way, but we knew that we had the senior

- civil servants on board. If we had been getting that sort of feedback from the meetings with the other Minister, this issue would not have escalated.
863. **Mr Wilson:** We will come to whether there is a difference in one situation and another. I take it that you are now clarifying your earlier remarks, when you seemed to be indicating that there was something suspicious and certainly unsavoury about any Minister daring to query a public sector contract. You are saying now that, although you would qualify it, there would be grounds when a Minister may ask officials about a public sector contract.
864. **Mr Cuddy:** No, what I am saying is that I can understand a Minister getting very uptight about contracts in an organisation that he has overall responsibility and oversight for. We can understand a Minister at times being very upset and suggesting and indicating that a contract should be terminated. It is a different matter, however, when it is clear that advice — our advice — was not being accepted. We said that performance on this contract had been poor, we had received a very damning report and that, therefore, our view was that he should not get involved, the contract needed to be terminated and that he should stand back from that. Notwithstanding that, we were told, “We want this contract extended”. I think that the two situations were different. I can understand a Minister coming in and his first reaction being that he wants a contract to be terminated. A Minister has not spent 20 or 30 years in the public sector and does not necessarily understand all the protocols, but, when he is told something by his senior managers, and is presumably told the same by the permanent secretary and senior civil servants, and he does not accept that, I think that there is a major concern.
865. **Mr Wilson:** So —
866. **The Chairperson:** Sammy, can we ask the question, because it may be helpful: was there any subsequent intervention by that particular Minister?
867. **Mr Cuddy:** No.
868. **The Chairperson:** I think that that helps us to work out a response.
869. **Mr Wilson:** You are saying that it would not be unusual for a Minister to ask about a public sector contract. It certainly would not be unusual for him to receive representations from other MLAs who had had concerns raised with them about a public sector contract. That is a normal part of a Minister’s job and a public representative’s job if concerns were drawn to their attention.
870. **Mr Cuddy:** From my perspective — maybe I come with more information, having spent so long in the public sector — if I were an adviser to a Minister, my advice to him, whether as a Civil Service adviser or a special adviser, would be that he should not meet contractors when there has been a damning report on their work in case that it misrepresented as lobbying, whether or not that perception is there. My clear advice would be: “Don’t go near it”.
871. **Mr Wilson:** That is not the question that I asked you, Mr Cuddy. You made a very definite statement to the Committee that you would have been concerned about any representations that a Minister would have taken about a public sector contract. You are now qualifying that by saying that, if other MLAs asked to speak to him about concerns, that is part of a Minister’s job and that, if concerns about a contract were drawn to a Minister’s attention and he asked questions about it, that is also part of a Minister’s job, and that there is nothing unusual in him asking officials and talking to officials about the contract.
872. **Mr Cuddy:** I agree with that. There is a process whereby, as you very well know, a Minister asks a question about a contract — about anything — and he is obviously entitled to do that. During that process, which may involve one meeting at which we provide a response and tell him the position, if that Minister appears to insist on going down a road,

- that, to me, is unacceptable in public procurement.
873. **Mr Wilson:** Let me come to the next part, because it is quite clear why the Minister was concerned. I note that you said — again, maybe you want to qualify this in the way that you have qualified your bald statement —
874. **Mr Cuddy:** I do not know that I have qualified it. With all due respect, I hope that I have explained it.
875. **Mr Wilson:** You made a bald statement that has now been considerably modified as a result of the answers that you have given. The second thing that you said was that you did not know why the Minister had raised concerns about the termination of the contract. Is that right?
876. **Mr Cuddy:** Are we talking now about Minister McCausland?
877. **Mr Wilson:** Yes, Minister McCausland.
878. **Mr Cuddy:** I raised concerns at the meeting. I asked why he was so interested in Red Sky in the context of the Minister wanting the contract extended, because it seemed totally illogical. If you have a damning report on a contractor, why would you ask for the contract to be extended?
879. **Mr Wilson:** This is what you said. Maybe you want to think about this one again. You said that you did not know why he would want the contract extended. You did not.
880. **Mr Cuddy:** I did not know.
881. **Mr Wilson:** Did you see the letter that he sent to Mr Rowntree on 1 July?
882. **Mr Cuddy:** I did.
883. **Mr Wilson:** It is in the pack that has been handed to you.
884. **Mr Cuddy:** Is it the short letter?
885. **Mr Wilson:** Yes. Let us just look at that letter. You say that you had read it.
886. **Mr Cuddy:** Yes.
887. **Mr Wilson:** He makes a number of points in it. At the end of the first paragraph, he asks for:
- “a forensic investigation ... including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination.”*
888. Why would he have asked that question?
889. **Mr Cuddy:** I assume that he would have asked that question for a number of reasons. Whether there were problems with those particular contractors would be one reason presumably. As a comparison with Red Sky.
890. **Mr Wilson:** Had he asked officials that question previously?
891. **Mr Cuddy:** The question about problems with other contractors.
892. **Mr Wilson:** Yes.
893. **Mr Cuddy:** I am sure that he would have raised that. He may have asked —
894. **Mr Wilson:** Did he ever raise it with you?
895. **Mr Cuddy:** At the meeting, he would have asked about the performance of other contractors.
896. **Mr Wilson:** Right. So he had raised it with you. Had you been able to give him any assurance about the performance of other contractors?
897. **Mr Cuddy:** I remember one question, and I responded by saying, “I have one query on my desk at the moment with a particular contractor”. It was quite an unusual query. I do not want to name the contractor at the moment.
898. **Mr Wilson:** It was named in the documentation anyway. You knew the name of the contractor at that stage, but go ahead.
899. **Mr Cuddy:** I said, “I have an invoice query on my desk at the moment”, but I made the point that I did not believe that it was material in terms of the wider cost of the contract.
900. **Mr Wilson:** And yet, within nine months of this, Housing Executive officials were informing the Minister that this was

- not confined to Red Sky but applied to all the companies to the tune of £18 million.
901. **The Chairperson:** Sorry, I have to intervene.
902. **Mr Cuddy:** I think that there are two different contracts here.
903. **The Chairperson:** Sorry, I am going to make a ruling on this. They are two separate contracts entirely, Sammy.
904. **Mr Wilson:** No.
905. **The Chairperson:** They are. I have to say this to you: we are not dealing with that set of contracts. That was the response maintenance contracts; the planned maintenance contracts are entirely separate. We have been dealing with that. So, that is not relevant to this issue.
906. **Mr Wilson:** The point that I am making —
907. **The Chairperson:** You cannot make it.
908. **Mr Wilson:** I know that there were two separate contracts.
909. **The Chairperson:** Sorry, Sammy, I am making a ruling on this. You cannot make that suggestion because it is factually incorrect. It is an entirely separate matter.
910. **Mr Wilson:** I know that there were two separate contracts, but what I am trying to illustrate is that —
911. **Mr Cuddy:** I know the very point that you are making.
912. **Mr Wilson:** — there was a culture —
913. **The Chairperson:** Sorry, I am directing the meeting. You will not respond to that question because it is not relevant. It is erroneous.
914. **Mr Wilson:** Do you accept that the Minister was increasingly aware of a culture of slack management in the Housing Executive where the potential for overpayments could extend to more than just one company?
915. **Mr Cuddy:** I think that he had a concern. There was the start of a concern at that stage. I do not think that he did prior to that. He might not have been in office that long anyway, but, yes, clearly, he had raised concerns that if it had happened with Red Sky, it could happen with other contractors. Our problem was that that might have been the case — as it turned out, it was the case — but two wrongs do not make a right. We were quite happy to say, “Yes, we will look at those contracts and if there are overpayments and overcharging, we will deal with those as well”.
916. **Mr Wilson:** So, first, the Minister would have been concerned that it was a case of assigning contracts to somebody who may have been guilty of even more than Red Sky —
917. **Mr Cuddy:** But there was no evidence, with all respect, of that. The other view could be that this was a fishing exercise. We had no evidence on those other set of contractors.
918. **Mr Wilson:** Well, you did, because allegations were made. In fact, you have told me that you had one piece of paper on your desk about another contractor.
919. **Mr Cuddy:** Yes, but with all respect, I also made the point to the Minister, when he pushed me on that, that it was a one-off incident at that stage. The word that I used was “material”, and he asked me what I meant by “material”. I suppose that I was using an accounting term. In the overall size of the contract — I think that the invoice at that time was maybe £400 or £500, I cannot remember, for a piece of work — it was not a “material” consideration, but it was still being addressed. I was trying to make the point that one query on one piece of work should not be the reason to start a full-scale investigation.
920. **Mr Wilson:** No, but, Mr Cuddy, I know that you are trying to underplay this, because this is a significant point. The fact is that, before 1 July, the Housing Executive was aware that there were other potential overpayments to contractors, some of whom might have been assigned the work that was going to Red Sky. You say that you did not

- know why the Minister wanted you to consider this, but that is one reason, and he had given you that reason: you could have been assigning work to firms that might have been guilty of even more than Red Sky.
921. **Mr Cuddy:** With respect, I told members earlier that the Housing Executive has an in-house review team. That review team looks at samples of work by all the contractors. What it does is find examples of poor workmanship in isolated cases. It also finds examples of overcharging and, indeed, sometimes undercharging, and there is an ongoing monthly adjustment to the contract to reflect that. For years, that would have applied to a number of contracts. The problem was that Red Sky was on the Richter scale; it stood out because of the scale of this. And the scale of it was identified through the forensic report. We are aware that there were overpayments and underpayments; of course we were —
922. **Mr Wilson:** And subsequently some of the other ones were off the Richter scale as well.
923. On my reading of the second paragraph of the letter, to reassign the contracts in this way would have required that you did not go out to tender: is that correct — to reassign the contracts quickly?
924. **Mr Cuddy:** From memory, within the terms of those contracts, we are obliged to reassign the work to adjacent contractors. I think that there is a contractual responsibility that, because they have already gone through the tender process, if a contractor, for whatever reason, pulls out or a contract is terminated, that contract is reallocated to adjacent contractors. That precludes, as you say, the need, at that stage, to go out for competitive tender.
925. **Mr Wilson:** So, when you said that you did not know why the Minister wanted you to consider extending the contract, you were not really correct, because you have read the letter and identified the two reasons in the letter. First, the work might have been reassigned to people who were as guilty, if not more guilty, than what had been alleged in Red Sky; secondly, there would not even have been a tender process.
926. **Mr Cuddy:** With all respect, if you were to go to a competitive tendering process and bring in new contractors, there is always the potential for overcharging. How do I prove something that I do not know is out there?
927. **Mr Wilson:** Well, why do you tender at all then?
928. **Mr Cuddy:** What I am saying to you, with all respect, is this: why would we assume that there is massive overcharging with adjacent contractors at that stage? And there was no evidence of that, at that stage. Why would we want to do that and go out to a competitive tendering exercise and probably end up with the same situation?
929. **Mr Wilson:** Because, at that stage, you already had allegations and you were already looking at another company with which you had queries about invoices.
930. **Mr Cuddy:** I had one invoice. It was not —
931. **Mr Wilson:** I was going to say, Mr Cuddy, that I hope that you are not making an argument for not going to open tender, to competitive tender. To take the argument that you are making to its conclusion, you would not go out to tender anyway.
932. **Mr Cuddy:** No, not at all.
933. **Mr Wilson:** You have got five contractors —
934. **The Chairperson:** Sorry, Sammy, let him finish.
935. **Mr Wilson:** No, but —
936. **The Chairperson:** I know, but let him finish the answer and then you can have all the time in the world here. We are here all day to ask the questions that we need to ask.
937. **Mr Cuddy:** Reassigning the contracts is part of the normal tendering process in contract management. It is written

- into the contracts, and it is done for a number of reasons. In particular, if you have contractors who are already doing the work and have the capacity, you can get them to do it at the rates that they tendered for. There are very pragmatic and practical reasons for doing that, but I am 100% behind competitive tendering.
938. **Mr Wilson:** But not if there is a cloud of suspicion hanging over those contractors, which the Housing Executive — do not forget that it was not too long after that that you asked Horwath to conduct an investigation into the rest of the contractors and found that there was the same degree of overcharging.
939. **Mr Cuddy:** I do not know if there was the same degree of overcharging. Those reports were not out by the time that I left. I have no idea what they found. I am sure that they found some level of opportunity, whether it was to the same degree —
940. **Mr Allister:** It was £3,000. I heard it last week.
941. **Mr Cuddy:** — whether it was to the same degree, I do not know.
942. **Mr Wilson:** There was a cloud of suspicion, hence —
943. **Mr Cuddy:** With all respect, you are —
944. **The Chairperson:** Stewart, Stewart.
945. **Mr Cuddy:** — you are making this out to be a much greater issue than it was.
946. **The Chairperson:** Mr Cuddy, just a wee second, please. I asked people earlier to be very mindful of how they are characterising their remarks. Let us stick to the facts that we know and probe the questions that we want answered, and let us try and do it in as professional a way as possible. We can be here as long as we need to be to ask whatever questions we want relevant to the issue. There is no panic and no rush. Let people ask the questions, and let people answer the questions.
947. **Mr Wilson:** It was not only the Minister who came in for the ire of the Housing Executive on this; it was also the permanent secretary. Is that correct? He dared to give advice.
948. **The Chairperson:** Again, I am advising on the use of language here and characterisation of relationships.
949. **Mr Cuddy:** I must say that, from my recollection of the situation, my concern was that senior civil servants, including the permanent secretary, could have moved to defuse the situation. We were very concerned. The one thing that I have said in my written evidence is that I was at pains to point out the role of the permanent secretary as senior accounting officer and adviser to the Minister. That said, perhaps the permanent secretary had given that advice orally or in writing, but he did not share that with us. A telephone call to clarify issues may have helped, but the letter that we wrote on 1 July was a genuine attempt to try and defuse the situation. The words in the letter were, “We are asking you to step back.” The chairman did not have the next letter, which was the very legalistic letter that followed that, threatening to take it to the High Court. That letter would not have been written if the Minister and the permanent secretary had acted on that first letter of 1 July.
950. **Mr Wilson:** Yes, but the permanent secretary, as the accounting officer — this is the point that I am getting to — felt that the Housing Executive was being overly defensive and, first of all, using incendiary language, such as, “We do not like the road that you are pushing us down”. He believed that you were questioning his integrity in that respect and was going to seek legal advice on the matter. So, the Housing Executive not only took objection to the Minister, which is your view and you have expressed it, querying what it was doing and asking for a forensic examination of the other contract, but took exception to the accounting officer in the Department.
951. **Mr Cuddy:** With all respect, it was not about taking exception. We felt that we were —

952. **Mr Wilson:** He felt that you were.
953. **Mr Cuddy:** We were confronted with a major organisational issue, and we could not understand how something like this could come about. There is no question of us taking umbrage at anything. I am well aware that in big, public sector organisations many things can go wrong, and the one thing that you learn is to be humble because you do not know what could be underneath. So, our concern was that something was going to happen out of this, and we wanted to stop it. It was something that was not going to be very good for the Housing Executive, the Department and the wider public. We tried genuinely to defuse that situation. The letter was robust, but we felt that that was required under the circumstances.
954. **Mr Wilson:** But you can see that the other interpretation, Mr Cuddy, is that the Housing Executive, having made a mess of this and because of its culture of dealing with these issues in silos, did not really want any scrutiny from the Minister or the permanent secretary and took exception to both.
955. **Mr Cuddy:** That may be an interpretation. I can assure you from my point of view that it was far, far from that. My motivation —
956. **Mr Wilson:** But, even in your evidence here this morning, you have queried the right of the Minister to ask robust questions about the contract —
957. **The Chairperson:** I do not think that that is fair.
958. **Mr Wilson:** Well, I have quoted him on a number of occasions.
959. **The Chairperson:** I do not think that that is fair, Sammy, because Mr Cuddy —
960. **Mrs D Kelly:** Misquoted, more like.
961. **The Chairperson:** Sorry, let us take one at a time. Mr Cuddy has made it clear that he accepts and acknowledges the rights of representatives, including the Minister, to ask questions. Mr Cuddy made the point that it is where people were going beyond where they should —
- as he was advised — that we get into muddy territory. That is what we have to deal with. At no point did Mr Cuddy say —
962. **Mr Wilson:** Well, all that I would say —
963. **The Chairperson:** Do not be unfair. For the record, you are misrepresenting evidence.
964. **Mr Wilson:** I am glad that, during questioning, he clarified some of that and nullified some of his earlier language. The first answer that he gave to Mr Allister indicates the kind of mindset that there was within the Housing Executive. The fairly angry letter from the Housing Executive to the permanent secretary, which drew the angry response, was an indication that the Housing Executive did not like the investigation of this. I suggest to you, Mr Cuddy, that —
965. **The Chairperson:** Sammy, you are experienced enough to realise that — although there is a certain amount of cut and thrust, people will use a certain amount of colourful language, and I will give as much latitude as possible — you really need to stop characterising things wrongly.
966. **Mr Wilson:** I just want to ask one last question. The Minister was aware that he did not have it quantified and asked for you to quantify it. He was aware of other allegations of overcharging. He was concerned that a single tender action might actually benefit those who may have been overcharging. The people who were being complained about, ie Red Sky staff — do not forget that it was about not just overcharging but the quality of workmanship — were going to be TUPE'd over to the firms that were going to take on the new contract anyway. Given all of that, would you not accept that the Minister had reasonable grounds for asking for the contract to be extended to allow some brand-new contractors to apply for the work?
967. **Mr Cuddy:** If he had asked for the contracts to be re-tendered without extending the Red Sky contract, we would have found that quite difficult but

- would have strived to achieve it. What we could not accept was extending the contract of a contractor who had been found to be overcharging, whose workmanship was very poor, and — we did not say — who had been referred to the PSNI on the basis of potential fraud.
968. **Mr Wilson:** But the alternative to not extending the contract was to run the risk of, for a period of time, giving contracts to firms about which there was some doubt.
969. **Mr Cuddy:** But there would be potential doubt about a whole range of different contractors. How can you be sure that somebody is overcharging if you do not have the proof and evidence to support that?
970. **The Chairperson:** You said that that was your last question, Sammy. If you are happy enough, we will move on.
971. **Mr Dickson:** Mr Cuddy, thank you for coming today and for the information that you have brought to us. I will look at an aspect of your written submission that is followed up on in correspondence. You say that such interventions from the Minister:
- “could be readily perceived as the Minister lobbying for a contractor and influencing a public procurement process which is a flagrant breach of public sector conduct and ethics and also a violation”.*
972. You go on to say:
- “As far as I am aware no explanation has been received as to why the Minister wanted the Red Sky contract extended”.*
973. On the one hand, we have the Minister attempting to extend the Red Sky contract, but on the other hand, in a letter of 25 May to the Member of Parliament for the constituency of East Belfast, he made no reference to wishing to extend the contract. Rather, he was entirely supportive of the position of the Housing Executive.
974. **Mr Cuddy:** Absolutely.
975. **Mr Dickson:** Do you believe that the Minister was trying to mislead the Member of Parliament for East Belfast when he did not explain that he was trying to extend the contract but, rather, was backing the Housing Executive’s position?
976. **Mr Cuddy:** Not at all. We thought that he was accepting the analysis that we had provided to the Department to enable him to respond to that letter.
977. **Mr Dickson:** You must have been very surprised when he came back and said that that was not what he was going to do and that what he wanted to do was to extend the contract.
978. **Mr Cuddy:** I was absolutely shocked. That was why we were so taken aback.
979. **Mr Dickson:** Why do you think he did that? Was this a change of mind or was it that he deliberately did not want the Member of Parliament to know what his real intent was?
980. **Mr Cuddy:** I think that it was a change of mind.
981. **The Chairperson:** You need to be mindful that you are not interpreting anybody else’s motivation. We have to stick to what we know happened or did not happen.
982. **Mr Cuddy:** The letter to Naomi Long reflected the analysis as we felt it and he accepted that. Clearly, his advisers, when we provided the evidence for him to respond to the letter, accepted that what we were saying was true and legitimate.
983. **Mr Dickson:** So, why do you think the Minister went on to change his mind and view on this matter?
984. **The Chairperson:** Stewart, I do not think that Mr Cuddy can interpret why someone changed their mind. It is not his job to do that.
985. **Mr Dickson:** He may not be able to interpret anyone’s mind, but can he point us to any evidence that demonstrates why the Minister would want to change his mind? Where were the influences coming from to want to change that view? Can you point us to

- any evidence as to why this change of mind took place?
986. **Mr Cuddy:** Probably not.
987. **The Chairperson:** Mr Cuddy, in your submission, you provide responses to the bullet points contained in a letter from the Committee Clerk. Under the last one, you state that:
- “The Administrators appeared not to be dealing expeditiously with the transfer of TUPE data”*
988. on the basis that, as is in inverted commas in your submission, there was a:
- “decision by the Minister to defer terminating the contract”.*
989. I am just trying to follow up on Stewart Dickson’s question, because you are attributing that, I presume, to the administrators. Will you elaborate on that?
990. **Mr Cuddy:** Yes. We had a number of concerns with the administrators. Clearly, to protect the jobs, there had to be a fairly slick TUPE transfer, and we were putting a lot of resources into that. We had had the representations from the various MLAs in the meeting, and we were keen that there would be no problems with the transfer. However, we found, in fact, that the administrators, despite the fact that we were providing all the information, were very slow in dealing with the TUPE issues. Then, in some of the correspondence, they were saying that we needed first to confirm that this was not contrary to the decision taken by the Minister. At that stage, there was no decision taken by the Minister, as far as we knew. We had concerns that, perhaps, there were other conversations going on that we were not party to.
991. **Mr Dickson:** When they say:
- “decision by the Minister to defer terminating the contract”*
992. how would the administrators be aware of those decisions? Where would they be getting that information from?
993. **Mr Cuddy:** Again, that is why we felt, maybe, that discussions and negotiations were going on that we were not privy to. Somebody pointed out the fact that we were not invited to the meeting with Red Sky where the Minister met Red Sky. Again, in a situation like that, under a lot of pressure and trying to find out what is going on, you think of all possibilities.
994. **Mr Dickson:** But the Housing Executive has not shared the Minister’s view or request to extend the contract with the administrators, has it?
995. **Mr Cuddy:** Well, there may have been some informal, throwaway line — “Well, do you know that the Minister wants us to ...”. That could happen, because a number of our staff, such as our purchasing officer Declan — I cannot remember his surname — had correspondence —
996. **Mr Dickson:** I suppose that this is really a question for the administrators, but bear in mind that as professional administrators they will understand the law with regard to TUPE and the overall duty of care to employees in terms of transferring them. It seems to me that you are suggesting that they were trying to hold that back because there was something in the air about the Minister wanting to change his mind on this.
997. **Mr Cuddy:** I think that is a fair assumption, and we would have assumed that as well.
998. The other thing is that my understanding was that the administrators, when we asked them about being able to take on the contract for up to six months or whatever the period was, came back and said that Newco could do it on their behalf. If Newco had been doing it, that would have meant that there would have been formal TUPE at that stage. My understanding was that Newco was going to be a reorganisation and reconstitution of the old company and, therefore, the process would probably be much easier to transfer those staff to the new company. That may have been their issue as well.
999. **Mr Dickson:** I think, Chair, those questions are perhaps more for the

- administrators to answer, but it has certainly opened an interesting window that we need to further explore with the administrators.
1000. **Mr Campbell:** Obviously, the relevant period is the period before and during 2011, during the discussions, the meetings and the contract award. In answer to a previous question, you talked about the people whom you perceived to be the most senior people in the Housing Executive in each of the categories. Just so that I am clear: you said the chief executive, the deputy chief executive and the director of corporate services, is that right?
1001. **Mr Cuddy:** The deputy chief executive and the director of corporate services. When I was there, both titles referred to my post. When I was acting, Clark Bailie, who was a finance officer, moved across to become the director of corporate services and John McPeake, who was the director of design and consultancy services, took the title of deputy chief executive. John had been there for a long time and had a lot of experience, which, with respect, Clark, who had just joined us from the health service, did not have. That was the rationale.
1002. **Mr Campbell:** I understand that. Did you then describe the post of director of housing and regeneration as senior?
1003. **Mr Cuddy:** Absolutely.
1004. **Mr Campbell:** So, if we are looking at the most senior people within the Housing Executive as an organisation, even though there might be a bit of overlap, we are talking about four positions: chief executive, deputy chief executive, director of corporate services and director of housing and regeneration. Is that right? Whoever is in those posts at the appropriate time would be the most senior people, is that right?
1005. **Mr Cuddy:** I would also include the director of finance, who was Clark Bailie, prior to him acting as director of corporate services. The final person would have been the director of human resources, because those people formed the management team.
1006. **Mr Campbell:** There are quite a few people who seemed to act, particularly in housing and regeneration. I am on page 40 of the meeting pack. There is a whole series of names, the times that they were appointed and the times they ceased being in their position. If we start at the director of housing and regeneration, you will see a series of people who were acting, most of them for quite short periods. I take it those are all accurate. H Walker was only in for a few months; S Graham was only there for three months; John McPeake for six months; Helen Walker for a month; and G Flynn for six months. In that position, the only person who was there for quite a period of time was C McCaughley, is that right?
1007. **Mr Cuddy:** Colm McCaughley.
1008. **Mr Campbell:** Is that accurate on the time that he was there, by your recollection?
1009. **Mr Cuddy:** No. Now that you have pointed that out to me, I think that Colm could not have been there to 30 November. The reason why the other people were acting was that he was not there.
1010. **Mr Campbell:** Right.
1011. **Mr Cuddy:** So, the reason why Helen Walker was acting was that Colm McCaughley had left the organisation.
1012. **Mr Campbell:** Do you remember roughly when Mr McCaughley left?
1013. **Mr Cuddy:** I assume that it must have been around the time that Helen Walker started to act. So, he must have left around the beginning of 2010 or the end of 2009.
1014. **Mr Campbell:** OK. That is useful.
1015. **The Chairperson:** For information, that chart was provided to us by the Housing Executive.
1016. **Mr Campbell:** OK.
1017. **Mr Cuddy:** Although Colm was still on the payroll as an employee, he would have resigned with effect from 30

- November 2011, but he was not in post prior to resigning.
1018. **Mr Campbell:** But Mr McCaughley was there up until about April 2010 and for quite some time before that, for about 11 years.
1019. **Mr Cuddy:** Yes.
1020. **Mr Campbell:** So, in that position, he was the longest-standing person, given that all the others were acting for quite a short time. Is that right? All the others seem to have been acting up for a few months.
1021. **Mr Cuddy:** That is right. After he left, they were acting up in that position.
1022. **Mr Campbell:** So, in the period up to the time that we are interested in, Mr McCaughley seems to have been the longest-standing, most senior person in that position. Is that accurate?
1023. **Mr Cuddy:** Yes. He was the director of housing and regeneration up to —
1024. **Mr Campbell:** OK. So, that is one person who was there for quite a long time in a very important post.
1025. Now let us look at the director of corporate services. Again, a number of people seem to have acted there: John McPeake, who acted for a month; Mr Bailie, who acted for about seven months; and Colm McQuillan, who acted for about six months. Mr McCartney came much later and is currently in post, having only been appointed this year. So, for the period of time that we are talking about, you seem to be the longest-serving person in that position.
1026. **Mr Cuddy:** That is right. By the way, I was director of corporate services and deputy chief executive together.
1027. **Mr Campbell:** Yes, I am coming to that. Do not worry, I am coming to that.
1028. Then let us move up to deputy chief executive. We have Mr McPeake and you. Mr McPeake was only there for a few months, but you were there for 12 years.
1029. **Mr Cuddy:** That is right.
1030. **Mr Campbell:** So, as deputy chief executive, again, you are very much in the frame, Mr Cuddy, given the length of time that you served for.
1031. **Mr Cuddy:** Yes.
1032. **Mr Campbell:** Then we move to chief executive. Mags Lightbody is currently there, having just been appointed. So, that leaves us with Mr McPeake, you and Paddy McIntyre.
1033. **Mr Cuddy:** That is right.
1034. **Mr Campbell:** Paddy McIntyre was there for a long time but left in 2010. So, he was there for quite a bit of the time that we are interested in, as you were, although for only a short time.
1035. So, of all the positions that we have looked at, which you have said were held by the most senior people, given their seniority and the length of time in that senior position, we really come down to these three people: Paddy McIntyre; Colm McCaughley; and you.
1036. **Mr Cuddy:** No. I mean —
1037. **Mr Campbell:** Who else do we have, then?
1038. **Mr Cuddy:** My definition of seniority was the definition that I gave you: the members of the senior management team. Included in the senior management team are the director of design and property services and the director of management and personnel. The lady there is Maureen Taggart. Maureen had been in the Housing Executive for 40 years.
1039. **Mr Campbell:** OK. So, we will put Maureen Taggart in as well then.
1040. **Mr Cuddy:** The other person is the director of finance. The final one then is —
1041. **Mr Campbell:** Sorry, who are we talking about now?
1042. **Mr Cuddy:** The director of finance at that time, until he acted up, was Clark Bailie. You can see that he came in from 2007 to 2011.

1043. **Mr Campbell:** OK.
1044. **Mr Cuddy:** The other senior person was the director of design and property services, John McPeake, who went to 2010 and then transferred over to act up in the corporate services post.
1045. **Mr Campbell:** OK. So, we have Colm McCaughley, Stewart Cuddy, Paddy McIntyre, Maureen Taggart, Clark Bailie and John McPeake. Can we settle on that? They are the core people at an exceptionally senior level in the organisation who were there for much of the time in which we are interested. Do you accept that?
1046. **Mr Cuddy:** If the time that you are interested in —
1047. **Mr Campbell:** Up to and including 2011.
1048. **Mr Cuddy:** As you say, Paddy left in December 2010, so he was not there for that critical period —
1049. **Mr Campbell:** No, but he was there up to the very end of 2010.
1050. **Mr Cuddy:** That is right, yes.
1051. **Mr Campbell:** Do you think that we should take Paddy McIntyre off the list then?
1052. **Mr Cuddy:** No, no. I am not nitpicking; I am just making sure. It seems to me that one of the critical periods that you are looking at is that six- to nine-month period around January 2011. The point that I am making is that Paddy had left in 2010 and there was somebody acting up, which was me. Then, John McPeake had moved across. He was still there. Although it says November 2011, Colm McCaughley actually left round about 2009-2010.
1053. **Mr Campbell:** OK, but there are five or six people, of whom you are one, who would have been in one of the most senior positions for a prolonged period up to and including 2011.
1054. **Mr Cuddy:** Yes.
1055. **Mr Campbell:** OK, right. The current chairman of the Housing Executive has described in a very forthright way what he believes the position was in relation to vetting of contracts before he arrived. Are you saying that those five or six core people were unaware or aware of the position as he described it when he came into post?
1056. **Mr Cuddy:** Sorry, how did he describe it?
1057. **Mr Campbell:** He described it in a fairly forthright fashion as a bit of a shambles.
1058. **Mr Cuddy:** My view is that his view was one that he gave in retrospect having found out what happened. When the chairman came into post, he would not have been aware of that.
1059. **Mr Campbell:** No, but you and the other five would have been.
1060. **Mr Cuddy:** No.
1061. **Mr Campbell:** You were not?
1062. **Mr Cuddy:** No, I was not aware. As I said to Mr Wilson, the first time that I became aware of the scale of this was when it was raised at the audit committee and the chair of the audit committee, who was the vice-chair of the board at that time, commissioned this report. I said that because the audit committee, believe it or not — I think this is quite ironic — was a very active audit committee. The Northern Ireland Audit Office was at it. DSD was present. The senior management team as we identified — the six senior directors including the chief executive — was there. Three or four board members were there. That committee had been very active for many, many years. It was only really with the whistle-blowing and the forensic report that the scale of this became known.
1063. **Mr Campbell:** So, are you saying that those five or six people, including you, were totally unaware until that point? Is that the case?
1064. **Mr Cuddy:** I am saying that I was unaware. I assume that the other directors —
1065. **Mr Campbell:** Right. Well, I am glad that you said that. That is fair enough.

1066. **Mr Cuddy:** That having been said, that is not to say that they did not think that there were any issues. Issues would have been thrown up by audit reports, but the view was that they were being managed on an ongoing, routine basis.
1067. **Mr Campbell:** Yes, but let us stick with those five or six people who are the core, long-term, exceptionally senior people in the organisation. You say that you were not aware. We accept that you were not aware. Would you have expected any of the other four or five people, if they were aware, to have mentioned it?
1068. **Mr Cuddy:** Yes. Sorry, let me qualify that. The director of housing and regeneration and the chief executive were very, very close, not only as senior officers but as friends. The view was that things would have been shared between those two officers that would not have been shared with other senior officers. For example, I gave an example regarding the meeting with Mr Cushnahan. I was totally unaware of that meeting happening at the time. I was also totally unaware of the fact that there was a threat to terminate the contract and that a decision was then taken. I was totally unaware of that. I would imagine that most of the directors other than the chief executive and the director of housing and regeneration would have known about that; possibly, I would think not.
1069. **Mr Campbell:** But only you and Mr McPeake had served in multiple capacities in that senior position. You were the only two to do so, according to this sheet that we have.
1070. **Mr Cuddy:** The only capacity I acted in was as chief executive. I had always been the director of corporate services and deputy chief executive; that is one post.
1071. **Mr Campbell:** Yes, but it is three separate roles at three different times.
1072. **Mr Cuddy:** No, no. The director —
1073. **Mr Campbell:** Then this sheet is wrong.
1074. **Mr Cuddy:** You see where the chart says, “Director of Corporate Services Post S. Cuddy”.
1075. **Mr Campbell:** Yes.
1076. **Mr Cuddy:** From 1 March 1998 to 31 December, I was the director of corporate services/deputy chief executive.
1077. **Mr Campbell:** Yes, and then after that you became the acting chief executive.
1078. **Mr Cuddy:** Acting. I then reverted to my substantive post.
1079. **Mr Campbell:** So, you held those different very senior roles at different times.
1080. **Mr Cuddy:** Yes.
1081. **Mr Campbell:** I take it from your evidence that you were not aware of others being aware.
1082. **Mr Cuddy:** At that time, no. I would have been totally unaware.
1083. **Mr Campbell:** You mentioned a couple of times that, when Red Sky was discussed, a “sectarian” issue had been raised.
1084. **Mr Cuddy:** No, I was asked whether there was a sectarian issue with the decision to terminate the contract, and I said no. It had been raised at the meeting with the elected representatives, but, no, we said that there was no —
1085. **Mr Campbell:** I understand that, but you did refer to the fact that it had been raised.
1086. **Mr Cuddy:** Yes.
1087. **Mr Campbell:** You were within this group of people at the top who had been there for such a long time. Were you aware that there was an issue about the actual composition of the Housing Executive itself, which had been put in the public domain by me and others?
1088. **Mr Cuddy:** I was.
1089. **Mr Campbell:** During all that time or just part of it?
1090. **Mr Cuddy:** Just part of it.

1091. **Mr Campbell:** Would that have been towards the end or when was that?
1092. **Mr Cuddy:** I remember meeting you on the issue and describing to you what we were doing, but I was aware that, from time to time, the director of personnel and human resources had indicated that the composition of the Housing Executive had been raised by a number of people, including you. That composition appeared to be skewed towards one community rather than the other. In fact, it went to the board and audit committee, and the director of personnel and management services explained that, as far as she was aware, the issue was in getting the Protestant community to apply for jobs. Once they applied, the allocation and success of those jobs reflected the composition of the applications. The positive action plan was to try to get more applications from the Protestant community. When I met you, I introduced you to one of our staff whose role was to go round a number of schools etc promoting the Housing Executive as an employer so that we could get some equalisation in those applications.
1093. **Mr Campbell:** To come to the nub of this: for a time, you were aware that there was significant under-representation of the Protestant community regarding people getting jobs with the Housing Executive. Is that right?
1094. **Mr Cuddy:** I was aware that was an issue, yes.
1095. **Mr Campbell:** Right, OK. Were your other colleagues — this senior set of people — aware of that as well?
1096. **Mr Cuddy:** I would have thought so.
1097. **Mr Campbell:** Right. So, when the alleged sectarian issue with Red Sky came along, would you have already been aware of an issue around the Housing Executive as an institution? Which came first?
1098. **Mr Cuddy:** The first time —
1099. **The Chairperson:** Sorry, Stewart. I think that we need to be very mindful of where this is going. If there is a specific question that needs to be asked of Mr Cuddy in relation to what is defined as the sectarian issue that you described it as and have referred to, that question needs to be put. We are now dealing with the community balance of the Housing Executive staff and so on, which is one issue, but the other issue raised was whether there was any sectarian influence in relation to how the Housing Executive dealt with Red Sky. That is a separate issue. We need to put the question directly rather than mix two issues into one, which, I have to say, is really unhelpful. I will rule on it if it goes any further.
1100. **Mr Campbell:** You can rule if you wish, Chairman. The issue is very clear, and they are directly linked.
1101. **The Chairperson:** You need to ask a direct question.
1102. **Mr Campbell:** I am.
1103. Can you recall if the issue that some of us raised in terms of the overall composition of the Housing Executive institution, of which you and five others were at the core for a long period in the run-up to 2011, was before you started to get involved and interested in the Minister coming to you about Red Sky and the alleged inference of sectarianism about Red Sky? Which came before the other?
1104. **Mr Cuddy:** The issue of employment was on the radar well before Red Sky because, as you know very well, the Equality Commission issues reports. Those reports came to the board and the audit committee. So, there was always a lot of discussion and, I might say, a lot of hard work to try to deal with that issue to boost applications so that we could get the balance that we wanted.
1105. **Mr Campbell:** That is the point that I want to get to, Mr Cuddy. So, in 2011, when you were dealing with the issue of Red Sky and responding in correspondence, the five of you were aware of a perception in the wider community for a long period of time

- about the Housing Executive as an institution. You were aware of that before Red Sky hit the scene.
1106. **Mr Cuddy:** Let me clarify. I was aware that there were a number of concerns amongst elected MLAs and probably amongst the community as well. But when I went around the Housing Council every month, which moved right across the Province, I was absolutely astonished at the support that the Housing Executive got from councillors of all backgrounds and denominations, and none of them has ever come up to me and accused us of being a sectarian organisation. Equally, I have met an awful lot of people in the public, including friends, relatives and acquaintances, and, again, while some will have a view that the Housing Executive only employs people from one sector, that is, by and large, a very small minority.
1107. **Mr Campbell:** I want to summarise and conclude. With all these people in all these positions, we have managed to narrow it down to about five or six people who were in the very senior positions for a period of time before and during the Red Sky issue. They, according to your evidence, would have been aware of the issue in the community regarding the Housing Executive as a body and the difficulties that it was having in getting a more equitable workforce. Then, in 2011, the issue of Red Sky arose and an allegation was made to you, which you refute, that there may be a sectarian undertone to dealing with Red Sky. You, as the Housing Executive, refute that. Is that right?
1108. **Mr Cuddy:** In any discussion around the contract, the pros and cons of that contract and then the decision to terminate the contract, there was no question whatsoever of any sectarianism. None whatsoever.
1109. **Mr Campbell:** But you were aware, at that stage, that the other bigger issue was out there.
1110. **Mr Cuddy:** I was, but I was also surprised, interestingly enough, that a link would be made at that time between the wider employment issue and that contract issue with that contractor.
1111. **Mr Campbell:** Why were you surprised at that?
1112. **Mr Cuddy:** Because I felt that they were totally separate issues, and I felt that there was an acceptance that we were bending over backwards and being very sensitive to the issue that we did not have the proper balance between the two communities and were striving to deal with that.
1113. **Mr Campbell:** I am sorry to go on; I will finish with this one. Just to get it clear: you were surprised even though you accepted that, out there in the public domain, a number of public representatives had raised concerns about the recruitment practices and policies of the Housing Executive. You were well aware of that and you said that all your senior colleagues were well aware of it. Then an issue of perceived religious bias in an individual contract came along and you, as an organisation, were surprised that that should be the case.
1114. **Mr Cuddy:** Absolutely, because —
1115. **Mr Campbell:** Even though you knew about the other issue for years.
1116. **Mr Cuddy:** Maybe I was being very naive, Mr Campbell, but I saw the issue of the employment as a totally separate issue and one that, to some extent, had been outside our control as well. The issue was that we were not getting sufficient applications from the Protestant community, but, once those applications came in, the allocation and success of the jobs were in the proper and appropriate percentages. Our job was to try to get more applications. In fact, I met you and explained what we were doing. We had appointed a person to go round a number of schools to promote the Housing Executive as an employer. Perhaps naively, I assumed that most people would accept that we were genuinely trying to redress that issue, but it was not totally within our control.

1117. **The Chairperson:** For the record, the suggestion that there may have been some sectarian undertones did not relate to the Housing Executive's decision-making process but rather to the source of complaints against Red Sky. That is where the sectarian issue was being alleged; not that the Housing Executive, which may have had a particular workforce balance, was acting in a sectarian fashion because it had that perceived workforce balance. I think that there are two separate questions. We will leave that particular issue. It has been well aired, and I think that we overextended on what we should have done on that. Nevertheless, it has been dealt with.
1118. **Mr Allister:** I have a couple of points. Going back to the request by the Minister in the letter of 1 July to extend the existing Red Sky contract for six months, did you tell us that, in the basket of contracts that you had for that response maintenance, there was a contractual obligation that, if one contractor fell out of the scheme, the work would be redistributed to the others already contracted?
1119. **Mr Cuddy:** My understanding was that, within the contract at that time — I do not know whether that is the case now — if a contractor, for whatever reason, was not able to meet the obligations of their contract, the work was first offered to what is known as the adjacent contractors, which were the contractors who were working in districts adjacent to the district that required the contract.
1120. **Mr Allister:** So, when the Minister said that he wanted six months to allow an open procurement competition for the Red Sky contracts, was that even legally possible?
1121. **Mr Cuddy:** I do not think that it was, and I will tell you why. If you look at the letter from our chairman to Will Haire, which is the letter of 1 July, I think you will see that he makes a point about us being potentially liable to other contractors if they took legal action. If it is not in that letter, it is in some letter.
1122. **Mr Allister:** I certainly have read that.
1123. **Mr Cuddy:** There is something in some of the correspondence that states that. It may be in the letter to the Minister, but I read somewhere that we could be liable to legal action if we did not offer —
1124. **Mr Allister:** That is because it is your belief that there was a cross-contractual obligation to redistribute the work amongst those who had been successful in the previous procurement.
1125. **Mr Cuddy:** That is my understanding, yes.
1126. **Mr Allister:** Of course, it may be pretty elementary, but the effect of extending the contract for six months would mean that Red Sky, though in administration, would go on doing that work.
1127. **Mr Cuddy:** That is right.
1128. **Mr Allister:** And they were the ones you had the adverse findings against.
1129. **Mr Cuddy:** Yes. My understanding was that Newco would take over from Red Sky and Newco would continue to employ the same staff and the same management team as previously.
1130. **Mr Allister:** During those six months.
1131. **Mr Cuddy:** Yes.
1132. **Mr Allister:** Also, if there was fresh procurement at that time, Newco would then be in a position to bid for that.
1133. **Mr Cuddy:** Yes. That would be my understanding, so long as it met the criteria under what they call Constructionline. There is an organisation called Constructionline, and you have to meet certain criteria regarding turnover etc.
1134. **Mr Allister:** Last week, we had evidence from a departmental official whose understanding was that Red Sky was making it clear that it wanted to form a new company to supersede Red Sky and take over its contracts. Does that accord with what you understood?
1135. **Mr Cuddy:** It also accords with an email between the administrators and Declan,

- the procurement manager, or me that talks about the only way that it could extend the contract would be by the administrators allowing Newco to do the work. However, the administrators would still nominally have had overall oversight. There is correspondence to that effect.
1136. **Mr Allister:** Did it seem to you that that was what the Minister was seeking to facilitate?
1137. **Mr Cuddy:** I do not know whether he would have been aware of that being the implication. The time frame of six months would have allowed that to happen.
1138. **Mr Allister:** From the meeting of 27 June, which Mr McCausland attended with Red Sky representatives and departmental officials and from which the Housing Executive was excluded, we know that that was clearly the intent. Is that not right?
1139. **Mr Cuddy:** Sorry, what are you reading from?
1140. **Mr Allister:** I am reading from the minute at tab 8: the fourth paragraph on the first page.
1141. **Mr Cuddy:** I do not think that I have seen this before.
1142. **Mr Allister:** Right. OK. Take a moment.
1143. **Mr Cuddy:** Yes, I see that they were talking about —
1144. **Mr Allister:** That paragraph states:  
*“Peter Cooke gave the Minister a brief history to the company and advised on how they were trying to establish a new company to acquire the entire Red Sky business including Bel Air from the Administrator. This latter company had already been sold and the focus was now on the maintenance side a large part of which included the housing contracts which are due to expire on 14 July. This created concerns for the future existence of the company as without the NIHE contract the business was not viable.”*
1145. **Mr Cuddy:** Yes.
1146. **Mr Allister:** From that 27 June meeting, it was quite clear that Red Sky was trying to form a new company to take over where Red Sky had left off.
1147. **Mr Cuddy:** That is right.
1148. **Mr Allister:** Four days later, the Minister writes to you, asking for the extension of the contracts, the consequence of which would have been that Red Sky, or a renewed Red Sky, would carry on for those six months, and, in that time, be able to compete for new contracts.
1149. **Mr Cuddy:** Yes.
1150. **Mr Allister:** Thank you.
1151. **Mr Cuddy:** I think that we set out in our letter of 1 July the concerns about the potential for a major conflict of interest, again going back to the issue of the Minister getting involved in this procurement.
1152. **Mr Copeland:** I will be brief, because I know that you have been through a fairly arduous morning.
1153. Would past performance have been taken into account in the issuing of any new contracts of this nature?
1154. **Mr Cuddy:** That is an interesting point, because one of the issues that was flagged up, which, intuitively for me, did not make sense, was that we were told that you cannot use past performance as a basis for letting a new contract. My initial reaction on hearing that was, “That is absolute nonsense; it is not right, it should happen. Past performance should be a requirement for letting new contracts”. However, I was told that, under EU procurement legislation, you cannot do that.
1155. **Mr Copeland:** Would that have pertained to the issuing of any new contracts arising from this pot of stew — in other words, the next contracts that were to be issued?
1156. **Mr Cuddy:** Yes, unless, presumably, a contractor had been found guilty of fraud or another criminal charge. However, we were told that we could not use past performance.

1157. **Mr Copeland:** What would the case be if a company was under investigation for suspected criminal activity or fraud?
1158. **Mr Cuddy:** Initially, the view was that you could not do anything, but I am aware that we challenged that. Subsequently, there was a contractor who was under investigation, and we decided that, irrespective of EU procurement, we would not let a contract to that organisation on the basis that it could challenge us in court. The company did not challenge. I think that it was a small disability-type contract. You might be aware of that one.
1159. **Mr Copeland:** No. Just do not be surprised.
1160. **Mr Cuddy:** On that occasion, we decided that we would test the principle, and the contractor did not challenge us.
1161. **Mr Copeland:** In a case in which any contractor had ceased to trade, become insolvent or left the contract, and if any new company arose like a phoenix from the ashes, would that arise free of the incumbencies of the past?
1162. **Mr Cuddy:** Yes. My understanding is that many of those companies have what is known as limited liability. They are limited companies, and therefore they would not —
1163. **Mr Copeland:** They would not inherit the difficulties that may have resided in their previous form of existence.
1164. **Mr Cuddy:** They would have no liabilities going back to the past.
1165. **Mr Copeland:** In such a hypothetical scenario, would any other companies that may be under investigation for similar misdemeanours find themselves disadvantaged in any way in a procurement process?
1166. **Mr Cuddy:** If a procurement was happening now or at that time.
1167. **Mr Copeland:** At that time.
1168. **Mr Cuddy:** My understanding is that, unless we had very good proof of malpractice, we would have great difficulties excluding them from re-tendering. I say that because, from memory, when we terminated this contract, the contractor was given three months' notice, which met the contractual responsibility. In other words, we did not say that we were immediately terminating the contract for whatever reason. We said that we were unhappy with the performance of the contract, and, in line with the contractual responsibility, we were giving them three months' notice. We went through a proper legal process, which meant that the contractor could not challenge the basis on which we were terminating the contract.
1169. **Mr Copeland:** The obligations had been discharged.
1170. At what stage, if you can remember, did you first become aware of Newco or whatever it was called?
1171. **Mr Cuddy:** I think that I became aware of Newco when I saw the letter — I have it somewhere — from the administrators. We were trying to seek clarification on whether the administrators could continue to service the contract for six months. They wrote a letter — I will see if I can find it — that referred to Newco.
1172. **Mr Copeland:** There is an email dated 23 June.
1173. **Mr Cuddy:** It is an email.
1174. **Mr Copeland:** Is it dated 23 June? Is it on page 1?
1175. **Mr Cuddy:** Which tab is that?
1176. **The Chairperson:** I am told that it is at tab 7.
1177. **Mr Cuddy:** To be fair, Mr Copeland, that was the first time that I had formally seen the name Newco. There had been a rumour that, following the meeting with the Minister, a new company was to be formed. What struck me was that it was called Newco. Maybe “newco” was the abbreviation for “new company” and was not going to be the official name of the company, but that is why the whole question of Newco stuck in my mind.

1178. **The Chairperson:** On the first page of tab 7 in the members' pack, there is a reference to Newco.
1179. **Mr Cuddy:** The very first page?
1180. **The Chairperson:** It is on the first page, at the third paragraph, which begins: "If successful, the management team". The email starts: "Good morning Stewart". Is that the email that you are referring to, at the third paragraph?
1181. **Mr Cuddy:** Yes, although I thought that there was another memo from the administrator, whose name was Michael. I am trying to remember Michael's last name.
1182. **The Chairperson:** Is it Michael Jennings?
1183. **Mr Cuddy:** It was a memo from Michael Jennings either to me or to the procurement manager in the Housing Executive, Declan. What is Declan's last name?
1184. **The Chairperson:** It is Declan Allen.
1185. **Mr Cuddy:** Yes. We were writing to the administrators, asking them whether they could manage the contract after 14 July for six months. They wrote back and did not say no but said that they could service the contract only if Newco was able to manage it on their behalf. That was the first time that I can recall seeing the name Newco.
1186. **The Chairperson:** I think that that is at tab 13. There is a series of pages from Declan Allen.
1187. **Mr Cuddy:** Was the email to Declan Allen?
1188. **The Chairperson:** There were emails to Declan Allen. If you are not sure and cannot find it, we need to —
1189. **Mr Cuddy:** Yes, I see it now. It is at page 8 of tab 13. There is an email from Michael Jennings to Declan Allen. The penultimate paragraph states:  
*"I can confirm that we did discuss the question as to whether trading for a further 8 weeks post 14 July or if necessary even longer for a 6 month period could be facilitated and this could be facilitated with the assistance of Newco acting as a management agent on behalf of the Administrators albeit the weekly payments from NIHE would still be made to the Administrators account & the Newco would be utilising the Administrators employees to fulfil the contract requirements."*
1190. **The Chairperson:** Michael, are you happy enough? You asked the question.
1191. **Mr Copeland:** Yes. I have now had the benefit of reading that letter, albeit at very short notice — it is on the first page of tab 8 — and I was going to ask Stewart —
1192. **The Chairperson:** The minute.
1193. **Mr Copeland:** The minute, rather —
1194. **Mr Cuddy:** At tab 8?
1195. **Mr Copeland:** — yes, on the very first page, regarding the meeting on 27 June 2011 —
1196. **Mr Cuddy:** This is a meeting with —
1197. **Mr Copeland:** I am asking you for an opinion, but in reading that, could you give a view as to what you think that meeting was actually about?
1198. **The Chairperson:** In fairness, I do not think that Stewart should be expected to give an answer to that.
1199. **Mr Copeland:** I understand.
1200. **The Chairperson:** Stewart, you are not required to answer that.
1201. **Mr Cuddy:** I am quite —
1202. **The Chairperson:** No, you cannot speculate on behalf of other people about a meeting that you were not at. Michael, are you happy enough with that?
1203. I want to ask a final question. It was raised earlier and rightly so. It was pointed out, Stewart, that you were a senior official who was part of the management team for a long time as the director of corporate services. I know that you mentioned this earlier, but it is important to clarify. At last week's evidence session, we also dealt quite extensively with something that most of us would say was the case, which is that, over a number of

years, Colm McCaughley was directly engaged with matters around contract management and compliance with Red Sky. It has been pointed out that, as the director of corporate services, you were a senior official. You suggested that Colm McCaughley was the director with responsibility for line managing that. I want that to be explained. You were the director of corporate services, and most of us would think that you would deal with financial matters, but, in your evidence, you clearly said that Colm McCaughley was dealing with that line. The detailed evidence presented to us showed that, year on year, Colm McCaughley and, I think, Paddy McIntyre, at least on some occasions, were engaged in dealing with issues of concern around costs associated with Red Sky contracts. All of those engagements, year on year, resulted in a considerable settlement at a much reduced sum. It may well be entirely legitimate. Were you aware of that process? Were you involved in that process or had you any concerns?

1204. **Mr Cuddy:** It is very, very interesting. When I was appointed director of corporate services/deputy chief executive, corporate services was meant to be quite a large department. It was meant to include a range of support services including finance, personnel, legal services and so on. For whatever reason, after I was appointed, a number of those functions did not come into my division. Therefore, I was left with a range of other functions, but I did not have personnel, finance or legal services, which normally would be part of the corporate services portfolio. I think that the reason why my post, before I applied, had the tag of deputy chief executive was to reflect that it was a very senior post with that range of functions. I can only speculate on why those functions never crossed over. I know for a fact that an external appointment at that time was not considered to be the way forward. When I was appointed, maybe there was a review of functions and services.

1205. The answer to your question is no. The finance function and the personnel function remained separate as director posts, as reflected in the management structure that I discussed with Gregory Campbell.
1206. **The Chairperson:** OK. Stewart, are there points that you want to make to add to anything that you have covered or been asked to cover today?
1207. **Mr Cuddy:** There is just one thing that I would like to say. Shortly before I retired, a letter was sent from the Minister to the new chairman of the Housing Executive. It was quite a long letter in which he gave a history of the Red Sky issue, and, to me, it was a revisionist approach to what actually happened. I think that I was the only officer named in that letter. He referred to the chairman — I do not know whether he mentioned the chairman — but he mentioned me. The implication was that, by naming me, I was at least partially, if not significantly, responsible for what happened with Red Sky. I was so concerned about that that I raised it with the board. On the basis of that, there was correspondence between the new chief executive, John McPeake, and the permanent secretary.
1208. At the time that I was leaving, it was still not resolved, so, before I left, I asked the chief executive, when he was pursuing this issue, to make a statement because I needed that statement for future reference. I retained a copy of that letter, and I am quite happy to give you a copy of it. The letter from the Minister stated:
- “Further, the then chairman, Brian Rowntree, and the then acting chief executive, Stewart Cuddy, pointed out that they had been aware of the failures of Red Sky for some years.”*
1209. The Minister used that to imply that we had been aware of this and done nothing about it. So, because of that, and because I was about to retire, I spoke to the chief executive and asked him to include the following in his letter of response, which he did. He wrote:
- “It is a matter of record that, in Stewart’s time with the Housing Executive, it has never had*

*any evidence, cause or reason to believe that he acted other than in an open, honest and professional manner in the best interests of the organisation.”*

1210. I felt that I had to have that included in light of the letter from the Minister, which, I believe, was targeted at me and misrepresents my role. I do not know what happened following that and whether there was further correspondence. I do recall that one of the letters that came back from the permanent secretary at that time seemed to suggest that what the Minister had said was fair game.
1211. **The Chairperson:** OK. You have put that on the record at this meeting. We have not had any sight of that letter, but we will now take note of it. Members will consider it, and the Committee will deal with it in whatever way it thinks necessary. Is there anything else that you want to put on the record?
1212. **Mr Cuddy:** I just want to clarify that the only reason that I raise that is that I do not know what evidence will be given to the Committee and whether I would ever have a chance of commenting on that or making a rebuttal. I think that it is important to have that on the record as an independent source from John McPeake, who was the chief executive at that time.
1213. **The Chairperson:** Obviously, this will not be the end of the matter. We have to assess the evidence that we have heard so far and will continue to hear in the next wee while. This will be a two-way process. You can expect that we may well want to come back to you. You should feel free to come back to us at any time if you think that there is anything that needs to be added to or if you want to clarify or seek further information on something. It is an open door and a two-way process until the inquiry is concluded.
1214. Stewart Cuddy, thank you for your attendance this morning. It has been a long enough session and a fair, open, honest and frank exchange. Thank you for that. It is likely that we will follow up
- on today with you, and the invitation for you to do likewise remains open.
1215. **Mr Cuddy:** Thank you, Chair and members.
1216. **The Chairperson:** Members, I suggest that we adjourn for 10 minutes for a comfort break.
1217. **Mr Allister:** Before you do that, do we have the correspondence from the Minister etc that Mr Cuddy has just referred to?
1218. **The Chairperson:** I do not think so.
1219. **Mr Allister:** We should be looking for that.
1220. **The Chairperson:** We will certainly follow it up.
1221. **Mr Cuddy:** The date is shortly after the new chairman of the Housing Executive was appointed, probably near the end of 2012 or the beginning of 2013.
1222. **The Chairperson:** We will follow that up.

## 2 October 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr Paddy McIntyre

1223. **The Chairperson:** We have Paddy McIntyre. Paddy, you are up first this morning. Thank you for attending. As requested, Paddy has provided a briefing to the Committee. To remind ourselves, this is in respect of phase 3 of the inquiry. Paddy, as is the norm here, we first of all want to thank you for attending this morning and for providing us with a written paper before coming here to let members have an opportunity to read it. We are dealing with phase 3 of the inquiry, and we have provided you with the relevant terms of reference and so on. You have had the opportunity to provide us with a paper, and I want to thank you for that. Is there anything that you want to add to that before we open it up to members?

1224. **Mr Paddy McIntyre:** No, Chairman. Thank you very much for the opportunity to come along here today. I will not go through the brief, because I imagine that most of the issues will arise during questions. The only thing that I want to say is that it is about four years since I left the Housing Executive, and I do not have access to all the papers — not that they have been denied to me in any way. Sometimes I will not remember things, and I may as well say that at the outset. Where I feel that my knowledge might be doubtful, I will suggest to the Committee that it might want to check

what I am saying with the Housing Executive, just for the record.

1225. **The Chairperson:** Not a problem, Paddy. Feel free to make those clarifications at any stage. Members, you have a briefing paper in your packs.

1226. **Mr F McCann:** Morning, Paddy, you are very welcome. In your briefing to the Committee you say that there were:

*“from the outset significant complaints from tenants, Community representatives and politicians regarding quality of work, completion of work and the attitude of Red Sky staff.”*

1227. Can you elaborate on that?

1228. **Mr McIntyre:** From the letting of the second phase of contracts in 2007, when Red Sky won, I think, five contracts locally, more complaints were coming about Red Sky than all of the other contractors put together, particularly in the west of the city. It had had a history previous to that. One of the success of Egan from the early 2000s, as I certainly knew from experience around councils, community groups and so forth was that there had been a significant improvement in the service that tenants were getting. That was demonstrated in a number of ways, not least by the fact that, when I went to the Housing Council every month and attended district councils and community associations regularly, maintenance as a big sore for us went off the agenda. Red Sky was unique from 2007 in that there were problems with it landing on my desk from public representatives such as you, west Belfast community centres and so forth that we were not experiencing elsewhere.

1229. **Mr F McCann:** When these were investigated, was it substantiated that there was a high level of poor work?

1230. **Mr McIntyre:** The report of the repairs investigation unit (RIU) plus the follow-

- up report from ASM Horwath justified that. Across the board, it was clear that not only were the problems related to west Belfast but that they were occurring in other parts of the city and in Newtownabbey.
1231. **Mr F McCann:** The other thing is that some people have said, during this inquiry and in the past, that the complaints against Red Sky were motivated by sectarianism. Did you find anything on that?
1232. **Mr McIntyre:** That is not something that I have any knowledge of, to be quite honest. I can say that Red Sky's contracts for fault failure in the three Belfast districts and the two districts in Newtownabbey was coming out at 3.6% as opposed to a provincial average of 1.7%. So, faults against Red Sky as a whole were higher than across the rest of the Province.
1233. **Mr Allister:** It appears that, in February 2008, you received a letter from the chairman of Red Sky and that, in that letter, he is reported to have written to you:
- "I hope you would acknowledge the communication is a very honest endeavour on my part, which, in setting out some observations, one can avoid having to wash dirty linen in public, albeit if that is the course we must take so be it."*
1234. Do you recall that letter?
1235. **Mr McIntyre:** I do indeed, yes.
1236. **Mr Allister:** Did you ever reply to that letter?
1237. **Mr McIntyre:** I probably did not reply, but I think that the letter may have been replied to by someone else in the organisation. I am not sure. I know the letter. It was passed out to the relevant staff for comment and for reply.
1238. **Mr Allister:** We do not seem to have a copy of it.
1239. **Mr McIntyre:** It may well be that there was not a reply, members.
1240. **Mr Allister:** What did you understand the reference to avoiding washing dirty linen in public to mean?
1241. **Mr McIntyre:** As I mention in my briefing, the relationship between our staff in west Belfast and Red Sky was not good.
1242. **Mr Allister:** Yes, I think that we have gathered that, but what did you understand that to be saying?
1243. **Mr McIntyre:** Red Sky would allege that, in west Belfast, going back to a comment that was made earlier, there was a sectarian influence in how it was being dealt with.
1244. **Mr Allister:** So you believe that to be a reference to that particular allegation.
1245. **Mr McIntyre:** Yes. Whether there is any truth to that or not, I am not in a position to say. Colm may know a bit more about that than I do. That is what I read into it. It was a comment amongst a substantial letter, if I recall, Mr Allister. Is it?
1246. **Mr Allister:** The chairman of Red Sky at that time was Mr Cushnahan.
1247. **Mr McIntyre:** Yes.
1248. **Mr Allister:** He had previously had a role with the Housing Executive.
1249. **Mr McIntyre:** He had been on the board, and was also on the audit committee for a time. When the Red Sky issue came up, he immediately left the meeting and resigned from the audit committee prior to the next meeting in March, whenever it was, 2007 or sometime.
1250. **Mr Allister:** March 2007.
1251. **Mr McIntyre:** Yes.
1252. **Mr Allister:** And then immediately got into discussions with you and others in respect of an alleged overcharge of some £680,000 by Red Sky.
1253. **Mr McIntyre:** Are you sure that that is the figure? I do not think —
1254. **Mr Allister:** Sorry, £260,000.
1255. **Mr McIntyre:** That is not a figure that I recognise at all, certainly from my time there.

1256. **Mr Allister:** I am mixing the two figures — £260,000.
1257. **Mr McIntyre:** Yes. Well, he was chairman. I had a couple of meetings with him and his company, along with other relevant staff members. The case that he was putting around that overpayment was that we were not justified in trying to claim it back. It turns out, by the way, that, for a large part of it, it was not justified because Red Sky installed kitchens to a higher standard that was signed off by our local staff. The eventual claim was settled, I think, at around £20,000, if I am not mistaken, and —
1258. **Mr Allister:** Yes.
1259. **Mr McIntyre:** Part of the problem was that we were undermined by our staff certifying higher kitchens to a higher price. Interestingly, subsequent to all of that, we actually increased our kitchen specifications, because the kitchens that we were installing were just not good enough.
1260. **Mr Allister:** Yes. I think that we have heard the evidence in previous weeks that the £260,000 was negotiated down to £20,000, and key to that was Mr Cushnahan.
1261. **Mr McIntyre:** Again, I met him a couple of times while he was presenting the case for the company. I was not involved in the subsequent discussions around a negotiated settlement. By the way, that settlement was based on legal advice and also advice from our contracts claims people, who have a lot of experience in dealing with claims and who are also quantity surveyors.
1262. **Mr Allister:** You are also aware that the Public Accounts Committee had something to say about his involvement in those negotiations.
1263. **Mr McIntyre:** Well, it said it, yes.
1264. **Mr Allister:** It said that it was unethical.
1265. **Mr McIntyre:** That is its view. I mean, he is the chairman of a company and a well-known local businessman. He also, interestingly, was on the audit committee of OFMDFM, if I am not mistaken.
1266. **Mr Allister:** Yes, I think that you are right; he has been in many places.
1267. **Mr McIntyre:** That is its view, so it is.
1268. **Mr Allister:** But I think that the point was that he had been on the audit committee of the Housing Executive, had been a board member and then, from all the knowledge of having been there, made a quick transition to negotiating downwards, very substantially, Red Sky's alleged debt.
1269. **Mr McIntyre:** To be clear about this: we undermined ourselves by our local maintenance officers specifying, which they should not have done and for which they were disciplined, higher standards of kitchens that Red Sky installed. As I said, we subsequently increased the standard for our kitchens.
1270. **Mr Allister:** Yes, and you obviously signed off, as accounting officer, that reduction to £20,000.
1271. **Mr McIntyre:** No, I would not have had to because — I was aware of it, by the way, because it was in the —
1272. **Mr Allister:** You would not have signed that off.
1273. **Mr McIntyre:** Pardon?
1274. **Mr Allister:** You would not have signed that off.
1275. **Mr McIntyre:** No, it was within the delegated limit of the director. Now, I was advised of it because of its nature. I was advised that a settlement of £20,000 had been agreed, which was cleared by legal and by our contracts claims people.
1276. **Mr Allister:** Mr Cushnahan told the Northern Ireland Audit Office that he attended the settlement meeting after discussions with two of the most senior executives of the Housing Executive. That was you and your colleague Mr McCaughley.
1277. **Mr McIntyre:** Yes, I met him, I think, and then there were discussions around the

- settlement after that, which I was not party to.
1278. **Mr Allister:** Yes. He attended a settlement meeting after discussions with two of the most senior executives:
- “as it was considered that his participation would be beneficial to both NIHE and Red Sky in seeking to diffuse”*
1279. a controversial issue. Do you quibble at all with his assessment there?
1280. **Mr McIntyre:** I do not exactly remember that, but if Mr Cushnahan said it — there certainly was a discussion. Now, whether or not or who agreed should be at the meeting, I do not recollect, to be quite honest.
1281. **Mr Allister:** He is putting it forward that his participation was thought by the two executives to be beneficial in seeking to defuse —
1282. **Mr McIntyre:** Now, I am not in a position to contest that because I do not remember the conversation.
1283. **Mr Allister:** Do you remember thinking that it would be a good idea to have Mr Cushnahan on board?
1284. **Mr McIntyre:** I am not being evasive here, but I do not recall the conversation at all. On reflection — I mean, he was the chairman of the company.
1285. **Mr Allister:** Yes, but did you approach him to come in as some sort of broker?
1286. **Mr McIntyre:** I do not think that I did.
1287. **Mr Allister:** So, can you help us? Who did?
1288. **Mr McIntyre:** At his request, I arranged to meet the Red Sky management and him as chair to discuss that claim. OK? Thereafter, he made a number of points, particularly about the kitchens. It went back into the system — back into the process — and was dealt with as any other contractual claim would be.
1289. **Mr Allister:** So you cannot help us on whether you came up with the idea to involve Frank Cushnahan.
1290. **Mr McIntyre:** Again, I am not being evasive here; it could be the case that he is right. I do not recollect the conversation.
1291. **Mr Allister:** Did you have or would you have had any qualms given that he had been in the audit committee?
1292. **Mr McIntyre:** He was the chair of Red Sky, so he was. The Audit Office has come to a view. Whether it is right is another matter. I am sure that Mr Cushnahan would not accept that.
1293. **Mr Allister:** Was Mr Cushnahan someone who was well known to you?
1294. **Mr McIntyre:** Well, he had been on the board of the Housing Executive for quite a few years.
1295. **Mr Allister:** Did you know him otherwise?
1296. **Mr McIntyre:** Not all that well, but I would know him now, yes.
1297. **Mr Allister:** So when it came to this suggestion about dirty linen, did you interpret that as a threat?
1298. **Mr McIntyre:** Not really. If I am not mistaken, it was a letter of four or five pages.
1299. **Mr Allister:** Maybe.
1300. **Mr McIntyre:** Yes. It was quite a long letter. It was in there amongst a number of other things.
1301. **Mr Allister:** Yes, but as the chief executive of an organisation like the Housing Executive, to have anyone writing to you suggesting that, if we cannot sort this, there will be some washing of dirty linen in public —
1302. **Mr McIntyre:** It would not affect me at all.
1303. **Mr Allister:** You did not take that as a threat.
1304. **Mr McIntyre:** I would not. It would not stop me from doing what had to be done either, so it would not.

1305. **Mr Allister:** What would you say to the suggestion that, over the years, right from when it first got into difficulties with contracts back in 2000 through to 2006-07 and right up, Red Sky had had a fairly charmed existence in terms of being able to get itself out of difficulties with the Housing Executive?
1306. **Mr McIntyre:** Yes, and I think that the Audit Office sums it up pretty well. The table in its report does demonstrate that from 2000, if you go back to the allegations about impropriety when we actually sacked the maintenance officer as a result of it. On independent appeal, by the way, he got his job back, much to our regret and surprise. You are right: I can think of very few other contractors, I suppose, with whom we have had as much trouble as we have had with Red Sky over the years.
1307. **Mr Allister:** But, until the end, it seemed to come out of it fairly well each time.
1308. **Mr McIntyre:** That is not quite true. If you go back to 2000, for example, you see that it actually claimed that we owed it £173,000, which it did not get off us. It was negotiated down or was actually demonstrated down to nothing, so it was. Looking back on it, I suppose that there are two things that I regret, in a way. One was that we tried to stop Red Sky from tendering for future work. We got legal advice to the effect that we could not do that. We tried to terminate its contract in 2007. Eventually, legal advice was that we should not proceed.
1309. So, really, I suppose that what happened was that we commissioned the RIU within the Housing Executive to carry out a very detailed study around April 2009, which demonstrated very clearly that there were problems with the quality of the work, overpayment and so forth. At that time I took a view, which was shared by the chair of the audit committee, that really we needed to get somebody to go through that forensically in a big way to make sure that we could make it stick this time. You have probably seen the ASM Horwath report which has subsequently led to the termination of its contract. By the way, the nature of the business with Red Sky was such that if you look at the termination of its contract, you will see that there was a claim by the Housing Executive of around £600,000, possibly. I suspect that if it had not gone into administration or whatever it was, we would still be arguing over what money was due. The construction industry, as you know, is not a fine business; there is always dispute and discussion around claims.
1310. **Mr Allister:** So there were several stages in the saga with Red Sky. On a number of occasions, one can observe that it came out of it better than one might have expected.
1311. **Mr McIntyre:** Or that we might have hoped as well.
1312. **Mr Allister:** Yes. When it was in difficulties, was there any political lobbying on its behalf?
1313. **Mr McIntyre:** Not to my knowledge and not to me personally.
1314. **Mr Allister:** We know that ultimately there was, after you were gone.
1315. **Mr McIntyre:** Yes, but not in my time.
1316. **Mr Allister:** You say that it was not to you personally.
1317. **Mr McIntyre:** No — nor am I aware of any lobbying to anybody else, by the way.
1318. **Mr Allister:** One of the low points may have been the fact that there seemed to be a desire on the part of Red Sky to have a certain individual in west Belfast removed from post. Is that right? It was Mr Ballantyne.
1319. **Mr McIntyre:** Well, I have to tell you that was never represented to me at all. I mean, do you want me to go through just what the position was with regard to Mr Ballantyne?
1320. **Mr Allister:** Just let me try and remind you. Is it not the case that the Red Sky operations manager, Ms Gazzard, wrote to Mr McCaughley in November 2008 expressing deep concern about certain personalities who remained working in the west Belfast office? It states that:

- “we trust appropriate actions will be taken to address this in the near future.”*
1321. Were you aware of that letter?
1322. **Mr McIntyre:** I saw it some time after the event, by the way. I did not see it when it was —
1323. **Mr Allister:** Did Mr McCaughley not show that to you?
1324. **Mr McIntyre:** No, not at the time, but I did see it. The letter should have been replied to, by the way, with a lot of force. I gather from reading the Audit Office report that a very strong reply was drafted —
1325. **Mr Allister:** But it never went.
1326. **Mr McIntyre:** It never went, for whatever reason.
1327. **Mr Allister:** You cannot help us as to why it did not go.
1328. **Mr McIntyre:** I cannot, no. I got the letter some months afterwards, by which stage it was too late to do anything about it. You are assuming that it applies to Gary Ballantyne, are you? Does it name Gary Ballantyne?
1329. **Mr Allister:** No, it refers to the west Belfast office. I am making the correlation between them.
1330. **Mr McIntyre:** Well, I need to correct that. Gary Ballantyne’s move was nothing to do with that letter. There was a planned move —
1331. **Mr Allister:** It coincided in time.
1332. **Mr McIntyre:** Yes. Indeed, by the way, when I was approached by Maurice Johnston, the area manager, about plans that he had in place to move Gary as part of a planned rotation programme, I asked Maurice to defer it because people might read something like that into it.
1333. **Mr Allister:** Well, Mr McIntyre, it coincided in time. Is that right? Chronologically, it happened shortly after that letter.
1334. **Mr McIntyre:** You have got the letter there. The discussion about Gary Ballantyne and his rotation went on for about six months. I would not be sure of the time, but what I can assure you of is that that letter had nothing to do whatsoever with a planned move for Gary Ballantyne.
1335. **Mr Allister:** That is what you want us to believe.
1336. **Mr McIntyre:** I can assure you, by the way, that it was absolutely nothing to do with the area manager in Belfast. I would like to go through the history of it.
1337. **Mr Allister:** Did Mr Ballantyne subsequently receive an apology for how he was treated?
1338. **Mr McIntyre:** I do not know. If he did, it was after my time. An independent personnel person was appointed to review that after I left. It was my understanding —
1339. **Mr Allister:** So, it is mere coincidence —
1340. **The Chairperson:** One at a time, please.
1341. **Mr McIntyre:** My understanding is that that independent personnel consultant said that the move was part of a planned rotation which the area manager had in mind for some years before that. It may not have been well handled, but, at the end of the day, it was not related to anything to do with Red Sky.
1342. **Mr Allister:** OK. So, what you want the Committee to conclude is that it was mere coincidence that Red Sky wrote asking for the removal of unnamed personnel and then the relevant manager was, at the same time, moved. That is mere coincidence.
1343. **Mr McIntyre:** Yes, but I did defer the move. I asked the area manager to defer it for a while because it might have seemed to people that there was some connection to it.
1344. **Mr Allister:** Did you refer that letter from Ms Gazzard to the board of the Housing Executive?

1345. **Mr McIntyre:** No. It was seen as an operational matter.
1346. **Mr Allister:** Did you refer Mr Cushnahan's letter that we talked about previously to the board?
1347. **Mr McIntyre:** It would have been an operational matter.
1348. **Mr Allister:** Were you keeping the board in the dark?
1349. **Mr McIntyre:** Absolutely not. I want to totally refute that.
1350. **Mr Allister:** It might be rather surprising, would it not, that, I think, both the audit committee and the board were kept in the dark about those two pieces of correspondence.
1351. **Mr McIntyre:** Well, Mr Allister, think about the amount of correspondence that comes into our organisation. It was an operational matter, so it was.
1352. **Mr Allister:** It is not every day that you get a letter from a company threatening to wash dirty linen in public, is it?
1353. **Mr McIntyre:** Well, it would not be the first time that I have seen it.
1354. **Mr Allister:** Do you not think that that is something that you should at least tell the board about?
1355. **Mr McIntyre:** I think, in hindsight, there are probably a lot of times when things get to a certain stage and you think it may have been wiser to have told the board at the time, but, at that time, the judgement was that it was an operational matter which would be dealt with by officers.
1356. **Mr Allister:** Were you concealing such matters from the board?
1357. **Mr McIntyre:** Absolutely not; no.
1358. **Mr Allister:** But they were not told about them.
1359. **Mr McIntyre:** They were not told about them, but there is no suggestion whatsoever from you, I hope, that it was a matter of deliberate suppression.
1360. **Mr Allister:** I am asking you.
1361. **Mr McIntyre:** I am saying to you that there was not.
1362. **Mr Allister:** Did you make a conscious decision to —
1363. **Mr McIntyre:** Absolutely not.
1364. **The Chairperson:** One at a time.
1365. **Mr Allister:** So, how was it, then, that the board was not told?
1366. **Mr McIntyre:** Because it was an operational matter involving a contractor with whom we were in dispute. Think of the size of our organisation: our board operates at a strategic level.
1367. **Mr Allister:** But this was a major contractor for the Housing Executive.
1368. **Mr McIntyre:** In the scale of things, it was one of probably a couple of hundred contractors we were dealing with.
1369. **Mr Allister:** Yes, but this is a contractor about whom you have told us already you were receiving multiple representations from public representatives in west Belfast about the quality of work. You then get a letter threatening to wash dirty linen in public, and you did not think: "I should really tell the board about this".
1370. **Mr McIntyre:** On reflection, it might have been wiser to have done so, but that is a long way away from saying that it was deliberately withheld from the board.
1371. **Mr Allister:** When did you take to the board the issue about Mr Ballantyne?
1372. **Mr McIntyre:** I am not quite sure that that was ever at the board in my time.
1373. **Mr Allister:** So, that, too, never went to the board, even retrospectively.
1374. **Mr McIntyre:** It may have done after I left, but certainly I know that, after I left, an HR consultant was appointed by the director of personnel management services to review the position around the transfer of Gary Ballantyne. I do not know whether the director took that to

- the board at that stage, but certainly that review was done after I left.
1375. **Mr Allister:** Did Red Sky discuss personnel issues with you, never mind correspondence?
1376. **Mr McIntyre:** I have no recollection of that. The discussions that I had with Red Sky were around two key things: one was that claim and, subsequently, I met Red Sky on a couple of occasions around the whole issue of its performance in west Belfast.
1377. **The Chairperson:** We will have to take a couple of other members here, Jim.
1378. **Mr Allister:** OK.
1379. **Mr Brady:** Paddy, thanks very much for your presentation. The Public Accounts Committee's report expressed:
- "very serious concerns about the capability and competence of management within the Housing Executive over a number of years, particularly at a senior level."*
1380. It highlighted what the Committee considered to be:
- "significant and serious breakdowns in corporate governance and accountability".*
1381. Do you accept that that allowed Red Sky and other contractors to do what they were doing?
1382. **Mr McIntyre:** First, it is a sweeping conclusion to come to on the basis of one contract and one audit that there was something wrong with the stewardship and governance of the Housing Executive. You have to judge it across the breadth of the organisation. While the Audit Office said that, there were a significant number of other internal and external reviews of the organisation over the years that I was there that had a lot of positive things to say about the stewardship of the Housing Executive.
1383. For example, a health check that was carried out in around 2010, although it had a number of things to say about what we needed to do, was extremely complimentary about the organisation. The PwC report on the future of the organisation was extremely complimentary about the leadership of the organisation. The RPA was complimentary about the leadership and stewardship of the organisation. Numerous charter marks and quality awards all had very positive things to say about the Housing Executive, so you cannot read the Audit Office across and say that the organisation was badly led or badly stewarded or whatever the word might be. Likewise, every year, we delivered our business performance targets to the Department and, which is a very important point, each year I got an annual assurance from both the Audit Office and our head of internal audit around governance and stewardship. I really want to make the point that you cannot read that across the organisation.
1384. **The Chairperson:** Just for the record, the report that you are referring to is from the Public Accounts Committee, not the Audit Office.
1385. **Mr Brady:** To follow that, the Public Accounts Committee criticised the fact that it seemed that Mr McCaughley's division had been out of control for many years. Do you accept that?
1386. **Mr McIntyre:** No, I do not, because, as I have just demonstrated to you, across the piece, the organisation has been extremely successful over the years in delivering what it was supposed to.
1387. **Mr Campbell:** Mr McIntyre, you were in post until 2010.
1388. **Mr McIntyre:** Yes.
1389. **Mr Campbell:** You were asked a series of questions about Red Sky and the issue of there being some sort of sectarian allegation. Your response was that you had been aware of issues about the types of contract earlier, and then the issue arose of some sort of sectarian inference. Is that what you said?
1390. **Mr McIntyre:** I am not quite sure, Mr Campbell, that —

1391. **Mr Campbell:** You said that you had been aware for some time of the problems with Red Sky —
1392. **Mr McIntyre:** Yes, going back to 2000.
1393. **Mr Campbell:** That was very early in your term.
1394. **Mr McIntyre:** It was.
1395. **Mr Campbell:** At what stage did you become aware of some inference in the later stages of your tenure that there was some sort of sectarian undertone?
1396. **Mr McIntyre:** From the time that Red Sky started its contracts in 2007 — the three in Belfast and the two in Newtownabbey — there were problems with west Belfast. Its response times were very poor, it was running behind time, and the quality of the work was not all that good. Also, at that stage — this was not common to its other contracts — the relationship between our local staff in west Belfast and the contracting staff was quite toxic. I do not know, Mr Campbell, whether it was sectarian, but it was toxic.
1397. **Mr Campbell:** You said that the Red Sky contract was one of a number — maybe 100 or thereabouts.
1398. **Mr McIntyre:** Contractors deal with the Housing Executive, but I think that we had about 20 response maintenance contracts throughout the Province. However, we deal with lots of other contractors as well.
1399. **Mr Campbell:** Were there problems of that nature with any of the other contractors?
1400. **Mr McIntyre:** With relationships?
1401. **Mr Campbell:** Yes, as well as workmanship.
1402. **Mr McIntyre:** Not to the point that it ever reached my ears.
1403. **Mr Campbell:** Does that mean, then, that there may have been —
1404. **Mr McIntyre:** I would have been in a local office once a week, and it was never really an issue. Maintenance almost went off our agenda with public opinion and the problems that it caused with public representatives and so forth as a result of the introduction of the Egan contracts. The answer is that I did not generally get it, and nor did I get it in localities all that much.
1405. **Mr Campbell:** You said, however, in answer to me just now and to an earlier question about the sectarian undertone as it related to Red Sky, that you did not seem to be aware of specific knowledge of that. Is that right?
1406. **Mr McIntyre:** No. I was aware of the toxic relationship. One of the allegations that Red Sky would have made was that, because it was a firm from east Belfast working in west Belfast, problems were being put in front of it that it was not getting anywhere else. I do not know whether that was the case. I think that Colm might be able to say a bit more about that because he asked somebody to investigate it. It was not a common problem that we were getting anywhere else.
1407. **Mr Campbell:** It is just that, last week, when Stewart Cuddy was before us, I put a similar question to him. His answer was that there was:  
*“no question whatsoever of any sectarianism.”*
1408. **Mr McIntyre:** I am not saying that there is sectarianism. I am saying —
1409. **Mr Campbell:** I know that, but he was quite specific.
1410. **Mr McIntyre:** Did he say that there was none?
1411. **Mr Campbell:** Yes.
1412. **Mr McIntyre:** You and I have had discussions before about the make-up of the Housing Executive workforce, but it is not a sectarian organisation in any way.
1413. **Mr Campbell:** As you say, we have had quite a number of discussions down through the years. You will be aware, as most people are, that the organisation has a problem recruiting from a very large section of our community and has had for decades. That is why I wanted to

- try to get to the issue of sectarianism. Mr Cuddy seemed to be quite specific and precise, but you are not being as specific or precise.
1414. **Mr McIntyre:** I am saying that allegations were made. I do not know whether that was the case. The organisation does not generally get allegations about sectarian behaviour.
1415. **Mr Campbell:** What I am really getting at is that the allegations were there, as you said. Everybody can accept that. Mr Cuddy appeared to be very forthright in repudiating those allegations. You seem to be saying that you did not have as much knowledge as Mr Cuddy, but you were the chief executive.
1416. **Mr McIntyre:** No, what I am saying is that the relationships between the staff in our local west Belfast office and the staff of Red Sky were toxic. One of the things that emerged is that Red Sky said that it was being treated in a sectarian way by local Belfast staff. That was never proven one way or the other; all I can tell you is that it was an allegation that was made by Red Sky.
1417. **Mr Campbell:** I have a final question. You were aware of the allegation and, as you said, the company was from east Belfast and was doing work in west Belfast. That was happening in the context of the overall organisation that had been awarding the contract for decades, and which had an issue. As you say, you and I have had a number of conversations about how to address the problem of ensuring that your organisation of over 3,000 people would attract equitable numbers from both communities, and we have done that. At that stage, did nobody say, “Here’s an allegation about Red Sky that has a sectarian undertone. Given the bigger picture that we already know has been out there for many years, maybe we had better investigate this very comprehensively”?
1418. **Mr McIntyre:** I think that my colleague might have something more to add to what I am saying, because I think that some investigation was carried out at the time. I am not trying to avoid what you are asking. I think that you will agree that we have taken a lot of steps to attract Protestant people into the Housing Executive over the years. I am sure that you will acknowledge that.
1419. **Mr Campbell:** I do acknowledge that, and, hopefully, the work that I have been doing with a number of your staff has contributed to that. You say that Mr McCaughley might be able to help us.
1420. **Mr McIntyre:** I think that those allegations were looked at at the time.
1421. **Mr Wilson:** I will start with Gregory’s last point. I know that you say that you cannot throw a great deal of light on it, Paddy, but as part of this investigation and any conversations you have had, were you made aware of the fact that there was clearly a sectarian campaign against Red Sky in west Belfast by public representatives and tenants and, indeed, that there were attacks on their vans and personnel? Ball bearings were fired at them —
1422. **The Chairperson:** Sammy, just a wee second. I do not mind giving people a bit of latitude, as I said last week, but I am not going to have it on record that there was factually established sectarian harassment of any company by any representative. You are making very sweeping and damaging accusations against people who were public representatives. I am telling you to exercise caution. I will not let you go down that road.
1423. **Mr Wilson:** You might not like to hear it, but —
1424. **The Chairperson:** It does not matter whether I like it or do not like it. I will not let —
1425. **Mr Wilson:** First of all —
1426. **The Chairperson:** Sammy Wilson, excuse me. I am making a point: I am asking members to be professional in their approach, because I will instruct the person not to answer the question.
1427. **Mr Campbell:** I hope, Chairman, that there is no question of somebody being

- restricted in the nature of the question they are asking.
1428. **The Chairperson:** No, but I am not —
1429. **Mr Campbell:** If there is, Chairman, it calls into question the participation of some of us in the rest of the inquiry. If that is the route that you are going to go down —
1430. **Mr Wilson:** Chairman —
1431. **The Chairperson:** Just a second. Let me deal with one question at a time. We are doing OK; we have to keep this professional. There is no restriction on any member asking questions, but we cannot have people putting factually incorrect statements on the record as fact. People can make their statements and allegations if they wish; they cannot put something on record and expect an official here to respond to something that is not factually established or correct. That is all that I am saying. Let us not generalise.
1432. **Mr Wilson:** Let me start with one question, Paddy. Were you aware, for example, that representatives of Sinn Féin in west Belfast made complaints to the Housing Executive about Red Sky?
1433. **Mr McIntyre:** About the quality of work, yes. I would expect that from any public representative anywhere who was getting a service that was not up to scratch.
1434. **Mr Wilson:** For the record, since two of the representatives who made those complaints are here and, therefore, surely have some vested interest, maybe the Committee Clerk can indicate whether we got a declaration of interest at the beginning of the meeting.
1435. **The Committee Clerk:** No one has declared an interest in respect of that.
1436. **Mr Wilson:** So —
1437. **The Chairperson:** Sorry, Sammy, just a wee second. We can check all the legal advice and the procedural fairness, rules and regulations — I am happy to do that — but, as an elected representative, I am certainly not aware of that, because, at that time, I do not recall making complaints in west Belfast. Other members of your party, for example, made representation. That is fine; people are entitled to make representation. That does not mean to say that anybody has an interest. As you well know, a conflict of interest means that you have some relevant, peculiar or other interest in a matter.
1438. **Mr Wilson:** I would have thought that there would be a conflict of interest. If someone had made allegations and complaints about a firm, I would have thought that that would slant the view that you might take to questions being asked and be one of the reasons why you probably object to some of the questions I am asking now and questions being asked of those who come along and give evidence.
1439. **The Chairperson:** My only assertion is that people cannot put things on the record that are not the case. That is all that I am saying. Let us keep it professional.
1440. **Mr Wilson:** Paddy, you had a number, maybe even a substantial number, of complaints about Red Sky from Sinn Féin representatives in west Belfast.
1441. **Mr McIntyre:** We also had complaints from community representatives and the SDLP because, frankly, the service was very poor, which is why people were making representations and complaints.
1442. **Mr Wilson:** Were you also aware of an ongoing campaign of attacks on vans and personnel etc on Red Sky workers by elements in west Belfast?
1443. **Mr McIntyre:** I was aware of vans being damaged. I also believe that Sinn Féin representatives got involved in trying to stop that happening.
1444. **Mr Wilson:** Were Red Sky employees described as “red, white and blue sky”?
1445. **Mr McIntyre:** I have never heard that expressed in any meeting or from any public or community representative. That is the first time I have heard it.
1446. **Mr Wilson:** OK. Complaints were made about the attacks on Red Sky equipment and employees in west Belfast. Were

- complaints about attacks on contractors so prevalent in other parts of Northern Ireland?
1447. **Mr McIntyre:** Generally speaking, currently, no. It might have been an issue at some time in the past, but in recent times it has been — . I know that local Sinn Féin and community representatives tried to influence the local community and make sure that that did not continue.
1448. **Mr Wilson:** Red Sky was a Protestant firm from east Belfast. Do you accept that Red Sky was singled out for special treatment in west Belfast?
1449. **Mr McIntyre:** No, not to my knowledge.
1450. **Mr Wilson:** But you said that its vans —
1451. **Mr McIntyre:** Yes, it happened, and I do not know why. We had Red Sky in our sights because its performance was very poor. The reason why we were getting complaints from public and community representatives was that its performance was very poor. I cannot remember the same volume of complaints about any contractor in a lot of years. We were not getting those complaints across the piece.
1452. **Mr Wilson:** That brings me to my second point. You said that its performance was about twice as bad as the performance of other contractors.
1453. **Mr McIntyre:** The Province average was 1.6% or 1.7%.
1454. **Mr Wilson:** You said that most of the complaints emanated from west Belfast.
1455. **Mr McIntyre:** No, I did not say that. We inspected across all the contracts that Red Sky held. Its failure rate was around 3.6% across all five of those contracts, only one of which was in west Belfast. The provincial failure rate was around 1.6% or 1.7%. I can get you the failure rate for west Belfast, or the Housing Executive can supply it to you. I do not have it to hand.
1456. **Mr Wilson:** I have written down what you said. Hansard will maybe show that I might be inaccurate, but you said that there were more complaints from the west of the city than from the rest of the Province.
1457. **Mr McIntyre:** May I explain what I mean by that? Before we brought in the Egan contracts — people may have comments about them — I regularly went around district councils, community associations and the Housing Council. At that stage, maintenance was not an issue with public representatives to the extent that it had been previously, with one exception: from 2007, there was a build-up of complaints about Red Sky's performance in west Belfast. They would have recognised that themselves. They brought in additional arrangements to try to sort out the problem that they were having in delivering with regard to the quality of the work and their response times to the Housing Executive.
1458. **Mr Wilson:** On the response times, you said that there was a toxic relationship between Housing Executive staff and Red Sky. Did that in any way contribute to the flow of information about repairs that were required, thus causing time delays, which in turn had an impact on the performance that you were talking about?
1459. **Mr McIntyre:** Are you suggesting that staff locally were making it difficult for Red Sky?
1460. **Mr Wilson:** You said that there was a toxic relationship. Red Sky made complaints about the relationship with staff and claimed that there was sectarianism. You say that the relationship was toxic. Will you explain how you came to that judgement and how that evidenced itself?
1461. **Mr McIntyre:** Egan-style contracts involve partnership, which certainly was not working in west Belfast for a variety of reasons. It takes two sides for a relationship to be toxic: Red Sky would probably have admitted at the time that some of the behaviour of some of their staff was not what they would have expected. Steps were put in place, which Colm might want to explain a bit more, to address those relationship issues.

1462. **Mr Wilson:** If communication and relationships were not good, it is possible that some of the delay in getting repairs done was due to failures on the Housing Executive side.
1463. **Mr McIntyre:** Some of it may have been. However, my reading of it — this was one of the few times that I got involved in any great detail on any contract that was delivering response maintenance — is that the fault lay mainly on the side of Red Sky. The quality of the work was terrible, and the delays were terrible and worse than anywhere else in the Province. That did not happen to the same extent in other areas where Red Sky had the contracts, but the relationship was not good and its performance was not good.
1464. **Mr Wilson:** Did you ever seek any explanation of why it was particularly bad in one part of the contract and not as bad in other parts?
1465. **Mr McIntyre:** Toxic relationships might be one reason. By the way, I think that Red Sky overstretched itself when it went for those five contracts and priced them. Almost from the outset, it was not going to be able to deliver across all five.
1466. **Mr Wilson:** However — this is important given the allegations that were made about the relationship between the community, the Housing Executive and the firm in one part of Northern Ireland — you are saying that the performance was not as bad in other places where the Housing Executive, the tenants and the community cooperated with Red Sky.
1467. **Mr McIntyre:** I am saying to you that Red Sky in west Belfast stuck out like a sore thumb in its performance.
1468. **Mr Wilson:** You are also saying that there were particular problems with the community and particular problems with your staff.
1469. **Mr McIntyre:** The relationship between our staff and the contractor was not good. That was operating on both sides. I do not want you to say that I said something that I did not. I am saying that public representatives, community people and tenants were vociferous about the service that they were getting in west Belfast, and, as far as I am concerned, they were right to be because the contractor's performance was very poor.
1470. **Mr Wilson:** I will move on to the overpayment that was alleged to have been made. Initially, it was deemed to be £200,000, but that was negotiated down to £26,000 or whatever. Was that done on an objective basis or some other basis?
1471. **Mr McIntyre:** Colm might be able to help you a wee bit more than I can on that, but the starting point of the overpayment of £150,000 was to do with kitchens. The contractor installed kitchens of a higher standard. That had been authorised by the local maintenance officers — they should not have done that — and that immediately knocked off £150,000. I am not terribly familiar with the rest of the detail, but the big piece that was taken out of the overpayment was for work that Red Sky did when it put in kitchens of a higher standard, which it believed it was authorised to do. It turned out, indeed, that the maintenance officers asked Red Sky to do that, which took a substantial chunk of the overpayment away. I am not all that familiar with the detail of the rest of it.
1472. **Mr Wilson:** So any suggestion that it was to do with who was negotiating the change rather than an objective assessment of what was owed was totally incorrect.
1473. **Mr McIntyre:** That was one of the points that was made in a meeting that I had with Mr Cushnahan. The claim went into a process with the organisation, and the substantial point that he made was, "How can you put down an overcharge for the kitchens worth £150,000 when your people locally authorised that?"
1474. **Mr Wilson:** Had Santa Claus done the negotiations, would you still have come to the same conclusion?
1475. **Mr McIntyre:** At the end of the day, this claim was agreed by legal advice and

- by our contract claims people, who are quantity surveyors and have long years of experience in dealing with contractors and their claims.
1476. **Mr Wilson:** Initially, it was not reported to the board. Your explanation for that, Paddy, is that this was an operational matter that you would not have expected to take to the board. Given your knowledge of the Housing Executive, what percentage of contracts would there be disputes about?
1477. **Mr McIntyre:** To some extent, Egan contracts have taken that very adversarial relationship out of it, but the construction industry is well known for claims and counterclaims. I can recall a contractor who at one stage, after he had finished doing big contracts for us, came back in with a claim for £5 million. It went to arbitration and all that sort of stuff. The construction industry is famous for claims around contracts.
1478. **Mr Wilson:** Has the board set some kind of criteria as to the threshold for reporting disputed contracts to it?
1479. **Mr McIntyre:** Again, I am thinking about the scheme of delegations here. When it comes to contract claims, the contracts manager, I think — I would want this to be checked because I am not exactly sure whether these figures are still right — had a limit, and he could settle a claim up to £50,000, provided he had the right legal advice and so forth. I have a feeling that I might have been authorised to settle claims up to £100,000, but there were delegated limits set by the board. I do not know whether those limits are as I am quoting them now, but they were of that order.
1480. **Mr Wilson:** So that is for claims being settled. Are there any criteria given, when there are difficulties or issues with a contract, that would trigger things that would indicate that the board should be told about those difficulties?
1481. **Mr McIntyre:** No. At the end of the day, the board was made aware of Red Sky when it became almost a political issue, or, rather, when it was very much in the public eye. The board would have been aware of it then. Until then, that is what it was: it was a dispute with a local contractor in a local district that was not performing properly and about which lots of complaints were coming in.
1482. **Mr Wilson:** Would it be normal for that to be dealt with locally?
1483. **Mr McIntyre:** Yes. If you think about the scale of our business, if we put everything like that to our board, it would be meeting for three or four days every month.
1484. **Mr Wilson:** So there was nothing unusual. There was no attempt by officials, as has been suggested, to hide this.
1485. **Mr McIntyre:** No, absolutely not. I would totally refute that allegation.
1486. **Mr Wilson:** I want to move on to the termination of the Red Sky contract. In March 2009, you advised the deputy director that, because of contract administration, backlogs in payments and relationships that may have been relevant, you considered that the Housing Executive's position in the matter of the termination was not robust. Is that correct?
1487. **Mr McIntyre:** In 2009? No, no. We made an attempt to terminate the contract in December 2007, by the way. In 2009, we began a process — the work was commissioned in April 2010 —
1488. **The Chairperson:** Hold on a second, Paddy. Sammy, we have a letter that was sent to Barney McGahan; that might be the one you are referring to.
1489. **Mr McIntyre:** Those dates do not ring a bell with me.
1490. **The Chairperson:** I want you to have a copy of the letter in front of you.
1491. **Mr McIntyre:** There is my signature, and it is dated March 2009. It is quite a long letter. At this stage, I have a feeling that the letter emerged because the Minister had been alerted about problems with Red Sky. I cannot remember whether it was Margaret Ritchie or Alex Attwood, but I assume that that is why I was giving Barney an update.

1492. **Mr Wilson:** Was the Minister pushing at that stage? Clearly, from the tone of the letter, you are seeking to give guidance that the contract should not be terminated. Was the Minister pushing for the contract to be terminated?
1493. **Mr McIntyre:** Absolutely not. They were looking for an update on the position. I would like time to read this letter before I commit any further comment to it.
1494. **Mr Wilson:** All I am asking is this: what provoked that letter? It is about refuting any case for termination. The letter states:
- “The basis of the legal opinion was that the Housing Executive should demonstrate reasonable cause for termination of the contract.”*
1495. You then go into the reasons why you do not believe that there is a robust case for the termination of the contract.
1496. **Mr McIntyre:** Minister Ritchie and Minister Attwood were aware of the issue because of complaints that they had received about problems with Red Sky. I assume that I was asked for an update, which I gave. I may have said at that stage, without reading the letter in full, that we were not in a position to take action, but, in the following year, we subsequently commissioned work by the repairs investigation unit across the outside contracts. We followed that up with the commission of ASM Horwath to build the case, which allowed us to take action against Red Sky and terminate the contract.
1497. **Mr Wilson:** Can you recall what provoked that letter from you, Paddy?
1498. **Mr McIntyre:** Was it Minister Ritchie or Minister Attwood?
1499. **Mr Wilson:** Attwood.
1500. **Mr McIntyre:** I can only imagine that he was hearing from his constituents that there were problems with Red Sky, and he knew that we were having problems, I guess, and was looking for an update.
1501. **Mr Wilson:** Last week, Mr Cuddy told us that he was very surprised that any Minister would wish to get involved in discussions about procurement and contracts etc. If this was a request from the Minister at that stage to terminate the contract, and you had to give reasons why you thought that that should not be the case, would you have taken the same view as Mr Cuddy that it would be unusual for a Minister to want to dabble in the detail of a contract like this?
1502. **Mr McIntyre:** I have a feeling that, at that time, significant numbers of questions were being asked in the Assembly by local MLAs about Red Sky. The questions were coming fast and furious, and I presume that he might have been looking for an update on the back of those questions. It is a very factual letter describing our position. That would not have been the first time that Ministers have asked for that type of information.
1503. **Mr Wilson:** It might be useful to check that we have the letter from the Housing Executive, and who it came from, that provoked that response.
1504. **Mr McIntyre:** It may have been verbal. I do not know, Mr Wilson. I guess that it was because, at that time, MLAs were asking significant questions about Red Sky.
1505. **Mr Wilson:** Had it been as a result of a verbal or written request for the Housing Executive to terminate the contract, or to consider terminating the contract, would you have regarded that as unusual and unacceptable — to use Mr Cuddy’s term, totally unacceptable — interference by a Minister in a public procurement contract?
1506. **Mr McIntyre:** I do not know that Minister Attwood was asking for us to terminate the contract. I would not expect a Minister to ask us to terminate a contract. As I said, I am not quite sure of the background, but it was obviously a comprehensive brief.
1507. **Mr Wilson:** Had it been that, would you take the same view as Mr Cuddy that it was totally unacceptable?

1508. **Mr McIntyre:** This letter is not unacceptable. This seems to be giving information.
1509. **Mr Wilson:** No, but would you regard a request to terminate a contract as totally unacceptable interference by a Minister, as Mr Cuddy did last week?
1510. **Mr McIntyre:** I would have thought that, in anybody's view, a Minister asking the Housing Executive to terminate a contract would not be acceptable. That said, Ministers — certainly devolved Government Ministers — have been pretty challenging compared with the old system here, where you dealt with a Minister whom you might have seen twice a year. They have a bigger interest and challenge a great deal more than under the old system.
1511. **Mr Wilson:** This is the last point. As has been pointed out, as part of the process of negotiating the amount that Red Sky owed the Housing Executive, the chairman of Red Sky was involved in those discussions. He had been a member of the audit committee but had come off the committee. Do you find anything unusual about that? Indeed, from your memory of it, was any advantage given to him because of his membership of the audit committee when it came to the negotiation of the downward part of the debt?
1512. **Mr McIntyre:** My contact with Mr Cushnahan was at one meeting, as far as I can recollect, where he made the point that the claim of £200,000-odd was excessive when his firm had installed kitchens as it had been instructed to do and should be paid for. Even a blind man could see that that should not have happened.
1513. **Mr Wilson:** All I am asking, Paddy, is whether his former position as a member of the board and the audit committee in any way impacted on the decision that you have said was made on an objective basis.
1514. **Mr McIntyre:** It would not have done, no.
1515. **Mr Allister:** On the issue of the kitchens and the £260,000, you have said twice that Red Sky was entitled to be paid because it was installing a higher-standard kitchen.
1516. **Mr McIntyre:** Authorised by the local Housing Executive staff.
1517. **Mr Allister:** I have to tell you that the evidence that we heard a fortnight ago —
1518. **Mr McIntyre:** I have read it.
1519. **Mr Allister:** — from the head of the audit side of the Housing Executive was that Red Sky was charging for higher-standard kitchens but fitting lower-standard kitchens.
1520. **Mr McIntyre:** I read that evidence. Raymond Kitson is a great guy, but I did not understand where he was coming from on that. That needs clarified, I think.
1521. **Mr Allister:** He was absolutely clear to us. Hansard states:
- "We have two types of kitchen in our schedule of rates: post-formed, which is a fairly expensive, elaborate-type kitchen, and a standard kitchen. What we were getting in west Belfast, north Belfast, east Belfast and the like were standard kitchens. However, we were paying for post-formed kitchens, which are substantially more expensive."*
1522. Then he was asked a question by the Chairperson, and he said:
- "Yes. We were getting the standard kitchen, not the more expensive one, but we were paying for the more expensive one."*
1523. He went on to reiterate that.
1524. **Mr McIntyre:** I saw that and, to be quite honest, I found it strange. I am not in any way —
1525. **Mr Allister:** It is totally contradictory to what you are saying.
1526. **Mr McIntyre:** Absolutely.
1527. **Mr Allister:** Who is right?
1528. **Mr McIntyre:** My understanding of it is as I described to you. I read Raymond's evidence, and I must say that I did not

- recognise it, but I am not in any way calling his integrity into question.
1529. **Mr Allister:** You both cannot be right.
1530. **Mr McIntyre:** Exactly.
1531. **Mr Allister:** Mr Kitson, as I understand it, was saying to us, “We were meant to be paying for standard kitchens, but we were paying for higher standards that were not installed, and that could not be pursued because someone in the Housing Executive had signed that off”.
1532. **Mr McIntyre:** My understanding of it was as I described to you until I read that evidence yesterday, and I must say that it runs contrary to what I understood.
1533. **Mr Allister:** There would be no issue with the £260,000 if you were getting higher-standard kitchens.
1534. **Mr McIntyre:** It is contrary, and I understand why you would take it up. It needs clarified.
1535. **Mr Allister:** Who can clarify that for us?
1536. **Mr McIntyre:** I think that you need to ask the Housing Executive. My understanding of it, up until I read that evidence yesterday, was that the higher-standard kitchens had been installed and were paid for on the back of that. Colm may be able to add a bit more light to that.
1537. **The Chairperson:** I was going to suggest that, Jim. I had already asked the Assistant Assembly Clerk to take a note, because we need to get clarification on that.
1538. **Mr McIntyre:** I want to assure you that I have not been misleading the Committee, but my understanding, up until I read that evidence yesterday, was that the position as I described it to you was why the claim was settled.
1539. **The Chairperson:** We are not accusing you or anybody else of misleading. What we are saying is that we have two direct pieces of evidence contradicting each other, so we have to clarify that.
1540. **Mr McIntyre:** I also want to say that I am not in any way calling Raymond Kitson’s evidence or integrity into question.
1541. **The Chairperson:** That is accepted.
1542. **Mr Allister:** There are a couple of other points. Who was or is Laurence Mercer?
1543. **Mr McIntyre:** He was a district maintenance officer with the Housing Executive. If you recall the Audit Office report, you will know that he was sacked in 2000 because, allegedly, he had taken holidays abroad with Red Sky. He was subsequently reinstated by an independent appeals committee and, I think, possibly downgraded and moved. I think that he subsequently ended up working for Red Sky as well. I do not know the man personally, but that is his history as far as I understand.
1544. **Mr Allister:** That is the gentleman who — the allegation was — was taken on Concorde to Nashville.
1545. **Mr McIntyre:** It could be, yes. You know more about that than I do. The allegation was that he was taken abroad on holidays by Red Sky.
1546. **Mr Allister:** Were there other maintenance officers disciplined for accepting excessive hospitality?
1547. **Mr McIntyre:** I believe there were, and I look to my colleague behind who will probably add to that.
1548. **Mr Allister:** That is excessive hospitality from Spectrum or Red Sky.
1549. **Mr McIntyre:** Yes, around Belfast in 2006, I think, there might have been some disciplinary action taken. Again, just to repeat, we had to take that man back on the back of an independent appeals tribunal.
1550. **Mr Allister:** That is Mr Mercer. You downgraded him. But the others were also disciplined for excessive hospitality —
1551. **Mr McIntyre:** Yes, but I think that might have been 2006. There might have been some incident around the Odyssey or something like that.
1552. **Mr Allister:** Yes, but is it fair for the Committee to infer that you can confirm

- that there were offers and acceptance of excessive hospitality from Red Sky to some of your employees?
1553. **Mr McIntyre:** We took disciplinary action, so that suggests that the answer is yes. I am not quite sure what the scale of the hospitality was around the Odyssey. I doubt that it was trips on Concorde.
1554. **Mr Allister:** I think that there is one suggestion of that.
1555. The Chartered Institute of Public Finance and Accountancy produced a report. First of all, it said that you acknowledged in an interview with it that you were a very close personal friend of Mr McCaughley.
1556. **Mr McIntyre:** Yes.
1557. **Mr Allister:** It went on to make the observation that that had clouded your judgement and that the degree of supervision and oversight of his division — the housing and regeneration division — was extremely weak.
1558. **Mr McIntyre:** I do not accept that, and I have told them that I do not accept it. Colm McCaughley has been a friend of mine for 30 years, so, at the end of the day —
1559. **Mr Allister:** Just inside the Housing Executive, or outside?
1560. **Mr McIntyre:** And outside. But, at the end of the day, he had to produce his business plan and targets for his division and was monitored in exactly the same way as any other director.
1561. **Mr Allister:** Have you any idea of how the Chartered Institute reached the view that your judgement was clouded by your friendship and that you let him off lightly in terms of supervision?
1562. **Mr McIntyre:** I do not know how they came to that conclusion, but it is nonsense.
1563. **Mr Allister:** It is a pretty damning conclusion, is it not?
1564. **Mr McIntyre:** Not if you do not accept it. It is not true. People can come to a view but it is not necessarily based on fact.
1565. **Mr Allister:** But they carried out an investigation.
1566. **Mr McIntyre:** It is not necessarily based on fact.
1567. **Mr Allister:** So, did they make it up?
1568. **Mr McIntyre:** I am telling you that I am refuting it. I am not sure of its relevance to this inquiry.
1569. **The Chairperson:** I am just going to make a point here, Jim. We are probably straying into something that is not the subject of the inquiry.
1570. **Mr Allister:** I thought that Housing Executive oversight was part of the inquiry.
1571. **The Chairperson:** Yes, it is; I was just going to say that. Obviously, we have to let some of these lines of questioning go to see where they get to, and we have to make a judgement at some point that it is straying.
1572. **Mr F McCann:** One of the questions that Sammy asked was about what Stewart Cuddy said last week in relation to the termination of the contract, but I thought that the whole debate around what Stewart Cuddy said was that he was being asked to reinstate the contract, not terminate it.
1573. **The Chairperson:** That is a different line. Sammy, you were asking about the previous ones.
1574. **Mr Wilson:** There was clearly a request of some sort. Mr Cuddy seemed to be quite indignant that any Minister should ask questions about a contract that was live. Since there appeared to be an earlier question about the contract — in this case, rather than extend the contract, it was a case of terminating it — I just wanted to see whether Ministers did, on a regular basis, ask about controversial contracts, whether all Housing Executive officials took the view that such interference was

- unacceptable and what the background to this particular request had been.
1575. **The Chairperson:** We said that we would try to get the correspondence. We dealt with that earlier when Paddy McIntyre was asked about what sparked the letter that he sent setting out the facts. For the record, the Minister at the time — October 2009 — was Margaret Ritchie. People were querying that earlier.
1576. **Mr Wilson:** In relation to the last question, Paddy, do you find it surprising that the question has to be asked as to how that conclusion was reached if there was clear evidence that the conclusion was based on fact? Would it not substantiate the point that you were trying to make, which was that people can have an opinion, but, if they cannot substantiate that opinion, it really is not relevant to this inquiry?
1577. **Mr McIntyre:** That is my view of it.
1578. **Mr Wilson:** Lots of friendships occur inside and outside an organisation. Would it be regarded as unusual for people in the Housing Executive to be friends outside work as well as inside?
1579. **Mr McIntyre:** No, and I have loads of other friends outside work from my days in the Housing Executive whom I still meet.
1580. **Mr Dickson:** Maybe I will follow through on that, although it was not my intended question. I have heard what both of you have said in respect of that relationship. However, I have to ask this question: why would a professional body make that comment? It would not normally comment on people's personal relationships if it was not relevant to whatever their inquiry was. I appreciate that you can dismiss the comment, but why do you think a professional body conducting an inquiry would want to come to that view?
1581. **Mr McIntyre:** You had better ask it why it might come to that view.
1582. **Mr Dickson:** Perhaps we should.
1583. **Mr McIntyre:** You should do. By the way, I had never come across that until two years after the event.
1584. **Mr Dickson:** OK. I will take you back to Mr Kitson's evidence. You helpfully told us that, when you read it yesterday, you felt that it was completely at odds with what you have told us.
1585. **Mr McIntyre:** Absolutely, yes.
1586. **Mr Dickson:** Why did you not tell us that at the beginning of giving your evidence this morning? Why did you not say, "By the way, I am going to tell you something that is very different from what you have already read"?
1587. **Mr McIntyre:** I should have done, and I was not intending to conceal it. I read the stuff yesterday for the first time, and it is contrary to what my belief was up until I read it. By the way, it was Colm's belief as well, up until we read that yesterday.
1588. **Mr Dickson:** Was that belief formed when you were the operational chief executive of the Housing Executive?
1589. **Mr McIntyre:** Yes, it was.
1590. **Mr Dickson:** So you have at least one other person who had a completely different understanding of a very serious situation inside the organisation at the same time that you were operationally functional.
1591. **Mr McIntyre:** It may be that I am wrong. I would not at all question Raymond Kitson's integrity. However, up until I read that, my understanding was the position that I have stated to the Committee.
1592. **Mr Wilson:** May I just ask one question based on that, Paddy? When you were looking at what was owed and what was not owed, and it was submitted that, "We supplied kitchens of a higher standard than what had been specified in the contract, but we did that at the request of the Housing Executive", presumably the Housing Executive official, Mr Kitson, who would have been knowledgeable in those matters, would have been asked the question at that

- time. Have you any recollection that he disputed that the appropriate kitchens had been supplied at that stage?
1593. **Mr McIntyre:** That is news to me. At the end of the day, I was not deeply involved in any way in that negotiation.
1594. **Mr Wilson:** I do not know how this works, but if someone came in and said, “No, those kitchens were better than what had been in the contract, but we did it at the request of the Housing Executive”, presumably somebody would have checked that before agreeing the figure. Would they?
1595. **Mr McIntyre:** I would have thought so, as part of the negotiation over the claim.
1596. **Mr Wilson:** So Mr Kitson would have had an opportunity at that stage.
1597. **Mr McIntyre:** I am not sure whether Raymond was involved at that stage.
1598. **Mr Dickson:** Can I give you Mr Kitson’s —
1599. **The Chairperson:** Sorry, Stewart. I want to draw people’s attention to the fact that we have a copy of an RIU interim investigation report, dated 2 June 2009. It indicates that Paddy McIntyre’s record is accurate. This has been raised, and we are now getting into three or four references to material. We have already agreed that we are going to get clarification on this. I am not saying that we should park this, because people have explored it, and Stewart has the floor. However, it might be useful, because we are now exchanging different versions of information, that we bear that in mind. Stewart, deal with it as much as you want to here, of course, but bear in mind that we are seeking further clarification.
1600. **Mr Dickson:** It is not my judgement at the end of the day, Chair. It is what Mr Kitson placed on the record. His opening words were:  
  
*“I was involved in the negotiations”.*
1601. So he is claiming that he was involved.
1602. **Mr McIntyre:** If he is saying that, by the way, I would not doubt it.
1603. **Mr Dickson:** Can I take you back to the case of the employee who was disciplined, dismissed and then reinstated? You have made a couple of references to the fact that you had to take him back. Is there any significance, in the scale of things, in the fact that you are telling us that you had to take him back?
1604. **Mr McIntyre:** We would rather not have taken him back, but he won an independent appeal and the recommendation of the independent appeal panel was that we had to take him back.
1605. **Mr Dickson:** Was that due to administrative failures on your HR side, in respect of how the matter was handled, or was it to do with the substance of the actual misdemeanour?
1606. **Mr McIntyre:** Again, that is back in 2000. I do not really have any detailed knowledge of it.
1607. **Mr Dickson:** It has potentially a material aspect to it. Either it was because you had handled the administration of the disciplinary procedure poorly or it was because the penalty of dismissal was deemed to be inconsistent with the level of offence committed.
1608. **Mr McIntyre:** Again, I do not know why the appeal panel came to that conclusion. I am sure that it is in the record somewhere, but I would have thought that, if the allegations were true that he had been taking that level of hospitality, he should never have been back through the door of the Housing Executive.
1609. **Mr Dickson:** In which case —
1610. **Mr McIntyre:** It could suggest that there was some failure in how we presented our case, or whatever. I do not know, to be quite honest, Mr Dickson.
1611. **The Chairperson:** Paddy, in your submission to us, in the context of Red Sky and its track record, you state:

*“Red Sky in its various forms had carried out work for NIHE for a number of years. Over these years it presented a number of management and performance difficulties.”*

1612. There is a pattern. For a lot of the members here, there is a picture that these difficulties persisted for years. In his submission, which we will discuss shortly, Colm points to a lot of measures that were put in place to correct those problems. However, clearly, they persisted over a number of years. What we are trying to establish in our minds is how that was allowed to happen and why it happened. I know that you say that you might have different views on things with hindsight, but it would be interesting to hear your view of it, because it also relates to the “toxic relationship”, as you describe it. I find it a bit unusual, with all due respect to your position, that someone says that it is a toxic relationship, and then there are allegations of sectarianism. I take that to mean that somebody in the west Belfast Housing Executive district was a Catholic imposing a biased approach to Red Sky. That is what has been said or at least suggested in everybody’s submissions. I think that it is better to say that openly than to hide around it. Clearly, it was a very important issue and a pressing one. Can you give us any further clarity on that? Obviously, it was a toxic relationship. Clearly, the inspection regime had been enhanced and so on, according to the evidence that we have received. You said that a lot of complaints were brought by a range of people, including your officials. We are trying to work out in our minds why that issue, where there were problems with performance and other management problems, was allowed to continue for years.
1613. **Mr McIntyre:** As I said, over the years, we tried to take steps to prevent Red Sky from tendering for further contracts, five of which it got in 2007. The legal advice was that we could not do that despite the fact that we knew that performance had not been good in previous contracts over a period of time. Secondly, we tried to terminate the contract in 2007 and again, on the back of legal advice, we were unable to do so. That really leads us back into 2009 and the early part of 2010, which is when we decided that we wanted to collect solid evidence of its performance across all of its contracts. We asked the RIU to carry out that work. I took the view, along with the chair of the audit committee, that, given our difficulty in enforcing action against Red Sky previously, we should get forensic accountants in to have a look at it. That is where ASM Horwath came in, and that put us in a position where the evidence was such that we had a strong case to terminate the contract. That happened after I left, but I am familiar with the comings and goings of all of that.
1614. We probably could have managed the situation better, but, at the end of the day, on the couple of times that we tried to take action, legally, we could not do it. We also undermined our own position from time to time as well. One way or another, on the kitchens, we undermined our position by our inaction.
1615. **The Chairperson:** Paddy, thank you. No other members have indicated that they wish to speak. Paddy, we will get clarity around that issue that was last referred to. Before we wind up, are there any further comments that you want to make? Obviously, the Committee will, in an ongoing way, assess all of the evidence that we have heard. We may want to get further information or even maybe talk to a number of individual witnesses in the future. I suggest that that invitation will also be open to you if you want to come back to the Committee and add to anything that has been said already or clear anything up that you subsequently think about. Are there any comments that you want to make before we finish this morning?
1616. **Mr McIntyre:** I presume, Chairman, that a draft report will be produced. Will people who have given evidence have an opportunity to have a look at it?
1617. **The Chairperson:** The Committee will do a report. Up until now, we had decided that, if there were adverse findings

against someone, they would receive a copy.

1618. **Mr McIntyre:** That is OK.

1619. **The Chairperson:** Paddy, thank you very much. As I said, your invitation to come back to us is open.

## 2 October 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr Colm McCaughley

1620. **The Chairperson:** Colm, you are very welcome. Thank you for being here this morning and for providing us with a paper. Some of the evidence and questions will cover similar ground to the previous session, I presume.
1621. **Mr F McCann:** Colm, you are welcome this morning to the inquiry. In the briefing that you have provided, you say that, in 2006, you raised concerns about a contract under Spectrum/Red Sky. I think that you took legal advice that you could not exclude it from tendering. Can you explain who Spectrum was, what difficulties you had with the contract, where the contract was based and whether any concerns were raised by local politicians, the local community or others?
1622. **Mr Colm McCaughley (Northern Ireland Housing Executive):** Spectrum was one of the predecessors of the new entity, Red Sky. There were three companies pulled together. Spectrum's main areas of operation prior to the existence of Red Sky were east Belfast and the Shankill. Its performance in east Belfast was not too bad, but, on occasions, its performance in the Shankill Road left a lot to be desired. On a number of occasions, I was drawn into detailed discussions with it about its performance. I had to deal with it on a number of occasions and to recover overpayments on a number of occasions. It was not quite as big or as awful — to use a general term — as it later transpired, but, yes, there were some difficulties. It was not all bad. It was an extraordinarily good company in cases of emergencies, which were quite common. On those occasions, it outperformed most other contractors. But on the day to day business that we were doing with it, yes, the old company, Spectrum, left a fair bit to be desired. Our fear was that that was going to get drawn into the new company, hence the desire to effectively block it from tendering. I think that the Committee has taken evidence from the Central Procurement Directorate (CPD) to explain the legal basis of that. You cannot simply stop a company from bidding on the basis of past performance.
1623. **Mr F McCann:** When it was operating in the Shankill and east Belfast, was it your officers who drew attention to the poor-quality work in the Shankill or was it local politicians or community representatives?
1624. **Mr McCaughley:** It was both. It was staff and the community and political representatives, particularly the community representatives. There was a huge amount of work going on around the Shankill at the time, and therefore it bubbled up through the community sector fairly extensively.
1625. **Mr F McCann:** If my memory serves me right, some very serious concerns were raised at the time in the Shankill about the quality of the work by Spectrum.
1626. **Mr McCaughley:** I think that that is fair enough, but it is like all contractors; they peak and trough in their performance. You seldom get a contractor who has a steady line of performance. The trouble with Spectrum was that its peaks and troughs were higher and lower than everybody else's. It was a problem in the Shankill Road at various stages.

1627. **Mr F McCann:** At the same time, you would not accuse it of being sectarian.
1628. **Mr McCaughley:** No. The sectarian issue was raised subsequently on two occasions.
1629. **Mr F McCann:** I am talking about on the Shankill.
1630. **Mr McCaughley:** Oh, on the Shankill.
1631. **Mr F McCann:** Mr Wilson seemed to indicate here this morning that all the complaints that were coming from west Belfast, whether they were from the likes of me as an elected representative or community representatives, about the poor work that was carried out by Red Sky seemed to have an indication of sectarianism. However, at the same level, the same poor work happened before, under the name of Spectrum in the Shankill area.
1632. **Mr McCaughley:** Yes, on occasion; but the sectarian issue was raised with me on two different occasions around the relationship between the west Belfast office and the new Red Sky.
1633. **Mr F McCann:** Did you carry out an investigation, or did anyone carry out an investigation, into that?
1634. **Mr McCaughley:** What happened was that it won the new tranche of contracts, which was a huge amount of work — its business effectively increased by a factor of 200% or 250% — and one of those was for west Belfast. Serious problems emerged. During my normal visits to the district office, I had a briefing from west Belfast maintenance department about the problems, but, in due course, I also had the view expressed by Red Sky that effectively what was happening was that, unlike in all other districts, it was sectarianism or some mild form of sectarianism, if there is such a thing, that was behind it. I decided to take one stand back, call in the repairs inspection unit (RIU) and get it to investigate the basis of the overall complaints about the performance of Red Sky.
1635. The results of the RIU's investigation clearly showed that it was an outright issue of performance. What happened, in my view, is that, having grown by 250%, Red Sky could not get the skilled labour. Remember, at this time, Northern Ireland was going through the highest rate of new build since after the Second World War. All the skilled labour was in the new build sector. They really could not get the skilled labour to perform on all the contracts, so they were not committing enough resource to fulfil the terms of the contract. On that basis alone, I terminated the contract, after asking Red Sky if it would like to withdraw on the basis that it did not have the capacity. It declined that offer. That was one area in which the sectarian issue was raised. It was raised later with me after we had reinstated them, and yet there were still obvious questions around its performance. Two things happened, one of which was verbally. At a face-to-face meeting, one of the officers said that a particular maintenance officer, whom I do not wish to name today but I know who he is — let me make it clear that it was not the district manager, who was totally irrelevant to this situation, this issue around sectarianism — was abusive and deliberately trying to undermine them. I told Red Sky that, if I discovered that to be the case, I would move the officer and discipline him. Subsequently, they put that in writing. Somehow, somewhere, somebody has decided to correlate the letter sent to me stating that this person was still creating problems for them and asking what I was going to do about it, because I said that I would move them, with a move by a district manager a year later. I do not know how that happened or why that correlation has taken place, but it was a specific maintenance officer.
1636. The letter in question was referred to the director of personnel and to my assistant director for investigation. A full investigation took place, and it concluded that the Red Sky official had told me that one other staff member was present when the abuse and some of these other issues took place. The other officer was interviewed. No evidence came forth of the fact that the

- officer was behaving inappropriately. I advised Red Sky of that verbally. Please do not ask me when, because I cannot honestly remember, but I know they were told. What transpired was that no formal letter of response was ever issued, even though one was drafted. I cannot provide any explanation to the Committee of why that happened. I certainly wish that it had not happened and that the letter had been issued. So, in both instances of sectarian calls, there was, in my view, proper investigations: one by the RIU and one by personnel/my assistant director, and —
1637. **Mr F McCann:** They found that there was no reason for the allegations to be made.
1638. **Mr McCaughley:** All that I am saying is that we could not find any evidence —
1639. **Mr F McCann:** I am talking about the findings of both organisations.
1640. **Mr McCaughley:** Well, we could not find any evidence to support the allegation.
1641. **Mr F McCann:** You talked about the termination of the Red Sky contract. If, at the time, a Minister had come to you and said that they wanted you to reinstate the contract — I do not know in what circumstances it was reinstated at that time — would you have believed that to be undue pressure from a Minister interfering in the normal contractual workings of the Housing Executive?
1642. **Mr McCaughley:** If the evidence was there to show poor performance, I could see no reason why anyone would wish to extend a contract, other than to find time to clear staffing issues. This was a major employer in the city. I always had due concern that, whatever we did with Red Sky, we had to be concerned with its employees and the impact that it would have on that bit of the local economy. Therefore, yes, had someone said to me about contracts and managing them to a proper conclusion, I would have to take account of the fact that I would have to manage it to honour commitments to the staff of that organisation and to make sure that they did not get a bad deal out of it because of mismanagement by managers of that organisation.
1643. **The Chairperson:** There would have been a legal requirement on you to do that.
1644. **Mr McCaughley:** Yes.
1645. **The Chairperson:** So, it would not have been an option; it would have to be done.
1646. **Mr McCaughley:** It would have to be done, but I am saying that you would need to take proper time to do it. To put TUPE and all the other things into effect may not necessarily take one month; it might take six months. In other words, I would not have been rushing in. Mind you, you could say that maybe we should have rushed in a few other times to terminate it. In summary, I am really saying that it should have had due regard.
1647. **Mr Allister:** When Pauline Gazzard wrote to you — she wrote to you, is that right?
1648. **Mr McCaughley:** Yes.
1649. **Mr Allister:** Was that on foot of discussions that there had been, or did that letter come out of the blue?
1650. **Mr McCaughley:** There had been continuous discussions at that stage. That was when they were going through the transition in terms of completing their management plan and improvement plan. We had continuous meetings with them. At one of the meetings, the issue was raised about a particular officer.
1651. **Mr Allister:** The letter, in fact, seems to go wider than that. It talks about certain personalities — more than one person, obviously — who remained working in the west Belfast office. They were looking for appropriate actions.
1652. **Mr McCaughley:** Initially, she was hitting out with a broad brush, saying that maybe the whole office was sectarian, but then she focused on one particular officer.
1653. **Mr Allister:** But not in this letter.

1654. **Mr McCaughley:** No, but — something on us” or “Red Sky has something on us”?
1655. **Mr Allister:** Was there a follow-up to the letter? Was there a further meeting?
1670. **Mr McCaughley:** I do not recall a statement to that effect.
1656. **Mr McCaughley:** In terms of —
1671. **Mr Allister:** To that effect.
1657. **Mr Allister:** There had been discussions. She then wrote to you talking about “certain personalities”, and now you are telling us that she focused in on one individual. When did the focusing on one individual occur?
1672. **Mr McCaughley:** No.
1658. **Mr McCaughley:** It was certainly prior to the issue of that letter. Prior to the issue of that letter, the focus was on one particular officer, with me verbally —
1673. **Mr Allister:** Were you aware of anything that Red Sky might have had that would not have been in the interests of the Housing Executive to become public knowledge?
1659. **Mr Allister:** The focus in this letter is on more than one officer.
1674. **Mr McCaughley:** Nothing more than the normal result of all the inspections, which castigated some of our staff as much as it castigated Red Sky and its performance.
1660. **Mr McCaughley:** I accept that, but I do not know why she decided to broaden it again. As far as I was concerned, the issue —
1675. **Mr Allister:** One of the reasons why you could not sometimes recover money was because your own staff had not covered themselves in glory. Is that not right?
1661. **Mr Allister:** Do you agree that it was quite an audacious letter for a contractor to write to their employer? It said, “We don’t like some of your staff. We want appropriate action”.
1676. **Mr McCaughley:** Absolutely. I have acknowledged throughout that that was part of the problem. Although most of the staff were excellent, on the three occasions that I had a detailed investigation into Red Sky, disappointingly, despite all our best efforts, the issue that percolated to the top was that some individual staff did not perform to the standards required, which, to some extent, let Red Sky off the hook.
1662. **Mr McCaughley:** It is quite desperate. I think that Red Sky was a little desperate at that stage, in any event. It really had to fulfil its improvement plan to maintain —
1677. **Mr Allister:** On the £260,000 reduced to £20,000 figure, you took the decision to sign that off. Is that right?
1663. **Mr Allister:** They seemed to want to call the shots in the Housing Executive.
1678. **Mr McCaughley:** Yes. It was in my delegated area of responsibility.
1664. **Mr McCaughley:** I do not think that the evidence supports the view that Red Sky ever called any shots —
1679. **Mr Allister:** Had you asked Mr Cushnahan to become involved?
1665. **Mr Allister:** I said that they wanted to.
1680. **Mr McCaughley:** I do not honestly recall, but I might have. I do not recall who —
1666. **Mr McCaughley:** They may have wished to, but that was not the case. They were under continuous scrutiny.
1681. **Mr Allister:** Why might you have?
1667. **Mr Allister:** When Mr Cushnahan wrote to your colleague threatening to wash dirty linen in public, were you aware of that letter?
1682. **Mr McCaughley:** On the basis that our dealings with some of the other members of Red Sky were circular and were not really as conducive to resolving some of the issues as they might have
1668. **Mr McCaughley:** Oh yes.
1669. **Mr Allister:** At that point, did you say to some staff, “Red Sky must have

- been. I do not honestly recall whether it was me, my assistant director or any of the other staff involved.
1683. **Mr Allister:** And you thought it appropriate to involve him, given the issues that the PAC has since adversely commented on.
1684. **Mr McCaughley:** Yes, and I still do. I can think of hundreds of private individuals and ex-public servants who subsequently worked as full-time employees even for the firms that they would have had previous dealings with, because they worked for IDB or whatever. The issue here was nothing to do with his previous role in the Housing Executive. The issue here was about how much we were owed and how much was he going to pay us.
1685. **Mr Allister:** On the issue of how much you were owed, you have heard the discussion this morning about whether installing standard kitchens and charging for higher standard kitchens was the problem or whether higher standard kitchens were actually installed. You know what Mr Kitson told us.
1686. **Mr McCaughley:** Yeah. By the way, Raymond was party to the, I think, six meetings that I had in dealing with that overpayment.
1687. I am struggling to find an analogy for the Committee to understand it. I think that the best thing to do is to say that, if you had two cars with exactly the same engine by way of output etc but one was encased in a Lada and the other one was encased in a Ferrari, they would both meet the standard and have the same output, but they would be fundamentally different products. The product that Red Sky gave us was excitingly better than anything that we had installed before. As Paddy remarked, that led me to demand a review of our kitchen standards. There was one standard — I think that Raymond said that there were two — and two prices. All you had to do was get above the standard.
1688. **Mr Allister:** So, Mr Kitson has misled the Committee in telling us that the issue was that you were paying for higher standard kitchens but only getting standard kitchens.
1689. **Mr McCaughley:** I would never suggest that Raymond deliberately —
1690. **Mr Allister:** But that is what he told us.
1691. **Mr McCaughley:** Let me explain this: to meet our standard, all you need to do is put a wooden handle on a kitchen door, but what Red Sky put on was a beautiful steel Shaker-shaped handle, which the tenants adored.
1692. **Mr Allister:** So, you are confirming to us that a higher standard kitchen was installed than what the contract was for and that that is what was then paid for.
1693. **Mr McCaughley:** I would say that it was of a higher quality. The materials used may not have been so, but the quality of the design was better.
1694. **Mr Allister:** Mr Kitson told us that there are standard kitchens and post-formed kitchens. Do you recognise that terminology?
1695. **Mr McCaughley:** Oh yes.
1696. **Mr Allister:** Right. What was installed at west Belfast: a standard kitchen or a post-formed kitchen?
1697. **Mr McCaughley:** Neither. Something different. Something which was —
1698. **Mr Allister:** Another variety.
1699. **Mr McCaughley:** Yes. Something which was not the standard. It was different, but it was not post-formed.
1700. Six months later, after the review of kitchens, everything was shifted, and the standard was upped to post-formed.
1701. **Mr Allister:** Let me ask you this: were you billed for standard or post-formed kitchens?
1702. **Mr McCaughley:** The local manager authorised the pricing at post-formed on the basis of what Red Sky provided.
1703. **Mr Allister:** But post-formed was not provided.

1704. **Mr McCaughley:** No. Well, there are many forms —
1705. **Mr Allister:** But post-formed was paid for.
1706. **Mr McCaughley:** Yeah.
1707. **Mr Allister:** So, there was a loss to the Housing Executive even in that scenario, was there?
1708. **Mr McCaughley:** You could argue that, yeah. How much? You could argue it.
1709. **Mr Allister:** So, we have Mr Kitson saying, “It was pretty clear-cut. We got standard kitchens, but we paid for post-formed kitchens”, Mr McIntyre telling us, “No, no. We got post-formed kitchens. That is what we paid for” and you telling us, “Well, in fact, it is something in between. We did not get post-formed kitchens, but we got standard kitchens with knobs on it”.
1710. **Mr McCaughley:** Of a higher quality design on some components.
1711. **Mr Allister:** You will understand that the Committee might be baffled at how we are getting three versions of the matter.
1712. **Mr McCaughley:** Yes, I do. I fully understand it.
1713. **Mr Allister:** Is that a reflection of a turmoil within the Housing Executive?
1714. **Mr McCaughley:** No. I think that it was just a reflection —
1715. **Mr Allister:** What is it a reflection of?
1716. **Mr McCaughley:** It is a reflection of a particular set of circumstances that happened in a particular district office at a particular time, which was inspected and then managed out of the system through a review of the standards.
1717. **Mr Allister:** It all sounds pretty shambolic, does it not?
1718. **Mr McCaughley:** Well, it certainly was not helpful to our relationship with Red Sky and its management. That is why the officer who authorised that was subsequently barred from any operational management.
1719. **Mr Allister:** So, what had he done wrong?
1720. **Mr McCaughley:** He had not sought central clearance on the standard that he was adopting.
1721. **Mr Allister:** He was paying for a higher standard than he got.
1722. **Mr McCaughley:** Up to a point, yeah. He was being offered a new product, and he should have got clearance from headquarters for the acceptance of that product.
1723. **Mr Allister:** I must say that I am more confused than ever about this. The head of the audit side, Mr McVeigh, gave evidence in which he said that, much to his annoyance, you altered a report — the RIU initial draft report. He said of the changes made:
- “In my view, they obscured the clear analysis that had come out of RIU’s initial draft, which indicated that there was some substance to the whistle-blowing letter’s allegations.”*
1724. He is saying that you sanitised it; you toned it down.
1725. **Mr McCaughley:** Well, what I demanded of the RIU was absolute precision in the report. We had been through a series of previous reports whereby we ended up with a figure that was much less than what we started with. That was through a process of review. Secondly, I wanted to make it totally clear what the financial impact of those results was. If we look at the two drafts, we see that exactly the same data is in both, except that, in one and not the other, you get a very clear picture of the financial impact. I am sure that the Committee has access to both drafts or can have access to them. I will put it to members that, if you look at both, you can judge whether anything cloudy has been introduced into the analysis.
1726. **Mr Allister:** What do you say to what Mr McVeigh told us? I presume that you have read it.
1727. **Mr McCaughley:** That is his opinion. My opinion is —
1728. **Mr Allister:** Well, his opinion is very clear that you sanitised it.

1729. **Mr McCaughley:** He said sanitised, but —
1730. **Mr Allister:** I am paraphrasing.
1731. **Mr McCaughley:** I changed it to make it a better report — a clearer report — and something that could be used against Red Sky and was comparative and relative as opposed to absolute.
1732. **Mr Allister:** But it was less critical of Red Sky.
1733. **Mr McCaughley:** No. My view is that it shows consistently that Red Sky was underperforming on a relative and comparative basis against other contractors. None of that comparative information was in the first draft.
1734. **Mr Allister:** I want to give you the opportunity to comment on what the Chartered Institute of Public Finance and Accountancy (CIPFA) said about the close relationship that Mr McIntyre had with you clouding his judgement and giving you a lot of leeway in how you ran the department. Do you have any comments on that?
1735. **Mr McCaughley:** I really do not accept that. I have been sent on many management courses, but I have never seen friendship as one of the factors in the efficiency and effectiveness of individual officers, to be honest. I struggle to accept what was said there. I do not know the motivation or the briefing that went on behind the construction of such a statement. I was subject to the same controls as all others. I had to produce business plans, and all my performance had to be reported, not simply to the chief executive but to the board as well every month, including how every component of my bit of the business was performing.
1736. **Mr Allister:** The report comes from CIPFA, which is a professional body. One would assume that it should have no axe to grind about these matters. Do you think it has?
1737. **Mr McCaughley:** I do not know. I do not know who briefed it.
1738. **Mr Allister:** It said that the division headed by you appears to have been operating with minimum oversight and ineffective controls.
1739. **Mr McCaughley:** I simply do not accept that.
1740. **Mr Allister:** The picture it paints is that your friend, Mr McIntyre, gave you a lot of latitude that maybe was not given to others and that you could run that department as you pleased.
1741. **Mr McCaughley:** My latitude was determined by the board and all the other arrangements that were put in place via the board about my delegated authority.
1742. **Mr Allister:** In terms of your subservience to the board, did you take Pauline Gazzard's letter to the board?
1743. **Mr McCaughley:** No. I had no —
1744. **Mr Allister:** Why not?
1745. **Mr McCaughley:** I viewed as being purely an operational matter.
1746. **Mr Allister:** That is a great phrase — “an operational matter” — but this was a contractor wanting to dictate terms about staffing within an office of the executive. That was more than an operational matter, was it not?
1747. **Mr McCaughley:** I viewed such matters as that is why they paid me: to manage problems like that away instead of taking every such issue to the board. The board was managing a huge multimillion pound business —
1748. **Mr Allister:** So, you thought that it was right to conceal that from the board.
1749. **Mr McCaughley:** I thought it was right not to present it to the board.
1750. **Mr Allister:** And from the audit committee.
1751. **Mr McCaughley:** And not to present it to the audit committee, yes.
1752. **Mr Allister:** Was that because it would have raised too many awkward questions?

1753. **Mr McCaughley:** No.
1754. **Mr Allister:** Thank you.
1755. **The Chairperson:** Colm, I just point out that the net effect of the changes minimised the levels of overpayment. That was said in the evidence last week. It was said that the changes that you made to the draft had minimised the levels of overpayment. I am just putting that on the record for you. Sometimes we skirt round things, but I just needed to say that so that you would have an opportunity to respond. You are saying that you were interested in relatively comparative —
1756. **Mr McCaughley:** Absolutely. The key figure here is about the percentage of the orders inspected that had an overpayment in financial terms. The percentage quoted in one of them against one of the districts was 25%, but what does that mean in financial terms? The answer is 4%. So, there was no point in me going to Red Sky and saying, “Twenty-five per cent of your orders are being overpaid”, when the actual answer was that 4% of the orders were being overpaid.
1757. **The Chairperson:** Fair enough. Thank you for that.
1758. **Mr Campbell:** In one of your answers to Fra McCann at the beginning of your evidence, you talked about Spectrum, a predecessor of Red Sky, and the peaks and troughs of performance. Was that specifically to do with Spectrum, or did that peak and trough happen with Red Sky?
1759. **Mr McCaughley:** It happened with Red Sky to some extent as well. If we were giving marks out of 10, earlier on in the contract, it would have been given four; it rose to about seven; and then fell back to six. So, there was a bit of a parabola going on: it was up and down. That was fairly dramatic, and I put that down to the availability of labour at the time in Northern Ireland. It just could not get the people to do the job.
1760. **Mr Campbell:** You said that one of its peaks was more in terms of emergency work.
1761. **Mr McCaughley:** Oh yes.
1762. **Mr Campbell:** Was that applicable to Red Sky as well as Spectrum?
1763. **Mr McCaughley:** Absolutely. At the time of the floods in Belfast, it was extraordinary.
1764. **Mr Campbell:** Extraordinarily —
1765. **Mr McCaughley:** Good.
1766. **Mr Campbell:** During your time, how many firms were involved in response maintenance contracts in addition to Red Sky? In timeline terms, leave Spectrum out and concentrate on Red Sky.
1767. **Mr McCaughley:** Is the timeline post-Egan or pre-Egan?
1768. **Mr Campbell:** When did the Egan contracts —
1769. **Mr McCaughley:** Really, 2004 was the threshold.
1770. **Mr Campbell:** Post that.
1771. **Mr McCaughley:** Only about 28 to 30.
1772. **Mr Campbell:** We will say 30 in round terms. I am interested in the peak and trough performance. Would there have been less volatility with the other companies? Is that what singled out Red Sky for attention?
1773. **Mr McCaughley:** Yes. No contractor can go in a straight line, because he gains and loses skilled labour, but you expect the level of volatility to be manageable. In Red Sky’s case, it proved not to be.
1774. **Mr Campbell:** Did the other 28 or 29 firms have poor performances as well as good performances, just not as extreme as Red Sky? Am I accurately depicting the picture?
1775. **Mr McCaughley:** Yes, there would have been times when we received complaints about some of the other contractors, but, again, it would have

- been for the most part short-lived, and there would usually be a good reason.
1776. **Mr Campbell:** The reason I am going down that route is that we have a copy of the letter that the BBC sent to you in June 2013. Of course, we sometimes forget that the reason all of this is going on is the BBC. They are why we are here, why we have spent the last 14 months examining this, but they never come and sit where you are. We have tried to get them, but they seem to be quite content. They kicked up a storm, and they are away in the smoke now. In the letter of 13 June to you they posed 13 questions. I have looked through them, and I do not see any of them alluding to any of the other 29 firms. Did they raise any of the firms other than Red Sky with you?
1777. **Mr McCaughley:** To the best of my recollection — I could be wrong — there was never anything raised about other firms.
1778. **Mr Campbell:** OK; but you have already said that some of the other firms had problems and issues, maybe not as extreme in volatility, either as good or as bad. Had they bad times as well as good?
1779. **Mr McCaughley:** Yes. That is another reason why I amended the audit report — to make it all relative and comparative. There was no point in isolating just Red Sky if we should have been terminating another dozen contracts. They were not of the scale and magnitude that we experienced with Red Sky.
1780. **Mr Campbell:** But none of the 13 questions in the letter from the BBC to you alluded to any of the other firms?
1781. **Mr McCaughley:** Not to the best of my recollection.
1782. **Mr Campbell:** The Chairman alluded to getting right down to the basics of the sectarian undertone in terms of a Protestant/Catholic thing. Maybe if we did that in relation to the overall issue, just so that we are absolutely clear and nobody is dodging that column, as it were. I have put it to a number of senior people in the Housing Executive that there was an underlying problem with the composition of the Housing Executive's workforce for 20-odd years. During the period that we are talking about — post Egan — the recruitment of Protestants into the Housing Executive was worse than the recruitment of Catholics into the police that necessitated a law change to get a 50:50 recruitment balance. Is that not right?
1783. **Mr McCaughley:** Yes.
1784. **Mr Campbell:** So, percentage-wise, fewer Protestants were being recruited into the Housing Executive than Catholics were into the police.
1785. **Mr McCaughley:** You really need to break that down. Those figures do not apply to technical staff. It would probably be the opposite for technical staff. In the technical professions there would traditionally be a higher percentage of Protestants than Catholics. For example, most of the architects and quantity surveyors would have been Protestant. I do not want to mislead. While that had been the case, by the end of the period in question I suspect that things had started to even out a lot, but it would depend on which bit of the organisation you worked in. At the clerical end, it was dominated by Catholics. The technical end, at one stage, was dominated by Protestants, but gradually the two, thankfully, changed.
1786. **Mr Campbell:** The reason I raised that is that the overall organisation had a recruitment practice over that period that gave a particular view to the organisation, irrespective of how various sections of it were viewed. The organisation as a whole had a perception of having a difficulty in recruiting sufficient numbers from the Protestant community at the same time as a company, Red Sky, which was viewed by most people as having a predominantly Protestant workforce, was working, among other areas, in a predominantly Catholic area. Is that right?
1787. **Mr McCaughley:** Yes, especially in my division, we were proactively seeking to recruit more Protestants.

1788. **Mr Campbell:** Yes, but the bigger picture is that there was an issue of sectarian undertone by a company that was perceived to be predominantly Protestant working in a predominately Catholic area. Once that allegation and assertion had been made, did you, or to your knowledge, did anyone else say anything like, “We better be exceptionally careful here, because we are aware of how we as a company, as an institution, are perceived in the wider context of Northern Ireland”?
1789. **Mr McCaughley:** That would continually run through your mind as a member of a public organisation such as the Housing Executive. You would be aware of that sort of situation being escalated into a major public issue, which it was not in this case. Yes, it would always be in the back of your mind. In the history of the Housing Executive, never had a case of discrimination been brought and held against us. The first thing that you always told a new member of staff was that they must never do anything that would leave the organisation in a position where it would be found guilty of some form of sectarianism or discrimination.
1790. **Mr Campbell:** Would that advice that was offered to staff have been offered to the staff members who were at the centre of the allegation by Red Sky?
1791. **Mr McCaughley:** They would have known that, and it would have been deeply instilled in them. Part of their whole psyche was that the Housing Executive was neutral.
1792. **The Chairperson:** I think that we are making a huge leap from an allegation of sectarian motivation that resulted in complaints against Red Sky to the workforce composition and so on. However, it has been aired and put on the table, and perhaps that is the best way to deal with it. It has been opened up.
1793. **Mr Campbell:** Better to be precise, Chairman.
1794. **The Chairperson:** I think that it is important that, if people have something to say, they should spit it out. However,
- I will rule when appropriate and when a line will not be continued. I want to make that clear.
1795. **Mr Brady:** Thank you very much for the presentation. There seems to be a fixation about sectarianism. I, fortunately, live in an area where we are not quite so fixated. I had never heard of Red Sky until I came here —
1796. **Mr F McCann:** You are lucky.
1797. **Mr Brady:** Yes, I probably am lucky, from what I have heard.
1798. **The Chairperson:** Please stick to the questions.
1799. **Mr Brady:** The point that I was making is that Gregory seems to be implying that there was this perception throughout the North about Red Sky. As I said, I was ignorant of Red Sky until I came here, and that is all I am saying. We would have been more concerned with the contractors in our own constituency as opposed to what somebody else was doing or not doing in another constituency.
1800. It has been said this morning that there was a problem, obviously, with Red Sky, and it was not just in west Belfast but throughout the contracts that it was doing to a larger or lesser extent. There has also been an inference that the “sectarian” element came in for complaints from west Belfast. It seems to me that public and community representatives and, indeed, tenants in west Belfast were simply more vociferous in complaining than, possibly, in other areas. Would you like to comment on that?
1801. **Mr McCaughley:** I think that the problem started in west Belfast with an under-resourced contractor who started, once he came under intense pressure, to spread the resources. What happened was that he was spreading his resources so thin that the problems started to pop up in east Belfast and north Belfast. It was swinging around the city according to where the greatest pressure was being exerted, politically, organisationally and otherwise for Red Sky. That is the best explanation that

- I can give to the Committee for what happened.
1802. **Mr Brady:** You said earlier that its capacity increased by over 200%.
1803. **Mr McCaughley:** Its workload increased.
1804. **Mr Brady:** Presumably, then, its capacity had to increase to take up on that type of work.
1805. **Mr McCaughley:** Yes. My view was that, because of the labour market at the time, they really could not —
1806. **Mr Brady:** In fairness, you did make the point that, because of the private developments that were being built at that time, people were going to the South to work in construction. I know that that was very much the case in my constituency. So, it had difficulty getting tradesmen, basically, who would be capable of carrying out the specifications that were required in particular instances.
1807. **Mr McCaughley:** Absolutely.
1808. **Mr Brady:** Would you accept that?
1809. **Mr McCaughley:** Absolutely, yes.
1810. **Mr Brady:** That is fine, thank you.
1811. **Mr Wilson:** Colm, I just take you back to what you said about the amount of overpayment and the area around the kitchens etc.
1812. **Mr McCaughley:** Yes.
1813. **Mr Wilson:** What was the legal advice that the Housing Executive received, first about how robust any assessment of overpayment could be? Was it ever drawn to your attention?
1814. **Mr McCaughley:** Yes. At the time, I think that the legal advice was clear, and it was that we were being continually undermined in our dealings with Red Sky because of officer error. Indeed, the police said the same thing to us at one stage as well, when we referred it to them for potential fraud. The police asked how we would expect them to handle it until we cleaned up our own act. So, yes, that was apparent in the £260,000. It was a significant amount of money and £47,000 or something was involved in what you would broadly call staff error. It was the whole issue of kitchens, which I will not go into again, but there was that and various other aspects concerning what was deemed to be included in the contract. Red Sky was saying one thing and staff were agreeing. My central contracts staff were saying, “You shouldn’t have approved that; it is included in the contract terms and you shouldn’t be paying for it as an extra”. So, yes.
1815. **Mr Wilson:** That being the case, was it not appropriate that you had the best people on your side and on Red Sky’s side sitting down to try and work out the mess that had been created?
1816. **Mr McCaughley:** That is exactly the stage that it arrived at. At the end of the day, this became so divisive that it was down to me, as director, to sit down with the head of Red Sky and try, as best we could, to resolve it. Absolutely.
1817. **Mr Wilson:** In light of the legal advice that you had been given and the complexity that you knew about the payment system and the mess that it was in, are you surprised at the conclusion that the Chairman of Red Sky, who had financial knowledge, should not have been the most appropriate person for you to deal with?
1818. **Mr McCaughley:** No. I repeat what I said earlier, I was thankful that the chairman of Red Sky intervened in this and helped us reach a conclusion. Yes, you are right; a legal adviser had six separate meetings — they had internal meetings — to make sure that the legal position was clear. I think his view at the time was take whatever you can get and run because, at the pace of abatement that we were hitting the overpayment with, it was going to arrive at the stage where we were going to have to pay Red Sky. So, the answer was let us clear the decks here. Let us get as much as we can and then try to start again here and manage our way through an intensely difficult situation — for staff, I add, and the contractor.

1819. It was not a happy situation, but I thought that we made enough progress at the time to move to the next stage, it being an improvement in the performance of Red Sky and an improvement in the performance of some staff. I must emphasise just some staff. If I had to do this all over again, one of the things that I would do is stop performance measuring district offices and start performance measuring individual officers in these contracts.
1820. **Mr Wilson:** The answers that Mr Kitson, you and Mr McIntyre have given have caused some confusion as to whether value for money was obtained when it came to the kitchens. I do not know whether we are talking about kitchens that are post-form, pro-form, anti-form or uniform. In your assessment, regardless of what designation you attach to the kitchens, did the Housing Executive pay the appropriate money to Red Sky for the kitchens based on what the Housing Executive asked for?
1821. **Mr McCaughley:** On a value for money basis, yes. I am not saying this, by the way, as a detached director. I went out and saw the kitchens that Red Sky installed and compared them against our normal standard. The tenant reaction to this was quite extraordinary. Indeed, we brought tenant groups to a one-day event. The problem is that Red Sky was bringing the kitchens in from England, which was cutting local suppliers out of the equation. We brought local suppliers to the table as well and, between us all, came to a new standard and a new type of relationship so that local suppliers could get their chance at the new kitchens that we were to install.
1822. **Mr Wilson:** I know that the letter came from Paddy McIntyre, but, in March 2009 — we will find out what it was in response to later on — it was indicated that termination of the contract should not be rushed into because of the administrative issues that were involved, such as the back payments, the slowness of payments, etc. What was your view about the termination of the Red Sky contract?
1823. **Mr McCaughley:** Remember that, on foot of this, I set aside all the cyclical programmes of RIU and redirected them full time to Red Sky in an attempt to try to get sufficient information. I would not have thought to terminate all the contracts. I was of a view back in 2009 that we should have gone back to where we were in 2007 and picked off the worst performing offices and terminated them but hold them in the other offices. I was not of a view that Red Sky should have been put to the sword per se back in 2009. But it was still questionable, on foot of the 2009 report — it does not matter whether it is the draft report or the final report — whether we had sufficient data and robust information represented in the way that I wanted to enable us to terminate the contracts. We probably had enough to terminate one, but, at that stage, the chief executive, Paddy, decided that he wanted more and something that he could stand up with in court and say, “This is the basis upon which I terminated one or more of these contracts.”
1824. **Mr Wilson:** Advice went to Brian Rowntree but was sent to Frances Gallagher, the head of legal services, first of all. Brett Lockhart is quoted as saying:
- “I appreciate that there are strong political pressures being exerted”,*
1825. for the termination of the contract. That was from a letter from way back in November 2010. Are you aware of where those political pressures were coming from?
1826. **Mr McCaughley:** That was after my involvement, but I can clearly say to the Committee that I was never brought under any political pressure to do anything to either keep or terminate maintenance contracts of any type.
1827. **Mr Wilson:** So, the political pressures did not occur while you were in post. It was subsequent to you.
1828. **Mr Allister:** Can you remind us when you left post?

1829. **Mr McCaughley:** From March 2010, I had no further involvement in those contracts.
1830. **Mr Allister:** Had you left the Housing Executive?
1831. **Mr McCaughley:** No, I was sick.
1832. **The Chairperson:** Colm, I have a couple of points. There were allegations of sectarian motivation for complaints coming from west Belfast, and you, Paddy McIntyre, Stewart Cuddy and others have dealt with that. You have also, in your evidence, presented that a number of complaints were coming from the Shankill area, which you mentioned specifically, mostly, I think you might have said, from the community networks. Is there any suggestion that those complaints were motivated by sectarianism?
1833. **Mr McCaughley:** No, none whatsoever. I went into the Shankill and saw the problem at first hand.
1834. **The Chairperson:** You have given evidence that there were a lot of complaints coming from that area, and all I am asking is whether those were motivated by sectarianism.
1835. **Mr McCaughley:** I can confirm that the complaints in the Shankill were totally justified.
1836. **The Chairperson:** I know. You said that about both, by the way. Given that, in your submission, you outline measures that you have put in, not least your last comments that you redirected all the RIU's focus on Red Sky, were you accused of having a sectarian motivation?
1837. **Mr McCaughley:** Me, personally?
1838. **The Chairperson:** Look at the information that you have given us in your submission. It says that you took a lot of measures, including seeking to terminate Red Sky's contract.
1839. **Mr McCaughley:** Yes.
1840. **The Chairperson:** Were you ever accused personally of having a sectarian motivation?
1841. **Mr McCaughley:** No. I was not.
1842. **The Chairperson:** That is fair enough. OK —
1843. **Mr Campbell:** I have just one point on the issue that you raised about — I cannot remember the word that you used — Red Sky's excellent performance, when you were talking about its volatility. I know that it does not happen very often, but people might commend contractors or the Housing Executive for the outstanding nature of the work. When that happened — I think you said that Red Sky was particularly good about flooding — did anybody imply that there was any sectarian differentiation about Red Sky's good performance, as well as its bad performance?
1844. **Mr McCaughley:** No.
1845. **The Chairperson:** OK. No other members are indicating that they wish to speak. Colm, as you have heard, this is our normal procedure. We appreciate your attendance this morning, providing a written submission in advance of it and dealing with the questions put to you. I know that they are sometimes very awkward and sensitive issues, so I appreciate people's ability to deal very professionally, for the most part, with all these things. This is the way we do business here. We will assess the evidence that we heard today in due course and as soon as possible. Obviously, we may want to seek further information and clarification. We have already indicated that in one aspect of the evidence today. Likewise, I give a standing invitation to you that if, at any time, you want to come back to us with any additional information or clarification, feel free to do that. Is there anything that you want to say this morning before we conclude this particular session?
1846. **Mr McCaughley:** I do not think so, Chair, other than to repeat what Paddy said. I do not think that one Red Sky makes a summer. I am still proud of the Housing Executive and all it has achieved over

many years in the public service of the  
people of Northern Ireland.

1847. **The Chairperson:** OK, Colm, thank you  
very much for that. Good luck.

## 9 October 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mrs Dolores Kelly  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Ms Jenny Palmer *Lisburn City Council*

1848. **The Chairperson (Mr Maskey):** Thank you, Ms Palmer, for being here this morning and for providing members with a written submission in advance. The briefing paper from Ms Palmer is in members' packs. In it, there are references to "2013" that should read "2011". The revised version is in the tabled papers. The references to "2013" are typos.
1849. Ms Palmer, thank you for attending this evidence session of the inquiry. I think that you have spoken to the Committee Clerk, and he has taken you through the procedure. We operate under the process of procedural fairness, which is very much the status of the evidence sessions. We do our best — for the most part we have done so quite professionally — to invite people here to deal with evidence on certain issues that we feel it necessary to address. We invited you to give us a submission on matters in advance of coming here. You will have had a chance to look at any paperwork that we thought was appropriate. We will then open up the meeting to members to ask questions.
1850. We try to do this in a way that is professional. Members are entitled to ask questions. We respect that, but we do not seek to badger witnesses or anything else. This is all about giving people — members and witnesses — the time and opportunity to give the most accurate information they can on a professional basis. If, at any time, you want to seek through the Chair clarification of a question or to take a breather, feel free to do so. Members know how we conduct our meetings. Before we start, is there anything that you want to add to your written submission by way of commentary this morning?
1851. **Ms Jenny Palmer:** No, Chair. I am happy to answer the questions.
1852. **The Chairperson (Mr Maskey):** OK. I remind members that this is phase 3 of the inquiry. We are not dealing with or reinvestigating contracts. We are not doing any of that work. We have specific terms of reference.
1853. **Mr F McCann:** Jenny, you are welcome the Committee. I was just reading through your submission, and you said that you were contacted by Stephen Brimstone, the special adviser to the then Minister, Minister McCausland, about 'Spotlight' or something coming to the board regarding Red Sky. You said that he had asked you to vote against it. Did anyone else approach you or have a conversation with you on that issue?
1854. **Ms Palmer:** No.
1855. **Mr F McCann:** There was nobody else you had spoken to who asked you what your position was on it?
1856. **Ms Palmer:** No.
1857. **Mr Allister:** I have a couple of preliminary points to clear up. You are still on the board, are you?
1858. **Ms Palmer:** Yes.
1859. **Mr Allister:** How long have you been on the board?
1860. **Ms Palmer:** Since November 2007.

1861. **Mr Allister:** You have been on the audit committee.
1862. **Ms Palmer:** Since January 2010.
1863. **Mr Allister:** You are still on the audit committee.
1864. **Ms Palmer:** Yes.
1865. **Mr Allister:** Therefore, you had quite a working knowledge of the background to the Red Sky issue.
1866. **Ms Palmer:** Yes.
1867. **Mr Allister:** It has been suggested — there were meetings with politicians in the Housing Executive at which this line was promoted — that the termination of Red Sky’s contract was in some way motivated by a sectarian motive. What do you say to that?
1868. **Ms Palmer:** I would have to say that, in all the time that I was involved in the investigations with audit, internal audit and all the external bodies associated with the investigations around Red Sky’s contracts, I never, ever heard any suggestion about sectarianism in the boardroom, from management or in audit. I myself did not know that Red Sky was a Protestant firm in east Belfast. I knew that it was called Project Young initially, but laterally, whenever the investigation went to external review, I became aware that it was Red Sky. However, I did not know until the April decision to terminate the contract that Red Sky was a Protestant firm.
1869. **Mr Allister:** Had anyone sought to lobby you about the April decision, which was the decision to terminate?
1870. **Ms Palmer:** No, not at that time.
1871. **Mr Allister:** Not at that time.
1872. I now come to the crux of the matter, which is the telephone call on 1 July. That came out of the blue to you, is that right?
1873. **Ms Palmer:** Yes. I was in Drogheda with Minister Wilson and some of his colleagues and my colleagues at the time. I was walking and having a lovely tea after the launch of the new open garden. My colleague then came to me, and he had his phone, and he said, “Jenny, there is a guy here who wants to have a chat with you”.
1874. **Mr Allister:** Who was the colleague? Was that Councillor Ewart?
1875. **Ms Palmer:** It was.
1876. **Mr Allister:** Councillor Ewart at that time was still himself a special adviser to Minister Wilson, is that right?
1877. **Ms Palmer:** Yes.
1878. **Mr Allister:** The call had come to his phone.
1879. **Ms Palmer:** Yes.
1880. **Mr Allister:** Did Councillor Ewart tell you who was on the phone?
1881. **Ms Palmer:** No, he did not. He just said that there was a guy who wanted a wee chat with me. I took the phone from him, and that is when the conversation began. I walked out into the garden, because of the noise in the building, to listen to the conversation.
1882. **Mr Allister:** Presumably, he told you who he was.
1883. **Ms Palmer:** Yes, he said that he was Stephen Brimstone. I knew Stephen Brimstone’s name, because of ministerial work around DSD, but I had never met him. He said to me, “I am Stephen Brimstone. Jenny, we have never met, and it is too late now to do so, and perhaps we should have done” and then he proceeded to ask me.
1884. **Mr Allister:** Did he tell you that he was the Minister’s special adviser, or did you know that?
1885. **Ms Palmer:** I knew that.
1886. **Mr Allister:** You knew that. He did not say that.
1887. **Ms Palmer:** No.
1888. **Mr Allister:** Did he say whether he was ringing at anyone’s request or on anyone’s behalf?

1889. **Ms Palmer:** Not really. In the conversation, after he had introduced himself and said that we should meet, that we had not had time to meet and that maybe we should have done, he basically said, “But I need you to go into the boardroom on Tuesday, go against the decision of the board to terminate the contract and ask for an extension to the contract”. I asked him then, because I was a bit shocked and taken aback by it, to repeat that, and he repeated it. I was unaware of a board meeting being tabled for Tuesday, and I said, “The board does not meet on a Tuesday”, and he said, “It will this Tuesday, and we need you to do this”. I said, “I am sorry, I don’t think that I can do this”.
1890. **Mr Allister:** Did he indicate who “we” were?
1891. **Ms Palmer:** No.
1892. **Mr Allister:** We now all know that what was coming up at that meeting was a proposal that the Red Sky contract should be extended and that that was what the vote was going to be on. What you were being asked, as you have conveyed to us, was that you should vote for the extension of the contract —
1893. **Ms Palmer:** Yes.
1894. **Mr Allister:** — to keep Red Sky as the contracted party.
1895. **Ms Palmer:** Yes. I said that I did not think that I could do that. It was then that he became aggressive. His language was more abrupt. In fact, it was intimidating when he said, “Look, there is no point in you being on the board of the Housing Executive unless you are prepared to do what the party needs you to do”.
1896. **Mr Allister:** At that point, it was pretty clear to you by whom and why you were being asked to do this.
1897. **Ms Palmer:** Yes.
1898. **Mr Allister:** Had you any sense of whether Mr Brimstone was on his own when he was making that call?
1899. **Ms Palmer:** To be fair, I did not know.
1900. **Mr Allister:** You had no idea, and there was nothing that happened that would have indicated that.
1901. **Ms Palmer:** No. I did not hear any background.
1902. **Mr Allister:** There was no background. He told you that the party comes first, is that right?
1903. **Ms Palmer:** Yes.
1904. **Mr Allister:** What did you understand that to mean?
1905. **Ms Palmer:** That my obligation was to the party first and foremost as opposed to my membership of the board, which is, in itself, ridiculous. It brought into question my integrity and the work that I had been doing on the audit’s integrity, as well as that of the external investigation and the board.
1906. **Mr Allister:** Remind us how you came to be on the board.
1907. **Ms Palmer:** It was as a representative through Lisburn City Council. I was nominated to the board of the Housing Council. As a Housing Council member, I was then nominated by the DUP group to go forward for interview for the position on the board. All four main political parties had a representative on the board, but that is where the party’s affiliation to me would end, because, as a member of that board, my paramount obligation would be to it.
1908. **Mr Allister:** Yes. He said to you that the party comes first. I think that you also told ‘Spotlight’ that he said to you, “You do what you’re told”. Is that correct? Did he say that?
1909. **Ms Palmer:** Yes.
1910. **Mr Allister:** What he was telling you to do was to vote to extend the contract of Red Sky.
1911. **Ms Palmer:** Yes.
1912. **Mr Allister:** He was aligning, was he, the party interest in what he wanted you to do on behalf of the party with the Red Sky interest of extending the contract?

1913. **Ms Palmer:** Local councillors are pretty isolated from our MLAs and Ministers. We really only get to meet our MLAs and Ministers so many times in the year. I did not really know, except for the media around it and the information that was provided through the Red Sky investigations, what my party's stance was on the contract. No one had approached me or spoken to me up until the point of Mr Brimstone's call.
1914. **Mr Allister:** Did you think that, if the party had a stance on that contract, it would be relevant for you as a board member?
1915. **Ms Palmer:** I had my allegiance to the board first and foremost. At the end of the day I am a political representative, and my integrity is important to me. It may not have been important to Mr Brimstone.
1916. **Mr Allister:** You used the word "aggressive".
1917. **Ms Palmer:** Yes, he was.
1918. **Mr Allister:** In his language and in his tone.
1919. **Ms Palmer:** His tone. His voice changed from the moment that I said that I did not think that I could do what he had asked me to do. He became more aggressive, and that is when he said, "Look, there is no point in you being on the board of the Housing Executive unless you are prepared to do what we need you to do. The party comes first in this instance, and you have to go into the boardroom on Tuesday, go against the decision of the board to terminate Red Sky and ask for the extension".
1920. **Mr Allister:** When you said, "I don't think that I can do that" or "I won't do that", what happened?
1921. **Ms Palmer:** He said that he would ring me later that evening. That phone call never came. I gave the phone back to Allan — Alderman Ewart — and said to him that I was probably going to have to resign from the party as a consequence of that phone call.
1922. **Mr Allister:** You were upset.
1923. **Ms Palmer:** Yes. He said to me, "Jenny, don't be silly. Take a deep breath and think who you could contact". I said, "I do not know who I could contact". From the media, I knew the big players in the DUP around Red Sky, and so I did not feel that I had anyone in Stormont whom I could approach.
1924. **Mr Allister:** Minister Wilson was there that day. You did not speak to him.
1925. **Ms Palmer:** No, I did not.
1926. **Mr Allister:** And the phone call never came.
1927. **Ms Palmer:** The phone call never came.
1928. **Mr Allister:** What did you understand the purpose of the second phone call would be?
1929. **Ms Palmer:** I assumed to try to persuade me again.
1930. **Mr Allister:** You have told us that, on 5 July, you went to the board, had a conversation with the chairman and excused yourself from the meeting.
1931. **Ms Palmer:** Yes.
1932. **The Chairperson (Mr Maskey):** Jim, I want to bring in other members. Ask another question, and I will come back around to you again.
1933. **Mr Allister:** OK. Briefly fill the gap for us from there until you spoke to the BBC.
1934. **Ms Palmer:** Goodness. It was quite a gap. I thought that I had not been punished by the party for not carrying out the wishes of Mr Brimstone and that everything had moved on. Then Mr Dillon, a councillor in Lisburn, came to me and said, "Guess who I had at my house last night". I said, "Tell me, Jim". Jim and I are friends. He said, "I had the BBC at my house", and I replied, "What were they looking for you for?". He said, "They were looking for you". I said, "What do you mean they were looking for me?", and he replied, "They had a dossier this thick. Your name was in it at least 12 times, and they want to interview you". I said, "What is it in relation to?", and he said, "It is to do

- with the Housing Executive contracts and Red Sky". I said, "Goodness" and went straight to Allan, because Allan is a good friend as well.
1935. **Mr Allister:** Allan Ewart.
1936. **Ms Palmer:** Yes. I said, "Allan, what am I to do here?", and he said, "Come you up to Stormont and talk to our PR team, and they will give you advice". I said, "I'll only go there if you come with me". I came into this Building and met two representatives of the DUP's PR team, media coverage and all that jazz. I told them my concerns and was basically told, "Don't be silly. We wouldn't ask you to do anything immoral or corrupt". I said, "But you have", and he said, "No, just tell them to stick it in an email, and we will respond to it".
1937. **Mr Allister:** "We will respond to it" — meaning the party.
1938. **Ms Palmer:** Yes, they said that they would respond to it on my behalf. Allan looked at me, and we walked out of that room. Allan said, "At least you tried". He and I travelled together on the way back, and I said, "What will I do, Allan?", and he said, "Do what the party asked you to do: ask the BBC to contact you by email and say that you will answer questions through email".
1939. I went to the planning committee that night, and Jim Dillon was there. He was the link with the BBC, because I had not had any links with the BBC at that point. I said, "Jim, here is my business card. When you speak again with the BBC, tell them to put any queries or comments to me in an email". He said, "I think you're wrong to do that, Jenny". I said, "Look, please, that's what I want to do at this point in time". He did so, and, two or three days later — I cannot remember exactly, but it was within the week — two vehicles drove into my driveway. One was a Mercedes van with no markings on it, and the other was a car. My son has a business that repairs cars. I said to my son, "John, there's a customer leaving a car off". I was on the computer doing some emails, and I heard him say, "Oh, it's my mum you want to speak to". I went to the front door, and it was blowing a gale. The people looked like just a normal husband-and-wife team to me. I did not recognise any of them. I said, "Oh, is it a constituency matter?", because they had asked me, "Are you Jenny Palmer?". I said, "Yes" and asked whether it was a constituency matter. They said, "Well, sort of. Could we have a chat with you, Jenny?". I said, "Look, step inside". I brought them into my hallway thinking that it was to do with my work as a councillor. The lady said to me, "Jenny, I'm Mandy McAuley". I think that she was a bit shocked that I did not know who she was. I said, "Right, OK. What's it about?". She said, "Can I introduce you —", and I thought that she was going to say to her partner or husband, but she said, "Can I introduce you to my producer?". It was only then that I realised who was in my hallway. I said to them, "I thought that the issue that you wanted to speak to me about was a constituency matter, and I feel a bit vulnerable now that you're in my hallway and are representing the BBC. I might have to ask you to leave, and I hope you don't think that I'm going to be rude". Mandy said to me, "Jenny, listen. You are not" — I cannot remember the phrase, I probably will remember it — but Mandy said, "Listen, Jenny, can we show you a video of a recording we've done with two people? After that, we'll leave if you want us to leave, but we think you should give an interview, because Jenny Palmer may not be believed within the programme if you don't say the truth". I looked at the video. My daughter and John were with me.
1940. **Mr Allister:** John is your husband.
1941. **Ms Palmer:** I looked at the first video. I could not hold back the tears, because I knew how passionate the man was. She recognised that I was upset by watching the video, and she then showed me the second video. I said to my daughter, "Hannah, what am I to do?". My daughter said, "Mum, you've done nothing wrong. You tell the truth". I gave the interview that day to the BBC. They brought their lights and stuff out of the van.

1942. **Mr Allister:** Do you stand over everything that was on the programme from you?
1943. **Ms Palmer:** Yes.
1944. **Mr Allister:** Do you want to shed any light on who the two videos were with?
1945. **Ms Palmer:** The first one was the chairman, Brian Rowntree, and the other was Ross Hussey.
1946. **Mr Allister:** Yes.
1947. **The Chairperson (Mr Maskey):** OK, Jim. I want to move on to other members, in fairness to them.
1948. **Mr Allister:** OK. Thank you.
1949. **Ms P Bradley:** Jenny, I know what it is like to be a councillor. As you know, I was a councillor from 2005 to 2011. I know that sometimes you do not get to meet all these people and that telephone conversations are very difficult when you do not have a personal relationship with them. You know of them, but sometimes you have not met them. How did you feel after that telephone call from Stephen?
1950. **Ms Palmer:** Fearful, annoyed and angry. I went through a whole range of emotions. Immediately after the phone call, I left the event with my husband, and we drove down to Stormont, because we had a meeting at Stormont that day with the Causeway Institute. I was invited to join the Causeway Institute by my MP. That was our meeting. I went straight down there and spoke to my MP briefly afterwards.
1951. **Ms P Bradley:** You said earlier that you have a good relationship with Allan Ewart. I know Allan very well and would call him a trusted friend also. At the time of the telephone call, you were with Allan. You said that you did not speak to him —
1952. **Ms Palmer:** I did.
1953. **Ms P Bradley:** You did speak to Allan directly after the phone call.
1954. **Ms Palmer:** I told Allan that I was going to resign from the party because of the manner of the phone call.
1955. **Ms P Bradley:** But Allan then talked you out of it.
1956. **Ms Palmer:** Yes. He said, “Don’t be silly, Jenny. You need to speak to someone”.
1957. **Ms P Bradley:** I was fortunate when I was a councillor. We had an MLA on my council, Paul Girvan, who was an extremely good friend of mine. I would have talked to him about anything that we were passing through council. Quite often, you need to speak to your MLAs, because some of the legislation is being passed down from here. Did you have that type of relationship?
1958. **Ms Palmer:** I had a very good relationship and still have with my MLAs. However, the MLAs did not involve themselves in the business of the Housing Executive. The MLAs directly dealt with constituency issues that would impact on the council.
1959. **Ms P Bradley:** OK.
1960. **Ms Palmer:** On the day — I am trying to remember whether it was on the day or whether it was the Monday afterwards — I spoke to Edwin and Jonathan Craig outside the Bridge Community Centre, to say briefly that I was in a bit of a pickle and to ask for some advice. Their advice was that it was over their head. They said that I was doing the right thing in the pathway that I had chosen. They knew briefly.
1961. **Ms P Bradley:** But did not offer you any advice.
1962. **Ms Palmer:** They could not. They did not know how to handle it. They were only new to the job themselves.
1963. **The Chairperson (Mr Maskey):** Sorry, you said Edwin.
1964. **Ms Palmer:** Edwin Poots.
1965. **Ms P Bradley:** He was a councillor then, as well as an MLA.
1966. **Ms Palmer:** As was Jonathan.

1967. **Ms P Bradley:** How long did your phone call with Stephen last?
1968. **Ms Palmer:** Only a few minutes. It was only enough time for him to repeat what he had asked me and then tell me that he would ring me later.
1969. **Ms P Bradley:** After you —
1970. **Ms Palmer:** Probably no more than about four or five minutes in total. Remember that Allan had the phone before he passed the call to me, and, before I responded to it, I went out into the garden. It could have been four or five minutes, but I do not know. My phone call, after the initial conversation, was only about two or three minutes.
1971. **Ms P Bradley:** You said in response to Jim that, when you received the information from the BBC, you then had a meeting with the PR people in our party. You did not feel then that they had given you any steer on that. Did you ask to speak to anyone else? Did you bring the matter up with Allan or your MLAs to say that you needed further clarification or a further meeting?
1972. **Ms Palmer:** I did speak to Allan, on the way home. Allan said to do what they had asked me to do.
1973. **Ms P Bradley:** How long have you been a councillor, Jenny?
1974. **Ms Palmer:** Since 2007.
1975. **Ms P Bradley:** Therefore, you know the party structures. As a councillor, if I needed to speak to someone, I knew whom to lift the phone to and get it resolved.
1976. **Ms Palmer:** We have group leaders.
1977. **Ms P Bradley:** After the programme was aired, there was a meeting again with Stephen Brimstone. Is it correct that he was present at the meeting? Was it maybe at party headquarters?
1978. **Ms Palmer:** Yes. There was a meeting initially with the party leader. Jeffrey Donaldson and I agreed to meet him, off the Newtownards Road.
1979. **Ms P Bradley:** At headquarters. OK.
1980. **Ms Palmer:** After that meeting, we had a very good conversation about the issues. The party leader asked me whether I would be prepared to meet Stephen. He was going to talk to Stephen and asked would I be prepared to meet Stephen. I said yes, if my MP was present.
1981. **Ms P Bradley:** You had a good relationship with Jeffrey as well.
1982. **Ms Palmer:** Yes.
1983. I went away from that meeting and then received a phone call. Jeffrey was the mediator from that point on. A meeting was set up with Mr Brimstone, Peter, me and Jeffrey. Gavin Robinson was there, representing the party leader, I think. Jeffrey had phoned me that morning to say that his flight had been delayed and there was a possibility that he would not make it in time. I said, “Well, if you are not there, I am not there”. He said, “Look, I’ll be there. Meet me at the cafeteria on the Newtownards Road”. Is it the Newtownards Road that runs around to Belmont?
1984. **Ms P Bradley:** The Belmont Road.
1985. **Ms Palmer:** I do not know Belfast that well.
1986. I met him there, and we went upstairs for a quick coffee before we went across to the party leader. We went to the top of the stairs and saw Stephen Brimstone and Gavin Robinson sitting talking to each other. I thought it was unusual that the legal adviser for the party leader and Stephen were talking together before we went in to talk, but Jeffrey and I turned on our heels and went a few doors down the street to another wee cafe and had a coffee in there. We just got our head around what the process would be.
1987. **Ms P Bradley:** OK. I believe that you received an apology for any offence that had been caused to you. Is that correct?
1988. **Ms Palmer:** I received an apology from — if you do not mind, I will take you through the conversation.
1989. **Ms P Bradley:** That is fine.

1990. **Ms Palmer:** When I arrived, I sat here; Peter sat where Gregory is; Gavin sat beside Peter; Stephen sat where Jim is; and Jeffrey Donaldson sat beside me. Peter asked Stephen to start the conversation. Stephen said, “Well, Jenny, I am a Christian and, if I have done anything to offend you or to cause you stress, I am sorry for that and I apologise for that”. He said, “It’s two years now since that conversation, and I can’t really recall that conversation”. I said, “Let me remind you, Stephen”, and I gave it to him verbatim. Peter looked at him and said to him, “Stephen, what have you to say?”. Well, he agreed then that my account was practically right. He agreed that it was very much what happened. Peter then said, “We need to do something around getting a statement out and an apology out to protect Jenny’s integrity and recognise her work on the board”. It would be agreed that Jeffrey Donaldson and Gavin would liaise between the two parties and that we would have a statement released. That is where it was left. Jeffrey was the mediator for me.
1991. **Ms P Bradley:** The apology was accepted and —
1992. **Ms Palmer:** Well, the apology was only —
1993. **Ms P Bradley:** Did you want anything further than that?
1994. **Ms Palmer:** The apology really only acknowledged that he had maybe caused me stress.
1995. **Ms P Bradley:** OK.
1996. **Ms Palmer:** The apology was not for what he had asked me to do.
1997. **Ms P Bradley:** Right, OK. To go back to your involvement on the Housing Executive board, you said that you had been on it for some time. Were you put on it just as a Lisburn city councillor or as a DUP —
1998. **Ms Palmer:** I am just a councillor. It just goes through; it is whoever is nominated.
1999. **Ms P Bradley:** OK. I just wanted to clear that up. When the BBC doorstepped you at your home, which I am sure was difficult, was hard —
2000. **Ms Palmer:** I did not know who they were, so —
2001. **Ms P Bradley:** — when you did find out. They did not tell you at all who they were. They just —
2002. **Ms Palmer:** They just asked —
2003. **Ms P Bradley:** — came into your home without even telling you.
2004. **Ms Palmer:** To be fair, I invited them into my home, because it was blowing a gale. I did not know them; I thought that they wanted to talk to me about a constituency matter. I regularly meet some of my constituents in my home or their home because I do not have an office. It was not unusual for me to bring someone into my home; it was unusual only in that I did not recognise them as BBC. Then it played out.
2005. **Ms P Bradley:** If, on the board, you had followed the instructions that Stephen asked you to follow — I know that you did not — would it have made any difference?
2006. **Ms Palmer:** I have been asked that so many times.
2007. **Ms P Bradley:** Is the decision made by the board a collective one? Would it have been voted on? Would it have made any difference at all?
2008. **Ms Palmer:** No, it would not, but, then again, why ask me, if it was not going to make a difference to the board’s decision? That is where I think the sectarian card might have been played.
2009. **Mr Brady:** Thanks for your evidence so far. I have a couple of questions. After the phone call, you approached Brian Rowntree, who was the chair at the time, and explained to him the situation. He said that you could excuse yourself from the board because, obviously, there was an issue there. Did you speak to any other people, or did you speak to any officials or other people, maybe from the Department or anything, about that?

2010. **Ms Palmer:** Sorry, can you repeat that?
2011. **Mr Brady:** Did you talk to anybody else apart from Brian Rowntree? Did you approach anybody or speak to anybody from DSD?
2012. **Ms Palmer:** No, I spoke with Brian, and I spoke with my MP.
2013. **Mr Brady:** In your evidence, you mention the DFP factual report on the special adviser. Were you given assurances that you would be made aware of the outcome of that?
2014. **Ms Palmer:** Yes, I was. I met Colin Lewis and Barry Mulligan on 30 August at Royston House to go through and give an interview with them. That is my copy of the interview. I got two copies, one to sign off for the report and one that I kept myself. At the time, I asked the questions. DFP has conducted this because there may be a possible conflict of interest in DSD and with the Minister's office. Yes, I was given assurances that, when the report was done, that report would go to the permanent secretary. I asked which permanent secretary, and they said that it would be Will Haire. I said that that surely could not be right because he was the permanent secretary of DSD. He said, "No, Jenny, he has to have it because of the contractual arrangements with Mr Brimstone's work". I asked when I would see the report, and he said that within a couple of weeks of them submitting the report, I should have oversight of the report, at least for accuracy within it. I said that that was fine.
2015. I gave my interview, and it progressed. I asked them how many they intended to interview, and he said, "Jenny, we cannot reveal anything around the report". I said that I was not asking for names but for how many he intended to interview, and he said three. I knew that that would be done in a pretty quick space of time. The letter and the copy was sent to me and was dated 4 September 2013, and my interview with them was on 30 August. On the day before the September board meeting of the Housing Executive, I got a phone call from one of the guys — I cannot remember which one. He said, "Jenny, we have conducted the inquiry, and we need you to check the final report and sign off on it before we take it to the permanent secretary. We intend to take it to the permanent secretary on Wednesday afternoon". I said that I would be at the board of the Housing Executive on Wednesday morning and that, if he met me in the lobby, I would look at the document and sign it. That is exactly what happened, and I told him then that the report had been contaminated in my eyes, and that it was not worth the paper that it had been written on. They said that they would take note of my concerns around the report and that they would report it to the permanent secretary.
2016. **The Chairperson (Mr Maskey):** Before Mickey comes in, can you elaborate on what you meant when you said that the report was contaminated?
2017. **Ms Palmer:** Yes. I chair the Housing Council's housing and regeneration committee. On the Thursday prior to signing off the document, the committee met. At that meeting, DSD was in attendance, and at the lunch afterwards a DSD official approached me and asked me whether he could ask me a personal question. I said, "Yes, fire away". He said, "Jenny, do you know anything about an email that was sent to the chairman of the board of the Housing Executive on the morning of the Tuesday that the Red Sky contract was terminated by the board?". I said, "Yes, sure it was your office that sent it on behalf of Mr Brimstone". He said, "You know, he is going mad in the Department trying to find it". I asked, "Who's going mad?", and he said, "Mr Brimstone's wanting to find out where that email is, and he wants to view it". I said, "Well, it was a DSD email, so you should have it within your system".
2018. I had never spoken to anyone about that email — ever — until that DFP report and investigation. I assumed that Mr Brimstone had been interviewed by the same two people, that they had used some of my evidence to tease out his

- interview, had told him about that and that he had panicked and gone into the Department to look for it and had caused a stir. So I knew then, and I told him that the report had been contaminated and that I did not trust it to go anywhere.
2019. **The Chairperson (Mr Maskey):** Thank you.
2020. **Mr Brady:** Who was that official?
2021. **Ms Palmer:** I would prefer not to say at this point in time. The same official may be called to give evidence at another time.
2022. **Mr Brady:** I have a final question. Have you seen a copy of the final report?
2023. **Ms Palmer:** No.
2024. **Mr Brady:** As far as the Committee is aware, that has been with the Minister's office since September last year. We have not seen it and you have not seen it, yet you were given assurances that you would get a copy of the final report.
2025. **Ms Palmer:** Yes.
2026. **Mr Brady:** Thank you.
2027. **Mr Dickson:** Jenny, thank you for coming to us today and for the information which you have given to the Committee.
2028. In respect of your role on the audit committee, did you have previous audit experience? Why were you chosen, or was that something you volunteered for?
2029. **Ms Palmer:** I volunteered. I did that simply because the board was under strength in its membership, because the Minister had not allocated the independent membership to the board. We were left with a very small board. I think that we were three members down, and there was an issue about appointments. Therefore, the board was in need of someone to sit on the audit committee, and the chairman asked if there were any persons who would volunteer to go on to the audit committee. I volunteered.
2030. **Mr Dickson:** Did you have previous audit experience in Lisburn City Council, in your business life or anything like that?
2031. **Ms Palmer:** Only in strategic policy in my business life. We have a family business, so I understood quite a bit about the work of it. I was also keen to learn, which I suppose added another string to my bow, and knew the competencies around the role. So, yes, I threw myself straight into it.
2032. **Mr Dickson:** When the audit committee and the Housing Executive came to the discussions about the Red Sky contract, and before the phone call you received, had you concluded in your own mind and with your colleagues that the correct course of the action was to terminate that contract?
2033. **Ms Palmer:** Yes, that decision was based on the evidence of the internal and external investigations and the fact that Red Sky did not cooperate in trying to recognise and repair the faults in terms of overcharging and poor workmanship. Red Sky had basically told us that they did not recognise that it owed the Housing Executive money and that it had overcharged. Indeed, they told us that we owed them money. We had no other option, because it was public money.
2034. **Mr Dickson:** Setting aside your personal integrity for a moment in terms of doing what you were asked to do that by Mr Brimstone, presumably it would have seemed exceptionally odd if you had gone into a meeting and attempted to reverse that decision.
2035. **Ms Palmer:** That was my whole point. That was what I was fearful of. I had been on an audit committee since 2010. The problems had been historical, not just with Red Sky but with contracts and with overcharging. If I had basically gone against the board, that would have brought into question the whole ethics around the audit committee, internal audit, RIU and the external VB Evans reporting evidence to ASM Horwath. All that work would really have been made to look very foolish.
2036. **Mr Dickson:** You would have been attempting to say the exact opposite on stuff that you had presumably agreed

- with and commented on, and would have had to look for justifications for saying that.
2037. **Ms Palmer:** I felt that I was a small cog in government. With all the legal advice going and froing between the Department and the Minister on Red Sky and the contracts, the unacceptable standard of repairs and overcharging, there was no other option for us to take.
2038. **Mr Dickson:** Moving on to the day that you took the telephone call, you were with Allan Ewart on that day. Did he give you any prior indication about what the conversation would be about?
2039. **Ms Palmer:** No.
2040. **Mr Dickson:** He then handed you the phone and you had the conversation with Mr Brimstone. You then handed his phone back. Were you in some distress? You commented that you felt that you had to resign at that point.
2041. **Ms Palmer:** Allan saw me when I gave the phone back to him and knew that I was close to tears. Some of us cry when stress develops. He was the one who instigated the conversation. He said, "What's wrong?" I told him, and he said, "Don't you resign."
2042. **Mr Dickson:** Did you tell him what the content of the conversation was?
2043. **Ms Palmer:** Yes.
2044. **Mr Dickson:** What was his reaction? Do you think that he was unaware that that was going on in the background?
2045. **Ms Palmer:** Allan is such a laid-back character. He is a lovely guy. He just looked at me and said, "Jenny, who can you go to to get this resolved?". I told him that I did not know. I could not go to anybody in Stormont, because I knew the big players from around the Red Sky contracts in the media from the party. He suggested that I should go to certain members, but I told him that I could not as I do not feel comfortable doing that. He said, "Well, look, go and see your MP". Allan told me to go and see Jeffrey.
2046. **Mr Dickson:** And you did.
2047. **Ms Palmer:** Yes; that day. I rang Jeffrey on the way from Drogheda. I was not going to attend the Causeway Institute, because I was in Drogheda and thought that it would be quite a full day. However, because of the stress of the telephone call, I left Drogheda at 1.00 pm and arrived at Stormont at just after 2.00 pm.
2048. **Mr Dickson:** What advice did Mr Donaldson give you at that stage?
2049. **Ms Palmer:** Jeffrey and I had a private conversation. He said, "Jenny, we just need to make sure that you are protected and that your integrity is intact and protected. As a consequence of that, you need to speak to your board chairman and advise him of the phone call". That is exactly what I did. I met Brian early on the fifth, about half an hour before the main meeting. He said, "Jenny, I think that there is a conflict of interest here, because it is your party that are pursuing the extension of the contract. As such, I am going to ask you to leave before the board begins to discuss it". And that is what happened.
2050. **Mr Dickson:** Do you know whether Mr Rowntree explained to the board at that meeting why you believed you had a conflict of interest? What was his reason for saying that you were to be absent at that point of time to the board?
2051. **Ms Palmer:** He believed that I was compromised in terms of the decision that the board was about to take and that I was conflicted with the party line and the board.
2052. **Mr Dickson:** Is that what he said to the board at that time?
2053. **Ms Palmer:** Yes. He told the members that I had had a phone call.
2054. **Mr Dickson:** OK, so he explained that to them.
2055. **Ms Palmer:** Yes.
2056. **Mr Dickson:** I just wanted to be clear about that. When Mr Brimstone made his call to you and, I suppose, in the subsequent conversations that you had around that did you believe that this was just Mr Brimstone asking you to do this,

- or did you think that this was coming from somewhere else and that he was just the messenger?
2057. **Ms Palmer:** I always believed that, if he was a ministerial aide and a political adviser to the Minister, I did not comprehend that he was speaking on his own.
2058. **Mr Dickson:** OK. You do not believe that he was speaking on his own.
2059. **Ms Palmer:** No. That is why I could not go to anyone.
2060. **Mr Dickson:** OK. When you moved to the situation of your meetings with the party leader and Jeffrey Donaldson — Mr Donaldson was supporting you in those meetings — you told us about an encounter with Gavin Robinson. That is not Mr Robinson's son, sure it is not.
2061. **Ms Palmer:** No, this was the Lord Mayor of Belfast.
2062. **Mr Dickson:** Yes, the Lord Mayor of Belfast. Why were you concerned — you expressed a little —
2063. **Ms Palmer:** I was a little bit shocked to see that I was going to try to resolve an issue in a private conversation, only to walk into a cafe and see that my party leader's solicitor was sitting with Mr Brimstone, and that worried me. I was probably a bit paranoid at that stage and I did not know who to believe; I did not know who to trust. It just did not look as though things were going to get resolved.
2064. **Mr Dickson:** So you felt that his presence was not a helpful presence.
2065. **Ms Palmer:** Well, within the structure of the meeting I had no issue; it was just seeing him in the cafe having a quiet chat with Mr Brimstone. They could just be friends, I do not know, but I was concerned and I said to Jeffrey, "I am not comfortable here". He said, "Let's go to another cafe."
2066. **Mr Dickson:** Thank you very much.
2067. **The Chairperson (Mr Maskey):** Before I bring in other members, something
- came up in the last discussion there and, just for the record, I want to try to establish that you referred to an email. This is important because we have had evidence in the last couple of weeks. Is the email that you referred to the email that was from Michael Sands? It is at tab 10 of your packs, members. I will pass you down a copy, Jenny, if you do not mind.
2068. **Mr Allister:** I have a spare one.
2069. **The Chairperson (Mr Maskey):** This relates to the evidence that Michael Sands gave that he, in response to a communication from Stephen Brimstone, had contacted the Housing Executive on behalf of Stephen Brimstone. I am just trying to establish whether that is the email that you were referring to which, according to you, Stephen Brimstone was looking for.
2070. **Ms Palmer:** Yes it was, because it says clearly, "Brian, the Minister's SpAd thinks", not the Minister. I believe that that is the email that Stephen wanted.
2071. **The Chairperson (Mr Maskey):** I just wanted to put it on the record that that is the email that you were referring to, because it relates to the evidence that Michael Sands gave here a couple of weeks ago, in which he said a number of things.
2072. We will come back; I just wanted to put that on the record.
2073. **Mrs D Kelly:** I apologise for being late, Jenny. I want to commend you because I know that you have been put in a very difficult situation, and I want to thank you for your integrity on behalf of the public.
2074. There is one other point that I wanted to raise. I note the email from Mr Sammy Douglas, who has absented himself on the basis that there may be a conflict of interest.
2075. **The Chairperson (Mr Maskey):** We heard that earlier.
2076. **Mrs D Kelly:** When I came in, I noticed that Jenny mentioned Mr Wilson being at a meeting, and I wondered whether there

- was any conflict of interest in Mr Wilson being here to ask questions as well.
2077. **The Chairperson (Mr Maskey):** We dealt with the issue of conflicts of interest earlier —
2078. **Mr Campbell:** Before Dolores came.
2079. **The Chairperson (Mr Maskey):** — and, just for the record, and I will not dwell on it too long —
2080. **Mr Wilson:** Late as usual.
2081. **The Chairperson (Mr Maskey):** — members are asked to declare any interests that are relevant to the agenda. It is up to them, obviously, to do that. It is my job as Chair to ask that question, as I do at every meeting. It is the members' responsibility exclusively to identify any conflicts of interest that there are. If anybody thinks that there is more to be addressed, they have to take that straight to the Clerk of the Standards and Privileges Committee.
2082. **Mrs D Kelly:** Chair, I just want to put it on record that, given the approach taken by Mr Douglas and what we now find, it is a matter that should be taken.
2083. **The Chairperson (Mr Maskey):** OK, we can address that.
2084. **Mrs D Kelly:** Jenny, Stewart covered a wee bit of this, but it is very clear that you do not believe that Stephen Brimstone acted off his own bat. At some of the tripartite meetings that were facilitated by Jeffrey, with the party leader, Gavin Robinson and Stephen Brimstone, I wonder whether at any time it was made implicit or explicit that Stephen Brimstone was acting off his own bat. Did any of the others say, "Stephen, you did wrong. You stepped out of line, and you should not have done it"?
2085. **Ms Palmer:** No.
2086. **Mrs D Kelly:** I must say that I would have expected people to make that clear at such a meeting. Was that your expectation?
2087. **Ms Palmer:** I had hoped that, because of the views that had been shared in the meeting and the fact that the party leader had said that the way forward was to issue a statement that would protect my integrity and recognise my worth and value on the board, the apology would be forthcoming. The first draft of the apology was sent, and I could not accept it. The second draft was sent, and I could not accept it. When the third draft was sent, Jeffrey and I sat down and went through it, and I amended a few words: instead of "accepting", I said that I would "acknowledge". It went back to Mr Brimstone for his response to my amendments, and the fourth draft that came back was quite lengthy. I responded to the fourth draft, and that went back to Mr Brimstone. I think that I can recall saying in one of my tweets, "24 days, and we are still waiting" and then "25 days and still waiting". That is how long the draft report or statement had been with Mr Brimstone.
2088. Jeffrey attended a barbecue at William Leathem's house — it was a fundraiser for a local charity — and I said to him, "Do you know, I think that Mr Brimstone is seeking legal advice on all this. It has been with him for that long". Jeffrey said, "You could be right, Jenny, but he has the right to do that". I said that that was fine.
2089. The fifth statement came in draft form, and Jeffrey sat down with me and said, "Jenny, I think that this is the last opportunity that you will have to get a statement out. It mentions that he apologised to you, and it covers other issues". I said, "Jeffrey, it is full of opinion and innuendo, and I am not prepared to stand over someone else's opinions. I only want to deal with the facts as to what I was involved in, and I do not think that I can sign off on that". He said, "Go home and talk to John, Hannah and the family, and then send me an email with your decision". I went home and showed that draft to my daughter and husband, and my daughter said, "Mum, if you sign off on that, the BBC may as well not have bothered to do the programme, because all that that is doing is protecting the Minister. It is not about acknowledging you, and

- it is not about protecting you”. I cannot remember whether I sent an email back to Jeffrey or phoned him, but I said that I was not prepared to sign off on it. I have had no contact since.
2090. **Mrs D Kelly:** Jenny, do you believe that the situation was more about media management than an actual apology? I noted that you said that, at the first meeting, Stephen had said, “If I have done anything to offend you”. That is always a great get-out. Would you share that interpretation?
2091. **Ms Palmer:** Yes.
2092. **Mrs D Kelly:** At that initial meeting, is it not the case that Stephen Brimstone admitted, at the private meeting, that he had told you to ask for a Red Sky —
2093. **Ms Palmer:** He did not actually say that. He said, “What Jenny has said is pretty much what happened”. That is basically saying, “Yes, Jenny is correct, and her view on the conversation is the accurate view”, as opposed to what he had said previously, because I challenged him on that, and he said, “No, Jenny is pretty accurate in what she says”.
2094. **Mrs D Kelly:** So a written apology should not have been that big a deal.
2095. **Ms Palmer:** No, it should not have been a big deal.
2096. **Mrs D Kelly:** I am sorry, Chair, I had one more point that I cannot recall at the minute. Can I come back?
2097. **The Chairperson (Mr Maskey):** I will bring you back in again.
2098. **Mrs D Kelly:** Thank you, Jenny.
2099. **Mr Campbell:** Jenny, I know that this is obviously difficult for you, and it is quite some time since the actual events, but you have been subjected to a series of questions from a variety of people on the Committee. Nobody has asked you about the BBC. I want to ask you about that, because the BBC is the reason why we are here. We have been here for 15 months now, and it looks as though we will be here for another while. The BBC, however, has not had the grace and courage to do what you have done: come and sit before us. However, they arrived at your door. Just take us back over it again. You mentioned that you had spoken to Jim Dillon, an Ulster Unionist councillor. Is that right?
2100. **Ms Palmer:** Yes.
2101. **Mr Campbell:** From your understanding, did he act as a sort of go-between? How did the BBC arrive at your door?
2102. **Ms Palmer:** Jim Dillon and I sit on the executive of NILGA. The guy O’Kane was the producer at the time, and his father is an SDLP councillor. I can only assume that his father said that Jim and I were good friends. As far as I am aware, that is what happened, which is why the BBC bypassed anyone from the DUP to get to me through Jim Dillon.
2103. **Mr Campbell:** Right. As for the BBC coming into direct contact with you, was the first contact at your front door?
2104. **Ms Palmer:** Yes.
2105. **Mr Campbell:** So in terms of the BBC and Councillor Palmer, they arrived unrequested, cold-called and rang your doorbell.
2106. **Ms Palmer:** Yes. They spoke to my son.
2107. **Mr Campbell:** Did you bring them in because you did not know who they were?
2108. **Ms Palmer:** Yes.
2109. **Mr Campbell:** At that stage, were you familiar with the ‘Spotlight’ series of programmes?
2110. **Ms Palmer:** No. As a politician, I am usually out most evenings, so I do not really get to watch television. I probably see the programme that goes out on Sundays, but I do not normally watch ‘Spotlight’, and I did not watch it this week either.
2111. **Mr Wilson:** It is a wise thing not to watch the BBC anyway, Jenny.
2112. **Ms Palmer:** I just do not have the time to watch a lot of television because of my commitments in the political world

- and my other activities. I did not know the woman from Adam. She looked as though she was a bit annoyed. I did not know her, and I did not know him either. I thought that it was a husband and wife who had arrived at the house.
2113. **Mr Campbell:** As you are not a regular viewer of 'Spotlight', is it fair to say that you were not familiar with what might be described as the political aspects of 'Spotlight' programmes, particularly down through recent years?
2114. **Ms Palmer:** No.
2115. **Mr Campbell:** OK. You said that you watched these clips. Did she have an iPad or something?
2116. **Ms Palmer:** He had. It was not an iPad; it was an iPhone or some sort of phone. It was only a small screen, but they were able to show me a few minutes of the clips.
2117. **Mr Campbell:** Thinking back now to the time that you let them in, would it be fair to say that you were surprised when they said who they were?
2118. **Ms Palmer:** I was, because I did not expect them to tell me that they were from the BBC.
2119. **Mr Campbell:** Right. Did you do the interview as a result of seeing the clips on the iPhone?
2120. **Ms Palmer:** Yes.
2121. **Mr Campbell:** So, if you were now —
2122. **Ms Palmer:** I told them that they had to leave at 5.50 pm. I told them at 5.30 pm that I had to go to rugby at Ravenhill. There was a match, and I am a season ticket holder. John and my friend were coming to pick us up, because we all travel together. I said to them: "Look, you have been here in the house long enough, and I need to get organised, get my rugby shirt and all on and get to Ravenhill". They said they would give me some sort of back shot that they do for voice-overs and then said, "We'll do that, Jenny, and then we're outta here", and then all the equipment and everything went, and I went to the rugby.
- I said to John, "I need to tell Jeffrey that the BBC has been, and I have given an interview". I sent Jeffrey a text message. He rang me within about two minutes of receiving it and said, "Right, Jenny, hat did they say?". I basically went over it, and he said, "Right, OK. Leave it with me, and I'll deal with it".
2123. **Mr Campbell:** You opened the door and discovered who it was because they then told you. You said that you were surprised, and they then showed you the clips. Would it be fair to say that, had they not shown you the clips, you would have been likely to do an interview? What made you say, "I'll do an interview", whereas, initially, because of your surprise, you said —
2124. **Ms Palmer:** I said, "I might have to ask you to leave".
2125. **Mr Campbell:** Yes.
2126. **Ms Palmer:** I think that seeing the interviews triggered it all again for me. I had been living with it for two years, and no one in the party had addressed it for me. Individuals were in turmoil and grief after Red Sky had been terminated in the Housing Executive, and I was involved with the audit committee and the board. It all culminated when I saw it, so I asked my daughter, and she said, "Mum, you've done nothing wrong here. You go and tell the truth". I said, "Right, OK", and that is what I did.
2127. **Mr Campbell:** Is it a fair assessment to say that, had they not played the two clips, you would not have done the interview?
2128. **Ms Palmer:** I cannot answer that because that is looking back in hindsight. I do not know whether I would have done the interview. You are asking me to give an opinion. In hindsight, I cannot say what I would have done.
2129. **Mr Campbell:** You used the word "vulnerable" when they arrived.
2130. **Ms Palmer:** Yes.
2131. **Mr Campbell:** What do you mean by that?

2132. **Ms Palmer:** It was only because they were in my house, and I knew then who they were. I said to them, “Look, I’m feeling a bit vulnerable”. I am trying to recall the phrase that Mandy McAuley used. It reassured me somewhat. I am trying to recall it — it is just sitting there.
2133. **Mr Campbell:** It is not unusual for a reporter to reassure somebody to get an interview.
2134. **Ms Palmer:** I have never dealt with reporters. I have never had media training, so I was not aware of —
2135. **Mr Campbell:** I will move on to the issue of the interview that you did at that time. Did you then take any advice or speak to anybody about whether you should do any more interviews about your participation?
2136. **Ms Palmer:** I spoke to Jeffrey, and I said to him, “Jeffrey, listen, the BBC were here, and I gave them an interview”. He said, “Right, OK. We need to manage that, Jenny. We need to know exactly what you said”. He arranged for a PR guy to come to my house on the Saturday and to sit with me. He sat with me, we had tea and discussed the interview. I told him about every aspect of the interview that I could recall. I asked him, “What do you think will happen?”. He said, “We need to protect the Minister and you, as an elected representative. Brimstone’s toast”. He left my house. That was the last time that we discussed it, after the interview was given.
2137. **Mr Campbell:** You said, in response to a question that, I think, Stewart Dickson posed, that, at the Housing Executive board meeting, I presume, somebody said, “It’s your party they’re after”. Was that Brian Rowntree? Who said that?
2138. **Ms Palmer:** No. When Brian instructed me to leave the boardroom because I was conflicted, it was because my party was seeking to extend the contract, which would be a conflict for me as a DUP political representative on the board. He believed that it was appropriate for him to ask me to leave the boardroom, which I was comfortable with because I did not want to be seen not to deliver for the party at the time.
2139. **Mr Campbell:** I understand that, but you said that he used the phrase, “It’s your party they’re after”.
2140. **Ms Palmer:** No, I did not. I do not think I used that. He said to me that it was my party that was progressing with the extension to the contract.
2141. **Mr Campbell:** And, for that reason —
2142. **Ms Palmer:** Yes, for that reason.
2143. **Mr Campbell:** Right. Did you watch the programme?
2144. **Ms Palmer:** Yes.
2145. **Mr Campbell:** All of the programme.
2146. **Ms Palmer:** Yes.
2147. **Mr Campbell:** Right. In the wider context of firms other than Red Sky that you have probably heard or read about since, were you aware that the BBC knew about them?
2148. **Ms Palmer:** Yes.
2149. **Mr Campbell:** Right, but it seemed to be interested solely in Red Sky.
2150. **Ms Palmer:** Well, you have to go back in time. When Red Sky was operating and overcharging and the workmanship was poor across the board, not just in certain areas, we zoned in on it because of the whistle-blowing allegation. Therefore, we were carrying out a thorough investigation internally. All contractors will try to overcharge. It is endemic. Whether you are in the Housing Executive, the Fire and Rescue Service, the Southern Trust or whatever, all contractors in the public sector try to overcharge. We were always dealing with overcharging and trying to keep abreast of it. The fact was that Red Sky’s was, at that time, much, much, much more serious. There were maybe four invoices overcharging in one job. The evidence was building on Red Sky, but that is not to say that we were not investigating the other companies. From my recollection, Brian Rowntree initiated the work that

- investigated all contractors to make sure that we had a grip on it.
2151. Allegations also came out of that programme about the mismanagement of housing officials, moneys changing hands and whatever. There was an allegation about Gary Ballantyne and how he and his staff were treated. There was a lot of information, Gregory, but the main issue for us was that we could not allow such blatant abuse of Housing Executive contracts and public money, so we had to make a decision. That was based on all the evidence and all the investigations, externally and internally. When we approached Red Sky to say, “Look, you need to put your house in order. You need to help us through this so that we can help you”, it told us to go away, it did not owe us anything and we owed it. At that point in April, we had to make a decision because it was public money and we were charged with looking after public money. There was no other option. We took legal advice. We were not happy with the legal advice, so we took QC advice, which was to terminate. That is exactly what we went to do.
2152. John McPeake would probably be better answering this, but Constructionline worried us in terms of the guarantees around Red Sky’s viability in the contracts as well.
2153. **Mr Campbell:** I was concentrating on the programme. You watched all of the programme. Do you agree that Red Sky was a particular focus of the programme?
2154. **Ms Palmer:** It was, because it was a particular focus of the Housing Executive at the time.
2155. **Mr Campbell:** Along with a series of other companies —
2156. **Ms Palmer:** Not to that extent.
2157. **Mr Campbell:** We had some information from the chairman of the Housing Executive that said that, in some regards, Red Sky was actually quite good. In dealing with emergency repairs, they were among the best.
2158. **Ms Palmer:** Yes.
2159. **Mr Campbell:** In other parts, they were quite poor. You were content with the programme anyway.
2160. **Ms Palmer:** Yes.
2161. **Mr Campbell:** I am talking about all of it, not just your part in it.
2162. **Ms Palmer:** Yes, I was. It was reflective of what we were dealing with.
2163. **Mr Campbell:** Were you aware of the Rinmore situation in Londonderry?
2164. **Ms Palmer:** Yes, but, Chair, if you do not mind, I will say this: this investigation is not about Rinmore; it is about Red Sky. Under the terms of reference, I would prefer not to talk about Rinmore.
2165. **Mr Campbell:** That is fine, but this investigation is not just about Red Sky.
2166. **Ms Palmer:** No.
2167. **Mr Campbell:** This entire investigation is the result of one BBC programme amongst a series of others, and the facts of the position in relation to BBC ‘Spotlight’ are very clear. They have hidden. They have not come where you have come. They have declined every attempt that we have made to get them there. No matter what we have done, they have hidden behind it. They arrived unannounced at your door to get an interview, which they got, and made a series of allegations, which they are not prepared to stand over, so we have a case for the BBC to take. I will leave it there, Chairman.
2168. **The Chairperson (Mr Maskey):** That is fair enough. I was going to make a ruling on that, but I do not have to. Thank you for that.
2169. **Mr Wilson:** Jenny, so that Dolores does not burst a blood vessel about some conflict of interest between me and this investigation, we were at the site of the glorious Battle of the Boyne on that day, were we not?
2170. **Ms Palmer:** We were.

2171. **Mr Wilson:** That is right. We were celebrating the great victory.
2172. **Ms Palmer:** You knew nothing about the phone call because I did not relay it.
2173. **Mr Wilson:** I just wanted you to confirm that. I was not involved in handing the phone to you, taking the phone back from you and you did not raise the issue with me.
2174. **Ms Palmer:** No.
2175. **Mr Wilson:** Even though I am an affable chap who, had you raised the issue with me —
2176. **Ms Palmer:** You were busy that day with Ministers from the South and TDs.
2177. **Mr Wilson:** I just wanted to set the picture so that Dolores does not feel that there is any conflict of interest between me and this investigation.
2178. **The Chairperson (Mr Maskey):** You were building bridges across the border.
2179. **Mr Allister:** And never talked to your SpAd, I am sure.
2180. **The Chairperson (Mr Maskey):** Let us keep the equilibrium. We are doing OK.
2181. **Mr Wilson:** You are the only board member who we will have at the inquiry, and it would be useful to get some background from you. How long had the whole Red Sky issue been going on at the board?
2182. **Ms Palmer:** I was given an appraisal of all the audit work when I became a member of the audit committee. The board was aware of the investigations that were ongoing on different aspects of the business, but we did not have the detail because that lay with internal audit and the repairs inspection unit (RIU). Apparently, Red Sky had been going back a long, long time. It was historical stuff, but I had no knowledge of any of it; I was dealing with the facts presented to me as an audit committee member from January 2010 onwards.
2183. **Mr Wilson:** So, it did not appear out of the blue in April 2011. There had been an issue with the board up to then.
2184. **The Chairperson (Mr Maskey):** Sammy, just so you that are aware, Brian Rowntree will be here. You said that there is no other board member, but he was the chair and will be here.
2185. **Mr Wilson:** He was the chairman, yes. You also indicated that it was not just Red Sky but that other contracts were being looked at by the audit committee in regard to overcharging, so this was an ongoing issue with a range of contractors.
2186. **Ms Palmer:** I think that, if you ask any NDPB, board or trust that has a public sector contract, you will find that there are issues with them all because they all like to overcharge. What they do is —
2187. **The Chairperson (Mr Maskey):** In fairness, that is —
2188. **Ms Palmer:** Well, most of them.
2189. **The Chairperson (Mr Maskey):** That is quite a sweeping statement. That is your statement and your opinion.
2190. **Ms Palmer:** It is, yes. OK. What I will say to you is that, when you go out to tender for a contract and the tender comes back in from the companies and it is minus 15% or 20%, you say, “Go away and do a piece of work and find out why it is minus 15% or 20%. How do they expect to make a profit from winning this tender?”. In our experience — it has proven so — overcharging was their way of making sure that they were a viable company delivering the service.
2191. **Mr Wilson:** You said that you were aware of this since about January 2010.
2192. **Ms Palmer:** No, I was aware of it before that but not to the extent of audit.
2193. **Mr Wilson:** From about January 2010, it could have been covered up. Throughout 2010, was there any discussion at the board about requests from the then Minister about the Red Sky situation?
2194. **Ms Palmer:** No. In terms of what?
2195. **Mr Wilson:** In terms of the contract, the delivery of the contract and what should be done about the contract. You

see, we have a letter that was sent as legal advice to the Housing Executive in November 2010. It said, in respect of Red Sky and the termination of the Red Sky contract at that stage:

*"I appreciate there are strong political pressures being exerted".*

2196. So, there had been no discussion of that at the board.
2197. **Ms Palmer:** I cannot recall that that was raised. That is not to say that it was not. As far as I was aware, all of the information was coming from our investigation teams internally and the RIU team. The audit committee decided that, because of the evidence that was presenting itself, we would get the external investigation under way. I cannot recall that letter.
2198. **Mr Wilson:** Had the board asked for any advice about the termination of the contract as early as 2010?
2199. **Ms Palmer:** I cannot recall, but that is an operational side of the business that I was not involved in at that level.
2200. **Mr Wilson:** If it was as extreme as terminating the contract, it is likely that there must have been some discussion at the board.
2201. **Ms Palmer:** I think that, in the past, the board had tried to terminate contracts with Red Sky because of the same type of practice. I would be giving an opinion on that, and I cannot honestly do that because it is an operational matter that the management team was working through, and I cannot recall.
2202. **Mr Wilson:** Are you aware of any time or, indeed, any requests from the then Minister about contracts for maintenance that were being carried out by the Housing Executive?
2203. **Ms Palmer:** No.
2204. **Mr Wilson:** So, you do not know where this political pressure was coming from.
2205. **Ms Palmer:** No.
2206. **Mr Wilson:** Were any reports given to the board, for example about the dissatisfaction with the contract from political representatives, or were representations made from particular areas?
2207. **Ms Palmer:** You will need to clarify that for me.
2208. **Mr Wilson:** You have said that, from January 2010 onwards, there was considerable discussion in the board and in the audit committee etc about the Red Sky contract and, indeed, other contracts. What was the nature of those discussions?
2209. **Ms Palmer:** From my information, when a report came to the audit committee, the report was giving us a brief on where the investigations were going, whether it was likely that it would be passed to PSNI, whether it was fraud, whether it was oversight and what the issues were. We dealt with all of that and gave instruction then to our investigators to go away and do a piece of work. Then we reported back through our chairman to the board that that was the process that we were involved in. Board members who were not on audit would not necessarily have known all the fine detail of the investigations at the time, but they would have been kept informed of issues that were coming to light as we moved through the business.
2210. **Mr Wilson:** In response to one of the first questions asked by Jim, you said that, as far as you were concerned, you were not aware of any sectarian motive being attached to the whole contract.
2211. **Ms Palmer:** Yes.
2212. **Mr Wilson:** This is where I want some clarification. Later on, Jim asked you about why you did not contact other senior members of the party, and you indicated, "I knew the big players in the DUP and their views around Red Sky".
2213. **Ms Palmer:** Yes. Let me elaborate on that. That was not about sectarian issues; it was about the issues that were being presented by our political representatives, who were involved in Red Sky, trying to save the Red Sky contract and extend it. That was in

- terms of the issues that were presenting to our local representatives and to you as TUPE and redundancies. It was not anything to do with sectarianism.
2214. **Mr Wilson:** How did you know that? How did you know what their views were?
2215. **Ms Palmer:** That is what was in the media. That is what you were all concerned with. Sammy Douglas, Robin Newton and all of them said that they were concerned about job losses in east Belfast and across the Province if Red Sky's contract was terminated, so —
2216. **Mr Wilson:** You see, Jenny, this is where I find it difficult to understand the answer that you gave. If you were so past the media stories about what had been expressed about Red Sky, you would have found that most of the media stories — all the controversy around Red Sky — was generated because of sectarian attacks on Red Sky workers and attempts to get Red Sky out of west Belfast because it was a Protestant firm. If you were aware of the TUPE issues —
2217. **Ms Palmer:** That was in the final stages.
2218. **Mr Wilson:** The TUPE issues were there. If you were aware of them, you must have been aware of what gave rise to the controversy in the first place. The two were never separated in the media. If it was through the media that you got it —
2219. **Ms Palmer:** I know. You did not ask me about that direct link in terms of the issues around Red Sky. I know of all the issues around Red Sky, in terms of the sectarian comments that were made because Red Sky was doing poor work in what were deemed to be nationalist areas. As we moved through the investigation, it was proving that Red Sky was actually failing in areas that were not nationalist. The overcharging was continuing. Sammy, to say that I was trying to equate it with sectarianism is not right; sectarianism was never mentioned in the board or on audit. It was a fact that this contractor was under scrutiny and was failing to deliver. Even Peter Robinson, in our private conversation, said to me, “Jenny, are you aware that 400 jobs will be lost?”. I said, “Peter, you know and I know that 400 jobs are not going to be lost because TUPE is applying”. Nearly every member, except for directors and a few rogue workers who were doing the double, were actually going either directly into the direct labour organisation (DLO) or into the other contracts. So that was unfair, and it certainly was not accurate.
2220. **Mr Wilson:** No, but Jenny, what I am trying to ascertain is this. There has been a blanket denial, in retrospect, from Housing Executive officials that they were aware of any sectarian motive behind all this. You said exactly the same — that you were not aware of any sectarian motives — but you also indicated that you knew that a number of big players in the DUP had been around the Red Sky issue. You knew that from the media, and the media were full of those sectarian allegations. So —
2221. **Ms Palmer:** Yes, but I knew that it was not true; that is what I am saying. It is not that I did not know of all the media around it. I am saying that I knew that it was not true from my experience on the board and on audit. It was never mentioned to me that this Red Sky group was a Protestant firm that was being picked on simply because of that. I was never informed of any of that. In fact, it was as Project Young that I knew it. I did not even know the name of the contractor at the time. We were trying to make sure that contractors, at the time, because we had not built a case, had protection. Therefore, they were given codes such as Project Young, Project Amber — whatever you want to call it — so I did not even know the breakdown of the workforce or anything about the links with a Protestant workforce, until we were working through it and got to the stage where we were going to terminate the contracts.
2222. Obviously, the media around it was pretty emotive because Robin Newton, Sammy Douglas and all of them had come out and said that they were worried about a loss of jobs. We had set in place, although it was somewhat

- slow, a process to make sure that the workforce was protected.
2223. **Mr Wilson:** But the media made it quite clear that one of the reasons why the issues were being raised was that this was a Protestant firm that was being attacked and, in some cases, it was alleged, wrongly accused of things in west Belfast. So you were aware that it was a Protestant firm.
2224. **Ms Palmer:** Only then.
2225. **The Chairperson (Mr Maskey):** Would it help you, Sammy, that Jenny earlier referred to a “sectarian card” being played? That may help with your posing of the question.
2226. **Ms Palmer:** A lot of people in this inquiry have said that there was a sectarian motive for Red Sky to be terminated. I hold up my hand and will take an oath that, in all of my work on the board, audit and investigations that led to external reports, I never once knew that this firm was Protestant with a Protestant workforce from east Belfast. I never once heard a single officer, director or board member discuss an issue about that. I love my culture. I am a Protestant and proud of it. I am an Orangewoman. As a housing councillor, I have challenged the board many times about the religious bias in the breakdown of its workforce. I have received assurances about the processes that were set up to address all of that. Therefore, I never once heard about that until it was mentioned in the media. I cannot speak for others, but I certainly cannot remember or recall one person ever saying to me that, “We are getting rid of Red Sky because it is a poor company and it is full of Prods”. That did not happen.
2227. **Mr Wilson:** Tell me this, and this is not hearsay or anything like that: did the board ever express any concern or raise queries about why, quite clearly, through the leaking of letters that the chairman sent to the permanent secretary, bits of reports that found their way into the ‘Andersonstown News’ and other leaks to the press, some Housing Executive officials seemed to have such a vendetta that they used the media and leaked confidential information?
2228. **Ms Palmer:** You see, it was never proven who leaked the confidential information to the media. My recollection of the conversation around the boardroom was that there were serious issues about information being shared with the media and the fact that the letter from Will Haire was shared as well. The board members did not believe at the time that that was leaked through the Housing Executive and thought that it may well have been leaked from here. I can see how it could have been leaked from here, because the last section of my personal statement to this inquiry, where I said that a report had been buried in the DSD, was in the news a month ago, before I even got to give this evidence. Therefore, leaks were coming from within the Department and from others and from within the Housing Executive. Remember, the morale of Housing Executive staff was at rock bottom over all this, because they felt as though they were being punished for 40 years of excellent work; they were being punished because of poor contractual management. We acknowledged the poor contractual management. Also, it was the Northern Ireland Housing Executive — not the Department, the Northern Ireland Audit Office or any of the officials sitting around the table in audit or in Housing Executive business — that initiated the inquiries and the investigations. It was Brian Rowntree and the board who set in place investigations, and, to his credit, it was a hard, tough line to take because there was management there that just did not want to play ball. So —
2229. **Mr Wilson:** Jenny, the only problem with that explanation is that the letters were leaked long before they were ever received here. They clearly did not come from the Committee or Committee members.
2230. **Ms Palmer:** I would not say that it did.

2231. **Mr Wilson:** You were just saying that you thought that they could have been leaked from here.
2232. **Ms Palmer:** No, I am talking about my own.
2233. **Mr Wilson:** These letters were leaked. What I am trying to get at, first, is that there were allegations in the press that there was a sectarian campaign against Red Sky while, at the same time, your audit committee was looking at overcharging of other firms. Yet, the board did not seem to take any cognisance of that; you are telling me that it was never raised. There was leaking of letters, which, obviously, justified the Housing Executive's position on this —
2234. **Ms Palmer:** Can I clarify that?
2235. **Mr Wilson:** — and that was not queried by the board.
2236. **Ms Palmer:** It was.
2237. **Mr Wilson:** It was queried by the board. And the explanations —
2238. **Ms Palmer:** The sectarian card was queried.
2239. **The Chairperson (Mr Maskey):** Just take your time, and you can answer fully.
2240. **Ms Palmer:** The board knew the conversations that were out there and the allegations around sectarianism and the Housing Executive's view on it. The board was well aware of all the issues that were permeating in terms of sectarianism in the Housing Executive on the Red Sky contract. We all knew that, in the ether, it was all floating around that this was a sectarian move by the Housing Executive to rid ourselves of a contractor with a Protestant workforce.
2241. **Mr Wilson:** But you say that you did not know that it was a Protestant workforce.
2242. **Ms Palmer:** I did not at the time until it started to permeate and until all the evidence started to come out. I did not know at the time, early in the investigations. I knew nothing about the religious bias and breakdown of any of those companies. I was quite shocked when I heard what it was.
2243. **Mr Wilson:** At what stage would this have been known?
2244. **Ms Palmer:** To me?
2245. **Mr Wilson:** Yes.
2246. **Ms Palmer:** Just whenever it started to permeate out that there were issues around sectarian views. I cannot recall the actual date, but it was only when it came out of the ether and into the arena where it was being said that the Housing Executive was doing this out of sectarian bias. I was offended at that, because I had worked on that audit committee and had given my heart and soul to those investigations only to be told that I was party to a decision by the board of the Housing Executive based on sectarianism.
2247. **Mr Wilson:** Did it strike you as odd that a proposal was being made to terminate the contract and hand it over to other firms that were partners in the maintenance arrangements, whilst you were already aware that, as you have said, there were investigations by the audit committee of other contracts with regard to overcharging? Were any questions ever raised at the board that you might actually be allocating these contracts to companies that you were already investigating for overcharging?
2248. **Ms Palmer:** You have to conduct the business of the Housing Executive with the hand that is dealt to you in terms of the contracts that had been leased and were being managed. Yes, while all contracts tended to have a bit of overcharging, it was nothing like what was happening with Red Sky. Red Sky would not communicate with us; it would not even agree our findings with the reports. It was at that point that we had to say, "Look, we cannot allow this to continue because it will seriously damage the reputation of the Housing Executive". Throughout all of it, DSD was involved in all of the meetings. I nearly remember that DSD officials were involved in the meetings around the issues with Red Sky for months before

- we made the decision to terminate the contract.
2249. **Mr Wilson:** I just want to get a picture of the mindset of the board here. There was never any serious querying that we might actually be handing —
2250. **Ms Palmer:** Of course there was.
2251. **Mr Wilson:** — this contract to people who were already being investigated for overcharging, whether to the same extent as Red Sky or not.
2252. **Ms Palmer:** Yes, it is always at the back of your mind about the board's decisions to make the judgement call on that. What were we to do? We could not go out to mini tender; we could not go out to procure new contractors; and we were in a difficult position where we had to adhere to the profile of the DSD in our spend and in managing those contracts, which were difficult to manage because they were Egan contracts. Really, they were not a healthy contract in hindsight. We had to make the decision that we needed to deal with Red Sky, because Red Sky was the one that was there; that was really prevalent in terms of the malpractice around it all. We decided that, in the interests of the best thing to do to protect public money and to protect the integrity and business of the board, it would have been wrong for us to have kept them on when we found that they were neglecting to even listen to us and try to resolve the issues. We had to remove them. Yes, some of those workmen and women transferred to other contractors under TUPE arrangements and the rest were absorbed into the direct labour organisation within the Housing Executive, but that is the risk you take in business when you have to deliver contracts and a programme of work and you have to be seen to be spending public money wisely.
2253. **Mr Wilson:** That is the other bit that I cannot understand. Maybe you can explain this to me. The complaints, and you have already told us this, were not just about overcharging. The complaints were about the inability of the workmen to do jobs properly. Was there no concern that all you were doing was transferring bad workmen from one company to another, and so there was going to be no change in the performance on the ground? Tenants are still going to get bad jobs done.
2254. **Ms Palmer:** It is opinion about how many of those workmen were performing badly. Could you identify individually who would perform badly? We had a duty of care to protect the workforce within the contracts under the procurement rules; therefore, the only options that were available to us were to take that risk and hope that the other contractors who were bringing those new employees in would have managed those employees and seen through the contracts without adversely impacting on them. That is all that you can hope for in the hand that is dealt.
2255. **Mr Wilson:** But it was not an opinion, according to what you said earlier, that the workmanship was poor.
2256. **Ms Palmer:** Yes, the workmanship was identified as being pretty poor in certain areas. Even after Red Sky was terminated, in 2012, I think, there was an issue with heat, electricity, electrical work — I cannot recall.
2257. **Mr Wilson:** Colm McCaughley, when he was here last week, indicated that the reasons why the workmanship was poor and the reasons that were given to the board were that Red Sky had overstretched itself, had taken on too much work and was employing people who were not skilled to do the work. Yet, although an alternative was suggested by the Minister, the board decided to uncritically allocate the contracts to firms that were already under investigation for overcharging and to transfer workmen who, the board knew, because the officers had told them, were delivering poor workmanship because Red Sky had overstretched itself and was employing people who were not properly qualified. Was the alternative that was suggested by the Minister, which, as we will come to in a minute, Stephen Brimstone was at least

- trying to encourage some discussion on, never seriously looked at by the board?
2258. **Ms Palmer:** Of course it was.
2259. **Mr Wilson:** They were quite happy to hand over —
2260. **Ms Palmer:** All of the options were placed in front of the board for a decision to be made. Based on the evidence that was presented, we took the decision to terminate the contract. We did not take it based on conjecture or opinion. We based our decision as a board on the evidence presented to us on the findings of the reports.
2261. **Mr Wilson:** This is where the controversy arose and where Stephen Brimstone comes into the issue. The Minister had made a suggestion that, since the same workers were going to be used and there was a danger that companies that may have been guilty of equal overcharging or maybe even greater overcharging — the evidence had not been completed by the audit committee at that stage —
2262. **Ms Palmer:** That piece of work was only beginning.
2263. **Mr Wilson:** Yes, that is right, so you did not actually know. I am glad you have confirmed that, because that does not seem to be the impression we got from other Housing Executive officials. The work was only beginning, so there could have been other firms that were guilty of far more than Red Sky, yet the board was thinking of simply transferring work to them because they said that that is what had to happen under the contract. Was it not a reasonable proposition in those circumstances to allow proper procurement procedures to arise and be undertaken so that the current contract, because they were going to use the same people anyway, was kept with the firm, which would be much more closely supervised, to allow the extension period to allow proper processes for the procurement of new people to do the job, rather than the jump into the dark of handing over to firms that may have been guilty of more overcharging and would be using the same unqualified workmen anyway? Was that proposition ever considered by the board?
2264. **Ms Palmer:** It was.
2265. **Mr Wilson:** In your view, is that not as reasonable as saying, “No, transfer all these inadequate workers to another firm that may be guilty of far worse”?
2266. **Ms Palmer:** You are inferring that all of the workers were inadequate. You are also inferring that —
2267. **Mr Wilson:** No, all of the workers were going to be transferred, Jenny, that is what I am saying.
2268. **The Chairperson (Mr Maskey):** Let Ms Palmer finish answering the question.
2269. **Ms Palmer:** Can I just make a comment about what you said? If the Department, the Minister and Housing Executive had all come to the conclusion that that firm was behaving badly in contract, in overcharging and in workmanship, it beggars belief that anybody would want to keep it, spend public money further and damage the reputation of the Housing Executive further, irrespective of the TUPE transfers. You, Minister, have spoken to me at length on many issues about procurement and about the difficulties we have in the European Union and the official directives that we have for dealing with poor contracts. It was not specifically about the Housing Executive; it was about INTERREG, councils and funding in a different lifetime. Are you saying to me that it would have been appropriate for us to go along with the line of the Minister, keep a bad company there and spend more public money badly?
2270. **Mr Wilson:** That was not the suggestion. The suggestion was that the contract be extended until a new contractor could be put in place and there could be proper supervision of that. It would be less disruptive, but it was no less of a risk than handing over to people who you have already admitted were under investigation for overcharging and who would be using the same workmen — some of them good and some of

- them bad — as were being used on the existing contract.
2271. **Ms Palmer:** The Northern Ireland Housing Executive has a responsibility, under the Department, to spend public money wisely. If there were whistle-blowers and if routine inspection units were telling us that some of the work was poor, the chairman directed us to look at investigating or reviewing that work. While all that work is ongoing, it is a natural progression of the business to try to keep on top of the management controls around it. That is not to say that there were rogue elements in the Housing Executive who were disciplined for malpractice and for behaving inappropriately around contracts, but the Housing Executive, I think, did the right thing in terminating the contract based on the evidence. I can only go on the evidence that presented to us at the time, which was pretty serious. The Housing Executive spoke, and I cannot recall who went to meet Red Sky. It might have been Stewart; I cannot remember. But I know they met them and said, “Listen, here is the evidence. We need you to address the evidence and to set a plan to recover the overcharging”. They told us to go away and scratch our heads and basically said that they did not owe us a penny and that we owed them money.
2272. **Mr Wilson:** Maybe there is some justification; I do not know enough about the amount of overcharging or undercharging that there was. However, there was chaos that existed in the Housing Executive and, on another occasion, the Housing Executive had claimed that Red Sky owed it £300,000 or something and settled for £20,000. Indeed, in November 2010, your own legal adviser said:
- “We know from experience, however, that even though there appears to be many obvious discrepancies in relation to work carried out, the position can often radically change when input is sought from Red Sky. My concern would be that what starts out as a very substantial claim results in a much reduced figure which, when taken as a percentage of the overall contract, is not perceived by a Court to be a fundamental breach.”*
2273. So, even your own legal adviser, on the basis of the information that had been supplied by the Housing Executive, was not as sure as you are today when you are telling us that, as a member of the audit committee, you were damn sure that they owed you piles of money.
2274. **Ms Palmer:** No, sorry. Let me confirm: based on evidence provided to us by external and internal reports, I was not damn sure of anything except the evidence presented to me, which I had to make a judgement call on. In terms of extrapolated figures based on samples of work that were carried out, that is an operational issue that I am sure John McPeake can address for you. I do not get involved in the operational side of the Housing Executive business. I scrutinise it, challenge it and make sure that the risks are identified and that we are trying to address the issues. I certainly cannot say that I did anything inappropriate in terms of —
2275. **Mr Wilson:** No, I am not saying that you did anything.
2276. **The Chairperson (Mr Maskey):** I am going to move on. I will let you finish that line, but I am moving on to other members.
2277. **Mr Wilson:** I am not saying that you did anything inappropriate. My concern is not about your behaviour. My concern is about the dysfunctionality of the officials, the structure in the Housing Executive and the information that then went to the board and how the board handled that.
2278. **Ms Palmer:** That is the reason why we took external review on it all. We knew that there were serious issues with management and with certain members of Housing Executive staff, and we were dealing with all that internally. In fact, internally, we kick-started that whole process and, as a consequence of that, DSD came on board and the whole thing took on a new light. But, do you know something? As far as I am concerned, the evidence was presented to me from external reports and to the audit committee, which then had to go

- to the board and tell them that those were the findings. Donald probably better explained the extrapolated figures and the actual amounts that we could recover based on the evidence of the 300 samples or whatever it was that we took, but the legal advice is always crucial and important in the final settlements. I am sure that you know that yourself, Sammy.
2279. **The Chairperson (Mr Maskey):** OK, Sammy —
2280. **Mr Wilson:** Was the uncertainty that we have here from the legal advice that was given to the Housing Executive — I assume, based on the information that it passed to the legal adviser — at any stage —
2281. **Ms Palmer:** We never sat on our laurels. If we received legal advice —
2282. **Mr Wilson:** Did you ever receive that —
2283. **Ms Palmer:** — and thought that it was not strong enough, we would have gone out to QC to make sure that we were sure about the decisions that we made. I think —
2284. **Mr Wilson:** Was that QC advice ever given to you?
2285. **Ms Palmer:** I cannot recall, but I am sure that John will. All that I will say on that matter is that I believe that the timing of the phone call that was made to me by Mr Brimstone was because all the legal arguments had been exhausted between the Department and the Housing Executive, and the Housing Executive was still going to remove the contract. I think that, as a consequence of all that expertise and legal advice being taken, I was contacted as the smallest wheel in the cog and as a sacrificial lamb. Those are not my words, but those of one of my colleagues. I was deemed to be probably worthless in all of this, but it was a case of phone Jenny Palmer and she will go against the decision of the board. That is my opinion, and I do not think anything will change that now.
2286. **Mr Wilson:** Just one last question.
2287. **The Chairperson (Mr Maskey):** Sammy, sorry. I will let you back in again later.
2288. **Mr Wilson:** Just one last question, and I will be finished. I will not be coming back in again.
2289. You talked about your relationship with the party and said that you could not go to anybody or trust anybody — I think that was the term you used. It was not that bad, though, because you stood as a councillor again for the party, did you not?
2290. **Ms Palmer:** Sorry?
2291. **Mr Wilson:** It was not that bad; you stood again as a councillor for the party.
2292. **Ms Palmer:** Yes, I did, and I had great support locally from my Lisburn colleagues. I have great friends in the party — I hope that you are one of them, Sammy — but there are also people in the party who behave badly.
2293. **The Chairperson (Mr Maskey):** Obviously, it is a difficult area. I appreciate that it is very sensitive for everybody.
2294. Before I bring in members and let others back in, I want to ask a couple of questions to try to weave through some of it. You addressed this point in some of your previous comments. You are here speaking for yourself but also on behalf of the Housing Executive and its audit committee. Are you satisfied that all the work you engaged in with regard to the Red Sky contract was professionally based?
2295. **Ms Palmer:** Yes.
2296. **The Chairperson (Mr Maskey):** And all decisions were professionally based.
2297. **Ms Palmer:** Yes.
2298. **The Chairperson (Mr Maskey):** You outlined earlier that you spoke to a range of people from Jim Dillon and Allan Ewart right through to Jeffrey Donaldson and others, including the party leader at a meeting. You outlined the range of those conversations. In your evidence, you said that Stephen Brimstone confirmed or verified,

whatever way you might use the word — you picked the word not me — that your version of the telephone call was correct.

2299. **Ms Palmer:** Yes.

2300. **The Chairperson (Mr Maskey):** There was a discussion around an apology to you. I extrapolate from your version of the conversation and take your word at face value that Stephen Brimstone confirmed that that was the substance of that conversation. Did anybody, at any time, say that that intervention should not have been made and that it was totally and wholly inappropriate?

2301. **Ms Palmer:** No.

2302. **The Chairperson (Mr Maskey):** OK. You mentioned earlier the PR guy who sat in your house and explained whatever it was; I think that arose through Jeffrey. Will you elaborate on who he was? Was he a consultant? If I remember correctly, you said that that person said that Stephen Brimstone was toast. Was he —

2303. **Ms Palmer:** That is what he told me.

2304. **The Chairperson (Mr Maskey):** — a private consultant?

2305. I understand that. Again, these are very sensitive issues, and we have all addressed that. But, we are all adults, so we have to face up to these things. Will you elaborate on the PR guy? Where did he come from?

2306. **Ms Palmer:** He was in the DUP PR team.

2307. **The Chairperson (Mr Maskey):** OK. I want to bring you back to the email that was referred to earlier. This goes to the evidence that Michael Sands presented, because the email is from him and he gave evidence about passing on the information or recommendations from the SpAd. You said earlier that it was an official who spoke to you about searching out that email. We have on this list the people who were cc'd into it, although, actually, it was Michael who sent it. Can one presume that it was Michael who contacted you about the email? We will have to go through all those people and invite them to

clarify that one way or the other. It is actually quite important. Are you able to elaborate on that earlier conversation?

2308. **Ms Palmer:** I am not going to tell any lies. Michael Sands was at the housing regeneration committee as a DSD official and had lunch with me afterwards. It was him who asked me whether I knew anything about an email. I told him that it was his office that sent it. I then asked him a personal question: I said, "Where you in the room when Mr Brimstone rang me?" He said, "Most definitely not, Jenny." I asked him how, then, he had found out about it. He said, "Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board." Those were Michael Sands's words to me. No one has asked Michael Sands that question. Jim asked him when he knew that I had been phoned, and he told him that it was the next day, but no one asked him how he knew. Michael shared that information with me at the same time as I shared that information about the email with him. I know that that email to him that caused Mr Brimstone such panic in the Department was because I had reported it in this report that I have never seen, and that information was shared. That is the whole truth of everything that I have been trying to deal with.

2309. **The Chairperson (Mr Maskey):** I appreciate that, and it has been a long session for you. It has been quite a grilling, but you will appreciate that these matters are quite important —

2310. **Ms Palmer:** They are.

2311. **The Chairperson (Mr Maskey):** — and all the members have questions that they want to ask. One or two members want to come back in, so, if you do not mind, the session might last a little bit longer. I appreciate the sensitivities. To a certain extent, it involves internal party business, and that is not easy for anybody to deal with. Everybody around the table is from a political party, so they can understand the stress involved in

- that. We appreciate the way that you are responding professionally, in the same way as members are posing questions. I will now bring in other members.
2312. **Mr F McCann:** In a number of these meetings, there has been an attempt — I think that you said it — to try to play a sectarian card and to focus on west Belfast. I am looking at some stuff that relates to 3 Rathcoole Drive, 44 Rathmore Drive, 245B Derrycoole Way and 17 Longlands Walk. All had issues of overcharging and many of them involved poor workmanship. I also asked a question last week about something that I think that you mentioned earlier, Jenny. Under a different name, Red Sky had a contract with the Housing Executive in, I think, the Shankill area and, again, there was poor workmanship and overcharging. There was no question of sectarianism in and around that, but, it seems that, when it came to west Belfast, that was the case.
2313. I want to cover one other thing. I know that you have spoken about the Housing Executive, but I have always said and believed that the Department has walked away scot-free from most of this. Yet, the Public Accounts Committee was critical and stated it was:
- “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”.*
2314. Does it not surprise you that a Department, which has a Minister who oversees it, should not also take responsibility for it? The other thing is that the impression that has been given here is that the Housing Executive is a very poor organisation and all the rest. Can you comment on that?
2315. **Ms Palmer:** For 40-odd years, the Housing Executive has been upheld in all the communities for its fairness and for delivering housing and services based on need. Much of the Housing Executive’s work is outside the area of contracts. That is only one small snippet of the work that the Housing Executive does. Yes, the Egan contracts were difficult. That form of contract did not come in with devolved government; it came in long before it. It was an English thing. These contracts were apparently easier to manage, supposed to give quicker resolutions, would do away with cowboys on the streets and would improve the work. So, essentially, it did tidy up and it brought a better, more constructive contract, but I think that there was an oversight in terms of how it was managed. There was a gentleman’s agreement around it all, and that was something that the Housing Executive, and I am sure others, learnt to their regret.
2316. I am sorry, I have lost track of my thoughts. I think I might have answered most of —
2317. **Mr F McCann:** What about the Department’s role in the whole thing?
2318. **Ms Palmer:** The Department oversaw the Housing Executive’s work, and so did the Northern Ireland Audit Office. They signed off on the work every year. At the end of every financial year, the executive was given a clean bill of health. So, where was the challenge from within the Department or the Northern Ireland Audit Office at the time? In fact, at one point, I asked a member of the Northern Ireland Audit Office at the audit committee how independent he was. So, there are lessons to be learnt for everyone within the sphere of public sector; there are lessons to be learned for us all.
2319. **Mr Allister:** There are just a couple of points that I want to touch on. I will just pick up on something that Sammy Wilson put to you. He was suggesting that, really, all that Mr Brimstone was doing was suggesting a sensible way forward and that, if you had this experienced contractor, what was the problem with extending the contract? Of course, the contractor, by that stage, was in administration. Is that not right? This Committee has had evidence that, for some, the period of extension was motivated by providing an opportunity for that company to re-form itself. Were you aware of that?

2320. **Ms Palmer:** Yes.
2321. **Mr Allister:** And, since these were framework contracts, was there not a term that, if someone fell off the edge of the table as a contractor, the work went to the other contractors?
2322. **Ms Palmer:** That is right, yes.
2323. **Mr Allister:** That is exactly what the Housing Executive was supposed to do.
2324. **Ms Palmer:** That is exactly what we were supposed to do, yes.
2325. **Mr Allister:** Can I ask you about the meetings that you had with Mr Robinson? I take it that those were all after the programme.
2326. **Ms Palmer:** Yes.
2327. **Mr Allister:** And the talk about an apology was at those meetings.
2328. **Ms Palmer:** Yes. Well, the first meeting was to ascertain and to give my account to the party leader with Jeffrey. Then he said he would have to speak to Stephen. After that, Jeffrey rang me and said, "Peter would like to meet with both of you". Peter had asked me if, when I meet Stephen, it would be appropriate for both of us to come together and talk to him. I said that I would certainly do that, as long as Jeffrey was —
2329. **Mr Allister:** Yes. The Chairman asked you this, but I think it is very important for the purposes of one of the questions that the Committee has to address. You said that, at that meeting, Mr Brimstone accepted that your account —
2330. **Ms Palmer:** That my account was more accurate.
2331. **Mr Allister:** Did that include you telling that meeting that he told you, "The party comes first"?
2332. **Ms Palmer:** Yes. I repeated it verbatim. I repeated the statement that I had received from the telephone call from him. I repeated his words verbatim.
2333. **Mr Allister:** Including "The party comes first".
2334. **Ms Palmer:** Including "The party comes first".
2335. **Mr Allister:** And "There is no point in you being there" etc. And "We need you to do that". All of that.
2336. **Ms Palmer:** Yes.
2337. **Mr Allister:** And Mr Brimstone accepted —
2338. **The Chairperson (Mr Maskey):** I am sorry, Jim, slow up and let Ms Palmer respond. There is a bit of pressure there.
2339. **Mr Allister:** Mr Brimstone accepted that that was what he had said to you.
2340. **Ms Palmer:** When Peter said, "What have you to say for that, Stephen?", Mr Brimstone said, "Well, you know, Jenny's account is pretty much as it was".
2341. **Mr Allister:** Did he dissect it at all, or did he change it at all?
2342. **Ms Palmer:** No. He acknowledged —
2343. **Mr Allister:** He had the opportunity to do that.
2344. **Ms Palmer:** He did, but he did not. He just said that yes, my account was reflective of what had been said.
2345. **Mr Allister:** And then you expected to flow from that a public apology and statement.
2346. **Ms Palmer:** Yes.
2347. **Mr Allister:** And that ran into the sand at the fifth draft, is that right?
2348. **Ms Palmer:** Yes. Then, I had said to Jeffrey that I believed that, because of the time it took to get Stephen's response back — we were toing and froing, and I was getting very impatient and very stressed about where it was going — I was afraid at one point that the draft would be issued by the party without my consent. It was always agreed that the consent would come from Stephen and me and that the mediators would be Gavin and Jeffrey. I was afraid at one point that, when I read how it went from two pages to four pages and became opinions, it was

- getting out of control. I wanted to take control of it again, and I said to him that I was not happy with it, that I thought that Stephen was taking that length of time to consider my amendments and that I believed that he was taking legal advice on it. Jeffrey said to me, “You could be right, Jenny, or he could just be taking his time to look at it”.
2349. **Mr Allister:** Have you any difficulty in sharing those drafts with this Committee?
2350. **Ms Palmer:** Yes, because, obviously, I gave a commitment that the draft would not be released until Mr Brimstone signed off on it.
2351. **Mr Allister:** OK.
2352. **Ms Palmer:** Therefore, it is something I said that I would adhere to.
2353. **Mr Allister:** I understand.
2354. **Ms Palmer:** The worry I had was that, possibly, because of the way it was going and the structure within it, the party might release the document without me signing off on it. I took legal advice on that.
2355. **Mr Allister:** OK, I understand. Now, you gave the interview to the BBC when it came, it has been suggested, doorstepping you. You gave that interview, and then you reported to Jeffrey Donaldson that you had done so. He used words to the effect that, “We will have to manage this”. The next product of the management was that one of the party’s press officers arrived down to your house.
2356. **Ms Palmer:** Yes.
2357. **Mr Allister:** Do you want to tell us who that was?
2358. **Ms Palmer:** Not particularly, unless it is essential.
2359. **Mr Allister:** We probably cannot say that it is essential.
2360. **The Chairperson (Mr Maskey):** It is not essential, I would have thought.
2361. **Mr Allister:** OK. Shortly after that, was a letter sent from a solicitor to the BBC on your behalf?
2362. **Ms Palmer:** Yes.
2363. **Mr Allister:** Was that a product of that meeting with the PR man, or was that a consequence of something else?
2364. **Ms Palmer:** No, I think the initial meeting was just to get the details, and then we had another meeting. I am trying to recall it.
2365. **Mr Allister:** That is OK.
2366. **Ms Palmer:** At that point — no, it was the second meeting — it was suggested to me, in order to protect me, that it would be better if we sent a letter to the BBC to ask whether — I cannot remember the phraseology — the letter, basically, was to say —. Have you got it there?
2367. **Mr Allister:** No. What I have is the transcript of the programme. At one stage, Mandy McAuley says:
- “Shortly after our first interview with Jenny Palmer we received a solicitor’s letter, saying she was unsure which of her remarks were on or off the record”.*
2368. **Ms Palmer:** They asked me to clarify that so that they knew — so that someone could go with me and be invited by the BBC to come and peruse what it was going to use in the programme.
2369. **Mr Allister:** Who sent that letter?
2370. **Ms Palmer:** Well, it was sent on my behalf from the party.
2371. **Mr Allister:** Did you instruct the solicitor?
2372. **Ms Palmer:** No. They instructed.
2373. **Mr Allister:** Did you ever see the solicitor?
2374. **Ms Palmer:** No.
2375. **Mr Allister:** Do you know who it was?
2376. **Ms Palmer:** I do, yes, but I cannot remember because it came to me through his email to sign off on it.

2377. **Mr Allister:** Right.
2378. **Ms Palmer:** I am trying to remember the sequence of it, because it was suggested that, to protect me, in the programme that was to go out, the BBC clarify what was on and off the record and was to be used in the programme. The BBC refused to allow anybody to come with me. It invited me down to look at it and said that it would absolutely compromise the programme if I was to bring someone else. However, it was happy to share with me the data that was to be used.
2379. **Mr Allister:** And you saw that.
2380. **Ms Palmer:** I did not need to because I know what I said, so I did not take up the offer. In fact, latterly, I did not see any point to the letter in the first place. Mandy McAuley contacted me and said, “Jenny, is there any possibility — I know you have sent the letter, and it asked whether it was on or off the record — but, since we have dealt with all of the issues, can you send me a letter of support to say that you are happy that the content to be used is agreed”. I sent something off to say that.
2381. **Mr Allister:** You did that.
2382. **Ms Palmer:** I did, yes.
2383. **Mr Allister:** In the programme, she said:  
*“Against the wishes of her party, Jenny Palmer subsequently wrote to us herself to say she was happy to stand over all her remarks and then gave us a second television interview.”*
2384. **Ms Palmer:** Yes.
2385. **Mr Allister:** So, is that statement accurate on her part?
2386. **Ms Palmer:** It is.
2387. **Mr Allister:** And you did that against the wishes of the party.
2388. **Ms Palmer:** Well —
2389. **The Chairperson (Mr Maskey):** Sorry, but that was Mandy McAuley’s reference.
2390. **Mr Allister:** That is why I asked whether it was accurate.
2391. **The Chairperson (Mr Maskey):** Yes.
2392. **Mr Allister:** She said that.
2393. **Ms Palmer:** That I had written to her.
2394. **Mr Allister:** She said:  
*“Against the wishes of her party, Jenny Palmer subsequently wrote to us” —*
2395. **Ms Palmer:** My party had told me not to make any —
2396. **Mr Campbell:** Chairman, that would really be a question to go to Mandy McAuley and is another reason to have the BBC here.
2397. **Ms Palmer:** My party and the people representing me, who were obviously trying to resolve and get the picture, said to me, “Jenny, please don’t make any more contact with the BBC”. So that is obviously, maybe, what that statement refers to.
2398. **Mr Allister:** We will leave the party out of it. Are you happy that Mandy McAuley was correct when she said in the programme:  
*“Jenny Palmer subsequently wrote to us herself to say she was happy to stand over all her remarks”?*
2399. **Ms Palmer:** Yes, because I told the truth. It was nothing that I had not told —
2400. **Mr Allister:** Then you gave a second interview.
2401. **Ms Palmer:** I gave a second interview for a programme that I do not believe has been aired, although part of the interview was with me walking along the country lane in Hillsborough. I cannot remember what it was.
2402. **Mr Allister:** Just to go back to the solicitor: you did not choose the solicitor, you did not pay the solicitor?
2403. **Ms Palmer:** No. I do not know who did.
2404. **Mr Allister:** Who got the solicitor, do you know?
2405. **Ms Palmer:** Obviously, the solicitor was sought by the two people who were

- in my sitting room at the time and suggested it.
2406. **Mr Allister:** They were Mr Donaldson and this PR person.
2407. **Ms Palmer:** Yes. I said, “Why would I need to do that?”, and they assured me that it was to protect me.
2408. **Mr Allister:** In retrospect, do you think that that was right?
2409. **Ms Palmer:** I have thought long and hard, and I suppose that I thought afterwards, when I went through the process and the BBC refused, anyway, to allow the access, that it was not productive. That is why I wrote the letter of support, still to make sure that I had spoken the truth and would stand over my statement to the programme.
2410. **Mr Allister:** I have just one final point. The report that was the product of your interview with DFP, with Mr Lewis and Mr Mulligan, did not make clear to me what you were asked to look at and sign off. Was that the finished report?
2411. **Ms Palmer:** No, it was my statement.
2412. **Mr Allister:** It was simply your statement.
2413. **Ms Palmer:** It was my statement to them on the interview that was conducted with me by those two, during which one dictated and the other interviewed.
2414. **Mr Allister:** Right. Whereas, your expectation was and is that you would finally see the ultimate report.
2415. **Ms Palmer:** Yes.
2416. **Ms Palmer:** And that is being withheld from you.
2417. **Ms Palmer:** Yes. The Housing Executive had an away day, and the permanent secretary was invited to the dinner. Upon getting up to leave, he came across and kissed me on the cheek and said, “Jenny, how are you?”. I said, “I am fine, Will. Can you tell me where the report is and why I have not got sight of it?”. He just shrugged his shoulders, and I inferred from that that he could not send the report to me.
2418. **Mr Allister:** You do not know where it went.
2419. **Ms Palmer:** I do now. I know that it went to the Minister, and I thought that the Minister would allegedly have been conflicted because of all the issues. I thought that the report was contaminated because of the leaks, and I am not sure of its worth now. If I may say so, the whole process has been most frustrating. As one of my colleagues said, it has been 15 months or whatever in the process, and, at each juncture or phase right through, it seems to me that there still is no power to address any of the wrongdoing. I am here because I was asked to come, Chair, and give my view. I have given it honestly, and I have not deceived anyone, but I really think that I do not know where the outcome of the report to this inquiry will go or what action will be taken around it. So far, I am disillusioned with the whole process.
2420. **The Chairperson (Mr Maskey):** I have one final member to speak. To confirm, no member wishes to speak after Dolores. Obviously, you have been here for quite a while, and, as I said earlier, I thank you for that.
2421. For the record, this Committee has spent a lot of time and interviewed a lot of people. Ms Palmer, you are the latest one, and John McPeake is sitting there, ready for the next session. This Committee does not have any power to sanction anybody. There are other mechanisms for doing that. This Committee has committed itself to being very robust about how it carries out its investigation, and, from day one, it has committed itself to following the evidence wherever the evidence takes us and however that manifests itself. I think that you can be assured that the Committee will be very firm in its ultimate conclusions, whatever they may be, and that we will stand over any report that we have made so far and challenge anybody to challenge that. It will be open to anybody to professionally challenge that if they so wish, and that is fine. I think that the record will show

- that, for the most part, the Committee has conducted itself very professionally.
2422. **Mr Campbell:** Chairman, you said that the Committee would go where the evidence led it. You said that previously.
2423. **The Chairperson (Mr Maskey):** Yes, I have repeated that, and I have said that regularly.
2424. **Mr Campbell:** Yes. Just now, you said that the Committee was of that mind. All of the Committee is not of that mind.
2425. **The Chairperson (Mr Maskey):** Fair enough, that is OK. The Committee, as in the decision-making process, has determined that. A minority of members have disagreed with that or resiled from that position. They are quite entitled to that.
2426. **Mr Campbell:** That is more accurate, yes.
2427. **The Chairperson (Mr Maskey):** I remind you that the Committee as a corporate body has taken decisions thus far and will continue to do so and will resolutely stand over them. We will do so on that basis with every person who is invited here or, indeed, who is, perhaps, compelled to be here, if that is required. The Committee has the power to compel, and we have exercised the power to compel documents to be made available in the past. One of the reasons why there has been delay and why I probed you earlier, Ms Palmer, on one of the questions is, as we have stated quite clearly, resolutely and publicly, that there has been a considerable delay from time to time in getting documentation, particularly from the Department. We had to bring the permanent secretary to this inquiry to challenge him on why that continually happened. We have basically characterised that as tantamount to obstruction, and I repeat that here this morning. When officers or officials come here to give evidence and do not provide information, I consider that also to be a serious offence, and we will take that up with the individuals concerned. All that I can do is try to assure you and anybody else who gives evidence that we will follow the evidence and that we will do that on a professional basis and stand and be scrutinised at the back end of that.
2428. I hope that that gives you some reassurance that, despite the fact that there have been, in my view, virtual obstructions put in front of the Committee by way of not giving us information that was readily available at officials' disposal, that we have continued to pursue this in a dogged way and will continue to do so. The intention is that we will, hopefully, wind the inquiry up before Christmas. That is still my belief and intention as far as I Chair this Committee.
2429. **Mr Wilson:** Chairman, since your remark is on record, can I also get my remark on record? This Committee consistently ignores the evidence and has ignored the evidence and has even refused to put some evidence that was given to it freely by people who came along here into its reports. Since you are putting your view in the public record, I want my view put in the public record.
2430. The minority report that we had to do for the first part of the inquiry had to list all the evidence that this Committee ignored or chose not to count as important, including the fact that this whole issue or the first part of the issue led to a saving of £15 million, which the Committee seems to have dismissed.
2431. **The Chairperson (Mr Maskey):** OK. Everybody will have plenty of time to put their views in public record. These are the last questions on this session.
2432. **Mrs D Kelly:** Chair, I intend to be brief, because it has been a very long session.
2433. Jenny, you said that you felt vulnerable with the BBC in your home but that you would not describe yourself as a vulnerable person. Would you describe yourself in that way?
2434. **Ms Palmer:** No. In recognising my strengths, I think that I am a stronger person as a consequence of the past seven years and ultimately the past three years in conducting myself in

- public life and standing up for what was right. Yes, I get a bit tearful because I have been hurt, but that does not mean to say that I am not a strong person.
2435. **Mrs D Kelly:** There are few who could quibble with that, Jenny.
2436. As for the allegations that have been repeated today about sectarianism being a motivation, would I be right in saying that the issue of sectarianism only arose when the Red Sky contract came into question?
2437. **Ms Palmer:** Yes.
2438. **Mrs D Kelly:** The other point that I wanted to ascertain was about the former Social Development Minister, Nelson McCausland. Has he, at any time during the event or subsequently, communicated or corresponded with you in any way?
2439. **Ms Palmer:** No.
2440. **Mrs D Kelly:** Just to clarify, you said that one of the reasons why you could not go to some of your senior party members was because they were main players in Belfast around the Red Sky issue. Is it your belief that that is because they were making public comment about the TUPE and the jobs only, or do you think that they have any other connections with Red Sky?
2441. **Ms Palmer:** No, I was not aware of any of the connections. I was not even aware that Red Sky was a Protestant firm. It was only through the media and the allegation at one of the meetings with the Housing Executive officials that it was relayed to the audit and the board that it seemed as if it might have been a sectarian decision. Up until that point, I did not know who Red Sky was.
2442. **Mrs D Kelly:** Chair, I will just finish by thanking Jenny for her evidence and saying that, certainly from my party's perspective and, I am sure, that of many of the other parties represented here, I would be proud to have a person of Jenny's integrity as a member of the party and as a public representative. Thank you.
2443. **The Chairperson (Mr Maskey):** This is not a rebuke of any nature, and I know that we all tend to use language loosely, but I do not want it to be said or accepted that Red Sky is a Protestant firm. It is a firm and obviously there is a composition of workforce, but that is like saying that somebody else has a Catholic firm or a Hindu firm or whatever else. I am not rebuking you, but just for the record, we here, myself certainly, would not look at any company by definition of its workforce.
2444. **Ms Palmer:** Nor did the Housing Executive.
2445. **The Chairperson (Mr Maskey):** I think that you have made that very clear.
2446. OK. Is there anything else that you want to say at this moment in time? You do not have to, I am just saying that, at the end of all these sessions, we offer people who have given evidence the chance to add anything else that they would like to say or clear up. This is an ongoing inquiry, as you understand, and we, as a Committee, may want to clarify some evidence further with you.
2447. **Ms Palmer:** I am happy to do so, Chair, at any time.
2448. **The Chairperson (Mr Maskey):** That invitation remains open to you for the remainder of this inquiry. You do not have to answer anything today, but feel free to come back if you wish to do that. On that basis, is there anything that you want to add this morning?
2449. **Ms Palmer:** I am conscious of the fact that Mr Brimstone will give evidence next week. Through Kevin Pelan's office, I was sent written submissions of all the contributors to the inquiry. So far, there are two that I have not been able to peruse for accuracy. I am assured that I will have input into that at some point if there is something that I disagree with in the next session.
2450. **The Chairperson (Mr Maskey):** You will have that opportunity —
2451. **Mr Allister:** Do we have Mr Brimstone's?

2452. **The Chairperson (Mr Maskey):** No. It is not available to us yet, either. We do not have it yet, but you certainly will, because this is a public inquiry. You will have every opportunity.
2453. **Ms Palmer:** Thank you.
2454. **The Chairperson (Mr Maskey):** Thank you very much. I know that it has been a difficult morning.
2455. Members, John McPeake is very patiently waiting, but we have been in session since 10.00 am. We need to take a short break of 10 minutes or so.



## 9 October 2014

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

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

### Witnesses:

Dr John McPeake

2456. **The Deputy Chairperson (Mr Brady):**

You are welcome, Dr McPeake. I know that you have given us a written submission. Is there anything that you want to add before I bring members in for questions?

2457. **Dr John McPeake:** Yes, thank you, very briefly. I am happy to help the Committee in any way I can. You will note from my written submission that I do not have access to the diaries and other written documents and therefore do not have the detail, and I have relied on my memory in producing the written submission. Of course, memories are not always complete or reliable, and, yesterday, when I was reviewing it, I realised that, under item 6, I included reference to the telephone call to Jenny Palmer. That is really a reference to the meeting of 5 July. I am satisfied that the other points around item 6 are, to the best of my knowledge, an accurate recollection of events. Apologies for that memory oversight. I will do my best to answer whatever questions that you have.

2458. **The Deputy Chairperson (Mr Brady):**

That is fine; thanks very much. I will start by asking you a couple of questions. In your submission you say that you accompanied the chair and the chief executive to a meeting on 28 April 2011 to discuss the termination of the Red Sky contract. You stated that the political delegation was not happy with the idea of terminating the contract. Did

you get the impression that they were aware of all the background to the Red Sky issues?

2459. **Dr McPeake:** It would be fair to say that they certainly had knowledge of the shortcomings of Red Sky, and I did not get the impression that the political representatives were unhappy with us terminating the contract because their workmanship was poor. They were more concerned about the fact that the decision happened in the heels of an election and were worried because the timing of it seemed to be of some concern to them. Equally, they expressed worries about the effect of the termination on employment. We spent quite a bit of time at the meeting explaining the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) implications and what steps we had taken to mitigate that.
2460. **The Deputy Chairperson (Mr Brady):** I have one other question before I bring members in. You mentioned that the Housing Executive had concerns that the former Minister's request to extend the Red Sky contract beyond the original termination date may not have been feasible, practical or legal. Can you elaborate on those concerns?
2461. **Dr McPeake:** Yes. The committee had asked me to offer a comment on that issue. I was not present at the meeting that Brian Rowntree and Stewart Cuddy had with the Minister and, therefore, I have no direct knowledge of what was discussed at that meeting. My observations reflect what I was advised when colleagues from the Housing Executive returned from the meeting, and the view that was expressed to me was that the Minister had a desire to see the contract run on so that that would give him time to arrange for a forensic — I think that that was the word used — investigation of the other contractors that we were proposing to

- hand the work across to. We had many concerns, the first of which was that the contract had already been terminated and so this was happening within perhaps a week of the actual end date of the three-month notice.
2462. We had concerns about whether it was legal to allow a contract to continue when it had been formally terminated. We were also concerned that adjacent contractors with whom we had extensive discussions and with whom we had entered agreements to take on the work and the workforce would legally challenge any decision. However, in recognition of the Minister's request, I recall that Declan Allen, who was the assistant director responsible for procurement, contacted BDO. You have to remember that, at that point, Red Sky was in administration and trading in administration under the auspices of BDO. Declan Allen approached BDO to see whether, from its perspective, if push came to shove and it was asked to continue managing the contract for an extended period, it would be possible. The response from BDO was less than clear. Ultimately, however, Declan's advice and interpretation, and what was accepted by the Housing Executive, was that it was not a practical proposition, setting aside the issues that we also had with the legal aspects of it.
2463. **The Deputy Chairperson (Mr Brady):** Since the contract had already been terminated, is there an issue that, if it had been extended, it would, in effect, be a new contract?
2464. **Dr McPeake:** We could not even reconcile the terms. I am not sure how you extend a contract that has already been terminated. That is the legal quandary that we had. We did not think that there was a way in which you could extend the contract. I do not recall the detail, but there was certainly some legal advice taken at the time, and my recollection of it was that we had no legal route to extend that. Nevertheless, given the Minister's request, we still asked the administrator whether it would be possible for it to do it if the eventuality arose.
2465. **The Deputy Chairperson (Mr Brady):** You also stated that you are involved in negotiations with Red Sky administrators.
2466. **Dr McPeake:** That is correct.
2467. **The Deputy Chairperson (Mr Brady):** According to evidence that we received from Mr Cuddy in his submission, there are some difficulties in ensuring the TUPE transfer of Red Sky employees. What difficulties were experienced in the TUPE transfer?
2468. **Dr McPeake:** The real issue was the time needed in order to give the adjacent contractors an opportunity to properly price for the work that they were going to take on and to understand what liabilities and commitments they were going to inherit, because TUPE protects the rights of those employees, including their terms and conditions of employment. So, it would be fair and reasonable for an incoming contractor to be given as much notice as possible about what liabilities they were taking on before they signed on the dotted line. We found getting that information out of BDO quite difficult. I do not know why that was, and, to be truthful, I do not know a tremendous amount about the administration process; however, I am sure that BDO had a lot of other issues on its plate around Red Sky at the time. I would not suggest for a moment that it was being deliberately difficult about it, but we were certainly frustrated that it seemed to take an inordinate amount of time to generate that information.
2469. **Mr F McCann:** John, thank you very much. You are very welcome. You have listened to the evidence. Some members, rather than looking at the totality of what happened with Red Sky and the difficulties that arose in relation to contracts and poor workmanship, have tried to focus on a sectarian attack on a company from east Belfast. Given your experience over a lengthy period, will you comment on that?
2470. **Dr McPeake:** The Housing Executive is not a perfect organisation — I am not the first to say that, and I will certainly not be the last — but one

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

2471. **Mr F McCann:** Just one other thing; I asked Jenny Palmer the same question. An impression has been given, from the announcement of the £18 million in the Assembly last year, that the Housing Executive was in chaos, there was poor leadership, it did not know where it was going and that it had a poor track record. Do you recognise that organisation?
2472. **Dr McPeake:** The Housing Executive is not perfect; it has certainly made mistakes in the management of contracts. I think that the issue that you are referring to specifically had to do with planned maintenance. Through its own internal work and through the investigation conducted on behalf of the board, the Housing Executive accepts and recognises that it did not put in place the proper structures for the management of some of the Egan contracts. However, that said, if you look at the quality of the maintenance service produced by the Housing Executive and compare it with what existed 20 or even 10 years ago, you can see that it is a sea change for the better. I am not using that in any way as an excuse,
- because I know that there have been serious shortcomings. However, I do not believe that we can categorise the work of the Housing Executive from those examples, embarrassing though they are. We started the process of reform before I retired, but I am confident that the colleagues who are there now will continue that process and address those issues.
2473. **Mr F McCann:** I have one final question. Again, I go back to a comment that I made earlier. All of this has been put at the door, as you say, rightly so, and there were difficulties and problems. Again, I will just quote the Public Accounts Committee. It said that it was:
- “astounded by the Department’s admission that the contracts being used by the Housing Executive were inappropriate ... and that opportunities ... were missed as far back as 2007”.*
2474. I have always been trying to work out what the relationship was between the Housing Executive and the Department in terms of overseeing. Do you believe that responsibility, besides it lying with the Housing Executive, also lay with the Department?
2475. **Dr McPeake:** All I can really comment on that is that, when I was the accounting officer of the Housing Executive for that period, I found the relationship with the Department to be robust. When I was a director in the Housing Executive, I would not have had direct contact with the Department as an accounting officer, so I cannot say for sure how it has changed, but my impression is that it was a much more robust relationship in the past several years than it may have been in the past. I know that Will Haire, at the Public Accounts Committee that you refer to, made an observation along those lines.
2476. **Mr Allister:** Just remind us when you became chief executive.
2477. **Dr McPeake:** September 2011.
2478. **Mr Allister:** And you retired in —
2479. **Dr McPeake:** March 2014.

2480. **Mr Allister:** Was that always your anticipated retirement date?
2481. **Dr McPeake:** No. I had always intended to retire early. I planned for that when I joined the Housing Executive; I made pension provision on the basis that I intended to retire early. I never had a particular date in mind, but what motivated me to take the decision to retire when I did was principally because of the reform programme. I do not like to give something up that I have started. I could see a road ahead of me: it was going to take a very long time to complete the reform programme. I felt that if I got bogged down in that, I would be stuck in that process and not feel able to leave it for perhaps 10 years or more. I decided that that would be an opportune time, before actually having to get into that restructuring around the reform programme.
2482. **Mr Allister:** Was your retirement precipitated in any way by a poor relationship with the Department and its Minister?
2483. **Dr McPeake:** No, not at all. I think that I had a good professional relationship with the Minister and the Department. In my time as a public servant, I have worked on the basis that you cannot be friends with politicians or public servants. You can have a respectful relationship, which is what I have tried to do. I do not believe that the acrimonious relationship that existed prior to my becoming chief executive existed after I became chief executive. There were certainly problems between the Department, the Minister and certain Housing Executive officials.
2484. **Mr Allister:** There seemed to be problems with the previous chairman and the Minister.
2485. **Dr McPeake:** I think that there was a fair bit of tension there, but I honestly believe that my personal and professional relationship with the Minister and the Department was much more positive and productive. As far as possible, we try to compartmentalise issues. You will notice from my statement that I had relatively peripheral involvement in the Red Sky issue. When Stewart Cuddy was acting chief executive and Brian Rowntree was the chairman and it was known that I was going to be the chief executive, having been interviewed and awarded the post in April but not taken it up until September, they worked to make sure that I was not contaminated by the issues that they were dealing with.
2486. **Mr Allister:** Is that why you were at the meeting of 28 April with Mr Robinson, Mr Newton and Mr Douglas?
2487. **Dr McPeake:** I was at that meeting principally because, at that point, I was the acting director/deputy chief executive of housing. It was sort of a dual function. That was the reason that I was there, and —
2488. **Mr Allister:** You —
2489. **Dr McPeake:** Sorry, just let me finish. It was principally because I was the person who was leading the discussions with the adjacent contractors about how to handle the transition. I think that Brian Rowntree and Stewart Cuddy felt that it would be useful for me to be there so that I could explain to the politicians what was happening around the TUPE issues, how staffing issues were being dealt with and things like that.
2490. **Mr Allister:** You gave some explanation of the focus of discussion at that meeting, but your note to us includes something more. It says:
- “It would be fair to say that the political delegation was not happy with the NIHE’s decision to terminate the contracts ... Mr Robinson in particular regarded it as a sectarian decision”.*
2491. **Dr McPeake:** That is the point that he made.
2492. **Mr Allister:** What do you say to that?
2493. **Dr McPeake:** As I said in my briefing note, the chairman at the time refuted it wholeheartedly. That was my view at the time, and it remains my view. I do not believe that the Housing Executive

- is a sectarian organisation, and I do not believe that that decision was in any way motivated by sectarian concerns.
2494. **Mr Allister:** That was obviously a lobbying meeting, in the sense that the politicians were lobbying against the termination of the contract, and subsequent events were lobbying towards the extension of the contract. Is that fair?
2495. **Dr McPeake:** I am not certain that it was ever explained to me. The meeting was requested, I believe, by Robin Newton or Sammy Douglas. I cannot recall.
2496. **Mr Allister:** It was one or the other.
2497. **Dr McPeake:** It was one or other of those two gentlemen. I do not recall hearing precisely what the purpose was, but the tone and the conversation were quite —
2498. **Mr Allister:** Well, the catalyst was the termination of the contract.
2499. **Dr McPeake:** There is no doubt about that, yes, and the fact that we were on the heels of an election, as you well remember. A number of the elected Members present were concerned that this was a contentious issue that was being handled by the Housing Executive during the period of purdah, which prevented those politicians from publicly commenting on it.
2500. **Mr Allister:** And we know that it subsequently played out into quite an intensive lobbying campaign, as we were hearing some of it this morning. There was quite a vigorous attempt to extend these contracts.
2501. **Dr McPeake:** Well, I am not sure about the terminology of “extension” because I have always struggled with that notion that the contract, having been terminated in April —
2502. **Mr Allister:** Yes, I understand that.
2503. **Dr McPeake:** — you cannot extend a terminated contract. However, it would be fair to say that the perspective was to see whether there was a way that this work could continue in the hands of Red Sky in administration until such times as there was either clarification about the bona fides of whoever was going to take the work on or a new procurement exercise was completed.
2504. **Mr Allister:** It was not the first time that Red Sky was in trouble with the Housing Executive, so to speak.
2505. **Dr McPeake:** That is correct.
2506. **Mr Allister:** You had some experience of that in 2007, did you?
2507. **Dr McPeake:** Not personally. The only reason I know something about that is because I had the not very pleasant duty of attending the Public Accounts Committee as the chief executive of the Housing Executive in which Red Sky was listed as a case study; therefore, I had to prepare for that by reading some of the material. I had no direct knowledge of what happened, but I read extensively around the records that the Housing Executive —
2508. **Mr Allister:** In reading through those records, was there any history of political lobbying at that time?
2509. **Dr McPeake:** I am not conscious of having picked that up. It would be fair to say that Red Sky itself as an organisation was formed in about 2006, but it had existed in an earlier form prior to that. However, the first Egan contracts were tendered in 2006 and it was appointed in 2007, and I think that, within a relatively short period, quite a lot of concerns were raised by local politicians, members of staff who were managing the contracts, and by tenants. I would not categorise that as “political lobbying”; I would categorise it as dissatisfaction with the quality of service.
2510. **Mr Allister:** On the other side of the coin, was there any representation in support of retaining Red Sky?
2511. **Dr McPeake:** I am not conscious of any, no.
2512. **Mr Allister:** Either at that point or at any earlier point.

2513. **Dr McPeake:** I am not conscious of that. I honestly cannot answer that question because I was not directly involved. However, I did not see, and I do not remember reading, anything that suggested that others lobbied to retain it.
2514. **Mr Allister:** You were required to give evidence to the PAC, and one of the issues that was dealt with there was the role of Mr Cushnahan. Is that right?
2515. **Dr McPeake:** That is correct.
2516. **Mr Allister:** And the PAC was ultimately quite critical of that.
2517. **Dr McPeake:** It was.
2518. **Mr Allister:** Did you have a view on that?
2519. **Dr McPeake:** My testimony is on the record from the Public Accounts Committee. I believe that I said that I did not doubt the motivation of the individuals who were involved in trying to reach a resolution, but that, if it were my decision to make, I would not have had him involved because the potential for a perceived conflict of interest — whether one exists or not — is serious. My own personal view is, had it been my decision, I would not have had that. However, my feeling is that the motivation of the individuals concerned was to resolve the matter; it was not anything untoward. I do not believe that the Housing Executive was in any way influenced by the fact that he had a former relationship. The very fact that we are discussing this now reinforces my view that perception of a conflict is just as, if not more, significant than an actual conflict.
2520. **Mr Allister:** Were you involved in the repair inspection unit (RIU) reports in the run-up to the eventual termination of the Red Sky contract?
2521. **Dr McPeake:** Very briefly. I had been the director of design and property services and had responsibility for the newbuild side of the Executive's private sector grants, the direct labour organisation (DLO) and the planned investment programmes. However, in the month of December, because we had had a few problems with senior staff, including health issues, I acted temporarily as a director of corporate services/deputy chief executive. I had sight of the reports that had just been issued on the Newtownabbey 1 contract, as the director, because RIU would have been reporting as part of internal audit. Therefore it was only briefly at that stage. However, I will have seen information on the RIU reports by virtue of the fact that I was attending the audit committee. It usually had summaries of those reports.
2522. **Mr Allister:** I do not know how far, if at all, you have been following the evidence to the Committee from Housing Executive staff and former staff. You may be aware of the confusion that was sown with us about whether in west Belfast the issue was of charging for higher spec kitchens than were provided or whether it was some other issue. Can you shed any light on that?
2523. **Dr McPeake:** Again, I have no access to the documents, in fairness. My memory of this is that the briefing that I had received when I was chief executive is that Red Sky's argument was that an element of the work that had been done was to a higher specification than the specification than the contract required and that that had been ordered and authorised by the Housing Executive. As I said, I have no first-hand knowledge of the details.
2524. **Mr Allister:** Did you read or hear the evidence?
2525. **Dr McPeake:** Yes, I saw that there was some confusion between a former chief executive and, I think, Mr Kitson around that.
2526. **Mr Allister:** You cannot really resolve that dilemma for us.
2527. **Dr McPeake:** I would have thought that the reports should be readily available. That will have been at the time when RIU was part of the housing regeneration division. I believe that that was in 2007.

2528. **Mr Allister:** Before you became chief executive, you were part of the senior management team.
2529. **Dr McPeake:** Correct.
2530. **Mr Allister:** Was there a sharing of information to the degree that you might have engaged in when you became chief executive?
2531. **Dr McPeake:** I think that it is fair to say no. I do not want that to sound overly critical, but I think that there was an awakening in the Housing Executive to a number of these issues. I think that the organisation had established itself in very strong silos with significant delegated responsibilities. That has certainly changed, not just under my term but when Stewart Cuddy was there in the acting role.
2532. **Mr Allister:** What about before that in Mr McIntyre's time? I have forgotten the name of the person before that.
2533. **Dr McPeake:** Mr Colm McCaughley. I have a lot of respect for both those individuals, and I do not want my comments to be seen as in any way critical of them, as they both achieved great things with the Housing Executive. However, they had a particular style of working and a particular culture. When I became chief executive and when Stewart was there in the acting capacity prior to me, we tried to do that in a different way to create a more collegiate style, where people had full —
2534. **Mr Allister:** What about taking matters to the board? There seemed to be a reluctance to do that on occasions.
2535. **Dr McPeake:** I am not so sure that it was reluctance. The board got a tremendous amount of information, but I think that the issue has been that it was not as focused as it could have been. So, again, in the more recent periods prior to my retirement as well, we reviewed what information we report to the board, how it is reported and what the relationship is between the board and the various committees. I think that we fundamentally addressed those issues, arising mostly, I have to say, from the experience initially with the Audit Office report and then the Public Accounts Committee report after the hearing. That included a lot of focus on making sure that the board had sight of the right information. As a final observation, since the new chairman has taken up post, he has also led a further review of the reporting to the board and how papers, agendas and so on should be prepared.
2536. **Mrs D Kelly:** Apologies, I have to leave shortly for another meeting. Mr McPeake, from reading the minutes of the meeting with you and Mr Robinson and company, it seems to me that they were more concerned about Red Sky retaining the contract than actually addressing how expenditure from public funds was being spent on faulty workmanship and even on jobs that did not exist. Were you not surprised about that?
2537. **Dr McPeake:** To be honest, I am not conscious of really thinking about it those terms. My desire when I was at the meeting was to explain to the political representatives how we were dealing with that transition. I did my best to assure them about how we would handle the TUPE issues. My concern was twofold: first, we had to deliver a service that was acceptable to tenants; and, secondly, where we could manage it, we needed to try to do something about the former employees, to the best of our ability. Truthfully, I did not read anything into that. I did not accept that it was a sectarian decision, in that sense; and, to be frank, I did not get a feeling that the DUP representatives who were there did not recognise that there were issues with Red Sky. I am not suggesting, in any way, that they thought the firm was perfect; that is not the impression that they gave. I think that they recognised that there were shortcomings.
2538. **Mrs D Kelly:** And in relation to TUPE — the transfer of employees — there has been a lot of talk about 400 employees losing their jobs, etc. How many actually lost their jobs?

2539. **Dr McPeake:** I cannot really say; you would need to speak to the administrator. However, Red Sky group was quite large and only about half of it, from memory, was associated with the Housing Executive. Although a large number of the operatives involved in Red Sky transferred to other contractors, a number of headquarters staff did not. Red Sky also had a number of teams spread across other contracts. Those of you who have dealt with TUPE issues will know that there is a rule of thumb that if an operative or a person is involved for at least half their time on a particular contract they come within the protection of the provisions, but if they spend less than half their time on it, they do not. That often happened, because Red Sky had seven contracts. So I think that there were some people who did not transfer for that reason. Certainly, there were some people in the head office operations who did not transfer as well, but I cannot give you the precise number.

2540. **Mrs D Kelly:** That is OK. Were the political representatives then reassured, because the number of people likely to lose their jobs was much smaller?

2541. **Dr McPeake:** That was certainly the impression that I had: that they had not fully appreciated how it would work. I left the meeting or the meeting ended with my having the view that we had done a decent job of explaining what was happening and what the next steps were.

2542. **Mrs D Kelly:** I am happy enough with that, Chair.

2543. **The Deputy Chairperson (Mr Brady):** OK. No other members have indicated that they wish to speak. Thank you very much for your evidence. As with all witnesses, if you have anything to add at this point or in the future and you want to get back to the Committee, feel free to contact us.

2544. **Dr McPeake:** Thank you very much

## 16 October 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mrs Dolores Kelly  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr Stephen Brimstone *Department of  
 Social Development*

2545. **The Chairperson (Mr Maskey):** I formally invite Stephen Brimstone to the table. As is the norm, when we invite people to give evidence to the inquiry, we notify them of the basis on which we are inviting them and provide them with any relevant material to assist them in their preparation. We also invite them, if they so wish, to present a written submission to the Committee, which, in this case, obviously Stephen has done. That is included at page 15 of your packs. Stephen, are you happy enough that you presented the submission to the Committee or are there any opening remarks that you want to make or anything additional that you want to say? You know the routine. It is entirely at your discretion if you wish to make any other points before we open it up to members.
2546. **Mr Allister:** Good morning, Mr Brimstone. Who decided that you would make contact with Jenny Palmer on 1 July 2011?
2547. **Mr Stephen Brimstone:** My recollection of events at that time was that it had been discussed with the Minister as an appropriate next step. He wanted to ensure that the board was adequately informed of his position. He became aware that the party had a councillor who sat on the board. He felt it appropriate to make contact with Councillor Palmer.
2548. **Mr Allister:** So that we are clear, it was you and the Minister together, and no one else, who decided that Mrs Palmer would be contacted?
2549. **Mr Brimstone:** Yes.
2550. **Mr Allister:** When was that decision made?
2551. **Mr Brimstone:** I can only assume that it was in the week leading up to the phone call on 1 July.
2552. **Mr Allister:** We know that, during that week, there had been a sequence of events, including meetings with the Housing Executive etc and that the Department or the Minister, rather, was forming a view that he would like the contract extended and all of that. Ultimately, it was getting to the point that the Minister was even considering an article-10 direction. That was sort of the direction of travel on the subject, yes?
2553. **Mr Brimstone:** Yes. The Minister was considering his options.
2554. **Mr Allister:** And, in that context, then, you and the Minister — it may not matter terribly, but was it your idea or his to contact Mrs Palmer?
2555. **Mr Brimstone:** Listen: it was over three years ago. I cannot recall the specifics around who said what and when to whom first. It was discussed and it was decided that this would be an appropriate step to take.
2556. **Mr Allister:** How was she then to be contacted?
2557. **Mr Brimstone:** Well, I did not actually have any contact details for Councillor Palmer.
2558. **Mr Allister:** How did you get them?

2559. **Mr Brimstone:** I had never met Councillor Palmer before. I had the contact details of Councillor Allan Ewart. He sat on Lisburn City Council along with Councillor Palmer, so I would have contacted Councillor Allan Ewart to ask for Councillor Palmer's contact details.
2560. **Mr Allister:** Well, Mrs Palmer told us that the phone call from you came in on Mr Ewart's phone. Was that your first contact? Did you just coincidentally happen to ring him up and say, "I am looking for Jenny Palmer's details", and he said, "Well, she is with me"?
2561. **Mr Brimstone:** Yes.
2562. **Mr Allister:** That is literally how it happened?
2563. **Mr Brimstone:** Yes.
2564. **Mr Allister:** You had no knowledge that they were together?
2565. **Mr Brimstone:** No: none at all.
2566. **Mr Allister:** OK. Why were you contacting her?
2567. **Mr Brimstone:** The Minister had growing concerns that his views around the handling of the contracts by the Housing Executive were not being accurately and entirely reflected by the then chairman to the wider board. He had no assurance that, if the Red Sky contracts were passed to adjacent contractors automatically post the decision of the board and before any work could be done to ensure that the same issues were not prevalent among the other contractors, in his view, a bad situation with regard to the Housing Executive could be made even worse.
2568. The Minister was not, in any way, suggesting that the Red Sky contracts, at that point being delivered by Red Sky in administration, should not be terminated early, but rather should be terminated only when there was an appropriate level of assurance that the adjacent contractors that would automatically get the Red Sky contracts did not have the same issues as Red Sky had, as has been demonstrated in the ASM Horwath report. The Minister became aware that a party councillor was one of the four political appointees on the Housing Executive Board, and that was Councillor Palmer. It was discussed and the Minister felt that it would be useful for me to contact Councillor Palmer to ensure that she was fully aware of his concerns, ahead of the special board meeting on 5 July, and that she could ensure that his concerns were accurately reflected to the wider board at the meeting on the following Tuesday. I undertook to contact Councillor Palmer.
2569. **Mr Allister:** You have just read that to us from something that you had pre-prepared, yes?
2570. **Mr Brimstone:** I was coming to this Committee so I prepared for what I thought would be questions that the Committee might present.
2571. **Mr Allister:** So, when had this meeting of 5 July been arranged?
2572. **Mr Brimstone:** The Minister and officials became aware of it only in that last week in June, to my recollection.
2573. **Mr Allister:** Is Jenny Palmer an honest person?
2574. **Mr Brimstone:** I have no reason to — I am sorry, I cannot answer that question, Chair —
2575. **Mr Allister:** Surely, you know whether she is honest or dishonest.
2576. **Mr Brimstone:** Chair, I am unsure if I am in a position to answer that question.
2577. **The Chairperson (Mr Maskey):** No, I think that it is an unfair question, Jim, because you are asking —
2578. **Mr Allister:** Well, was she honest in what she told the Committee, as she told the BBC, that, during the course of that conversation, you told her that there was no point in her being on the board of the Housing Executive unless she was prepared to do what the party needed her to do and, "You do what you are told; the party comes first"? Was she being honest when she told the

- Committee that language to that effect was used by you in that conversation?
2579. **Mr Brimstone:** Chair, I have no recollection of using language to that effect in the phone call with Councillor Palmer.
2580. **Mr Allister:** What do you have a recollection of?
2581. **Mr Brimstone:** I am happy to go into that now, if you allow me to. My best recollection of the event is having a phone call that lasted some five or six minutes over three years ago and amongst everything else that was happening. I called Councillor Allan Ewart. Again, I have made notes of this so that I can reflect to the Committee my best recollection.
2582. **Mr Allister:** When did you make the notes? It was not at the time.
2583. **Mr Brimstone:** No, not at the time, no.
2584. I called Councillor Allan Ewart, who sat on Lisburn City Council with Councillor Palmer, on the Friday morning before the Tuesday board meeting, to ask for contact details for Councillor Palmer. He happened to be at an event with Councillor Palmer and suggested that I could speak to her there and then. I had no issue and he passed the phone to Councillor Palmer. I introduced myself and explained my role in the Department with Nelson McCausland. I had never met Councillor Palmer and assumed that she did not know anything about me either.
2585. I outlined the issue regarding the Red Sky contract, including some of the allegations that had been made publicly. In light of the special board meeting in the next week, which we had been made aware of, at which the board would vote on terminating the Red Sky contract, I said that the Minister wanted me to brief her on his concerns and ask if she would reflect those concerns to the board in an accurate fashion.
2586. The Minister did not have confidence in the then chairman to accurately reflect his position — his concerns about the handling of contracts by senior management and the chairman of the board — to the wider board. He believed that he had received no convincing assurance from the chairman that the Red Sky issues were not prevalent among other contractors, particularly adjacent contractors who would automatically get the Red Sky contracts post-termination, if the board voted that way.
2587. My recollection is that I outlined how the Minister wanted a clear and transparent tendering exercise, as had been indicated in writing to the chairman, which would also allow time to get assurances that the same Red Sky issues were not happening with other contractors as well. There was no issue with terminating the Red Sky contract early, due to the issues identified, but the Minister wanted the termination to take place when there could be some degree of assurance that the new contracts could be properly delivered. To date, he had not been given any evidentially based assurance by the then chairman.
2588. Councillor Palmer, from my recollection, became very defensive regarding the then chairman and strongly contested any suggestion that he was not carrying out his duties appropriately. Councillor Palmer went on to tell me about her role on the board's audit subcommittee and said that, in her view, all of the fault lay with Red Sky, the issues were solely limited to Red Sky and the management of the Northern Ireland Housing Executive was appropriately managing the response maintenance contract.
2589. I responded by asking about Leeway Maintain, another response maintenance contractor in Belfast about which the housing Executive internal audit department was raising concerns regarding overcharging etc — the same issues as with Red Sky. Councillor Palmer refused to accept that. I again asked that she reflect the Minister's concerns to the board. She said she could not do that. I believe that the phone call ended after this point, and I did not pursue the issue with Councillor Palmer any further.

2590. **Mr Allister:** You said all that to her on the phone.
2591. **Mr Brimstone:** That is my recollection of what happened during the —
2592. **The Chairperson (Mr Maskey):** Just a wee second. I want to move on to another member after this because I want to make sure that everybody has a chance in the early part of this. Stephen, you provided a written submission to the Committee. You are here to give evidence and answer questions from members. I just draw to your attention that, in answer to questions from Jim, you said that you could not remember who initiated it or whose idea it was that you would contact Jenny Palmer, and then you read a submission saying that it was from the Minister. You have given us a submission but you are here to answer members directly, so I ask you to do your best to answer without having to read out lengthy scripts. That is not what —
2593. **Mr Brimstone:** Apologies, Chair, I was trying to fully articulate the recollection.
2594. **The Chairperson (Mr Maskey):** Clearly, there are differences in what we are hearing.
2595. **Mr Allister:** Did you, in terms, tell Jenny Palmer that you wanted her to go against the existing decision of the board and extend the contracts? Did you tell her that?
2596. **Mr Brimstone:** No, my recollection of the conversation is that I asked, on behalf of the Minister, that she reflect his concerns to the board.
2597. **Mr Allister:** So, you did not say to her, “We need you to do that” in terms of voting against what was then the present position of the board.
2598. **Mr Brimstone:** I have no recollection of saying that to her.
2599. **Mr Allister:** You did not say to her that the party comes first.
2600. **Mr Brimstone:** Again, whilst I cannot remember every phrase that I used during a four- or five-minute conversation that happened over three years ago, I have no recollection of using that phraseology to Councillor Palmer either.
2601. **Mr Allister:** What about, “You do what you are told”?
2602. **Mr Brimstone:** I again go back to the previous answer: I do not recollect using that phraseology to Councillor Palmer.
2603. **Mr Allister:** Could you have used it?
2604. **Mr Brimstone:** No, I do not believe so, in the context of the call and what we were actually looking.
2605. **Mr Allister:** Did you say to her, “Otherwise there is no point in you being on the board, if you are not prepared to do what we asked you to do”?
2606. **Mr Brimstone:** I have no recollection of using that phraseology to Councillor Palmer.
2607. **Mr Allister:** Councillor Palmer has a very clear recollection of you using that terminology; is that not right?
2608. **Mr Brimstone:** I have not seen the Hansard, but I believe that she made a comment along those lines to the BBC programme and to the Committee last week.
2609. **Mr Allister:** You know that she did, do you not?
2610. **Mr Brimstone:** Yes.
2611. **Mr Allister:** Yes. So, is she being dishonest with this, in your opinion?
2612. **Mr Brimstone:** No, I am — Well, again, Chair, if you could rule on whether I am here to answer questions of fact —
2613. **Mr Allister:** What you are saying is diametrically opposed to what she said.
2614. **Mr Brimstone:** I have given you my best recollection of the events as they happened at that —
2615. **Mr Allister:** She also said that, at a subsequent meeting, when you and she met Mr Robinson and others, you acknowledged that her account was essentially accurate.

2616. **Mr Brimstone:** I did not at that meeting acknowledge that her account was accurate.
2617. **Mr Allister:** Are you just trying to protect yourself, Mr Brimstone?
2618. **Mr Brimstone:** No, I am trying to give honest answers to the Committee in as full and frank a way as I possibly can.
2619. **Mr Allister:** Do you now acknowledge that, if she is right — that you told her that the party comes first and all the other things that I have put to you — you would be in breach of the code of conduct of a special adviser by using your position for party political purposes.
2620. **Mr Brimstone:** I do not accept that I used any of those —
2621. **Mr Allister:** If what Councillor Palmer has told the Committee is correct, do you accept that that would put in breach of the code of conduct?
2622. **Mr Brimstone:** I would need to go and look at that. I am not in a position to answer that question.
2623. **Mr Allister:** Let me remind you. Paragraph 6 states:
- “Special advisers should not use official resources for party political activity ... They should act in a way which upholds the political impartiality of civil servants ... They should avoid anything which might reasonably lead to the criticism that people paid from public funds are being used for party political purposes”.*
2624. Now, if you said to her, “This is what we need you to do. The party comes first”, would that not be breaching the code?
2625. **Mr Brimstone:** I do not believe that I used any of that phraseology.
2626. **Mr Allister:** If she is correct that that is what you said, do you acknowledge that that would be you breaching the code of conduct?
2627. **Mr Brimstone:** I do not accept that I used any of that phraseology.
2628. **Mr Allister:** I am not asking you to accept; I am saying that, if Councillor Palmer was believed by the Committee, when she said that you said that, would that put you in a position of having breached the code —
2629. **Mr Wilson:** Chairman, with respect —
2630. **The Chairperson (Mr Maskey):** Sorry, Sammy —.
2631. **Mr Wilson:** — the witness is here to answer questions about what he said —
2632. **The Chairperson (Mr Maskey):** — Sammy, Sammy —
2633. **Mr Wilson:** — not to give Jim an interpretation of the code of conduct.
2634. **The Chairperson (Mr Maskey):** — Sammy, Sammy —
2635. **Mr Wilson:** So stop the badgering.
2636. **The Chairperson (Mr Maskey):** Sammy, hold on a wee second. Jim, hold on a second.
2637. **Mr Wilson:** You are only a bully.
2638. **The Chairperson (Mr Maskey):** Hold on a second.
2639. **Mr Allister:** I think we know who was bullying, all right.
2640. **The Chairperson (Mr Maskey):** Excuse me, folks.
2641. **Mr Wilson:** Yes, we have got evidence of your bullying.
2642. **The Chairperson (Mr Maskey):** Jim and Sammy Wilson. Sammy Wilson —
2643. **Mr Wilson:** We have got evidence of your bullying —
2644. **The Chairperson (Mr Maskey):** Sammy Wilson.
2645. **Mr Wilson:** — on record.
2646. **The Chairperson (Mr Maskey):** Sammy Wilson, be quiet please for a moment. I am sorry, Jim.
2647. **Mr Wilson:** Thug.
2648. **The Chairperson (Mr Maskey):** Sammy —

2649. **Mr Allister:** Chair, I must say that I do object to that.
2650. **The Chairperson (Mr Maskey):** Sammy, I am sorry, I really have to ask you —
2651. **Mr Campbell:** You object, Jim?
2652. **The Chairperson (Mr Maskey):** I am sorry. I am going to have to ask you, Sammy; you need to reflect on that remark. Seriously. You seriously need to reflect on that remark. I am asking you to reflect on the remark and then let us get back to business.
2653. **Mr Wilson:** You can reflect all you want on it, but I am not going to —
2654. **The Chairperson (Mr Maskey):** No, I am asking you to reflect on it. I do not need to reflect on it; you need to reflect on it. The member has objected to it and, in my opinion, very justifiably so. So, I will ask you to reflect on that. I am asking you to reflect on that.
2655. **Mr Wilson:** And after a period of reflection, what?
2656. **The Chairperson (Mr Maskey):** Well, you answer the question.
2657. **Mr Wilson:** I have reflected on it.
2658. **The Chairperson (Mr Maskey):** How do you feel —
2659. **Mr Wilson:** I have reflected on it —
2660. **The Chairperson (Mr Maskey):** — your conduct —
2661. **Mr Wilson:** — and I have observed bullying of a witness, trying — after he has given an answer on five different occasions — and still keeping on at it. He is here to give evidence about what he said, not to give legal interpretations of the code of conduct. To pursue a matter like that, in the way in which it has been done, is bullying behaviour and, of course, is typical of what we can expect from somebody who has approached this, as I have said on many occasions, not with an open mind but with a conclusion already made and seeking to ensure that that conclusion is reached.
2662. **The Chairperson (Mr Maskey):** And in the course of the conduct of this meeting, which is open to the public, you have referred to another member as a “thug”. That member has obviously taken exception to that, and I would think that the Committee —
2663. **Mr Wilson:** I take exception to his line of questioning.
2664. **The Chairperson (Mr Maskey):** You did refer to the member, and, Sammy, you are long enough in the tooth, and you are around long enough in these political institutions. I have asked you to reflect —
2665. **Mr Campbell:** I think, Chairman, it was said in the political context. I do not think that there was any —
2666. **The Chairperson (Mr Maskey):** Well, sorry —
2667. **Mr Campbell:** — attempt to say —
2668. **The Chairperson (Mr Maskey):** Gregory, I am asking Sammy to deal with this in the first instance, before I bring anybody else in. It is a matter between a few members, although it is a responsibility for the Committee to take whatever decision it wants to take.
2669. You are not withdrawing your remark. I want to ask Jim to reflect on that. We do not have to deal with it this morning.
2670. **Mr Allister:** I can say it very clearly. I have been called many things, but I take great offence to being called a thug.
2671. **The Chairperson (Mr Maskey):** I appreciate that. It is the first time that such intemperate language has been used —
2672. **Mr Campbell:** Are you wounded, Jim?
2673. **The Chairperson (Mr Maskey):** — in the course of this Committee over three years
2674. **Mr Allister:** Sorry?
2675. **Mr Campbell:** Are you wounded — hurt?
2676. **The Chairperson (Mr Maskey):** Gregory. I am sorry. Gregory Campbell.

2677. **Mr Allister:** Maybe Mr Campbell wants to use the word as well. It sounds like he does.
2678. **The Chairperson (Mr Maskey):** Let us not have this meeting deteriorate any further. As in the past, if I feel it necessary, I will adjourn the session again if this the way this is going to deteriorate. I am just advising members. I will not accept —
2679. **Mr Campbell:** Chairman, you know where the deterioration started.
2680. **The Chairperson (Mr Maskey):** I will not accept language directed at other members that was used here a few minutes ago. I will not accept that from any member. No other member round the Table would expect me to nor want me to; nor, I would like to think, allow, as a Committee, corporate decisions to happen again. Let us get back to business here. Jim has —
2681. **Mr Allister:** It is not a matter of it happening again. It is a matter that it has happened.
2682. **The Chairperson (Mr Maskey):** I appreciate that.
2683. **Mr Allister:** I have been called a thug.
2684. **The Chairperson (Mr Maskey):** I appreciate that, and I have asked the member to reflect on that, and I am asking the member to withdraw that. He has refused to do it yet. So, I am quite prepared to suspend the meeting, because we cannot allow this Committee, no matter what anybody thinks of any member round the Table, to degenerate into such intemperate language.
2685. **Mr Campbell:** Or behavior.
2686. **Mr Wilson:** Chairman —
2687. **The Chairperson (Mr Maskey):** No member round this Table —
2688. **Mr Wilson:** Chairman, do you notice the pattern here? The only time there has ever been bullying of witnesses under your chairmanship of this Committee is when either the DUP Minister appeared or now, when a DUP adviser appears. I think that that says a lot about the way this inquiry is being run. Despite the fact that we have had some fairly dodgy witnesses here, I have never heard —
2689. **Mrs D Kelly:** That is ridiculous, Chair.
2690. **Mr Wilson:** — this kind of bullying behaviour before.
2691. **The Chairperson (Mr Maskey):** OK. I have given notice. I am not allowing this intemperate language. I am suspending this session of the inquiry this morning.
2692. **Mr Campbell:** Until?
2693. **The Chairperson (Mr Maskey):** I am not going to allow this to continue. I will seek advice, and I will consult, and we will resume again.
2694. **Mr Campbell:** OK. I hope it will not be like the last time.



## 6 November 2014

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

Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr Michael Sands                      *Department for  
 Social Development*

2695. **The Deputy Chairperson (Mr Brady):** I welcome Mr Sands to the Committee. You have provided a written submission. Members have also been provided with a cover note. Mr Sands, do you wish to brief the Committee, or are you content to take questions from members?
2696. **Mr Michael Sands (Department for Social Development):** I am content to take questions, Chair. I would only be reading out the statement that I have already given to the Committee.
2697. **The Deputy Chairperson (Mr Brady):** I have one question initially. As you know, Jenny Palmer gave evidence before the Committee a few weeks back and said that she met you. I want to ask about any subsequent conversations about the conversation around the phone call.
2698. **Mr Sands:** As I set out in my statement, the conversation that I had with Jenny Palmer was a casual conversation over lunch. It was not as if I had lunch with her; it was a lunch with the committee. All the committee members were present, and the conversation arose after lunch. It was no more than that.
2699. **The Deputy Chairperson (Mr Brady):** That was the housing committee.
2700. **Mr Sands:** It was the housing regeneration committee, which Mrs Palmer chairs.
2701. **Mr F McCann:** In the evidence that Ms Palmer gave to the Committee, she said that it took place at lunch, but she said that, at the meeting, you asked her if you could ask her a personal question. Her evidence is:
- "I said, 'Yes, fire away'. He said, 'Jenny, do you know anything about an email that was sent to the chairman of the board of the Housing Executive on the morning of the Tuesday that the Red Sky contract was terminated by the board?' I said, 'Yes, sure it was your office that sent it on behalf of Mr Brimstone'. He said, 'You know, he is going mad in the Department trying to find it'. I asked, 'Who's going mad?', and he said, 'Mr Brimstone'".*
2702. That seems to be more than a casual conversation.
2703. **Mr Sands:** I can assure you that all it was a casual conversation over lunch. As I said in my statement, it was Jenny who raised the issue of what had happened over the summer and her appearance, and she mentioned an email that had gone from the Department. To get clarification as to whether it was another email that I was not aware of or an email that we are aware I sent on the morning of 5 July, I simply asked her about it. She said, "It was your email". I knew then that the email that she was referring to was the one and only email and that, in fact, it was in the system, was readily available under freedom of information and that there was no need for anybody to go mad looking for it, because it was there.
2704. **Mr F McCann:** There is a clear contradiction in the written evidence and what you are saying and what Jenny Palmer said. She said that you asked her rather than her asking you.
2705. **Mr Sands:** Yes, I did ask her. I did not introduce the subject. She introduced the subject as we were chatting over lunch. She mentioned the email and, yes, I did ask her, for clarity, whether it was the email that I had sent or not.

- So, yes, I did ask her that, but I did not instigate the conversation.
2706. **Mr F McCann:** Did you not say to her that Mr Brimstone was going mad?
2707. **Mr Sands:** From my recollection, I did not.
2708. **Mr F McCann:** So she is wrong in the information that she has supplied to the Committee.
2709. **Mr Sands:** My recollection is what I have said: I did not say that he was going mad.
2710. **Mr Allister:** I want to get the chronology of the scene. The events with the Housing Executive board occurred in July 2011. We will fast-forward through July 2013, when there was the ‘Spotlight’ programme, to 19 September 2013, when you were sitting beside Mrs Palmer at lunch.
2711. **Mr Sands:** Yes, with the other councillors.
2712. **Mr Allister:** Yes, but she was sitting next to you, and you were in conversation. In judging time as best the Committee can, that seems to have coincided with the ongoing fact-finding investigation relating to Mr Brimstone. You were aware of that fact-finding investigation?
2713. **Mr Sands:** I was aware of it. I was not involved in it.
2714. **Mr Allister:** How were you aware of it?
2715. **Mr Sands:** I had heard that there was an investigation going on.
2716. **Mr Allister:** From whom?
2717. **Mr Sands:** I cannot remember specifically who it was.
2718. **Mr Allister:** From Mr Brimstone?
2719. **Mr Sands:** No, no, it was not from Mr Brimstone. It may have been discussed in the office that an investigation was ongoing.
2720. **Mr Allister:** Given the position that you have, you have been working with Mr Brimstone very closely for a number of years and obviously have some form of relationship with him as a work colleague in that sense.
2721. **Mr Sands:** A business relationship.
2722. **Mr Allister:** Yes, and you know him quite well.
2723. **Mr Sands:** I would not say that I know him quite well; I have a business relationship with him. I met him and his wife one day in House of Fraser, and that is as much as I know about his family life.
2724. **Mr Allister:** On the subject of the email, you were at your desk at 7.30 am when the subject email was sent on 1 July 2011.
2725. **Mr Sands:** It was 5 July.
2726. **Mr Allister:** Sorry, 5 July 2011. Thank you. Are you normally at your desk at 7.30 am, or was that by arrangement?
2727. **Mr Sands:** I am normally in my office every morning at 7.10 am.
2728. **Mr Allister:** That is very commendable.
2729. **Mr Sands:** Thank you. I was there at 7.05 am this morning.
2730. **Mr Allister:** Mr Brimstone also appeared to be in early that morning. Is that right?
2731. **Mr Sands:** He appeared in my room. I do not know his normal starting time because he would normally be —
2732. **Mr Allister:** Anyhow, he came and asked you to send an email to the chairman.
2733. **Mr Sands:** Yes.
2734. **Mr Allister:** And there was some urgency about it.
2735. **Mr Sands:** Yes.
2736. **Mr Allister:** And it was an email adjusting the timings of the contract review that the Minister and Mr Brimstone were eager to get the board to agree to.
2737. **Mr Sands:** It was an email asking if the chairman could ask the administrator if, in fact, the time of six months in the Minister’s letter could be lessened to four months. It was a question asking if and whether he could. It was not telling him to do anything.

2738. **Mr Allister:** Yes, it was a question that he put that before the board.
2739. **Mr Sands:** No, if he could put it to BDO, the administrator.
2740. **Mr Allister:** Yes, to the administrator to report on. That was an email amongst, I am sure, thousands of emails that you send over a year, and here we are, two years later, and that matter is being revisited. You would not remember offhand all the emails that you sent two years ago?
2741. **Mr Sands:** No, it was only when that was shown to me and someone said, “Here is a record of it”. As you rightly say, I could receive 70 or 80 emails a day.
2742. **Mr Allister:** I am sure. Was it not the case that some issue had been raised about that email and you, knowing that Mrs Palmer was on the board and the centrality of that to the controversy that had been generated by the programme, asked her, “Do you know anything about an email to the chairman?”?
2743. **Mr Sands:** I have already admitted that to Mr McCann. In fact, I did ask her.
2744. **Mr Allister:** If you already knew about it, you did not need to ask that question.
2745. **Mr Sands:** I thought that I had explained myself; I will try again. Mrs Palmer referred to an email which had been sent from the Department. I was trying to get clarity on whether it was another email or my specific email that was sent on that morning. Mrs Palmer’s answer to my question was that it was my email. I knew then that it was only the one email. That is what we discussed and that which we referred to.
2746. **Mr Allister:** Had anyone suggested that there were two emails?
2747. **Mr Sands:** Mrs Palmer simply said that an email had been sent from the Department —
2748. **Mr Allister:** And you knew that to be right.
2749. **Mr Sands:** Well, I was not sure whether she was talking about another email or mine, because she did not refer to it by name.
2750. **Mr Allister:** Was there another email?
2751. **Mr Sands:** No, there was not. It turned out that there was not.
2752. **Mr Allister:** So, if you knew that there was no other email, I am a bit puzzled as to why you would say or test her on whether or not you were talking about the same email.
2753. **Mr Sands:** I now know that there was no other email. I did not know at that point in the conversation because, as I said — I repeat myself again — she had referred to an email from the Department. I was merely trying to get clarity on whether it was my email.
2754. **Mr Allister:** So, Mrs Palmer is absolutely right when she tells us that you asked her whether she was aware of an email from the Department to the Chair.
2755. **Mr Sands:** Yes.
2756. **Mr Allister:** She is absolutely right that she sat beside you at lunch and that that is when this conversation took place.
2757. **Mr Sands:** Yes.
2758. **Mr Allister:** She is absolutely right when she asked you whether you had been in the room when the phone call had taken place.
2759. **Mr Sands:** Yes.
2760. **Mr Allister:** So, on all of those pertinent issues, Mrs Palmer is absolutely factually accurate.
2761. **Mr Sands:** On the points that you have just raised, yes.
2762. **Mr Allister:** Yes. And you want us to believe that she is factually inaccurate on the question of who asked about the email.
2763. **Mr Sands:** No. Sorry, I thought that I had already said that I asked about the email. That is the third time, now, that you have said it. I asked about the email.

2764. **Mr Allister:** Yes, but you are trying to put it in the context of your asking it after she had already asked you.
2765. **Mr Sands:** She had raised the issue of what happened over the summer and the programme.
2766. **Mr Allister:** She had not raised the issue of an email.
2767. **Mr Sands:** No. She mentioned that an email had been sent from the Department.
2768. **Mr Allister:** I want to suggest to you that you may be mistaken about that and that you raised the issue — as you admit that you did — but that you did it without Mrs Palmer’s having asked you anything about an email. You asked her if she was aware of an email sent by the Department.
2769. **Mr Sands:** My recollection is as I have set it out already, in that she raised the issue, she mentioned it, and I was trying to get clarity on which email it was.
2770. **Mr Allister:** That is your recollection.
2771. **Mr Sands:** Yes.
2772. **Mr Allister:** So, you are relying on your recollection. You are not —
2773. **Mr Sands:** It was a casual conversation.
2774. **Mr Allister:** We know —
2775. **The Deputy Chairperson (Mr Brady):** Sorry, Mr Allister. Mr Sands has answered the question.
2776. **Mr Campbell:** About five times, Chairman.
2777. **Mr Allister:** Well, let me put this to you, Mr Sands: the Committee knows from phase 1 of this inquiry that your recollection can be faulty. You sat where you sit today and gave us evidence that you had never seen a minute of a certain meeting until August, when it came out under freedom of information (FOI), yet the subsequent evidence was that, on four occasions, amendments to that minute had been sent to you. You had no recollection of that.
2778. **Mr Sands:** May I explain that, Chairman?
2779. **The Deputy Chairperson (Mr Brady):** Of course.
2780. **Mr Sands:** This would have been the evidence that I would have given had I not been off ill. What I would have said at that time was that the minute was sent round and, when I received it, I looked at it and, first of all, I noticed that, in fact, my name was not on the attendance list. I inserted my name. Someone must have come into my room and interrupted me. I subsequently went back to the email and reordered the middle of it to simply highlight the fact that there would be a saving of £15.1 million. I tracked those changes and sent them back to Barbara McConaghie. That is all that I did. When I answered that I had never seen the email titled “A meeting with the Glass and Glazing Federation”, I had not seen that minute because the minute that I worked on had shown the meeting to be with Turkington’s, so I was absolutely right.
2781. **Mr Allister:** You are turning it on the head of that pin, are you? Four times, you told the Committee, “I did not see those minutes until August”.
2782. **The Deputy Chairperson (Mr Brady):** Mr Allister —
2783. **Mr Campbell:** We are going down a route again, Chairman. Obviously, you never learned the last time.
2784. **Mr Brady:** Mr Allister, Mr Sands has answered the question. You can ask him from now till kingdom come; you will still get the same answer.
2785. **Mr Wilson:** Chairman, I want a ruling from you. Mr Sands is here today to talk about the evidence that Mrs Palmer gave and his response to it. Phase 1 of the inquiry is over. He is not here to answer questions about phase 1 of the inquiry.
2786. **The Deputy Chairperson (Mr Brady):** I think, Sammy, Mr Allister initially asked Mr Sands about Jenny Palmer.
2787. **Mr Wilson:** Yes, but he is now on to another subject.

2788. **Mr Allister:** It is not another subject.
2789. **Mr Wilson:** It is.
2790. **Mr Allister:** It is the issue of what reliance this Committee should place on Mr Sands's recollection if we already have evidence of faulty recollection on phase 1. I am simply suggesting to Mr Sands that his recollection was faulty then and perhaps it is faulty now.
2791. **The Deputy Chairperson (Mr Brady):** Again, Mr Sands has provided clarity today on whatever his recollection was. He can only answer the questions as asked.
2792. **Mr Campbell:** Mr Sands has explained that it was not, as Mr Allister said, faulty recollection. We are in danger here of reopening old wounds.
2793. **The Deputy Chairperson (Mr Brady):** The point that I am trying to make, before we proceed any further, is that Mr Sands has been questioned and has given answers. That is as much as he can do in the circumstances. If people have their views on the content of those answers, that is another matter.
2794. **Mr Wilson:** There were two occasions when the evidence that Mrs Palmer gave seemed to be in contradiction to the evidence that you have given. One was around the conversation about the emails. You have explained to us that, as far as you are concerned — we will just get this on record again — she initiated the conversation about emails —
2795. **Mr Sands:** Over lunch, about the programme.
2796. **Mr Wilson:** — and around the programme. Would you or Stephen Brimstone have had any reason to go mad about finding an email? What would the procedure have been had he wanted to find that email?
2797. **Mr Sands:** He would have asked me, and I would have said that the emails that I had, and which are now freely available to the Committee, were there. We knew what they were, and they were open for anybody to see, so there was no reason why he would go mad.
2798. **Mr Wilson:** So there is a record of all of those emails. Clearly there is, because we have been supplied with a copy of the email anyhow. So, he would have been well aware of the system and how to access it. Would he have had to go to you or could he have accessed it without going near you?
2799. **Mr Sands:** He would not have come to me. He would have gone to, say, the director's office in the housing division, which would be the keeper of all of those things and would have ready access. As I already said, I deal with 70 or 80 emails a day. I cannot remember all the specific ones, but they could turn up on various records; they are all on the TRIM records.
2800. **Mr Wilson:** So, indeed, if someone was very concerned about an email, rather than publicly going around being in a flap about it and drawing even more attention to their concerns, they could quite easily have gone quietly and got access to it. So it would not make sense for him to have gone mad about it, as Mrs Palmer suggested.
2801. **Mr Sands:** Not at all.
2802. **Mr Wilson:** In fact, if anything, it would probably have been to his detriment to have gone mad if he had been concerned about it, especially when there were other channels open to him. I am not going to ask you to speculate on Mrs Palmer's motives for presenting the information in that way. She also told us that she had a conversation with you about the phone call that Stephen Brimstone made to her. What is your recollection of that?
2803. **Mr Sands:** She simply recounted that, in fact, the telephone call had taken place, and she asked me if I had been in the room when Stephen made the phone call. I pointed out to her that no one in the Department knew about the phone call. The first that we heard about it was when Brian Rowntree phoned Will Haire several days later and explained that that telephone call had taken place.
2804. **Mr Wilson:** And you became aware of it after that.

2805. **Mr Sands:** Yes.
2806. **Mr Wilson:** Why did Mr Haire decide to share that? Was it shared to you in the form of a question about whether anybody had heard the phone call? What was the reason for Mr Haire raising it?
2807. **Mr Sands:** The context would probably have been around, as you said, whether anyone else was aware of the phone call. He was not aware of it, and the senior management team was not aware of it. We were not told about it, except by Brian Rowntree after the event.
2808. **Mr Wilson:** Mrs Palmer was quite adamant that you told her:
- “Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board.”*
2809. Those are the words that she has attributed to you.
2810. **Mr Sands:** This was in the context of the actual phone call. I can only say that, in working with Mr Brimstone since May 2011, he has been in my room twice. Once was on the morning of 5 July to send that email, which you are well aware of. The second occasion was when I returned from being off ill. He called down to my room three or four days after my return as a mere courtesy to see how I was. He does not make a habit of coming down.
2811. **Mr Wilson:** So, he is not the kind of boy who comes in and says, “Wait till I tell you what I did yesterday”.
2812. **Mr Sands:** No, absolutely not.
2813. **Mr Wilson:** Yet, Mrs Palmer has suggested —
2814. **Mr Sands:** I never said the words to her.
2815. **Mr Wilson:** Here are two fairly crucial conversations that she has used as evidence that her version of events is correct, and you are saying that, on both occasions, she is lying.
2816. **Mr Sands:** I would not accuse her of lying. I am saying that that is my recollection of that conversation. Based on the information that you have in relation to my relationship with Stephen Brimstone, it just would not have happened.
2817. **Mr Wilson:** I think that this is important, Michael. This is not just about your recollection. This is about you saying that both of these things would be totally out of character given his relationship with you, that it is not a kind of palsy-walsy relationship where he tells you everything that he has been up to —
2818. **Mr Sands:** Absolutely not. It is business.
2819. **Mr Wilson:** — and, indeed, in the case of the email, that he would not have had any reason to go in a flap looking for the evidence because there was a much more surreptitious way in which he could have obtained the email if he had wished to.
2820. **Mr Sands:** Yes.
2821. **The Deputy Chairperson (Mr Brady):** I do not think Mr Sands mentioned the word “lying”, as you are saying.
2822. **Mr Wilson:** No, he has not, but what I am saying is that —
2823. **The Deputy Chairperson (Mr Brady):** There is an implication there, with respect.
2824. **Mr Wilson:** Well, it is not an implication; it is direct. One person is telling the truth, and another person is telling a lie. What I am trying to establish from Mr Sands is that, given the relationship that he had with Stephen Brimstone, it is hardly likely that he would have been coming and confiding in him about a conversation that he had with another member of the party —
2825. **Mr Sands:** Absolutely not.
2826. **Mr Wilson:** That was not the kind of relationship —
2827. **The Deputy Chairperson (Mr Brady):** I say again, with respect, that, if you consider that someone is telling a lie, that is a subjective judgement on your behalf.

2828. **Mr Wilson:** No, I am just trying to establish that the —
2829. **Mr Campbell:** Chairman, surely it is about an accurate recollection and an inaccurate recollection.
2830. **The Deputy Chairperson (Mr Brady):** You are coming in next, Gregory, so we will just let Sammy finish.
2831. **Mr Wilson:** Leaving aside what was said in the conversation, I am just trying to establish that the kind of conversation that Mrs Palmer has suggested that Stephen Brimstone had with you is totally out of character because you are not a kind of close confidant, a buddy or somebody who frequents his company and has casual conversations with him.
2832. **Mr Sands:** That is correct.
2833. **Mr Wilson:** And you are saying that him visiting your office and dropping in for a chat does not happen.
2834. **Mr Sands:** No, and it still does not happen.
2835. **Mr Wilson:** And, as far as the email is concerned, one person claims that he was in a flap and you are saying that, if she had known the routes that were open to him, she would know that he would not have had to get into a flap because he had plenty of ways of getting this information, indeed probably without even drawing anybody's attention to the fact that he was looking for it.
2836. **Mr Sands:** Yes.
2837. **Mr Campbell:** Mr Sands, obviously the Committee is having a series of difficulties proceeding with the inquiry given the reluctance of some to appear before it, but you are here and we are glad to see you after your illness. You have alluded to the issue of the famous phone call and, after that, Mr Rowntree speaking to Will Haire, the permanent secretary. That was your knowledge then of the original phone call; is that right?
2838. **Mr Sands:** Yes.
2839. **Mr Campbell:** What was your understanding, if you had spoken to Mr Haire, about the rationale for Brian Rowntree's phone call to Will Haire? What was your understanding of the background of that?
2840. **Mr Sands:** Again, I am speaking on behalf of Will Haire here. Brian Rowntree's intention was simply to bring to Will Haire's attention that Jenny Palmer had received the phone call and that he had to excuse her from the meeting so that she was not involved in any vote.
2841. **Mr Campbell:** Was it your understanding that Will Haire was just relating the factual position of the outcome of the phone call? Was that it?
2842. **Mr Sands:** Yes.
2843. **Mr Campbell:** There was nothing else to it other than that.
2844. **Mr Sands:** Nothing else could have been done about it because the phone call had been made. We were not involved in it, and Stephen Brimstone started to set out in his evidence at the previous meeting how he had arrived at that phone call. No official was involved in it and no official knew about it, and we did not know about it until afterwards when Brian Rowntree phoned Will.
2845. **Mr F McCann:** I notice that, in the past, Sammy has accused members of the Committee of having a particular bias against people who have given evidence, but it is quite clear that he has a particular bias against Mrs Palmer and the evidence that she gave. I know that it was not Michael who accused her of lying, but it was Mr Wilson who accused her of lying. I cannot understand something. When Mrs Palmer gave evidence, at the start of her presentation, she would not name you as the person who she had the conversation with and, reluctantly, at the end, after being probed, said that it was you who had the conversation. What sort of relationship did you have with Mrs Palmer, if any? I know that people get on fairly friendly at Housing Council meetings and build up relationships. It is your job to do that and certainly Mrs

- Palmer's job to do it also. What sort of relationship did you have?
2846. **Mr Sands:** I would not say that I had any relationship with Mrs Palmer. Again, as with my relationship with Stephen Brimstone, it is purely business. I had attended several of the housing and regeneration committee meetings. I was aware that she was on the Housing Council. I have never come into her company in any situation other than those business relationships and business meetings where we were dealing with various issues. As I said, at the meeting on 19 September when she sat beside me or I sat beside her — I cannot remember how it happened — there was a casual conversation around what had happened over the summer, and the conversation then led on to the programme.
2847. **Mr F McCann:** Why would she say that you said those things?
2848. **Mr Sands:** I cannot answer that, Mr McCann.
2849. **Mr F McCann:** Councillor Palmer was unequivocal about what you told her. She said:
- “He said, ‘Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board.’ Those were Michael Sands’s words to me.”*
2850. Are you saying that that did not take place?
2851. **Mr Sands:** Absolutely not. I did not say that Stephen Brimstone came to speak to me personally. Can I just point out, Mr McCann, that, in Mrs Palmer's evidence, she said:
- “afterwards a DSD official approached me and asked me whether he could”.*
2852. She went on to say:
- “as a DSD official and had lunch with me”.*
2853. So, she said two different things.
2854. **Mr F McCann:** We can go further on in the evidence. When she was asked again by the Chair, she identified you as the person she spoke to. She said that you had phoned her about the conversation that took place between Mr Brimstone and Mrs Palmer. It is them directly quoting that. The point that I am making is that, whilst Mr Wilson accused Mrs Palmer of telling lies, somebody is telling lies. Obviously, you are saying that it is not you.
2855. **Mr Sands:** As you rightly said, it is a difference in a recollection of a casual conversation. I can only repeat to you what my recollection of that conversation is, and I have stated quite clearly what that is.
2856. **Mr F McCann:** Yes, but, for her, it was much more than a recollection. She was quite clear about a conversation that took place between yourselves. Are you now saying that Mrs Palmer misled or lied to the Committee?
2857. **Mr Sands:** I am certainly not saying that. I am saying that I can only repeat what I have said. I explained to Mr Wilson the relationship that I have with Mr Brimstone and why it would be totally out of character for him to come and tell me anything personally. He has never done so on any issue. The only personal dealings that I have had with Mr Brimstone, as I said, was when he came to me after I came back off sick leave and asked me how I was, which was out of courtesy.
2858. **Mr F McCann:** If you are not accusing her of lying or misleading the Committee, what are you doing? It is tantamount to telling us that she is lying.
2859. **Mr Sands:** I am recounting my version of the events as happened in that casual conversation.
2860. **The Deputy Chairperson (Mr Brady):** Again, I think that is all Mr Sands can do.
2861. **Mr Allister:** I want to take you back to how you became aware of the Brimstone/ Palmer phone call. Tell us how and when you became aware of that.

2862. **Mr Sands:** Brian Rowntree phoned Will Haire after the event and told him what had happened.
2863. **Mr Allister:** And how did you know?
2864. **Mr Sands:** I cannot remember the exact circumstances, but Will may have told us at a particular time. I cannot honestly remember.
2865. **Mr Allister:** I am trying to remember what they have told us. At some point, it came to your knowledge. Did that come directly from Mr Haire?
2866. **Mr Sands:** I believe that it did, yes.
2867. **Mr Allister:** Was that at a meeting where he sat you all down and said, "There has been this issue about a phone call from the special adviser to Councillor Palmer"? Was it at a meeting that he told you that?
2868. **Mr Sands:** Yes, it would have been at a meeting.
2869. **Mr Allister:** It was not an email.
2870. **Mr Sands:** No, it was not an email. It would not be one of those things where he would specifically come and speak to me personally.
2871. **Mr Allister:** Who else would be at that meeting?
2872. **Mr Sands:** I honestly cannot remember.
2873. **Mr Allister:** You cannot remember that.
2874. **Mr Sands:** No.
2875. **Mr Allister:** Was it just you and Mr Haire, do you think?
2876. **Mr Sands:** I honestly cannot remember. No, I said that it would not have been a meeting simply between Will Haire and myself. It would have been a meeting of other senior officials, perhaps discussing other issues. I cannot remember.
2877. **Mr Allister:** You remembered enough for it to register that that is how you got the information but you cannot remember where and when.
2878. **Mr Sands:** That was helped by the evidence that Mr Haire gave to this Committee that that was how he came to hear of it.
2879. **Mr Allister:** That is how he came to hear of it, he says.
2880. **Mr Sands:** Yes.
2881. **Mr Allister:** It is not how you came to hear of it necessarily.
2882. **Mr Sands:** No, I have explained to you that Will told us about it then. I cannot remember —
2883. **Mr Allister:** Are you conveying to the Committee a means by which you came into possession of that information, anxious to avoid conceding that your source was Mr Brimstone?
2884. **Mr Sands:** Absolutely not.
2885. **Mr Allister:** Are you trying to keep on the right side of Mr Brimstone?
2886. **Mr Sands:** Absolutely not. I have no affinity with or loyalty to Mr Brimstone at all. He is a business colleague, and that is it.
2887. **The Deputy Chairperson (Mr Brady):** Mr Allister, I go back to the point that I made before: Mr Sands can only answer the questions that he is asked, and I think that the last remark was speculative.
2888. **Mr Allister:** I think that we are entitled to probe motive. Tell us this: does the special adviser personally have access to the TRIM system?
2889. **Mr Sands:** I do not know.
2890. **Mr Allister:** I think that we heard evidence, if I recall correctly, that a special adviser personally does not have access.
2891. **Mr Sands:** I do not know but, again, in answering Mr Wilson's question, and as he pointed out and set out, it would not be difficult for him to come and ask somebody to get that for him.
2892. **Mr Allister:** Yes, he would have to ask someone. If he was looking for an email —
2893. **Mr Sands:** If he does not have access to TRIM. I do not know.

2894. **Mr Allister:** I am relying on evidence that arose in phase 1, but I think that the evidence was that the special adviser does not have access to the TRIM system and would have to ask a third party.
2895. **Mr Sands:** If that is what you say, yes. I honestly do not know if he has access or not.
2896. **Mr Allister:** So, if he was looking for an email, he would have to ask someone.
2897. **Mr Sands:** Yes.
2898. **Mr Allister:** And Mrs Palmer says that you said that he asked you.
2899. **Mr Sands:** Sorry, run that past me again.
2900. **Mr Allister:** Mrs Palmer says that you said that he was looking for an email and you asked her if she knew anything about it.
2901. **Mr Sands:** As I set out in my statement to the Committee, during the casual conversation that I had with Mrs Palmer, she raised the issue and referred to a minute from the Department. I was trying to get clarity from her in relation to whether it was my minute or another minute. That was what happened. Her answer to me was, "It was your minute that was sent". So, I knew then that there was only one minute and that was what we were talking about.
2902. **Mr Allister:** You have known Mrs Palmer in your official role for many years, is that right?
2903. **Mr Sands:** I would not say "many": a few years.
2904. **Mr Allister:** She told us that she has been on the board since 2007 maybe.
2905. **Mr Sands:** Yes, but I do not attend the board. I might have known she was a member.
2906. **Mr Allister:** How long has she been chairman of the committee that you service?
2907. **Mr Sands:** I do not have a clue. A year or two years.
2908. **Mr Allister:** In whatever number of years it is that you have known her, have you ever found her to be anything other than an honest person?
2909. **Mr Sands:** Chairman, that is not a fair question for me to answer.
2910. **Mr Campbell:** It is not the first time that has been asked either, Chairman. It was asked of another witness.
2911. **The Deputy Chairperson (Mr Brady):** With respect, Mr Sands is being asked to speculate on something that he may not necessarily have the answer to.
2912. **Mr Campbell:** As Mr Brimstone was last time as well by the same member.
2913. **Mr Allister:** I am not sure who is chairing this meeting.
2914. **The Deputy Chairperson (Mr Brady):** The point that I was trying to make, Mr Allister, is that Mr Sands has answered the question. You are going over old ground.
2915. **Mr Allister:** If you please.
2916. **The Deputy Chairperson (Mr Brady):** Are you finished?
2917. **Mr Allister:** If you wish.
2918. **The Deputy Chairperson (Mr Brady):** Do any other members have questions for Mr Sands? If not, I thank you for your evidence, Mr Sands, and for attending today.

## 6 November 2014

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

Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr Peter Cooke *Formerly of Red Sky*

#### 2919. **The Deputy Chairperson (Mr Brady):**

We return to our inquiry. I welcome Peter Cooke, former Red Sky managing director. The details are at page 170 of members' packs.

2920. Thank you very much for coming to the Committee. I ask members to note that Mr Cooke has provided a written submission, which is included at page 178 of members' packs. Members have also been provided with a cover note at page 172 of their pack. Mr Cooke, do you wish to brief the Committee initially, or are you content to simply take questions?

2921. **Mr Peter Cooke:** First, I apologise for being late. It is the ageing progress: I thought that I was coming at 2.00 pm, and I suddenly realised that it was 1.00 pm. It was one minute before 1.00 pm when I realised that, so my apologies.

2922. **The Deputy Chairperson (Mr Brady):** That is fine.

2923. **Mr Cooke:** I will just give you a flavour of where I may or may not be able to assist you. I am a businessman, not a politician, and I was invited by what was then the Northern Bank to have a look, on their behalf, at Red Sky at the end of 2010 because the bank was very concerned about their ability to recover the loans they had made to the company and its owner. They invited me to go and spend a couple of months looking at the company to see whether I thought that

it was recoverable, because it was in a fairly parlous state at that stage.

2924. During October and November, I had an opportunity to sit in on the company, ask questions and look at it, but I had no executive function at that time. At the beginning of December, I went back to the Northern Bank and said that a lot of good work had already been done by the then acting managing director, a gentleman called Harold Booth. He was a banker from the west of England who had been brought in by the board around one year previously. I said that, if his work was continued and some further restructuring took place, the company had a reasonable potential of being turned around again. I was then asked if I would take on the role of acting managing director from around the beginning of December 2010, and I took on that role and was there until I requested the administrators to come in in April 2011. I stayed on during the administration process to assist the administrators in any way that I could. At the time I joined the company, having spent much of my working life travelling and away from here, I had actually never heard of Red Sky. I did not know any of the people who owned or were involved in the company or any of the politicians who later became involved in it, so I hope that I can give you as neutral a view as possible of all that I saw and heard during that period.

2925. **The Deputy Chairperson (Mr Brady):** Thanks very much. I will ask you a question initially and then bring members in. The note of the meeting that you attended on 27 June 2011 between representatives of Red Sky, Minister McCausland, DUP MLAs and senior DSD officials indicates that the Minister would have liked to have had the administrator in place until the end of August to allow contract handover issues to be considered and so that, during that time, the proposed new

- company might be able to progress matters. During your extensive career of managing companies large and small across Europe, how often have you met a Minister to discuss public contractual issues for which that Minister would be ultimately responsible?
2926. **Mr Cooke:** Never. Prior to that particular series of events, I had never been in a company facing administration. It was an entirely unique set of circumstances. My priorities through this whole process were to try to see if the company could be sustained in some shape or form and if the employment that it furnished in east Belfast could be continued. As we were apparently denied any access to the Housing Executive to discuss the opportunity further, the only recourse we had was to local politicians. Through the local politicians, we were then given the opportunity to talk to the Minister.
2927. **Mr Allister:** You were invited by the Northern Bank to come in as a consultant.
2928. **Mr Cooke:** Initially, yes.
2929. **Mr Allister:** Why you? Do you know that?
2930. **Mr Cooke:** As the recession hit, I had been round the banks and a number of the institutions saying that my skills, such as they were, were available if anybody wanted to use them. The Northern Bank was one of a number of places that I had been.
2931. **Mr Allister:** Was Frank Cushnahan someone whom you knew?
2932. **Mr Cooke:** I had never met him prior to Red Sky. I met him a couple of times during the Red Sky thing, but I had never met him prior to that. I beg your pardon; he interviewed me once when I applied for a job as managing director of the Harbour Commissioners, but I did not get the job.
2933. **Mr Allister:** What was his role at Red Sky when you went there in October 2010?
2934. **Mr Cooke:** None, other than, as I understand it, he was a person who Norman Hayes referred to for private advice.
2935. **Mr Allister:** And it was in that context, though he held no official function —
2936. **Mr Cooke:** No, and he was never on the premises in my time.
2937. **Mr Allister:** But you said that you met him in connection with Red Sky.
2938. **Mr Cooke:** I met him with Norman socially a couple of times.
2939. **Mr Allister:** Norman Hayes was not known to you before you went there.
2940. **Mr Cooke:** I had never met him in my life, and I have not seen him for the last two years.
2941. **Mr Allister:** What was Norman Hayes's position in the company in October/ November/December 2010?
2942. **Mr Cooke:** He was the owner of the company, which is questionable because I would say that, effectively, the bank was the owner of the company at that stage. The previous acting managing director, Harold Booth, had him, using his words, "handcuffed in his office", so he was not doing anything really functional with the company. He came into work and was in his office, but he did not actually have a role when I arrived.
2943. **Mr Allister:** Until administration, he was still the owner of the company.
2944. **Mr Cooke:** He was still the owner of the company.
2945. **Mr Allister:** Who then appointed you managing director or temporary managing director?
2946. **Mr Cooke:** I was informed by the bank that the company had appointed me.
2947. **Mr Allister:** Does that mean Mr Hayes?
2948. **Mr Cooke:** I imagine that Mr Hayes was persuaded to appoint me by the bank, which held the purse strings, but I could not prove that.
2949. **Mr Allister:** Yes, but, within the company, if it was a company appointment, it had to be Mr Hayes's appointment.

2950. **Mr Cooke:** Yes. Eventually, I got an offer of employment from him, but I think that his arm was all the way up his back when that offer was made.
2951. **Mr Allister:** Remind us how the meeting with the Minister on 27 June came about.
2952. **Mr Cooke:** Norman Hayes had contact with one of the local MLAs, Robin Newton, and prevailed upon him to see if he could bring any influence to bear in political circles for the termination to be delayed while we made the case, which we wished to make to the Housing Executive but that they did not want to listen to at the time, that the problem that it was referring to was not a problem that related to Red Sky in particular but a problem with the Housing Executive contracts that applied across its different contractors.
2953. **Mr Allister:** I think that what you appeared to say on the ‘Spotlight’ programme was that you were looking to the politicians to put pressure on the Housing Executive to change its position. Is that fair?
2954. **Mr Cooke:** Yes, that is fair.
2955. **Mr Allister:** Was Norman Hayes at that meeting?
2956. **Mr Cooke:** No.
2957. **Mr Allister:** Was he at any meetings?
2958. **Mr Cooke:** He was at the meetings with the Housing Executive in February. He certainly was not at that meeting.
2959. **Mr Allister:** You have said to us in your written submission that you had pre-briefed politicians before a meeting. How many times did you pre-brief politicians?
2960. **Mr Cooke:** To the best of my knowledge, once.
2961. **Mr Allister:** When and with whom?
2962. **Mr Cooke:** Robin Newton and Mr Robinson visited our office and spoke to staff and management. I could not tell you what the date was, but it was at some distance before the meeting here with the Minister.
2963. **Mr Allister:** We know, for example, that there was a meeting between Mr Robinson and colleagues and the Housing Executive. Relying on my memory, I think that that was on 28 April. Had you pre-briefed those politicians for that meeting with the Housing Executive?
2964. **Mr Cooke:** Not specifically for that meeting. All we had done was to appeal to the local politicians of a number of parties, of which the DUP was but one, to explain that we felt that the termination of the contracts was not allowed for in the contracts and was being handled in a way that was prejudicial to Red Sky.
2965. **Mr Allister:** But you told us that Mr Newton and Mr Robinson came to the Red Sky offices —
2966. **Mr Cooke:** They did.
2967. **Mr Allister:** — and that that was where the pre-brief took place.
2968. **Mr Cooke:** That was about the general situation. It was not particularly preparation for whatever came next, because I did not know what actions they were going to take.
2969. **Mr Allister:** I was trying to establish whether you think that that was before they went and met the Housing Executive at the end of April.
2970. **Mr Cooke:** Yes, definitely; it must have been. I have no doubt that it was as a consequence of their meeting with us that they went to meet the Housing Executive.
2971. **Mr Allister:** And you did not brief them again before you met them on 27 June.
2972. **Mr Cooke:** To the best of my ageing memory, I think that I met them only once prior to the meeting in June, which was on the premises of Red Sky one evening.
2973. **Mr Allister:** Did you brief the Minister at any stage?
2974. **Mr Cooke:** No, the only time I ever spoke to the Minister and, you could say,

- briefed him was at that meeting in June that you referred to. I have not met him before or since.
2975. **Mr Allister:** On the last page of your written submission to us, you say of the meeting of 30 June between the Minister, the chairman and chief executive of the Housing Executive, and senior DSD officials:
- “I was not there, nor to my knowledge did I receive any information at the time on such a meeting. Through the local MLA for Red Sky I had been given the opportunity to brief both the First Minister and the Minister”.*
2976. **Mr Cooke:** That was at the meeting that you have just referred to, where I was called to this Building and explained the situation. That was the only meeting that I had with the Minister.
2977. **Mr Allister:** So, to be clear: there was a meeting with Mr Newton and Mr Robinson in Red Sky’s offices, probably before the end of April.
2978. **Mr Cooke:** It must have been around that time, yes.
2979. **Mr Allister:** And, then, there was a further meeting between Red Sky personnel and the Minister and the First Minister.
2980. **Mr Cooke:** I have read all the correspondence. He did not say either that he was or was not the First Minister. He was in the room, as were other MLAs; that is all that I can tell you.
2981. **Mr Allister:** Yes, but we are talking about Mr Peter Robinson.
2982. **Mr Cooke:** Mr Peter Robinson, correct.
2983. **Mr Allister:** And that was at the end of June.
2984. **Mr Cooke:** That was at the end of June. I have read about everything that happened after that in your evidence with great interest in the last 48 hours, because the sequence of events after that was never known to me.
2985. **Mr Allister:** At the meeting on 27 June, you were looking to set up a new company, is that right?
2986. **Mr Cooke:** I was not looking to set up a new company.
2987. **Mr Allister:** You — the Red Sky collective.
2988. **Mr Cooke:** I was not a financial part of anything. I was —
2989. **Mr Allister:** Was someone looking to set up a new company?
2990. **Mr Cooke:** Mr Hayes and some of his colleagues were, yes.
2991. **Mr Allister:** And was that to take over the contracts?
2992. **Mr Cooke:** I think at that stage it was fairly clear that the contracts were not going to be retained. It was to carry on with the rump of the Red Sky business, which was maybe 40% of its turnover. I think there was an attempt there to see whether there was a possibility of being able to stay involved with the Housing Executive.
2993. **Mr Allister:** If you look at what you told the ‘Spotlight’ programme just on that point:
- “The purpose of that meeting was to try to get some way of delaying the termination while Red Sky was in administration so that it could prove that it had been treated unjustly and have an opportunity to emerge back out into the sunlight as a trading business”.*
2994. **Mr Cooke:** Correct. That does not necessarily mean with or without the Housing Executive. The company had gone into administration, and the sole objective was to try to see if the employment could be continued and the business could continue in some shape or form, either by being bought by others or from within.
2995. **Mr Allister:** But there was a desire by Mr Hayes to set up a new company.
2996. **Mr Cooke:** Oh yes, as you can see.
2997. **Mr Allister:** And the sequencing that you now know about, of trying to extend the termination of the contracts, would have facilitated that.

2998. **Mr Cooke:** If that venture had been successful it would have meant that the new business might have potentially been bigger than the current businesses, yes.
2999. **Mr Allister:** Was that new company to be Totalis?
3000. **Mr Cooke:** At that stage there was no name or anything. It was a concept, as a number of people were asked by the administrator to bid for the business and Norman Hayes was asked among them if he wanted to express an interest. So, at that stage he was trying to see if it was possible to do something for himself.
3001. **Mr Allister:** How appropriate was it to hold meetings with the Housing Executive and the Minister for a company in administration in the absence of the administrators?
3002. **Mr Cooke:** In all honesty, I never thought about that issue until I saw it in —
3003. **Mr Allister:** But thinking about it now.
3004. **Mr Cooke:** As far as what we were trying to achieve that day is concerned, I think my answer would be simple. The administrators did not appear to be terribly interested in anything other than getting maximum value out of the company.
3005. **Mr Allister:** Legally, they were the company.
3006. **Mr Cooke:** Yes, they were, so in legal terms you might well be correct in suggesting that maybe we should not have been there. In practical terms, I was receiving constant representations from the employees to try to see if we could do anything to save their jobs. I do not at all regret having endeavoured to do that. That is what we were trying to do. If we were able to forestay the determination until a third party could see that what Red Sky was being accused of was common across all of response maintenance and was a function of the way the contracts were run, I believed that Red Sky would at least have a chance of staying alive. As it happens, it did not.
3007. **Mr Allister:** But, with hindsight — which is a wonderful thing, of course — would it not be fair to say that it would have been much more appropriate to have involved the administrators in any such meeting?
3008. **Mr Cooke:** As a simple, black-and-white expression, that is absolutely correct. They were not interested in —
3009. **Mr Allister:** Were they getting in the way of the agenda to get a new company?
3010. **Mr Cooke:** No. I think if they had been getting in the way, a new company would never have happened. I do not believe that they were getting in the way at all. They wanted the maximum number of bids on the table to get the best value.
3011. **Mr Allister:** Were they getting in the way of the extension of the contracts?
3012. **Mr Cooke:** They were persuaded initially that the extension of the contracts was in the interests of the administrators. Then they went to the Housing Executive and came back persuaded that it was not going to happen.
3013. **Mr Allister:** You said that you had never met a Minister on a contractual issue.
3014. **Mr Cooke:** Yes.
3015. **Mr Allister:** Of course, the contractual issue here lay not with the Minister but with the Housing Executive.
3016. **Mr Cooke:** Correct.
3017. **Mr Allister:** So why was one meeting the Minister at all?
3018. **Mr Cooke:** We went to the local politicians because the Housing Executive would no longer talk to us.
3019. **Mr Allister:** Who suggested that you meet the Minister?
3020. **Mr Cooke:** Norman Hayes.
3021. **Mr Allister:** Norman Hayes.

3022. **Mr Cooke:** He suggested that we meet Robin Newton; Robin Newton suggested that we meet the Minister.
3023. **Mr Allister:** And that is without the administrator.
3024. **Mr Cooke:** Without the administrator.
3025. **Mr Allister:** And without the Housing Executive.
3026. **Mr Cooke:** I did not send out the invitations for that meeting.
3027. **Mr Allister:** But they were not there either.
3028. **Mr Cooke:** No.
3029. **Mr Allister:** And they were with whom the contract was.
3030. **Mr Cooke:** As far as I recollect, there were two representatives from DSD's housing department.
3031. **Mr Allister:** Yes, from DSD, but there was nobody from the Housing Executive.
3032. **Mr Cooke:** No, no one from the Housing Executive was there.
3033. **Mr Allister:** I have a few other questions for later.
3034. **Mr Wilson:** The one thing that comes through in your submission to us, Mr Cooke, was that you believed that a bias or a prejudice against Red Sky was endemic in the Housing Executive. What brought you to that conclusion?
3035. **Mr Cooke:** I have to try and think, after all the things that I have read from your evidence in the past few days. Clearly, those are other people's opinions and I have to try to give you my own opinion.
3036. My period there was very short, and I cannot see, in real terms, anything that took place before I was there. I can only see what happened when I was there. What I sensed, and certainly what the people working around me would have encouraged me to believe, was that, for whatever reason, Red Sky was being, I will use the word "victimised" for a contractual environment that did not work and that was being operated by all

the response maintenance contractors, and, as I think that you now know, the general maintenance contractors as well. Previous claims of overcharging had largely been dispensed with and the evidence that I could see, as we picked through the enormous volume of documents that was being put in front of us constantly at that time, suggested that the sum of the conclusions did not tie with the individual facts underneath.

3037. I have said on numerous occasions and am happy to say again that I am not going to be an apologist for Red Sky: it did some things really well, and it did some things really badly. It was a commercial enterprise and probably a fairly extreme one in certain ways. There was a great deal of work that it should have been ashamed of, there was some work that it should have been extremely proud of and there was a lot that was acceptable. I do not like the word "acceptable" in a business environment, but there was a lot that was acceptable. However, when the data was collected, either by the repairs inspection unit (RIU) or by the ASM report, collated and given to us as a great raft of data on a case-by-case basis, we started checking through it. In the case of the ASM report, we had an independent quantity surveyor from across the water to ensure independence in checking through it, but we could not find the substance of the numbers.
3038. What we could find — I can freely agree with this — was that there was massive difficulty in working those contracts in the way that they were written. Nobody was doing that. In fact, the Housing Executive had instructed a number of variances to make them operational, and the vast bulk of what was claimed as overcharging was actually down to contractors doing exactly what they had been told to do. My outrage, if I may use that word, at the time of the termination of those contracts was that it was inequitable to do that to Red Sky; it should have been done to all the contractors or none of them. Then the problem should have been solved and a fresh start made. I would use the word "victimisation", but I cannot give

- you the reason behind that because I do not know.
3039. **Mr Wilson:** You point out that practices were similar across all contractors and were in accordance with the Housing Executive's written instructions, yet you feel that Red Sky was —
3040. **Mr Cooke:** Yes.
3041. **Mr Wilson:** When Mr Cuddy was here, it was put to him that this was common practice and that all contractors were guilty of that. His argument was that that was not the case and that only Red Sky stood out as far as this was concerned. What is your response to that?
3042. **Mr Cooke:** Reading through the evidence that you have already got, as I understand it, another contractor was investigated on the same basis very shortly afterwards . You have probably got much more information on that than I have access to. It was certainly common knowledge at the time, and it would have been said through the Housing Executive offices, "This is how the contracts work. This is how they are done". It is a pragmatic way of finding your way around a rule book that does not fit the circumstances.
3043. Were there opportunities inside that to defraud a public body of money? There may have been. During the time I was at Red Sky, I have to say, hand on heart — I had my eyes as open as I could get them — that I never saw anybody doing anything deliberate. I saw people doing things that were really stupid, I saw people who were unsupervised and unmanaged, I saw workmanship that people should have been ashamed of, but I never saw any evidence, in my time, of anybody deliberately twisting information for gain. If they had done so, then they did it pretty badly, because Red Sky had been making losses for three years, and there is not much value in defrauding people if you are not going to make money out of it.
3044. **Mr Wilson:** You have identified some of the ways in which the alleged overcharging occurred —
3045. **Mr Cooke:** I will happily talk about those.
3046. **Mr Wilson:** — in the application of pro rata rates but that would have happened with all the other contractors.
3047. **Mr Cooke:** It was the norm.
3048. **Mr Wilson:** Housing Executive officials gave us evidence that Red Sky alone was guilty, or primarily guilty, of this. You have been very helpful in your submission in pointing out, for example, that, if a door was put on with one screw missing, then the full cost of that door was regarded as an overcharging rather it being than 5p for the screw. That would have occurred with all the other contractors, yet you are saying that Red Sky was picked out.
3049. **Mr Cooke:** There may be many reasons for that. I have read all the historical background over the last few days, which I did not have access to previously, and there was clearly some kind of breakdown in relationships between Red Sky and the Housing Executive. It goes back a very long time.
3050. I can only judge what I experienced when I was there, which was for less than six months in total. I believe that Red Sky was doing exactly what everybody else was doing, what they were being told to do and what was being signed off properly by maintenance officers across all the districts.
3051. Red Sky might have had a higher profile because it was the biggest contractor in response maintenance; it had five contracts whereas most others only had one or two. There may have been more to it than that. Clearly, there is a massive amount of history here, and I put the same point to Mr Cuddy and the then chairman of the Housing Executive when we met. That was a very unpleasant meeting. It was the most unpleasant business meeting that I have ever been to in my life. I put the point to them that those were common practice, and they said, "They are not common practice. They do not exist". I have a piece of paper, which you have a copy of, which, if it is not the instruction, it is

- effectively confirming by the way in which it is written that that was the practice. So, I do not understand how they could have been in denial. That was how the system worked, and a number of audits on the Housing Executive confirm that the practices and the way that it ran the contracts was not giving proper control.
3052. **Mr Wilson:** Mr Cuddy and, I think, Mr McIntyre both admitted when they were questioned that there was a toxic relationship between some of the Housing Executive officials and Red Sky. They allege that that was just at local level. From your experience of the relationships, were you aware of that toxic relationship and would you like to tell us how it demonstrated itself?
3053. **Mr Cooke:** All I know is that the quality of the relationships between Red Sky local management and Housing Executive local management varied on a district-by-district basis. Much has been written already about the difficulties in the relationship between the west Belfast contract and Red Sky, and I have no doubt that that was a difficult relationship. However it got there, it was a very difficult relationship. There were other parts of Belfast or Newtownabbey where the relationship was constructive. It was not necessarily warm, but it was constructive. I never saw the toxic bit directly myself.
3054. It is unminuted, I suspect, and I cannot even remember the date, but we had a visit from, I think, Clark Bailie from the Housing Executive prior to all the events that you are referring to. I remember sitting with him in the Red Sky boardroom. I had never met him before. I cannot even remember the purpose of his visit in the first place, but I think that, at that time, we were owed £300,000 of overdue money for work completed. Under the contract, it was due. We were pushing for it, and he came out to discuss it with us. I have never found that you gain anything by keeping your thoughts to yourself, so I said to him very early in the meeting, “You are sitting there thinking that we are guilty of fraud”. He said to me, “Nobody has ever said that to me before”. I said, “But you are, aren’t you?”. He said, “Yes, I am”, and I said, “Well, I would be fascinated to see the evidence, because, if we are, we deserve all the consequences arising from it. I don’t believe we are”. He said, “This is the first open conversation I have ever been able to have on this subject”. Again, I never met him another time. I could clearly tell from his reaction that he came with a lot of baggage that was to do with the nature of the relationship. That might have been founded or unfounded; I do not know.
3055. **Mr Wilson:** You talked about the unpleasant meeting —
3056. **Mr Cooke:** The first of the two meetings in particular.
3057. **Mr Wilson:** — of 4 February 2011. Did that indicate to you that there was perhaps a toxic relationship at the top of the Housing Executive towards Red Sky, as well as at local level?
3058. **Mr Cooke:** It was toxic. There is no indication about it: it was absolutely toxic. We walked into the room, and it was like being made to stand in the corner at school. Before I even got my name out, I was standing in the corner to be shouted at. It was an appallingly badly handled meeting. The bit that still sticks in my mind is that I got my notepad out, and he said, “You may not make any notes. We will make the minutes available to you”, but they never were. So, other than from my memory, I cannot tell you what happened at that meeting. I have never seen the minutes.
3059. **Mr Wilson:** Was any reason given for you why they did not want the meeting minuted by you?
3060. **Mr Cooke:** They said, “We will make the official record. No one else will have a record”.
3061. **Mr Wilson:** But they never supplied the minutes.
3062. **Mr Cooke:** No. In fact, I would be very interested if you could get hold of those minutes for yourselves, if not for me.

3063. **Mr Wilson:** That might be useful. I do not know whether we have a record of that meeting.
3064. **Mr Cooke:** His secretary sat there and took minutes.
3065. **Mr Wilson:** Who was in attendance at that meeting?
3066. **Mr Cooke:** From the Housing Executive, there was Brian Rowntree and Stewart Cuddy. I cannot remember whether the head of RIU was there. He was certainly at the second meeting, and I think that he might have been at the first. Norman Hayes was there, myself, and Pauline Gazzard. I suspect that the chairman's secretary was present. That might have been it, or there might have been one more.
3067. **The Deputy Chairperson (Mr Brady):** I am sorry, Mr Cooke, could you clarify what date that was?
3068. **Mr Cooke:** It was on 4 February 2011.
3069. **The Deputy Chairperson (Mr Brady):** Thank you.
3070. **Mr Wilson:** The sum of money that they claimed was, I think, £650,000, and they withheld that in payments. Was any detail ever given of how that calculation was arrived at?
3071. **Mr Cooke:** You are testing my memory a bit, but basically I think that they were sampling on the basis that I explained about taking one screw out of a door, etc. They were sampling and coming up with a number, multiplying it to make a total and then applying it across the districts. I never saw full evidence of where that particular number came from. Again, under the contract, so far as I remember it — I no longer have access to those documents — I think that they had no right to retain money. They had a right to call for arbitration, as we had. We called for arbitration when they gave us a termination notice, but they refused it. However, the contract allowed us that right of arbitration.
3072. **The Deputy Chairperson (Mr Brady):** Can I just clarify that? There are minutes of a meeting held on 4 February 2011
- at 2.30 pm between the Housing Executive and Red Sky Group Limited. It was a meeting about Newtownabbey overpayments, and they mention Norman Hayes, Mr Cooke and Pauline Gazzard. Presumably, those are Red Sky minutes.
3073. **Mr Cooke:** We did not make any minutes.
3074. **The Deputy Chairperson (Mr Brady):** They are in your pack, so you can check. Present from the Housing Executive were Stewart Cuddy, Clark Bailie and Raymond Kitson.
3075. **Mr Cooke:** I think that those are Housing Executive minutes. I have never seen them before, but I am pretty sure that they are Housing Executive minutes.
3076. **The Deputy Chairperson (Mr Brady):** We were not sure who compiled those minutes.
3077. **Mr Wilson:** I will not ask you to comment on them, Mr Cooke, as you have not had a chance to go through them.
3078. **Mr Cooke:** I would be very interested in reading them at some point.
3079. **Mr Wilson:** I know that your involvement started only in the last months of Red Sky but not only has the Housing Executive admitted that there was a “toxic relationship” that it claimed was at local level but you are now indicating that it may have been at a much higher level. There are also allegations that this stemmed from two things, the first being a sectarian campaign against Red Sky in west Belfast. Were you ever aware of complaints about those kinds of allegations and the practical ways in which they manifested themselves?
3080. **Mr Cooke:** There were people at ground level in Red Sky who might have made those allegations. I heard conversations on that subject occasionally, but I have no evidence whatsoever that there was sectarianism. To try to put the winning of the west Belfast contract into some kind of context, I can say that we were all working very hard to create a new

- world here, and, if you remember the history of where we came from, which we all do, Red Sky was quick to win a very challenging contract. I suspect that it was always going to be stunningly difficult for a while. It may be just that simple. I suspect that there is a huge element of this being something that was forced on both communities that neither was ready for.
3081. **Mr Wilson:** We also have legal advice from a barrister writing from the Housing Executive's legal team at a stage well before the contract was terminated warning against termination of the contract and advising caution because of the political interference that there had been. From the meetings that you had with the Housing Executive, were you aware of any kind of political pressure that may have added to the toxic relations that you described?
3082. **Mr Cooke:** I do not think so. You all have all the evidence in front of you. The media, and the BBC in particular, enjoyed bringing Red Sky to the front as often as possible. I cannot believe that, when I went to Red Sky, I had never heard of it before. That is because when you start reading this stuff afterwards, you find that it was clearly an issue that stirred the public imagination for some considerable period of time. I was not aware of it other than that it appeared in the media to be a bit of a political football. I know nothing that justifies why that would be the case, other than perhaps that it was a company from east Belfast winning a contract in west Belfast. However, that is supposition.
3083. **Mr Wilson:** You indicate in your submission that there had been other occasions when allegations of overpayment were made and then dropped and arrangements breached. It is fairly dramatic, and I just wanted to ask you about the way in which that happens. On one occasion, £264,000 was overpaid and was settled for £20,000, and, on another occasion, £924,000 overpaid and settled for £35,000. From your knowledge, how are these figures reached? It seems to me that on one occasion you are out by
- 13 times the figure, and on the other occasion you are 33 times out.
3084. **Mr Cooke:** Did you not just see from the evidence how, on the maintenance contracts, the figure of £18 million became £600,000-odd? This is an opinion, so you must treat it only as such. They had got themselves into a series of contracts that did not function and were under pressure from the Audit Office to justify the expenditure. It was really easy to blame the contractors, but the serious underlying problem was that the contracts as written were unworkable. My understanding — I set it out in my evidence — was that the principle of the contracts was really simple: every job that you would ever be asked to do was in a schedule of rates, and a quantity surveyor, or a series of quantity surveyors, put a price on it, such as £200 for a door, to use my previous example. You then bid against the number 100. If we bid 98, we were bidding 2% below or 4% above, or whatever it was, and whoever won the contract had to honour those rates for every job. That is great. I would say that 80% of what happened was done that way.
3085. The problem arose when a job was not in a schedule of rates or when the description of the job was not really appropriate for the work that was being asked to be carried out. The vast majority of the so-called over-claims relate to those areas, where either dayworks were permitted and policed in its own way by the Housing Executive — it had to sign it off to allow you to do it in the first place, and it was labour and materials — or where there was this extraordinary one called pro rata rates. I am not sure whether you have got your heads around it yet, but it is really interesting.
3086. I see exactly why anyone would want to conclude that it is fraudulent. If a contractor were asked — I will use the same example that I have used before — to clean the front garden of a house, which normally meant cutting the grass and straightening the fence, or whatever, and there was a scrap car and a tree stump in the garden, he would immediately go back to a district

- maintenance officer and say, “I can’t do that for 20 quid”. The officer would say, “OK, under the instruction I have from Colm McCaughley, you can have two front gardens”. The contractor would then say, “OK, I’ll do it”. Therefore, you get two front gardens, but one of the houses does not exist, so it is fraud. However, it is Housing Executive-sponsored fraud, if you want to call it fraud, because that was how it found its way through that particular problem.
3087. I cannot remember the details, but I know that we had one situation in which we had a change of tenancy and had to take a dead body out of a house. Extra money was paid for that, and I think that it is entirely right that it should have been.
3088. **Mr Wilson:** You got an extra house for the body.
3089. **Mr Cooke:** Effectively, yes. That was how the Housing Executive ran its system. The initiative came not from the contractor but from the Housing Executive. You would raise the issue and say that it is not fair to pay 20 quid for a job, and it would reply, “OK, I’ll give you two”. That is how it did it. It had a written instruction to do it. That is not fraud; it is a bad contract.
3090. **Mr Wilson:** Why do you believe that Red Sky was singled out for engaging in those practices? In all the evidence that we have had from Mr McIntyre, Mr McCaughley and Mr Cuddy, they did not identify that other companies were engaging in those kinds of practices.
3091. **Mr Cooke:** You should surely be able to find that out without too much difficulty by questioning one or two of the other response maintenance contractors. I find it interesting, and perhaps connected, that, after the jobs were transferred to what were called adjacent contractors, a number of them went out of business. This was not lucrative business for anybody. It was not where you went to make your fortune. It was dirty, dirty work, and it remains such. It is really hard work to do, because you are doing a little bit here and a little bit there. The problem is that, if you are going to a job worth £50 in someone’s house, how many people are going to check it? Where is the value? The Housing Executive was not doing enough checking. Red Sky certainly was not doing enough supervision or checking. I suspect that other contractors were the same. It was driven by the economics.
3092. **Mr Wilson:** You have described the toxic relationship. Mr Cuddy tried to lead us to believe that that was just at a local level, but, clearly, it extended throughout the Housing Executive towards Red Sky. Leaving that aside, do you believe that Red Sky challenged that where other companies perhaps did not — perhaps they just paid the difference, or whatever — and therefore you were punished for that?
3093. **Mr Cooke:** Honestly, I do not know the answer to that. If Red Sky challenged it, it was only because of the history that you have already read of claims of over-claims.
3094. **Mr Wilson:** Are you aware that any other companies did challenge overcharging allegations?
3095. **Mr Cooke:** Only through hearsay. That should not be difficult to find out, but it was only hearsay. In Red Sky, it would have been discussed continuously that the same situation was pertaining with other contractors but perhaps the focus of attention was very much on Red Sky. Again, from the evidence, I think that you can see that, for a period, the focus was on Red Sky rather than on anywhere else.
3096. **Mr Wilson:** That may well be because of the BBC’s involvement, the public campaign that there was against it and the willingness within the Housing Executive to find a scapegoat for what you have described as bad contracts.
3097. **Mr Cooke:** I think that bringing the subject to public attention was absolutely right. It needed to be fixed, but the finger was not necessarily pointed in the right direction.
3098. **The Deputy Chairperson (Mr Brady):** Before I bring in Fra McCann and Mr

Allister, I want to ask about the letter from you to the Housing Executive addressed to Stewart Cuddy. You attach the minutes of your meeting on 4 February. It may be confusing, because there was a meeting in December, I think. The letter from you to Stewart Cuddy states in the first paragraph:

*“to attach our minutes of that meeting prior to our next meeting this Wednesday 16th February.”*

3099. **Mr Cooke:** That refers to my minutes, then.
3100. **The Deputy Chairperson (Mr Brady):** Yes. It is just to clarify that.
3101. **Mr Cooke:** Those will have been done from memory, and I have just shown that my memory is not very good. We were never given minutes, so you are going to make me question myself about whether it was at the second meeting that we were not allowed to take minutes.
3102. **The Deputy Chairperson (Mr Brady):** There was a meeting in December, and, as far as I am aware, there were no minutes taken of that meeting.
3103. **Mr Cooke:** It was either the one on 4 February or 16 February for which we were told that we could not take minutes. Perhaps it was the second one. I am not absolutely sure.
3104. **The Deputy Chairperson (Mr Brady):** It was just to clarify that.
3105. **Mr Cooke:** Thank you for doing that.
3106. **Mr F McCann:** Welcome, Mr Cooke, to the meeting.
3107. **Mr Cooke:** Thank you.
3108. **Mr F McCann:** Especially if you were to listen to Sammy and what has run through most of the meetings, you would believe that the problems that there might have been between Red Sky and the Housing Executive were as a result of this grand political conspiracy against Red Sky in west Belfast. However, before Red Sky got the west Belfast contract, under another name, it had a contract for the Shankill, where it faced

a similar situation, in that there were complaints about the workmanship. I was reading some stuff the other day about Newtownabbey and some of the difficulties and problems there, so it was not confined to west Belfast.

3109. **Mr Cooke:** Absolutely not.
3110. **Mr F McCann:** I remember that a number of years ago — 2007 or 2008 — the introduction of Egan contracts was being argued against because it seemed to be a case of asking for more for less. Built into it was a programme where people argued for additions to the original contract, and people bid low for contracts.
3111. Leaving that aside, the manager in west Belfast at the time when a lot of complaints were coming in certainly would not have operated in any sectarian way. I remember going into houses in which work had been carried out — for example, houses in which a tenant’s hall had been dug up and the walls tracked — and the contractor had walked away. The argument was not about trying to deal with the issue but about the price that the company would get for the job. Therefore, many of the complaints from people in west Belfast were not about how much the contractor was getting paid but about when they were going to fix the hall or plaster the walls. That happened quite a lot. If you were to talk to a number of the residents’ associations in west Belfast, they would tell you exactly the same thing. People have now made complaints against other contractors about work carried out. Rather than there being a grand conspiracy against Red Sky, people were genuinely complaining about what they saw as poor workmanship and the time that it took for contracts to be completed. I am making that point. Is that a fair reflection?
3112. **Mr Cooke:** As I said at the beginning, I will not be an apologist for a lot of the stuff that Red Sky did. I was probably not there when the jobs that you are talking about were done, but it makes no difference. No contractor working for the Housing Executive should be allowed to

- get away with workmanship like that. That is not what you are being paid for. You have to do what you are being paid to do.
3113. There are two separate issues here. There is the quality-of-work issue, which relates across all the contractors. They did some benchmarking, and from time to time Red Sky was quite good and, at other times it was not so good. Then there is the overcharging thing or the allegations of fraud. The two things are not the same, but they have been wrapped up in the same box at the moment.
3114. I agree totally with what you say. There were undoubtedly examples of buildings that everybody at Red Sky should have been ashamed of. There were other ones that were superb and above the standard. However, there is no point in a contractor exceeding people's expectations one day and missing them entirely the next. That was, in my mind, a function of a company that expanded by acquisition really quickly. If you talk to Mr Hayes, you will probably get this from him. Ironically encouraged by the bank in the good times, Red Sky went out and bought everything that moved on this side of the water and on the other side. It ended up building a very large enterprise very quickly and did not have the management to run it. The companies that it bought generally managed to fall out with the new management and lose them as well. It ended up as inadequate management trying to run a company twice, three times or four times as big. There was a lot to be embarrassed about. I fully understand the point that you make, and I am sure that there are lots of examples of that.
3115. The fraud and overcharging thing is something completely different. That was an integral part of the contract and the way in which it was operated by the Housing Executive. So if there is blame to be taken on this, the Housing Executive should be bearing a fair bit of it; that is what I am saying.
3116. **Mr Allister:** I am a little confused about these meetings now. You initially told us that the 4 February meeting was a pretty robust meeting, and you were treated like the bad boy in the corner —
3117. **Mr Cooke:** Correct.
3118. **Mr Allister:** — and not allowed to take minutes.
3119. **Mr Cooke:** It may have been on 16 February that we were not allowed to take minutes.
3120. **Mr Allister:** So you are now saying that 16 February was the hostile meeting.
3121. **Mr Cooke:** No. The first one was extremely hostile, but we may have taken minutes. I may have made my own notes as I went along. I know that, at one of those two meetings, perhaps it was the second — I am sorry that, after the passage of time, I cannot tell you absolutely —
3122. **Mr Allister:** You see, on 16 February, after the meeting, Pauline Gazzard, on behalf of Red Sky, sent an email to Stewart Cuddy, which is at page 206 of our pack, saying:
- “Once again thanks to both yourself and your Chairman for your time this morning, and participation in what we consider was a very constructive meeting.”*
3123. **Mr Cooke:** Again, excuse me on this — you are testing my memory — but the first meeting led to the second one. The first meeting was an impasse, and we came back on the second one. What happened at the second meeting was that we were given a longer period of time to respond to two of these massive research exercises with claims attaching to them. Compared with the first one, the second one at least had an outcome.
3124. **Mr Allister:** Do you now accept that you did take minutes and were permitted to take minutes of the first meeting?
3125. **Mr Cooke:** Yes, but not at the second one, I think.
3126. **Mr Allister:** And it was a constructive meeting.
3127. **Mr Cooke:** So that I get this right, could I ask if you have minutes from the Housing Executive for either meeting?

3128. **Mr Allister:** I do not believe that we have, although I stand to be corrected.
3129. **Mr Cooke:** When I sent those minutes of the first one, I believe that that was me sending minutes because we had not received them. They had been promised.
3130. **Mr Allister:** But they were obviously contemporaneous minutes. The detail of them is such that they were quite clearly written in the room, were they not?
3131. **Mr Cooke:** Yes, so it may be that I was allowed to make notes at the first one and sent the minutes, and, at the second one, I was not allowed to make notes.
3132. **Mr Allister:** A few minutes ago you said that you must have made those afterwards. However, the detail of them is such that they were patently made in the meeting.
3133. **Mr Cooke:** I have not had the time to study them. I apologise if I am confusing you as well as myself. However, I am guessing that what has happened here is that we were promised minutes of the first meeting and they did not come, so I sent them my minutes, and we then came to the second meeting and were not permitted to take minutes. That is the best approximation of what happened that I can think of, because I do remember being told quite clearly, “Put your pads down; you can’t take minutes”.
3134. **Mr Allister:** So we should adjust your earlier evidence accordingly.
3135. **Mr Cooke:** Please.
3136. **Mr Allister:** Of course, the reason for the impasse in the first meeting, in part, was the fact that Red Sky had happily ignored the requested deadline for a submission, is that not right?
3137. **Mr Cooke:** No, I do not think that is correct. What actually happened was that what was being asked for was completely unreasonable. I do not know whether you have access to the documents on Newtownabbey, for example. We were given a report on Newtownabbey and a report on ASM Horwath at much the same time, and given a very short period of time to come back with the full and complete response.
3138. **Mr Allister:** You were allowed five weeks.
3139. **Mr Cooke:** Yes, but if you saw what that was — you had to visit every job. We are talking about thousands of jobs to visit, and you had to resource that at the same time as keeping up with the Housing Executive’s daily workload, which, at that time —
3140. **Mr Allister:** But you turned up at the 4 February meeting having made no response to the documentation sent to you in December.
3141. **Mr Cooke:** I honestly cannot —
3142. **Mr Allister:** Take a look at page 203.
3143. **Mr Cooke:** I cannot tell you the answer to that.
3144. **Mr Allister:** This is the letter from Mr Cuddy back to you on 11 February, referring to the meeting on 4 February:
- “At that meeting I expressed my disappointment that Red Sky had not replied to my letter dated 23rd December 2010 which sought a response by 31st January”.*
3145. So you obviously had not.
3146. **Mr Cooke:** I must not have.
3147. **Mr Allister:** So, that was the scene-setter for that robust meeting.
3148. **Mr Cooke:** Yes, I accept that.
3149. **Mr Allister:** You have told us that the practices were rampant among other contractors. Have you ever worked with or for any of the other maintenance contractors?
3150. **Mr Cooke:** No, I did actually say that you have the ability to find out whether that is true or not. That is what was commonly being said at the time. I have no evidence in my hand to prove it.
3151. **Mr Allister:** So you have no evidence whatsoever that other contractors were operating exactly as Red Sky was.

3152. **Mr Cooke:** Other than that that was what the Housing Executive staff were telling our people at the time. Again, it could be hearsay.
3153. **Mr Allister:** Some of them have denied that to us, and the tone of their evidence has been that, whatever irregularities there were in general, Red Sky was in a league of its own. I think that is a fair synopsis of the tone of the evidence that we have heard from the executive.
3154. **Mr Cooke:** Is that at the top level or at low level?
3155. **Mr Allister:** That is from a senior level.
3156. **Mr Cooke:** That is from Stewart Cuddy.
3157. **Mr Allister:** I cannot remember exactly who said that.
3158. **Mr Cooke:** I suspect that it is.
3159. **Mr Allister:** In helping us to evaluate the truth of the speculation, which you gave legs to, that Red Sky was no different from anyone else, you in fact have no evidence whatsoever of how other contractors conducted themselves.
3160. **Mr Cooke:** No, personally I have not.
3161. **Mr Allister:** In regard to the unfairness being perpetrated on Red Sky by the termination of the contract, you had, of course, a ready remedy. That was in the High Court, but you never went there.
3162. **Mr Cooke:** We went into administration immediately afterwards because we would not have made it another week. As I said earlier, the company was in a fairly parlous state already. Ironically, for the first time in three years, we had actually returned to profit in March. The termination happened on, I think, 14 April. If we had attempted to go on without the protection of administration we would not have made another week, because all our creditors would have stopped supplying us.
3163. **Mr Allister:** You could have been in the High Court within 24 hours to injunct the Housing Executive.
3164. **Mr Cooke:** We had no resources to do it. We asked the bank if it would like to do it.
3165. **Mr Allister:** You chose, rather, to use the hopeful route of political pressure on the Housing Executive.
3166. **Mr Cooke:** That was not even contemplated before administration. The administration happened almost instantly after the termination.
3167. **Mr Allister:** You told us that you knew Mr Cushnahan —
3168. **Mr Cooke:** He interviewed me once, yes.
3169. **Mr Allister:** Yes, and you knew him socially.
3170. **Mr Cooke:** No, I met him after —
3171. **Mr Allister:** Socialising with Mr Hayes. Was that at Mr Hayes's home?
3172. **Mr Cooke:** Yes.
3173. **Mr Allister:** Were there any politicians at those socialising events?
3174. **Mr Cooke:** It was just the three of us, I think.
3175. **Mr Allister:** Just the three of you. You were not at any meetings with —
3176. **Mr Cooke:** As I have already explained in detail, I had no contacts with the politicians prior to that, and you are aware of the ones I have had since.
3177. **Mr Allister:** It is the case that you were not there until the end of 2010, but you have given us the benefit of your opinion of things that have been happening down through the years at Red Sky. You furnished us with a letter from 2005 which you think is a testimonial to how good Red Sky was.
3178. **Mr Cooke:** It was an example which was made available to me at the time.
3179. **Mr Allister:** So you obviously have been delving into the past performance of Red Sky.
3180. **Mr Cooke:** That was in preparation for the 'Spotlight' programme, yes.

3181. **Mr Allister:** Did you delve into or find anything about the offering of excessive hospitality to Housing Executive officials?
3182. **Mr Cooke:** No. I read about that for the first time in documents that I read in the last couple of days.
3183. **Mr Allister:** Or about Concorde flights, or anything like that?
3184. **Mr Cooke:** No.
3185. **Mr Allister:** And do you know anything about the reference to the threat:  
*“to wash dirty linen in public”?*
3186. **Mr Cooke:** No. I am not even aware of that threat.
3187. **Mr Allister:** Thank you.
3188. **The Deputy Chairperson (Mr Brady):** Before I bring Sammy back in, let me tell members that we can check back to December in the minutes and come back to the Committee with those.
3189. **Mr Wilson:** Now having had a chance to read through the minute which you had taken, I can see why you described the meeting as being robust. I just want to get a flavour of the relationship with Stewart Cuddy. Stewart Cuddy came along here and gave evidence in which he clearly indicated that Red Sky were only — and almost solely — responsible for the fraud that is described, etc. During this, he described you as being “paranoid” and said he would not allow you to get sidelined; and there are other references. Did Stewart Cuddy have a particular difficulty with Red Sky, personally?
3190. **Mr Cooke:** I had never met him or Brian Rowntree before that first meeting. It was a most extraordinary meeting, because it was “Nice to meet you all; have a cup of coffee” and then pounce. It was kind of back and forwards between the chairman and the acting chief executive. Mr Allister is quite correct, of course; in not responding to that, perhaps we had set the environment in which the meeting was going to be robust. I had no prior knowledge of either of those guys. I met them both twice and have never seen them before or since. So I do not know what their agendas were or were not.
3191. **Mr Wilson:** You have described the total shambles that the Housing Executive’s contract system was. You have actually described it as “Housing Executive-sponsored fraud”, because of the way the contracts were organised. Did you get the impression that the Housing Executive was unhappy that somebody was actually challenging it on the shambles that it was running at that stage?
3192. **Mr Cooke:** I do not know whether it was or was not, but there was no reason to do anything other than challenge it when these enormous claims came out. Any company that did not challenge it was not going to be around for very long. The sums of money involved were massive.
3193. **Mr Wilson:** Red Sky was the one that was identified, but is it possible, Mr Cooke, that any of the other contractors, given the pro rata arrangements that there were and the way in which jobs were evaluated — if there was one thing wrong, the whole job was scrapped and was regarded as an overpayment — is it possible that any of the other contractors, since they had to operate on the same contract basis as Red Sky, would not have been caught in the same way that Red Sky was, with having claims which could be described as fraudulent because of the way in which the Housing Executive officials allocated them?
3194. **Mr Cooke:** As has already been pointed out, I should be careful about speculating. I cannot possibly know.
3195. **The Deputy Chairperson (Mr Brady):** In fairness to Mr Cooke, he has already said that he did not have any knowledge of that —
3196. **Mr Wilson:** Mr Cuddy would have had some knowledge, because he indicated in his note, on page 202, that he had already had to speak to one contractor the very same morning about the same kind of issue.

3197. **Mr Cooke:** The only thing I would say is —
3198. **Mr Wilson:** Mr Cuddy did not deign to give us that information when he came here. All I am saying is that, given the way in which these contracts operated, every contractor, if they got a difficult job, would have had to apply on a pro rata basis and would have been allocated a mythical job in order to get payment, and that would have been regarded as fraud.
3199. **Mr Cooke:** That is how the system worked. That is how it is documented as having worked.
3200. The most embarrassing thing for Red Sky, and the one that the media enjoyed focusing on most — I think that it is appropriate to bring it up because it was always the elephant in the room — was the payment for checking lights in external alleyways of blocks of flats, which I am sure that you have read something about. Red Sky's part in that is not acceptable. Again, I have to be careful about speculating, but what I believe happened was that, in the previous maintenance contract and the contract after the one that replaced Red Sky's, there were a number of properties listed for response maintenance that do not exist any more. The first thing that is wrong is that they have been listed in a contract by the Housing Executive, which should know that it does not own them any more because it has knocked them down. If you want to share blame, there is a good reason to share some blame before you start. I understand — hearsay; you will be able to check it — that they were still in the next contract as well, but I cannot prove that, so, it is speculation.
3201. Red Sky sent out a man to check the lightbulbs and to replace them if they were gone and, from memory, of seven flats, he found five. He would go in once a fortnight or whatever it was, and he signed off and got £7 for the company for doing it. It turned out that, when Horwath went out to inspect it, two of the blocks of flats did not exist. Red Sky's supervisors had not checked on the work that the man did. There was no personal gain for the guy doing it, because he was not being paid on the amount of work he did; he was getting his weekly wage. If there was a gain for the company, it was very small. It was identified and was repaid at that time. I maintain that it is something that any company should be ferociously embarrassed about being any part of, but I am fascinated that the Housing Executive was listing properties that it did not own to be inspected in the contract. That perhaps shows you that this was not just about Red Sky; it was about a very inefficiently run contract.
3202. **The Deputy Chairperson (Mr Brady):** Do any other members have any questions?
3203. **Mr Allister:** That is a bit different from what you told the programme.
3204. **Mr Cooke:** Tell me.
3205. **Mr Allister:** You told the programme "Our operative will have driven through an estate, looked at x number of blocks and ticked a box to say 'Everything is done and I have inspected it' ". In reality, what he never did was count the number of blocks.
3206. **Mr Cooke:** That is what I am saying.
3207. **Mr Allister:** Some of those blocks had been demolished in previous years, during the time that the previous contractor had also been paid for them.
3208. **Mr Cooke:** That is right. As far as I am concerned, that is what I have just said.
3209. **Mr Allister:** That you did not count the blocks; you held your hands up and repaid that sum.
3210. **Mr Cooke:** Yes, that was deducted immediately. It was repaid within the week. It is very embarrassing, but that is exactly what I said.
3211. **Mr Allister:** Is it a snapshot?
3212. **Mr Cooke:** In what sense?
3213. **Mr Allister:** In that no one can possibly revisit every charge sheet for every piece of work. Is that a snapshot of a more endemic problem?

3214. **Mr Cooke:** Absolutely, in the sense that neither Red Sky's supervisors nor the Housing Executive's supervisors visited every job always. The low-value ones tended to go through. I think that that was a problem then, and it is probably still a problem. If you got £7 a week for checking that, how many supervisors would you send? That is a risk with the form of contract.

3215. **The Deputy Chairperson (Mr Brady):**  
No one else has any other questions, Mr Cooke. Thank you very much for attending.

3216. **Mr Cooke:** Thank you. If you happen to manage to get a copy of the executive minutes of those meetings, I would be fascinated to see them.

3217. **The Deputy Chairperson (Mr Brady):**  
Obviously that is something that we will check on. Thank you.

## 13 November 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mrs Dolores Kelly  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr McCausland                      *MLA - North Belfast*

3218. **The Chairperson (Mr Maskey):** Nelson, I invite you to the table. Good morning.
3219. I remind members that we are in phase 3 of the Committee inquiry, and Nelson McCausland, the former Social Development Minister, is in attendance. Mr McCausland provided the Committee with a written submission yesterday, and members have been provided with a cover note by Committee officials, who have provided some information relevant to the evidence. It is for your attention and your information, to use as you wish. I ask members to declare any interests relevant to today's agenda. None are declared. Thank you for that, members.
3220. Mr McCausland, are there any remarks that you want to make before we go to members' questions?
3221. **Mr Nelson McCausland (Northern Ireland Assembly):** Thank you, Mr Chairman, but not particularly. The paper that I sent yesterday sets out a detailed response to each of the issues of concern to the Committee.
3222. **Mr Brady:** Mr McCausland, following the request from Robin Newton, a meeting was arranged for 27 June. You made a statement —
3223. **Mr McCausland:** Can I ask you to speak up? I cannot quite hear.
3224. **Mr Brady:** Sorry. My question is about the meeting scheduled for 27 June. You advised the Assembly on 8 July that, before the meeting took place, legal advice was sought from the Departmental Solicitor's Office (DSO):
- "I sought that advice in the light of the fact that I was being asked to meet individuals from a company in administration, and I wanted to be assured of the probity of my actions. It advised me that Ministers may meet such persons as they choose."*
3225. Obviously, the Committee has not had access to or sight of that legal advice. Is it possible to obtain that? Presumably, that is generic to all Ministers, or does it relate to particular situations? Essentially, you are saying:
- "Ministers may meet such persons as they choose."*
3226. I was just wondering what the content of that legal advice was.
3227. **Mr McCausland:** I think, Mr Chair, that the practice is that legal advice is not normally disclosed. It is a long time ago now. I do not have that legal advice with me.
3228. **The Chairperson (Mr Maskey):** Normally, Ministers, as you rightly say, would refer to the legal advice that they had received and say that, on the basis of that, they intended to do A, B, C or D. However, on this occasion, you have quoted part of that legal advice. So, on that basis, are you prepared to provide all of that legal advice to the members around the table? You quoted from part of it, but we have no way of knowing whether —
3229. **Mr McCausland:** I have no access to that legal advice. I am no longer in the Department, so I do not have any access to it.
3230. **The Chairperson (Mr Maskey):** OK. On that, the third paragraph in your statement begins:

- “The Committee has also been provided with the note of the meeting”.*
3231. You state toward the end of that paragraph that you:
- “would like to have the Administrator in place until the end of August to allow all issues relating to the handover of the contracts to be considered”.*
3232. You go on to mention “the official”. I suggest that there is an important omission, because, on page 105 —
3233. **Mr McCausland:** Sorry, you are referring to page numbers, but I do not have the same file as you. Therefore, I —
3234. **The Chairperson (Mr Maskey):** Sorry, Mr McCausland. We will rectify that. Just bear with us.
3235. **Mr McCausland:** Yes, it is the note of the meeting. OK, I have that. It is just that the page numbers do not correlate.
3236. **The Chairperson (Mr Maskey):** Page 104 refers to the meeting with MLAs and Red Sky representatives on 27 June 2011. The paragraph that I quoted is at the top of page 105. Your submission to the Committee yesterday refers to you wanting:
- “to have the Administrator in place until the end of August to allow all issues relating to the handover of the contracts to be considered.”*
3237. Your submission then mentions, “the official”, referring, I presume, to Jim Wilkinson. What has been omitted from that is that the record also states that it was:
- “during this time the proposed new company might also be able to progress matters.”*
3238. In the context of —
3239. **Mr McCausland:** Which line on page 105?
3240. **The Chairperson (Mr Maskey):** The second-last line on that top paragraph on page 105.
3241. **Mr McCausland:** I have that now. Mr Chairman, we are dealing with a meeting on 27 June 2011 — over three years ago. I cannot recall the full detail. As
- we are well aware, this is a note of the meeting. The status of a note has been discussed in the past. That would have been a possibility.
3242. **The Chairperson (Mr Maskey):** You referred to that note in your submission yesterday, so you have drawn from that. I am just drawing to your attention that what has been omitted from your submission yesterday is a fairly important point.
3243. **Mrs D Kelly:** Paragraph 2 of your written submission relates to the instructions to —
3244. **Mr McCausland:** Sorry, paragraph 2 on which page?
3245. **Mrs D Kelly:** It is on the second page, overleaf. Bullet point 2, perhaps — sorry.
3246. **Mr McCausland:** Bullet point 2, yes.
3247. **Mrs D Kelly:** It relates to you requiring your officials to:
- “rigorously review all existing contracts to same level of scrutiny”.*
3248. You go on to say that you:
- “would like to have the Administrator in place until end of August to allow all issues relating to the handover of the contracts to be considered”.*
3249. It is really on that point. I am just wondering what your thinking was. We have heard from a number of witnesses that the level of concern raised against the Red Sky contract was way above the concern about any other contracts, contractor or the workmanship of any other contractor and that there was a historical element to that. I just wonder why you, as Minister, did not seem to share the concern of so many others about the workmanship of Red Sky, based on the information that was, presumably, available to you and has been made available to the Committee in statements from others. Why did you not share the concern about Red Sky’s workmanship? Why did you seek to have the other contractors drawn in to the same level of investigation, even though

- they did not stand accused of the same level of poor workmanship?
3250. **Mr McCausland:** The fact is that I came into the Department in the middle of May, and this was within a few weeks of that. The issues had been ongoing for quite a number of years. The member, I am sure, is well aware that the interest of the Housing Executive in Red Sky went back to at least 2007. ASM Horwath had been brought in to conduct a forensic audit investigation of both contracts. I was also informed, at the point at which I came into the Department or shortly afterwards — certainly before this point — that concerns had also been raised about another company, which no longer exists, called Leeway Maintain. In October 2010, the regional inspection unit (RIU) identified some irregularities in Leeway Maintain, and, subsequent to that, a whistle-blower emerged. I do not know the details, but the RIU and the whistle-blower raised different issues. I was also aware, then, that a second company — an adjacent company — had irregularities as well.
3251. **Mrs D Kelly:** That does not really explain why all other contractors were, it would appear, drawn into the mix. Why, if there were such concerns that you sought to have the administrator in place with Red Sky for a longer period, given —
3252. **Mr McCausland:** I think —
3253. **Mrs D Kelly:** Sorry. If I am right in thinking that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) would apply — I can understand that the interests of workers in their constituencies, or anywhere, are a real concern for public representatives — the employees would have found work elsewhere. I wonder why, if there were irregularities in Red Sky, you sought this. I would have thought that the natural reaction would be to get rid of them. These people were not doing a good job.
3254. **Mr McCausland:** I wanted to be sure that we were not in a position where the Housing Executive removed contracts from one company and then transferred one of those contracts to another company in which similar issues might exist. No other company had been subjected to the same level of forensic scrutiny as Red Sky. There had been some work done on Leeway Maintain by the RIU and in view of the whistle-blowing evidence about it, but I wanted to have an assurance that we were not in a position of simply moving contracts from a company where there were issues — certainly, serious issues — to another company where there might also be serious issues.
3255. You mentioned TUPE. What has become clear, and was very clear to me on a number of subsequent occasions for other reasons, is that when workers transfer from one company to another and a contract moves from one company to another, it is not really a seamless move, as people might suggest. Hiccups and issues always emerge in the service to tenants.
3256. Secondly, workers in companies have told me that they have been through TUPE up to three times and hardly knew who they worked for. So, it is some comfort for workers that TUPE is there, but it leaves uncertainties. I was concerned for three reasons: the need for a seamless service; not wanting to do something that would unnecessarily harm the interests of workers; and wanting to be sure that the Housing Executive did not transfer a contract from A to B, only to find later that it had been moved on to C.
3257. **Mrs D Kelly:** Is it not the case that the rationale for a more forensic investigation of Red Sky was precisely the number of complaints? It was a consequence of the complaints and concerns about its workmanship. In fact, I think that I am right in saying that some buildings against which they had submitted invoices did not even exist. Surely, the onus on you, as Minister at that time and guardian of the public purse, was to be more precautionary in favour of the public purse than Red Sky.
3258. **Mr McCausland:** My interests related to the public purse, and that was why

- I initiated a forensic investigation and audit of other, adjacent companies to make sure that similar things were not happening elsewhere. You are aware of the ASM Horwath report and the issues that emerged in it.
3259. **Mrs D Kelly:** I am willing to come back on this, but I just want to know now whether, in retrospect, you believe that you acted outside of the parameters as Minister in what was clearly the responsibility of the Housing Executive in relation to Red Sky and against the advice given to you by some in your Department.
3260. **Mr McCausland:** In which particular —
3261. **Mrs D Kelly:** The extension — the interference, as some perceive it, of setting the parameters of the Red Sky contract — and the decision to terminate by the Housing Executive.
3262. **Mr McCausland:** I have already pointed out that this issue emerged within weeks — in fact, within days — of my arriving in the Department in May 2011. I wanted to have an opportunity to explore what the options might be so that, if there was a better option, it could be considered by the Housing Executive. That was all.
3263. **Mrs D Kelly:** That decision was not yours to make.
3264. **Mr McCausland:** I think that, if you look back, you will see that there was engagement between the Housing Executive and the previous Social Development Minister on Red Sky. The role of the Department with regard to a public body under its ambit is one that needs to be carefully considered. I did not do anything that was untoward, and, as you can see quite clearly from the correspondence, in the end, when the Housing Executive took its decision, I endorsed that decision.
3265. **Mr Campbell:** A senior Housing Executive official was before the Committee, and, when questioned by a number of members, including me, said that Red Sky's problem was not consistently poor workmanship. He said that, in some regards, there was excellent workmanship, but that it could be very poor in other instances, so the issue was the variation in its workmanship. Was that drawn to your attention?
3266. **Mr McCausland:** I was aware, through officials, the Housing Executive and my personal experience of having seen the standard of workmanship in my constituency, of issues that had emerged. I think that it is probably true to say that, across a number of companies, there were variations in the standard from time to time. There were examples of good workmanship from Red Sky — that is correct. I saw its work on some estates, and it was good; on others, it was not as good. Subsequently — much later on — having talked to people in other companies, I got the impression from observations that they made that cadres of workers sometimes moved from A to B, and some were of a better standard than others, but they were TUPE'd across from A to B. I found out that some were even on their third or fourth employer at one point.
3267. **Mr Campbell:** My reason for asking Mr McCausland that is that an issue arises not just with other firms but with other contracts with a range of firms. The programme at the centre of all this, about which the BBC will not come and answer any questions, included a reference to what is now known as the Rinmore contract in Londonderry. A few weeks ago, I asked another witness about the Rinmore contract. I asked Councillor Palmer whether she was aware of the Rinmore situation, and her response is in Hansard:
- “Yes, but, Chair, if you do not mind, I will say this: this investigation is not about Rinmore; it is about Red Sky. Under the terms of reference, I would prefer not to talk about Rinmore.”*
3268. That is fair enough. However, I would have liked to speak to a number of others about Rinmore, particularly Mr Rowntree, who was in a position to know about these things, but he refuses to

- come before the Committee. Had you any knowledge of the Rinmore contract?
3269. **Mr McCausland:** I was aware of issues with Rinmore. I have said already that we are talking about three years ago. I am not absolutely certain of the exact point at which I became aware of those issues. It was a stock transfer scheme in Londonderry, which I later visited as part of the process of looking at stock transfer, to see the houses that had been improved and brought up to standard.
3270. The member, and other members, I am sure, will remember that Mr Rowntree referred to Rinmore in the ‘Spotlight’ programme. There seemed to be, within the Housing Executive, some dispute about Rinmore. I was informed, eventually, by the permanent secretary that, as a result of the dispute, which seemed to involve the former chairman and the former chief executive, Mr McIntyre, a report had been produced, which I have not seen, and that the permanent secretary had written to the head of the Northern Ireland Office about the role of Mr Rowntree in the matter. I was informed of that only after the letter had been written. As the accounting officer, the permanent secretary dealt with that. I did not see that correspondence, but, after he had sent the letter, he made me aware that he had done so. I have not seen the letter, and I have not seen the emails to which Mr Rowntree referred in the programme or the initial report that was at the centre of that dispute.
3271. **Mr Allister:** Mr McCausland, how many times have you been to the Red Sky offices?
3272. **Mr McCausland:** Never.
3273. **Mr Allister:** Never.
3274. **Mr McCausland:** I have just said “Never”.
3275. **Mr Allister:** Have you ever met Mr Norman Hayes?
3276. **Mr McCausland:** I do not know Mr Norman Hayes.
3277. **Mr Allister:** Have you ever met Mr Norman Hayes?
3278. **Mr McCausland:** Not to the best of my knowledge.
3279. **Mr Allister:** Have you ever met Mr Frank Cushnahan to discuss Red Sky issues?
3280. **Mr McCausland:** I have never met him either.
3281. **Mr Allister:** After you became Minister, did you ever have discussions, as Minister, on Red Sky issues with the DUP or anyone else without officials present?
3282. **Mr McCausland:** We are talking of something that was three years ago, so my recollection of individual conversations is, as I am sure the member will appreciate, somewhat vague. However, rows of white vans belonging to Red Sky were lined up outside this Building, workers with placards were here, too, and there were protests elsewhere in Belfast, so I am quite sure that there were conversations about it. It would be very surprising if there were not.
3283. **Mr Allister:** What are the rules about Ministers discussing issues germane to their official functions without officials present?
3284. **Mr McCausland:** I think that that is a rather interesting, but somewhat bizarre, question. As I said, when vans were parked outside the Building, workers were outside and someone asked me, “Do you see the Red Sky vans out there?”, and commented on the issue, I do not think that, in that situation, it was practical to say, “Well, I cannot discuss that. I will have to go and get a civil servant”.
3285. **Mr Allister:** I do not think that we are talking about idle chatter; we are talking about matters of more substance.
3286. **Mr McCausland:** The member did not specify —
3287. **Mr Allister:** Well, let us deal with matters of more substance.

3288. **The Chairperson (Mr Maskey):** Let the question be answered first, Jim, and then come back in again.
3289. **Mr McCausland:** That is all I can say.
3290. **Mr Allister:** Are there any rules governing ministerial engagements without officials? Maybe there are not.
3291. **Mr McCausland:** I have not had anyone draw anything to my attention. At least, I cannot recall anything.
3292. **Mr Allister:** Apart from flippant conversations such as you described — “Do you see all the Red Sky vans?” — were there any occasions —
3293. **Mr McCausland:** I think that, for the members of Red Sky’s staff — the workers — the issue was not flippant.
3294. **Mr Allister:** I am not suggesting that the issue was flippant, but a conversation based on “Do you see the Red Sky vans?” might be more of that nature than a matter of substance. Were there any discussions of substance with you as Minister without officials?
3295. **Mr McCausland:** I have very little recollection of any detailed conversation.
3296. **Mr Allister:** Have you any —
3297. **Mr McCausland:** I am sure that these matters were talked about. Certainly, as the member will be aware, Sammy Douglas and Robin Newton were in contact about a meeting, and I am fairly sure that they would have spoken to me about that, probably in the corridor or somewhere, but I cannot remember the details.
3298. **Mr Allister:** You had knowledge that Mr Brimstone was going to call Councillor Palmer before that call was made, did you not?
3299. **Mr McCausland:** Again, I make the point that we are dealing with events of three years ago. I have read the transcript of what Mr Brimstone said. My recollection of it, as I say, is very sparse, if anything, but there is nothing in what he has said that would be in any way unusual. I am quite happy to accept what he said, because it would be natural that, if there was a telephone call to be made to someone of that nature, it would be raised with me.
3300. **Mr Allister:** So you are accepting his evidence that it was the product of discussion between you and him.
3301. **Mr McCausland:** Yes, I accept that entirely.
3302. **Mr Allister:** You are saying —
3303. **Mr McCausland:** The member’s recollection is better than mine.
3304. **Mr Allister:** Are you saying that although this matter has been much debated and discussed and been very prominent for quite a long time, you really have nothing but the vaguest of recollections?
3305. **Mr McCausland:** Which matter?
3306. **Mr Allister:** The matter of the phone call to Mrs Palmer.
3307. **Mr McCausland:** The significance placed upon the phone call became apparent only when the programme went out, which was roughly a year later.
3308. **Mr Allister:** What was the purpose of the phone call? This discussion that you had with Mr Brimstone — what was the point in making the phone call?
3309. **Mr McCausland:** I had an interest in ensuring that all of the background to this was known by members of the board of the Housing Executive and that they should be aware of the concerns about, for example, Leeway Maintain. The issues of workmanship and overcharging were not the preserve of one company. In at least one other company in a different district, issues were emerging, and more might emerge if a forensic audit was carried out. To convey that information to a board member seems a perfectly proper thing to me.
3310. **Mr Allister:** Why Mrs Palmer?
3311. **Mr McCausland:** If I or someone from my office were to ring up a political representative from another political party, they might well wonder why I had rung them. It seemed the natural

- thing to speak to someone who was a member of the same political party.
3312. **Mr Allister:** Was it thought that, because of that, she could be leant on?
3313. **Mr McCausland:** That would have been a very futile exercise —
3314. **Mr Allister:** As it turns out.
3315. **Mr McCausland:** Sorry, if the member would at least let me answer the question — because a single member out of, I think, 10 on the Housing Executive board is not going to make much difference when it comes to the final decision, other than, if they are aware of the facts, they can pass those on. That is all.
3316. **Mr Allister:** But at that point you were wanting the Housing Executive board to alter its April decision to terminate the contracts by 14 July. Is that not right?
3317. **Mr McCausland:** They had taken a decision back in April — on 12 April — to give three months' notice to Red Sky, and that would have terminated on 14 July. As I have previously stated, I was of the view that two things were important here. One was that there should be clarity and certainty regarding the standard of workmanship and the operation of other companies adjacent to that company. Secondly, I was also interested in the concept of open procurement, but it was primarily that issue of getting an opportunity there to say, "Are we sure?". I had actually asked the chairman if he could give me an assurance that other companies adjacent, which would have been the recipients of the contracts, did not have the same issues.
3318. **Mr Allister:** Yes, but, Mr McCausland, let us not beat about the bush: your letter of 1 July to the Housing Executive made it very clear that you were wanting the —
3319. **Mr McCausland:** Sorry, which line is that?
3320. **Mr Allister:** I do not know which line it is, but I am sure you are well familiar —
3321. **Mr McCausland:** Well, no, I —
3322. **The Chairperson (Mr Maskey):** A wee second, folks. Jim, can you indicate to where you are referring? And then, on the back of that question, I am moving on to two other members coming in behind you.
3323. **Mr Allister:** Yes. It is the letter that was written to the chairman, asking him to review the April decision about terminating on 14 July.
3324. **Mr McCausland:** Which page is this?
3325. **Mr Allister:** I cannot recall what page it is in. It is pretty much clear in my memory. I would have thought that it would be pretty clear in yours, but —
3326. **The Chairperson (Mr Maskey):** Refer to the page number, please, when you are asking a question.
3327. **The Committee Clerk:** Is it page 121?
3328. **The Chairperson (Mr Maskey):** Is it 121? That is to Jim to answer.
3329. **Mr Allister:** Yes.
3330. **Mr McCausland:** Page 121?
3331. **Mr Allister:** Yes. Do you see that?
3332. **Mr McCausland:** I can see the letter, yes.
3333. **Mr Allister:** And in that letter, you are asking:  
*"to put to the ... Board that the termination date of the Red Sky contract should be extended from 14 July".*
3334. And there you ask for a period of six months.
3335. **Mr McCausland:** That is correct.
3336. **Mr Allister:** I am putting it to you that it was quite clear that you were anxious to obtain support for that proposition when the board met. That would be the purpose of the call to Mrs Palmer. Is that fair?
3337. **Mr McCausland:** I have already said that I have very little recollection other than some awareness that there was a telephone call to Mrs Palmer, but the —
3338. **Mr Allister:** She was not being —

3339. **The Chairperson (Mr Maskey):** Sorry, Jim. Go ahead, Nelson.
3340. **Mr McCausland:** Of the detail beyond that, the letter is there. It is quite clear. It makes a request, and that is all. The period of six months was in order to give an opportunity. It was going to take a longer period than I had initially thought to carry out a proper forensic audit. I have no experience of forensic audits, but they do take some time.
3341. **Mr Allister:** But, Mr McCausland, I suggest to you that it was not a phone call to enquire after the state of her health or anything else.
3342. **The Chairperson (Mr Maskey):** Just ask the question.
3343. **Mr Allister:** It was a phone call, quite clearly, to get her onside to support the action you wanted the board to take in reviewing its decision. Are you denying that?
3344. **Mr McCausland:** I think that, first of all, the suggestion that it might — I do not think that anybody would suggest that it was a conversation about the state of anybody's health, but the content of the conversation that was held, I was not party to. I cannot comment on it, but I have to say, and I have put on record, that I have read what Mr Brimstone says in his evidence, and there is nothing there that seems untoward to me in any way. It makes good sense.
3345. **Mr Allister:** You were not present when the phone call was made.
3346. **Mr McCausland:** No.
3347. **Mr Allister:** Did Mr Brimstone report back —
3348. **Mr McCausland:** Not that I can — I would have remembered, I think, but the fact is that I have no real recollection of it.
3349. **Mr Allister:** Did Mr Brimstone report to you?
3350. **Mr McCausland:** He would have, and he indicates that he did. Again, at the time, it meant very, very little.
3351. **Mr Allister:** Is that the best you can do on this matter?
3352. **Mr McCausland:** Well, all I can —
3353. **The Chairperson (Mr Maskey):** We are going to move on, Jim, in a second. I was just going to let you finish that one question, and then I am moving on to the next member.
3354. **Mr McCausland:** Sorry, Chairman, the best I can do is tell the truth, and that is what I have done.
3355. **Mr Allister:** Indeed.
3356. **The Chairperson (Mr Maskey):** I will come back round to you again, Jim, if you want back in again.
3357. **Mr Dickson:** Thank you, Mr McCausland. It is really, in a sense, a continuation of just that little area of discussion that we have had, not specifically about Mrs Palmer. On quite a number of occasions this morning, you have said to the Committee that you have no memory or little recollection, and you have relied on that quite extensively by way of answering questions. What papers do you now, today, have access to as a Member sitting in front of this Committee with regard to the issues of this inquiry? Are they only the papers that are in the public domain — in other words, the Committee papers that have been published, and the Hansard reports? Have you any other documents in your possession? You have no access to departmental —
3358. **Mr McCausland:** I have no access to anything in the Department. I have the documentation that has been provided to the Committee, and probably not even all of that.
3359. **Mr Dickson:** But you do have access to that?
3360. **Mr McCausland:** Well, the papers that were provided to the Committee are in the public domain.
3361. **Mr Dickson:** Yes, but you have no private or personal papers or notes of your own, taken —

3362. **Mr McCausland:** I have no notes — nothing.
3363. **Mr Dickson:** So you are not going to write a book?
3364. **Mr McCausland:** I might write a book, but I do not think it will be about that.
3365. **Mr Dickson:** But you do not retain any personal notes or —
3366. **Mr McCausland:** No.
3367. **Mr Dickson:** As a Minister — a former Minister?
3368. **Mr McCausland:** None at all.
3369. **Mr Dickson:** None whatsoever. And does that therefore account for the fact that you are entirely relying on your memory this morning in terms of how you answer these questions?
3370. **Mr McCausland:** No, I am simply stating what would be understandable by any reasonable person: that three years is quite a lot of time. A lot of things have happened in three years, and a lot of water goes under the bridge. Detailed events that, in retrospect, acquire some significance, but at the time meant very little, do not become etched in the memory. All I can say, therefore, is that it is not surprising that the recollection of some of this is vague. The broad issues are very clear in my mind.
3371. **Mr Dickson:** Would it be fair —
3372. **Mr McCausland:** That is as far as it goes. I have no other paperwork that I can refer to.
3373. **Mr Dickson:** But would it be fair to say that, if you were still Minister today, those memory losses — those absences of memory — could potentially be prompted by officials in preparation for this meeting?
3374. **Mr McCausland:** I think that the Department has provided the Committee — I do not know how many forests were killed off in so doing — with a huge amount of paper. And since everything that the Committee has access to, I have access to — and if I have not referred to something, as was the case earlier on, a member will refer to it and raise the point — there is nothing that would be additional. I think that you have got every bit of paper that there could possibly be in any cupboard anywhere in DSD, judging by the amount of paper that has gone to the Committee.
3375. **Mr Dickson:** But would you agree with me that it is not just the paper and what is written on it? We need your personal input to it, and you are indicating to us today that that is not as fresh in your mind as it might have been at the time, or if you were supported by officials.
3376. **Mr McCausland:** I am not clear what the member is getting at.
3377. **Mr Dickson:** I am just wondering. Obviously the paperwork has to be supported by the sort of questions that members round this table will ask of you, but it seems to me this morning that you are indicating that you really do not have much memory of these things.
3378. **Mr McCausland:** I have stated that on several occasions. It is three years ago — in fact, three and a half years ago.
3379. **The Chairperson (Mr Maskey):** Before I bring Sammy in, I will follow up that point. You referred earlier on to having read the transcripts of Mr Brimstone's evidence. Do you accept, from that evidence, that you and he alone decided that Mrs Palmer would be contacted?
3380. **Mr McCausland:** That seems fairly reasonable to me.
3381. **The Chairperson (Mr Maskey):** OK.
3382. **Mr Wilson:** When you took over as Social Development Minister, what background were you given to the involvement of the previous Minister in this whole issue of Red Sky and the Housing Executive contract?
3383. **Mr McCausland:** I was informed that the issue had been going back for quite a number of years and given an outline of it, so I knew that the issue had been raised in 2007, and a contract terminated then cancelled, and that whistle-blowers had been around in

2009. There was the ASM Horwath report in October 2010. And I was aware, in a general sense — I would not have had any detail on it — that the previous Minister had taken a very particular and personal interest in it. It certainly occurred to me that he was a representative from west Belfast, and one of the contracts related to west Belfast, so it would have been natural for him to take a particular interest.
3384. **Mr Wilson:** Was any indication given to you that the previous Minister had given any view as to what should happen with the contract?
3385. **Mr McCausland:** There is a practice of almost a line being drawn at the end of a period when someone comes to the election, with the previous Minister there prior to the election. It was made clear that he had taken a particular interest. The details of it, I would not have had. As regards what he wanted, I was conscious anyway from a range of Assembly questions. The issue had been aired in the 'Andersonstown News' on various occasions. It was pretty clear that there was a determination there that the contract should be terminated.
3386. **Mr Wilson:** But you are not aware that the previous Minister had had —
3387. **Mr McCausland:** Not other than the fact that he was supportive of that.
3388. **Mr Wilson:** In a lot of the letters that we have, or the correspondence from Brian Rowntree — and, indeed, other evidence that we have had from Mr Cuddy, for example, at this Committee — there was a view that for any Minister to talk about a contract, which was live like this, was regarded as taboo. It was political interference in the operational matters of the Housing Executive and, indeed, in a live contract. Are you aware, or did officials warn you, "The previous Minister has had his fingers burnt on this. Don't be doing this."?
3389. **Mr McCausland:** I think, for the 40 years of its existence, the Housing Executive operated in a particular way, and there was a very distant relationship for most of that period as regards the Department. That is why it was interesting that the previous Minister started to take a much more hands-on approach. He initiated governance reviews because he was aware that there were governance issues, as anybody would have been. I think that all politicians would have been aware that there were governance issues. That is why he initiated the investigations and reviews — the gateway review and so on. So there was work under way that indicated that there was an awareness that the very distant, hands-off, stay-away-from-it approach was not good. There has to be a good relationship and a close relationship where it is a body that is under the ambit of the Department. At the end of the day, if there are questions being asked in the Assembly by MLAs, I am the one who has to answer them, not Brian Rowntree.
3390. **Mr Wilson:** And tell me this: you continued, then, the interference, if you want to use the pejorative word, that the previous Minister had exercised. What was the response of Housing Executive officials to this interest by the Minister?
3391. **Mr McCausland:** It was most evidenced in the fact that we initiated the ASM Horwath forensic audit of all of the companies, particularly the adjacent ones. That simply confirmed what had been clear, I think, to some people for some time: that the management of contracts by the Housing Executive was not well done. I was interested to read some of the evidence of Stewart Cuddy and others. There seems to be an acknowledgement now, belatedly, that things were not as they should be within the Housing Executive. But there were those within the Housing Executive, coming from different angles — and one could speculate, although I do not intend to, as to motivations and whether someone is trying to cover their own back or whether there is a dispute between A and B. People have all sorts of reasons for doing things, but it was clear that there was a resistance. There was a state of denial by some people in there, and they felt that there should not be a more hands-on approach. In

- particular, the chairman felt that he was doing everything that needed to be done — that he had done everything that he could possibly do. I was most alarmed when he gave me an assurance, in one case, that adjacent companies had no problems there, and they could move ahead and hand contracts over, because there would not be issues there. At the same time, as early as October 2010, it was already clear to the RIU within the Housing Executive that they needed to investigate issues about Leeway Maintain.
3392. **Mr Wilson:** Did it surprise you, then — I do not know if you saw the report that the chief executive gave to the board meeting on 13 April 2011.
3393. **Mr McCausland:** Is that in the pack?
3394. **Mr Wilson:** Yes, it is in the pack — pages 26 to 35.
3395. **Mr McCausland:** Yes.
3396. **Mr Wilson:** When talking about the termination of the Red Sky group and going into detail as to —
3397. **Mr McCausland:** Sorry, which paragraph?
3398. **Mr Wilson:** I am referring to it generally.
3399. **Mr McCausland:** OK, sorry.
3400. **Mr Wilson:** Referring to duplication of payments, etc etc, there is not one mention, in that report from the chief executive, that other companies may have been involved in the same practice.
3401. **Mr McCausland:** I have actually seen that report previously. It is in my own papers that I have there. Yes, it is a surprise. It would have been a very natural thing to have that reference to another company where there were things happening that should not have been happening. It would have been right and proper that that be mentioned, in order to set the context for that, but it was not mentioned, which is a surprise.
3402. **Mr Wilson:** I then turn you to the meeting that occurred exactly two weeks after that report went from the chief executive to the board in which he does not mention anybody other than Red Sky. On pages 43 to 51, there is the meeting that there was at the chairman's office — you were not there — on 28 April, where Mr Cuddy, having not said a thing to the board on 13 April, indicated that:
- “there are currently one of two other Contractors ‘on the radar’”.*
3403. Does it surprise you? Maybe you can let us know, but did the Housing Executive ever inform you, as Minister, that its contract arrangements were so loose that not only were Red Sky able to abuse it, but others were able to abuse it?
3404. **Mr McCausland:** My recollection is that this was raised with me by officials within DSD soon after I came into the Department. I do not have a precise date, but I am conscious that I was made aware of other contractors. In conversation I had raised that, as well, with the Housing Executive. That is why I asked, “Can I have an assurance that other contractors adjacent — there are not issues there? And are you therefore going to go ahead and transfer the contracts from Red Sky to other companies? Can you give me an assurance that there is nothing wrong there?”. The chairman assured me that they would be able to go ahead, and there would not be any problems.
3405. **Mr Wilson:** So the Housing Executive —
3406. **Mr McCausland:** It is inconsistent.
3407. **Mr Wilson:** Yes, and the Housing Executive's chief executive did not think to inform the board on 11 April, then admitted to other public representatives two weeks later, that there were other people involved in the same practices.
3408. **Mr McCausland:** And he would have been conscious of that. Those meetings were in March 2011. I am sure that he would have been aware, if that is March 2011, that, in February 2011, the whistle-blower had emerged regarding Leeway Maintain. Prior to that, it was simply the RIU identifying issues. I do not know what the whistle-blower

- produced about Leeway Maintain. I am not party to that.
3409. **Mr Wilson:** Did you ever have any discussions with officials as to why there was this culture of almost keeping the practices of firms other than Red Sky under wraps?
3410. **Mr McCausland:** As to why that was done, that is a question that only the chairman of that time, and the acting chief executive, can answer. I was not given any explanation as to why it was.
3411. **Mr Wilson:** Were you ever able to determine whether there was any sectarian motive on behalf of the chairman?
3412. **Mr McCausland:** I cannot comment on that. I have no evidence, other than to say that it is totally inconsistent on the part of the chairman and the acting chief executive, when they were aware of the issues with the other company — Leeway Maintain — to not bring it to the attention of the board at that point. I understand that Mrs Palmer was a board member. Was she aware of this? Who was aware of it? Who was on the audit committee? There are a lot of questions that need to be asked and answered, but, again, the only people who can answer those are Brian Rowntree and Stewart Cuddy.
3413. **Mr Wilson:** Just coming to Mrs Palmer —
3414. **The Chairperson (Mr Maskey):** Sammy, now —
3415. **Mr Wilson:** It is my last question.
3416. **The Chairperson (Mr Maskey):** Fair enough. I am just —
3417. **Mr Wilson:** Thanks for your indulgence. Just coming to Mrs Palmer, then. Quite clearly, the chief executive of the Housing Executive never intended to inform the board of the practices of other companies. Quite clearly, Housing Executive officials knew that their contracts were so poor that other companies could abuse, and were abusing, them. You have told us that the purpose of the phone call to Mrs Palmer was to see if she would at least draw the board's attention to things that the Housing Executive officials were not prepared to draw its attention to. Were you surprised that she then took the attitude that she did — that she wanted to be part of this culture of secrecy?
3418. **The Chairperson (Mr Maskey):** You are making what I consider to be clearly subjective remarks. Just for the record: that is the member's opinion. I am just making that clear for the record.
3419. **Mr Wilson:** OK. It is my opinion.
3420. **The Chairperson (Mr Maskey):** That is fair enough. You are entitled to say that, but I am just making the point.
3421. **Mr Wilson:** Were you surprised, then, that she refused to at least accede to the request to draw some of these issues to the attention of the board?
3422. **Mr McCausland:** It is certainly disappointing that people who were aware, and who had been made aware, of these issues — and should have been aware of them anyway — did not convey that to the board meeting. This is central to the thinking that was taking place on my part regarding this. I was only in the Department, but I had picked up very quickly that this was a wider problem than just one company. It may be more deeply entrenched in one than another. We will probably never know, to some extent, because to actually carry out a full forensic audit of the extent that was done, with the intensity that was done, with regard to Red Sky, would be a phenomenally lengthy and expensive piece of work if you were to do it across all of the contracting.
3423. But certainly, even without that, the fact was that the whistle-blower had emerged and the RIU had already picked up on something that showed there was a problem there. Why people did not want to acknowledge that contracts were not being well managed at the time is something that they will have to answer for. I should say just one point: after this, we certainly came to the point where, with changes within the Housing Executive, there was a much more open approach to things, and an

- acknowledgement that it had not been well run with regard to contracts.
3424. **Mr F McCann:** Thank you, Mr McCausland, for your evidence. Did you know Mrs Palmer?
3425. **Mr McCausland:** I would have seen her on about half a dozen occasions, probably, at different events. That is about all.
3426. **Mr F McCann:** What was your impression of her? Would you say she would be a trustworthy and honest person, in your belief?
3427. **Mr McCausland:** There is no point in — you do not have —
3428. **The Chairperson (Mr Maskey):** Fra, sorry. We had to remind a member at a prior evidence session about asking someone about someone else's motivations. You cannot really do that.
3429. **Mr F McCann:** OK. Thank you, Chair. In terms of who took the decision to phone Mrs Palmer, your former PA said that it was —
3430. **Mr McCausland:** What page is that on?
3431. **Mr F McCann:** Pardon?
3432. **Mr McCausland:** What page are you referring to?
3433. **Mr F McCann:** It is in the evidence given by Stephen Brimstone on 6 October 2014.
3434. **Mr McCausland:** What page?
3435. **Mr F McCann:** Pages 1 and 2.
3436. **Mr McCausland:** Right, OK.
3437. **Mr F McCann:** Mr Brimstone said —
3438. **Mr McCausland:** Sorry, you said PA; did you mean special adviser?
3439. **Mr F McCann:** Stephen Brimstone.
3440. **Mr McCausland:** Right, OK. Sorry. I understand now.
3441. **The Chairperson (Mr Maskey):** SpAd.
3442. **Mr F McCann:** SpAd. [*Inaudible.*] When Mr Brimstone was asked about who made the decision, he said:
- "Listen: it was over three years ago. I cannot recall the specifics around who said what and when to whom first. It was discussed and it was decided that this would be an appropriate step to take."*
3443. That is, to phone Mrs Palmer. However, on page 1, he had actually said that, after discussion, in his recollection, of what would be the appropriate next step, he felt that the Minister felt it appropriate to make contact with Mrs Palmer. I take it that it was you who made the eventual decision to ask Mr Brimstone to make the phone call.
3444. **Mr McCausland:** That would have been the natural thing, yes.
3445. **Mr F McCann:** So it was you who asked him to do it.
3446. **Mr McCausland:** I keep having to make the point, and it has come into the answer, that I have no real recollection of it, but that would have been the normal practice.
3447. **Mr F McCann:** Did you talk about what he should say to Mrs Palmer in the phone call?
3448. **Mr McCausland:** Again —
3449. **Mr F McCann:** Let me remind you that Mrs Palmer said that, when asked to approach the board, she was asked to vote against —
3450. **Mr McCausland:** Sorry, I just —
3451. **Mr F McCann:** That is page 3 of Mrs Palmer's evidence on 9 October 2014.
3452. **Mr McCausland:** OK. What page number?
3453. **Mr F McCann:** It is at the bottom of page 3.
3454. **The Chairperson (Mr Maskey):** Just hold on until we establish the electronic page number.
3455. **Mr McCausland:** I was not party to the conversation. I was not there when it

- took place, so I cannot comment on that.
3456. **Mr F McCann:** In evidence to the Committee, she said that she was being asked to vote against the taking of the contract from Red Sky and to give an extension to it. She said that she refused to do that. She said that, at that stage, Mr Brimstone became more aggressive and his language was more abrupt. In fact, it was intimidating when he said, “Look, there is no point in you being on the board of the Housing Executive unless you are prepared to do what the party needs you to do”. Again, she felt that, because of her personal integrity, she could not do anything like that. You said that you took on board what your former SpAd had said. Somebody has to be telling lies. If you accept that it is not Mr Brimstone, I take it that you are saying that that is untruthful.
3457. **Mr McCausland:** I cannot make any comment on the telephone conversation because I was not party to it.
3458. **Mr F McCann:** So, he never came back to you and advised you.
3459. **Mr McCausland:** He would have come back to me, but I cannot remember now. I appreciate the fact that it may be a bit repetitive, but it simply is the fact of the matter: it is three and a half years ago.
3460. **Mr F McCann:** I understand and accept that. However, the total of that conversation is a DUP councillor who sits on the board of the Housing Executive being reminded that she needs to represent the party and to go against what she believes is right, and she stood up against that. The evidence last week from your former SpAd and some of what you have said this morning calls into question the evidence that Mrs Palmer gave about that conversation.
3461. **Mr McCausland:** I have no reason to disbelieve what the SpAd said in his testimony to the Committee on 16 October. I worked with him for five years altogether in two different Departments, and what he said seems perfectly reasonable to me. I have no recollection of it. I have no reason to doubt him.
3462. **Mr F McCann:** It goes back to the question that I raised earlier. You have no reason to doubt him, and he is saying that he did not say that.
3463. **Mr McCausland:** I am here to answer questions of fact and things that I have knowledge of and can contribute in that way; I am not here to draw conclusions about what others may think.
3464. **Mr Allister:** Something, Mr McCausland, that you have knowledge of, because you were there, is the meeting of 27 June.
3465. **Mr McCausland:** What page is that?
3466. **Mr Allister:** I am referring to pages 104 and 105 of the pack. I remind you that that is the meeting that you held with DUP colleagues and with Red Sky representatives without either the administrators or the Housing Executive present. I will read from the bottom of page 104 to the top of 105. This is a minute of the meeting, recording things that you said.
3467. **Mr McCausland:** I point out that it is a note, not a minute. I did not see it until a long time later, at least a year later.
3468. **Mr Allister:** It is a note that your private office would have had the opportunity to verify.
3469. **Mr McCausland:** It is a note of the meeting.
3470. **Mr Allister:** We have some knowledge from phase 1 that the private office took considerable interest in the accuracy of notes, so presumably we can assume the same in regard to this. Can we?
3471. **Mr McCausland:** A person can assume whatever they want, but I do not make assumptions.
3472. **Mr Allister:** Let us say what you said —
3473. **Mr McCausland:** Mr Chairman, if I can finish, I can only report on things as I know them to be.
3474. **Mr Allister:** OK. This note records you advising that “he”, that is you:

- “would like to have the administrator in place until the end of August to allow all issues relating to the handover of contracts to be considered, during this time the proposed new company might be able to progress matters.”*
3475. What proposed new company were you talking about?
3476. **Mr McCausland:** It is quite a vague statement there indeed.
3477. **Mr Allister:** That is why I am asking you what company you were talking about.
3478. **Mr McCausland:** I cannot recall the exact significance of that; I do not know.
3479. **Mr Allister:** You do not know what you were talking about.
3480. **Mr McCausland:** I would have known at the time.
3481. **The Chairperson (Mr Maskey):** Sorry, can I make a point? I would not characterise that as “a vague statement”; I think that it is quite specific. “Proposed new company” seems to me a specific rather than a vague reference.
3482. **Mr Wilson:** There is a reference in the earlier part of that minute, where it is Mr Cooke who talks about a new company.
3483. **Mr Allister:** Yes, but this is now the Minister speaking; it is the Minister advising.
3484. **Mr McCausland:** Give me a moment to read it. There is a reference to that in paragraph 4; that is correct.
3485. **Mr Allister:** Yes, but this was you coming in on side with that to give the new company time. So, is the new company the reincarnation of Red Sky? Is that what we should understand?
3486. **Mr McCausland:** The phrase “new company” must refer to the new company that Mr Cooke referred to in paragraph 4.
3487. **Mr Allister:** It is fair to characterise that as a reincarnation of Red Sky.
3488. **Mr McCausland:** The terminology regarding company law is a matter that I will leave to others.
3489. **Mr Allister:** Let us not quibble, Mr McCausland. We are talking about whatever new company might emerge out of Red Sky. Is that right?
3490. **Mr McCausland:** I do not know whether it was going to be bought over or dealt with in some other way. I could not possibly —
3491. **Mr Allister:** When you were talking about the “proposed new company”, you were talking about a proposed new company — a phoenix that would arise from the ashes of Red Sky.
3492. **Mr McCausland:** That is an interesting phraseology.
3493. **Mr Allister:** Do you quibble with it? Surely, that is clearly what Mr Cook is talking about and which you are then endorsing.
3494. **Mr McCausland:** I have no knowledge, and did not have any knowledge at the time, of the detail of that. He obviously did refer to some company or other, but I have no knowledge of it.
3495. **Mr Allister:** What were you saying when you said that this time might also give them time to be able to progress matters? What does that mean?
3496. **Mr McCausland:** We are dealing with events of over three years ago. It does not specify: it is a note of a meeting; it is not a full minute. If it were a full minute, it might explain exactly what was meant, but it is only a note.
3497. **Mr Allister:** I am asking you to do the best you can to explain what you meant when you talked about giving time so that the new company might be able to progress matters.
3498. **Mr McCausland:** It is also important to bear in mind that I was brought here under oath. Therefore I have to be very careful in what I say to make sure that I am not saying something that is untrue or which would misrepresent something. I can, therefore, simply state the fact that there is not sufficient information in that note to enable me to comment on it.

3499. **Mr Allister:** I do not think, factually, that you are under oath today.
3500. **Mr McCausland:** I assumed that that continued from previous occasions, because I was never informed differently.
3501. **Mr Campbell:** Is that the case, Chairman?
3502. **The Chairperson (Mr Maskey):** I do not think so, but we can seek to establish that.
3503. **Mr McCausland:** It is a cause for concern that, over an hour into the meeting, the Committee is not clear whether it is under oath.
3504. **Mr Allister:** You are not suggesting to us, Mr McCausland, that your evidence would be any different if you were or were not under oath, are you?
3505. **The Chairperson (Mr Maskey):** I do not believe that you are under oath. It is interesting to note that if you had thought that, you might have thought of asking or you might have just presumed so. There is no fault intended anywhere. I do not believe that you are under oath.
3506. **Mr Allister:** But it could be under the assurance that you are not suggesting that your evidence would be different.
3507. **Mr McCausland:** I am not suggesting anything; I am simply stating.
3508. **The Chairperson (Mr Maskey):** One at a time. Fra, Mickey, a wee bit of order. We are doing well here. The meeting is measured.
3509. **Mr Campbell:** At least the meeting is still going on, Chairman; that is progress.
3510. **The Chairperson (Mr Maskey):** I am working on the presumption and the understanding, as advised, that you are not under oath. No oath was administered for this session.
3511. **Mr McCausland:** That said, it makes no difference, because I would answer the questions honestly in every case.
3512. **Mr Allister:** Then why did you raise the point?
3513. **Mr McCausland:** Because, I think, a document was circulated earlier that was borne of legal implications. I understand now that the Chairpersons' Liaison Group intends to produce guidelines and guidance on bringing people under oath, because there are no such guidelines at present. This was at the first meeting that I had attended of the Chairpersons' Liaison Group a few weeks ago. The Chairperson was not there, but the main item on the agenda was people being brought to Committees under oath. It was pointed out to the Chairs there that there is no Assembly guidance on that and that there was a need to produce some.
3514. **Mr Campbell:** Was that as a result of this inquiry, Chair?
3515. **The Chairperson (Mr Maskey):** I was not at that meeting, so I am not going to speak in any detail on it, but a report was brought to the Chairpersons' Liaison Group; it is a matter in progress. The administration of the oath or affirmation was directed and guided by the Assembly's legal services, so we took guidance. It is clear that the administration of an oath has legal implications.
3516. **Mr Campbell:** Is that directly as a result of our inquiry?
3517. **Mr McCausland:** Reference was made to this inquiry at the meeting.
3518. **Mr Campbell:** I am glad to hear that, Chairman, because that means that at least some good will come of this.
3519. **The Chairperson (Mr Maskey):** I have no doubt that members will have views on it in due course, but the administration of an oath or affirmation, as was opted for by a number of witnesses, has its own implications.
3520. **Mr F McCann:** Do they have equal weight?
3521. **The Chairperson (Mr Maskey):** Yes, they do, and this inquiry has been directed and assisted by the Assembly's legal services, so I am satisfied, as I believe are all members, that the system under which we are working has been guided

- by fundamental legal requirements and obligations. Until such time as that may change, that is the guidance under which we are operating.
3522. We will move off that issue because it is clear that the Member is not here under oath.
3523. **Mr Allister:** So that we are clear, Mr McCausland, you say that you cannot help us as to what you were talking about when you said that the proposed new company might be able to progress matters.
3524. **Mr McCausland:** I would not know the precise meaning of that.
3525. **Mr Allister:** But they are words or sentiments attributed to you.
3526. **Mr McCausland:** That is correct.
3527. **Mr Allister:** Of course, this was a meeting that you had been advised by your officials not to hold. Is that right?
3528. **Mr McCausland:** That is incorrect. I do not have the legal advice in that regard, but the implication of the core of what I was told was that it was — sorry, if I can just pause for a moment to look through my papers —
3529. **The Chairperson (Mr Maskey):** Go ahead.
3530. **Mr McCausland:** This was the meeting on 27 June. I cannot find it here, but the gist of what I was told was that I was free to meet whomever I wanted to meet. Ministers can meet whomever they want. Sorry, it is in paragraph 2. Following on from Robin Newton's request on 17 May for a meeting with me, it was arranged that that would take place on 27 June. Departmental officials provided me with a briefing in advance of the meeting, and that has been copied to the Committee. Senior housing officials also attended the meeting. I should add that the Housing Executive was aware of the meeting before, during and after. A view was also sought from the Departmental Solicitor's Office and, while the legal advice has not been provided to the Committee, members will be aware that I advised the Assembly that I was advised that Ministers may meet such persons as they chose.
3531. **Mr Allister:** Your officials had drafted a response to the MLA's request declining the meeting. The chronology that we have shows that your special adviser overrode that with your authority.
3532. **Mr McCausland:** It is important that I have ownership of letters that go out in my name. Officials advise, and the Minister looks at the advice or the draft and considers it.
3533. The initial draft said that it was essentially a matter for the Housing Executive and that it would not be beneficial — I think that those were the words used. I was conscious of the extensive public interest in the issue and the concern in the East Belfast constituency. By and large, I tried to accommodate people, and the final version suggests that if the Member still wanted a meeting that I would be willing to meet.
3534. **Mr Allister:** The constant theme of the advice was that those were contractual matters between the Housing Executive and the administrator.
3535. **Mr McCausland:** That is correct.
3536. **Mr Allister:** Was that meeting and others not you seeking to meddle in those contractual arrangements and to abort the termination of the contract and to extend it by six months? Was that not you meddling in contractual matters?
3537. **The Chairperson (Mr Maskey):** Jim, we had a session this morning. I remind members to be mindful of their language and not to use pejorative terms and so on.
3538. **Mr Allister:** I am not sure what the pejorative term was. Was it "meddle"?
3539. **The Chairperson (Mr Maskey):** Yes.
3540. **Mr Allister:** Well, was that not you trying to have an influence on contractual matters between the Housing Executive and the administrator, even at a meeting from which the administrator was excluded?

3541. **Mr McCausland:** I do not now whether it is appropriate to use the word “excluded”. I arrived —
3542. **Mr Allister:** He was not present.
3543. **Mr McCausland:** Yes. That is a more accurate account.
3544. **Mr Allister:** By determination, he was not present.
3545. **Mr McCausland:** If you would let me finish without interrupting. Chairman —
3546. **The Chairperson (Mr Maskey):** Go ahead. You have the Floor.
3547. **Mr McCausland:** The terminology that I would use is that it is right and proper that the Minister should take an interest in those matters. They are matters of public interest and matters on which I might well have had to answer questions in the Assembly. Questions had already been asked about that contract during the previous Minister’s time. The media, and people generally, were asking about it. I think that it is a good thing to listen to people and hear their views.
3548. I understand that Peter Cooke has given advice to the Committee. It says that he had given the Minister examples of irregularities about the performance and that he felt that the company was being victimised. In the course of that meeting, he also provided information about the point that he raised before the Committee, which was the coding system for jobs. Various examples, some more ghoulish than others, have been given of workmen arriving to do a piece of work for which there was no code. When they were told that the job involved a big tree, they put in for two trees, and if there was a car in the garden as well as a lot of rubble, they put in for two gardens, a big garden or whatever else. There were peculiarities and weaknesses in the way the work that was undertaken was reported. In that way, as well as others, the management of contracts was flawed. It was flawed because of the hands-off approach by the Housing Executive and the weaknesses in the coding system.
3549. Peter Cooke made that point, and I was interested to hear that from him. At that time, I was not made aware of that detail of information by anyone else, although I heard it subsequently from other contractors.
3550. **Mr Allister:** It moved far beyond gathering information. It moved to a point at which a Minister was seeking to have the relevant body, the Housing Executive, extend a contract by six months. Surely that was a Minister seeking to bring influence on a contractual matter.
3551. **Mr McCausland:** It was expressing a concern — a legitimate concern that was subsequently demonstrated to be a very sound concern that there were issues with contractors more widely, and I have referred previously to the issues with the contracts undertaken by Leeway Maintain.
3552. I wanted an assurance that there was no danger of contracts being taken away from company A and given to company B without some assurance that the same issues would not arise there.
3553. In that context, I held a meeting with the Chair of the Committee on 6 July — I do not know on which page in members’ folder there is a record of that meeting or if it is in the folder. The board of the Housing Executive met on 5 July and took its decision. I wrote to the chair of the Housing Executive on that point, but I also met the Chair of the Committee on 6 July. There is a section in the paper that was prepared and drafted for me on that day that I would like to refer to. It summarises pretty clearly the issues that were in my mind. It states:
- “When I took up office, I was fully briefed by my officials on the issues that arose from the governance audit and gateway review of the Housing Executive that was carried out last year by my predecessor. This highlighted clearly that there were issues in relation to the existent response maintenance contracts.”*
3554. It continued:
- “The recommendations from the gateway review in relation to procurement and contract management are now being implemented.”*

3555. That was at that point in 2011 and it was:

*“to ensure that the Housing Executive enters into a new contract management regime.”*

3556. The document continued:

*“The date for the completion and implementation of the new contract management regime was to be October/ November this year when new contracts and contractors would be in place.”*

3557. That is useful in setting the context. There was a concern about the wider picture.

3558. At that time, I was also briefed on the situation with Red Sky and was broadly content with the actions that had been taken by the Housing Executive. I confirmed that in a letter to Naomi Long: it was not just one party that had raised the issue of Red Sky with me. She had technically raised it with my predecessor, Alex Attwood, but, because of the election, the response was made during my period in office. I wrote back to her on 25 May 2011.

3559. It may also be useful to refer to the letter that was sent to her. In it, I stated that I shared her concerns about the impact on Red Sky employees, about the knock-on effect on the wider economy, the investigation process and so on. She made those points clear in her letter, which the Committee probably has.

3560. My officials were also assured by the Housing Executive that ongoing regulation and inspections had not identified similar concerns with other contractors, other than in one area, which was subject to further detailed investigation. That was not the outcome of the ASM Horwath forensic audit, which looked into things in more detail. However, having received more information from the Housing Executive about the Red Sky issues and other investigations ongoing in the Housing Executive into contractors and Housing Executive personnel, I became increasingly concerned that issues similar to those in Red Sky that led to the termination of its contract might have existed with other response maintenance contractors. In light of

that, and to ensure that those issues were not endemic across contractors, I instigated a forensic investigation similar to the one carried out on Red Sky. That was initiated by me and not by the Housing Executive, and it looked into other contracts, particularly those adjacent contractors to which the Housing Executive intended to assign the Red Sky contracts.

3561. I wrote to the Housing Executive on 1 July and asked that, rather than assigning the two adjacent contractors with whom similar problems may exist, they would take that forward through an open procurement competition. I attached three conditions to that request: that response maintenance services to tenants must not be affected; that the administrator should state that he could continue to service the contract — it subsequently turned out that that was not possible — and that it was implicit that the open procurement exercise was to be carried out within a reasonable timescale. My primary concern throughout had been a focus on having new contract arrangements in place and good contracts that would underpin the best possible services to be provided to tenants. I received a response from the Housing Executive that focused on its response, should I issue some direction on that matter. Once it became clear that the administrator could not continue beyond a short period of time, all that became irrelevant and the thing moved ahead. It is important to put on record those points about how other politicians, outside my party, had expressed concerns about the impact of the contract being reassigned. They had concerns which [*Inaudible.*] and it was also highlighting the fact that I wanted to have that forensic investigation carried out as quickly as possible but, at all times, ensuring that the response maintenance service to tenants must not be affected. That was drawn up by officials, not by me.

3562. **Mr Allister:** It is quite clear that, by your letter of 1 July, in respect of a contractual matter between the Housing

- Executive and the administrators of Red Sky, you were seeking to have the Housing Executive extend the termination of that contract by six months. Is that not right?
3563. **Mr McCausland:** The six-month period was to enable the forensic audit to be carried out.
3564. **Mr Allister:** No. According to your letter, the contract would be for a period —
3565. **Mr McCausland:** Which page are we on?
3566. **Mr Allister:** Page 121.
3567. **Mr Allister:** It states:
- “This contract would be for a period of six months or until the new contract procedures can be put in place.”*
3568. **Mr McCausland:** Sorry, just bear with me. There are two points. I mentioned one of them: the need to have the forensic audit carried out and completed — and there was a period of time for that — or until the new contract procedures can be put in place. There seemed to be some sort of lack of speed on the part of the executive in getting to new contracts. It was about to award new contracts but seemed to be taking an inordinately long time about it. The timetable for that kept slipping. So, it was important to put in there:
- “or until the new contract procedures could be put in place “.*
3569. It might have been possible that it could be quicker than six months, or it might take longer; we do not know.
3570. **Mr Allister:** Is it not quite clear, from what you said at the 27 June meeting, that part of your thinking was that those six months would give the new company time to “progress matters”? Was it not your thinking that they might be able, in procurement, to take over the contracts that Red Sky had held? Is that not what you meant by progressing matters?
3571. **Mr McCausland:** Mr Allister was not there —
3572. **The Chairperson (Mr Maskey):** Just finish that question and then we will move on to other matters.
3573. **Mr McCausland:** — and he is not a mind reader.
3574. **Mr Allister:** That is your answer.
3575. **The Chairperson (Mr Maskey):** Can you answer the substance of the question?
3576. **Mr McCausland:** I have already stated that, as regards that particular line in that note, I cannot really comment on the precise significance of it.
3577. **The Chairperson (Mr Maskey):** OK. Fair enough.
3578. Hansard might record that, in the earlier part of your evidence, in answer to Mr Allister, I think you said that you were not advised not to attend the meeting which subsequently happened on 27 June; and then you referred to the legal advice that you got from the DSO, which said that a Minister may meet a person whom he chooses — or words to that effect. In the briefing from the Department, on pages 74 and 75, the recommendation on page 75 is that you should decline the invitation to meet Mr Douglas and so on.
3579. **Mr McCausland:** The reason given there is the one stated. The key word there is “recommendation”.
3580. **The Chairperson (Mr Maskey):** The point I am making is that you were recommended by the Department not to attend the meeting and then, further to that, on pages 92 and 93 there is a briefing for the meeting, which you went ahead with. Paragraphs 4 and 5 are quite relevant in that they refer to these matters about the contract and then you are advised:
- “to be cautious in relation to any discussions around these issues. Termination of the contract is a matter between the Housing Executive and Red Sky and the appointment of the Administrator by Red Sky has now placed matters relating to the future of the company, including any potential sale, in the hands of the Administrator.”*
3581. I draw that your attention because that —

3582. **Mr McCausland:** The reason given for the recommendation is there on page 76, but it is purely a recommendation.
3583. **The Chairperson (Mr Maskey):** Part of the clear and consistent advice, I would suggest, from all of the other evidence is that you were being advised, as Minister, not to accede to that request.
3584. **Mr McCausland:** For the reason given there: it would not be beneficial. That was the key thing in the letter. The initial draft of the letter was that it would not be beneficial. My view was that it was beneficial for me to hear whatever information I could glean on this because it was proving difficult to get information. If you can get some, that is a good thing. It is better to be informed than not.
3585. **The Chairperson (Mr Maskey):** But it was against the advice of the Department. That is the point that is being established.
3586. **Mr McCausland:** Let us be clear precisely what the advice was. The advice was that it would be almost nugatory or pointless because this was a matter for the Housing Executive. However, I wanted to make sure that I was well informed and had as much information as possible. As we are already aware, information with regard to Leeway Maintain was mentioned at one stage. Yet, when the report was put to the board of the Housing Executive, it was not mentioned. It is important to get as much information as possible. I am sure that members would agree that it is right to be informed.
3587. **The Chairperson (Mr Maskey):** Yes, but I was just establishing the fact that your own permanent secretary, Will Haire, in his evidence, confirmed that you were advised to decline a meeting on the basis that these matters were ongoing contractual matters. I was just establishing that. You are not disputing that.
3588. **Mr McCausland:** I do not have his testimony in front of me, but that is what it says on page 76, in the recommendation in the briefing paper that was provided to me on 27 May.
3589. **Mr Campbell:** Surely the key point is what happened after it became clear that you were going to have the meeting having received the advice. Did the permanent secretary or any other senior official in your Department then say, “Minister, if you do this, in our view, x.” Were you given a warning that this would be completely unacceptable in that you had a take a directive in order to do it? Were you given any advice of that nature?
3590. **Mr McCausland:** No. Mr Campbell has hit the nail on the head there. That is exactly the point: there was no subsequent advice.
3591. **Mrs D Kelly:** I am pleased to hear that there are some parts of which you have very clear recall and others of which you obviously do not.
3592. **Mr McCausland:** I am sure that Mrs Kelly —
3593. **The Chairperson (Mr Maskey):** Sorry, Mr McCausland. Dolores is asking a question.
3594. **Mrs D Kelly:** It is just that I wanted some clarification. Mr McCausland, in his evidence today, said, referring to the Housing Executive management of the contracts, that they were not being well managed and that it is something that it will have to answer for. Yet, all that we have heard today and in earlier testimonies is that, when the Housing Executive was going to manage well a contract that was clearly failing, the Minister was clearly interfering in the conditions of that contract in seeking it to be extended. Can you see that that poses a number of concerns for me and others? It does not sit with your evidence in that there appears to have been concerted efforts on your part to retain, extend and allow time potentially not only for Red Sky to regain the contract but, if that were not possible, to re-emerge as a new company.
3595. **Mr McCausland:** First, Mrs Kelly used the term “manage well”. This was an attempt to address an issue that was the result of shortcomings and failures in the Housing Executive system, because it was not monitoring contracts

- properly. I am sure that Mrs Kelly would acknowledge that that is indeed the case. It was addressing issues that arose because of serious shortcomings. I think that those shortcomings are now generally acknowledged, and that is why there is a totally new regime with new contracts. The Egan contracts required a much more hands-on approach. The Housing Executive adopted a hands-off approach. Therefore, the Housing Executive was belatedly looking at what it could do in a situation that was, to a significant extent, of its own making. As I have said, my concern is also that there was at least one other company in which similar issues were identified. I was simply asking that there be an opportunity for that forensic audit to be completed so that, when contracts were handed across to somebody else, we were indeed sure and certain that the same issues would not arise again.
3596. **Mrs D Kelly:** I was always taught very simply that two wrongs never make a right. I cannot see how one failing company would be protected whilst you seek to establish whether another company was guilty of the same. I think that we will agree to disagree on that point.
3597. A further question goes back to the issue of the phone call to Mrs Palmer. Can I clarify whether or not I heard you say that, whilst you had no recollection of the content of the phone call, it is unlikely that the SpAd would have made such a call without your knowledge?
3598. **Mr McCausland:** That is correct.
3599. **Mrs D Kelly:** Then, may I ask what conversations, if any, you have had with your colleagues, Jeffrey Donaldson, who was representing Mrs Palmer at internal party meetings with your party leader, and whether your party leader expressed any concerns? In Mrs Palmer's evidence, she states that Mr Brimstone admitted that her interpretation was the correct interpretation of what was said, although Mr Brimstone has subsequently no recollection of the content of that conversation.
3600. So, have you had conversations with your party leader and Jeffrey Donaldson in relation to that phone call? What concerns, if any, do you have about the "party first" phraseology that Mrs Palmer said was used? What do you think it meant in that context? Why do you believe that the apology that Mrs Palmer was promised by your party leader has not yet materialised to her satisfaction based on what appears to be the internal investigation within your own party?
3601. **Mr McCausland:** I had no role in the internal workings of the party with regard to this.
3602. **Mrs D Kelly:** So, you have never had a conversation with Mr Robinson about it?
3603. **Mr McCausland:** I did not say that.
3604. **Mrs D Kelly:** I am asking you.
3605. **The Chairperson (Mr Maskey):** Sorry, Nelson. When you strip it all back, there were a couple of questions in there. You know what they are.
3606. **Mr McCausland:** I did answer the first one. I said that I had no role in those internal conversations. As regards who within my own political party I talked to or have not spoken to, that is all subsequent to this. I think it is outside the remit of the inquiry. Of course, I will have talked to individuals in the party. It would be bizarre if one did not. However, any conversations that were held are internal matters within a political party. I am not party to the internal workings of Sinn Féin. I am not party to the internal workings of the SDLP. I think that there the matter should rest.
3607. **The Chairperson (Mr Maskey):** In fairness, I think that the questions are pertinent to the inquiry because they relate to a person's evidence and the naming of other individuals who were allegedly participating in discussions. You are saying that you have no knowledge of that.
3608. **Mrs D Kelly:** I was not asking about the internal workings; I was asking about the telephone conversation. How did you

- interpret it? How did you interpret what was meant by “party first”? I was asking whether Jeffrey Donaldson and Peter Robinson ever had any conversations with you, as Minister, around that in the whole furore that followed the ‘Spotlight’ programme? In Jenny Palmer’s evidence, she states that Mr Brimstone, at the internal party meeting, accepted her version of events. Therefore, do you have any concerns about the actions of your SpAd and whether he was acting with your full knowledge and blessing in what he said to Mrs Palmer and how he said it?
3609. **Mr McCausland:** Mrs Kelly moved the goalposts slightly by saying “as Minister”. As Minister in DSD, I had no conversations with members of the party about this. As an individual member of the party, I may well have talked to people, but that is a separate matter. That is internal to the party. As Minister, I did not. I was not approached in that context and there was no conversation in that context at all. I had no role whatsoever in any of the meetings that were held subsequently with Mrs Palmer. So, I could not comment on them.
3610. **Mrs D Kelly:** So, you are now telling us that you are able to completely divorce the conversations you have had as Minister with those you have had as a member of the DUP and that you may have had conversations as a member of the DUP but not as a Minister.
3611. **The Chairperson (Mr Maskey):** We need a bit of guidance. Are you seeking to ask the former Minister if he has any view on the alleged exchange between Mrs Palmer, Stephen Brimstone and other party colleagues?
3612. **Mrs D Kelly:** That is one part.
3613. **The Chairperson (Mr Maskey):** That is what I think you are trying to get at. You need to ask the question perhaps more directly.
3614. **Mr McCausland:** All I can repeat again is that I was not there when the telephone conversation took place. I was not there when there were subsequent meetings with Mrs Palmer and, therefore, I have nothing to add.
3615. **Mrs D Kelly:** I have to say, Chair, that I believe the answers to be unsatisfactory.
3616. **The Chairperson (Mr Maskey):** OK. You posed a question and got answers. You can make your own mind up in due course.
3617. **Mr McCausland:** It may not be the answer that Mrs Kelly wanted to suit her agenda but it is the truth.
3618. **Mrs D Kelly:** Chair, I do not have an agenda other than seeking the truth.
3619. **The Chairperson (Mr Maskey):** I will not allow that to go any further.
3620. **Mr McCausland:** That is a surprise, Mrs Kelly.
3621. **The Chairperson (Mr Maskey):** Sorry, Dolores and Nelson, we are moving on from that point. People can make their minds up in due course when they consider all the evidence in the round.
3622. **Mr Allister:** In terms of the conversation, whatever was in it, between Mrs Palmer and Mr Brimstone, you have the advantage of the outcome of a fact-finding exercise by DFP. Is that correct?
3623. **Mr McCausland:** A piece of work was undertaken. That is correct.
3624. **Mr Allister:** When did you receive that piece of work?
3625. **Mr McCausland:** I do not have the details of the dates with me.
3626. **Mr Allister:** I am sure that you can help with whether it was last week or last year.
3627. **Mr McCausland:** It was certainly not last week because, last week, I was not in the Department. It was at the time when I was in the Department but I could not recall an exact date.
3628. **Mr Allister:** So, you cannot help us with when that exercise concluded. If the Committee had evidence that it seemed to have completed in or about the latter part of September 2013, would that gel at all with what you believe?

3629. **Mr McCausland:** I cannot comment because, as I say, I cannot recall. I would need to go back and enquire.
3630. **Mr Allister:** You cannot recall that either.
3631. **Mr McCausland:** I have already stated that I do not know the date on which it was given to me.
3632. **Mr Allister:** Do you recall whether it reached factual conclusions?
3633. **Mr McCausland:** The position regarding it is into the realm of a personnel matter.
3634. **Mr Allister:** Quite distinct from personnel matters, did it reach conclusions of fact?
3635. **Mr McCausland:** I am not going to comment on personnel matters because, as the member will be —
3636. **Mr Allister:** What are you trying to hide about it?
3637. **The Chairperson (Mr Maskey):** Sorry, Jim —
3638. **Mr Campbell:** Come on, Chairman. Come on.
3639. **The Chairperson (Mr Maskey):** Sorry, Gregory, let him finish.
3640. **Mr Campbell:** This man thinks that he is back at the Bar Library.
3641. **Mr Allister:** Just a wee second, Gregory. The sentence was not finished, and you are trying to challenge me.
3642. **Mr Campbell:** I am not challenging you at all; I am making a factual statement about Mr Allister.
3643. **The Chairperson (Mr Maskey):** I have already indicated to Jim. I am asking him to ask a question as opposed to making comments like that. Allow me to do my job.
3644. **Mr Allister:** We know that, if the report followed its terms of reference, it was to make findings of fact and then a recommendation based upon those facts. Did the report, as furnished to you, make findings of fact?
3645. **Mr McCausland:** I will not comment on what is a personnel matter. That would be totally inappropriate.
3646. **Mr Allister:** Acting upon the recommendations might, on one construction, take it into the realms of personnel if, for example, it recommended some disciplinary action, but whether or not it reached findings of fact is itself a question of fact.
3647. **Mr McCausland:** I am not going to comment on something that is part of a personnel matter.
3648. **Mr Allister:** But you know the answer to my question.
3649. **Mr McCausland:** I am not going comment on what —
3650. **Mr Campbell:** Chairman, there is second-guessing here.
3651. **Mr Allister:** So, you wish to withhold from the Committee the findings of fact that might help the Committee on the dispute between Councillor Palmer and Mr Brimstone about what was or was not said in that conversation.
3652. **Mr McCausland:** I took legal advice from the Attorney General on the matter and acted on his advice. I am not going to comment now on what is a personnel matter. That would be inappropriate.
3653. **Mr Allister:** How would it be inappropriate to tell us, as a Committee, probing these factual issues, whether that report reached conclusions on questions of fact? I am not asking what they are; I am asking whether it reached conclusions on questions of fact. How would that prejudice anything?
3654. **Mr McCausland:** I have already answered the question.
3655. **The Chairperson (Mr Maskey):** OK, Jim, I am making a ruling that Mr McCausland, as a Minister, refused to provide that as requested by the Committee, and that the matter is now subject to an engagement between the Committee and the current Minister. Mr McCausland, in his capacity as a witness this morning, has declined to

- give any further information and, on that basis, we will move on to the next question.
3656. **Mr Campbell:** Mr McCausland, there are a couple of references here. I want to get into the whole issue of Red Sky and the rationale behind it. According to our notes, a letter was sent by the MP for East Belfast, Naomi Long, to you about Red Sky. The third paragraph states:
- “I am concerned for the jobs of the 400-plus employees of the firm”.*
3657. Then, Robin Newton wrote to you around the same time about the implications that the possible ending of the contract would have for the employees. You replied:
- “However, like you I am concerned about the 400 plus employees of Red Sky”.*
3658. So, there was a fairly clear line of thought among those in East Belfast to you, as Minister, about their concern about the jobs. I am not asking you to second-guess anybody else. I will leave others to do that. I am asking you to answer for yourself. That is the position of the public representatives in East Belfast about Red Sky. There has been a series of questions to you today and on previous occasions from members around this table about your approach to the Red Sky contract. People on the other side of the argument are very clear that their concern was to protect the jobs. Did anybody allude to you, because I have not heard it here in this questioning, at the time when you were Minister, subsequent to those letters, at the time of your meeting or at the time of the debate in private, by letter, email or public press release as to why they think that there was some sort of association or inference between you and Red Sky?
3659. **Mr McCausland:** Sorry, could you repeat the last point?
3660. **Mr Campbell:** It appears to me that there is a line of questioning that appears to imply that there is some sort of connection that you have not elaborated upon yet. Nobody has actually said what that is. I have not heard one questioner say it. I am just wondering if you have heard it or whether anybody has written to you implying what that is.
3661. **Mr McCausland:** Nobody has suggested to me that I have any connection with Red Sky, and it would be impossible for them to do so because I do not.
3662. **Mr Campbell:** I was coming to that. So, nobody has then been man enough or woman enough to stand up and say, “What I am getting at here is”, and then say it. Nobody. Is that right?
3663. **Mr McCausland:** That is correct.
3664. **Mr Campbell:** Thank you.
3665. **The Chairperson (Mr Maskey):** I remind people that the Committee and the inquiry are not inquiring into Red Sky or any other contractor. We are dealing with the terms of reference for the inquiry. This inquiry has no remit to inquire into any company.
3666. **Mr Campbell:** That is not what I was asking. The inference is fairly clear from the series of questions, but nobody went to Mr McCausland when he was Minister to make any claim or implication.
3667. **The Chairperson (Mr Maskey):** You have made your point, and it is up to others to —
3668. **Mr Campbell:** I have and nobody has denied it either.
3669. **Mrs D Kelly:** They would not grace it.
3670. **The Chairperson (Mr Maskey):** I am not sure whether that is a relevant point.
3671. **Mr Campbell:** Maybe they will in the Chamber.
3672. **The Chairperson (Mr Maskey):** Perhaps. That will be a matter for anybody who has that in their mind, but nobody that I am aware of has indicated that it is.
3673. **Mr F McCann:** The issue of 400 jobs being lost in east Belfast is has been brought up. However, the Housing Executive maintenance end of the contract was only a small part of the

- overall business that Red Sky had. How many jobs were actually affected?
3674. **Mr McCausland:** I do not know. I knew at the time as it was a point that was raised then, but I do not know today.
3675. **Mr Wilson:** Regarding the meeting that the Housing Executive was not present at. They did not object to the meeting, or did they?
3676. **Mr McCausland:** No, they were aware of it beforehand.
3677. **Mr Wilson:** According to Mr Cuddy, not only were they aware of it, they were provided with briefing forms.
3678. **Mr McCausland:** That is correct. I emphasise that they were aware of it before [*Inaudible.*] As you correctly stated, Mr Cuddy confirmed that they had provided information.
3679. **Mr Wilson:** In his evidence to the Committee, he stated that, whilst they were concerned about it, they did a briefing for it.
3680. You said that you were not aware of the previous Minister's involvement in this. Mr Cuddy informed us that the previous Minister wanted the Housing Executive to terminate the contract. That was before there was any evidence or report. On a number of occasions during his evidence, he talked about the previous Minister making representations about the termination of the contract. Were you ever made aware by your officials that there had already been discussion from the Department about the termination of the contract?
3681. **Mr McCausland:** I was aware of the fact that he had an interest in the matter and had contributed to the discussions, but I do not have the details of those discussions. I was conscious that he was fully supportive of terminating the contract.
3682. **Mr Wilson:** Are you aware of any letters, like the ones you received from Mr Rowntree or Mr Cuddy, on how appalling it was for a Minister to want to be involved in the internal workings of a live Housing Executive contract?
3683. **Mr McCausland:** I would not have been given access to papers and correspondence for the previous Minister. That seems rather bizarre with freedom of information, but that is the protocol. He certainly had a strong view on the matter.
3684. **Mr Wilson:** It seems to be a constant theme from the Housing Executive that Ministers should take no interest in its internal workings.
3685. **Mr McCausland:** There was an ethos in the Housing Executive that grew over the years where that was very much the thinking and that was how it operated. It also became clear that in the Housing Executive there were tensions and deep divisions. That is illustrated by the point that Mr Campbell raised at the start regarding the chairman, Mr Brian Rowntree. That was a particular example, but more generally there was an attitude that the political process, politicians, public accountability and all of that should stay away. I think that challenge is a good thing, and I sought to challenge the Housing Executive by asking questions.
3686. We are probably drawing to a close, so I will just make the observations. That is how I came to identify issues such as, when you have only 26 tower blocks in Northern Ireland, why there was no strategy for maintaining them. Why do you have 5,000 properties with no cavity wall insulation and nobody has done anything about it? That was buried as an issue. Why have you not put double glazing into your properties, and why do you not even know how many have it? In one of the first meetings with the chairman — I think that it was the first meeting — I put a picture on the desk of three or four houses in a row in my constituency with holes in the walls and the roof falling off, and he said that we would have to get those knocked down. I said that, before he knocked them down, he should make sure to take the tenant out of the second one, because a man was living in the middle of that. They do not like being challenged on that sort of thing.

3687. **Mr Wilson:** The surprising thing was that, when Mr Cuddy gave his evidence and was asked about who all knew about the overcharging and whatnot in the Housing Executive, he said to me that that was before they commissioned the forensic accounts. He said that they were all there and that none of them, except presumably the chief executive and possibly the director of housing, would have known whether there were major issues. Do you think that the Housing Executive was embarrassed at the shambles and the way in which senior, well-paid officers were running it and that some of the fury that is now being directed at you by the Housing Executive was because you dared to expose that?
3688. **Mr McCausland:** I think that you are very much right there. It is very much a diversionary tactic to get attention away from the exposure of all the issues. I mentioned tenants living with poor glazing and no cavity wall insulation, and a very vulnerable tenant living in the middle of dereliction with a hole in the wall of his house. There was almost an attempt to bury those and wipe them out of the story. A lot of this, I think, unfortunately, has become simply a way of doing that.
3689. **Mr Wilson:** Somebody as senior as Mr Cuddy, who was then acting as the chief executive, said:
- "I assumed that the contracts were being operated satisfactorily."*
3690. He was talking about 2010.
3691. **Mr McCausland:** When you read that, what comes across — it was something that I had heard from others in the executive — is that there was a top tier that ran the show, and there were others further down who may not have been —
3692. **Mr Wilson:** Do you find it surprising that members of the Committee almost seem to think that your interference as Minister to try to expose and deal with some of those things was behaviour that was untoward as Minister?
3693. **Mr McCausland:** There was a boil there that needed to be lanced; it has been lanced, and we are in a better place because of it. The Housing Executive is in a much, much better place today. A lot of the things were covered up and concealed for decades — certainly for a decade. A lot of good work was done at the beginning, but an ethos developed that was not good. We are away from that now, and that has been because of the challenge. However, people do not like to be challenged in that way.
3694. **The Chairperson (Mr Maskey):** I have one final point. On page 107, you have a briefing in the name of Heather Cousins. This is in respect of the meeting that you had with the Housing Executive to discuss the termination of the Red Sky contract. On page 110, in paragraph 7 at the top, you indicated that you might consider issuing a directive on the matter. Obviously, that has been referred to in other people's evidence. Can you give us some context for issuing such a directive and your consideration of it at the time?
3695. **Mr McCausland:** Let me state categorically that, having been two years in DCAL and three years in DSD, I never once issue a ministerial direction in the whole of those five years. In fact, the issue had never even occurred, been talked about or thought about when I was in DCAL. I was just into DSD, and I was looking round to inquire what the options and the routes were and whether I could have a good understanding. So, it was just as much about finding out information about why the coding system did not work very well, why the contracts were not being properly managed, the relationships and so on. That was part of the picture. It was something that was mentioned, but it was not pursued.
3696. **The Chairperson (Mr Maskey):** OK. Thank you for that. No other members have indicated that they wish to speak. Is there any final remark that you want to make this morning, Mr McCausland?
3697. **Mr McCausland:** No. I am quite content. I am happy to come here. I just wish

that some others, including the former chairman, might appear.

3698. **The Chairperson (Mr Maskey):** OK. You understand, on the basis of the —

3699. **Mr Wilson:** Maybe the BBC as well.

3700. **Mr McCausland:** The BBC might come as well.

3701. **The Chairperson (Mr Maskey):** OK, folks. Hold on a second. We are winding up the session. For the record, I want to make the point that the Committee may wish to return to you again. Obviously, you are entirely free to make contact again with the Committee if anything else comes to your mind that you believe is of relevance. Thank you very much for your evidence.

3702. **Mr McCausland:** Thank you.

# 13 November 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mrs Dolores Kelly  
 Mr Fra McCann  
 Mr Sammy Wilson

## Witnesses:

Mr Stephen Brimstone *Department for Social Development*

3703. **The Chairperson (Mr Maskey):** We have Stephen Brimstone here to continue his session from 16 October, which was interrupted. We are now resuming business. On that basis, I again ask any members to declare any interest relevant to today's business. As no one has anything to declare, we can move on.
3704. As you aware, Mr Brimstone provided a written submission, which is on page 186 of your pack. Members have also been provided with a cover note from officials, as is normal, which is at page 179. I want to pick up where we left off. Jim Allister was just finishing a line of questioning, and I had indicated that we were going to move to the next member to speak, Gregory Campbell, and then move back around to the members who had indicated. Jim, you have questions that you want to return to later.
3705. **Mr Allister:** I do.
3706. **The Chairperson (Mr Maskey):** I want to move on, first, to Mr Gregory Campbell.
3707. **Mr Campbell:** I have no idea what I was speaking on; it was that long ago, Chairman. That is the point I made.
3708. **The Chairperson (Mr Maskey):** It is entirely up to yourself. I have called you to ask your questions.
3709. **Mr Campbell:** I will maybe start afresh.
3710. Mr Brimstone, just as a matter of interest, how many times have you been before the Committee?
3711. **Mr Stephen Brimstone:** This is my fourth.
3712. **Mr Campbell:** My question is similar to one that I posed to former Minister McCausland. There is serious concentration on the Red Sky contract, for understandable reasons, but not exclusively so. Therefore, when Councillor Palmer was in front of the Committee, I asked her about Rinmore, and she said:  
*"I would prefer not to talk about Rinmore."*
3713. Did you have any knowledge of this Rinmore contract?
3714. **Mr Brimstone:** I am not so sure that it is around the Rinmore contract, but issues appeared to emerge around how the Rinmore issue had been dealt with. From my recollection, it was some time after the Red Sky issue. I understand that allegations were made both within the Housing Executive about officials within the Department. I understand that the permanent secretary, on the back of that, instigated some sort of review, report or investigation. On the back of that and the concerns raised on the back of that, with the former chairman having taken up a new position as chair of the Civil Service Commissioners, the permanent secretary wrote a letter to —
3715. **Mr Campbell:** Sorry, but, by "former chairman", do you mean Mr Rowntree?
3716. **Mr Brimstone:** Yes.
3717. The permanent secretary wrote a letter to the then director general of the Northern Ireland Office. I think that reference was made in the 'Spotlight' programme to a courtesy call that the permanent secretary made to the former

- chairman Mr Rowntree in relation to the letter that he had sent, or was about to send, to the then director general of the Northern Ireland Office.
3718. **Mr Campbell:** This is in relation to the Rinmore — whatever it was, whether it was contract, scenario or whatever it was. Was there any direct relevance to that Rinmore situation during your time as special adviser (SpAd) in the Department?
3719. **Mr Brimstone:** No, the Rinmore issue had been dealt with. In fact, the Minister went to see the completed project in Rinmore in Londonderry shortly after entering office.
3720. **Mr Campbell:** But you did not have any direct knowledge of it. Fair enough. OK.
3721. **Mr Brady:** I have a couple of questions. Jenny Palmer gave evidence, which seemed to be very clear, about the conversation that you had. In your last evidence session, you said that you could not really recall the specifics. She said that, at a subsequent meeting with, I think, Mr Robinson, she was with Jeffrey Donaldson and that you were there. She said that you agreed that what she was saying was said was accurate. In your last evidence session, you said that you would not have used that phraseology. You cannot necessarily remember the details of the original conversation on 1 July, but you could remember what was not said when you gave evidence here the last time. It seems that there is a bit of a dichotomy there somewhere.
3722. **Mr Brimstone:** Just so that we are clear, I think that we are talking about a number of different conversations. We are using the remarks I made at the last appearance, which were in regard to my telephone conversation with Councillor Palmer. I do not think that I made any comment around the conversation, although I stand to be corrected on that.
3723. **The Chairperson (Mr Maskey):** I think that you did actually.
3724. **Mr Brimstone:** Could we look at that? Could you point it out?
3725. **Mr Allister:** Page 5. It is in the middle of the page of the transcript.
3726. **The Chairperson (Mr Maskey):** Do you have that, Stephen?
3727. **Mr Brimstone:** Yes.
3728. **The Chairperson (Mr Maskey):** Bear with us a second. Yes, page 5. It is right in the middle of the page. You said:  
*“I did not at that meeting”.*
3729. I take it that it is the meeting where Jenny Palmer says she was accompanied by Jeffrey Donaldson. She said that it was attended by a number of others, including Peter Robinson. Is that what you are asking about, Mickey?
3730. **Mr Brady:** Yes.
3731. **The Chairperson (Mr Maskey):** Stephen, you said:  
*“I did not at that meeting acknowledge that her account was accurate.”*
3732. Go ahead, Mickey.
3733. **Mr Brady:** You could not remember the details of the specific conversation that you had with Jenny Palmer when you originally rang her, but, in the evidence you gave, you were sure that you did not acknowledge that her account was accurate. You had a recall of one but not necessarily of the other. That seems to be a bit of a contradiction.
3734. **Mr Brimstone:** If we go to page 3 of that same Hansard, you will see that I outlined as clearly as I could my recollections of the phone conversation.
3735. **Mr Brady:** The point that I am making is that Jenny Palmer, in her evidence, said that, in the telephone call on 1 July, you demanded that she vote against the termination of the Red Sky contract and that she should ask for an extension. You also said, “The party comes first; you do what you are told”. You are saying that you would not have used that phraseology. In fact, I think she used the word “aggressive”. You are sure that her version is not accurate. You can recall that, but you cannot recall the specifics of the original conversation.

3736. **Mr Brimstone:** What I said was that I did not accept her version of the conversation. On page 5 of Hansard, you will see that I was clear to the Committee that I did not, at that meeting, acknowledge that her account was accurate. So, I was not accepting her recollection of the internal party meeting where I accepted that her recollection of the conversation was accurate.
3737. **Mr Brady:** In phase 1 of the inquiry, you said:
- "I have no powers to give instructions in the Department. I have no powers at all to give instructions to anyone."*
3738. In relation to the email that was sent on 5 July 2011, did you instruct Michael Sands, under the authority of the Minister, to send an email?
3739. **Mr Brimstone:** I referred to that in my written submission to the Committee. If you give me a second, I will turn it up here. According to the official record, Mr Sands sent an email to the chairman stating that the Minister's SpAd thought that six months was too long a time frame for continuation by the Red Sky administrator. There is further detail of the Central Procurement Directorate (CPD) advice on the time that we required to prepare a contract. The chairman was asked, not instructed, whether the question could be put to the administrator to ascertain whether it would be able to continue with response maintenance service. I did not issue any instructions.
3740. **Mr Brady:** So, Mr Sands did that of his own volition. He is an official in DSD dealing specifically with housing, as far as I am aware, and has been for a long time. Would he have taken that initiative himself to send an email to the chair of the Housing Executive about something like that without having prior instructions from you or the Minister?
3741. **Mr Brimstone:** I cannot recall the conversation with Mr Sands, but looking at the evidence that is here in front of me about what the official record states, it is clear that I had a conversation with Mr Sands. The outcome of that conversation was that he would send an email to the chairman asking whether certain things were possible.
3742. **Mr Brady:** My last question is this: did you have any conversation with Mr Sands about the phone call to Jenny Palmer at any stage? Was that ever discussed?
3743. **Mr Brimstone:** I do not recall having any conversations with Mr Sands about the telephone conversation with Mrs Palmer.
3744. **Mr Allister:** Mr Brimstone, when we were interrupted, the point that I was giving you an opportunity to comment on was this: it could be thought that you would have a motive to deny Jenny Palmer's evidence as to the content of the phone call, because, to admit it, would put you in obvious breach of your code of conduct. Do you want to comment on the point that that could be a motive for you denying the content of Mrs Palmer's evidence?
3745. **Mr Brimstone:** Following on from the last evidence session, I cannot answer questions of opinion. I am here to answer questions of fact. Members asking my opinion on a matter to do with conditions of employment —
3746. **Mr Allister:** I am really just giving you an opportunity to comment and disabuse us, or otherwise, if some of us thought that that could be a motive.
3747. **Mr Brimstone:** I am here to answer questions of fact.
3748. **Mr Allister:** Dealing with questions of fact, in your evidence the last day — I want to be as fair to you as I can — you said to us six times in relation to the content of that phone call that you cannot recollect saying that or using that phraseology. You will appreciate that that is different from denying saying something. Do you want to rest your evidence on that, that you simply cannot recollect saying the things that Mrs Palmer alleges were said in that phone call? Is that your position?

3749. **Mr Brimstone:** I go back to the previous evidence, at the bottom of page 4, when you asked almost the same question. You asked:  
*“Could you have used it?”*
3750. In essence, it is the same question, and I answered:  
*“No, I do not believe so, in the context of the call and what we were actually looking.”*
3751. **Mr Allister:** That is the point I am trying to get you to clarify. Do you want the Committee to believe that you did not use any of the language? When I talk about the language, I am talking about the pertinent matters that I recited with you. You know what they are: “The party comes first; you do what you’re told” etc. Do you want the Committee to believe that you did not say any of that? Are you quite positive and clear about that, or is your evidence, as appeared to be the burden of it the last day, that you have no recollection of saying any of that?
3752. **Mr Brimstone:** Neither have I any recollection, and I do not believe that I said any of that.
3753. **Mr Allister:** “Believe”. Where that leaves the Committee is that we have Mrs Palmer very emphatic and clear that that is what you said, and you telling us, “I don’t recollect and don’t believe that’s what I said”. That is the situation we are at.
3754. **Mr Brimstone:** Well, the basis of my recollection of the phone call is on whatever notes I took of the phone call subsequent to the phone call. I can only operate on the basis of that.
3755. **Mr Allister:** When did you take notes?
3756. **Mr Brimstone:** When I became aware that there was an issue around the phone call and that the BBC ‘Spotlight’ team was looking at the phone call in particular.
3757. **Mr Allister:** So, that was 18 months after the phone call.
3758. **Mr Brimstone:** Well, no —
3759. **Mr Allister:** Thereabouts.
3760. **Mr Brimstone:** We became aware of it before then because they had started to ask questions.
3761. **Mr Allister:** Yes, I think they started to ask questions in the latter part of 2012, is that right?
3762. **Mr Brimstone:** Yes.
3763. **Mr Allister:** And we are talking about July 2011.
3764. **Mr Brimstone:** Yes.
3765. **Mr Allister:** So, a year-plus later, you started to make some notes about a conversation.
3766. **Mr Brimstone:** Yes.
3767. **Mr Allister:** Where are those notes?
3768. **Mr Brimstone:** I provided those — the outworking of those — in the evidence that I gave in the previous session.
3769. **Mr Allister:** Presumably, that is not the format they were in. You have extracted from other notes.
3770. **Mr Brimstone:** No, that is the note of my —
3771. **Mr Allister:** That is the note you made at that time. When was that?
3772. **Mr Brimstone:** Whatever date it was when the BBC started looking around the phone conversation.
3773. **Mr Allister:** Where were you when you made that call?
3774. **Mr Brimstone:** Specifically, as in —
3775. **Mr Allister:** Yes, specifically.
3776. **Mr Brimstone:** I assume that I was in my office at the Department.
3777. **Mr Allister:** You have no recollection of where you were.
3778. **Mr Brimstone:** No, I do not.
3779. **Mr Allister:** Who was with you when you made it?
3780. **Mr Brimstone:** Again, I assume that I was on my own.

3781. **Mr Allister:** How soon did you make it after agreeing with the Minister that it would be made?
3782. **Mr Brimstone:** Again, I think we looked at that the last time. My answer to the Committee at the last session was that I believed that we had a conversation earlier in that week, so I assume that it was days.
3783. **Mr Allister:** “Days”. And then on the Friday — if I remember correctly — you made the phone call. You cannot remember where and you do not think there was anyone with you.
3784. **Mr Brimstone:** No, I said I assume that I was in my Department —
3785. **Mr Allister:** You assume. You are leaving some —
3786. **Mr Brimstone:** It was over three and a half years ago, Mr Allister.
3787. **Mr Allister:** Yes, but it is a matter that has been of some controversy ever since.
3788. **Mr Brimstone:** It is still a matter of three and a half years ago as to where I was.
3789. **Mr Allister:** Did you report back to the Minister on the phone call?
3790. **Mr Brimstone:** Yes, I believe that I did.
3791. **Mr Allister:** Do you know when you did that?
3792. **Mr Brimstone:** I can only assume that it was shortly after the phone conversation itself.
3793. **Mr Allister:** Things were moving at quite a fast pace at that point, because the Housing Executive board was meeting on the Tuesday. That was the Friday. Your intervention was to try to steer Mrs Palmer in a certain direction, and she was not being cooperative, so presumably you reported that back quite quickly.
3794. **Mr Brimstone:** No, my phone conversation with Mrs Palmer was to inform her fully of what the Minister’s concerns were at that time and to ask that she inform the rest of the board, accurately and fully, of what the Minister’s concerns were at that time.
3795. **Mr Allister:** And she was making it plain that she was not happy doing what you were asking her to do.
3796. **Mr Brimstone:** Yes.
3797. **Mr Allister:** And she, of course, has a very different account of what you were asking her to do. The common denominator is that she was not cooperating in being willing to do what you were asking her to do.
3798. **Mr Brimstone:** Yes.
3799. **Mr Allister:** She says that that was because you were asking her to go against the board decision, the probity of which and the reasons for which she was satisfied with, and that you were directing her to do that in a quite heavy-handed way.
3800. **Mr Brimstone:** That is what she says.
3801. **Mr Allister:** At the subsequent meetings with Mr Robinson etc, did you say anything by nature of apology whatsoever?
3802. **Mr Brimstone:** I want to be careful that I do not get into the internal workings of the party or discussions within the party, but I am quite content to make it clear that I never set out, in anything that I do or say, to cause anyone any offence or any sort of discomfort. Watching the programme that was broadcast on the BBC, it was clear that, for whatever reason — I do not accept the reasons that were put forward — Councillor Palmer felt upset or aggrieved at her recollection of the phone conversation. I made it clear that I never set out to cause any distress, and I apologise for any distress that was caused.
3803. **Mr Allister:** So you said that in the meeting.
3804. **Mr Brimstone:** Yes.
3805. **Mr Allister:** Let us be clear: at that meeting, she was emphatic and clear in saying what the content of the phone call was, according to her. She said

- that you had said things like, “the party comes first”, etc.
3806. **Mr Brimstone:** Where?
3807. **Mr Allister:** At the review meeting that the party held.
3808. **Mr Brimstone:** I am not getting into the detail of the conversation at that internal party meeting.
3809. **Mr Allister:** I am not sure you have that luxury. Is it fair to say —
3810. **Mr Campbell:** I think he has, Chairman.
3811. **Mr Allister:** Is it fair to say —
3812. **The Chairperson (Mr Maskey):** Sorry, Jim, just a wee second. We need to be clear, because the issue is, perhaps, not necessarily about where the comments were made. You are being asked about the accuracy, for want of a better way of putting it, of the remarks that Jenny Palmer attributed to you. That is the substance of the issue.
3813. **Mr Allister:** I was going to put it this way: is it being fair to Jenny Palmer to say that what she alleged you had said in the phone call, when she was making those allegations at the internal party investigation, was consistent and compatible with what she has told this Committee you said?
3814. **Mr Brimstone:** Again, I cannot comment on internal party discussions.
3815. **Mr Allister:** You can comment on whether, as a fact, she was making the same allegations about what you had said as she made to the Committee. Why could you not say that?
3816. **Mr Brimstone:** I cannot comment on internal party decisions.
3817. **Mr Allister:** Sorry, that is some sort of refuge you are trying to take.
3818. **Mr Campbell:** Chairman, now we are going down the same route again.
3819. **The Chairperson (Mr Maskey):** Sorry, a wee second —
3820. **Mr Campbell:** Three times he has tried this. Badgering a witness.
3821. **The Chairperson (Mr Maskey):** Wait a moment.
3822. **Mr Campbell:** Badgering a witness.
3823. **The Chairperson (Mr Maskey):** Wait a moment, everybody.
3824. **Mr Campbell:** Go back to the Bar library for that.
3825. **The Chairperson (Mr Maskey):** Gregory, that includes you. Everybody, wait a moment. We are doing well; we had a professionally handled briefing this morning.
3826. **Mr Campbell:** We were doing well.
3827. **The Chairperson (Mr Maskey):** We are doing well, relatively speaking. That includes everybody. Let us just ask one question at a time. The witness is not compelled to answer any question, because the Committee cannot compel anybody to answer a question. That will set the record straight. However, we expect witnesses to be as cooperative as possible. We can work around the parameters of all of that. Please ask one question at a time and allow the witness to respond.
3828. **Mr Allister:** I am giving you the opportunity, Mr Brimstone, to say if, at the review meeting within the party, Mrs Palmer repeated the allegations as she repeated them to the Committee.
3829. **Mr Brimstone:** I am not prepared to discuss internal party discussions.
3830. **Mr Campbell:** That is the fourth time, Chairman, that that question has been asked.
3831. **The Chairperson (Mr Maskey):** Gregory, excuse me. I will deal with this.
3832. **Mr Campbell:** I hope so. Five was his record the last time, and he is coming close to it this time.
3833. **The Chairperson (Mr Maskey):** The question has been dealt with by me. Jim, I remind you that you have asked

- the question, and the witness is refusing to answer it.
3834. **Mr Campbell:** He has answered it, Chairman.
3835. **Mr Allister:** I note that he has refused to answer.
3836. Flowing from that meeting or meetings — in fact, I have forgotten whether there were one or two meetings of internal review.
3837. **Mr Brimstone:** I am not aware of any comment on the number of meetings of internal —
3838. **Mr Allister:** I am asking you whether there were one or two meetings.
3839. **Mr Brimstone:** As I said before, I am not prepared to discuss internal party discussions.
3840. **Mr Allister:** As a consequence of those encounters, Mrs Palmer told us that there then was a flurry of draft apologies passing between the parties or between her and the party. Is that correct?
3841. **Mr Brimstone:** Again, Chair, I am not prepared to discuss internal party matters.
3842. **Mr Campbell:** That is five now, Chairman. One more to beat the record.
3843. **Mr Allister:** I must object to the barracking —
3844. **The Chairperson (Mr Maskey):** Sorry, Gregory Campbell.
3845. **Mr Allister:** — of Mr Campbell.
3846. **Mr Campbell:** Then you are objecting to your own line of questioning.
3847. **The Chairperson (Mr Maskey):** Gregory Campbell, please be quiet a moment. We are dealing with this, in my opinion, in a measured way, so let us keep it that way. Jim, you are aware that the witness is not going to answer any questions, as he already indicated very clearly and repeatedly, about the internal discussions within the DUP. On that basis, I am directing you to move on to another —
3848. **Mr Allister:** Can I ask this question? I wanted to ask him whether he contributed to draft apologies.
3849. **The Chairperson (Mr Maskey):** That is a fair question.
3850. **Mr Brimstone:** Again, Chair, with respect, I am not prepared to comment on internal party discussions or workings.
3851. **Mr Allister:** Mrs Palmer said that you did, so you are leaving us only with the evidence of Mrs Palmer on that issue.
3852. **Mr Brimstone:** Chair, my position is clear on the matter, I hope.
3853. **The Chairperson (Mr Maskey):** OK.
3854. **Mr Allister:** Tell me this: in the DFP investigation, what was the timeline on that? When were you interviewed?
3855. **Mr Brimstone:** I cannot recall. Chair, I am very uncomfortable answering matters relating to personnel-related investigations and inquiries.
3856. **Mr Allister:** This was a fact-finding investigation. You were interviewed. Yes?
3857. **Mr Brimstone:** Again, Chair, I am very uncomfortable answering —
3858. **The Chairperson (Mr Maskey):** All right, Stephen, but, in fairness, it is a fair question. You are not being asked to comment on whether it was personnel or otherwise. You are simply being asked whether or when you contributed to a fact-finding exercise. Whatever the substance or the deliberation of that was, you are not in a position to give that answer, but it is a fair question to be asked and for you to answer whether or when you took part in an interview on a fact-finding exercise.
3859. **Mr Brimstone:** OK. Yes, I did partake. I cannot recall at this point when exactly that happened.
3860. **Mr Allister:** Were you interviewed on one occasion or more than one occasion?
3861. **Mr Brimstone:** Once.

3862. **Mr Allister:** Were Mrs Palmer's allegations put to you? resurface as a substantive item in this inquiry.
3863. **Mr Brimstone:** I am not getting into the detail of the fact-finding exercise.
3864. **Mr Allister:** Again, Chair, I think that that is a question of fact.
3865. **The Chairperson (Mr Maskey):** I accept that, but the witness is making it clear that he is not going to deal with it. I will ask him: are you prepared to give any information in relation to the fact-finding exercise in terms of your participation?
3866. **Mr Brimstone:** No. I do not believe —
3867. **The Chairperson (Mr Maskey):** You are going to stand —
3868. **Mr Allister:** I think that it is important, Chairman, for the probity of the inquiry, that we get on the record the type of questions that the witness is refusing to answer. Therefore, he needs to be given the opportunity to answer them. If he wishes to compound the situation by refusing to answer them, then I think that the record needs to show that.
3869. **The Chairperson (Mr Maskey):** I am not disputing that at all, which is why I put the question directly to the witness myself. I am simply reminding ourselves that we cannot compel a witness to give a response. Members will, perhaps, infer or make their own judgement. At the end of the day, this is an inquiry that is taking place over a period of time, there is a range of witnesses, and there is evidence and documentation. Ultimately, the members of the Committee have to make their judgements in the round of all of the evidence that they read, hear and see.
3870. **Mr Wilson:** But, Chairman, this is only a circuitous route by which to try to get an answer on an issue. The former Minister has already indicated that he was advised by the Attorney General that this was a personnel issue which he was unable to reveal.
3871. **The Chairperson (Mr Maskey):** I made it clear earlier that the matter is now subject to engagement between the Committee and the new Minister. It will
3872. **Mr Allister:** Chairman, I want to have the opportunity to put on the record questions to see whether this witness will answer them. If he does not answer them, I have to accept that, but I believe that I am entitled to have the opportunity to put those questions on the record.
3873. **The Chairperson (Mr Maskey):** You have put a number of questions of that nature. I have obviously quite clearly permitted you to do that and will continue to do so, but there will come a point when the same questions will have been asked. Clearly, if the witness chooses not to answer them, we have to move on to the next question. We have other members.
3874. **Mr Allister:** Well, I will ask a different question.
3875. When you were interviewed in the fact-finding exercise, were you asked about the sending of the email of 5 July 2011?
3876. **Mr Brimstone:** Again, Chair, I do not feel comfortable answering questions that relate to the personnel matter.
3877. **Mr Allister:** With regard to the fact-finding investigation, did you see the report that was produced?
3878. **Mr Brimstone:** Again, Chairman, I do not feel comfortable answering any questions that relate to the fact-finding exercise.
3879. **Mr Allister:** You do not wish to deny that you may have read it.
3880. **Mr Brimstone:** Chair, I will revert to my earlier answer.
3881. **Mr Allister:** Did you discuss the report with the Minister?
3882. **Mr Wilson:** Chairman, since all of these question are about a personnel report —
3883. **The Chairperson (Mr Maskey):** Hold on a second. Sorry, Sammy, I will conclude on this. Jim, I take your point. I share your view and concern on it, but the matter has been exhausted. The questions have been put. The witness has given his responses. That has been

- very clearly made. Members will have to draw their own conclusions from that.
3884. **Mr Allister:** I want to ask one final question, because it is relevant to what Jenny Palmer told us about how she was treated on this matter. I want to ask whether Mr Brimstone was told the outcome of the fact-finding investigation.
3885. **The Chairperson (Mr Maskey):** That is the final question that you will be asked on it.
3886. **Mr Brimstone:** I revert to my earlier answer, Chair.
3887. **Mr Allister:** I might have something to say later about the obstruction of this Committee.
3888. **The Chairperson (Mr Maskey):** Obviously, again, everybody will have their opportunity to deal with all of these issues in the round. I remind you that we will discuss the evidence thus far at the meeting on 27 November. I imagine that it will be a full and fulsome occasion for us to look at all of this.
3889. **Mr Allister:** Chair, I will have other questions later.
3890. **The Chairperson (Mr Maskey):** I will come back to you.
3891. **Mr Wilson:** Mrs Palmer also made a number of other allegations about you and conversations that you had with members of the Department. Will you just tell us, first of all, Stephen, about you and Michael Sands? He works in the Department. He is obviously in fairly regular contact with the Minister. What would your relationship with him have been?
3892. **Mr Brimstone:** I would like to think that, as with all officials in the Department, I have a good working relationship with each of them.
3893. **Mr Wilson:** Are you on friendly, “palsy-walsy” terms with each other?
3894. **Mr Brimstone:** Did we socialise together? No.
3895. **Mr Wilson:** Would you regularly visit his office?
3896. **Mr Brimstone:** No. I do not.
3897. **Mr Wilson:** Is he the kind of person to whom you would go and have a conversation? Would you tell him all about a telephone conversation that you had the other day with one of our councillors?
3898. **Mr Brimstone:** No.
3899. **Mr Wilson:** Did you ever talk to him about the telephone conversation that you had with Jenny Palmer?
3900. **Mr Brimstone:** No. I do not believe that I did.
3901. **Mr Wilson:** Jenny Palmer says that he recounted that conversation in great detail.
3902. **Mr Brimstone:** She does, yes.
3903. **Mr Wilson:** But you are saying that you did not have the conversation with him at any stage.
3904. **Mr Brimstone:** That is correct. I do not believe that I ever discussed it with him, no.
3905. **Mr Wilson:** The other allegation was that Michael Sands argued that you were in a bit of a flap about this email that was sent early one morning. Did you go searching for an email that had been sent about the termination of the contract or about extending the contract?
3906. **Mr Brimstone:** I cannot recall getting in a flap around anything, to be honest, or running around like mad — I think that was the phrase that was used. There are occasions when you query things and you might get the private office to get you an email or whatever.
3907. **Mr Wilson:** I was going to ask you that. Can you retrieve the emails yourself from the system?
3908. **Mr Brimstone:** I do not generally do that, but I probably could if I wanted to, yes.
3909. **Mr Wilson:** So you have access to all the departmental emails. If an email was sent, you can do whatever you do on a computer.

3910. **Mr Brimstone:** I have never used it.
3911. **Mr Wilson:** So, if an email was required that you wanted to have a record of, how would you have got it? Who would you have asked for?
3912. **Mr Brimstone:** I likely would have gone through the Minister's private secretary to get me a copy of the email or ask for a copy of the email.
3913. **Mr Wilson:** Would there be any reason why you would have to, especially if it was an embarrassing email, run around frantically asking somebody to do that for you?
3914. **Mr Brimstone:** No, and there was nothing embarrassing that I can read in it anyway. No.
3915. **The Chairperson (Mr Maskey):** Can members speak up a wee bit?
3916. **Mr Dickson:** Thank you, Stephen, for coming to us this morning. On the day that Jenny Palmer received the phone call, she did not receive it directly. Why was that?
3917. **Mr Brimstone:** I refer back to my earlier remarks. As I said on page 2 of the Hansard report from my earlier visit, I contacted Councillor Allan Ewart with the initial intention to enquire as to whether I could get Councillor Palmer's phone number as he sat on the Lisburn City Council with Councillor Palmer. It so happened that he was at an event that Councillor Palmer was at as well.
3918. **Mr Dickson:** So, even though it was your intention to speak directly to Councillor Palmer, which you did, you had not prepared to check with DUP headquarters or the Minister's private contacts or whatever for that individual's phone number.
3919. **Mr Brimstone:** I was going through internal party contacts.
3920. **Mr Dickson:** It was just to ring another councillor and ask him.
3921. **Mr Brimstone:** Yes.
3922. **Mr Dickson:** Allan Ewart took the call from you and, on the basis of what Jenny Palmer told us, he passed the phone to her, you had that conversation and she then handed him his phone back. She says that she was in distress at that stage, certainly on the verge of if not actually in tears, and it was sufficient for Allan Ewart to pick those signals up immediately from the conversation. Do you believe that you had driven her to tears in that conversation?
3923. **Mr Brimstone:** Absolutely not.
3924. **Mr Dickson:** Do you believe that you had driven her to the point of resignation from the conversation that you had?
3925. **Mr Brimstone:** Absolutely not.
3926. **Mr Dickson:** Why then do you believe that her reaction to that phone call would be to tell Allan Ewart, "I need to resign", in a very emotional or tearful manner?
3927. **Mr Brimstone:** With respect, Chair, I can only answer questions of fact. I cannot surmise or —
3928. **Mr Dickson:** I appreciate that you were not present and did not see her at the time of phone call. Nevertheless, were you not in a position to pick up how she felt, what her voice was like and what she said to you in that conversation? Do you think that it was a fairly reasonable conversation and certainly one that should not have distressed her or driven her to the point of resignation?
3929. **Mr Brimstone:** Absolutely not. I was perfectly aware that Councillor Palmer was in disagreement with me. She took a completely different view, and she made that point very clear to me. But in no way did I pick up that she was on the verge of tears, on the verge of resigning or any of that, no.
3930. **Mr Dickson:** Moving further on to the reconciliation moves between you and Councillor Palmer, was Mr Gavin Robinson your legal representative in those discussions?
3931. **Mr Brimstone:** Again, Chair, with respect, those were internal party discussions and I do not wish to comment further on them. I am sorry.

3932. **Mr Dickson:** You at no stage appointed a legal representative.
3933. **Mr Brimstone:** Regarding?
3934. **Mr Dickson:** These proceedings — in order to represent yourself on any of those matters.
3935. **Mr Brimstone:** Just in relation to my responses to the BBC. My legal adviser responded to the BBC on my behalf.
3936. **Mr Dickson:** OK. That was the only legal representation you had?
3937. **Mr Brimstone:** Yes.
3938. **Mr Dickson:** Thank you very much.
3939. **The Chairperson (Mr Maskey):** Gregory.
3940. **Mr Campbell:** It is not really a question to the witness; it is a query about what you said earlier. If people put questions to Mr Brimstone, the Minister or whoever and, for whatever reason, the witnesses say that they do not want to comment on internal matters of the party, people can then draw whatever conclusion or outcome they want from that. I assume that that is equally the case for those who, unlike Mr Brimstone, have not come here once, never mind four times. In other words, we are asking a certain series of questions of the BBC, Mr Rowntree and Mr Hayes, none of whom have come. In fact, some of them — all of them, I think — have taken legal action to ensure that they do anything but come in front of the Committee. Are we entitled to draw the same inferential conclusion from their non-appearance as we are from a witness who has come voluntarily, not just once but four times, to subject themselves to badgering?
3941. **The Chairperson (Mr Maskey):** I made it very clear that, at all times, from the outset — I repeat it again — this Committee is bound to make decisions or judgements on the basis of evidence. I also made it very clear a couple of minutes ago that people have to make their judgements in the round. That includes what they have heard. I am not sure how you factor in what you do not hear, but people will make their judgements in the round on the evidence presented to them — written, email, oral and so on. It is the entitlement of all of the members to do that.
3942. Stephen, you said that Ms Palmer disagreed with you on the telephone call. Will you tell us what she disagreed with? What was the disagreement about?
3943. **Mr Brimstone:** I am going on the transcript of the ‘Spotlight’ programme of that night. There was clearly a difference in opinion, as there was in her evidence to this Committee, as to what was or was not said during that phone conversation, and the tone of the conversation.
3944. **The Chairperson (Mr Maskey):** I understand that. That is not what I am asking. A moment ago in your response you said, in answer to Stewart’s question, that, yes, she disagreed with you. Stewart asked — I am not using his words — if you were aware of any distress, upset or emotion in her voice when you spoke to her on the phone. You did say that she disagreed with you, but you did not detect any of that. Can you give us any indication of what she disagreed with? What you are saying you asked her to do was make the board aware of the Minister’s concerns, so what would she have disagreed with? I am just trying to elicit some substance of the conversation. You are saying that she disagreed, so it would be helpful if we understood what the disagreement was about.
3945. **Mr Brimstone:** I refer back to page 4 of the report of my earlier visit to the Committee, when I went into detail on that — the second paragraph on page 4. I do not think I can add anything further to that.
3946. **Mr Campbell:** Chairman, can I ask one question?
3947. **The Chairperson (Mr Maskey):** I will bring you in in a wee second, Gregory.
3948. I understand in reading that, but I am not quite sure whether that addresses the issue in my mind. As I said, it is of what the actual disagreement was about. You make the case that you

- wanted to get her, on behalf of the Minister, to advise the board of his concerns. Did she disagree with putting those concerns to the board or with the substance of the Minister's concerns?
3949. **Mr Brimstone:** Just as I outlined there, my recollection of the call was that she became very defensive, particularly about the chairman. I could not quite get to the bottom of that. She strongly contested any suggestion that he was not carrying out his duties appropriately. She did not accept my remarks around Leeway Maintain and the concerns that we had become aware of that related back to 2010 with regard to the same issues pertaining to another contract in a different area. She would not accept that either.
3950. **The Chairperson (Mr Maskey):** I will bring in Stewart, because it is pertinent to that, and then I will bring you in, Gregory.
3951. **Mr Dickson:** Going back to my earlier question, I appreciate Stephen's answer in respect of the internal party matters. He has acknowledged that Gavin Robinson was involved in that. Have you, Stephen, received any advice or guidance on what might happen in similar circumstances if you as a special adviser were asked to represent or act as a friend to another special adviser by way of disciplinary or other matters?
3952. **Mr Brimstone:** I am not sure where I actually confirmed who was or was not at the meeting.
3953. **Mr Dickson:** Mrs Palmer told us who was there. We will take a hypothetical question, then, if you are not indicating your involvement —
3954. **Mr Brimstone:** Can I just get guidance from the Chairman on hypothetical questions?
3955. **Mr Campbell:** I do not think that it is a good idea.
3956. **Mr Dickson:** Well, it is not a hypothetical question. Have you received any guidance on how you would act if you were asked to act in the role of a friend to another special adviser?
3957. **Mr Brimstone:** In the role of a friend?
3958. **Mr Dickson:** Yes, in any interdepartmental matters, for example, disciplinary or otherwise. Is there anything contained in the guidance to you as a special adviser on how you should act in those circumstances?
3959. **Mr Brimstone:** No, I do not think that the —
3960. **Mr Dickson:** So you would feel free to act as a friend to somebody who was being disciplined or act as someone who would go along as a witness.
3961. **Mr Brimstone:** I am not sure that I can answer that question, Chair, with all due respect.
3962. **The Chairperson (Mr Maskey):** You have just answered it how you feel you can. Thank you.
3963. **Mr Brimstone:** Sorry, Stewart.
3964. **Mr Campbell:** The issue occurred to me after I asked the last question. When Councillor Palmer was here, I asked her about the 'Spotlight' programme turning up unannounced, and the tenor of it was that she was quite shocked and did not know who they were when they arrived at her house etc. I seem to recall from the programme that there was a piece with a reporter at a car park somewhere. I do not whether that was at the Department or where it was. The reporter approached you. Was that a prearranged event, or how did that come about?
3965. **Mr Brimstone:** Most definitely not.
3966. **Mr Campbell:** Did they just arrive there?
3967. **Mr Brimstone:** They came out from behind a hedge, from what I can recall.
3968. **Mr Campbell:** Was that how they conducted their attempt to have a discussion with you — an interview?
3969. **Mr Brimstone:** Clearly it was not a discussion, and clearly it was not an attempt. It was clearly an action to get a piece of television footage.

3970. **Mr Allister:** You were running away from questions that day too.
3971. **The Chairperson (Mr Maskey):** Jim — Jim Allister. Sorry, no interruptions. Gregory, continue on with your question.
3972. **Mr Campbell:** The point that I am trying to make, despite the attempted interruption, is that Mrs Palmer was fairly clear that this was an out-of-the-blue arrival by the BBC, unannounced, in her home. There is no disparity here — none whatever. The two of them appear to be saying the exact same thing. The people who have created our 17-month hiatus refuse to come here every single time. They want to have a correspondence course with us, which seems to be the in-vogue response now by a number of people. Mr Brimstone is confirming that he was approached, if you can call it that, by the BBC in an unannounced fashion. Councillor Palmer said likewise. That is the nature of the programme that we are left with. That is the only question that I have.
3973. **Mr Wilson:** Maybe we should hide behind a bush and jump out on Chris Thornton.
3974. **Mrs D Kelly:** Thank you for your evidence, Stephen. I have just a couple of points to make. I noted that you were in the Public Gallery when the Minister gave evidence, for part of the time if not all of it. You heard the Minister say that it was unlikely that you would have made that phone call, or made those interventions, with the Housing Executive and others without his knowledge and instruction. Is that fair comment?
3975. **Mr Brimstone:** I am sorry. What is the question?
3976. **Mrs D Kelly:** Given Mr McCausland's evidence to the Committee this morning, is it fair comment that it is unlikely that you would have made the phone call to Mrs Palmer and made the interventions with the Housing Executive and others without explicit instruction from the Minister?
3977. **Mr Brimstone:** You use the word "instruction". The Minister would have been aware of it. He would have been consulted, and it would have been discussed. I cannot get into whether it was an instruction. I have no recollection of being told to do that.
3978. **Mrs D Kelly:** It is just that, in some of the evidence and the board minutes, there is deemed to be political interference from you, as special adviser, that was believed to be inappropriate. I am trying to ascertain whether you were acting on behalf of the Minister on those occasions.
3979. **Mr Brimstone:** If you look at that particular occasion, there was no instruction and no interference. A question was raised, and that was it. I am unclear as to how that can be perceived as political interference on a contractual matter.
3980. **Mrs D Kelly:** The board minutes reflect the Minister's concerns, which you were then asked to, and felt compelled to, raise in a phone call to Mrs Palmer. According to the board minutes, those concerns had already been outlined to the board membership, and it did not concur with and, indeed, refuted the matters raised by the Minister. Is that not the case?
3981. **Mr Brimstone:** Forgive me. I am unclear as to what you are getting at.
3982. **Mrs D Kelly:** Maybe you do not understand. What I am getting at is this: you made a phone call to Jenny Palmer, or had to make it — whatever. There were concerns as to whether the Minister's fears around Red Sky and other contractors would not be properly articulated in the board's decision-making. He had been asked, by email but not by letter, I think from you, to raise that at the board. The board minutes reflect that concerns were raised about the Minister's comments about the termination by the chair of the Red Sky contract.
3983. **Mr Brimstone:** Those related to letters that were sent from the Minister to the board and to discussions that he had with chairman.
3984. **Mrs D Kelly:** Yes.

3985. **Mr Brimstone:** Where the board accused the “political adviser” — I think that that is the term that the minutes used — refers to the email from Mr Sands. Again, I would be grateful if someone could point out to me whether there is an instruction or an implied instruction in that email. Queries were raised as to what was and was not possible.
3986. **Mrs D Kelly:** This morning, the Minister told us, I believe, that it is unlikely that you would have made those contacts without him having requested you to do so.
3987. **Mr Brimstone:** OK.
3988. **Mrs D Kelly:** You do not ring up councillors, willy-nilly, and say that you need them to vote this way or that, I presume?
3989. **Mr Brimstone:** No.
3990. **Mrs D Kelly:** You are there to advise the Minister and check correspondence. You are there to perform that interface role, if you like.
3991. **Mr Brimstone:** Yes.
3992. **Mrs D Kelly:** All that I am trying to say is that you would concur with the Minister that it is unlikely that you would have made such interventions without his prior knowledge or instruction.
3993. **Mr Brimstone:** I would not call it an “intervention”, but I do not want to get hung up on that word. Yes, the Minister should have been aware of the issues around that time.
3994. **Mrs D Kelly:** Otherwise, you would have been the de facto Minister, would you not? Some people might say so.
3995. Maybe it is more appropriate to ask at the end of the meeting for guidance on what constitutes internal party matters and what is pertinent evidence to the inquiry. Mrs Palmer indicated that four draft apologies were submitted to her, which may or may not indicate the version of the phone call that was accepted. You have said on a number of occasions that there was no intent to cause her any distress, and I accept that, but distress was caused, and some form of wording had been agreed as a consequence of your internal party discussions. I believe that those matters are pertinent.
3996. The other bit is on the issue around Leeway Maintain. Why would those concerns have meant that the Minister would have sought to stall the very appropriate actions that were to be taken on Red Sky? Can you shed any light on that?
3997. **Mr Brimstone:** The Minister had concerns that the potential existed, if the issues pertaining to Red Sky were procedural system issues in the Housing Executive — in part, in whole or on the contractor side — for those same issues to pertain to other response maintenance contractors operating across Northern Ireland. As June progressed, we became aware that the Housing Executive had been aware of issues of a similar nature from 2010, which is before our time in the Department. Therefore, a suspicion that he had at that point that those issues potentially existed had been confirmed. Here was another contractor operating in a different Housing Executive district but with similar issues emerging. Therefore, the conclusion was that if issues existed in not one but two different areas, the potential existed at least for the same issues to be happening elsewhere.
3998. **Mrs D Kelly:** I am a bit puzzled as to why you just would not stop the contract with Red Sky, halt the Leeway Maintain one and then look at others. Why would you make a decision to try to seek to extend a contract based on the evidence before you that the contract was not serving the public well.
3999. **Mr Brimstone:** I can give answers only to questions that relate to decisions or actions that I undertook. Those are questions that should be addressed to the Minister, and I believe were.
4000. **Mrs D Kelly:** That is OK for now.
4001. **The Chairperson (Mr Maskey):** I have a couple of points. In your evidence a few minutes ago, you referred to the TRIM

- system and to the fact that you have access to it.
4002. **Mr Brimstone:** I do not have access to the TRIM system. I have access to the knowledge network system, but what is on it, I do not know.
4003. **The Chairperson (Mr Maskey):** The point that I was going to make was that, in previous evidence in an earlier session, you were emphatic that you did not have access to the TRIM system.
4004. Jenny Palmer is making certain allegations attributed to you about the conversation that you had. Did you ask Jenny Palmer to vote in any particular way if the matter went to a vote on the board?
4005. **Mr Brimstone:** I do not believe that I did, Chair.
4006. **Mr F McCann:** I will try to be as brief as possible, which will be a surprise to some people. We established this morning that it was former Minister McCausland who asked you to contact Mrs Palmer about the board meeting that was about to take place. In fact, I think that she was a bit shocked to hear that a board meeting was taking place, because it was off-schedule. How long did the phone conversation take? There seems to be a lot in it. Was it two minutes? Three minutes? Five minutes?
4007. **Mr Brimstone:** In my evidence to the Committee on the previous occasion, I think that I said five or six minutes. I could be wrong.
4008. **The Chairperson (Mr Maskey):** You said that it was five or six minutes.
4009. **Mr F McCann:** It seems strange that it was a five-minute conversation yet your recollection of what took place in the phone call is completely at odds with Mrs Palmer's. I cannot get my head around why she would said what she said when she seemed so shocked at getting the phone call in the first place. What would her motive be?
4010. **Mr Brimstone:** With respect, Fra, I cannot answer a question about what is in someone else's mind.
4011. **Mr F McCann:** Fair point. I have one other point to raise. Mrs Palmer said that she had had a conversation with the councillor from Lisburn and that she was quite shocked, was close to tears and felt as though she was being intimidated. Would it be worthwhile asking Councillor Ewart to come before the Committee?
4012. **The Chairperson (Mr Maskey):** That is a question that you can put to the Committee at another point. That is nothing to do with Stephen.
4013. **Mr Allister:** Did you go to Michael Sands's office at around 7.30 am on 5 July 2011?
4014. **Mr Brimstone:** No. I am trying to think when I was ever in the Department at 7.30 am. I can think of one such occasion. It was the morning after the 'Spotlight' programme, and the Minister was being briefed prior to his appearance at the Committee.
4015. **Mr Allister:** Do you challenge Mr Sands's evidence to the Committee that he was in from about 7.10 am and that you came to his office at about 7.30 am and asked for an email to be sent?
4016. **Mr Brimstone:** I have no idea about the time or anything else. I am afraid that I have no recollection, Chair.
4017. **Mr Allister:** Let us be clear: did you go to his office at any time that morning for the purpose of ensuring that that email was sent?
4018. **Mr Brimstone:** I cannot recall going to his office. That is not to say that it did not happen, but I cannot recall going to his office.
4019. **Mr Allister:** You said that it did not happen at 7.30 am.
4020. **Mr Brimstone:** At 7.30 am or at any other time on that day or any other day.
4021. **Mr Allister:** We know at what time the email was sent. I am trying to recall whether it was 7.38 am or 7.58 am.
4022. **The Chairperson (Mr Maskey):** It was at 7.40 am.

4023. **Mr Allister:** Yes, so whatever instruction or equivalent of that word was given, it was obviously given before 7.40 am. You are saying that you would not have even been in the office by then.
4024. **Mr Brimstone:** I genuinely cannot recall being in the office at that time of the morning.
4025. **Mr Allister:** What time do you normally come into the office?
4026. **Mr Brimstone:** Any time from 8.00 am or 8.15 am onwards.
4027. **Mr Allister:** We are left with the puzzle of why Mr Sands would tell us that. You are disputing whether that is likely to be true.
4028. **Mr Brimstone:** As to what time I was in the office —
4029. **Mr Allister:** As to you going to the office as early that morning.
4030. **Mr Brimstone:** I cannot recall going to his office that early in the morning.
4031. **Mr Allister:** Do you recall giving instructions or making requests about the sending of that email?
4032. **Mr Brimstone:** I do not, no.
4033. **Mr Allister:** Yet the email refers to something that you wanted done.
4034. **Mr Brimstone:** Clearly, yes.
4035. **Mr Allister:** It is hard to imagine that you had no involvement in the genesis of that email.
4036. **Mr Brimstone:** I never disputed that.
4037. **Mr Allister:** Tell us what your involvement was in the genesis of that email.
4038. **Mr Brimstone:** Just so that I am clear, I thought that I had already answered that. I do not recall.
4039. **Mr Allister:** Indulge me by answering it again.
4040. **Mr Brimstone:** I do not recall.
4041. **Mr Allister:** You do not recall. Therefore, we have an email that, on the face of it, appears to involve an instruction from you, and you cannot help the Committee, because you cannot recall how it came about. Is that it, Mr Brimstone?
4042. **Mr Brimstone:** I am not sure how else I can answer that.
4043. **The Chairperson (Mr Maskey):** Maybe I can come in. You are being asked about an email that was sent at 7.40 am. Michael Sands said that he sent that email at your behest.
4044. **Mr Brimstone:** Yes.
4045. **The Chairperson (Mr Maskey):** You were asked at what time you were in the office, and you said that you could not recall. You were then asked whether you were in the office, and you said that you could not recall. Can you give us any information about how you engaged with Michael Sands to elicit that email?
4046. **Mr Brimstone:** No, I cannot.
4047. **Mr Allister:** You cannot help us at all on that. Very well.
4048. The email should form part of the system of records at the Department. Is that right?
4049. **Mr Brimstone:** I would imagine so, yes.
4050. **Mr Allister:** Can you shed any light on why it seems for a long period not to have been?
4051. **Mr Brimstone:** I cannot, no.
4052. **Mr Allister:** Are you aware that the paper trail to the Committee indicates that, when the BBC asked the Department, under a freedom of information (FOI) request, for all emails from that date, there was no disclosure of that email and that there was an affirmation on the review that anything that was there had been provided? Are you aware of that?
4053. **Mr Brimstone:** I am aware — sorry, I am not aware that that email was not disclosed, why it was not disclosed or —
4054. **Mr Allister:** As late as 12 August 2013 — this is on page 279 of the pack.
4055. **Mr Brimstone:** I am afraid that I do not have the pack.

4056. **Mr Allister:** I am sure that you can be given it.
4057. That appears to be the letter from the Department as a result of the review that was requested by the BBC on the discovery by FOI of, including other things, all email correspondence of 4 July and 5 July. In that letter, the Department confirmed that there is nothing left to give. Were you aware of that FOI exercise?
4058. **Mr Brimstone:** I am sure that I was, but I have no involvement in the —
4059. **Mr Allister:** But the significance of this, Mr Brimstone —
4060. **Mr Brimstone:** Sorry. If I might clarify, I have no involvement in the discovery of information around FOIs. If that is what the Department said, I am sure that that is what it believed at that point.
4061. **Mr Allister:** The significance of that point is that, according to Mrs Palmer, a month later, after the Department had affirmed that it had no such email, you were going mad looking for it. You see the point. If the record of the Department does not contain the email, you might well be going mad looking for it if you had been asked about it during the fact-finding investigation.
4062. **Mr Brimstone:** Is there a question, Chair?
4063. **Mr Allister:** The question is how it could be that the email was not within the DSD system. If it were not in the DSD system, it would not be there for you to look up. Therefore, you might well be going mad looking for it.
4064. **Mr Brimstone:** I have already said how I would go about getting a copy of an email. It would not be a case of me looking up an internal system. It would most likely involve me going to the private office and asking it to go to the individual who had sent the email and for it to get me a copy.
4065. **Mr Allister:** Presumably, the Department had done all that in pursuit of honourably dealing with the FOI request and went formally on the record to say that, effectively, there was no such email.
4066. **Mr Brimstone:** That is a question that you need to put to the Department.
4067. **Mr Allister:** You are more than familiar with the departmental processes. I am just painting the factual picture.
4068. **Mr Brimstone:** I am not familiar with the processes that are used when an FOI request comes in.
4069. **Mr Allister:** Except for these purposes, which are that we can put total trust in what the Department said to the BBC on 12 August. The effect of that is that we did not have an email from 5 July 2011 from Mr Sands to the chairman of the board of the Housing Executive.
4070. In September 2011, there was a fact-finding exercise, and, when Mrs Palmer told the fact-finders about that email, you started to look for it. It was not in the system. Hence the credence to the suggestion that you were going mad looking for it.
4071. **Mr Brimstone:** I can only assume that the first time that I became aware of the email was when the board minutes of the Housing Executive meeting became available and that point was made in those minutes. It was definitely nothing to do with any fact-finding exercise.
4072. **Mr Allister:** Can you shed any light on why that email would not be in the system?
4073. **Mr Brimstone:** I am afraid that I cannot.
4074. **Mr Allister:** Do you know enough about the system to know that matters can be expunged, removed and edited — I think that we had some evidence about that during the first phase of the inquiry. Do you know about that?
4075. **Mr Brimstone:** No.
4076. **Mr Allister:** The mystery, Mr Brimstone — shed some light on it if you can — is that, when the Department came to provide information to the Committee, it provided the email that it had denied

- to the BBC existed. Do you have any explanation for that conundrum?
4077. **Mr Brimstone:** I do not. The permanent secretary was before the Committee some weeks ago. You would need to put that question to him.
4078. **Mr Allister:** If the factual situation was that, in August or September 2013, there was no trace of the email, it lends credence to the suggestion that someone might be going mad looking for it.
4079. **The Chairperson (Mr Maskey):** Just because that is in your mind, Jim, it does not necessarily follow that it is anybody else's. I am just making that point for the record.
4080. **Mr Allister:** I want to ask you one other thing. You had had a conversation with Jenny Palmer —
4081. **Mr Brimstone:** May I say one thing? On the one hand, there is an implicit allegation that somehow I was involved in some sort of expungement of an email that I was not aware of —
4082. **Mr Allister:** Sorry, I am not alleging that.
4083. **Mr Brimstone:** That is OK.
4084. **Mr Allister:** I am saying that it was not there. Hence, if you had an interest in it and could not find it, you would be going mad looking for it. That is what I am suggesting. I am not suggesting that you had a hand in expunging it.
4085. **Mr Brimstone:** Going mad looking for it when?
4086. **Mr Allister:** In September 2013, after it was raised with you in the fact-finding investigation.
4087. **Mr Brimstone:** OK.
4088. **Mr Allister:** You had the conversation with Jenny Palmer on the phone and had initiated it by going through Allan Ewart. In fact, it took place on his phone. Did you speak to Allan Ewart after about the conversation?
4089. **Mr Brimstone:** I have no recollection of that.
4090. **Mr Allister:** Remind us of what you said about when you spoke to the Minister about it.
4091. **Mr Brimstone:** All that I said was that I assumed that it would have been that afternoon or shortly after the phone conversation.
4092. **Mr Allister:** If you did not say anything untoward, why would you be apologising at all?
4093. **Mr Brimstone:** I do not know, but I was brought up a certain way, Mr Allister. I do not know whether you were, but I was. If a woman — indeed, especially a female — appears to be broken on national television, or at all, and it appears that she is broken because of an action that I had supposedly taken, all that I can do is apologise. That is the case even though I did not believe that I had done anything wrong and had no recollection of having done anything wrong. I can only apologise for leaving her in that state.
4094. **Mr Allister:** She is very clear about why and how you left her in that state. Was that what you were apologising for?
4095. **Mr Brimstone:** No.
4096. **Mr Allister:** The BBC allegations in the programme laid out matters pertaining to you. You then had your solicitor write to the BBC to threaten legal proceedings because of alleged untruthful, unfounded, defamatory allegations. How did those legal proceedings turn out?
4097. **Mr Brimstone:** There was a response sent to the BBC. That was it.
4098. **Mr Allister:** You never initiated legal proceedings.
4099. **Mr Brimstone:** No, I did not.
4100. **Mr Allister:** This is a programme that you tell us made unfounded and untruthful allegations about you by repeating what Jenny Palmer said, and you did nothing about it.
4101. **Mr Brimstone:** That is correct.
4102. **Mr Allister:** Thank you.

4103. **Mr Wilson:** I have a couple of questions. On the last point, we have heard contradictory evidence. Mrs Palmer said that you said certain things to her, and you say that you did not. Mrs Palmer said that Mr Sands said certain things to her, and he said he did not. Mr Palmer said that certain assurances were given to her by party officers but has not been able to produce any evidence of those assurances. Given that there is quite a lot of hearsay involved, would there be any point in pursuing legal proceedings?
4104. **Mr Brimstone:** I operate under advice at all times.
4105. **Mr Allister:** That you had no case.
4106. **Mr Wilson:** The advice was that, given that there was hearsay on both sides, it would be difficult, just as the Committee would find it difficult, to establish what the facts of the issue were.
4107. **Mr Allister:** With respect, it was not hearsay. One party who was there — Mrs Palmer — very expressively and explicitly said what was said, and Mr Brimstone took the view that that was defamatory of him but did nothing about it.
4108. **Mr Wilson:** No. Mrs Palmer, it appears, had been quite happy to make allegations about conversations that she had with other people, who then denied that such conversations took place. She has a record for that, has she not?
4109. **The Chairperson (Mr Maskey):** All those matters will be discussed by members but not in the presence of the witness or, indeed, any other witness.
4110. Stephen, do you have any other remarks that you want to make before we conclude this session? You know the routine: the Committee may want to come back to you. It is open to you whether you want to come back. For the record, it has been the practice thus far when we get conflicting evidence to bring people back without judging the accuracy of any comments attributed to any of the witnesses. The Committee will return to that in due course.
4111. Stephen, you seem to be happy enough to leave it for now. Thank you for being here.



# 11 December 2014

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Maurice Devenney  
 Mr Stewart Dickson  
 Mr Fra McCann  
 Mr Sammy Wilson

## Witnesses:

Mr Brian Rowntree

4112. **The Chairperson (Mr Maskey):** I welcome Brian to the meeting. You have provided us with some information, but are there any remarks that you would like to open with, before we open it to members of the Committee?
4113. **Mr Brian Rowntree:** I am here this morning to give evidence on the facts. I do not intend to offer any opinions because I do not think that is the remit of the Committee. I intend to substantiate where I can with evidence. I think that, as chairperson of the organisation and the board, I left a reasonable audit trail for all matters, and I am prepared to have that investigated and questioned.
4114. **The Chairperson (Mr Maskey):** Thank you, Brian. Members, you have the papers in front of you.
4115. **Mr Brady:** Good morning, Brian. There have been suggestions that Red Sky was unfairly treated and that there were sectarian issues. Why was the Red Sky contract terminated from the point of view of the Housing Executive? My other question is on the relationship that you had with the previous Minister as chair of the Housing Executive.
4116. **Mr Rowntree:** On the first point, I totally refute any allegation of sectarian bias on the part of the organisation, and I

have refuted it since the meeting with political representatives in April 2011. I have been silent since I left the Housing Executive; I do not intend to comment other than to this Committee. No one has produced any evidence to me as former chairperson of the Housing Executive; neither has anyone produced any evidence to the board members, the chief executive or the acting chief executive. We have a complete audit trail for all the issues that we dealt with in relation to Red Sky. The director of the company went on TV after we terminated the contract stating that it had overcharged for buildings that did not exist. That was evidence on which any public body would terminate a contract. That was after extensive investigation by the organisation not just of Red Sky but of the whole series of processes, where we could, in response maintenance contracts. I want to deal with this issue: Red Sky was not the only contractor under investigation, but it was the most difficult contractor in its relationship with the organisation and its adherence to standards. They were away ahead in negative indicators, and, as an organisation, we were duty-bound to respond.

4117. I would have hoped for and sought an amicable relationship with any Minister; I have always had a good relationship with any Minister I have worked for in public life. I did not seek the breakdown of that relationship, and I continued right up until the end to try to offer advice. In fact, what I sought was a working relationship that respected all parties in the equation. I found it difficult because it became personal, and I do not want it to be personal; I do not even want this conversation to be personal. I still respect the Minister as an individual. We had a misunderstanding about governance provisions, about their role and the role of the board and, therefore, my role as chair of the board. I think that that is where the difficulty arose.

4118. **The Chairperson (Mr Maskey):** The Minister met you on 30 June 2011 and subsequently wrote to you in July about his proposals to extend the contract. It did not appear as an official direction, but you had concerns that it might be. Can you elaborate on that?
4119. **Mr Rowntree:** The meeting was in June 2011, at the latter stages of the termination period. From memory, 13 July was the termination date. We were already in advanced negotiations; in point of fact, we were in a position to award contracts to adjacent contractors as part of the contract provisions. The meeting was about extending the contract with the administrators, who had indicated that they found it difficult to continue to run the contract because they did not have the relevant cover. They had been appointed by the bank and were acting for the courts.
4120. The difficulty for us was that extending the contract would have meant revoking the notice period. We had no grounds to revoke the notice period and continue the contract because we saw nothing that allowed us to say that the bona fides of those to whom we were awarding it were in place. If I may go further, the board was very concerned — this was a corporate decision — about contract and contractor sustainability. Why would we extend a contract with an organisation that was in administration and was financially non-viable? Why would we extend Red Sky's contract when we did not know where its future lay? We were going to new contracts, which had been agreed a few years previously. All the work had been done and was being run through our procurement department at arm's length to the board and everyone else. Why would we interrupt that process, take it off track and re-award contracts to a party that we knew could not meet our performance measurement indicators? It did not stack up for us.
4121. More importantly, we were concerned that the existing contract for response maintenance allowed us to award those contracts to adjacent contractors. If we did not award those before the end of the notice period, it was unlikely that a contractor would have taken a contract of that nature on board — there were multiple contracts — for a period that would not offer them any financial reward. That was because the gearing-up costs for other contractors to take on those contracts were substantial. We also wanted to protect the existing Red Sky workers, who were relevant to the Red Sky contracts under Transfer of Undertakings (Protection of Employment) (TUPE) provisions. Passing them to an administrator gave them no guarantee under TUPE of continuous employment. We wanted to offer some provision whereby the adjacent contractors would give those individuals the relevant guarantees and support under the TUPE provisions. TUPE provisions were an integral part of the adjacent contractors' provisions under the existing contract. It would have been nonsensical to set those contractor provisions aside and not protect the 200 workers who were noted as being allied to Housing Executive contracts.
4122. **The Chairperson (Mr Maskey):** I have a couple of other points to put to you. On 5 July, you received an email from Michael Sands — this is the information that we have, and you have heard this — in furtherance of a conversation from Stephen Brimstone and Michael. In other words —
4123. **Mr Rowntree:** Is that the email at 7.40 am?
4124. **The Chairperson (Mr Maskey):** Yes. There are two points that I want to put to you. You got that email that morning. First, had you any further conversations about that with Michael or with anybody else? Secondly, we have evidence from the Minister, and Stephen Brimstone as well, that the reason why they had contacted Jenny Palmer directly as a board member was because they had no confidence in you to relay the Minister's concerns to the board. Can you comment on those two points?
4125. **Mr Rowntree:** I will say two things. The first is that the email arrived at 7.40 am. I knew that we were meeting early, but we

- were not meeting that early to discuss the issue. The second is that the email gave an indication and further elaborated on the request to extend the contract and, I think from memory, it was to take it to four months or something like that. That was another option suggested in the email. How would we consider an option to extend it that had not been appraised financially or substantiated, nor had we any guarantee from the administrators that they could do that? However, the email failed to clarify that the administrators, the evening before, had emailed our procurement department to say that they were in no position to continue with the contract to Red Sky and that the discussions on extending the contract were, in point of fact, defunct at that stage.
4126. The board was also concerned that this was an attempt to influence it and to interfere in what was a procurement process, because here was a discussion and board papers going to the board, and I am a big fan of not tabling board papers to board members on the day; I do not think that it is right. It does not give due regard to the paper; nor does it give due regard to members' capacity to absorb the information in the paper. We have a strict rule in that regard. However, why would we table a matter to the board at that late juncture that did not have any clarification round it and did not have any supporting protocols around it?
4127. The third point is that I had already had a conversation with Jenny Palmer on the day previous, and the email was in line with the information that Jenny Palmer had relayed to me as chair. As to whether one has confidence in me as chair or not, that is a matter for the Minister and a personal issue with the Minister. I had a 10-person board, and I had 10 people who unanimously voted on that board. I had no dissent. A board member came to me with a sensitive issue, and I dealt with that relative to the board member, and that board member had confidence in me. I would hope that the confidence in me was understood by all in the equation —
- the administrators, the other adjacent contractors and those tenants whom we are responsible for by ensuring that we have continuing response maintenance as an organisation. Thank you.
4128. **The Chairperson (Mr Maskey):** Did you have any other conversation with Michael Sands or anybody around that?
4129. **Mr Rowntree:** I had no conversation with Michael Sands. My conversations were with the Minister or Will Haire, and that is right in that regard. Michael Sands would have had conversations with officers in the organisation.
4130. **The Chairperson (Mr Maskey):** Thank you. We will have Jim, Paula and then Gregory.
4131. **Mr Allister:** You made reference to the contact from Jenny Palmer before 5 July meeting.
4132. **Mr Rowntree:** Yes, indeed.
4133. **Mr Allister:** Can you tell us about that? How did it come about and what was said?
4134. **Mr Rowntree:** Jenny Palmer rang me. She seemed quite perturbed and asked to meet me the day before the board meeting. It was about an allegation of an intervention, external of the board, to Jenny Palmer. She relayed the conversation to me, a conversation that I know you are aware of, so I do not want to elaborate on it. However, the conversation was about the fact that she had been contacted by the Minister's special adviser and that she had been told that the party comes first. I saw the distress that Jenny was in; she was very traumatised by the event, but she was more traumatised by the fact that she had been separated out of the board as a special board member and not one of the other board members. That annoyed her, because she did not see her position or role on the board in that regard. So I took Jenny through her standing on the board, and, if I may, I will take you through it as well.
4135. Jenny is not appointed to the board by any individual political party; she

- is appointed by Lisburn City Council as a member of the Housing Council. Therefore, her local authority has confidence in her to represent its views on housing matters to the Housing Council. The Housing Council, as a corporate body, has the right to nominate four individuals, under legal provision and constitutional arrangements, to the board of the Housing Executive. Therefore, any members who have a political background on the board and declare their political interests are representatives of the Housing Council on the board. Therefore, any intervention to Jenny was an intervention to the work and organisation of another statutory instrument — the Northern Ireland Housing Council. So, we had two interventions: one around the Housing Executive; and another around a Housing Council representative on the board.
4136. I explained that to Jenny and tried to comfort her in that regard. However, I said to her that this was a very serious matter and that I took any allegation of any intervention quite seriously. I also said that it was far, far outside proper corporate governance provisions that anyone should try to influence any board in the decision-making process but, more importantly, a non-client body dealing with a very sensitive matter. I also said that, given that the request from the Minister was a ministerial consideration, it went beyond a consideration in my view, if someone was attempting to make sure that a representative of the Minister — as the Minister's SpAd saw them — was being instructed to take a party line in the boardroom.
4137. I asked whether that was her intention. She said no, but she said that she felt conflicted to a great degree because of this issue. She and I agreed that I would consider it overnight, but my view might be that I might ask her to consider leaving the debate because of that issue. I told her that I would reflect on it and that I would meet her early the next morning. I met Jenny before the board meeting next morning; she was still highly traumatised and had not been able to sleep but wanted to turn up. I gave her the good grace to come into the room, listen to the opening remarks of the meeting, record her attendance — which she wanted me to do — and then declare that she had a conflict of interests, had disclosed it to me, and I had agreed for her to leave the meeting. Then we started the debate.
4138. I thought that that was the best way of dealing with the issue for everyone present and to try to get some balance into it. I also thought that the best way of dealing with it was to try to neutralise the situation so that no one could say that we had raised the political stakes in the room. As there were three other political members, I could foresee a political debate arising about an issue that was a board matter. I wanted to preempt that.
4139. **Mr Allister:** Did she tell you who had instructed her that “the party comes first”?
4140. **Mr Rowntree:** She said that it was Mr Brimstone.
4141. **Mr Allister:** And did she convey anything else of what he said?
4142. **Mr Rowntree:** She said that she was instructed to support the motion, which was the consideration of the request from the Minister.
4143. **Mr Allister:** Yes, the Minister's request.
4144. **Mr Rowntree:** To extend the contract.
4145. **Mr Allister:** She told us that she had been told, “There is no point in you being on the board, unless you do what we tell you”. Did she convey that to you?
4146. **Mr Rowntree:** She implied it in conversation. Her exact words I do not recall, but the implication of her words was “We do not have confidence in you unless you do this, and you must do what is required of you”. However, in her view, she was doing what was required of her because the Housing Council was also supporting our motion not to accept the extension of the contract,

- because the Housing Council members on the board were unanimous in that regard. The three other Housing Council members on the board voted in support of the motion.
4147. **Mr Allister:** How long had you been chairman?
4148. **Mr Rowntree:** I had been chairman at that stage for seven years.
4149. **Mr Allister:** Had you encountered a situation like that before?
4150. **Mr Rowntree:** I have been in the public sector since 1988 and I have never had this issue in my life; this is the only instance I have ever had of it. I have chaired boards with political representatives, and I must say that I found political representatives always to be creditable and also to honour the provisions of corporate governance. For the record, I want to state that none of the political members in the room, including Jenny Palmer, broke the rules.
4151. **Mr Allister:** Have you given evidence to the DFP fact-finding inquiry?
4152. **Mr Rowntree:** I have never been contacted by DFP about the fact-finding issue for Councillor Palmer.
4153. **Mr Allister:** Even though you were a person in the public domain who would have been in a position to corroborate the allegations that she was making.
4154. **Mr Rowntree:** I have never been contacted by the inquiry.
4155. **Mr Allister:** Can I ask you about one other thing? We know that there was a meeting on 27 June 2011 between political representatives, the Minister and some Red Sky personnel. You are aware of that.
4156. **Mr Rowntree:** I was not aware of it when I was chairperson of the Housing Executive.
4157. **Mr Allister:** Yes.
4158. **Mr Rowntree:** I became aware of it when I left the Housing Executive, and I was absolutely surprised.
4159. **Mr Allister:** What surprised you?
4160. **Mr Rowntree:** The note of the meeting that was shown to me referred to the word “Newco”; it said that this was a Newco. I think that that is the note that you referred to.
4161. **Mr Allister:** Yes, indeed.
4162. **Mr Rowntree:** There was no identified organisation on that note. From memory of reading the note — I never had a copy of it — there were no Housing Executive procurement personnel present, nor were there any Housing Executive officers present. As far as I understand, there were no representatives of the administrators present at that meeting.
4163. **Mr Allister:** Yet the company was in administration at that point.
4164. **Mr Rowntree:** Yes, it was indeed. There were no representatives of the administrators, yet I believe that matters relating to the extension, or to Housing Executive contract provisions, were noted. I wondered why someone would be discussing an NDPB’s business to a Newco that had not been identified, but, more importantly, where there might have been extensive conflicts in relation to that grouping having those discussions. If this was an organisation that was looking to potentially acquire the assets and the ongoing provisions of Red Sky, then that would have left them with an obvious commercial advantage from those discussions. I hope that that was not the case, but, afterwards, I was shocked to see the note and quite shocked to see that the meeting had taken place. I also noted that there were DSD officials at the meeting as well.
4165. **Mr Allister:** What did you make of the record in the minutes of the Minister, in advocating an extension until the end of August, saying that, during that time, the proposed new company might also be able to progress matters? What did that convey to you?
4166. **Mr Rowntree:** That refers to what I said: that may imply giving commercial advantage to an unidentified organisation, or in that case individuals,

- if there was no body corporate incorporated at that stage. I believe that the assets of Red Sky may have been acquired by an organisation called Totalis. I am not too clear about that, but I think that it may have been. The question would be that, if Totalis was incorporated after that date, was that meeting potentially seen as fact-finding by people who intended to acquire the assets from the administrator? I thought that it would have been better had those conversations been had with NIHE and the administrators together, because we had established, under my chairmanship, an ongoing series of dialogues with the administrators to secure TUPE arrangements for the relevant transfer of staff and also to make sure that the financial standing of the administrators was such that we were aware of the time frame that they could honour the existing contract provisions during the notice period.
4167. **Mr Allister:** Did the fact that those comments came from the Minister surprise you?
4168. **Mr Rowntree:** The Minister was obviously being briefed in relation to the ongoing discussions with Newco, whoever Newco was. We had never been involved with Newco; nor had we any intention of being involved with Newco.
4169. **Mr Allister:** At a later stage, you made reference to lobbying for a commercial interest.
4170. **Mr Rowntree:** That is correct, yes.
4171. **Mr Allister:** What were you referring to?
4172. **Mr Rowntree:** I was saying that it could be seen, potentially, as lobbying for a commercial interest.
4173. **Mr Allister:** By the Minister?
4174. **Mr Rowntree:** By all parties in that room, because, if any party to that discussion was seen as offering a commercial advantage to any organisation that was not at present in a contract with the Northern Ireland Housing Executive, they would have been seen as lobbying for commercial gain. The question is this: why was that note not sent to the Housing Executive? That is a question that I would ask the Committee —
4175. **Mr Allister:** And you were not invited to the meeting.
4176. **Mr Rowntree:** No, we were not, nor did we get a note of it.
4177. **The Chairperson (Mr Maskey):** I want to move on, Jim. We will come back to you.
4178. **Ms P Bradley:** Jim asked some of the questions that I wanted to ask. I just want to clarify a couple of things. When Jenny was in, I asked her how she felt after the phone call; she said that she had felt annoyed and that she was hurt. You have clarified that as well. We could see that she was quite visibly annoyed by those things. She also said in her statement that she felt that there was no one she could turn to to talk about what had happened. We know that she spoke to Allan Ewart in the car on the way up and that she met Jeffrey that day and spoke to him. When did Jenny contact you, Brian?
4179. **Mr Rowntree:** It was the day before. From memory, I think that it was the morning of the day before the board meeting.
4180. **Ms P Bradley:** So it was the Monday.
4181. **Mr Rowntree:** I think that it was the Monday, yes. The board meeting was on the Tuesday, I think, so it was the Monday. She contacted me in a very distressed state. It was amazing, and I want that recorded. She has a tremendous loyalty to the party. I want to say it on record as the chairperson. I respect that 100%. In that regard, I wanted to ensure that that loyalty was respected and understood by the party itself. To place a board member — who was not a party board member but a Housing Council board member — in that situation was, I thought, a misinterpretation of the governance provisions. Therefore, in that regard, I deemed the intervention inappropriate, but I also felt that it placed Jenny in a

- position of mistrust, which she should not have been placed in.
4182. **Ms P Bradley:** You also commented, in your reply to Jim, that she felt like a special board member.
4183. **Mr Rowntree:** Yes.
4184. **Ms P Bradley:** Did you say that there were four political representatives?
4185. **Mr Rowntree:** There are four political reps, yes.
4186. **Ms P Bradley:** I assume that Jenny is the only one who is a member of the Democratic Unionist Party.
4187. **Mr Rowntree:** Jenny is the only one who was contacted.
4188. **Ms P Bradley:** Jenny would be the only one who was contacted if it was a DUP special adviser.
4189. **Mr Rowntree:** Yes, but what Jenny felt was that, if it was a Housing Council issue, she was quite prepared to pull all the other Housing Council members together and have a Housing Council discussion about it, but she was not offered that. The statement that hurt her most was, “The party comes first”. That is not denigrating. Jenny is so loyal to her party, but she is also loyal to her conscience as a board member. That was the issue that she had with me, which was very difficult.
4190. **Ms P Bradley:** So, you met Jenny the day before, on the Monday morning.
4191. **Mr Rowntree:** Correct.
4192. **Ms P Bradley:** Where did you meet Jenny?
4193. **Mr Rowntree:** In my office in the Housing Executive.
4194. **Ms P Bradley:** OK. Then Jenny went to the board meeting on Tuesday —
4195. **Mr Rowntree:** She met me in my office that morning before the meeting as well, and we agreed —
4196. **Ms P Bradley:** And that day, again, she was still feeling very uptight.
4197. **Mr Rowntree:** Absolutely. She did not want to lose her respect for the party nor her respect for the board itself. I offered her the opportunity to come into the room and listen to the opening of the meeting, when we took the minutes etc, then we asked for a declaration of interest and she declared her interest, then excused herself from the room.
4198. **Ms P Bradley:** I have nothing further at this time.
4199. **Mr Campbell:** Mr Rowntree, on the issue of the board meeting, did you say that there were 10 representatives on the board?
4200. **Mr Rowntree:** We have a 10-person board.
4201. **Mr Campbell:** How many were present that day?
4202. **Mr Rowntree:** I think that we had a full complement that day.
4203. **Mr Campbell:** Would that have been the normal course of events?
4204. **Mr Rowntree:** Yes, we generally had high attendance at board meetings.
4205. **Mr Campbell:** If there was either a nine-person or 10-person board discussing matters of that import, if there was a proposition from the Minister or any other serious proposition, would it be the case that, in order to proceed down that route, a majority would be required?
4206. **Mr Rowntree:** Absolutely, and correspondence would have been sent to members for their sight and discussion well in advance of the meeting as part of the board papers. You will see that there are board papers around; the Committee will have access to them. You will see the minutes of the meeting, where it is noted that members had sight of the correspondence. If there was a requirement for a divided board on the issue, we would certainly have had a democratic vote.
4207. **Mr Campbell:** Therefore, to avoid your being put in an invidious position, if there were 10 persons there, logic

- would tell you that six people would be required to vote in favour of a proposal.
4208. **Mr Rowntree:** I am also a board member.
4209. **Mr Campbell:** I know, but if it was 5-5.
4210. **Mr Rowntree:** The chair has the casting vote. That is within our constitutional arrangements.
4211. **Mr Campbell:** Yes, and that was you.
4212. **Mr Rowntree:** Correct.
4213. **Mr Campbell:** So, to avoid you being in that position, six people would have been required to vote for that or any other proposition.
4214. **Mr Rowntree:** I am sure you are absolutely right.
4215. **Mr Campbell:** Well, is it right?
4216. **Mr Rowntree:** If you are saying that if the majority vote —
4217. **Mr Campbell:** I am asking you. You were the chairman of the board.
4218. **Mr Rowntree:** It takes six persons to require a majority on a 10-person board if there is a casting vote from the chair. You are absolutely right.
4219. **The Chairperson (Mr Maskey):** There were eight members in attendance, according to the record.
4220. **Mr Campbell:** So, in that instance, to avoid your being in the casting vote position, it would have required five people.
4221. **Mr Rowntree:** It would have required four members to vote for the motion, with a casting vote from the chair.
4222. **Mr Campbell:** That is right, and to avoid your being in that position, it would have required five.
4223. **Mr Rowntree:** No, in that situation, four members would have been required to vote, with a casting vote from the chair. There would still only be four members supporting the motion, and the casting vote is the chair's. There is no extra member in the room.
4224. **Mr Campbell:** I understand that.
4225. **Mr Rowntree:** Mine is an additional vote cast in addition to that. That does not mean that five voted for the motion; it says that the casting vote was in favour.
4226. **Mr Campbell:** Yes, but to avoid the chair's being in the position of having to cast the deciding vote, a 5-3 vote would have been required. Is that right?
4227. **Mr Rowntree:** I think what you are getting at, Mr Campbell, is whether, to avoid a drawn situation — a 4-4 vote — we would have had to have five persons in support of the motion.
4228. **Mr Campbell:** That is exactly what I am getting at. Is that right?
4229. **Mr Rowntree:** It is indeed.
4230. **Mr Campbell:** So, on that day, when eight members were in attendance, five people would have been required to vote for the Minister's proposition.
4231. **Mr Rowntree:** Correct.
4232. **Mr Campbell:** How many people, to your knowledge, were contacted to try to get the Minister's proposition passed?
4233. **Mr Rowntree:** One person.
4234. **Mr Campbell:** So five people would be required to vote, and one person was contacted.
4235. **Mr Rowntree:** Yes.
4236. **Mr Campbell:** That does not sound like a device or mechanism to get something through.
4237. **Mr Rowntree:** I have never been on record and nor have I stated that this was an attempt to sway the board in terms of majority voting. That was never going to be the case. I think it was an attempt to reinforce a party political position in the room, and Councillor Palmer was not prepared to do that. Councillor Palmer spoke to me about being told that she had to support the party, that the party must come first and that she had to reinforce the party position in the room. That took away

- her independence as a Housing Council member.
4238. I never saw this as a situation that would divide the board, because the board had been unanimous in terms of the termination notice in April and had been unanimous in all decision-making around the contract divisions ever since. This was an attempt to bring a party political stance into the room, which Councillor Palmer wanted to avoid, and that is what she spoke to me about.
4239. **Mr Campbell:** Was this, in your view, a serious attempt to get the board to change its mind?
4240. **Mr Rowntree:** I do not think it was not a serious attempt to sway the board in terms of majority voting.
4241. **Mr Campbell:** That is the only other way it could have been.
4242. **Mr Rowntree:** I am giving you the evidence. I am telling you that, as chair of the board, I did not see the intervention changing the result in the room, and my evidence points to that, because we had a unanimous decision. What I did say was that Councillor Palmer was concerned that her independence as a Housing Council member was being thwarted by an intervention that brought a political viewpoint on the matter into the room, and therefore removed her capacity to participate in the debate as an individual. She therefore was seen to be adopting party lines.
4243. **Mr Campbell:** So it was not an attempt to change the decision of the board.
4244. **Mr Rowntree:** It was an attempt to influence the debate in the room, not to change the decision of the room.
4245. **Mr Campbell:** That is not my question, Mr Rowntree. I am asking you a straight question: was this, in your opinion, an attempt to get the board to change its mind?
4246. **Mr Rowntree:** I will be as honest with you as you are being with me — and I appreciate that, Mr Campbell: as chairperson on the day, the intervention with Jenny Palmer would not have changed the decision of the board in the room.
4247. **Mr Campbell:** So it was not designed to change the decision.
4248. **Mr Rowntree:** For my purposes as chair, one intervention with Councillor Jenny Palmer would not have changed the decision in the room.
4249. **Mr Campbell:** That is fair enough.
4250. Who were the other three political representatives on the board?
4251. **Mr Rowntree:** There was a representative from the Ulster Unionist Party: Jim Speers. From Sinn Féin, there was, I think, Sean Begley. The SDLP representative was Eamonn O'Neill. It is amazing how, after you have left an organisation for a few years, names tend to leave you.
4252. **Mr Campbell:** The four political representatives just happened to be from four different political parties.
4253. **Mr Rowntree:** It is quite an unusual process. It is a process under the public appointments process. It is regulated by the Department for Social Development, and they are, de facto, ministerial appointments. The Housing Council nominates two persons for each post. When I first became chairperson, there were only three political nominees on the board, and I extended that so that there was a capacity for four. We removed the capacity for one independent on the executive to make it a politically represented organisation. The practice, under public appointments, has been that the Minister appoints one person who is representative of political parties, and that has been the desire of the Minister, not the board. The Minister chooses that, not the Housing Council. The Housing Council nominates eight individuals for consideration by the Minister, and that is what happens.
4254. **The Chairperson (Mr Maskey):** Gregory, for everybody's information, on page 181, there is a record of the attendees at that meeting. Jim Speers apologised.

- There was no apology from Sean Begley, who was not at the meeting. So, there were eight members in total. That is just to clarify that.
4255. **Mr Campbell:** You said that you had been chair for about seven years at this time. During those seven years and up until then, had there always been four political representatives?
4256. **Mr Rowntree:** No, there had been three up until about 2006, I think.
4257. **Mr Campbell:** It then became four.
4258. **Mr Rowntree:** Just before the St Andrews Agreement. I think that that was 2007.
4259. **Mr Campbell:** Yes.
4260. **Mr Rowntree:** Yes, it was 2006 — a change to 2000. Sinn Féin had never been represented on the board of the Housing Executive. Since Councillor Brendan Curran was a key participant at the Housing Council and had chaired numerous committees for the Housing Council, we thought that we would try to balance the representation from the Housing Council going forward if possible.
4261. **Mr Campbell:** During your seven years on the board, whether there were three or four political members, was there ever any occasion when there was more than one person from a political party on the board?
4262. **Mr Rowntree:** No.
4263. **Mr Campbell:** So throughout your entire duration, there were always three political members or, in the latter part of your tenure, four, and all were separate reps from all of the political parties.
4264. **Mr Rowntree:** Absolutely.
4265. **Mr Campbell:** I will move on to Rinmore. During the ‘Spotlight’ programme, which is why we are all here, Mandy McAuley put to you a series of questions. She talked about Will Haire ringing you at the height of the dispute about Red Sky. She said:
- “Brian Rowntree says he was informed that a complaint is being sent to the Northern Ireland Office to get him removed from the Civil Service Commission”.*
4266. Was that accurate? That was her comment during the programme.
4267. **Mr Rowntree:** Is this to do with Red Sky or Rinmore, Chair?
4268. **Ms P Bradley:** You just said Rinmore, did you not?
4269. **Mr Campbell:** Yes.
4270. **The Chairperson (Mr Maskey):** What is the relevance, Gregory?
4271. **Mr Campbell:** The relevance of it is that it is part of the ‘Spotlight’ programme.
4272. **The Chairperson (Mr Maskey):** What has it got to do with the inquiry? That is the point. Regardless of the ‘Spotlight’ programme, we can rely on the ‘Spotlight’ programme for one programme or maybe not on another, but it is the inquiry terms of reference that we have to address.
4273. **Mr Campbell:** Yes, that is right.
4274. **The Chairperson (Mr Maskey):** Obviously you are putting a question. The witness will have to determine whether or not it is relevant, and we will challenge that, whatever the view might be. I have to say this: what is the relevance of the question?
4275. **Mr Wilson:** It actually is relevant, especially since the witness has indicated that there was a dispute between him and the permanent secretary and the Minister —
4276. **Mr Rowntree:** No, I never said —
4277. **The Chairperson (Mr Maskey):** Hold on.
4278. **Mr Wilson:** — over the whole Red Sky incident. In fact, we have got fairly robust letters between him and the Minister and the permanent secretary about their involvement. Drawn into this is the allegation that, because the relationships were so bad, the permanent secretary actually tried to get him removed from another job. So it is totally relevant. First of all, it is part of the ‘Spotlight’ programme, and,

- secondly, it is relevant to the breakdown in the relationship that he alleges there was between him and the Minister, which then led to the allegations about interference in the board and everything else. Chairman, I think that you would be stretching things if you tried to rule that issue out of this series of questions.
4279. **The Chairperson (Mr Maskey):** I make the point again that it does not appear to be relevant to the terms of reference of phase three of the inquiry. The witness was invited here to address matters that are relevant to phase three of the inquiry. He was given that direction before he attended, and has responded accordingly in his written response and in answering questions here. As any other witness will tell you, they will only deal with what they are asked to deal with. I imagine that Mr Rowntree will say what he has indicated he is saying. He is asking the Chair what that has to do with the inquiry.
4280. **Mr Campbell:** I mentioned Rinmore to a previous witness during this phase of the inquiry.
4281. **The Chairperson (Mr Maskey):** Rinmore has not arisen from the evidence of Will Haire — or anybody else, for that matter — at any point in the inquiry. The original letter is supposed to have come from Will Haire, but he has never raised it, to my recollection, as a means to — I use my words advisedly — discredit Brian Rowntree, any evidence that he may give or his character.
4282. **Mr Campbell:** I have raised Rinmore with a previous witness, and I want to raise it with this witness.
4283. **The Chairperson (Mr Maskey):** Obviously, people will raise questions, but the witness was invited here to deal with the terms of reference of phase three of the inquiry —
4284. **Mr Campbell:** And I am asking questions under those terms of reference.
4285. **The Chairperson (Mr Maskey):** I do not see that.
4286. **Mr Campbell:** You may not, Chairman. However, I raised that issue previously, and there was no query from the Chair or other members.
4287. **The Chairperson (Mr Maskey):** No matter how many times you have raised it, the person who is supposed to have sent the letter, Will Haire, has never come to this inquiry and made it a relevant point in terms of the character or the judgement of —
4288. **Mr Wilson:** Mr Rowntree did in the programme. Let me read out what Mr Rowntree said in the programme:
- “On the back of this evidence, I am demanding a police inquiry on this issue. I am demanding the Serious Fraud Office take it on board and, more importantly, I am demanding an external independent inquiry into the roles and responsibility of the people, the information and the processes both internal to and external of the Northern Ireland Executive.”*
4289. Within days of the attack — this is important — Mr Rowntree said that “attempts to destroy him continued”. So, it clearly is relevant to the inquiry. He said that he objected to the way in which the Minister was dealing with the Red Sky issue and that, as a result, attempts were made to destroy him. There could not be a clearer link.
4290. **Mr Rowntree:** Can I say something, Chair?
4291. **The Chairperson (Mr Maskey):** I will invite you in in a wee second. I remind people what the terms of reference of this phase of the inquiry are. They are about:
- “Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.”*
4292. Those are the terms that we are dealing with. Mr Rowntree was invited here to deal with that and with related matters that are specific to him.
4293. You have put the question. I have asked for the relevance of it, and I have not got

- a clear answer. However, Mr Rowntree is big enough and ugly enough to give us a response to the question, and he can do that.
4294. **Mr Rowntree:** I did not come here to have my integrity and my character impugned; I came here to give evidence to the Committee. I have never seen the report that is referred to on Rinmore. No one copied me in on that report. and no one had the decency to forward that document to me and send it for my attention prior to its publication and finalisation. I was never interviewed as part of the preparation of that report and was never asked to give evidence in relation to it. I refused to comment on one paragraph of it, because I wanted to see the context where that paragraph sat within the full report. That is my right as a citizen. More importantly, I did not come here to get into a battle with members from any political party. I very much respect the integrity of people in politics and have always done so.
4295. I want to put it in context that that had no bearing on the Red Sky issue. More importantly, the Red Sky issue was not about a relationship between the Minister and me, but a relationship between the board and the Minister. I was an instrument of the board; I was the chair of a board that voted unanimously to terminate a contract and to refuse the recommendations of the Minister. I do not wish to be singled out for special attention.
4296. You may see in my evidence that I submitted to the Committee that I was under personal threat as a consequence. I had to leave my home for two nights. I want to put that on the public record. No public official should be forced to consider leaving their home. Mr Campbell was recently placed in an awful situation where he felt that his life was under threat. Nobody in any public place should feel threatened by anything. You should have the courage of your convictions to stand over decisions you are party to, but others should respect that decision-making process.
4297. More importantly, I further state for the record that, as chair of the board, I am the leader of the board. I stand up for the board. I will present the board's case in public and in private with the Minister. What Mr Wilson said about getting into a spat with the Minister was wrong. I tried to present the options to the Minister so that we could get round this. I never wanted it to come to this situation. For the record, that is why I spoke to political representatives in June 2011. I tried to heal the wounds, as you will recall, Chair. As a consequence of that, you met the Minister at that stage. Those interventions were across all parties. I saw the difficulty that was going to emerge from this intervention, so I thought it best to try to calm it down. Also, for the record, as the chair of a public body I had nowhere to go to report this. There is no mechanism in the system that allows me to report the intervention and to have it dealt with, ruled on and reported back. That would have taken the sting out of the tail. I would like that to be recorded.
4298. **Mr Campbell:** Mr Rowntree, you previously indicated that you were not aware of the issue of the stock transfer in relation to Rinmore. Is that right?
4299. **Mr Rowntree:** The stock transfer was a political decision, not a board decision.
4300. **Mr Campbell:** Does that mean that you were not aware of it?
4301. **Mr Rowntree:** I do not want to discuss Rinmore. It is not relevant to Red Sky.
4302. **Mr Campbell:** Chairman, we are now in a very serious position in this inquiry. This is the second witness I have asked about Rinmore. The previous witness said:  
*"this investigation is not about Rinmore; it is about Red Sky. Under the terms of reference, I would prefer not to talk about Rinmore."*  
I said:  
*"That is fine, but this investigation is not just about Red Sky."*
4303. The witness said "No".

4304. We have two witnesses now — Mr Rowntree is the second of the two — who have declined to answer questions about Rinmore. That tells me that there is something about Rinmore. Why will you not answer questions about Rinmore, Mr Rowntree?
4305. **Mr Rowntree:** It is not relevant to Red Sky. I was supplied with a schedule of questions by the Committee Clerk, Kevin Pelan. I had the good grace to respond in detailed fashion to those questions. I thought that it was good grace to come and answer and provide evidence in support of those today and to take tangential issues that may arise, as would be normal practice in any evidence session. This is a totally different subject. I am quite prepared to debate the Rinmore subject, not at this Committee but at any other Committee. I have nothing to hide, and nor does the board. Rinmore involved politics. It is for others to have the debate around Rinmore.
4306. **Mr Campbell:** Did you know about Rinmore?
4307. **Mr Rowntree:** I was the board chairperson at the time of Rinmore. Of course I did.
4308. **The Chairperson (Mr Maskey):** I am going to —
4309. **Mr Campbell:** So you did know about it.
4310. **The Chairperson (Mr Maskey):** Sorry, folks —
4311. **Mr Rowntree:** I was the board chairperson.
4312. **The Chairperson (Mr Maskey):** Mr Rowntree and Mr Campbell, I am referring people to the terms of reference. If there is an issue around Rinmore, let us deal with that. As a Committee, we should consider and discuss it. If it is relevant to this inquiry, we should table whatever witness sessions we need to undertake that. The Committee will decide on that. I remind people that this inquiry has specific terms of reference. Mr Rowntree was required to be here this morning to deal with specific issues, which he has been doing and will continue to do. This is a ruling: we will come back to Rinmore as a Committee, in closed session if need be, so that we can determine whether there is an issue about Rinmore that requires the Committee's attention. If there are any witnesses who would be required to come along to answer questions, if there are specific questions in relation to the propriety or otherwise around Rinmore, then we will deal with that. However, we are not dealing with it this morning in pursuance of this specific element of the inquiry. I am making that decision this morning. We will return to it as a Committee as a substantive item at our next meeting. If needs be, I am happy to have a closed session at our first meeting after the recess to discuss Rinmore. If we need to bring Mr Rowntree back on that basis, then we will certainly do that. You made the point yourself in your remarks that you are more than happy to return to a Committee of any description to deal with Rinmore if that is required.
4313. **Mr Rowntree:** May I state for your records, Chairperson, and for all members present that I was chair of the Housing Executive? If there are issues that were dealt with by the Housing Executive as part of its business, then I will be more than happy to discuss those issues in this forum.
4314. **The Chairperson (Mr Maskey):** In fairness and in deference to other members, I do not want to go on any longer on this issue. I am making a ruling on it. The Committee will return to the issue of Rinmore on 8 January, and we can discuss it as a dedicated issue to see whether it is relevant. If it is relevant to this inquiry, we will introduce it appropriately. We will gather the evidence, and the officials will accumulate the evidence required to do that. We will then invite whomever we need to, and, if that includes Mr Rowntree, he will be one of the first people to be invited back.
4315. **Mr Campbell:** In terms of the workings of the board, Mr Rowntree, there had been reference to the audit processes. In fact,

- in the programme, you referred to an internal audit that was carried out. How does that work within the board? How does the internal audit section work?
4316. **Mr Rowntree:** The Housing Executive has a dedicated audit committee, which I did not sit on. It was chaired by Anne Henderson, who was also the vice-chair of the board; that was part of her remit. She was the chair of the audit committee for the nine years that I was chair of the Housing Executive. During that period, that committee initiated a substantial number of audits. It is served by an internal audit department resourced by the board.
4317. **Mr Campbell:** Who sits on the internal audit committee?
4318. **Mr Rowntree:** There is no internal audit committee. There is an audit committee of the organisation, chaired by Anne Connolly. It comprises three board members and two independent members.
4319. **Mr Campbell:** Who were they at that time?
4320. **Mr Rowntree:** Anne Henderson, Jenny Palmer and one other board member. I was not involved in the audit committee. There would have been one other board member and two independent members, who were non-executives approved by DSD.
4321. **Mr Campbell:** But can you remember any of the board members other than Jenny Palmer?
4322. **Mr Rowntree:** I think Edna was the other board member on the audit committee at that stage.
4323. **Mr Campbell:** Right. I have just one other question, then, Mr Rowntree. Once the whole Red Sky position had been resolved, in that the issue had passed and the programme had gone out, had you any other dealings or discussions or meetings with people after the programme and the controversy?
4324. **Mr Rowntree:** I left the organisation in June 2012, and I had no other business with the Housing Executive after June 2012.
4325. **Mr Campbell:** You had no other business.
4326. **Mr Rowntree:** With the Housing Executive. My position as chairperson terminated. I resigned in June 2012, and I had no official business with the Housing Executive after June 2012.
4327. **Mr Campbell:** That is why I asked you if you had any discussions. You could have discussions without having business.
4328. **Mr Rowntree:** I had discussions with lots of people around issues.
4329. **Mr Campbell:** Yes, but had you any in relation to Red Sky or the programme?
4330. **Mr Rowntree:** The people on the programme who interviewed me — that is the discussion I had.
4331. **Mr Campbell:** Yes, and that programme went out.
4332. **Mr Rowntree:** Yes, 'Spotlight'. Yes indeed.
4333. **Mr Campbell:** And after the programme?
4334. **Mr Rowntree:** That was after I left office.
4335. **Mr Campbell:** Yes, but had you any discussions after you left office?
4336. **Mr Rowntree:** As part of the interview, I had a discussion with the BBC people around that issue. I was interviewed by them. That is part of the discussion.
4337. **Mr Campbell:** Had you any other discussions with them?
4338. **Mr Rowntree:** No. What are you referring to? I do not know what you are referring to.
4339. **Mr Campbell:** You said you had no further business or dealings with the Housing Executive once you left it.
4340. **Mr Rowntree:** Yes.
4341. **Mr Campbell:** Had you any other discussions with anyone, formally or informally, about Red Sky or the programme or with 'Spotlight'?

4342. **Mr Rowntree:** Discussions in what way? I am mystified as to what you mean. I am a citizen. I am entitled to have a discussion with my family or anyone else. I do not understand where this is going, Chair.
4343. I moved to a position where I became the chair of the Civil Service Commissioners. If I have discussions around matters, I have discussions as part of my role and discussions that take me into other forums. I do not understand the questioning, and I am confused.
4344. **Mr Campbell:** I am not talking about casual conversations with your family, Mr Rowntree; I am talking about any discussions you may or may not have had with the BBC or the Housing Executive about the programme after you left your employment with the Housing Executive.
4345. **Mr Rowntree:** I had no formal discussions with the Housing Executive after I left it.
4346. **Mr Campbell:** Had you any informal discussions?
4347. **Mr Rowntree:** None whatsoever. I had no contact. Why would Housing Executive staff want to talk about Red Sky to me after I left the office?
4348. **Mr Campbell:** I was just wondering why you started your question by saying you had no formal discussions. Had you any discussions?
4349. **Mr Rowntree:** I am confused by what you mean by “discussions”. As a citizen of anywhere, you are entitled to have discussions —
4350. **The Chairperson (Mr Maskey):** There does not appear to be a direct question, so —
4351. **Mr Campbell:** There is a direct question. There is not a direct answer, Chairman.
4352. **Mr Rowntree:** I must tell you that I had no discussions with anyone from the Housing Executive about issues to do with Red Sky.
4353. **Mr Campbell:** And had you any discussions with the BBC?
4354. **Mr Rowntree:** I had discussions. I was interviewed by the BBC.
4355. **Mr Campbell:** After the programme went out.
4356. **Mr Rowntree:** After the programme went out?
4357. **Mr Campbell:** Yes, after the programme went out.
4358. **The Chairperson (Mr Maskey):** Settle down, Gregory.
4359. **Mr Campbell:** Yes —
4360. **The Chairperson (Mr Maskey):** Gregory. Sorry, Mr Rowntree. I am advising you not to answer any further questions if we are going to get the tone of the questions in the way that we just did.
4361. **Mr Campbell:** If have asked the question about four times, Chairman.
4362. **The Chairperson (Mr Maskey):** You got the answer — sorry, Fra — you got the answer from Mr Rowntree, who is basically saying that he does not know what question you are trying to put to him because the questions you are putting to Mr Rowntree could suggest, “Did you have a conversation with somebody when you had a cup of coffee this morning?”. You need to be specific.
4363. **Mr Campbell:** No, Chairman, I made that clear —
4364. **The Chairperson (Mr Maskey):** Fra, hold on a wee second.
4365. **Mr Campbell:** We are not talking about informal discussions with family over a cup of tea or coffee.
4366. **The Chairperson (Mr Maskey):** The last question you asked Mr Rowntree was whether he had any conversation with the BBC after the programme was broadcast. That was a direct question. You have —
4367. **Mr Rowntree:** I said that the only conversation I had with the BBC was about how I felt about the programme. That is a fair response from the BBC.

4368. **Mr Campbell:** Was that after the programme?
4369. **Mr Rowntree:** Yes, indeed. They asked me how I felt about the programme and whether I was traumatised or whatever the case may be. It was a big programme.
4370. **Mr Campbell:** They asked you were you traumatised by the programme.
4371. **Mr Rowntree:** They asked me how I felt, because they knew that it was a big, difficult programme. You saw how I felt during the programme. They followed up and asked. When something like that goes live, they ask you how you felt about it.
4372. **Mr Campbell:** They asked you that.
4373. **Mr Rowntree:** Yes, and I am being honest.
4374. **The Chairperson (Mr Maskey):** OK, thanks.
4375. **Mr Dickson:** Going back to Jenny Palmer, you have, for me certainly, confirmed all that she said —
4376. **The Chairperson (Mr Maskey):** Sorry, Stewart, we cannot —
4377. **Mr Dickson:** Sorry. Mr Rowntree has confirmed for me all that Jenny Palmer said and, indeed, the way and sincerity of what she said to us. Would declarations of interest at board meetings be a regular occurrence across the board?
4378. **Mr Rowntree:** Correct. Every meeting.
4379. **Mr Dickson:** What would the nature of those declarations of interest be?
4380. **Mr Rowntree:** For instance, if you were a local authority councillor and a housing scheme was being proposed for final endorsement, you had to confirm if anyone had approached you as a councillor on any of those issues. If it was a Housing Council matter where the Housing Council was in dispute with the board — and there were times when the Housing Council was not in agreement with board policy, and that is a good thing and a healthy relationship — Housing Council members would have stated that they discussed that at Housing Council and there was an issue on the agenda that they had difficulty with. That is OK, fair and reasonable, and I would take that.
4381. **Mr Dickson:** So there would be a brief explanation of what the issue was about.
4382. **Mr Rowntree:** Correct.
4383. **Mr Dickson:** How was that dealt with in Jenny Palmer's case?
4384. **Mr Rowntree:** Jenny was asked to leave the room. I said, "Jenny, it is a personal issue and you have spoken to me privately about the issue", and I asked her to leave the room.
4385. **Mr Dickson:** Was there any questioning by board members about that?
4386. **Mr Rowntree:** No. The members said to me, "Are you aware of the issue?" I said, "As the chairperson, she has spoken to me privately. It is a personal issue and she feels conflicted. She has asked me to consider it, and I think it is best she leaves the room". And she did.
4387. **Mr Dickson:** And that was accepted without further comment.
4388. **Mr Rowntree:** Without further comment from anyone in the room. I did not want to open up a political discussion in the room, which would have been difficult to manage at that time.
4389. **Mr Dickson:** That, in a sense, is what I am trying to get an understanding of: whether other board members knew what the issue was or not.
4390. **Mr Rowntree:** No.
4391. **Mr Dickson:** OK. I will go back to the email that you received that morning from Mr Sands. Did you inform the board about that email?
4392. **Mr Rowntree:** Yes. It is noted in the minutes that there was an email, and the intervention is recorded.
4393. **Mr Dickson:** What other emails had you ever received from Mr Sands?

4394. **Mr Rowntree:** I had never received an email of that nature, or of any substance or intent, during my previous period as chair.
4395. **Mr Dickson:** Have you ever had any emails from Mr Sands about what might be described as regular rather than irregular business?
4396. **Mr Rowntree:** No. Mr Sands would generally deal with officers in the organisation. He would not be corresponding with me as chair.
4397. **Mr Dickson:** Have you any idea why Mr Sands was motivated to write to you in these terms?
4398. **Mr Rowntree:** As I said at the very start, I do not want to give opinion to the Committee. I just want to deal with the evidence. What I had in front of me was an email that offered an option that I could not consider because the administrators were not in a position to consider the option. The option was ruled out.
4399. **Mr Dickson:** On the basis that Mr Sands is somebody who normally dealt with officials in the Housing Executive, did you hand that email to any other Housing Executive official?
4400. **Mr Rowntree:** It was dealt with by the acting chief executive, Stewart Cuddy.
4401. **Mr Dickson:** With what instruction from you was that handed to him?
4402. **Mr Rowntree:** To find out the purpose of the intervention and what was meant by it. That was a matter for officers.
4403. **Mr Dickson:** That was a matter for officers.
4404. **Mr Rowntree:** Correct.
4405. **Mr Dickson:** What report did you get back in respect of that? Did you seek that, and did you get a report back?
4406. **Mr Rowntree:** After the meeting, when we agreed that we could not proceed, we just let it go because it was irrelevant at that stage. We were not seeking to get into any issue of antagonism with anyone. The email was a matter that could not be dealt with by the board because the administrator was not in a position to take this forward. So, it was set aside.
4407. **Mr Dickson:** But receiving an email from a civil servant who would not normally communicate with your organisation clearly must have rung some alarm bells.
4408. **Mr Rowntree:** Correct, and at 7.40 am as well.
4409. **Mr Dickson:** And given the timing as well. You handed that to the acting chief executive to investigate.
4410. **Mr Rowntree:** To deal with, not to investigate. That is a matter for operations. If Michael Sands needs corresponded with, the chief executive would request someone to correspond with Michael accordingly.
4411. **Mr Dickson:** But, when you put that together with what Mrs Palmer told you, do you believe that those circumstances constitute something that needed investigation?
4412. **Mr Rowntree:** Well, from recollection, the email from Michael Sands makes reference to Mr Brimstone. Therefore, in my mind, it was a continuation of the discussion that Jenny had with me.
4413. **Mr Dickson:** When did you bring to the attention of the board your receiving an email making reference to Mr Brimstone and that you had had a conversation with a board member who had made reference to Mr Brimstone?
4414. **Mr Rowntree:** That morning.
4415. **Mr Dickson:** That morning.
4416. **Mr Rowntree:** Yes, indeed. Everything was brought to the attention of the board, and it is recorded in the minutes.
4417. **The Chairperson (Mr Maskey):** It is at page 185.
4418. **Mr Wilson:** May I just go back, first of all, to the contact that you had with Jenny? You say that she visited your office on two occasions to discuss this.

4419. **Mr Rowntree:** She requested to meet with me, yes.
4420. **Mr Wilson:** Was it discussed again with you, either before the meeting or after, in any other —
4421. **Mr Rowntree:** No. At the meeting on the Monday, she said that she was going to speak to her MP, Jeffrey Donaldson, about the matter. I thought that that was wise counsel. I thought that that was good, because she had a lot of respect for the MP. Again, it goes back to what I said about her respect for the party, her understanding of the party, and her being a very loyal member of the party. I said, “It would be better if you could get this matter dealt with within the party and, more importantly, to get yourself settled as an individual that you feel that the party can deal with this and give you the necessary support.” She felt that that could happen. Then, I said, “Will you meet with me in the morning and update me as to where you are and how you feel about this?” However, she was further traumatised in the morning because she had reflected on it all night and felt that her position on the board had been compromised in relation to this subject matter.
4422. **Mr Wilson:** And there was no discussion about it with her afterwards or ever again.
4423. **Mr Rowntree:** With Jenny, no. I let the matter die. I saw Jenny raise the issue on the programme. I had never been aware of it before the programme.
4424. **Mr Wilson:** I am just asking you this question because it seems to have been relevant when dealing with other members. Outside the board, would you have had any social contact with Jenny?
4425. **Mr Rowntree:** None whatsoever.
4426. **Mr Wilson:** Any contact that you had with her was purely on a board basis.
4427. **Mr Rowntree:** I have known Jenny only as a board member, as a member of the Housing Council and through visiting Housing Council meetings, as recorded by the council. That is the only way I know Councillor Palmer.
4428. **Mr Wilson:** I want to ask a question that has not been asked. In response to Jim Allister, you said that your concern about the meeting with Newco, which Housing Executive officials were not at, and DSD officials were, was that it could give it a commercial advantage in any discussions about a new contract. In what way? What was the content of that meeting that would have given you those kinds of concerns?
4429. **Mr Rowntree:** Let me explain, Sammy. We were well advanced with contract provisions with the adjacent contractors, because you could not expect them to pick up that baton within two weeks. In fact, you would need to give them at least six weeks’ notice to gear up and take on board sizeable contracts, and these were sizeable contracts in response maintenance. They also needed that time to work with the administrator on the TUPE provisions that applied, so that the relevant staff were protected in that regard and transferred to the adjacent contractors, which was the case, by the way. Only a small number — six or eight people — did not transfer. The note was not sent to us. It was only after I left that I saw it. When I saw it, I reflected on where we were travelling. We had a dedicated audit trail in relation to where we were going and discussions that we were having with the administrator. Why were we not included in that audit trail in relation to those discussions with former directors of Red Sky? Why were those people discussing extensions of contracts to Housing Executive arrangements with the administrator without the administrator or the Housing Executive in the room? If those extensions were in place — if an extension of, say, four, six or eight months, or whatever the case may be, had been approved — it is unlikely that the adjacent contractors would have taken the contracts, because there would not have been sufficient time for them to gain financial reward from them to cover their costs, because we

were going to new contracts in March 2012. So, there was a very short time frame for them to run out the balance of the contracts. In that context, it could have been seen as offering distinct commercial advantage to Newco establishing itself to take on board those contracts, and to use the existing resources of Red Sky, but in a sense, bypassing a procurement process, which we were involved in with the other contractors, by simply acquiring the assets of Red Sky.

4430. **Mr Wilson:** Mr Rowntree, this is where I am a bit confused. You have not given us any content of that note that would have given you concern. The nature of the contract was not being discussed. So, what in those discussions, which you saw the note of, caused you fear that information that would give an advantage was being passed to somebody? Do not forget that they would have had to bid, or they would have had to —
4431. **Mr Rowntree:** No, they would not.
4432. **Mr Wilson:** The board would have had to approve the contract.
4433. **Mr Rowntree:** No.
4434. **Mr Wilson:** Well, the Department would not have been issuing the contracts, so the Housing Executive would have had to issue the contract. What commercial information was in those discussions that would have given rise to the company having an advantage over anybody else?
4435. **Mr Rowntree:** We were not copied into the note, so I have seen the note only once. First, I think that the last paragraph in the note refers to the DSD official who says that these matters are matters for the Northern Ireland Housing Executive. I think that is what it says in the note. Secondly, there was no confirmation in that note of the legal standing of the individuals representing Newco. Were they directors? Were they future directors? There was no confirmation of their legal standing. Thirdly, you are right, Sammy, to say that the note is not explicit in that regard. That is absolutely true, and I support

that. However, for me, as the previous chair, the note flies in the face of what was happening behind the scenes, with full departmental and administrator understanding of what we were doing with adjacent contractors.

4436. Let us just say that the board entered into contract arrangements with adjacent contractors, which were implied contracts. We were down the road of implied contracts with adjacent contractors. If we were to have set those aside and extended the contract, we would have been sued by adjacent contractors for breaching the terms and provisions of the contracts in place. That is the first thing. The second aspect is that, if individuals, groups or parties concerned in those discussions were intending to acquire the assets of Red Sky, and those assets could be further enhanced by the extension of an existing contract with the administrator by four to six months, that would have given obvious commercial advantage to those acquiring those assets. That is what I was saying in my response to Jim Allister.
4437. **Mr Wilson:** Yes, but, I have just noted down what you have said. First, you had not seen the note, so you do not know what was discussed. Secondly, the only part that you have noted was that the end of the note indicated that these would be matters that the Housing Executive would have to deal with, yet you come here today and make this sweeping allegation that, somehow or other, this meeting — which you did not see the note of, the only part of which you can remember, which would not have given anybody any commercial advantage, was that these were matters for the Housing Executive to deal with — was designed to give commercial advantage. All I am saying to you, Mr Rowntree, is this: if you make sweeping allegations on the flimsiest of evidence — on the basis of a meeting that you did not have or see the note of — and when you admit that the conclusion was that the Housing Executive would have to deal with these, does that not show a bit of a bias on your part towards the

- Minister and the Department, based on no evidence at all?
4438. **Mr Rowntree:** Can I respond, Chair? First, as the member knows, I did not use the word “designed”. I did not say that this was designed to give rise to commercial advantage; I said that it may give rise to that. Remember what the job of a chair is for an organisation as well as a Minister: it is to protect. I am here to protect the Minister when I am in my role as much as to protect the organisation in that regard. If that had been brought to my attention at that time, I would have been seeking a meeting with the Minister to ask what the basis of it was, because it ultimately could have led to a challenge from adjacent contractors, because we would have been seen to be offering, potentially, commercial advantage.
4439. **Mr Wilson:** Yes, but, with respect, that does not give somebody a commercial advantage. That may lead to other contractors suing the Housing Executive or whoever, but your words were that you were concerned that a commercial advantage would arise from these discussions. That is what you said.
4440. **Mr Rowntree:** Can I elaborate further, Chair? Perhaps the Committee could check whether parties represented at that meeting were also party to the establishment of a Newco, which then acquired the assets of the former Red Sky organisation. If that party did acquire the assets of Red Sky, then by extending the contract, by implication, it would also have gained a commercial advantage from the Housing Executive based on additional work from us outside of procurement, because we would not have been procuring that; we would simply have been extending a provision to the administrators.
4441. **Mr Wilson:** But the Housing Executive would have had to make that decision.
4442. **Mr Rowntree:** No, the point is that that is what was being discussed at that meeting. What I was saying was that, yes, that was the implication of the decision made to us and a recommendation made for the Minister. What I am entitled to know as a former chair — I would have been entitled to know as the chair at the time — was what the standing of the individuals in that room was and what their corporate representation was, because Newco does not mean anything to me. Who did they represent? What was the intention of the representation? That is all that I seek to understand.
4443. **Mr Wilson:** No, and this is the point: that is not what you said. What you said was, and you were trying to cast aspersions —
4444. **Mr Rowntree:** I was not. I want to make that clear —
4445. **Mr Wilson:** Well, you know, anybody listening to this interview would hear someone of your standing coming along and saying that you were excluded from that meeting and that you were concerned that the meeting could give a commercial advantage to this Newco, which you did not know. Then, only after you are questioned about it, you admit that, first, you did not know what was contained in the note of the meeting and that the bit that you did know indicated that the officials made it quite clear that this was a decision that would be up to the Housing Executive. Now your only defence is that some other companies may have sued. However, that does not give any Newco a commercial advantage. It would have had to go through the process of acquiring the assets of Red Sky, and the Housing Executive would have had to make the decision to extend the contract. So, I take it as a direct attempt to discredit the Minister. I will come to that in a minute. You say that you did not mean it in that way, but, when you say that this meeting was held to give somebody a commercial advantage, one can only draw a conclusion that there was something underhand going on. And yet, you have not one scrap of evidence, and you cannot tell us what was discussed that would have given that commercial advantage. All you can say is that the conclusion was that the Housing

- Executive would have had to make the decision at the end of the day.
4446. **Mr Rowntree:** Chairman, maybe —
4447. **Mr Wilson:** It hardly represents giving a commercial advantage.
4448. **The Chairperson (Mr Maskey):** I just want to remind people, Sammy as well, that this goes to the heart of the terms of reference of the inquiry. That is why Jim Wilkinson is quoted in that note of the meeting, reminding people that it is a contractual matter, and it was not just a casual reminder. It was part of a series of very firm reminders from senior officials, including Will Haire. The contract is all of these things.
4449. **Mr Rowntree:** The first thing is that maybe Mr Wilson is aware of the standing of the individuals who were representing the Newco; I am not. The second aspect is that it is the responsibility of the Housing Executive to discuss, in confidence, the issues arising from procurement and the extension of contracts. Therefore, those discussions were outside that confidential arena. Those discussions were in another forum around Housing Executive matters that are privileged, not even to the board but to the procurement side of the Housing Executive. Thirdly, if there was no intention — I believe you; I firmly believe that there was no intention to offer commercial advantage in calling the meeting — why was the meeting summoned? Why had those individuals access to that meeting without the Housing Executive being present? Why did those individuals not approach the administrator to meet with the Housing Executive and the administrator in that regard? Why did they not approach the Housing Executive, for us to convene a meeting? What access had they to the Minister that went above the Housing Executive and above the administrator? That is a very considerable issue for a chairman of any organisation. When I read the note, I was concerned. That is all I will say on the matter.
4450. **Mr Wilson:** You were concerned about commercial advantage, and you have indicated that you have no evidence that any commercial advantage was obtained through that meeting.
4451. I will move on to another issue. You have talked about interference in commercial contracts. Had you contact from any other Ministers while you were chairman of the Housing Executive, or were you aware of contact with the Housing Executive from any other Ministers about this or any other maintenance contract?
4452. **Mr Rowntree:** I am on record as having said that the intervention on the Red Sky contract poor performance was referenced by the former Chair of the Public Accounts Committee (PAC). I said that that reference was not helpful during ongoing investigations and discussions by the Housing Executive board.
4453. **Mr Wilson:** And no other Social Development Minister raised the issue of termination of contract.
4454. **Mr Rowntree:** Oh yes. We were in discussions as a board, and we were apprising the Department of them when Alex Attwood was Social Development Minister.
4455. **Mr Wilson:** Was he the Minister who was referred to by Brett Lockhart, in the advice that he gave to the Housing Executive? He said:
- "I appreciate that there are strong political pressures being exerted but as a public body, the Executive is subject to a different type of public scrutiny than politicians and must, in my view, act with proper circumspection even when that means taking a longer route."*
4456. **Mr Rowntree:** No. Brett Lockhart QC, who gave that advice in April — was it April?
4457. **Mr Wilson:** November 2010.
4458. **Mr Rowntree:** November 2010. When Brett Lockhart offered that advice to us, it was on the back of reports that we had made and the various political commentaries that had taken place. We copied him in on political commentaries from the media around the Red Sky

- intervention. There were numerous political commentaries around Red Sky.
4459. **Mr Wilson:** So, who were the political pressures coming from?
4460. **Mr Rowntree:** From political individuals and from the parties —
4461. **Mr Wilson:** Which political individuals?
4462. **Mr Rowntree:** People in west Belfast; some people in Lisburn; people in Poleglass —
4463. **Mr Wilson:** But you never had any other Minister write to you about this.
4464. **Mr Rowntree:** Not that I am aware of. They never wrote to me, as chairperson.
4465. **Mr Wilson:** That is funny, Mr Rowntree, because in October 2009, you responded to a letter from the then Minister, Margaret Ritchie.
4466. **Mr Rowntree:** Was that on Red Sky?
4467. **Mr Wilson:** Yes.
4468. **The Chairperson (Mr Maskey):** Could you give us the page number?
4469. **Mr Wilson:** It is on page 192; sorry. She wrote to you on 7 October, and you responded on 23 October.
4470. **Mr Rowntree:** What was the correspondence about?
4471. **Mr Wilson:** It was about Red Sky and the —
4472. **The Chairperson (Mr Maskey):** Hold on a wee second until we see whether we can get a copy for Mr Rowntree.
4473. **Mr Rowntree:** I understand the context of this, yes.
4474. **Mr Wilson:** So, other Ministers had contacted you.
4475. **Mr Rowntree:** Yes, but that was after we initiated an inquiry. That was the Minister confirming that we had made her aware of the inquiry. She confirmed that complaints had been raised but she had no intention to direct the board to do anything.
4476. **Mr Wilson:** Actually she expressed concern about the terms of reference of the inquiry and asked for them to be extended.
4477. **Mr Rowntree:** Yes, but the inquiry was already under way and the terms of reference were not extended.
4478. **Mr Wilson:** That is the point. We have some written correspondence, although I could not find it in the pack, with her successor, Alex Attwood, regarding Red Sky.
4479. **Mr Rowntree:** There would have been correspondence, yes.
4480. **Mr Wilson:** It is not that Nelson McCausland was the only person who was making representations. Around the same time, the barrister who was instructing the Housing Executive — I assume that this must have come as a result of some correspondence from the Housing Executive, which we have not got; I am sure that he did not just lift this himself — referred to strong political pressures and to terminating the contract.
4481. **Mr Rowntree:** Absolutely. People in the media called for that termination in advance. That is not their right, nor would we respond to that. The advice of the board to the QC at the time was to maintain an independent position and give the board independent advice; not to take account of political interventions but to take account of the necessary information provided by the organisation in relation to the performance of Red Sky.
4482. **Mr Wilson:** Mr Rowntree, you must have been responding to it, because you asked for legal advice as to whether or not you should respond to it. You actually were considering buckling to this political pressure.
4483. **Mr Rowntree:** I asked for legal advice in response to what?
4484. **Mr Wilson:** To the demands that were being made, you say, through the media. I suspect that they were a bit more direct than that. You must have been responding to that, or else you would not have asked for legal advice as to

- whether or not you could terminate the contract.
4485. **Mr Rowntree:** No, no, no. You have to get the choreography right here. You are totally out of context about the relationship. The QC was engaged after we completed the inquiry. The recommendation of the audit committee at that stage was to terminate the contract. The board sought legal cover in that regard on the provisions that would apply to the board in terminating the contract. You will recall that, in the legal advice, it stated that we could terminate forthwith and that there were provisions that would apply in the contract. The board took the decision to give the maximum term of notice, which is a termination period of 13 weeks. The legal advice was not brought about by extensive political interference.
4486. I want to elaborate. I welcomed Minister McCausland's discussions on the matter. However, I would have preferred those to be discussions with, rather than directions to, the board. That is the issue on which we went into conflict. The board was quite prepared to take considerations on board. I think that any public body is always prepared to take considerations on board. We also had to then go and seek legal advice on that correspondence from Minister McCausland, which was the basis of the reply that was sent to the Minister.
4487. **Mr Wilson:** You say that it was not as a result of political pressure, yet you obviously instructed or indicated to the barrister that there was political pressure.
4488. **Mr Rowntree:** Absolutely. Yes, indeed.
4489. **Mr Wilson:** You indicated that there was political pressure to terminate the contract. However, even after receiving that advice, and the advice actually did not state that you could terminate forthwith —
4490. **Mr Rowntree:** The advice to the board was that we could terminate forthwith. I stand over that.
4491. **Mr Wilson:** Well, it was not. In fact, since we have a copy of the legal advice, we can see that that was not the case. Even after that, you met representatives of Red Sky, did you not?
4492. **Mr Rowntree:** Correct.
4493. **Mr Wilson:** That was to discuss how termination could be avoided if Red Sky was prepared to make a payment. Now, despite the fact that the claim was worth millions of pounds, what was the offer to Red Sky at that stage?
4494. **Mr Rowntree:** The issue was not simply about finances; the issue was about improving the performance indicators of its activity, which you would well appreciate. The indications from ASM Howarth were, I think, £37,000 at that stage. That extrapolated out to about £1 million across all the contracts. The intention at that stage was to seek some resolution of this and to maintain the sustainability and viability of Red Sky. Here was a proactive situation undertaken by the organisation. You may recall that that was a reduced finding at that stage because we had not done the extensive inquiries and were working through them. At that stage, consideration would have been given to putting proposals to the board to continue to work with Red Sky and move forward through a process of resolution as opposed to one of termination. Red Sky refused that, not the board. Red Sky refused to accept that offer.
4495. **Mr Wilson:** When Red Sky's representatives gave evidence to us, Mr Rowntree, they explained why they had refused that. They claimed that they were being penalised for the chaos that existed in the Housing Executive and its contracts, whereby, for example, the Housing Executive had encouraged them to apply for cleaning up two gardens instead of one garden if there happened to be too much work. When it came to a screw being out of a door, the Housing Executive simply charged them for the whole door's not being fitted, so that rather than 2p for a screw, they had a £200 fine. They argued that the overpayment that was claimed was

- as a result of instructions that they got from the Housing Executive. They had been bitten with it before, and we not prepared to do it again. Do you accept that there was absolute chaos in the Housing Executive as to how those maintenance schemes were run?
4496. **Mr Rowntree:** I do not accept that there was chaos. We —
4497. **Mr Wilson:** Well, do you accept that those practices occurred?
4498. **Mr Rowntree:** If I may respond. The Housing Executive did have issues among its personnel who were engaged with response maintenance. It is a matter of record that disciplinary procedures were issued among the management team. The management team itself dealt with other personnel in the organisation who were involved in such matters. But, in the main, the indicators were not around the performance of Housing Executive staff, but around the overcharging and a sustained pattern of overcharging from Red Sky, which goes beyond performance into other areas.
4499. What we had was an attempt at an olive branch with Red Sky; for it to meet halfway and to, at least, see the board to discuss the potential of moving forward, but its position became absolute to the point that, in fact, the managing director stormed out of the room and was not prepared to have that discussion. Others were trying to calm the situation down because the person could not at least address the positivity of the offer on the table. Here was an opportunity to maintain and sustain a relationship with the Housing Executive, and it was refused.
4500. **Mr Wilson:** You said that people were disciplined. Do you accept that this was not about discipline? This was about a policy, which you oversaw as chairman. Maintenance contracts did not fit into a code. The Housing Executive just made up how payments were made.
4501. **Mr Rowntree:** No, that was not the case.
4502. **Mr Wilson:** You then tried to blame some poor wee official down at ground level for allowing claims through that were claimed to be fraudulent or overpaid or to blame contractors.
4503. **Mr Rowntree:** That is unfair, and I refute it. A number of reports were published subsequent to the termination of the Red Sky contract that show no blame on behalf of the board. The Committee has also seen reports showing that management withheld information going to the board about response maintenance and planned maintenance contracts. They also show that the board itself made every effort though its audit committee, the internal audit function and the repairs inspection unit to put betterment in place. We were also working through archaic and outdated contract provisions, which were in place before I arrived as chair. Those contract provisions were going to be replaced in March of the subsequent year with enhanced performance indicators for all contractors. This was not about singling out one organisation. I would not want you to be seen as defending one organisation that said in the media that it charged a public authority for buildings that did not exist. I presume that you are not doing that. You are putting it to me that both the Housing Executive and Red Sky had lessons to learn from this process. I am sure that you agree.
4504. **The Chairperson (Mr Maskey):** What we are saying is not academic, because all these issues are very relevant. There have been, however, a number of reports, which we are dealing with at phase 2 of the inquiry. The recommendations flowing from them identified failures of contracts and the management of contracts. We can talk here for as long as we wish, but they are all established facts. We can now have an exchange of opinions on whether it was bad or worse, chaotic or the reverse. At the end of the day, we know that there were a number of reports from the regulatory bodies identifying significant failures. Our job in this inquiry, particularly in phase 2, is to try to determine and to satisfy ourselves on behalf of the public that lessons have been learned and that measures are in place to redress those

- issues satisfactorily and prevent any recurrence. I am just making a point about what has been established.
4505. **Mr Wilson:** I appreciate that. I am very interested in what Mr Rowntree said about these Spanish practices or whatever you want to call them that led to overpayments. They were in place before he became chairman, were tolerated for the seven years that he was chairman and were going to be changed only in March 2011. Do you not think, Mr Rowntree, that, if you were aware, as chairman of the Housing Executive, of those Spanish practices — call them what you will — you really should have got around to resolving them a bit more quickly than seven years?
4506. **Mr Rowntree:** The board and I would like to have been in a position to resolve them. The sad situation is that it was a fixed term contract. Contract provisions cannot be altered without formal redress by the contractor. No contractor was going to agree to any redress on those issues. We had to work at enhancing our own internal regulatory provisions to make sure that we were in a position to interrogate the data and the information in a more robust fashion and also to be prepared to deal with enhanced performance indicators under the new contract provisions. These matters came to light in 2010 as a result of action taken by the board in relation to investigations into contractors. The board was not aware of irregularities before this, as they had not been brought to its attention. If the board was not aware and everything seemed to be in order, how was it supposed to take action?
4507. **Mr Wilson:** Either the board runs the Housing Executive, or it does not. Some of the contracts were awarded after your appointment. They had not been running for seven years at this point. Even if the practices that led to overpayments were in existence before you took over as chairman of the Housing Executive, it surprises me that the board never made any attempt to change them until this situation arose. It calls into question how effective your chairmanship of the board was.
4508. **Mr Rowntree:** I take exception to that. Chairman, that affects my personal integrity.
4509. **The Chairperson (Mr Maskey):** I will allow you in in a wee minute.
4510. **Mr Wilson:** My last point is that, if these Spanish practices were going on —
4511. **The Chairperson (Mr Maskey):** I do not want the Spanish consul to be on to us.
4512. **Mr Wilson:** These were dodgy practices, whereby officials on the ground were having to authorise payments that they knew should not have been made, because they had no other way of making payments for exceptional work. If that was the case, was the Minister not then correct in asking why you would terminate a contract with one group when quite clearly — you have told me that this was established practice in the Housing Executive — other groups were probably being overpaid as well? Was it not reasonable for the Minister to make that argument? In your answer to Mickey Brady, you argued that, although you knew this, you did not believe that the bona fides of the other contractors was in question. However, you have just admitted to me that everybody was overpaid, because that was the way the Housing Executive did it.
4513. **Mr Rowntree:** No, I did not say that. I said that we had performance indicators, Sammy. The board took every reasonable step that it could take to get to the crux of the problem. Remember that the Housing Executive is a housing authority; it is not an investigative police authority. As chairperson, I asked the Serious Fraud Office to intervene in 2011 because I had concerns. If there were inappropriate third-party relationships outside the Housing Executive, we as the Housing Executive had no method of intervention to analyse those relationships. Under my chairmanship, the board did initiate quite a number of inquiries and investigations into a number of issues in the organisation — rightly so. We do not in any way apologise for that. There were no extensive negative performance

- indicators for other contractors to draw us straight to them like a magnet. We were working through a review of all contractors, and, as chairperson, I would have sought the support of the Minister — be it Alex Attwood, Margaret Ritchie or Nelson McCausland — to assist me and to endorse what we were doing as a board in taking those matters forward and arriving at a solution. That is what I would have expected, and that is what I was looking for. I was not looking for anything other than that.
4514. **Mr Wilson:** Would the Minister not have been negligent in his duty if he had allowed you to award contracts to firms that, as you indicated in your answer to Mickey Brady, were also under investigation? Would this not have been a case of rewarding with additional work firms that the Housing Executive already had concerns about?
4515. **Mr Rowntree:** Let me pick this up. We do not want to stray into the issue of response maintenance contracts. I need to respond to this briefly.
4516. **The Chairperson (Mr Maskey):** We need to be very careful because we are dealing with separate matters. Let us listen very carefully.
4517. **Mr Rowntree:** I will stick to the Red Sky provisions. There were contract provisions in relation to adjacent contractors. There were no indicators for any of those contractors that warranted us refusing to issue or authorise contracts. We understand that one of those adjacent contractors removed themselves from that contract provision and did not want to take up the offer. That was a voluntary decision. There was no intervention or instruction by the Minister not to award those contracts. What you are saying, therefore, is both correct and incorrect, in that the Minister was not in a position to refuse us permission to award those contracts. Those were in the existing contract provisions, and the Housing Executive had a right to award them.
4518. **Mr Wilson:** You could, however, have been awarding contracts to firms that were equally guilty of overcharging. In fact, they were probably rightly overcharging because you encouraged them to do so.
4519. **Mr Rowntree:** Subsequent reports will indicate whether we were right or wrong on that.
4520. **The Chairperson (Mr Maskey):** It is hypothetical, anyway. I will invite Brian to make any concluding remarks at the end of the evidence session.
4521. **Mr Rowntree:** Thank you, Chairperson.
4522. **Mr Allister:** Is Sammy finished?
4523. **Mr Wilson:** Yes.
4524. **Mr Allister:** I want to touch on a couple of things. When it comes to the awarding and the revocation of contracts, do I discern that the Housing Executive's view would be very emphatically that that is an operational matter for the Housing Executive?
4525. **Mr Rowntree:** That is absolutely correct.
4526. **Mr Allister:** How important is that in the juxtaposition of the relationship between the Housing Executive and the Department?
4527. **Mr Rowntree:** It is removed from the Department. The Department holds us to account for the processes that surround our rewarding of contracts, but it has no right of authority in relation to the authorisation process.
4528. **Mr Allister:** I want to go back to the meeting on 27 June from which you and the administrators were excluded. When the Housing Executive is dealing with a company that goes into administration, who has the legal authority to deal with you?
4529. **Mr Rowntree:** I have spent a part of my life with such provisions. The legal authority is the administrator, because it is the agent of the court.
4530. **Mr Allister:** What is the status of the company in administration?
4531. **Mr Rowntree:** The company is set aside, and the directors are set aside. The

- administrator speaks and acts on behalf of the company.
4532. **Mr Allister:** Yes. At paragraph 4 of the minute of that meeting from which you were excluded, it says that Peter Cooke, who I understand had been —
4533. **Mr Rowntree:** A former managing director.
4534. **Mr Allister:** — a former managing director of Red Sky:
- “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”.*
4535. What does that convey to you?
4536. **Mr Rowntree:** That was my concern about the transfer of potential commercial opportunity.
4537. **Mr Allister:** Yes. The minute continues:
- “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.”*
4538. **Mr Rowntree:** Yes. Those were the terminated contracts that were now under the direction of the administrator.
4539. **Mr Allister:** The minute goes on:
- “This created concerns for the future existence of the company as without the NIHE contract the business was not viable.”*
4540. So what we have here, Mr Rowntree, seems to be a company in administration with no legal standing being met by the First Minister, the Minister for housing and other politicians from the same party, and that company of no legal standing making a plea and making it plain that their game plan was to establish a new company to acquire the contracts that would make the company viable. Is that a fair representation?
4541. **Mr Rowntree:** I do not want to give a view on it. What I will say is that, for me, it presents a difficulty in terms of the statements made that, without the contracts, the operation is not viable. Those contracts are not matters of discretion for the persons in that room. Those are matters that can be considered only by the two parties absent from the room, which were the administrator and the Housing Executive.
4542. **Mr Allister:** What does that make you feel about the absence of those two relevant parties?
4543. **Mr Rowntree:** As I said, I need to know the standing and the structure and the official standing of the meeting. I can comment only if I know that.
4544. **Mr Allister:** The Minister goes on to say that, if there could be an extension to the end of August:
- “the proposed new company might ... be able to progress matters.”*
4545. Do you read that as enabling the company to do the very thing Mr Cooke had been talking about — namely, acquiring the contracts that would keep the new company viable?
4546. **Mr Rowntree:** The statement reads — if it is a flow from the third paragraph — that if, by the end of August, we give approval to the extensions of the contracts, the viability of the Newco is assured.
4547. **Mr Allister:** How does that sit with the independence of the Housing Executive as having control of the contracts itself as a purely operational matter?
4548. **Mr Rowntree:** In a way, it bypasses the procurement process, but it also breaches the provisions of the existing contract because we were already in advanced discussions with adjacent contractors on those provisions, and, prior to our board meeting on 5 July, we had a confirmed email from the administrator saying that they were not in a position to undertake that work and extend the contracts.
4549. **Mr Allister:** What you were then facing on 5 July was correspondence from the Minister asking for a six-month extension in that context, amended on that morning by the email originating from Mr Brimstone to four months. It is hard to escape the conclusion, is it not, that that all ties back pretty indisputably

- to the Minister seeking to get more time for the company to progress matters?
4550. **Mr Rowntree:** If the recommendation in the email that morning had referred to that meeting and enclosed the note of the meeting, we would have been in a clearer position to understand the background to the option. We had no idea what the option was supported by.
4551. **Mr Allister:** Yet you were quite conscious, or had you been kept in the dark about that?
4552. **Mr Rowntree:** I did not know about this meeting, so I was not aware of it. The board was not a party to those discussions. Whether that was deliberate or an oversight, the board was not party to the discussions.
4553. **Mr Allister:** Nor was the administrator.
4554. **Mr Rowntree:** Nor were the administrators.
4555. **Mr Allister:** Was the request to the Housing Executive to meet the new company?
4556. **Mr Rowntree:** No.
4557. **Mr Allister:** I think, in fact, Mr Rowntree, we have an email trail —
4558. **Mr Rowntree:** Oh, no —
4559. **Mr Allister:** — which suggests that it was and that the Housing Executive declined because the new company would not say who it was.
4560. **Mr Rowntree:** No, I thought that you meant “new company” as in the incorporated entity.
4561. **Mr Allister:** No.
4562. **Mr Rowntree:** OK. We had a request to meet an unidentified party. We asked the administrator — that is proper and right because, as chairperson and chief executive, we wanted a proper record of who exactly we were meeting and in what context we were meeting them — to confirm the exact terms of engagement and the bona fides of the organisation that we were meeting. They could not provide that to us, and we refused to meet.
4563. **Mr Allister:** The Housing Executive had previously met —
4564. **Mr Rowntree:** Red Sky.
4565. **Mr Allister:** — a potential bidder for Red Sky.
4566. **Mr Rowntree:** Yes, that is correct, and it was on the instructions of the administrator, to provide some context to the provisions around existing contracts and whether they could acquire those. We told them that they could not do so either.
4567. **Mr Allister:** Then you had the request to meet unspecified people about the acquisition of the same contracts.
4568. **Mr Rowntree:** Correct.
4569. **Mr Allister:** And you refused.
4570. **Mr Rowntree:** The issue was that we had the bone fides of the previous people. They were an incorporated entity, the directors’ names were forwarded to us, and we knew who we were meeting. Remember, the people who were suggested to us at that stage were the previous directors of Red Sky. We asked the administrator whether they were representing the administrator, and they said that, no, they were representing a Newco. We asked what the intention of the Newco was, and they said that they were in discussions with them. We needed to know what that intention was because that could have compromised the position of everyone in the room. Clearly, that note is testament to that.
4571. **Mr Wilson:** In relation to the last question that Jim asked, after the meeting of 27 June — as you quite rightly pointed out, the people who attended the meeting were informed that it would be a matter for the Housing Executive and for the administrator — the Minister wrote and asked that consideration be given to a six-month extension of the contract. Is that any different from Margaret Ritchie writing and asking you to extend the terms of reference? Is it not perfectly legitimate for a Minister to ask you to consider a certain course of action?

4572. **Mr Rowntree:** Minister Ritchie was writing about an ongoing inquiry. The terms of reference were such that, if the Minister had concerns — I appreciate that even a senior departmental official had concerns about the terms of reference — those would be matters for consideration by the organisation. However, in this case, it was a matter of an ongoing procurement exercise around contracts and the potential to award a contract, under base of extension, to a new party, because we were not awarding that contract to the administrator. The administrator had already confirmed to us that the administrator could not undertake that and could not give us the necessary guarantees in relation to the extension. Therefore, that becomes a matter of procurement. It is not even a matter for the board. The board does not involve itself in procurement; it is outside procurement. It is an operational matter for the organisation and must be retained in that independent fashion. That is where I leave it. The Minister is entitled to write, but, in my view, he leaves himself exposed to a little bit of risk of potentially being seen as interfering in a procurement process. That is all that I will say.
4573. **Mr Wilson:** Let us get this clear: he was not instructing. In light of a meeting where it was suggested that there was a way of saving x number of jobs and of ensuring that contracts were not handed to companies that may have been guilty of the same as Red Sky or worse, because it had not been ascertained at that stage that that was not the case, it is perfectly legitimate for a Minister to ask, in light of those facts, that a certain course of action be considered.
4574. **Mr Rowntree:** The Minister obviously reflected very carefully on that decision going into writing. We were not aware of the named party who the Minister was obviously requesting us to consider, because the minute of the meeting of 27 June refers to ongoing discussions between individuals and the administrator in relation to establishing the Newco. So, the Minister was privy to that information when he wrote to me. He did not offer that information to me. I was not aware of that meeting.
4575. Also, the Minister would know that any information he held in relation to that needs to be offered at that stage so that we do not then consider it as lobbying for a particular organisation or groups of individuals in relation to contract provisions. The letter from the Minister clearly talked about extending the contract, but to who? The administrator had already confirmed to us that they were not in a position to do that. So, who was this extension in favour of? As I have said and repeat now, we were already well advanced with awarding contracts to adjacent contractors within the existing contract provisions, and that was done through an internal arm's-length procurement process.
4576. **Mr Wilson:** Whether it was possible to do it or not, because of the issue that you had with the administrator, all I am trying to establish is that, for a Minister to give reasons why he would like a certain course of action to be considered is perfectly legitimate.
4577. **Mr Rowntree:** That is absolutely right, Sammy. The Minister is entitled to write to me with matters for consideration, and I accept that.
4578. **The Chairperson (Mr Maskey):** No other members have indicated that they want to ask questions. Brian, you said earlier that you wanted to respond to some remarks, so you have an opportunity now to make any winding-up remarks that you want. You should feel free, as the Committee will after this meeting, to correspond. We may want to follow up on things, and I extend a standing invitation to you, as to all other witnesses, to do the same. Have you any concluding remarks?
4579. **Mr Rowntree:** I have. I appreciate the openness and frankness of the Committee; it is a sign of good governance in any democratic framework. I am a big supporter of the independence of Northern Ireland in terms of its democratic framework. We

need the Assembly, and we need this retained.

4580. With respect to this Committee hearing, I do not want this to be personalised against me. I was the chair of a board, a corporate entity, and that corporate entity made the decisions. In your reflections, I ask you to make sure that the board is retained as a plural. The board is not an individual. I am not the Housing Executive; I was just the chairperson of it at that time and was privileged to be so. Also, I want to make sure that the integrity of the organisation is not called into question for what are issues surrounding individuals internally and organisations externally. In the main, the organisation continues to provide a wonderful service to Northern Ireland and has done so in the past.

4581. I want to say that this was a matter where I felt, as chair, that the board acted appropriately and endeavoured to put in place reasonable measures to deal with an issue. I said that I would not give views, but you have asked me for conclusions. To sum up, I think that it would send a wrong message that a public authority cannot terminate a contract on the basis of evidence provided to that public authority after extensive investigation. I ask the Committee to consider those as my closing remarks.

4582. **The Chairperson (Mr Maskey):** OK, Mr Rowntree, thank you for your attendance, and, as I said, if you have anything that you want to add, feel free to do so, and the Committee may wish to return to you at a future date. Thank you very much.

## 8 January 2015

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Maurice Devenney  
 Mr Stewart Dickson  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Mr Michael Sands                      *Department for  
 Social Development*

4583. **The Chairperson (Mr Maskey):** Could I then formally welcome Michael Sands to the Committee this morning? You've already heard, Michael, that the Committee has taken a decision in regard to legal advice, and you're attending here on a voluntary basis. You've opted to take your evidence under an affirmation this morning, so, on that basis, I ask the Clerk to bring you round a copy of the affirmation. I would advise you, obviously, and remind you that you do know your legal rights in terms of if you wish not to answer a particular question, and that's entirely a matter for yourself to do that.
4584. **Mr Michael Sands (Department for Social Development):** I, Michael Sands, do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be truthful and honest and that I will give the Committee all such information and assistance as I can to enable it to discharge its responsibilities.
4585. **The Chairperson (Mr Maskey):** OK. Thank you. OK, members, so we are now open. Michael, do you want to give any opening statement or anything this morning to the Committee?

4586. **Mr Sands:** No, Chair; my original submission, which I made to the Committee on my two previous appearances on this issue.
4587. **The Chairperson (Mr Maskey):** OK. So, members?
4588. **Mr Brady:** Thanks, Michael. Councillor Palmer, previously in evidence, told the Committee that you had relayed a conversation to her that you had with Mr Brimstone about the 1 July phone call. If I can quote from that, she told us:
- "Mr Brimstone came to me personally. He told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board."*
4589. In a previous evidence session, you denied that you had said this to Councillor Palmer, so there's obviously a conflict. I would just ask you to explain that, if possible.
4590. **Mr Sands:** My recollection of this casual conversation, as I continue to refer to it, is that, in relation to the comments which Mrs Palmer made, I did not say those words. If you look at actually what she said:
- "Mr Brimstone came to me personally",*
4591. I think it was teased out at the previous meeting that I do not have the sort of relationship with Mr Brimstone where he would come and tell me anything personally. So, there is no fact really to — there is no reason why I would say that because it is not in his nature and not in his psyche to do that.
4592. **Mr Brady:** Well, you know, I mean, I don't think you have to have a personal relationship with somebody to have a conversation with them about presumably what would be considered a work-related issue. So, you're saying really that there is a conflict there and that was not said.

4593. **Mr Sands:** Well, there are two recollections of a particular event on a specific date which is now three and a half years ago. My recollection is, as I have said, I did not say those things.
4594. **Mr Brady:** OK. Thank you.
4595. **Mr Allister:** Mr Sands, you remember the discussion on a previous occasion about the issue of the sending of the email of 5 July. You told us that Mr Brimstone came to your room.
4596. **Mr Sands:** Yes.
4597. **Mr Allister:** I think you said that a number of times — that he came to your room — and you painted the scene of it being 7.30 in the morning and that sort of thing. Mr Brimstone, when he gave evidence to us, appears to dispute that. I say “appears” because Mr Brimstone’s evidence has been equivocal on a number of occasions. There seems to be dispute about that. How sure are you that he came to your room that morning?
4598. **Mr Sands:** I am very sure.
4599. **Mr Allister:** Have you a mental picture of him physically standing there in your room?
4600. **Mr Sands:** Yes.
4601. **Mr Allister:** Your room — just help us with the geography — is it in the same complex as Mr Brimstone’s room, for example?
4602. **Mr Sands:** It is in the same building, but Mr Brimstone would work on the fifth floor. I work on the second floor.
4603. **Mr Allister:** Right. Mr Brimstone suggested to us he wouldn’t have even been in the office by 7.30, but you’re quite clear that he came to your office that morning.
4604. **Mr Sands:** Yes.
4605. **Mr Allister:** And gave you the instruction to send this email in the terms that you sent it.
4606. **Mr Sands:** Well, I think there’s been some discussion already about whether it was an instruction, but he did ask me certainly to send the email.
4607. **Mr Allister:** He asked you to. He was initiating the sending of that email.
4608. **Mr Sands:** Yes.
4609. **Mr Allister:** And you have no doubt about that.
4610. **Mr Sands:** None.
4611. **Mr Allister:** In respect of that email, subsequently, in evidence, there was the issue raised about the search for that email, and you were very assertive that no one would need to go looking for that email because it was on the system. In fact, this Committee now knows, Mr Sands, it wasn’t on the system at that time. Are you aware of that?
4612. **Mr Sands:** Yes.
4613. **Mr Allister:** So, how then were you able to assert to us that it was on the system when it wasn’t?
4614. **Mr Sands:** May I give a chronology of events, as far as I am concerned, Chairman? The email issued from me, as you are aware, at 7.40 that morning on 5 July. It was copied to Stewart Cuddy, the chief executive of the Housing Executive, and to Jim Wilkinson. It was acknowledged at 10.00 that morning by the Housing Executive and copied again to the head of the legal department and head of procurement. It then was discussed the following — sorry, that morning in the Housing Executive board, and each of the board members and senior staff attending got copies of the actual minute. That was on 5 July.
4615. On 7 July, the Minister wrote to the chairman of the Housing Executive accepting that, in fact, the Red Sky contract had to be terminated. There was nothing really further as far as that email was concerned until the ‘Spotlight’ programme in July ‘13, followed then by the commencement of this inquiry in September ‘13 and the papers which were presented as requested under FOI. Now, I have no input as far as the collation of papers is concerned.

4616. **Mr Allister:** For FOI.
4617. **Mr Sands:** For FOI requests. I throw my hands up immediately and say I should have actually asked someone to put that email on TRIM. It was one email which, for everyone else, was available — sorry, had copies of, as far as the executive etc was concerned. Whenever —
4618. **Mr Allister:** Sorry, can I just stop you there? Are you accepting it was your responsibility to put it on TRIM?
4619. **Mr Sands:** To ask someone to put it on TRIM for me, yes.
4620. **Mr Allister:** To see to it that it was put on.
4621. **Mr Sands:** That it was recorded on TRIM, yes.
4622. **Mr Allister:** And have you any explanation as to why that didn't happen?
4623. **Mr Sands:** That is why I am trying to set out that chronology of events and the way things were moving rather quickly. So, two days after I sent that, the letter had been sent from the Minister to the chairman saying, really, "end of story", because the contract was being terminated. There was nothing further in that until July of '13. So, two years later, when the 'Spotlight' programme then commenced, papers again were provided as far as the Committee is concerned, but, again, I do not actually collate those papers and they were not copied to me to see just what was available. I had the conversation with Jenny Palmer then in September of '13, and I went off ill on 1 January, this time last year. I was due then before the Committee as well and I was ill, not returning until June.
4624. When the papers were being prepared for me for my first session at this particular Committee, a copy of the email was in that. I did not know that, in fact, I had forgotten that I had asked or should have asked to have that email put on to TRIM, but it was on TRIM when the papers were presented to me and moved forward. It was only until I saw the letter to the Committee from Susan McCarty setting out that there had been extensive research, I think was the terminology used, to try and find that. I wasn't in the office; I was off ill at that particular time.
4625. **Mr Allister:** So, when you told this Committee previously that Mr Brimstone would have no reason to be in a flap looking for this email because it was on the system, in fact, it wasn't on the system. You assumed it was.
4626. **Mr Sands:** I had assumed it was, but it was also on the Housing Executive system. They would have —
4627. **Mr Allister:** Yes, but Mr Brimstone wouldn't have access to that.
4628. **Mr Sands:** No, he would have to ask for it.
4629. **Mr Allister:** Indeed, Mr Brimstone tells us he personally doesn't have access to the TRIM system. He would have to ask someone else to look for it. Is that right?
4630. **Mr Sands:** Yes, I have repeatedly said that.
4631. **Mr Allister:** But it does rather cast in a wholly different light your dismissal of the suggestion that he would be in a flap looking for this email because your answer was, "Why would he? It would be on the system".
4632. **Mr Sands:** I don't think I said it in that particular way or gesticulated in the way you have suggested.
4633. **Mr Allister:** Perhaps not.
4634. **Mr Sands:** I simply said that I didn't say that.
4635. **Mr Allister:** It wasn't on the system and, therefore, if he was looking for it, he wouldn't be able to find it.
4636. **Mr Sands:** If he was looking for it.
4637. **Mr Allister:** If he was looking for it.
4638. **Mr Sands:** I was aware of the email, of course, because I had sent it and because of the circumstances under which it had been sent. So, I was fully aware it was sent.
4639. **Mr Allister:** Yes, but, to you, it was only one of many emails you would send.
4640. **Mr Sands:** It was, but this was a particular one, with, as you say at the

- start, I remember Stephen standing at my door.
4641. **Mr Allister:** Just remind us why it was a particular email.
4642. **Mr Sands:** Because Stephen Brimstone came down to ask me to send it.
4643. **Mr Allister:** That plus the content of it.
4644. **Mr Sands:** We discussed, yes, what it should say.
4645. **Mr Allister:** Were you ever asked by anyone about that email?
4646. **Mr Sands:** I don't believe so, because, I mean, it went on 5 July after 7 July, when the Minister's letter was really "End of story". We had moved on with our lives to deal with the other important issues as far as I was concerned.
4647. **Mr Allister:** And you are quite clear to us, during the FOI search, you had nothing to do with that. You had no —
4648. **Mr Sands:** No.
4649. **Mr Allister:** We have been told in that letter that you referred to that a hard copy print of the email was recovered some time after February 2014. You have pointed out that's a time when you were off.
4650. **Mr Sands:** That is correct.
4651. **Mr Allister:** So, you don't know where that hard copy came from.
4652. **Mr Sands:** I was off. That said, it was around 11 April. I was on long-term sick leave from 1 January 2014 until mid-June 2014.
4653. **Mr Allister:** But somebody had obviously printed off the email in hard copy.
4654. **Mr Sands:** I assume so, if they said they found a hard copy, yes. I wasn't there.
4655. **Mr Allister:** You haven't picked up anywhere how and where that was found.
4656. **Mr Sands:** No.
4657. **Mr Allister:** You have no knowledge. You haven't asked.
4658. **Mr Sands:** No.
4659. **Mr Allister:** See, in circumstances where the email wasn't available, as you believed it was and contended it was, I want to suggest to you that gives a lot more credence to Mrs Palmer's evidence that Mr Brimstone was — I think the words were these — "going mad looking for it". The circumstances prevailed where he could be going mad looking for it, because it couldn't be found. Isn't that right?
4660. **Mr Sands:** Well, as you rightly say, it wasn't on our system, but it was available in the Housing Executive —
4661. **Mr Allister:** Yes, but that wasn't available to him.
4662. **Mr Sands:** — *[Inaudible.]* under FOI. Sorry?
4663. **Mr Allister:** That wasn't available to Mr Brimstone.
4664. **Mr Sands:** If he had asked properly, I would have — Had I been there, I would've told him where it was.
4665. **Mr Allister:** Yes, but, just so as we're clear, we're trying to evaluate this assertion that Mr Brimstone was going mad looking for an email.
4666. **Mr Sands:** Yes.
4667. **Mr Allister:** We know now, contrary to the impression created by your earlier evidence, that, factually, no matter how much he'd looked for it, he wouldn't have found it on the system.
4668. **Mr Sands:** Not on the system, but, had he asked me, I could've easily produced a copy.
4669. **Mr Allister:** How could you have produced a copy?
4670. **Mr Sands:** Well, it was an email which I had sent — Well, sorry, when I said "a copy", I could've recollected that I sent it.
4671. **Mr Allister:** No, no, you couldn't have produced a copy —
4672. **Mr Sands:** Well, I could —

4673. **Mr Allister:** — because, we are told, after three months, they drop off the end of the table.
4674. **Mr Sands:** That's right. Sorry.
4675. **Mr Allister:** So, you couldn't have produced a copy.
4676. **Mr Sands:** I could've told him that it went.
4677. **Mr Allister:** Yes, you could've told him, but he was looking for a copy, apparently.
4678. **Mr Sands:** Yes, apparently.
4679. **Mr Allister:** Yes. So, you couldn't have produced a copy.
4680. **Mr Sands:** No.
4681. **Mr Allister:** No. And the circumstances of him looking for a copy are now confirmed by the fact it wasn't in the system. He couldn't find it. If someone was looking it, you couldn't find it, because it wasn't in the system. Isn't that fair?
4682. **Mr Sands:** Well, a copy was found eventually, but, as you say —
4683. **Mr Allister:** But not in the system. This mystery copy, in hard form, was eventually found months later, but, at the point when, it is alleged by Mrs Palmer, you told her that Mr Brimstone was "going mad looking for it", it wasn't there to be found. Isn't that right?
4684. **Mr Sands:** Well, I did not say that he was going mad looking for it.
4685. **Mr Allister:** OK, but if he was looking for it —
4686. **Mr Sands:** That's hypothetical.
4687. **Mr Allister:** — in September —
4688. **The Chairperson (Mr Maskey):** Sorry, Mr Sands has already said that he wasn't asked and he didn't have that conversation. I appreciate the line. You are probing the questions around the email, and that's very appropriate, but there are two things that I want to just remind you. I want to move on to other members and then come back to you for other questions later on. Obviously, you will wish to do that. You also can't expect Mr Sands to speculate as to what may have been or may not have been in the mind of another person.
4689. **Mr Allister:** OK. I will come back.
4690. **The Chairperson (Mr Maskey):** OK, fair enough. Sammy.
4691. **Mr Wilson:** There are two conversations that are recorded here that Mrs Palmer argues allegedly took place. Can I just ask you first of all, Michael, how well do you know Mrs Palmer?
4692. **Mr Sands:** I know her simply in a business format, attending the housing regeneration committee.
4693. **Mr Wilson:** And, you know, what kind of or in what kind of circumstances would you have conversations with her? Would it be —
4694. **Mr Sands:** Very few, really. It's business as far as the agenda which we're discussing on a particular day and then, as happened with this particular occasion, I may not necessarily have had lunch with her — it would've been other members I would've had lunch with — but it would've been just casual conversation about really probably the agenda and other efforts.
4695. **Mr Wilson:** The kind of person you would kind of share gossip with.
4696. **Mr Sands:** No. Absolutely not.
4697. **Mr Wilson:** The two conversations that Mrs Palmer claims you had with her would be very gossipy conversations, would they not?
4698. **Mr Sands:** Yes, it could be judged that particular way.
4699. **Mr Wilson:** Like, "Wait till I tell you" —
4700. **Mr Sands:** No.
4701. **Mr Wilson:** — "He was going mad. He told me about the conversation he had with you over the telephone". Are those the kinds of conversations you would

- have with Mrs Palmer? I mean, do you know her that well —
4702. **Mr Sands:** No.
4703. **Mr Wilson:** — to have those kinds of —
4704. **Mr Sands:** No, I certainly do not know her so well that I could have a conversation like that with her. It would be very much business-related and business-orientated. It would not be, as has been suggested before, “Wait till I tell you”, “Wait till you hear this”, “Did you know this?”.
4705. **Mr Wilson:** So, you didn’t have the relationship with Stephen Brimstone where he would come in and say, “Wait till I tell you the row I had with yer woman yesterday”.
4706. **Mr Sands:** No, as, again, was drawn out at the Committee session which I attended on the last occasion. Again, Stephen is the Minister’s adviser. Everything is strictly sort of business as far as he is concerned. I explained, in the last situation, I know nothing about his social life. We know nothing; we’re not — I wouldn’t regard us as friends. We are business colleagues, and I certainly do not have a relationship where he would come down to tell me anything personal.
4707. **Mr Wilson:** So, he’s unlikely to have had a gossipy conversation with you, and you’re unlikely to have had a gossipy conversation with Mrs Palmer, because that’s not the relationship you had with either of the two of them.
4708. **Mr Sands:** That would be correct.
4709. **Mr Wilson:** Yet Mrs Palmer has come — has indicated that you were almost like bosom buddies sitting having this kind of gossipy conversation over a cup of tea.
4710. **Mr Sands:** I don’t think so.
4711. **Mr Allister:** When was that indicated?
4712. **Mr Wilson:** Well —
4713. **The Chairperson (Mr Maskey):** I mean, I think people should just be mindful of maintaining —
4714. **Mr Wilson:** Mrs Palmer, over lunch —
4715. **The Chairperson (Mr Maskey):** Sorry, Sammy. Let me —
4716. **Mr Wilson:** Mrs Palmer claimed —
4717. **The Chairperson (Mr Maskey):** Let me make the point. It is important that we try to retain as much professionalism here as we possibly can do. That also applies to how we characterise evidence or witnesses or conversations or any such thing.
4718. **Mr Wilson:** Well, the point that I’m making is that, allegedly, over lunch or whatever, a conversation was had where Mr Sands talked about Stephen Brimstone coming personally to him and telling him about a conversation he had with another party member. Now, I think that that could be defined in any circumstances as a kind of a gossipy conversation. I’m trying to draw out from Mr Sands whether or not that’s the kind of relationship he had with Stephen Brimstone and whether it’s the kind of relationship he had with Jenny Palmer. And you’re saying, Mr Sands, that with neither of the two of them you’ve got that kind of casual acquaintance where you would sit and talk about things that had happened that were not directly related to what was on the agenda or whatever.
4719. **Mr Sands:** No, I wouldn’t.
4720. **Mr Wilson:** OK. So, as far as you’re concerned, Mrs Palmer’s contention that she had this conversation with you is totally untrue.
4721. **Mr Sands:** I can’t say it’s untrue, Chair. I mean, it’s recollection of an event which happened now three and a half, approaching four, years ago. Memory’s a reconstruction of events at any one particular time. It is similar to any sort of court case. I mean, if there are two witnesses to a particular incident, there are two sides of every story, so two different people can see things that actually happened and recollect things that happened at a particular time.
4722. **Mr Wilson:** So, you’re not denying you had a conversation with her on that day —

4723. **Mr Sands:** Absolutely not.
4724. **Mr Wilson:** — but what you are saying is that, first of all, you wouldn't have been aware that Mr Brimstone had had a conversation with her on 1 July, nor would you have recounted, even if you had known, you'd have been, it's not the kind of thing you would've recounted to her as another member of the board.
4725. Just on the second issue as to "going mad", again that's a kind of a gossip conversation: "Yer man was in this morning. He was going daft about something". Whether or not, as Mr Allister has pointed out to you, Stephen Brimstone could have easily found the letter or not, do you recollect him coming in asking about the letter?
4726. **Mr Sands:** No.
4727. **Mr Wilson:** Or the email, sorry.
4728. **Mr Sands:** No.
4729. **Mr Wilson:** Right. So, you wouldn't have been in any position then — again — to even make an assessment as to whether or not he was going mad looking for the thing or not looking for it.
4730. **Mr Sands:** That is correct.
4731. **Mr Wilson:** He never came and asked you.
4732. **Mr Sands:** No.
4733. **Mr Wilson:** So, it would have been impossible for you to relate his state of mind or anything else about this email, since he never approached you.
4734. **Mr Sands:** He didn't ask me.
4735. **Mr Wilson:** Even if he had — but you are quite clear in your recollection that he never came to talk to you about this email.
4736. **Mr Sands:** Absolutely.
4737. **Mr Wilson:** Right, but, even if he had, would you have had — again — that kind of conversation with Mrs Palmer where you would have felt at ease saying about him coming in and being in an agitated state or whatever? I mean, is that the kind of — again, I am just trying to establish — is that the kind of relationship that you had with her?
4738. **Mr Sands:** No. That wouldn't have been — I wouldn't have had that palsy-walsy type conversation.
4739. **Mr Wilson:** So, Mr Brimstone never asked you about the email and, even if he had asked you about the email, you are not in a position or you are not in the kind of relationship — you don't have the kind of relationship with Mrs Palmer where you would have recounted his state of mind.
4740. **Mr Sands:** No.
4741. **Mr Wilson:** But, the two pieces of conversation that Mrs Palmer has recounted to the Committee, would you accept, are only the kinds of conversations that you would have had with somebody you were fairly at ease with, fairly familiar with and would have been gossiping with on a fairly regular basis?
4742. **Mr Sands:** I did not gossip with her on a regular basis, and it wouldn't have been the type of conversation that I would have had.
4743. **Mr Dickson:** Can we just — thank you for coming along this morning. Just to get a broader understanding of the nature of the business relationships which you and Mr Brimstone have as civil servant to special adviser — how often would you have had a conversation or a business conversation with Mr Brimstone? Is that daily, weekly, monthly or —
4744. **Mr Sands:** At that time it literally could have been daily.
4745. **Mr Dickson:** It could have been daily.
4746. **Mr Sands:** Certainly, several times, though not necessarily daily, because he would have been up here in Parliament Buildings on Mondays and Tuesdays.
4747. **Mr Dickson:** In your building, would he have been a regular visitor into your office, or would you have been more likely to go to his office?

4748. **Mr Sands:** We would get summoned to the fifth floor.
4749. **Mr Dickson:** Sorry?
4750. **Mr Sands:** We would get summoned to the fifth floor.
4751. **Mr Dickson:** You would get summoned to the fifth floor. So, had he ever been in your office before?
4752. **Mr Sands:** As I said previously, it was only two occasions — there still have only been two occasions — when Mr Brimstone was in my office. One was on the morning of 5 July, and the second time was several days after I returned from sick leave, when he came down out of courtesy to see how I was.
4753. **Mr Dickson:** Is your office easy to find? I mean, would anybody with a knowledge of the building —
4754. **Mr Sands:** Well, my name's on the door.
4755. **Mr Dickson:** Your name's on the door, OK. So you are not hard to find.
4756. **Mr Sands:** No.
4757. **Mr Dickson:** That's fine. In relation to the number of times that you might have met Mrs Palmer and the circumstances in which you might have met her — this is at committee meetings and board meetings of the Housing Executive.
4758. **Mr Sands:** Not the board meeting. None of the civil servants attend the Housing Executive board meeting.
4759. **Mr Dickson:** You just attend the —
4760. **Mr Sands:** It's a subcommittee of the Housing Council.
4761. **Mr Dickson:** How many occasions would that have been?
4762. **Mr Sands:** I probably would have been five or six times or more possibly.
4763. **Mr Dickson:** So you are saying —
4764. **Mr Sands:** It's a monthly meeting, which I would have attended.
4765. **Mr Dickson:** So you think it's only on five or six occasions that you've met Mrs Palmer.
4766. **Mr Sands:** You are asking me to be specific in relation to numbers.
4767. **Mr Dickson:** I am basing it on — the only time you ever met Mrs Palmer was at those subcommittee meetings.
4768. **Mr Sands:** Yes.
4769. **Mr Dickson:** So, I am just trying to get an estimate of the number of times that those meetings have occurred when both of you would have been present.
4770. **Mr Sands:** Yes. Occasionally I would have had to give a presentation to the Housing Council and she may have been there, she may not.
4771. **Mr Dickson:** But at the Housing Executive — so, how many people would have been at those meetings?
4772. **Mr Sands:** There could be nine or 10 councillors.
4773. **Mr Dickson:** At the subcommittee meetings?
4774. **Mr Sands:** Plus Housing Executive officials plus myself.
4775. **Mr Dickson:** OK. You were telling us about the FOI search work that was going on. You are not involved in that, but did you not have to hand your email or your password to them in order for them to scrutinise your computer?
4776. **Mr Sands:** No, the — well, as far as the computer is concerned —
4777. **Mr Dickson:** How would they have access to your email other than that?
4778. **Mr Sands:** Well, they have access certainly to my diary. My PA has access to all my emails, so they could have asked her. As far as the —
4779. **Mr Dickson:** But you were never directly asked for your password, were you?
4780. **Mr Sands:** No, because, again, as is set out in Susan McCarty's letter, every civil

- servant's inbox is wiped clean every 90 days.
4781. **Mr Dickson:** No, I understand that, but, if somebody was searching for documentation in relation to freedom of information and it wasn't you doing it yourself — if somebody came to you and said, "Look, could you check and see if you had written to x, y and z?", you would go into your system and you'd say, "It's there, here it is" or, "It's past 30 days, it's gone". You did not do any of that, so you must have released your password to someone to do that for you.
4782. **Mr Sands:** No, I don't see where you are coming from that I would have released my password to someone. My computer wasn't searched.
4783. **Mr Dickson:** But your password — your computer is password-protected.
4784. **Mr Sands:** Yes.
4785. **Mr Dickson:** OK. So, how can anyone have access to your email if they can't have your password?
4786. **Mr Sands:** Well, my PA has access. I am not sure where you are coming from with this one because —
4787. **Mr Dickson:** I am just trying to understand. If you didn't give your email — If you didn't search for freedom of information answers yourself, somebody else must have searched for them.
4788. **Mr Sands:** Well, there is a difference between emails and searching for information as far as FOI is concerned. The FOI information is all contained on TRIM containers, which are all logged in under specific numbers, and the director's office certainly would have access to all of that. As I said, I should have actually asked someone to record that particular email on the TRIM system and because of the —
4789. **Mr Dickson:** Is it your personal and is it every personal and individual decision of a civil servant to have something recorded on the TRIM system?
4790. **Mr Sands:** Yes.
4791. **Mr Dickson:** There are guidelines around that, presumably.
4792. **Mr Sands:** Yes, there are departmental guidelines around it.
4793. **Mr Dickson:** So, would you acknowledge in this case you, by omission or error, didn't follow them?
4794. **Mr Sands:** Yes, in that I forgot to ask someone to actually record the email on the system.
4795. **Mr Dickson:** Who would you normally ask to do that for you?
4796. **Mr Sands:** It would either be my PA or the director's office.
4797. **Mr Dickson:** But you don't do it yourself.
4798. **Mr Sands:** No.
4799. **Mr Dickson:** But a hard copy did appear.
4800. **Mr Sands:** Apparently so.
4801. **Mr Dickson:** Have you any idea how or where?
4802. **Mr Sands:** No, this occurred while I was off on sick leave.
4803. **Mr Dickson:** OK. Well that's, in a sense, why I was asking did somebody interrogate your PC in your absence and print a copy off.
4804. **Mr Sands:** Well, no one asked me for my password, certainly while I was on sick leave, so I would say no.
4805. **Mr Dickson:** OK. Thank you.
4806. **Mr Sands:** Just to finish, I mean, there was ready access as far as TRIM was concerned through the director's office. They have all that.
4807. **Mr Dickson:** But it wasn't on it.
4808. **The Chairperson (Mr Maskey):** Could I ask just a couple of points, Michael, just before we move on to other members? Jim Allister is up next. You have described the engagement with Stephen as he, essentially, came to your office, which is only one of two occasions, at 7.30 in the morning, and he — I think

- you used this term — directed you to issue an email.
4809. **Mr Sands:** No, I said — I wouldn't — directives have been referred to several times. I wouldn't have said that. He asked me to send an email.
4810. **The Chairperson (Mr Maskey):** So, I mean, would you have sent the email if he hadn't asked you?
4811. **Mr Sands:** No.
4812. **The Chairperson (Mr Maskey):** OK.
4813. **Mr Sands:** I was quite specific as far as the email was concerned, stating that this was a change which was going to be made to the Minister's letter of 4 July, so that the request was coming from the Minister's political adviser, and that's why I qualified the email by saying "Minister's SpAd".
4814. **The Chairperson (Mr Maskey):** I am trying to sort of get the environment of all this in my head right because you have actually, in a way, presented your evidence on the basis that it was most unusual that Stephen Brimstone went to your office in the first place because he had only been there ever twice. So, he was there at 7.30 in the morning, so that was a very unusual occurrence. You're now saying he asked you — there was a word characterised earlier on as directing — you to send the email. So, you sent the email, which you wouldn't have sent had you not been asked by Mr Brimstone to do that.
4815. **Mr Sands:** That's correct.
4816. **The Chairperson (Mr Maskey):** But this is all in a backdrop against which senior officials were advising the Minister not to proceed on the basis on which they had been proceeding.
4817. **Mr Sands:** Yes.
4818. **The Chairperson (Mr Maskey):** You were aware, when you sent that email, that that was certainly a contentious issue.
4819. **Mr Sands:** Well, the Minister's letter had already issued to the Housing Executive asking for an extension of six months.
- When Stephen came to me on 5 July, then, he was asking that I send an email asking if the chairman of the Housing Executive could ask the administrator if that period could be reduced to four months. So, it was seen as being helpful — rather than six months.
4820. **The Chairperson (Mr Maskey):** Would you not accept that it was certainly contentious in the context where senior advisers, at meetings that you were attending, had advised the Minister not to go down the road which they were going down, that this was a contractual matter and should not be interfered with in any way?
4821. **Mr Sands:** But the letter, again, had already issued —
4822. **The Chairperson (Mr Maskey):** I am aware of that. You are aware of all that, so —
4823. **Mr Sands:** It had already issued —
4824. **The Chairperson (Mr Maskey):** What I am trying to say is you issued the email at the request of Mr Brimstone in the full knowledge that that was certainly an issue of contention, because if the Minister had been advised very firmly not to be proceeding on that basis —
4825. **Mr Sands:** Yes, but I repeat again: he was changing the Minister's letter. That was what he was doing.
4826. **The Chairperson (Mr Maskey):** Yes, but even changing the letter on a contentious issue; that's the basis. So, can you tell me if you had any conversation with Stephen Brimstone at all about that engagement that morning — after that morning?
4827. **Mr Sands:** After that morning, no.
4828. **The Chairperson (Mr Maskey):** None whatever?
4829. **Mr Sands:** No.
4830. **The Chairperson (Mr Maskey):** None. No discussion.
4831. **Mr Sands:** No.

4832. **The Chairperson (Mr Maskey):** OK. Fair enough. Could you characterise your conversation that you had with Jenny Palmer, because obviously there are very strongly conflicting reflections of that conversation? Obviously, different people can be at the same meeting and can maybe sometimes pick up some things and maybe don't pick up something else, but there are quite graphic descriptions of the conversation and there are strong conflicts, which is why people here are giving evidence under oath or affirmation as required by the Committee. Can you characterise — I know Sammy was exploring earlier on with you, and I take the point that we're trying to tease out what was just like a kind of casual conversation with the type of person you would know very well — but can you characterise the type of conversation that you had and the issues that you discussed with Jenny Palmer?
4833. **Mr Sands:** Again, from memory, from a discussion which happened quite a while ago, it was a casual conversation over or after lunch, really about what had happened over the summer, and then, as I explained at my previous appearance here, Jenny raised the issue of the 'Spotlight' programme and it moved on from there. But it was really a casual conversation; it was no more than that.
4834. **The Chairperson (Mr Maskey):** But, I mean, I think that is the first time you've indicated that the 'Spotlight' programme was discussed in your conversation.
4835. **Mr Sands:** No, I said in the previous evidence session that in fact she raised it.
4836. **The Chairperson (Mr Maskey):** OK. So, therefore, there is nothing in the way of the comments that Mrs Palmer has made in her evidence and will do so, I presume, later on this morning. What you're saying is that nothing that Mrs Palmer has outlined in her evidence in terms of the nature of that conversation took place.
4837. **Mr Sands:** Correct.
4838. **The Chairperson (Mr Maskey):** OK. Thank you for that. Gregory and then Jim.
4839. **Mr Campbell:** Just the issue you'd raised there, Chairman, to Mr Sands about the email and how it came to be sent, where there was the use of the word "directing", and Mr Sands is indicating that it wasn't a case of him being directed. Who suggested that he was directed?
4840. **The Chairperson (Mr Maskey):** It was in a conversation earlier on this morning, so we'll check Hansard for the actual — who made the comment. It was in a conversation earlier on —
4841. **Mr Campbell:** But Mr Sands is saying that he didn't — he wasn't directed, and he didn't use that language.
4842. **The Chairperson (Mr Maskey):** Which is why I asked him the question to clarify.
4843. **Mr Campbell:** But you had intimated that he did.
4844. **The Chairperson (Mr Maskey):** I asked him to clarify did he say that.
4845. **Mr Campbell:** And he hasn't.
4846. **The Chairperson (Mr Maskey):** Well, he gave his answer.
4847. **Mr Campbell:** So he wasn't directed.
4848. **The Chairperson (Mr Maskey):** Well, he gave his answer.
4849. **Mr Campbell:** Who suggested that he was?
4850. **The Chairperson (Mr Maskey):** Well, the witness is at the other end of the table, Mr Campbell, I remind you.
4851. **Mr Campbell:** I know he is, but you, Mr Chairman, were saying to Sammy Wilson about the need to be accurate in dealing with witnesses. Now, I'm alluding to what you've just asked the witness about directing, and he said he wasn't directed, so you obviously had thought that someone had said he was. Who was it who suggested that Mr Sands had been directed —

4852. **The Chairperson (Mr Maskey):** There was a conversation earlier on between Jim Allister and Michael Sands —
4853. **Mr Campbell:** So was it Mr Allister suggested that he was directed then?
4854. **The Chairperson (Mr Maskey):** If you check Hansard —
4855. **Mr Allister:** I certainly put that to him, yes. That's the import. If somebody at 7.30 in the morning turns up in a room and asks for an email to be sent in these terms, he's directing it be sent.
4856. **Mr Campbell:** And the witness has indicated that he wasn't directed.
4857. **Mr Allister:** I understand the witness's answer.
4858. **The Chairperson (Mr Maskey):** The witness has given his answer.
4859. **Mr Allister:** What is the issue?
4860. **Mr Campbell:** Well, the point here is, Chairman, that a member of the Committee attempted to suggest to the witness that he was directed. The witness said he wasn't. Now the Chair has repeated the inaccurate assumption that he was directed —
4861. **Mr Allister:** Is that the best you can do?
4862. **The Chairperson (Mr Maskey):** Sorry, Jim —
4863. **Mr Campbell:** Mr Allister needs to learn that he's not at the Bar.
4864. **The Chairperson (Mr Maskey):** Just hold on a wee second —
4865. **Mr Campbell:** He needs to learn that.
4866. **The Chairperson (Mr Maskey):** This is not a Bar or a bar room, so let's behave professionally. The witness is here to answer questions; he is doing his best to answer questions. Members are asking questions. Where I have felt that they have strayed, I've reminded them of that. We've been doing OK so far; nobody's complaining about it. So, you have the floor to question the witness. If you want to reflect on any comments that any member has made, you'll always have the opportunity to do that afterwards. So, the floor is yours to ask any further questions if you so wish.
4867. **Mr Campbell:** Well, I mean, I've made the point, Chairman. You, quite rightly, as the Chair, have to try and keep and maintain order, and we, as members, when we think the Chair has stepped out of line, should ensure that the Chair maintains the same order, and I've just done it.
4868. **The Chairperson (Mr Maskey):** OK. Jim.
4869. **Mr Allister:** You said to Mr Wilson, under affirmation, that you didn't know about the conversation between Mr Brimstone and Mrs Palmer on 1 July. Do you remember saying that?
4870. **Mr Sands:** Yes.
4871. **Mr Allister:** Do you want to reflect on that answer?
4872. **Mr Sands:** Well, the phone call, I believe, happened on 1 July, and I have stated already to this Committee that we did not — none of the civil servants became aware of that until the following week, when —
4873. **Mr Allister:** I know, but, if I understood Mr Wilson's question correctly — I stand to be corrected — that was in the context of your discussions with Mrs Palmer in September 2013. You were saying that, in September 2013, you didn't know about the conversation of 1 July.
4874. **Mr Sands:** No, sorry. In September 2013, I would've known about it. I certainly did not know about it on 1 July, when the phone call was made. I did not know about it till the following week.
4875. **Mr Allister:** Just remind us now how you say you became aware of that conversation.
4876. **Mr Sands:** I think we covered this again in the last evidence session. I believe that Will Haire, at a meeting — again, going back three and a half years — Will Haire at a meeting the following week told those who were at the meeting. As I said at the last session, I can't remember who was at that particular

- meeting, because it was one meeting which was whenever, and Will told us that he'd been contacted by Brian Rowntree.
4877. **Mr Allister:** Did he come to tell you that?
4878. **Mr Sands:** I think we covered this the last time as well. I said no. It happened at a meeting as far as I can recollect, but it was three and a half years ago.
4879. **Mr Allister:** Are you saying three and a half years ago things could've been said by various people that you've forgotten?
4880. **Mr Sands:** No, I'm not saying that; I'm saying that information came from Will Haire at a meeting is my recollection of how that information was given to us.
4881. **Mr Allister:** In terms of the email, do you accept that you asked Mrs Palmer about the email in September 2013?
4882. **Mr Sands:** Yes. I set that out; it's in my evidence.
4883. **Mr Allister:** So she is right that you asked her about an email — that particular email — in September 2011?
4884. **Mr Sands:** September 2013?
4885. **Mr Allister:** Sorry, 2013. Apologies.
4886. **Mr Sands:** Yes, again, as I said, during the casual conversation, the issue —. She raised the issue of the email — sorry, of the 'Spotlight' programme and referred to an email which had been sent to the chair. I was simply trying to get clarity from her as to whether it was another email or the email which I had sent on that morning of 5 July. She said it was my email, so I knew it was it. There's only the one.
4887. **Mr Allister:** Yes, and we had this evidence from you that you wanted to test which email she was talking about.
4888. **Mr Sands:** Sorry, I was trying to get clarity in relation to whether the email that she had mentioned was the email which I had —
4889. **Mr Allister:** So, you asked her about was this the email that you had in your mind of Mr Brimstone's having you send of 1 July?
4890. **Mr Sands:** No. I asked her if, in fact, she was aware of an email which had been sent from the Department; I did not say that I was the sender. She then said that it was my email which, in fact, she was referring to.
4891. **Mr Allister:** You see, if I recall her evidence correctly, she says that you initiated the discussion about the email because you were the man interested in knowledge of where this email might be —
4892. **Mr Sands:** That is not my recollection of events.
4893. **Mr Allister:** — because you knew it wasn't on the system and couldn't be found, and you were asking her because you knew that it had come up whether she knew about it. Isn't that the scenario?
4894. **Mr Sands:** No. I did not know that it wasn't on the system; I had assumed that it was on the system.
4895. **Mr Allister:** You had had no occasion to look for it before that.
4896. **Mr Sands:** No, none whatsoever.
4897. **Mr Allister:** Still on that email, when you were last here, I said to you:  
*"You would not remember offhand all the emails that you sent two years ago?"*
4898. And you said:  
*"No, it was only when that was shown to me and someone said, 'Here is a record of it.'"*
4899. Who showed it to you?
4900. **Mr Sands:** I can't honestly remember, Mr Allister.
4901. **Mr Allister:** Well, do you remember someone showing it to you?
4902. **Mr Sands:** No.
4903. **Mr Allister:** Well, what did you mean when you told us on 6 November — that's the date — that  
*"it was only when that was shown to me and someone said, 'Here is a record of it' "*

4904. that you remembered about the email?
4905. **Mr Sands:** No, I didn't say I had not remembered about the email. It was in the information in the pack which was given to me in preparation for my attendance here at the Committee.
4906. **Mr Allister:** Sorry, have you got Hansard for 6 November?
4907. **Mr Sands:** I believe so, yes.
4908. **Mr Allister:** Would you turn to page 3?
4909. **Mr Sands:** 6 November, sorry?
4910. **Mr Allister:** Yes. Three questions up from the bottom of the page by me. Do you see that? I think you have it highlighted:
- "That was an email amongst, I am sure, thousands of emails that you send over a year, and here we are, two years later, and that matter is being revisited. You would not remember offhand all the emails that you sent two years ago?"*
- You replied:
- "No, it was only when that was shown to me and someone said, 'Here is a record of it'."*
4911. That is what you told us in evidence.
4912. **Mr Sands:** Yes.
4913. **Mr Allister:** So, you were referring to a specific occasion when someone showed it to you and said:
- "Here is a record of it".*
4914. **Mr Sands:** It was part of the papers which were prepared for me for my first appearance at the Committee.
4915. **Mr Allister:** Who was the someone?
4916. **Mr Sands:** I can't honestly remember.
4917. **Mr Allister:** But you obviously could remember on 6 November someone showing it to you, did you?
4918. **Mr Sands:** Well, it would have been part of the pack, as I say, and the papers which were prepared for me to come to the Committee.
4919. **Mr Allister:** Yes, but it did not say in the pack, "Someone showed it to me". This is very specific:
- "it was only when that was shown to me and someone said, 'Here is a record of it'."*
4920. That is someone speaking to you, saying, "Michael, here is a record of it".
4921. **Mr Sands:** I repeat again: it was part of the pack which was given to me for my —
4922. **Mr Allister:** I don't understand this business of "it was part of the pack". Your evidence doesn't come out of a pack; your evidence comes out of your memory. Now, what is your memory of someone showing it to you?
4923. **Mr Sands:** Sorry, let me just get this correct. My evidence is based on information which would be available; it is not entirely from memory.
4924. **Mr Allister:** So, you are regurgitating to us, are you, stuff that you don't remember at all but someone has told you?
4925. **Mr Sands:** I don't understand where you are coming from with that.
4926. **Mr Allister:** If you read it in a pack, are you prepared to come to this Committee and say something because it is in the pack and dress it up and present it as if someone told you it?
4927. **Mr Sands:** We're sort of going off on a line here.
4928. **The Chairperson (Mr Maskey):** I just want to moderate this session. As I said earlier on, keep it on a purely professional basis. So, if you have a question to ask — I am putting this to any member; it is yourself, Jim, on the floor at the moment — if you have a question to ask, put the question and allow the member, the witness to have time to respond.
4929. **Mr Allister:** Sure.
4930. **The Chairperson (Mr Maskey):** OK.

4931. **Mr Allister:** So, the question, Mr Sands, is this: when you told this Committee on 6 November — two months ago — that
- “it was only when that was shown to me and someone said, ‘Here is a record of it’.”*
4932. who was it who said to you, “Here is a record of it”?
4933. **Mr Sands:** I cannot honestly remember who said that to me.
4934. **Mr Allister:** Do you remember an occasion when someone showed it to you?
4935. **Mr Sands:** It was part of the information which was provided as far as —
4936. **Mr Allister:** Do you remember an occasion when someone showed it to you?
4937. **Mr Sands:** Not specifically. As I said, it was in the papers which were given to me.
4938. **Mr Wilson:** Chairman, we have had this situation before, where Jim seeks to bully people, as though they were in court. It has been said — I think this is the fifth time the question has now been asked. The answer has been given, and the rule which you have adhered to, at least after we had the last row about this, is that, once a witness has given an answer, he should not or she should not be bullied into trying to give a different answer, which is what Jim is at at the moment.
4939. **The Chairperson (Mr Maskey):** Well, first of all —
4940. **Mr Campbell:** Again.
4941. **The Chairperson (Mr Maskey):** First of all, the rules that I apply as the Chairperson I have applied since day 1 of this inquiry and, in fact, in all of my work as the Chair of this Committee. They are not dated to any discussion or any row as you might describe it, so don’t flatter yourself on that basis. I apply the rules rigidly.
4942. **Mr Wilson:** You have in recent times.
4943. **The Chairperson (Mr Maskey):** I also make the point that there has to be a certain degree of probing of witnesses, clarifying of evidence, clarifying of responses. That is accepted. I will not allow bullying from anybody. I will not accept bullying from anybody. I will not take bullying from anybody around this table. As long as people are aware of that, then we will all get on quite well.
4944. **Mr Wilson:** But, Chairman, you are well aware —
4945. **The Chairperson (Mr Maskey):** I am well aware.
4946. **Mr Wilson:** — this is an old barrister’s trick where you seek to unsettle a witness by continually putting the same question. The essence of the issue is quite simple: whether it was shown to him by someone or whether it was in a pack of papers that were given to him by someone, Mr Sands became aware of this email. That is the essence of this.
4947. **The Chairperson (Mr Maskey):** I think the essence —
4948. **Mr Wilson:** To try and keep on this line of questioning is only designed to unsettle a witness. It is not to —
4949. **The Chairperson (Mr Maskey):** Well, I mean, I think Mr Sands —
4950. **Mr Wilson:** It is not to obtain any additional information.
4951. **The Chairperson (Mr Maskey):** I think Mr Sands is in public service long enough. He is an experienced public official. He is not going to be under any abuse here as I am in the Chair — that will not happen — but he is obliged to answer questions —
4952. **Mr Wilson:** He has answered the question five times.
4953. **The Chairperson (Mr Maskey):** He is obliged to answer them under the legal rights that he has pertaining to himself as a witness coming here voluntarily. He knows that, he accepts that and that is what I have explained to him. So, Mr Sands will have the right to complain to

- me, as the Chair, if he feels he has been badly treated.
4954. **Mr Wilson:** No, but I am complaining —
4955. **The Chairperson (Mr Maskey):** I know you are, and that is fair enough.
4956. **Mr Wilson:** I am complaining about the way in which Jim Allister is abusing this situation.
4957. **The Chairperson (Mr Maskey):** I am listening to your complaint. I am also dealing with it on an ongoing basis, and I will continue to do that.
4958. Stewart, do you want to come in on the same issue, because I do not want to be interrupting the flow of questions?
4959. **Mr Dickson:** No, Chair, I want to come in on the real issue here, which is Mr Sands's words, and they are in quotation marks in Hansard. They are:  
*" 'Here is a record of it' "*.
4960. Now, Mr Sands, can you tell the Committee was that at a pack briefing which you were having with other colleagues, or was it as part of a meeting where there was a search going on for this email and somebody eventually, at a session or a meeting or knocked the door of your office, said, "Michael, here is that email"? Your words were:  
*" 'Here is a record of it' "*.
4961. You have got to paint and tell us the scene and tell us why you said those specific words.
4962. **Mr Sands:** It is the former, which you just described, which you just set out. It was part of the information which was provided to me. I have already explained that.
4963. **Mr Dickson:** But a person said those words: "Here is the pack". They are in quotation marks.
4964. **Mr Allister:** "Here is a record".
4965. **Mr Dickson:** "Here is a record": who said that?
4966. **Mr Sands:** I can't honestly remember.
4967. **Mr Dickson:** But can you remember the context in which they were said?
4968. **The Chairperson (Mr Maskey):** Sorry, Stewart, can I just, I mean, because I think that people here are talking about the essence. I need to move back to Jim because he actually had the floor there, and then I can bring yourself back, Stewart, in again if needs be. But the issue here is — I think what people are trying to get at here is — did someone just — I mean somebody must have met you and presented you with a file and gone through that file with you.
4969. **Mr Sands:** Not necessarily gone through the file with me. They would have presented the file of papers to me and said, "Here is the information which you require for your appearance in front of the Committee".
4970. **The Chairperson (Mr Maskey):** And they drew your attention to an item that you dealt with a minute ago. Who was that person?
4971. **Mr Sands:** It would have been someone from the director's office, I would say, who would actually collate that information.
4972. **The Chairperson (Mr Maskey):** Could that be narrowed down? Is it as senior official? Is it a PA?
4973. **Mr Sands:** I am reluctant about sort of naming persons, Chairman.
4974. **The Chairperson (Mr Maskey):** Well, I don't know why, because we are asking a simple question, Michael, as to where you got the information from. Remember this — this goes to Sammy's point earlier on — see you are relying on evidence, which you are saying was given to yourself. So, I think that we are entitled to have an understanding of where did that come from, what level of the Department did that come from. Surely it would not be something that would be done by 100 people.
4975. **Mr Sands:** That information, as I say, would've been prepared by the director's office. Now, Susan McCarty is the head of that director's office, so I would

- say it probably was Susan who came and presented me with that pack of information.
4976. **Mr Dickson:** And did she specifically point out the email to you when she did that, because that's what you've told us in Hansard?
4977. **Mr Sands:** She may have done. I can't honestly —
4978. **Mr Dickson:** Can I quote?  
*"No, it was only when I saw what was shown to me and somebody" —*
4979. — who you are now suggesting may be Susan McCarty —  
*— "said, 'Here is a record of it'."*
4980. "It" being the email.
4981. **Mr Sands:** Yes.
4982. **Mr Dickson:** So, it wasn't, "Here's the pack. Have a look through all of that".
4983. **Mr Sands:** You are sifting something out just in relation to the whole sort of —
4984. **Mr Dickson:** Well, they're your words.
4985. **Mr Sands:** Yes, but I did not describe the information in that all of the information came in preparation for a meeting here.
4986. **Mr Dickson:** Yes, but you made reference to the email.
4987. **Mr Sands:** It was in direct answer to a question from Mr Allister, I believe.
4988. **Mr Dickson:** Yeah, but you told us it was pointed out to you.
4989. **Mr Sands:** Yeah, but he was asking about the email.
4990. **Mr Dickson:** Yes, and you told us that the email had been pointed out to you. Up until that point in time it couldn't be found or hadn't been found —
4991. **Mr Sands:** Well, it was found.
4992. **Mr Dickson:** — or you hadn't seen it since you'd typed it.
4993. **Mr Sands:** Yep.
4994. **Mr Dickson:** So, here is a very important moment. This is the first time you saw that email since you'd typed it, and you can't remember who handed it to you and the —
4995. **Mr Sands:** I said it. Generally, it would have been the likes of Susan McCarty who would have presented it to me, but I cannot remember —
4996. **Mr Dickson:** Was there a discussion at that point? Was this at a meeting? Was this at a preparation session? What was this at?
4997. **Mr Sands:** It would've been probably a preparation session that she presented those papers to.
4998. **Mr Dickson:** Ah, right, OK. So, there was a preparation session.
4999. **Mr Sands:** I said it probably would have been a preparation session, yes.
5000. **Mr Dickson:** But you'd remember if there was a preparation session. Who was preparing you?
5001. **Mr Sands:** I believe it was Susan McCarty.
5002. **Mr Dickson:** OK. Thank you very much, Chair.
5003. **Mr Allister:** Just Susan McCarty?
5004. **Mr Sands:** I believe so, Mr Allister. Yes.
5005. **Mr Campbell:** Chairman, are we going to start now a witch-hunt of another member of staff —
5006. **The Chairperson (Mr Maskey):** Members have a right to ask —
5007. **Mr Campbell:** — as a result of the question-and-answer session we've had now?
5008. **The Chairperson (Mr Maskey):** Members have a right to ask questions, as do you, including all the rest of the members, so go ahead.
5009. **Mr Allister:** Could I ask you something else? You had lunch with the Housing Council's subcommittee in September, about the 19th maybe.
5010. **Mr Sands:** In 2013?

5011. **Mr Allister:** Yeah, 2013, and you were sitting beside Mrs Palmer. That's when you asked her about the email etc.
5012. **Mr Sands:** Yes.
5013. **Mr Allister:** Have there been other occasions when you've had lunch with that subcommittee?
5014. **Mr Sands:** Generally every month of the committees that I attended, unless I had other pressing business back at the office and couldn't stay for lunch.
5015. **Mr Allister:** So, you were a regular attendee at these, were you?
5016. **Mr Sands:** As I explained earlier, I think I probably attended five or six of them.
5017. **Mr Allister:** Just to place the September one, was that the first one?
5018. **Mr Sands:** It was, yes, after the summer recess.
5019. **Mr Allister:** Was that the first one you'd ever been at?
5020. **Mr Sands:** No, no. It was the first one after the summer recess.
5021. **Mr Allister:** Were you at one in October and one in November 2013?
5022. **Mr Sands:** I probably was. I can't honestly remember.
5023. **Mr Allister:** And did you have any further discussions about the 'Spotlight' programme with Mrs Palmer, for example, at any of those?
5024. **Mr Sands:** No.
5025. **Mr Allister:** Definitely not.
5026. **Mr Sands:** Definitely not.
5027. **Mr Allister:** Thank you.
5028. **The Chairperson (Mr Maskey):** OK. No other members are indicating to ask any questions.
5029. OK, any final comments to that, Michael, you want to make this morning?
5030. **Mr Sands:** No.
5031. **The Chairperson (Mr Maskey):** OK, thank you. So, you know the routine. Obviously, the Committee will be considering all of this evidence in the round and may or may not wish to speak to you again. Likewise, the door is open for yourself if you want to come back and make any additional remarks, comments or clarifications. OK, so thank you very much, Michael.

## 8 January 2015

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Maurice Devenney  
 Mr Stewart Dickson  
 Mr Fra McCann  
 Mr Sammy Wilson

### Witnesses:

Ms Jenny Palmer *Lisburn City Council*

5032. **The Chairperson (Mr Maskey):** I formally welcome Mrs Palmer — yourself — here this morning to the Committee and just remind you then that you've been requested to give evidence under oath or affirmation, as you so choose, and you have chosen to give your evidence under oath. So, could I now ask the Clerk to bring you a copy of the oath? Obviously, you have been advised of the potential legal implications of giving evidence under oath and so on.

5033. **Ms Jenny Palmer:** I, Jenny Palmer, swear by almighty God that the evidence I shall give shall be truthful and honest and that I will give the Committee all such information and assistance as I can to enable it to discharge its responsibilities.

5034. **The Chairperson (Mr Maskey):** OK. Thank you very much. OK, members. So, again, you have your papers. Jenny, are there any opening remarks you want to make this morning before we open it up to members for their questions?

5035. **Ms Palmer:** No, Chair, I'm happy to take questions.

5036. **The Chairperson (Mr Maskey):** OK. Thank you. Mickey Brady.

5037. **Mr Brady:** Thanks very much for coming, Mrs Palmer. In your submission to the

Committee previously, you talked about the telephone conversation with Mr Brimstone and gave a fairly detailed account of the actual conversation itself. In terms of what had been said, you said that Mr Brimstone told you, "The party comes first. You do what you are told". I think that was quoting. Mr Brimstone, when he gave evidence to the Committee previously, said he had no recollection of using that phraseology. Now, that's fairly clear phraseology. I mean, it's something that is very specific, and maybe, just for the benefit of the Committee, you could maybe reiterate what was actually said in that conversation, because, as I said, you have given very specific detail of the conversation previously. Mr Brimstone then said, "No", basically, "That's not what I said". So, it was just maybe to clarify that.

5038. **Ms Palmer:** Yes, I'm happy to do so, Chair. I received a phone call in Dundalk at the Boyne centre, and it was from Allan Ewart's telephone, and it was Allan that said to me, "Jenny, here is a chap — Stephen Brimstone — he wants to talk to you". I took the call, and it was noisy, so I went outside into the garden, and he introduced himself on the phone. He said he was Stephen Brimstone and he was the Minister's SpAd. He said that we hadn't had time to meet, we didn't know each other. Basically, he didn't have any time to meet me, but he needed me to go into the boardroom of the Housing Executive on Tuesday and that I was to go against the decision of the board to stand down the Red Sky contracts and to ask for an extension to the contract. I asked him clearly to repeat what he said, because I was shocked. When I heard him, I was on — I was — I think it was shock. What are they asking me to do here? A lot of things were playing through my mind, and so he repeated it again verbatim, and I said to him, "I'm sorry. I don't believe that I can do that". And

- he said to me, “Jenny, listen, the party comes first here. You have to do that. Otherwise, there’s no point in you being on the board of the Housing Executive”. I said, “Well, I’m sorry, I don’t believe I can do that”. That was the end of the conversation. Not another word was spoken.
5039. **Mr Brady:** Just then maybe a second question. You had said and you had given some evidence about a subsequent meeting with party members, I think including Mr Robinson. I think Jeffrey Donaldson was with yourself, if I remember rightly, and you had said that, at that time, Mr Brimstone essentially agreed your version of the conversation. Subsequently, in evidence, Mr Brimstone said that he didn’t agree essentially with what you had been saying. So, is there any — I mean, as far as you’re concerned, that is what was said, and you’re quite clear on that.
5040. **Ms Palmer:** Quite clear. He, in the room, was asked by Peter Robinson if he wanted to give his account of the conversation, and he looked at me and said, “Firstly, I am a Christian, and I would not go out of my way to offend you or hurt you in any way, Jenny. It’s over two years since this conversation happened”. He said, “I can’t really recall exactly”. That’s when I interrupted and said, “Well let me remind you”. I repeated it verbatim. Peter Robinson looked at him and looked at me and said, “So, Stephen, what have you to say?”. And he said, “Well, that is pretty much as it was”. At that point, Peter Robinson said to me, “Jenny, what is it that we need to do now to put this right?”. I said to Peter Robinson, “Well, this is a very public affair now, and there is a lot of interest and speculation out there as to who in fact was telling the truth in all of this and whose version was accurate. So, therefore, I want a public apology”. He agreed, and Mr Brimstone agreed. It was left that the two of us would put together — that we would agree a form of words that would include an apology to be released to the public. Everyone in the room agreed that. We all gave each other big hugs, and we all went out the door. And five drafts later, we are still fighting over that apology.
5041. **Mr Brady:** Did you consider — this is my last question — that the apology would be based on the consensus of agreement that what had been said in the conversation had been agreed by all parties present at that particular meeting?
5042. **Ms Palmer:** Yes. I was not expecting an apology for him being sorry about hurting my feelings; I was expecting an apology for the wrong that he did in approaching me outside of the boardroom.
5043. **Mr Brady:** But also in relation to the accuracy of —
5044. **Ms Palmer:** And the accuracy of the conversation. In fact, if you want, I’ll share with you the first opening — if you permit, Chair — the first —
5045. **The Chairperson (Mr Maskey):** If you speak to explain the —
5046. **Ms Palmer:** I have the five draft copies, of which none of them, except the last one — the first two paragraphs were not amended at all, toing and froing between myself and Stephen Brimstone. That would indicate that both he and I were comfortable with the opening paragraphs from our party leader. It was only on the last draft that Mr Brimstone amended it dramatically. So, there are four copies here, toing and froing from the party, from the concerned parties involved, and not once were those three paragraphs from Peter Robinson amended, until the very final draft. I refused to accept any of the drafts, because of the amendments.
5047. **The Chairperson (Mr Maskey):** You appreciate that people here don’t have sight of those copies —
5048. **Ms Palmer:** Well, I wouldn’t like to show the whole documents, Chair, but I can read the first three paragraphs that Peter Robinson opened the statement in.
5049. **The Chairperson (Mr Maskey):** I think that the question you were being asked

- there and dealing with there was that you have provided a version of the conversation —
5050. **Ms Palmer:** Yes, and this —
5051. **The Chairperson (Mr Maskey):** — on the telephone.
5052. **Ms Palmer:** — third paragraph will clarify that, Chair.
5053. **The Chairperson (Mr Maskey):** If we could just — so we are clear what we are looking for here: you have provided a version of the telephone conversation between yourself and Stephen Brimstone. Mickey Brady, as the Member currently asking questions, is probing you around that. Obviously Mr Brimstone has rejected your characterisation of that conversation. So, what we're looking for here is for you to give us whatever information you have in regard to that conversation.
5054. **Ms Palmer:** Yeah.
5055. **The Chairperson (Mr Maskey):** It may or may not verify one or any version. If you don't mind —
5056. **Ms Palmer:** But, Chair, they are all the same —
5057. **The Chairperson (Mr Maskey):** — could you speak to that?
5058. **Ms Palmer:** They are all the same — there are all five copies, but one amends dramatically, at the very last, the fifth draft. The actual opening couple of paragraphs from my party leader were not amended at any point until the fifth draft.
5059. **The Chairperson (Mr Maskey):** Well, sure, present that.
5060. **Ms Palmer:** If I could read the opening third paragraph that Mr Robinson says:
- "Both were agreed that the only issue discussed during a conversation was the board's consideration of the Red Sky contract."*
5061. So, in terms of the meeting I had, the private meetings that I had with Peter and all of the said parties, each of these statements that Peter Robinson opened up with:
- "Following the BBC 'Spotlight' programme focusing on the Northern Ireland Housing Executive during which there appeared to be two alternative recollections of a telephone conversation between Councillor Palmer and the DSD ministerial adviser, Stephen Brimstone, DUP leader, Peter Robinson MLA, hosted a meeting between the two recently. Speaking afterwards, Mr Robinson said: 'Following the programme, I indicated that I would be pleased to meet with Jenny and Stephen should they so desire. I was pleased that they both sought a meeting having met separately and then hosted a meeting between the two. Both were agreed that the only issue discussed during the conversation was the board's consideration of the Red Sky contract.'"*
5062. It wasn't about Leeway Maintain; it wasn't about the Northern Ireland audit role that I had; it wasn't about the chairman's role; and it wasn't, certainly, about the Minister. So, that is in Peter Robinson's words, never amended until the fifth document. So, that clearly indicates to me that Stephen was quite content with the way forward until he realised the implications for him. That is there, Chairman, and that's the party leader, the First Minister. That's his words, and I expected that the statement would be delivered, and it never was because it never was agreed, but I am happy to share Peter Robinson's words with you.
5063. **The Chairperson (Mr Maskey):** First of all, we would appreciate, then, if, after this, you could share that document with the Clerk —
5064. **Ms Palmer:** Yes.
5065. **The Chairperson (Mr Maskey):** — who will then issue it to all the members for their own attention. But what you are saying is that, over four drafts among all the participants, that was, basically —. Because it runs, this issue runs to the heart of the evidence or the conflict in the evidence, because you have made, as I said earlier on, a claim of what was the conversation that was a single-focus conversation. Stephen Brimstone rejected that and basically described the conversation as something else or additional. What you have said about

- that is a process of at least four drafts, which actually confirms, it would seem to me, your version of the event. OK, that —
5066. **Mr Brady:** Sorry, could I just —. It was just that you have been very clear in the evidence that you have given previously that there was particular phraseology used. Mr Brimstone, in his evidence, said he had no recollection of using that phraseology. Now, the phraseology that you have quoted is very specific in relation to the conversation. There is an obvious conflict there, although, subsequently, at the meeting, then there was consensus that, essentially, that was what was said.
5067. **Ms Palmer:** Yes.
5068. **Mr Brady:** I just wanted to clarify that, thank you.
5069. **The Chairperson (Mr Maskey):** OK.
5070. **Ms Palmer:** I didn't want to reveal that, but, since, in the previous inquiry meetings that I wasn't present for, I was perturbed at the near allegation that I was a liar from — it stopped very short of calling me a liar — from certain members of this Committee. So, therefore, I determined then that I would be using all of the evidence that I had to present my case as accurately as I could so that everyone would know that I am telling the truth.
5071. **The Chairperson (Mr Maskey):** OK, well, I mean, obviously, that's an expectation that we would have of all of our witnesses, but I appreciate your remarks, and, obviously, you will have an opportunity to make concluding remarks at the end of the evidence session.
5072. **Mr Campbell:** Jenny, if you could just go back to the issue of the context of the phone call. How long had you been on the board when that happened? Just roughly.
5073. **Ms Palmer:** I think four years. I was only on the audit committee from January 2010, but I was on the board from about 2007.
5074. **Mr Campbell:** So then, obviously, you were aware of the composition of the board.
5075. **Ms Palmer:** Yes.
5076. **Mr Campbell:** Well aware. So, let's set to one side at the minute the conflicting view about what was said and the import of what was said. But your recollection of what was said about the need for you to go to the board and vote in a certain way — you would have been aware because of being on the board for four years that it would have required more than your vote for that —
5077. **Ms Palmer:** Oh yes.
5078. **Mr Campbell:** Right. So, did you, at any stage after the conversation, speak to anybody else to say, "Look, have you changed your mind?" or whatever? Because you were being asked to, effectively, vote in a particular way. Now, that would only be of any relevance if there were four or five others going to vote the same way to overturn the decision. Is that right?
5079. **Ms Palmer:** My input into what way I voted on that board wouldn't have made any difference to the outcome of that board decision, because that board decision was a unanimous decision. So, my one, lone voice would not have made any difference to it.
5080. **Mr Campbell:** Right. I suppose that's precisely the point. Does that mean then that you knew that people weren't going to change their mind or that they hadn't any — declared any view about being approached themselves to change their mind? How did you know that your one vote wasn't going to make the difference?
5081. **Ms Palmer:** I didn't at the time. It was only afterwards, in hindsight, because I didn't know what way the board — we had not had a conversation. This meeting was called as an extraordinary meeting. I didn't even know that we were having a meeting until Mr Brimstone told me on Tuesday, which is not even the regular day that we would have our meeting.

5082. **Mr Campbell:** Yes, but there was a period of time between the phone call and the board meeting.
5083. **Ms Palmer:** Oh yes. There was.
5084. **Mr Campbell:** Your recollection of this phone call is that you had a decision to make about which way you should vote if you were to take part in the discussion and to vote at the board. Did you ask anybody else if they had any opinion?
5085. **Ms Palmer:** No.
5086. **Mr Campbell:** Right. What was your state of mind going into the board meeting in terms of how others were likely to vote, given the fact that you had had a phone call?
5087. **Ms Palmer:** You know, I didn't really think about how others were going to vote. I thought about the predicament that I was placed in and about the challenge to my integrity and to the integrity of the audit committee and to the Housing Executive board by having been approached outside of my boardroom by someone who I didn't know and asked to do something that was highly irregular. So, therefore, I wasn't really worried about how the rest of the board would vote at that time; I was worried about how I protected myself in all of this.
5088. **Mr Campbell:** How many members — when you went into the board meeting, how many members were there? Can you recall?
5089. **Ms Palmer:** They were probably all in the room. I don't think I recall; I was upset. I had been in with the chairman just before that, and he had said he was going to direct that there was a conflict of interest because of the party interest in Red Sky, and he was going to ask me to leave. That gave me some assurance of protection. I thought, in doing all of that, that this would put this all to bed. That the party — that there would never be another word about it, and I would leave the boardroom and they could make the decision, and that would be it.
5090. **Mr Campbell:** But your view was that the board, up until that point, had been unanimous.
5091. **Ms Palmer:** Oh yes. In their decision on the Red Sky —
5092. **Mr Campbell:** Yes.
5093. **Ms Palmer:** — yes it was. We had taken the decision earlier in the year.
5094. **Mr Campbell:** So, a 10-person board or thereabouts — a nine- or 10-person board — in your view, was unanimous, and you were going into a meeting, and no one had said to you or made contact with you to indicate that they were considering changing their mind?
5095. **Ms Palmer:** No.
5096. **Mr Campbell:** Right. So, was it your view that if you did as had been requested you would have been the one person saying that?
5097. **Ms Palmer:** Uh-huh.
5098. **Mr Campbell:** So, it wouldn't have made any difference then in terms of the end of the contract.
5099. **Ms Palmer:** That is what I am saying: I don't think it would have made any difference.
5100. **Mr Campbell:** Right, which would make the phone call a bit pointless then, wouldn't it?
5101. **Ms Palmer:** No, not really.
5102. **Mr Campbell:** What?
5103. **Ms Palmer:** Not really, no.
5104. **Mr Campbell:** Well, if there are 10 people on a board taking a decision about a contract and one person is contacted and the other nine are all voting the other way —
5105. **Ms Palmer:** Can I give you some thoughts around this? I have thought very, very long and hard about this, and there is only one conclusion that I can come to around all of this. The fact that Jenny Palmer was the last wheel in the cog, because we had exhausted

- all of the legal issues around toing and froing about the Red Sky contracts, the fact that Jenny Palmer was a DUP councillor on the board and the fact that, throughout the issue of Red Sky, it appeared that this sectarian card was being played and that the Housing Executive was acting in a sectarian manner, the only conclusion that I could aspire to at the time, aside from the fact that it was going to damage my integrity to tell a lie and to get up and to go against my gut feeling on this, was the fact that the sectarian card could have been played out in the public domain, because I was only one of two unionist voices on that board that actually would have said, “No, hold on here, I disagree with the board”. You see, I couldn’t disagree with the board simply on a whim. I had to have evidence to disagree with the board, and the evidence that was presented to me throughout my time on audit was quite clear that there were serious issues. So, I believe that the only reason — the only conclusion that I can come to — is the fact that I would’ve been used as a pawn in the game of politics to say that the sectarian card was alive at the Northern Ireland Housing Executive.
5106. **Mr Campbell:** Of course, the sectarian issue in relation to the Northern Ireland Housing Executive had been there for a long, long time, long predating —
5107. **Ms Palmer:** And I challenged it.
5108. **Mr Campbell:** Yeah, as many of us did over a countless number of years, when others were away. So, when you came to the point that you were going into the board and you were the only person, as far as you were aware, who had been contacted, your view is that this was a sectarian card issue, rather than an attempt to change —
5109. **Ms Palmer:** No, not at the time. No, no. It was only in hindsight —
5110. **Mr Campbell:** What did you think at the time, then?
5111. **Ms Palmer:** Well, I just didn’t know what on earth the DUP would want me to do this for. You know, there was uncertainty
- as to why would the DUP hierarchy want to contact me. I’d been on that board since 2007. It was now 2011. I’d never been contacted once by a senior member of my party about any issue other than the basic lobbying issues that you get for —
5112. **Mr Campbell:** Would there have been any reason, though, for them to contact you?
5113. **Ms Palmer:** No, there wouldn’t have been, so why was he contacting me?
5114. **Mr Campbell:** Well, that’s the point I’m asking you. If it wasn’t going to make any difference in terms of the decision, which, according to what you’re saying, it wouldn’t, what was the reason then? You’re saying that you think it was a sectarian card reason.
5115. **Ms Palmer:** Look, I don’t know what was in the thoughts of my Minister at the time and his SpAd or anybody else who was associated with this Red Sky contract on the —
5116. **The Chairperson (Mr Maskey):** If I could just maybe, because you can’t know the mind —
5117. **Ms Palmer:** No.
5118. **The Chairperson (Mr Maskey):** So, therefore, I’m just going to advise people against speculating as to somebody else’s motivation, and that works both ways because there’s no doubt — this is just, Gregory, in terms of that line you’re pursuing there. Stephen Brimstone doesn’t in any way deny the fact that he contacted Jenny Palmer, so there’s no — if you know what I mean — that’s not in dispute.
5119. **Mr Campbell:** I accept that, Chairman. I think the central point here is that it would appear and ‘Spotlight’ were attempting to indicate in the programme that there was a very determined attempt to get this decision on a contract changed. My questioning to Councillor Palmer is to indicate that, even if it were the case that Jenny Palmer was being asked to change her vote, it wouldn’t have made any

- difference. It would've been a 9-1 vote rather than a 10-nil vote, so it wouldn't have made any difference to the contract, which is what 'Spotlight' were majoring on.
5120. **Ms Palmer:** It would have damaged my integrity.
5121. **Mr Campbell:** But it wouldn't have made any difference to the contract.
5122. **Ms Palmer:** Imagine your own party wanting to damage a party member's integrity around an issue.
5123. **Mr Campbell:** Well, there's an inference there, Jenny, that that's what was —
5124. **Ms Palmer:** Exactly.
5125. **Mr Campbell:** — at the back of the phone call, which, I think, we've got to — that's quite subjective.
5126. **Ms Palmer:** It's quite evident.
5127. **The Chairperson (Mr Maskey):** I could suggest some of the questions could be described that way as well, but I'm just making that point, so —
5128. **Mr Campbell:** Well, my questions are about the programme, Chairman.
5129. **The Chairperson (Mr Maskey):** You don't know what way a vote would've gone. I mean, for example, I —
5130. **Mr Campbell:** Well, that's why I've asked the witness and she has indicated nobody else had indicated a change of mind. We've never heard from anybody else that they were indicating a change of mind.
5131. **Ms Palmer:** I wasn't in the boardroom.
5132. **The Chairperson (Mr Maskey):** Sorry. Mrs Palmer wasn't there for the debate because she left, so who knows, if Mrs Palmer had made an interjection, what the conversation would've —
5133. **Mr Campbell:** Well, we had Brian Rowntree here and he never indicated that there was any — I mean, it has never been hinted or suggested that there was any decision other than the one that was made by anyone.
5134. **The Chairperson (Mr Maskey):** Mrs Palmer didn't make any interventions at that particular board meeting at all, so you don't know the outcome of any debate. Who knows —
5135. **Mr Campbell:** Brian Rowntree was here and gave no indication whatsoever that anybody else was of a mind to change their opinion or their vote on the issue of the contract. Nobody has ever suggested that. No one has ever suggested it. So, the difference would've been 9-1 or 10-nil, but still the same outcome — still the exact same outcome.
5136. If I could move on to a separate issue, Chairman. Jenny, just the last time you were here, I asked you about the issue regarding the famous or now infamous Rinmore contract in Londonderry. You had said, "I would prefer not to talk about Rinmore".
5137. **Ms Palmer:** Yes, that's right.
5138. **Mr Campbell:** Was there a reason for that?
5139. **The Chairperson (Mr Maskey):** Again, I just remind people the Rinmore contract — because this Committee is not aware of any issue around the Rinmore contract other than tangential references to it in a couple of evidential sessions. So, nobody around this table that I am aware and, certainly, the Committee formally has not been made aware of any issue. Certainly it is no relation to this inquiry.
5140. **Mr Campbell:** The Committee formally at our last meeting, Chairman, when you and I had an exchange about this, formally agreed — it's in the minutes — that Rinmore would form part of this inquiry.
5141. **The Chairperson (Mr Maskey):** No, it did not. That's not what we agreed whatsoever. No, no, no. I actually invited anybody who wanted to discuss Rinmore as an issue then we would do that. I was prepared to even go into closed session to do that, and I raised it again.
5142. **Mr Campbell:** As part of this inquiry.

5143. **The Chairperson (Mr Maskey):** No, not as part of this inquiry.

5144. **Mr Campbell:** Oh yes.

5145. **The Chairperson (Mr Maskey):** Unless somebody proves that it is part of it because, at the end of the day, people had mentioned Rinmore. Not one person has introduced as to what the relevance Rinmore is in relation to this inquiry, and, until somebody does, it won't form part of the inquiry.

5146. **Mr Campbell:** No, Chairman.

5147. **The Chairperson (Mr Maskey):** So, I didn't. I know what I said.

5148. **Mr Campbell:** Excuse me, Chair, you may do, but there have been two witnesses now, Chairman. I raised this at the last meeting with Mr Rowntree, who, when asked about Rinmore — there may well be legitimate reasons why they didn't want to talk about Rinmore, but you can't then say, "Unless somebody tells us something about Rinmore, we're not going to form an opinion about what we should do about it" if people say, "No, I'm not going to talk about it".

5149. **The Chairperson (Mr Maskey):** I was very clear because people are referring to Rinmore, no substance to it, no reference, no understanding what it's about, and what I suggested at the last meeting is that people want to discuss it because Mr Rowntree made it very clear that he would be more than happy to talk about the Rinmore issue outside of this — he didn't make it conditional outside this inquiry — but he made the point that he didn't see that it was anything to do with this, and he was quite prepared to discuss it in any other meeting or any other forum. I put it to the Committee that, if the Committee so desired, I was quite prepared to facilitate a discussion, even in closed session, although that wouldn't be necessary as such on the issue of Rinmore. Not one member of this Committee came to me before this meeting or even at the start of the meeting to say, "By the way, I want to have that raised". So, the offer still stands. We will deal with it under AOB,

but I am directing the witness not to respond to an issue around Rinmore because this Committee is not aware of anything relevant to Rinmore because — I will say this for two reasons — first of all, it has been referred to before without any substance attached to it or understanding as to why it has even been brought up. The second point about it is Ms Palmer is here this morning under oath to give evidence in relation to specific matters which have been identified to her, and that is what she is here to respond to. No other witness has been asked to deal with issues outside of the remit that they have been charged with for that particular evidence session, and that will pertain today. So, I am directing the witness not to be addressing the Rinmore issue.

5150. **Mr Campbell:** Right, Chairman, then the issue is this: in the 'Spotlight' programme of July 2013, a specific reference was made during the interview with Brian Rowntree to the Rinmore contract during the programme, and this Committee is conducting an inquiry as a result of the programme — the 'Spotlight' programme — of that date. Now, I am quite content to rest with your decision in terms of Councillor Palmer and Mr Rinmore — sorry, Mr Rowntree — also made the same view that he would not, despite what you've just said, he said he would not answer when I asked him. He then subsequently said he would be happy to come back and answer questions about Rinmore. I made the point that we've now had two witnesses who've declined to answer questions about Rinmore. You, Chairman, or anybody else can't then say, "We've had nothing raised about Rinmore". We are trying to get something raised about Rinmore, and people won't answer the questions.

5151. **The Chairperson (Mr Maskey):** Well, I've made it clear again, if someone has an issue to raise around Rinmore, then bring it to our attention and then we can deal with it.

5152. **Mr Campbell:** And once we get answers to the issues, we then can understand

- and establish whether there is any substance to the issues.
5153. **The Chairperson (Mr Maskey):** Thankfully, I appreciate that you're prepared to deal with it in this manner. It's rested for this morning, and we will deal with it under AOB immediately after this session because, as I've said to you earlier on, people mentioned Rinmore, they haven't said what it's about, they haven't said what it means, they haven't said, "Has the Housing Executive dealt with it?". I heard Brian Rowntree saying he'd be prepared to come back. I would make it more strong than that. If this Committee requires Mr Rowntree to come back as a witness in respect of Rinmore, he'll be here. So, I'll have no hesitation, nor would any other member round this table. If it's pertinent to this inquiry, we will certainly compel any witness. That's what we would seek to do, as one would expect us to do: to follow our job robustly. So, I am moving on from the Rinmore issue.
5154. **Ms Palmer:** Chairman, can I just make a comment briefly? I am happy to answer any questions around Rinmore if you wish to bring it before this Committee at another point.
5155. **The Chairperson (Mr Maskey):** OK, thank you for that. OK, so we can move on from the Rinmore.
5156. **Mr Campbell:** Right. And, we're coming back to Rinmore, of course.
5157. **The Chairperson (Mr Maskey):** Surely. I said that before Christmas.
5158. **Mr Campbell:** Yes, and we agreed to do that.
5159. **The Chairperson (Mr Maskey):** Not under the inquiry. No, I said we would have a discussion —
5160. **Mr Campbell:** We agreed at the last Committee to do that.
5161. **The Chairperson (Mr Maskey):** Just check the reports of the meeting. Anyway, we have made the decision, so —
5162. **Mr Campbell:** And we will do that, Chairman.
5163. **The Chairperson (Mr Maskey):** We will, surely.
5164. **Mr Campbell:** Yes, we will indeed.
5165. **The Chairperson (Mr Maskey):** I am looking forward to hearing it.
5166. **Mr Campbell:** No decision by the Chair or anyone else will prevent us from doing it.
5167. **The Chairperson (Mr Maskey):** The Committee will decide.
5168. **Mr Campbell:** That's right; they will indeed.
5169. **The Chairperson (Mr Maskey):** The Committee will decide, which, I remind you, I actually asserted that in our last meeting. I made it very clear. If people do not want to then take up the offer to come back and raise the issue, it is not my fault. The responsibility for raising these matters lies with those who want to raise them.
5170. **Mr Campbell:** That's right —
5171. **The Chairperson (Mr Maskey):** We will raise them —
5172. **Mr Campbell:** And some of us have.
5173. **The Chairperson (Mr Maskey):** The Committee will deal with it. Nobody will dictate to anybody round this table. I will moderate the business of the Committee and the hearing. I will do that robustly. OK, so we are moving on from Rinmore. We will come back to that at another stage.
5174. **Mr Campbell:** Yes, we will indeed.
5175. **The Chairperson (Mr Maskey):** And decide whether or not it is pertinent to this inquiry.
5176. **Mr Campbell:** Yes, we will, and it is pertinent to the inquiry.
5177. **The Chairperson (Mr Maskey):** You say that —
5178. **Mr Campbell:** It is pertinent to this inquiry, Chairman.

5179. **The Chairperson (Mr Maskey):** The Committee will decide that. You will not, and I will not.
5180. **Mr Campbell:** It is pertinent to this inquiry.
5181. **The Chairperson (Mr Maskey):** That's fine, but you won't decide that, nor I will.
5182. **Mr Campbell:** It is pertinent to —
5183. **The Chairperson (Mr Maskey):** Move on.
5184. **Mr Campbell:** — this inquiry.
5185. **The Chairperson (Mr Maskey):** Move on.
5186. **Mr Campbell:** If I could go on then, Jenny. The issue about Mr Rowntree. I had asked him about talking with the producer of the programme or, sorry, the reporter — Mandy McAuley, I think it was. You had said that she had arrived unannounced at your door for the interview. Mr Rowntree had said that, subsequent to the programme, he had spoken to her. I don't know whether it was in the context of her wanting to establish what he thought of the programme. Did she do that with you?
5187. **Ms Palmer:** Yes. I was made aware from the BBC — not Mandy but the director chap who was with her at one point during the programme — that they had a duty of care after the programme to meet with all of the contributors who had been under pressure or something. It is like a pastoral role, a compassionate role — I don't know.
5188. **Mr Campbell:** Is this the BBC we're talking about?
5189. **Ms Palmer:** Yes, so they met with me afterwards to make sure that I was OK, because, for about five or six weeks, I was under a massive amount of pressure, media pressure. So, yes, they did meet with me on a couple of occasions to make sure I was OK.
5190. **Mr Campbell:** I think, from recollection, Mr Rowntree said it was, from his perspective, the discussion he had with them was a very short time after the programme — within the following week or so. Would that have been the same for yourself?
5191. **Ms Palmer:** It probably was around a week or two.
5192. **Mr Campbell:** Have you had any discussions with the director or the reporter subsequent to that?
5193. **Ms Palmer:** In terms of the —
5194. **Mr Campbell:** In terms of the programme.
5195. **Ms Palmer:** No. Only the indicated times that I have met with them to discuss my pastoral well-being in terms of their — they have a legal obligation or something. I can't remember what they said, but they basically said that they had an obligation to make sure that I was OK. So, they had a cup of coffee with me and a chat to see how I was.
5196. **Mr Campbell:** Right. But the programme went out about 18 months ago. So, you haven't had any discussions with the makers of the programme, for example, in recent months.
5197. **Ms Palmer:** In terms of that programme.
5198. **Mr Campbell:** Yes, or any follow-up to it.
5199. **Ms Palmer:** No, no, not at all, not in terms of that programme.
5200. **Mr Campbell:** So, the last time you would have spoken to the director or the reporter was when?
5201. **Ms Palmer:** Last week.
5202. **Mr Campbell:** Last week?
5203. **Ms Palmer:** But not about this, not about the programme. This was a whistle-blowing allegation that came to me, that I was asked to approach the reporter on to ask them to meet with the whistle-blower. So, it was a separate event.
5204. **Mr Campbell:** Was it in any way related to the 'Spotlight' programme?

5205. **Ms Palmer:** No, it was nothing to do with that. Nothing to do with any of this. Nothing to do with housing.
5206. **Mr Campbell:** Right. OK. So, had the ‘Spotlight’ — because we’ve been trying to get the BBC to come to the Committee. In your earlier discussions with them in relation to this programme, did the issue of your attendance at this Committee come up at all?
5207. **Ms Palmer:** No.
5208. **Mr Campbell:** No. Neither from you or them.
5209. **Ms Palmer:** No. I don’t think even we had — no, they never discussed anything about the programme, just about my well-being, just making sure that I was OK, because I was under extreme pressure and stress. My husband was being treated for cancer at the time as well, and they showed compassion where a lot of people didn’t.
5210. **Mr Campbell:** Is your husband improving now?
5211. **Ms Palmer:** He is, yes, thankfully.
5212. **Mr Campbell:** Good. OK, Chairman. Thank you.
5213. **The Chairperson (Mr Maskey):** OK, Gregory, thank you. Fra.
5214. **Mr F McCann:** Thank you for your evidence so far. Earlier on in the meeting with, when Michael Sands was giving evidence, there seemed to be a complete difference of events that occurred. Obviously, when you were giving evidence, you were saying that — stating it as a matter of fact, and Michael was talking about it in terms of recollection. Would you like to comment on what Michael Sands has said and on how he framed his interpretation of what happened during the —
5215. **Ms Palmer:** Well, it seems like it’s a long, long time for Michael Sands to recollect three and a half years ago, but I can tell you now that, in terms of the email and how that conversation came around, it was very clear to me that I had given evidence — I had given evidence to DFP on a fact-finding investigation into Stephen Brimstone’s conduct on 30 August, and, a few weeks after that, Michael Sands appeared at my committee for the first time. That was his first appearance at my committee, other than if he was coming to give a presentation, whereby he had no role to attend my committee. And even my secretariat said this was very unusual that Michael Sands would attend a basic subcommittee of the Housing Council. And after lunch or after the meeting, I asked him, Chair, I asked Michael Sands in front of the members, “Michael, can you clarify for me why you’re here? Can you tell me do you report back to the DSD in terms of the work of my committee?”. He said in front of a lot of members — I am sure there are plenty of members that were in attendance that would’ve heard it — “Oh no, no, madam chairman, I’m only here out of my own volition just to find out a wee bit more about the issues that are perplexing the elected members”. So, he had no role to be there.
5216. After the lunch or after the meeting and we had lunch, he sat beside me, and it wasn’t a gossip — I asked him, “Michael, did you have a good holiday?”, because, normally, we’re in recess and we’re all having a break away, and he said, “Yes, I had a lovely time away with the grandchildren and the family”. And he said, “What about you?”. So, it was general conversation, not gossip. I said, “No” —
5217. **The Chairperson (Mr Maskey):** OK. Just take a moment. OK. Do you want to —
5218. **Ms Palmer:** I said, “No”, Chair, because John —
5219. **The Chairperson (Mr Maskey):** Do you want to take a few minutes’ break?
5220. **Ms Palmer:** If I could.
5221. **The Chairperson (Mr Maskey):** No problem. Just adjourn for a few minutes.
- The Committee suspended at 12.04 pm and resumed at 12.07 pm.*
- On resuming —*

5222. **The Chairperson (Mr Maskey):** Again, thank you for — are you happy enough, Ms Palmer, to go ahead with your evidence today?
5223. **Ms Palmer:** Yes, Chair. I'm sorry about getting a bit upset.
5224. I did explain to Michael that we'd had a couple of days in Donegal, because, obviously, John was getting his chemotherapy. And then he said to me — not the other way round, Chair — he said to me, "Can I ask you something, Jenny?". I says, "Fire away, Michael", and he said, "Do you know anything about an email that was sent to the chairman of the Housing Executive?". Chairman, I was worried at that point on that inference that he had asked me about an email that he sent. The only reason that I was worried was because, within this document here, which has not been released — this is only my statement — but, within that document, I had indicated, as part of — they had asked me in the interview —
5225. **The Chairperson (Mr Maskey):** Document? Sorry, Jenny, you are referring to what document, just for the record.
5226. **Ms Palmer:** The investigation of DFP. In the document, Chair, under investigation with the two chaps, they said to me, "Jenny, listen, you know, is there anything there —"
5227. **The Chairperson (Mr Maskey):** I take it these are two DFP officials.
5228. **Ms Palmer:** Yes.
5229. **The Chairperson (Mr Maskey):** This is a fact-finding exercise.
5230. **Ms Palmer:** Yes. Do you need their names?
5231. **The Chairperson (Mr Maskey):** No, it's not necessary.
5232. **Ms Palmer:** They asked me, "Jenny, is there anything else that you can think of that would actually give substance to your side of the conversation?". And I said, "The only thing I can think of is that I know that there was an email sent to the chairman that I never saw because I was outside the boardroom that morning". But there was an email that was sent to the chairman from the DSD and from Mr Brimstone that basically directed him or invited him to invite the board to extend the contracts. I said, "So, that's the only thing that I know would link Stephen Brimstone with the conversation he had with me and the accuracy of my account of it". I am assuming, Chair — that's all I can do, because the Department won't release the document — that Mr Brimstone was met before Mr Sands appeared at my committee, because I met on the 30th; this investigation was over in three weeks, and they had presented it to the permanent secretary. When he asked me that, I knew right away that they must have said to him, "But, Stephen, Jenny Palmer has said to us that you sent an email to the chairman directing him to tell the board to extend the contracts on the morning of —". That's the only reason I can think that Stephen Brimstone went into his office and demanded that he see that email. And it wasn't there, Chair.
5233. **The Chairperson (Mr Maskey):** OK. Fair enough. Thank you for that. Again, just watch the speculation. But, I mean, the factual record is —
5234. **Ms Palmer:** But, the chronological timeline in all of it, Chair. Why would Michael Sands come to my committee? Why would Michael Sands ask me about an email? Why on earth would I want to talk to Michael Sands about any email that was nothing to do with him? I did not enter into that conversation with Michael Sands. Michael Sands raised that with me. That triggered my concern that Mr Brimstone was probably going to hide that email, and that was my assumption around it all.
5235. **The Chairperson (Mr Maskey):** OK. Fair enough. Thank you for that. OK.
5236. **Mr F McCann:** Chair, during Michael Sands's evidence, unless I picked it up wrong, he seemed to say that he was at the committee on a number of occasions. I think he mentioned six

times. I take it from what you are saying that is not the case.

5237. **Ms Palmer:** The first time that Michael Sands appeared at my committee informally was in that September meeting, and, after that, he came maybe four times more before he took ill and then after he took ill. After he was back, he came one more time, but he didn't come because he had any business to relate to the board — to the regeneration committee. I don't know why he came, and I still don't know why he came, and he didn't answer it fully. But I did ask him in front of members, and, in fact, whenever I asked him about — when he returned to — I asked him a couple of times so he knew about it — the phone call. Or if he was even — I asked him if he was present when the phone call was made to me because I was trying to find out who was present, and he said no, most definitely not.
5238. Then, when he gave evidence to this Committee when he came back from sick leave — I can't remember the date — he was fidgeting about with papers. If you look back on the record and you view it, he was fidgeting, and I noticed as I was getting ready to go out to the Chamber of Commerce dinner and I saw him on television on the six o'clock news. And the six o'clock news saw him, and he was very anxious around some paperwork. He was at the Housing Council committee the following week, and I went up to him and I said to him, "Michael, I am very impressed with your evidence at the Committee", because I believed that he had given an accurate account of all of that. And I said, "What was wrong with the paperwork in front of you? You were very fidgety about it?". He says, "Well, I was trying to get — I was trying to get someone to actually ask to see the paperwork, but they didn't". And I says, "Michael, were you present when Mr Brimstone made that call to me?". And he says, "No I wasn't". I says, "How do you know about it then?". He said Mr Brimstone came to him and said to him — about, I think, a day later, he told me — and said to him, "Look, just for your information", because of his role.

It wasn't gossip; it was because he needed to say that he had made contact with a board member, and that's how he found out about it. So, his account that the permanent secretary told him a week later is not the same account that he relayed to me.

5239. I said to him, "Would you be prepared to tell the truth because that substantially supports my conversation with Mr Brimstone?". He said, "Well, if somebody asks me, I'll tell the truth", and I went to my secretariat and told them, "This is brilliant. Michael Sands". I mean, I was so elated that someone else knew exactly what Michael Sands asked me to do that I went to a couple of members on the Housing Council regeneration committee and to my secretariat and said, "This is great news. If Michael Sands stands by his word, Michael Sands will relay the exact conversation that Stephen Brimstone and I had because he has just told me". They were bowled over with it. They thought this was great. So, this is not just me and Michael Sands because, at the meeting, I was so elated about his testimony that I told a few members that this was wonderful news because this supported me. Unfortunately, he let me down badly. That's all I can say on that, Chair.
5240. **Mr F McCann:** Chair, it's just to go back on that. I think it's something that, on the basis of that evidence, it's something that we need to come back on also because, again, there is a clear contradiction —
5241. **The Chairperson (Mr Maskey):** We'll consider that, you see, in —
5242. **Mr F McCann:** It just goes back, and I'm just obviously seeking some clarification, and it was based on a question I'd asked back on 6 November 2014 in relation to the conversation that you had, and I'd said to him that it seemed more than a casual conversation that you were having, when he said:
- "I can assure you that all it was a casual conversation over lunch. As I said in my statement, it was Jenny who raised the issue of what had happened over the summer and*

*her appearance, and she mentioned an email that had gone from the Department. To get clarification as to whether it was another email that I was not aware of or an email that we are aware I sent on the morning of 5 July, I simply asked her about it. She said, 'It was your email.'*"

5243. And then he goes on. I said that there seemed to be a clear contradiction in the evidence, and he said:

*"Yes, I did ask her. I did not introduce the subject."*

5244. **Ms Palmer:** He did introduce the subject — he asked me. After I had discussed holidays and he had shared his experiences of his holiday, he asked me, "Can I ask you a personal question, Jenny?". That was how he introduced it. I said, "Fire away", and he said, "Do you know anything about an email that was sent to the chairman on the morning of the infamous board meeting?". I said, "What are you asking me that for, Michael? You sent it on behalf of Mr Brimstone". I mean, it's a clear-cut as that. To me, there is no deviation in terms of who enacted that conversation. He did, and that triggered for me, because it was only three weeks after I had given evidence to the DFP and had said expressly that that email would have supported my view of the conversation I had had with Mr Brimstone. So, I was very concerned that Michael Sands was asking me about an email that he should have known about because he sent it.

5245. **Mr F McCann:** Chair, I have one final question and comment on it. It's much, much more than a gossipy conversation that Sammy Wilson is trying to portray here, that it was two people in a corner who were having this wee conversation and passing on gossip about the thing, and that that part of the evidence that Michael Sands gave here this morning was untrue.

5246. **Ms Palmer:** You say I'm under oath, Chair, but I know I'm telling the truth.

5247. **The Chairperson (Mr Maskey):** Well, I mean, I don't want to have to remind you, but I will remind you for the record,

and I will also advise Mr Sands after this meeting in writing on behalf of the Committee just to remind him that people are under oath and there are implications of being on oath, but we expect and anticipate that all witnesses coming here will be as honest and frank as they can be.

5248. **Ms Palmer:** I will answer that question, Chair, by saying I have told the truth — the whole truth.

5249. **Mr F McCann:** That's fine.

5250. **Ms Palmer:** I have been totally honest.

5251. **The Chairperson (Mr Maskey):** OK. Fair enough. Thank you. Sammy.

5252. **Mr Wilson:** There are a number of parts of your evidence that seem to be quite contradictory, not only contradictory from what other people have said, Jenny, but contradictory from what you said yourself. Let me just take you back to the whole discussion about this. In your evidence on 9 October, I asked you about allegations that were made about a sectarian witch-hunt against Red Sky, and, in that, you said you were not aware of any sectarian allegations. You've told Gregory Campbell this morning that you were concerned that you were being asked to play the sectarian card.

5253. **Ms Palmer:** Can I say —

5254. **Mr Wilson:** Now, if you weren't aware of any sectarian allegations around the contract, and that's what you've said in the evidence that you gave on —

5255. **Ms Palmer:** I think you'll find that I said that I wasn't aware of any sectarian allegations around the Red Sky contract at the outset of me becoming a board member on the audit committee, that I actually only became aware of the sectarian element around it when it became public knowledge that the contract was going to be removed from Red Sky. I think you'll find that I said that I realised then that there was political inference out there that there was sectarianism in the Housing Executive around this Red Sky contract

- and the fact that the media had covered some of the repair work done to it.
5256. **Mr Wilson:** You see, you didn't say that.
5257. **Ms Palmer:** I think you'll find I did say that.
5258. **Mr Wilson:** I asked:  
*"you were not aware of any sectarian motive being attached to the whole contract."*
5259. And you said: "Yes". Then, I said you knew that big players, because you'd said that earlier on, in the DUP and their views around Red Sky. Now, the big players in the DUP had — as you admitted later on, what you knew about it was what was in the media, and yet all the media stories were about the sectarian campaign that there was in west Belfast against Red Sky. So you told us that — you're telling me now that you're only aware of it because it was in the media, then you tell us that all you were aware about the media stories was TUPE issues. That's what you said under evidence the last time. And now you tell us today or you tell Gregory Campbell today that you were concerned that you were being dragged into an issue which was sectarian. Now, were you telling us the truth the last time, or are you telling us the truth now?
5260. **Ms Palmer:** Sammy, you're very good at saying if I'm telling the truth or not. Can I, Chair, through you, explain: Mr Wilson asked me questions for 35 minutes, which was tantamount to bullying, around the Red Sky contracts and when I became aware of sectarianism. I was on audit committee, reports were brought to audit committee, there was media sent to me, and there was media sent to me every single day and probably every week around Housing Executive business. But, I was not aware at the time of this company or their background in this company; I was looking at this as a professional making a decision based on evidence presented to me about Red Sky.
5261. Now, yes, there was media attention, because Brian Rowntree's name was put up on some wall or something because of, I suppose, the allegation that there would be a lot of job losses. Now, I think I have it — I don't have it with me — I think that 391 out of the 400 actually got re-employed. But, in terms of — who did I see on the media from my own party? I saw Robin Newton and Sammy Douglas and Peter Robinson and the Minister, and when the phone call was made to me, could I go to any of them, Chairman? Because they were already involved in the Red Sky issue in east Belfast. So, was it appropriate that I could've felt comfortable going to any of those members who are my party hierarchy to discuss how I felt? No; so I went to my MP, and that's the basis of it. Now, whether you want to twist my words because it was 35 minutes of toing and froing — you are very welcome to twist my words, but I know exactly —
5262. **The Chairperson (Mr Maskey):** Just for the record, I mean, there were essentially two strands of the discussion around what's called "sectarianism". One was the suggestion, which was put to Mrs Palmer, that there was a sectarian motivation behind the decision in the Housing Executive to terminate the contract, and that was rejected by Mrs Palmer and all of the other witnesses from the Housing Executive in particular. And then there was the issue as to whether or not there was what was described as the "sectarian card being played". So, there are two separate strands of the conversation here.
5263. **Ms Palmer:** Yeah, they are.
5264. **The Chairperson (Mr Maskey):** So, it's important not to mix the two.
5265. **Mr Wilson:** So you're now telling us that you couldn't approach anybody because you actually did know that this was a company which is based in east Belfast and there were sectarian issues around it. In fact, you can even recollect some of the stuff about Brian Rowntree being pasted on a wall in east Belfast. Yet, at the time, you were telling me that you weren't aware of any sectarian issues —
5266. **Ms Palmer:** No.

5267. **Mr Wilson:** — and, indeed, all you knew — I’ll quote it — was what was in the media and the concern about job losses and the TUPE issues.
5268. **Ms Palmer:** Yeah. I knew that our party wanted to keep the Red Sky contract afloat, but I didn’t know anything else. No one from my party came to me and said to me, “Jenny, we need to protect Red Sky”. Even if they did, why would we be — with public money and the worry of public money — why on earth would any of my party hierarchy have come to me and said, “We need to protect Red Sky”, because it is a private company and public money being wasted? I felt uncomfortable about going to them when the phone call came in; that’s all that I’m saying around that issue. The big guns were all over that story. All I could see on the news was my party leaders — all my party hierarchy — all trying to save Red Sky.
5269. **Mr Wilson:** No. All I’m trying to —
5270. **Ms Palmer:** I’m not saying that there was anything sectarian in any of that, because I didn’t even know that was — I’ve said clearly that I didn’t know what the political or religious breakdown of that contractor was.
5271. **Mr Wilson:** Well, then, why did you then say to —
5272. **Ms Palmer:** I didn’t. The media said —
5273. **Mr Wilson:** Why did you then say to Gregory Campbell this morning that, when Stephen Brimstone rang you, you were perturbed that you were being asked to play the sectarian card? You know, Jenny, all I’m saying to you is there’s no consistency —
5274. **Ms Palmer:** There is very much.
5275. **Mr Wilson:** — in what you are saying, which calls into —. I’m going to leave this one, because I think that we’ll to and fro from it and then you’ll accuse me of bullying you for 35 minutes, though you never mentioned anything about bullying the morning you were here. Anyhow, leave that aside.
5276. Let’s come to the second issue then, where there appears to be a conflict of evidence. When you were here the last time, you indicated that you were asked to go and meet with the party officers and there was a number of people there. This is what you said about Stephen Brimstone at that meeting in which Peter, Gregory, Gavin, some others and Jeffrey were all there: “He” — that is Stephen —
- “agreed then that my account was practically right.”*
5277. **Ms Palmer:** Yeah.
5278. **Mr Wilson:** Now, the strange thing is that’s not the recollection of anybody else.
5279. **Ms Palmer:** Have you spoken to them all?
5280. **Mr Wilson:** And the other thing is, according to the letter which you have read out — because you then said that, on the basis of that, an apology was to be sent. On the basis of the letter that you have quoted here this morning, there was no such content in that letter indicating that the agreement which you allege took place was actually made. Indeed, your objection to that letter — maybe you’ll tell us: what was your objection to the letter?
5281. **Ms Palmer:** Well, really, I don’t think you want to go there.
5282. **Mr Wilson:** Your objection — no, you’ve already stated — what was your objection to the letter?
5283. **Ms Palmer:** Well, Chairman, first and foremost, the objection to the letter — the first draft — when I sat down with my MP and my family to discuss what was the content of the letter: basically, apologise to me for hurt, recognise that I was a valued member of the DUP and that my — that Peter Robinson acknowledged my expertise on the board of the Housing Executive and to protect my integrity. But the letter deviated from what was agreed in the room. I couldn’t sign off on it, and Jeffrey said, “And I wouldn’t expect you to”.

5284. So, it was sent for a second draft, with amendments. Jeffrey and I sat down and talked it through and amended the document at my table. Then it came back to me — another amendment and another addition. It was getting more and more wieldy because all it was was — as you rightly say, Chair, we deal with facts, not with opinions — but all this was was opinions about how the Minister, Jenny understood the Minister's role and it quoted the SpAd's code of conduct. It all got really messy. And I said: "I am not signing off on this, no way, Jeffrey." So we sent it back again. I told him that I removed all the crap that was in it and dealt with the facts. And then the next draft came back to me, and it was even worse than the last one. And Mr Brimstone had one of the drafts for about three weeks. I think I put on Twitter, and I remember saying this at this Committee: "Twenty-one days and still waiting"; "Twenty-two days and still waiting". I think it went up to about 26 days before Jeffrey actually rang me and said: "I've got another copy; can I send it to you? It's probably our last opportunity". And it was our last opportunity, because I wasn't signing off on such rubbish. It wasn't based on the meeting of Peter Robinson and those agreed. And in Peter Robinson's words, nothing was amended there, because Peter Robinson's words were not amended until the last draft. And Peter Robinson was clear on it in what he tried to do, to set the scene, that Jenny Palmer —. Both were agreed that my recollection of the conversation was the accurate one. That is Peter Robinson's words after the meeting with all the other parties in the room, Chair. So I can only assume that the agreement to put out the apology to me would only have been predicated on the acknowledgement within the room that I was right, and not the witch-hunt that has presently —
5285. **Mr Wilson:** Obviously, the inconsistency in your argument here, Jenny. First of all, if that had been agreed — and Stephen Brimstone has said it wasn't agreed, there's no recollection amongst those who were present that it was agreed, but, furthermore, the evidence —
5286. **The Chairperson (Mr Maskey):** Sorry, sorry. Just a second. I want to make a ruling on this here because, Sammy, you have made that reference twice. This Committee has not spoken to any other person in that meeting so therefore we can't —
5287. **Mr Wilson:** OK, well, the only reflection we have then is Jenny's revelation of what was contained in the letter, and the letter contains nothing of what she claimed was agreed when she spoke to this Committee. And, in fact, I suspect that the main reason for that is that no such agreement was ever reached when that meeting took place. Jenny, when you say you did not know there was any sectarian motive behind the Red Sky contract, and then admit to Gregory this morning that you thought you were being asked to play the sectarian card, your recollection —
5288. **Ms Palmer:** Two separate issues, Chair.
5289. **Mr Wilson:** Your recollection of that meeting —
5290. **The Chairperson (Mr Maskey):** Sorry, folks. Just wait a wee minute. Again, Sammy, you are putting questions and putting assertions some of which are not correct, but obviously there is always a certain amount of latitude. We are all being adult in the room. So you are putting your questions and, you know, you have to allow the witness then time to respond to some of that, if it is in order to do so. So, stick to the kind of facts of the matter and ask the relevant questions.
5291. **Ms Palmer:** Chairman, I was asked if my recollection of the conversation with Stephen Brimstone was accurate. We had this meeting with Peter Robinson. As a consequence of my appearance at that meeting, and both of us, Stephen and I, both giving an account of what happened, Peter Robinson didn't turn to Stephen Brimstone and say: "How will we manage this?". He turned to me and he said: "Jenny, so what can we do to put this right?". And I said to him, "This

- is in the public domain, and people are asking whose account is accurate, mine or Stephen's, and I need the apology to show that". And, Chairman, this is the fifth draft; it is not even worth reading because it is an absolute — But you see the rest of the drafts? They all say, in the third paragraph, Chair, and these are Peter's words: "Following the programme, both were agreed that the only issue discussed during the conversation was the board's consideration of the contract with Red Sky". Not about all the other stuff that Stephen said he talked to me about.
5292. **Mr Wilson:** Nobody's denying that. Stephen Brimstone has not denied.
5293. **Ms Palmer:** Stephen did. He amended —
5294. **Mr Wilson:** Stephen Brimstone did not deny when he was here that the discussion was about Red Sky. The issue is whether or not he tried, he was ignorant to you —
5295. **Ms Palmer:** He was.
5296. **Mr Wilson:** — and tried to force you to do something that you didn't want to do. That was the issue. So, you know, you can quote about both agree it was Red Sky, the conversation was the contract with Red Sky. That is not at dispute, so I don't know what the relevance of quoting that particular document is.
5297. **Ms Palmer:** I'll tell you what the relevance is, Chair.
5298. **The Chairperson (Mr Maskey):** Sorry, let me just come in. There is an important relevance, because in Stephen's evidence, he suggested there were other items which were discussed — a number of items which were discussed in the telephone conversation. So, it is very pertinent that we have a set of drafts, none of which have been amended until, we have been told, maybe five. I am not sure, but certainly over four drafts which have been exchanged between the various parties, including Stephen, that that hadn't been changed at all. So, the relevance is that the drafts have been read out into the record and we haven't physically got them yet. We will do that later on and consider further in Committee session and the private session what we make of all of this obviously in due course. But, it clearly states there, and it's been read into the record twice, that there was a single item of discussion and it was Red Sky, which is directly contrary to what another witness has actually said in relation to the telephone conversation, so it is relevant.
5299. **Mr Wilson:** No, the issue is whether or not there was a demand from Stephen, and he was ignorant to Jenny causing her to nearly have a heart attack over what was said to her. Now, there is nothing, no evidence that she has given so far, although she did give evidence to the Committee that, when she met with people from the DUP, they agreed that her account was practically right. She has produced no evidence to show that that is the case. That's all I'm saying. So, there appears to be a contradiction yet again on this particular issue, where she says —
5300. **The Chairperson (Mr Maskey):** No, I mean —
5301. **Ms Palmer:** With respect, Chair, the evidence that I have given today is actually predicated on the meeting that took place, where I interjected and spoke to Stephen in that meeting and said, "Let me remind you", when he couldn't recall exactly what he had said. He couldn't recall exactly what he had said, and I reminded him verbatim in that meeting with Jeffrey Donaldson and all the others present. And it was after that, Peter looked at him and said, "Well, what have you to say?" He shook his shoulders, he went red in the face and he said, "Well, that's probably as accurate as it'll be". Peter then turned to me, so what more evidence do you need? For me to produce a document.
5302. **The Chairperson (Mr Maskey):** Again, you have been asked a question, and you have been asked it on a number of occasions, and that's fair enough. And you've given the same response. Obviously, the Committee, in due course, will consider all the evidence, including

- this particular piece of evidence, and decide what weight, if any, to attach to it. That is a discussion the Committee will have when we look at and consider all of the evidence. That's not something we'll decide in the middle of an evidence session.
5303. **Mr Wilson:** Could we come just to a third issue, where, in response to Gregory, one of the reasons Mrs Palmer said she was so upset was she didn't know if her vote would make any difference because she didn't know how the rest of the board would have reacted? Isn't that what you said?
5304. **Ms Palmer:** No, it's not what I said.
5305. **Mr Wilson:** Well, you said, "I didn't know if my vote would have made any difference". Those are exactly the words which you said.
5306. **Ms Palmer:** And that's exactly right. I didn't know, because I mean the board hadn't made the decision. I wasn't in the room. All I could think was, "Why am I being approached? Why is my integrity at risk here? Am I going to have to go in there and do something that goes against the grain, that damages the integrity of the Housing Executive, the audit committee and all of the external reviews that were undertaken on behalf of the Housing Executive and the legal advice?". Was I going to go in there and make a fool of myself and be a sacrificial lamb on the whim of a phone call that I took from Mr Stephen Brimstone that demanded, and did bully me and did say to me, "Jenny, you do what the party wants, otherwise there's no point in you being on the board of the Housing Executive"? Now, if that's not bullying and that's not a demand, then I don't know what is.
5307. **The Chairperson (Mr Maskey):** But, I mean —
5308. **Mr Wilson:** Of course, he says he never said anything like that.
5309. **Ms Palmer:** He says a whole lot of things.
5310. **The Chairperson (Mr Maskey):** I want to remind people, and I pointed this out earlier on: Stephen Brimstone and, indeed, the Minister, made it clear in evidence that they approached Mrs Palmer as a board member to speak to the board, which may well be legitimate to do on the basis that they were not confident that Brian Rowntree was presenting the proper arguments. So, it remains to be seen and totally speculative and therefore pointless for us to go down that line — If Jenny Palmer had taken on board the essence of what Stephen Brimstone or the Minister presented here and gone to the board and relayed other information that allegedly Brian Rowntree was not important to the board, who knows what the board might have decided? We don't know, because Jenny Palmer wasn't at the board, left the board meeting, wasn't involved in the discussion, and the Minister and Stephen Brimstone have actually rationalised —
5311. **Mr Campbell:** Mr Rowntree was. Mr Rowntree was.
5312. **The Chairperson (Mr Maskey):** Yeah, but the point I'm making is both Stephen and the Minister have actually very clearly stated that they approached Mrs Palmer, as a board member, to go over the head of the chair of the board, or Brian Rowntree, because they weren't confident in his interpretation of the Minister's wishes. So, that's fair enough. That's not in contention. We don't know what the result would've been if any debate had have unfolded.
5313. **Mr Wilson:** You see, this is where the point of contention does come, because when Mrs Palmer was giving evidence the last time, she said a number of things which would have indicated that she knew the mind of the board: that, first of all, the board had already tried to terminate contracts of Red Sky; that there was dissatisfaction about the contract; that there was evidence of overpayments; that there had been political representations already, and don't forget there were three other political representatives on the board at that time. So, given all of that

- background, your knowledge from the audit committee, all of the evidence that you knew was going to be presented, the political opposition there already was to the contract and the fact that attempts had already been made to terminate the contract, do you honestly believe your own contention that you did not know what the outcome of any representations which you made would have been?
5314. **Ms Palmer:** In terms of my representation to the board on the morning of that meeting?
5315. **Mr Wilson:** In terms of what Stephen Brimstone asked you to do, either voting or speaking. Did you honestly believe, what you've just told Gregory Campbell, that, "I didn't know if my vote would make any difference"?
5316. **Ms Palmer:** Chairman.
5317. **The Chairperson (Mr Maskey):** I think the question actually would be best put to the people who say they made the request to Jenny Palmer, because why would the Minister or the SpAd have actually approached Mrs Palmer under their explanation of events? Why would they have went to Mrs Palmer to ask her to go and explain matters to the board? You'd have to ask them what was their assessment —
5318. **Mr Campbell:** They are from the same political party. *[Inaudible.]*
5319. **The Chairperson (Mr Maskey):** I know, but they are the people who say that they asked Mrs Palmer to go and make an intervention.
5320. **Mr Wilson:** No, all I'm trying to do is —
5321. **The Chairperson (Mr Maskey):** They would need to explain why they thought that her decision to cooperate in that venture may have been successful or otherwise, because Mrs Palmer has given you an explanation which is really speculative, because she doesn't know.
5322. **Mr Wilson:** Chairman, all I'm trying to do is to establish that, first of all, Mrs Palmer said she didn't know there was any sectarian motive here, although she had read all the papers and read the media, that she wasn't telling the truth. That when she said —
5323. **Ms Palmer:** Oh no, hold on.
5324. **The Chairperson (Mr Maskey):** Hold on a wee second.
5325. **Mr Wilson:** That when she said she didn't know —
5326. **The Chairperson (Mr Maskey):** I think you need to clarify. Sorry, Sammy, you have just — I mean, are you saying in this evidence session that Mrs Palmer isn't telling the truth?
5327. **Mr Wilson:** Well, all I'm saying is —
5328. **The Chairperson (Mr Maskey):** They are your words now. I'm quoting. That's a quote.
5329. **Mr Wilson:** Yes. All I'm — I'm saying that, first of all, she read all of the stories in the media, and yet she has told us she didn't know there was any sectarian issues involved here. She had all of the background of what the board thought about Red Sky, yet she didn't know if her vote would have made any difference, and she met with party officers in the DUP, who agreed essentially with her report of what had happened and yet couldn't get a letter of apology for it. Now, all I'm saying is it doesn't add up that, if those things were the case, she could be telling the truth.
5330. Let me just come to Mr Sands and the relationship with Mr Sands. I mean, Mr Sands seems to have a totally different view of two conversations that you claim he had with you, where he confided in you that Stephen Brimstone was going mad and that Stephen Brimstone had had a conversation with him or a telephone call. Now, how well do you know Michael Sands?
5331. **Ms Palmer:** I don't know him any more than having met him at six meetings and having sat beside him for lunch at six meetings. That's about the height of it, Chair, but —
5332. **Mr Wilson:** Do people who are just casual acquaintances like that come

- up and unload to you all the gossip that they hear, or you allege they hear, and tell you this kind of tittle-tattle about somebody going mad and somebody coming in and telling you about a conversation they had with you and everything else? Is that what people do?
5333. **Ms Palmer:** Can I just say to you, Sammy, in terms of the conversation I had with Mr Sands, it was introduced as a “How were the families? How were the holidays?”. And then he asked me if he could ask me a personal question. Now, that question was: “Do you know anything about an email that was sent to the board chairman on the morning of the Tuesday?”. And I looked at him and said, “Well, sure, what are you asking me that for, Michael? You know about that, because you sent that on behalf of Brimstone”. You know, that is when I asked him, “Were you there when Mr Brimstone made that phone call to me?”. So, there is nothing unclear in my mind about who instigated that conversation. That was Michael Sands instigated that conversation.
5334. **Mr Wilson:** There is nothing unclear in Mr Sands’s recollection either.
5335. **Ms Palmer:** There is. There’s plenty of recollection. Where was the email?
5336. **Mr Wilson:** However, when you were asked about the conversation and why you thought he had asked the question, this is what you said, in answer to — I think it was Fra McCann. You thought that he wanted — Stephen Brimstone — to hide the email.
5337. **Ms Palmer:** Well, he definitely wanted to see what was in it.
5338. **Mr Wilson:** Now, no, this is what you told the Committee today, that Mr Brimstone wanted to hide the email. Now, if you knew that the Housing Executive had received the email, that the board had had the content of the email relayed to them, how could you possibly have thought that the email was going to be hidden?
5339. **Ms Palmer:** It was off the system. Why could Michael Sands not find the email?
5340. **Mr Wilson:** No —
5341. **Ms Palmer:** Why was Mr Brimstone looking for the email three weeks after I gave evidence to the DFP and he gave evidence to the DFP?
5342. **Mr Wilson:** But you knew that the Housing Executive had it. You’ve already told us you knew that the Housing Executive had it. So how could he have hidden it?
5343. **The Chairperson (Mr Maskey):** Take your time.
5344. **Ms Palmer:** Who hid it?
5345. **Mr Wilson:** No. You — in your evidence you have said that you believed that Mr Sands was asking the question because he — I don’t know whether you meant him or Stephen Brimstone — wanted to hide the email. Now, how could you possibly have believed that, since you knew that the Housing Executive had already received the email —
5346. **Ms Palmer:** Well, I didn’t know where the email was.
5347. **Mr Wilson:** — and, furthermore, it had been reported to the board.
5348. **Ms Palmer:** I had never seen the email, Chair. I didn’t know where the email was. I know it was sent to the chairman, but I didn’t know after that where that email was. I didn’t even know that any of the board members had got a copy of it. But I do know this: when he asked me about it, it triggered in my mind, why would Stephen Brimstone be looking for that email other than the fact that I gave evidence to the DFP and that Stephen Brimstone was interviewed after me, and they had elaborated on it. Now, it’s only my reasoning behind it all, but I was concerned that that email — why could they not find it, why were they looking for it, why was he specifically looking for it? It was two years, it was sent two years previous to it. Why was Stephen Brimstone looking for it? Why did Michael Sands say to me, “Jenny, Stephen Brimstone is going mad in the office. He wants to find that email, and we can’t find it”. Now, I didn’t know

- at that point that the email couldn't be found. I didn't know at that point that the email was off the records and was a hard copy. But I was concerned that the evidence that I had given to the DFP was going to be compromised because — I couldn't understand why Mr Brimstone would be wanting to find that email. Now, did he want to hide it? I don't know. Where was it? It was in a cupboard somewhere.
5349. **Mr Wilson:** But you see —
5350. **Ms Palmer:** Who did hide it?
5351. **Mr Wilson:** But you see, Ms Palmer, that all doesn't add up, because in your very clear recollection two and a half years later of the conversation that you had with Michael Sands, this is what you said, that it was sent to the chairman of the board of the Housing Executive. Now, you know that, if it was sent to the chairman of the board of the Housing Executive, since he had every reason to make sure that that email was in the public domain, nobody could have hidden it.
5352. **Ms Palmer:** Yeah.
5353. **Mr Wilson:** So why, then, did you make —
5354. **Ms Palmer:** Chair, I have a role. I have a role to play on the Housing Executive board. The chairman — that email was the — the email belonged to the chairman and to the Housing Executive. I don't interfere in the operational side of the business of the Housing Executive. I scrutinise the Housing Executive at audit and on the board but I don't interfere with processes whereby I would be looking for emails or where they would go. My role is totally different than an employee of the Housing Executive, so I don't know where Mr Wilson is coming from in terms of what he says, that the email was there and readily available. How was it? If it wasn't, and the evidence proves it wasn't, then why was he looking that? Why was he looking that email off me? Why was he looking details of that off me? That's concerning; that was three weeks after I gave evidence to DFP
5355. **The Chairperson (Mr Maskey):** OK, that's fair enough. OK. Mickey, you were looking to interject, but is it resolved?
5356. **Mr Brady:** I have two comments, really.
5357. **The Chairperson (Mr Maskey):** If it is on that matter, because I'm bringing —
5358. **Mr Brady:** I think Sammy made what I consider an uncalled-for and facetious remark to Mrs Palmer about the phone call nearly giving her a heart attack. My recollection of Mrs Palmer's evidence is that she was upset by the phone call and immediately, then, went home. The other point that I'd make in relation to the sectarian card, in inverted commas — I've been sitting here this morning and my recollection of what Mrs Palmer said in answer to Gregory was that it was on reflection and hindsight —
5359. **Ms Palmer:** Uh-huh.
5360. **Mr Brady:** — that she felt that that is possibly the reason why she had been contacted, not necessarily at that particular time, so I just wanted to clarify that.
5361. **The Chairperson (Mr Maskey):** OK, well, thanks for that. All of that there are matters that the Committee will consider when we come to consider the evidence. Jim?
5362. **Mr Allister:** Yes, there are a couple of things, just. On this issue — and there has been an attempt to dispirit you over this, I think, this morning — this issue about the sectarian card, if I understood your evidence the last day and, indeed, today, it was to the effect that while Red Sky was being investigated by the audit committee and others, you didn't even know it was Red Sky; it was Project Young.
5363. **Ms Palmer:** Uh-huh.
5364. **Mr Allister:** So and on foot of that, you knew nothing about the composition —
5365. **Ms Palmer:** No.
5366. **Mr Allister:** — of the Red Sky workforce.
5367. **Ms Palmer:** No, just the poor work.

5368. **Mr Allister:** And then there comes a point when a proposition comes to the board to terminate the contract and at that point it becomes clear it's Red Sky we are talking about. Is that right?
5369. **Ms Palmer:** Yes.
5370. **Mr Allister:** So, at what point in the chronology did you become aware that the investigations you were overseeing in respect of Project Young in fact related to a company called Red Sky?
5371. **Ms Palmer:** Only when it became public knowledge in the media that Red Sky was to be terminated and all of the party colleagues then lobbied and set up meetings, and there were meetings, extraordinary meetings, that were happening that weren't involved in the Housing Executive. So, therefore, that was brought as a report to the audit committee that there were specific meetings that were being held without the knowledge or the invitation of the Housing Executive on a company that was in administration at that point.
5372. **Mr Allister:** So, up until the point of March/April 2011, as far as you were concerned, this was Project Young we were dealing with.
5373. **Ms Palmer:** Yes, as all the other contractors would have had project names, as would land deals, to protect the identity and commercial interests of all of those contractors.
5374. **Mr Allister:** And then the board, in April, vote to terminate the contract of Red Sky and all hell breaks loose.
5375. **Ms Palmer:** Yes.
5376. **Mr Allister:** And at that point —
5377. **Ms Palmer:** That is when it became —
5378. **Mr Allister:** A sectarian issue.
5379. **Ms Palmer:** Yes.
5380. **Mr Allister:** And if I understood you correctly, what you were saying was that you interpreted the attempt to inveigle you into that matter by the phone call of 1 July as an attempt to legitimise the sectarian allegation by having a board member raise it.
5381. **Ms Palmer:** Yes. That would be my opinion, based on what happened and the reason for the approach to me. In terms of this wonderful idea about all these people who can't recall my recollection from three years ago or two years ago or whatever, I will tell you that on 5 July, when this was a hot potato, after the decision of the board to terminate the contract, 'The View', which is a BBC programme — it was all over the media. It was after the 'Spotlight' programme. 'The View', which is a BBC programme, ran an interview, which was two minutes and eight seconds long, with the Minister at the time for DSD, and do you know something? I have only heard once since then where the Minister has supported Mr Brimstone's version at this Committee of how it came that they went to approach Jenny Palmer, because, in that first BBC programme that he did the interview for, in those two minutes and eight seconds, the commentator asked him, "Minister, did you know that your special adviser was going to ring Jenny Palmer?" "No." "Minister, should you have known that your SpAd was going to ring Jenny Palmer?" "What a ludicrous and bizarre question", I think was his response. Now, all along, all through the whole process of all of this, the Minister has never once wanted to contact me, because he had no reason to because he wasn't involved. All of a sudden, you bring Mr Brimstone here, and he says the next step forward in the process was decided after a conversation with the Minister. So, the Minister did know, but, all along, he kept saying in the media he didn't know about it. So, who is lying here? I'm telling the truth. I know that.
5382. **Mr Allister:** You've told us this morning about Mr Sands attending a sequence of meetings — your subcommittee, socialising with people afterwards — and you said, at a subsequent meeting, which I took to be different from the September 2013 meeting, you approached him again about whether or not he would tell the truth about

- knowing about the conversation. Now, you said that was after he gave evidence here. There might be some confusion or room for confusion because Mr Sands has given evidence a number of times. Was that after he gave evidence in the Turkington part of this inquiry?
5383. **Ms Palmer:** Yes. Yes, it was Turkington's, and it was to do with Turkington contracts. He was in the lobby along with all the members when I arrived at the hotel. I think it might've been up in Bushmills or up on the north coast somewhere. He was in the lobby, and I went over to him and I said to him — I said, "Michael, I want to commend you for your honesty around the reporting to this Committee on the issues pertaining to the Housing Executive."
5384. **Mr Allister:** So, that wasn't his evidence about your part of the inquiry.
5385. **Ms Palmer:** No, no, no.
5386. **Mr Allister:** That was after his evidence about Turkington's.
5387. **Ms Palmer:** Yes.
5388. **Mr Allister:** The third point I want to ask you about: you've made reference to the evidence you gave to the DFP fact-finding body. Is that in line with what you've told this Committee?
5389. **Ms Palmer:** Yes. Most definitely, yes.
5390. **Mr Allister:** Are you prepared to give that to this Committee?
5391. **Ms Palmer:** Yes, I am. It's there, and I highlighted the question that was linked to the email in yellow marker. I'm happy to share it because it's my testimony at the time. I'm quite happy to.
5392. **Mr Allister:** Well, I think we should receive that.
5393. **The Chairperson (Mr Maskey):** We'll get that through. The Clerk will sort that out.
5394. **Ms Palmer:** If I can quote, Chair, page 4;  
*"Mrs Palmer confirmed that when an announcement was made that the Red Sky contract was to be ended, representatives from the Department and politicians from the East Belfast area, where Red Sky were based, became heavily involved. In fact, there was even an email" —*
5395. this is where I highlighted this —  
*"there was even an email sent to the chairman of the Housing Executive by Michael Sands, DSD, on behalf of Stephen Brimstone on the morning of the board meeting at 7.30 instructing him not to close the contract."*
5396. Now, I'm quite happy to share. That's my interview, it's no one else's, and I'm quite happy to share that.
5397. **The Chairperson (Mr Maskey):** We'll procure that from you later on through the Clerk here. Thank you for that.
5398. **Mr Allister:** Thank you.
5399. **The Chairperson (Mr Maskey):** OK. There are no other members indicating that they want to ask any particular questions at the moment. Again, Ms Palmer, obviously you have made statements, and you are now providing two elements of documentation in relation to the comments that you have made to the evidence that you have provided. Thank you for that. We will get that from yourself immediately after this meeting and distribute it out to members. Obviously, the members will have to consider all this evidence before us in the round. Are there any other remarks that you want to make this morning before —
5400. **Mr Wilson:** Chairman, there is just one last question that I wanted to ask.
5401. **The Chairperson (Mr Maskey):** Go ahead.
5402. **Mr Wilson:** The conversations you had with Michael Sands were over lunch. Who else heard those conversations?
5403. **Ms Palmer:** Probably whoever was sitting beside me. I don't know.
5404. **Mr Wilson:** And you can't remember who was sitting beside you.
5405. **Ms Palmer:** I would think Alderman Brown would usually have been sitting beside me, and Bobby McKee maybe. I

- don't know, Chair, to be honest. It was a luncheon. You just sit where you —
5406. **Mr Wilson:** You can remember exactly what was said, but you can't remember who was sitting beside you?
5407. **Ms Palmer:** Well, I was talking to Michael Sands.
5408. **Mr Wilson:** It's the kind of conversation that you would imagine that most other — anybody sitting beside would've pricked their ears up at, isn't it?
5409. **Ms Palmer:** It is, aye, but you would need to ask the rest of the members of the housing council if they did hear it, because I spoke to a few afterwards and said, "This is great".
5410. **The Chairperson (Mr Maskey):** It is open to the Committee to consider any witnesses we think might be of benefit to our evidence gathering sessions.
5411. **Mr Allister:** Could I just ask to clarify, is that Alderman Brown of Carrickfergus council?
5412. **Ms Palmer:** It would be, yes.
5413. **The Chairperson (Mr Maskey):** And just to finish, for example, it is open to this Committee, I think we have discussed it before, and certainly I have indicated before that it is entirely open to this Committee if it wants to extend the evidence gathering sessions out, balancing that against trying to wind up this inquiry sooner rather than later. By the same token, as far as I am concerned, we have always said from day one we will pursue the evidence. There are options open to this Committee for further verification or clarification, and that could include the meeting which Jenny Palmer has referred to, which involved her being represented — I think was the term used previously — by Jeffrey Donaldson. Stephen Brimstone was there, Peter Robinson was there, Gavin Robinson was there and whoever else was there. So, we consider this, and it is up to the members of the Committee to determine how far further it wants to go. Certainly, I am in the gift of the Committee. We are quite prepared to [*Inaudible.*] evidence wherever it needs to take us to.
5414. On that basis, there are no further questions this morning. Could I thank you, Ms Palmer, for your evidence here this morning? I appreciate that at points it was very difficult for you. Thank you for continuing on notwithstanding that. These are difficult evidence sessions. I know you have personal issues as well with your family's health and so on, so thank you again for this morning. Obviously, the Committee will consider the evidence in the round. It is quite clear that there is very starkly contradictory evidence being presented. We have to weigh all that up. We may want to come back to you at some point. Obviously, as I have said to all the other witnesses, it is entirely open to yourself if you wish to come back to us in advance of any such engagement. OK. Are you happy enough with that?
5415. **Ms Palmer:** Happy, Chair, yes.
5416. **The Chairperson (Mr Maskey):** Thank you very much, Ms Palmer.



# 15 January 2015

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

Mr Alex Maskey (Chairperson)  
 Mr Mickey Brady (Deputy Chairperson)  
 Mr Jim Allister  
 Ms Paula Bradley  
 Mr Gregory Campbell  
 Mr Stewart Dickson  
 Mrs Dolores Kelly  
 Mr Fra McCann  
 Mr Sammy Wilson

## Witnesses:

Mr Stephen Brimstone     *Department for  
 Social Development*

5417. **The Chairperson (Mr Maskey):** Just for the record, then, for Mr Brimstone, the Committee considered an application from the Department for a legal adviser to attend the evidence session with Mr Brimstone in an advisory capacity. The Committee informed the Department that it had rejected that request on the basis that a witness giving evidence voluntarily, whether under oath or affirmation or not, may refuse to answer any question, including answering questions that might expose him or her to civil, disciplinary or criminal proceedings. I just wanted to remind formally Mr Brimstone that that option of course remains open today.
5418. Furthermore, I just want to further advise the Department that we did advise the Department in a letter on 18 December that it is the Committee's view that this is a matter upon which the witnesses, if they attend voluntarily, can, if they so choose, seek their own legal advice before attending the meeting and answer or decline to answer questions accordingly within their legal framework. It is the Committee's view that the witness has had ample time to seek such legal advice and prepare accordingly for today's evidence session.

5419. I would just, then, just remind the Committee and advise the Committee formally that Mr Brimstone has, of course, agreed to give evidence today under affirmation, and, on that basis, Stephen, if you wish to come forward and, if you are satisfied with that outline that I have just provided and you are confirming that you are taking an affirmation, I ask the Clerk to bring you round a copy of that, which you will read into the record.
5420. **Mr Stephen Brimstone:** I, Stephen Brimstone, do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be truthful and honest and that I will give the Committee all such information and assistance as I can to enable it to discharge its responsibilities.
5421. **The Chairperson (Mr Maskey):** Thank you, Stephen. As is customary in these situations, Stephen — you have been here on a number of occasions, and you're aware of the procedure. Is there any opening statement that you wish to make? I think you've received all of the kind of evidence and the paperwork that we're obliged to provide to you. OK, can I just remind members, then, you need to have the cover note on page 3 of the tabled items? Other material to this inquiry this morning are on page 37 of your main pack. OK — Mickey Brady.
5422. **Mr Brady:** Good morning, Stephen. Thanks for coming. It was just to clarify a few issues that there appears to be some conflicting evidence around.
5423. **The Chairperson (Mr Maskey):** Speak up, Mickey, will you?
5424. **Mr Brady:** Sorry, just to go back to the phone call, in evidence on 16 October, in answer to questions from Mr Allister, you were asked who decided that you would make contact with Jenny Palmer on 1 July 2011. That time, you said you:

- “recollection of events at that time was that it had been discussed with the Minister as an appropriate next step. He wanted to ensure that the board was adequately informed of his position ... He felt it appropriate to make contact with Councillor Palmer.”*
5425. Then, Mr Allister asked you:
- “it was you and the Minister together, and no one else, who decided that Mrs Palmer would be contacted?”*
5426. You answered, “Yes.” In an interview the day after the ‘Spotlight’ programme, the Minister was asked by Mark Carruthers:
- “Did you know he was going to make that phone call?”*
5427. And Nelson McCausland answered, “No”.
- “Should you not have known he was going to make that phone call?”*
5428. And Mr McCausland added that that was a “bizarre and ludicrous question”. So, basically, on the one hand, you gave us evidence to the effect that the Minister and yourself had discussed this, so he would have obviously been aware that Mrs Palmer was going to be contacted, but he then, subsequently — or previously, in terms of the programme — stated very clearly, his answer was a definitive “no”. So, I am just wondering, can you give us some insight maybe into why that would have —
5429. **The Chairperson (Mr Maskey):** Sorry, just for the record, it was ‘The View’ programme that interview was conducted about the ‘Spotlight’ programme.
5430. **Mr Brady:** Yes, ‘The View’ programme, and it was the day after, I think, the ‘Spotlight’ programme.
5431. **Mr Brimstone:** If I can recall right, the Minister, when he gave evidence to the Committee, had a different view, if that’s right.
5432. **Mr Brady:** So, he changed his recollection, presumably, then, on that.
5433. **Mr Brimstone:** Well, when he gave his evidence, he had a different recollection.
5434. **Mr Brady:** Although he was very definite on the programme. His answer was a definitive “no”. He didn’t elaborate. He didn’t give any other detail. He simply said “no”. It would assume you, as a special adviser, could not, off your own bat, have made that phone call.
5435. **Mr Brimstone:** Yes.
5436. **Mr Brady:** So, there would have had to be some discussion, presumably, between yourself and the Minister in relation to Mrs Palmer being contacted at all.
5437. **Mr Brimstone:** Yes, and if I go back to my evidence on 16 October, on page 2, the bottom of page 2, I give the background to that.
5438. **Mr Brady:** Yes, you said in that:
- “It was discussed and the Minister felt that it would be useful for me to contact Councillor Palmer to ensure that she was fully aware of his concerns ... I undertook to contact Councillor Palmer.”*
5439. Very clearly, from that, it’s your understanding that the Minister was very much aware that Councillor Palmer was going to be contacted, yet he stated definitively “no” about the phone call.
5440. **Mr Brimstone:** I think the Minister, when he came to this Committee and he gave evidence to this Committee, was clear that he assumed that a conversation had been had about —
5441. **Mr Brady:** Sorry, you can see that there was a conflict, if you take an overview of the evidence, that there is a conflict.
5442. **Mr Brimstone:** I can’t answer for a conflict in someone else’s evidence, if that’s there. Are you saying there’s a conflict in my evidence?
5443. **Mr Brady:** Well, there’s a conflict in the round in the evidence, because, on the one hand, you’re saying that the Minister knew about the conversation. The Minister said that he didn’t.
5444. **Mr Brimstone:** At the Committee or on the programme?
5445. **Mr Brady:** On the programme.

5446. **Mr Brimstone:** But at the Committee what did he say?
5447. **Mr Brady:** Well, obviously, his evidence to the Committee was different from the evidence or the answer that he gave to the programme. So, again, there's conflict.
5448. **Mr Brimstone:** But the conflict is with the former Minister's evidence, potentially, if —
5449. **Mr Brady:** Well, that's what, you know, I'm really asking the question to try and discover the nature of the conflict and the reason, possibly, for the conflict.
5450. **Mr Brimstone:** I can't answer to that, I'm afraid.
5451. **Mr Brady:** Just, in moving on, in your evidence, again on 16 October, you had said that you had spoken to Councillor Palmer, obviously, about Red Sky, but you also said that you had asked about Leeway Maintain, so there are other issues in that conversation. But, in documents that we've received, some of which are redacted, it states very clearly that, and this is from Peter Robinson:
- "Both were agreed that the only issue"*
- and this is yourself and Minister Palmer, presumably. Yes, both.
- "discussed during the conversation was the board's consideration of the contractor, Red Sky."*
5452. There's no mention of any other.
5453. **Mr Brimstone:** In all of the drafts?
5454. **Mr Brady:** Well, in four of them, certainly. Councillor Palmer did give evidence that the fifth draft was different from the previous four.
5455. **Mr Brimstone:** Again, this is a party statement put together. I can't comment on that. The words were the words of the First Minister, potentially, in a draft statement.
5456. **Mr Brady:** But you can see where I'm coming from, that surely the First Minister, not having been personally involved in the conversation, could only issue a statement based on the evidence that he received.
5457. **The Chairperson (Mr Maskey):** We should — first of all, I just want to make it clear — there's two things. We can't determine what was in the mind of the First Minister or whether the First Minister was acting as a First Minister or a party leader. Our evidence to date was that this was a party discussion, that the apology, which was referred to in the documentation — the drafts that we've received, which, as Mickey Brady said, were redacted — that, in all the drafts that I've read, that there is a clear argument that there was one item for discussion during the telephone conversation. So, first of all, I just don't want people to try to be speculating on behalf of the First Minister: it's not our role to do that. But, secondly, and more importantly, I'm not aware, as the Chair of this inquiry, of any legal basis upon which he would say that, "That's internal party business, so I can't discuss that." I'm just advising you of that. There's no indication of any legal basis for that. You still have your legal rights as to whether or not you want to answer questions. I just want to remind you that it's not my understanding that you have any reliance, legally, on the issue that it's party business. So, you need to understand, when you're giving your evidence to the Committee, the Committee will draw its conclusions on the basis of the evidence that it hears in the round and in its totality, by omission or by inclusion. I just want to remind you of that formally. OK.
5458. **Mr Brady:** But, I think that the point I was making, Chair, was that it would be a reasonable assumption that Mr Robinson would issue a statement based on evidence that was available to him. I presume that would've been the case in any statement that he would issue: that it would be based, particularly in relation to something like this, because it was a meeting, which involved yourself, I think, and Jenny Palmer. Jeffrey Donaldson was there, Gavin Robinson, I think, was taking notes. So, it would have been a situation

- where, having listened to the evidence, then Mr Robinson would have issued a statement based on that evidence.
5459. **Mr Brimstone:** And I can only imagine that's why there are a number of drafts, as that was further clarified.
5460. **Mr Brady:** No, that's fine. Thank you.
5461. **Mr Brimstone:** But the fifth draft does not make mention of the fact there's only one issue mentioned. Is that right?
5462. **Mr Brady:** Well, I suppose the question — That begs the question, then, "Why were there five drafts?". Not an unreasonable question in the circumstances.
5463. **The Chairperson (Mr Maskey):** I think the record will show that it actually does remain in the fifth draft.
5464. **Mr Brimstone:** OK.
5465. **The Chairperson (Mr Maskey):** So, I mean, your — that's twice you've drawn, you've actually suggested that the draft changed, and I need to point out on the record that that's not true. Do you accept that?
5466. **Mr Brimstone:** If I could have the drafts, that'd be useful, if that was possible.
5467. **The Chairperson (Mr Maskey):** They were issued to you, I understand. Were they issued?
5468. **Mr Brimstone:** Yeah. Yesterday, they were emailed to me, but, if you had a hard copy, I'd appreciate it.
5469. **The Chairperson (Mr Maskey):** Have you had a chance to look at them?
5470. **Mr Brimstone:** Yes. Yesterday, when I got them.
5471. **The Chairperson (Mr Maskey):** OK. So, you've said twice here that — you basically suggested there on two occasions this morning already that the drafts changed. I'm asking you now if you accept that that's not the case.
5472. **Mr Brimstone:** And if you — again, this is a party draft release, and, if you look at that line, I mean, I can't tell you what
- the rest of that line says on the fifth, on the fifth draft:
- "Both were agreed that the only issue discussed during the conversation was the board's consideration of their contract to Red Sky."*
5473. It doesn't show what follows on on the rest of that line.
5474. **Mrs D Kelly:** Chair, could I just seek —
5475. **The Chairperson (Mr Maskey):** Sorry. But you can confirm what's in those — what is in it. Do you accept for the record that what is in it states clearly that there's one item for discussion.
5476. **Mr Campbell:** Chairman, these were internal draft exchanges between a number of parties that, as yet, haven't reached a conclusion.
5477. **The Chairperson (Mr Maskey):** I'm aware of that.
5478. **Mr Campbell:** Right.
5479. **The Chairperson (Mr Maskey):** I'm aware of that. I am aware of that, and I've advised Mr Brimstone that I am not aware of any legal basis upon which he can say that, "That's internal party business and therefore I can't discuss it." Having advised him of that, he's still within his rights not to answer any question. He's aware of that, but I can't accept people giving inaccurate evidence to the Committee either, as you would expect me not to do so. So, I'm simply, for the record, trying to have Mr Brimstone establish that what is in the document states very clearly —
5480. **Mr Campbell:** But, Chairman, these are a series. These are a series of documents that have not reached a conclusion as yet.
5481. **The Chairperson (Mr Maskey):** I'm only drawing attention, and I'm formally, for the record, making sure that people accept and understand that what's in all of those is exactly the same.
5482. **Mr Brimstone:** You will accept, Chair, that that line in the fifth draft — I think it's the fifth draft, is it? We can't see —

- it's been redacted — the final part of the fifth line.
5483. **The Chairperson (Mr Maskey):** But it's up to you. I mean, you're, on the one — You see, you're telling us that you don't want to discuss internal party business. Your opportunity to reject what is there in front of us or explain it, that's entirely down to you whether you want to take that option. It's up to you. I'm simply saying that there's no legal basis upon which you can stand behind the fact that it's party business, but you can answer or not answer as you decide.
5484. **Mr Brimstone:** Yes, but I was going to answer the question around the document in front of me and how it was different from the previous drafts.
5485. **The Chairperson (Mr Maskey):** Yeah. I'm just advising you of that because the Committee has to, as I've said to you earlier on, Stephen, the Committee has to deliberate on this in due course, and, if you're saying you can't discuss it, then, if I am reading that evidence, I have to read what I see in front of me.
5486. **Mr Brimstone:** Yeah.
5487. **The Chairperson (Mr Maskey):** Unless someone tells me it's different.
5488. **Mr Brimstone:** Yeah, and you can recognise — I know that part of that line has been redacted.
5489. **The Chairperson (Mr Maskey):** Yeah, but I am reading what I am reading, which is quite clear to me.
5490. **Mr Brimstone:** Yeah, but you can see there is a final part.
5491. **Mr Campbell:** An inconclusive set of documents.
5492. **The Chairperson (Mr Maskey):** There's nothing which contradicts the wording in that series of drafts. That's the only point I'm making, and I'm not going to labour it any further. So, Mickey Brady, you were —
5493. **Mr Brady:** That's fine.
5494. **The Chairperson (Mr Maskey):** OK. Jim Allister.
5495. **Mr Allister:** So, what are your objections to the content of the 'Spotlight' programme?
5496. **Mr Brimstone:** Is this a point of a conflicting evidence or clarity around conflicting evidence —
5497. **Mr Allister:** A very straightforward question.
5498. **Mr Brimstone:** — at a previous evidence session that I gave?
5499. **Mr Allister:** A very straightforward question. What are your points of objection to the content of the 'Spotlight' programme? If you have any, tell us what they are.
5500. **Mr Brimstone:** I'm sure I had. Whether I can give a definitive list to this Committee here today or not —
5501. **Mr Allister:** Well, let's try.
5502. **Mr Brimstone:** I think, through my answers, I have given where I —
5503. **Mr Allister:** You are now giving evidence under affirmation. I am asking you to tell us what your objections are to the content of the 'Spotlight' programme.
5504. **Mr Brimstone:** And I am not in a position to give that today in its entirety. If I was aware of such a question was going to come, I would've prepared along those lines Under affirmation, I can't give a definitive [*Inaudible.*] —
5505. **Mr Allister:** Can you tell us anything you object to in the programme?
5506. **Mr Brimstone:** Well, I think it's clear that I object to Councillor Palmer's recollection of the phone conversation.
5507. **Mr Allister:** You telling her, "Party comes first", "Do what you're told", "This is what we require you to do" et cetera.
5508. **Mr Brimstone:** Yes.
5509. **Mr Allister:** You object to that.
5510. **Mr Brimstone:** Yes.
5511. **Mr Allister:** Anything else?

5512. **Mr Brimstone:** Well, I think that was the main point regarding myself at this point.
5513. **Mr Allister:** And did you think that that defamed you?
5514. **Mr Brimstone:** I'm not a legal adviser. I've no qualifications in that regard, so I can't answer that question.
5515. **Mr Allister:** Well, you certainly threatened legal proceedings. Isn't that right?
5516. **Mr Brimstone:** Potential proceedings, yes.
5517. **Mr Allister:** Did you ever take them?
5518. **Mr Brimstone:** No, I — if we go back to the previous evidence session that we had, I made that point clear.
5519. **Mr Allister:** So, whatever your objections were to the content of the programme, they weren't such that it motivated you to initiate any legal proceedings. Is that fair?
5520. **Mr Brimstone:** Well, I haven't initiated any legal proceedings.
5521. **Mr Allister:** Yes. And is that because what Mrs Palmer was saying was true and you knew it to be true?
5522. **Mr Brimstone:** No.
5523. **Mr Allister:** Then why would a man sit back and let himself be lied about and do nothing about it?
5524. **Mr Brimstone:** Well, I act under advice at all times. I have tried to give a defence at this Committee. I gave a defence to the 'Spotlight' programme. That is my defence.
5525. **Mr Allister:** And your defence was such that you didn't have the confidence of launching into legal proceedings to challenge that which you say or seem to suggest is untrue.
5526. **Mr Brimstone:** As I said before, I act under advice.
5527. **Mr Allister:** I'm suggesting to you that there's a fairly clear indication of you knowing in your heart of hearts that what the lady said was true.
5528. **Mr Brimstone:** No, I don't accept that.
5529. **Mr Allister:** You are aware that she, on evidence under oath, continues to be very clear about the content of that phone call.
5530. **Mr Brimstone:** Yes.
5531. **Mr Allister:** And we now know that she told the same account not just to 'Spotlight' but to the DFP inquiry.
5532. **Mr Brimstone:** So it appears, yes.
5533. **Mr Allister:** Are you prepared to share what you told the DFP inquiry?
5534. **Mr Brimstone:** No, I'm afraid — apologies to the Committee — it's a matter of personnel and a fact-finding exercise, and I'm not in a position to comment on that.
5535. **Mr Allister:** The ultimate outcome might be a personnel matter, but I suggest to you the collection of facts is exactly that: a fact-finding matter touching wholly upon the facts that this Committee is seeking to get to the bottom of. But you don't wish to share that with us.
5536. **Mr Brimstone:** I am not in a position to share details pertaining to the fact-finding exercise to this Committee.
5537. **Mr Allister:** You are in a position if you wish. You don't wish: isn't that correct?
5538. **Mr Brimstone:** I reiterate my previous answer, Chair. Apologies.
5539. **Mr Allister:** Now, on this point that Mr Brady asked you about — about the Minister having told 'The View', first of all, that you didn't make the phone call at his behest and, then, that he didn't know you'd made the phone call — you knew the Minister had told 'The View' that.
5540. **Mr Brimstone:** Yes.
5541. **Mr Allister:** Yes. So, before the Minister came to give evidence to this Committee, knowing what you knew, what your evidence was going to be, did you have a discussion with the Minister: how are we going to handle the fact that you told 'The View' that it wasn't made at my behest — at his behest — and he didn't even know about it?

5542. **Mr Brimstone:** I'm clear on my actions throughout all of this, and I've given that as best as I can. The Minister clearly felt that he had, in hindsight after the programme, been in part of the discussions before the phone call and was aware of it after it as well.
5543. **Mr Allister:** Yes, but I was asking you had you any discussion with the Minister before you came to give evidence about how to handle this conflict.
5544. **Mr Brimstone:** I can't recall any particular discussion regarding —
5545. **Mr Allister:** "Any particular discussion": what does that mean?
5546. **Mr Brimstone:** Chair, I don't know —
5547. **Mr Allister:** Either you had a discussion or you had not.
5548. **Mr Brimstone:** That's not clear. I'm trying to answer as best I can. I don't recall any particular discussion.
5549. **Mr Allister:** So, can you offer — you might well say, "Well, ask Mr McCausland", but have you any light to shed on how the Minister came to tell 'The View' one thing and this Committee another?
5550. **Mr Brimstone:** No. That would be a matter for Mr McCausland.
5551. **Mr Allister:** And you've had no discussions that would shed any light on that.
5552. **Mr Brimstone:** As I previously answered, yes.
5553. **Mr Allister:** You would agree they're entirely contradictory.
5554. **Mr Brimstone:** That's a matter for this Committee.
5555. **Mr Allister:** Now, in terms of the draft apologies that you were asked about and this salient point that in all of those we've seen, there is this unambiguous statement that both — that's you and Mrs Palmer —
- "were agreed the only issue discussed during the conversation was the board's consideration of the contractor Red Sky."*
5556. Is that correct?
5557. **Mr Brimstone:** I'm not getting into matters relating to the internal party discussion.
5558. **Mr Allister:** Sorry — why not?
5559. **Mr Brimstone:** I'm not sure I have to answer that question, Chair. I've said —
5560. **Mr Allister:** Well, Mr —
5561. **The Chairperson (Mr Maskey):** You don't have to answer the question, but it's a fair question.
5562. **Mr Campbell:** But having said that he didn't want to, Chairman.
5563. **Mr Allister:** Well, just —
5564. **The Chairperson (Mr Maskey):** Just a wee second. I mean, the witness, at all times, is within his rights not to answer any question, but that's not to suggest that he's not obliged to hear some questions, and he might decide to answer them whatever way he decides to do that.
5565. **Mr Wilson:** He's not obliged to hear the same question six times, Chairman.
5566. **The Chairperson (Mr Maskey):** And I will allow that on a number of occasions. I will not allow that to be overstated. I have done that repeatedly. I have stopped people asking the same question on a number of occasions, but I think it's fair that the questions are put. The witness is obliged to hear questions. He'll answer them whatever way he chooses, and the Committee will draw its conclusions on the basis of that.
5567. **Mr Allister:** Mr Brimstone, do you remember, 20 minutes ago, taking an affirmation at the start of your evidence?
5568. **Mr Brimstone:** Yes, I do.
5569. **Mr Allister:** Do you remember uttering the words as part of that affirmation:
- "I will give the Committee all such information and assistance as I can"?*
5570. **Mr Brimstone:** Yes.

5571. **Mr Allister:** And here we are, 20 minutes later, you're refusing to give the Committee information on this matter. How do you square that with your affirmation?
5572. **Mr Brimstone:** I don't believe that I can share matters —
5573. **Mr Allister:** Why not?
5574. **Mr Brimstone:** — on an internal party matter.
5575. **Mr Allister:** Why not? You can tell us; you're choosing not to tell us. Your affirmation was:
- "I will give the Committee all such information and assistance as I can".*
5576. **Mr Brimstone:** And I don't believe I'm in a position to share internal party matters with this Committee.
5577. **Mr Wilson:** Chairman —
5578. **Mr Allister:** So, you're happy to breach your affirmation.
5579. **Mr Wilson:** Chairman —
5580. **The Chairperson (Mr Maskey):** Sorry, hold on.
5581. **Mr Wilson:** He has made it quite clear, and you've pointed out he is entitled to decide if he is going to answer a particular question or he is not. Now, this bullying —
5582. **The Chairperson (Mr Maskey):** Here we go again.
5583. **Mr Allister:** Another distraction.
5584. **Mr Wilson:** Well —
5585. **Mr Allister:** Buying time for the witness.
5586. **The Chairperson (Mr Maskey):** Hold on, gentlemen. Hold on. Gentlemen, hold on a second.
5587. **Mr Wilson:** That's what he's at.
5588. **Mr Allister:** This is buying time for the witness.
5589. **Mr Wilson:** That's what he's at.
5590. **The Chairperson (Mr Maskey):** Gentlemen, hold on a second.
5591. **Mr Allister:** It's a well-tried tactic.
5592. **Mr Wilson:** It's not buying time for the witness.
5593. **The Chairperson (Mr Maskey):** Excuse me, Sammy Wilson.
5594. **Mr Wilson:** It's making sure he doesn't —
5595. **The Chairperson (Mr Maskey):** Sammy Wilson, be quiet for a moment. *[Interruption.]* Sammy, just hold on a second. We're not going to allow this to degenerate. As I've said here before, I won't accept the kind of disruption we're likely to get here today. Hopefully, that will not happen and won't happen again. If it does happen, you know what the result will likely be, but that will not —
5596. **Mr Campbell:** Oh, let's not go down that route, Chairman.
5597. **The Chairperson (Mr Maskey):** We will go down whatever route I decide to do so, as you well know, Mr Campbell.
5598. **Mr Campbell:** No, let us not go down that route. No, it will not go down that route, and, if it does, Chairman, go down this route, as I have said before, there will be very serious consequences —
5599. **The Chairperson (Mr Maskey):** Fine.
5600. **Mr Campbell:** — for the future investigation by this Committee into the inquiry.
5601. **The Chairperson (Mr Maskey):** That's your view, and you're entitled to have your view.
5602. **Mr Allister:** That's a threat.
5603. **Mr Campbell:** No, it's not. It's not. This is the fifth time this witness has been before the Committee. *[Interruption.]*
5604. **The Chairperson (Mr Maskey):** Excuse me, gentlemen. Just hold on a second, Mr Campbell. You are subject, like the rest of us around this table, to the procedures which govern the conduct of this Committee —

5605. **Mr Campbell:** Yes, and I'm quite happy to abide by them.
5606. **The Chairperson (Mr Maskey):** — and inquiry, and you will abide by them.
5607. **Mr Campbell:** Yes, and I've always done so as well.
5608. **The Chairperson (Mr Maskey):** You will. So, therefore, I make it very clear: I want this to be conducted on a professional and orderly basis. If it's not and people want to disrupt it, we have the option ultimately to suspend. I will have no hesitation in doing that, but I want to make it also very clear that will not allow time for anybody to avoid dealing with questions. People may wish to not answer a question or they'll answer them in a way in which they are legally entitled to do, but they will still face the questions. That's what will happen. Whether we —
5609. **Mr Campbell:** There should be no admission of failure by any Chair —
5610. **The Chairperson (Mr Maskey):** That's your —
5611. **Mr Campbell:** — by adjourning the discussions. That is an admission of failure.
5612. **The Chairperson (Mr Maskey):** If you wish to disrupt the business of this inquiry, I will conduct it —
5613. **Mr Campbell:** Whether Mr Allister would like to prolong this even further —
5614. **The Chairperson (Mr Maskey):** Mr Campbell.
5615. **Mr Campbell:** — and get a sixth bite at the cherry.
5616. **The Chairperson (Mr Maskey):** Mr Campbell, I advise you to be orderly.
5617. **Mr Campbell:** I'm orderly at all times, Chairman.
5618. **The Chairperson (Mr Maskey):** I advise you to be orderly, or this meeting will suspend. I will do that very quickly.
5619. **Mr Campbell:** I'm orderly at all times.
5620. **The Chairperson (Mr Maskey):** I've already given notice, and I'm giving notice now — *[Interruption.]* If it continues, it will happen. Sorry, Fra.
5621. **Mr F McCann:** Talk about taking —
5622. **The Chairperson (Mr Maskey):** Fra McCann. Fra McCann, please, just remain silent —
5623. **Mr Campbell:** Be orderly.
5624. **The Chairperson (Mr Maskey):** — at the moment till we get this back on track again. OK. So, I'm just making it very clear, if push comes to shove and there is further disruption, I will suspend the business of the Committee and the inquiry.
5625. **Mr Campbell:** Take the consequences then.
5626. **The Chairperson (Mr Maskey):** Yeah, and there will be consequences —
5627. **Mr Campbell:** There surely will.
5628. **The Chairperson (Mr Maskey):** And that consequence is a lack of public confidence in the conduct of members of this Committee and the failure of this inquiry to do its business in an expeditious time.
5629. **Mr Campbell:** There will be a lack of confidence in your chairmanship ability.
5630. **The Chairperson (Mr Maskey):** Well, people will decide on that.
5631. **Mr F McCann:** Chair —
5632. **The Chairperson (Mr Maskey):** And I think they've decided already. Fra, please, no more, no further interventions.
5633. I want to move back on to the evidence. I've said from day one I'm allowing members to pose a number of questions. If other members want to ask questions, indicate to me that they wish to do so, and I'll bring them in on a timely fashion. At this moment in time, Jim Allister has the floor. Jim. Just again, I'm reminding people that I will allow people to pose questions. Witnesses may decide not to answer a

- question, but they are obliged to hear the questions. I will allow a number of questions put on a number of occasions, but I'll not allow them to be made repeatedly when it's quite clear that the witness has made his position, but I'll remind the witness that the Committee will make its judgement on the basis of the evidence it hears from the witness and other witnesses, so, you know, this is your opportunity to clarify issues which clearly, in terms of the evidence presented to this Committee, are quite contradictory and quite starkly so. So, I'm allowing members to ask questions and will stop members asking a question repeatedly if it goes on for too long. Jim.
5634. **Mr Allister:** Mr Brimstone, you've had five minutes, courtesy of that interruption, to reflect upon the affirmation you took that you would:  
*"give the Committee all such information and assistance"*
5635. as you can. Having had that opportunity to reflect, do you wish to help this Committee by telling us if that repeated declaration in the five drafts, that both were agreed the only issue discussed during the conversation was the board's consideration of the contractor Red Sky? Do you wish to take the opportunity to tell us if that's the truth?
5636. **Mr Brimstone:** I am not prepared to answer internal party-related matters — questions relating to internal party-related matters
5637. **Mr Allister:** You put that above your affirmation.
5638. **Mr Brimstone:** I have answered the question, Chair.
5639. **Mr Allister:** Mrs Palmer told us that the genesis of this attempted apology went through five drafts, which was mutually provided to you and to her. Is that correct?
5640. **Mr Brimstone:** I am not prepared to answer questions relating to internal party matters.
5641. **Mr Allister:** And that you had the opportunity on each of those occasions to amend and to change that which appeared in the respective drafts. Is that correct?
5642. **Mr Brimstone:** Again, I refer to my previous answer.
5643. **Mr Allister:** And that you significantly failed to take that opportunity to write out, to take out, the affirmation that both were agreed that the only issue discussed was the contractor Red Sky. Is that correct? Five times you failed to take it out.
5644. **Mr Brimstone:** And I refer to my previous answer.
5645. **Mr Allister:** And five times you failed to take it out, I suggest to you, because it is the truth. Is that right?
5646. **Mr Brimstone:** Sorry, I refer to my previous answer.
5647. **Mr Allister:** And that there wasn't discussion, such as you previously told us, about Leeway Maintain or anything else; it was about Red Sky.
5648. **Mr Brimstone:** I've give my outline of the phone conversation in my evidence on 16 October, page 3. That is my recollection of the phone conversation, and I stand by that.
5649. **Mr Allister:** If that was correct, why wouldn't you then take the fivefold opportunity to change the draft to put that in?
5650. **Mr Brimstone:** I refer to my previous answer.
5651. **Mr Campbell:** Chairman, is Mr Allister hard of hearing?
5652. **The Chairperson (Mr Maskey):** Mr Allister is asking questions which he is entitled to ask —
5653. **Mr Campbell:** Which he has now asked six times.
5654. **The Chairperson (Mr Maskey):** — and I have already made a ruling on that. The witness can answer or not, and he has given his answers. The Committee

- will duly note the answers and take cognisance of the weight of the answers against the evidence presented.
5655. **Mr Campbell:** And they'll note the questions as well, I hope.
5656. **The Chairperson (Mr Maskey):** Absolutely. You, of course, will be a member of the Committee involved in that assessment of the evidence.
5657. **Mr Campbell:** Yes.
5658. **Mr Allister:** You say, Mr Brimstone, you said to Mr Brady that there are parts of this redacted; you don't know what's there. You have the original drafts that were sent to you, do you not?
5659. **Mr Brimstone:** I am not prepared to comment on internal party matters.
5660. **Mr Allister:** But you are prepared to suggest to this Committee, oh, mystery of mysteries, there's matters redacted. This Committee knows from evidence already given under oath that you, like Mrs Palmer, were sent these very documents in their unredacted form. So, you do know what has been redacted.
5661. **Mr Brimstone:** I'm not prepared to answer questions related to internal party matters.
5662. **The Chairperson (Mr Maskey):** I did suggest to you earlier on, Stephen, just for the record again, I did suggest to you earlier on, that when you did suggest, which is why I intervened, that when you did suggest, that, by way of redaction, that the assertion made by Mrs Palmer was actually inaccurate —
5663. **Mr Brimstone:** I was just —
5664. **The Chairperson (Mr Maskey):** — that is why I drew to your attention that, in all of the copies, the same assertions are in black and white. I'm just drawing that to your attention.
5665. **Mr Brimstone:** I was just making the point, Chair, with regard to your assertion.
5666. **The Chairperson (Mr Maskey):** The point I am making is you were straying into what I would suggest
- giving an explanation about the draft document. But, otherwise, from that one intervention, you've been saying you're not prepared to discuss it. I am just making that point.
5667. **Mr Brimstone:** If I can clarify that, Chair. I'm just clarifying the point, Chair, that the line you referred to in the fifth version of this draft is clearly redacted, and we can't read what the remainder of that line says. That was the point I was making at the start.
5668. **The Chairperson (Mr Maskey):** But you are not in a position to give an explanation to the inquiry to contradict the words that we have in front of us. That's all I'm saying to you. You need to understand that.
5669. **Mr Brimstone:** Yes, the partial sentence that you have in front of you, yes.
5670. **The Chairperson (Mr Maskey):** But what's there is there in front of us. There's nothing by way of what you have said to contradict that document.
5671. **Mr Brimstone:** That's correct.
5672. **The Chairperson (Mr Maskey):** But we have to consider that in our evidence assessment.
5673. **Mr Allister:** And I am suggesting to you, you know full well what has been redacted. Some of them are your handiwork.
5674. **Mr Brimstone:** Again, Chair, I'm not in a position to answer questions of an internal party matter.
5675. **Mr Allister:** You are in a position, but you won't.
5676. **Mr Campbell:** Which he has said numerous times.
5677. **The Chairperson (Mr Maskey):** OK. I've already mentioned that.
5678. **Mr Allister:** Now, let me ask you this: can you yet recall —
5679. **The Chairperson (Mr Maskey):** Jim, just a second. I've allowed a range of questions there.

5680. **Mr Allister:** I'm finished with that point.
5681. **The Chairperson (Mr Maskey):** OK.
5682. **Mr Campbell:** I think hearing aids should be supplied, Chair.
5683. **The Chairperson (Mr Maskey):** OK. Proceed, Jim.
5684. **Mr Allister:** I think Mr Campbell only lets himself down with comments like that.
5685. **Mr Campbell:** Can supply them.
5686. **The Chairperson (Mr Maskey):** I said earlier on there the conduct of this —
5687. **Mr Allister:** There are a lot of people — this Committee knows it full well, dealing with people with great disabilities — afflicted with hearing loss and to have a trite comment made like that by Mr Campbell reflects very poorly on him.
5688. **Mr Campbell:** Don't try and shift the emphasis, Jim.
5689. **Mr Allister:** Very poorly on him.
5690. **Mr Campbell:** Don't try and shift the emphasis.
5691. **The Chairperson (Mr Maskey):** Let me just remind members again that this is an inquiry in public session —
5692. **Mr Campbell:** When in a hole, stop digging, Jim.
5693. **The Chairperson (Mr Maskey):** Mr Campbell — *[Interruption.]* Mr Campbell, I am speaking — *[Interruption.]* Mr Campbell, I am speaking from the position of the Chair. OK. No further interventions at this stage of the game. So, I am making it very clear that this is in public session. The general public will have made their mind up, or will make their mind up, on the conduct and behaviour of members, so I would advise members to remind themselves of that. There already has been a fair amount of public commentary around the nature of this inquiry on more than one occasion, and that is not something that I think does this Committee or any member around this table a service. So, let us stick to what our statutory obligations
- are in a responsible and professional manner. So, Jim.
5694. **Mr Allister:** Mr Brimstone, do you — have you yet been able to remember where you were when you made the phone call to Mrs Palmer?
5695. **Mr Brimstone:** No. I wasn't in a position to answer that question clearly on 13 November and I am not today. I cannot recall exactly where I was when I made the phone call.
5696. **Mr Allister:** Can you recall who was with you?
5697. **Mr Brimstone:** No. I assumed I was on my own but —
5698. **Mr Allister:** Can you recall going back and discussing it with the Minister?
5699. **Mr Brimstone:** Yes, that was the general course of events for such a phone call. Yes.
5700. **Mr Allister:** Can you recall how soon you did that?
5701. **Mr Brimstone:** It would likely have been shortly after the phone call, as I stated on 13 November; on page 6 of the evidence.
5702. **Mr Allister:** Can you recall if the Minister was awaiting the outcome of that phone call?
5703. **Mr Brimstone:** I am not sure that question was asked to me before —
5704. **Mr Allister:** It may not, but I am asking it now. Do you recall if the Minister was awaiting for you to come back to him about the outcome of the phone call?
5705. **Mr Brimstone:** No. I am assuming at some point he would have expected the phone call to have taken place and for him to be given a readout on the phone conversation.
5706. **Mr Allister:** Did you report the phone call to anyone else?
5707. **Mr Brimstone:** Not that I can recall, no.
5708. **Mr Allister:** In terms of the email that was sent on 5 July, Mr Sands has been

very emphatic to this Committee that that came about by you coming to his room at 7.30 on the morning of 5 July 2011 and asking him to send it. Your evidence previously has been, well — it has been somewhat varied between you cannot recall or that you didn't go to his room. In light of what Mr Sands has told us under oath or under affirmation, what do you now say about how it came about that that email was sent when it was sent?

5709. **Mr Brimstone:** I go back to my earlier evidence, and still I cannot recall the precise conversation with Mr Sands. I still hold the view that I can only remember on one occasion being in the Lighthouse Building at that time of the morning, and it was not on that occasion.
5710. **Mr Allister:** So, are you saying to us under affirmation that you did not go to his room that morning?
5711. **Mr Brimstone:** No, that is not what I said; I said that I cannot recall a conversation with Mr Sands and I cannot recall any other occasion, except one, when I was in the Lighthouse Building at that time of the morning.
5712. **Mr Allister:** Well, you are not suggesting to us, I take it, that Mr Sands, of his own volition, sent this email.
5713. **Mr Brimstone:** I never suggested that.
5714. **Mr Allister:** No. You are accepting, I take it, that the genesis of the email is an instruction or a request from you.
5715. **Mr Brimstone:** Well, let us just read the email, just for clarity here. If you do not mind, Chair, I will read it onto the record. So, it is from Michael Sands, sent on 5 July at 7.40 am to a Maria McLaughlin, cc'd to Stewart Cuddy, the acting chief executive of the Housing Executive, and Jim Wilkinson, the director of housing in the Department for Social Development. It reads:

*"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."*

5716. **Mr Allister:** And?
5717. **Mr Brimstone:** My conversation with Mr Sands, looking at this email, was around the fact that I felt that six months was too long a time frame taking into consideration the CPD advice around the 91 days. I cannot see any instruction there at all.
5718. **Mr Allister:** When I said "instruction", I used it in the context of the instruction to send the email.
5719. **Mr Brimstone:** I do not believe — I do not know whether there was a — how I can give an instruction, I am unclear. There — I well could understand a conversation taking place, and I accept that a conversation took place that instigated this email, but whether that is an instruction or whether it is a follow on from the discussion —
5720. **Mr Allister:** OK, let us take the word "instruction" out of it if you do not like that. Do you accept that this email was sent not by Mr Sands of his own volition but upon request from you?
5721. **Mr Brimstone:** No. I do not think that we can read that into this email at all.
5722. **Mr Allister:** Never mind what we can read into the email. Giving your evidence from your memory, was this email sent at your request?
5723. **Mr Brimstone:** I can't answer that question. All I can say reading the email here is that it was clear that we had a discussion around the fact that I, as special adviser, felt that the six months time frame was too long, and that was clearly in around some discussion that had been had around the Central Procurement Directorate advice of 91 days.

5724. **Mr Allister:** Are you suggesting to this Committee that Mr Sands, of his own volition, then decided at 7.30 in the morning, “Oh, I better email the Housing Executive and tell them the latest thinking, that I picked up from somewhere, of Mr Brimstone”?
5725. **Mr Brimstone:** Well, no, he emailed the Housing Executive asking if a question could be put to the administrator —
5726. **Mr Allister:** Yes.
5727. **Mr Brimstone:** — of a reduction.
5728. **Mr Allister:** At your behest, Mr Brimstone.
5729. **Mr Brimstone:** You can read that into it. I don’t read that into it.
5730. **Mr Allister:** Well, that is very clear by the evidence to this Committee from Mr Sands: at your request, with you standing in his room.
5731. **Mr Brimstone:** Well, I am reading the email. As I said, I can’t recall the conversation three and a half —
5732. **Mr Allister:** You take great refuge in not being able to recall things.
5733. **Mr Brimstone:** It is three and a half years ago, Mr Allister.
5734. **Mr Allister:** It is three and a half years ago about incidents which have been hardly out of your mind, I would suggest, in those three and a half years, given the notoriety that is attached to this matter.
5735. **Mr Brimstone:** I’ve give my answer as best as I can.
5736. **Mr Allister:** So what are we to conclude? You didn’t know the email was going? You did know the email was going? What are we to conclude on that?
5737. **Mr Brimstone:** I think it is safe to conclude that I would have been aware that the Housing Executive would be asked —
5738. **Mr Allister:** At your request.
5739. **Mr Brimstone:** Well, further of my request or following a discussion and mutual understanding or a mutual agreement, this was the appropriate way forward that the Housing Executive would be asked if, based on the CPD advice, it would be more appropriate to look for four months as opposed to six months.
5740. **Mr Allister:** So, are you or are you not accepting that that email went at your request?
5741. **Mr Brimstone:** No, I can’t, on the basis of that email, accept that.
5742. **Mr Allister:** So, does that drive us to conclude it went from Mr Sands at his own volition?
5743. **Mr Brimstone:** No, people can have a conversation —
5744. **Mr Allister:** Where is the middle ground?
5745. **Mr Brimstone:** The middle ground is that people can have a conversation, and it may not have been just Mr Sands and myself. I can’t answer that question. People can have a conversation and the outcome of that conversation, which may well have been instigated — the conversation may well have been instigated by myself. The outcome of that is an agreed way forward.
5746. **Mr Allister:** So, you are leaving the Committee in limbo with the very clear, affirmed evidence of Mr Sands that it is a request from you standing in his room to send this email — and the very email cites you — that evidence; and you, as so often, saying, “I can’t really recall”.
5747. **Mr Brimstone:** So, if we look at the first line, Mr Allister, it cites myself.
5748. **Mr Allister:** Yes.
5749. **Mr Brimstone:** OK. The second line starts with the word “Our”; OK. Not the SpAd’s advice; it is “Our advice”. Now, I put the question to you as who do you think the “Our” includes?
5750. **Mr Allister:** Well, I think, Mr Brimstone, since you are the Minister’s adviser and this, I assume, is the product — and I will come back to that — of discussion with the Minister, because I think you told us you wouldn’t have done this on your own,

- that the “Our” referred to is either the Department or the Minister or both.
5751. **Mr Brimstone:** And who is the email from?
5752. **Mr Allister:** It’s from a housing officer in the Department.
5753. **Mr Brimstone:** Who is saying “Our advice”.
5754. **Mr Allister:** “Our advice”. The Department’s advice.
5755. **Mr Brimstone:** Yes. Thank you.
5756. **Mr Allister:** And isn’t that because you didn’t require — or did you require? — this email to go without the knowledge of the Minister?
5757. **Mr Brimstone:** How are you reading that into —
5758. **Mr Allister:** Well, I’m asking you. Was the Minister aware that this email was going to be sent —
5759. **Mr Brimstone:** I would imagine —
5760. **Mr Allister:** — at 7.30 in the morning? He may not have known the time, but it was going to be sent to the Housing Executive board.
5761. **Mr Brimstone:** Well, the Minister may not have known a particular email was going to be sent. The Minister, I would have assumed, would have been aware that the Housing Executive would have been asked was four months a more appropriate time frame, based on the CPD advice as opposed to the six months, as had been in his original letter.
5762. **Mr Allister:** And he would have known that on foot of your discussions with the Minister and giving advice to the Minister as to the fact well maybe six months, which you had asked for, having previously asked for six weeks, maybe, in fact, the right figure is four months. You must have had that discussion at some point with the Minister.
5763. **Mr Brimstone:** I am sure that it was more than just myself. I am sure —
5764. **Mr Allister:** Yes.
5765. **Mr Brimstone:** — officials were involved in that discussion as well.
5766. **Mr Allister:** Yes. Yes. And, on foot of that, an email is then sent to the Housing Executive.
5767. **Mr Brimstone:** Yes.
5768. **Mr Allister:** Citing you.
5769. **Mr Brimstone:** Yeah. My opinion, yes.
5770. **Mr Allister:** And I want to suggest to you: all that points very emphatically, in accordance with Mr Sands’s evidence, to you issuing the request that it go with the knowledge of the Minister, I assume.
5771. **Mr Brimstone:** That the particular email goes or that a request is made.
5772. **Mr Allister:** That request be conveyed before the board meets.
5773. **Mr Brimstone:** Yeah, I’m assuming the Minister would’ve been aware that a request was going to be put to the Housing Executive or to the administrator.
5774. **Mr Allister:** And you were the messenger to send that email to Mr Sands. To send that email.
5775. **Mr Brimstone:** I don’t accept, because I can’t recall where I was when this conversation took place, nor can I recall who else was in the room when the conversation took place that instigated this email.
5776. **Mr Allister:** This email, of course, raised its head again. Isn’t that right?
5777. **Mr Brimstone:** Yes, in the board minutes of July 2011.
5778. **Mr Allister:** Yes. Yes. And, more than that, when Mrs Palmer gave evidence to the DFP fact-finding investigation, she made very express reference to the existence of this email. Isn’t that right?
5779. **Mr Brimstone:** I have a recollection it came up, yes, from the evidence I seen earlier on in the week, yes.
5780. **Mr Allister:** Yes. And that would have been put to you as part of the fact-

- finding exercise. What did you say about that?
5781. **Mr Brimstone:** I think I've been clear to the Committee around any answers to questions relating to the fact-finding exercise. And, again, I state, Chair, I am, unfortunately, not in a position to answer such questions.
5782. **Mr Allister:** You're refusing to answer that question as well, despite your affirmation.
5783. **Mr Brimstone:** I am not in a position to answer questions relating —
5784. **Mr Allister:** So, you are happy to leave the Committee in the position that the only evidence we have on that is from Mrs Palmer.
5785. **Mr Brimstone:** Evidence relating to what?
5786. **Mr Allister:** The fact that that was raised in the fact-finding inquiry, the issue of that email. You are not confirming or denying whether it was raised with you.
5787. **Mr Brimstone:** Correct.
5788. **Mr Allister:** I'm suggesting to you, if it was a proper fact-finding inquiry, that having been an allegation of Mrs Palmer, it inevitably was raised with you.
5789. **Mr Brimstone:** And what's the allegation?
5790. **Mr Allister:** That you were involved in the sending of an email on the morning of the board meeting on 5 July, giving instructions.
5791. **Mr Brimstone:** Where is the instruction in the email?
5792. **Mr Allister:** Yes, you want to quibble again over that. That you were involved in the sending —
5793. **Mr Brimstone:** No, no, no —
5794. **Mr Allister:** — of an email on the morning of 5 July.
5795. **Mr Brimstone:** No. I'm quibbling the fact of where is the instruction.
5796. **Mr Allister:** Well, I think it's fairly clear. Conveying —
5797. **Mr Brimstone:** Could you point it out to me, Mr Allister?
5798. **Mr Allister:** Conveying to the board on your — at your request that they wanted the board to consider an adjustment to what they'd previously been asked for in correspondence.
5799. **Mr Brimstone:** So, where is the instruction?
5800. **Mr Allister:** Well, obviously, the request, rather than instruction.
5801. **Mr Brimstone:** I'm — you argued that I was instructing the Housing Executive to do something, so where is the instruction in that email?
5802. **Mr Allister:** Well, I think the import is that you're asking the Housing Executive to consider an alternative approach, including this four-month extension. Now, if you quibble with that being an instruction, so be it. I'll accept if you wish that that is not an instruction. The issue is the sending of the email and how the email came to be sent, and, in the fact-finding inquiry, it had been drawn to the attention of the fact-finders that it had been sent. Mrs Palmer drew it to their attention. I am suggesting that, inevitably, then, you were asked about it in the fact-finding inquiry. Were you not?
5803. **Mr Brimstone:** I have said that I'm not prepared to answer —
5804. **Mr Allister:** Not prepared to answer.
5805. **Mr Brimstone:** — any questions relating to the fact-finding exercise.
5806. **Mr Allister:** And then, with that knowledge that somewhere out there there was this email, you then set about looking for it. Is that not correct?
5807. **Mr Brimstone:** Well, I first became aware of the email over a year — two years — before the fact-finding exercise. So I first became aware of the email in July if not August of 2011, not 2012 or 2013 — 2011.

5808. **Mr Allister:** See, I want to suggest to you that, from the fact-finding exercise, you discovered about the email and then wanted to see this email. In the words of what Mrs Palmer says Michael Sands said to her, you were going mad looking for it.
5809. **Mr Brimstone:** What's Michael Sands's evidence relating to those words?
5810. **Mr Allister:** He takes some dispute with that.
5811. **Mr Brimstone:** Some dispute.
5812. **Mr Wilson:** He denied it.
5813. **Mr Allister:** But let's be very clear — let's be very clear — the initial explanation by you and Mr Sands was "Why would I be going mad looking for it? Sure it's on the system". And now we know it's not on the system.
5814. **Mr Wilson:** Chairman, see before we go on from this —
5815. **The Chairperson (Mr Maskey):** Just a second, Jim. I'm going to — well, first of all —
5816. **Mr Wilson:** Would you make it quite clear to anybody who's asking questions that they cannot, should not and must not, in order to try and twist questions, misrepresent? Mr Sands did not have some dispute or some query of this: Mr Sands denied — full stop, outright, unequivocally — that what Mrs Palmer said was not true. In fact, it was a lie.
5817. **The Chairperson (Mr Maskey):** That was in a separate meeting.
5818. **Mr Wilson:** He made that quite clear, so don't let Mr Sands's words be misrepresented in any question.
5819. **The Chairperson (Mr Maskey):** Well, don't — look —
5820. **Mr Wilson:** Mrs Palmer, as far as he was concerned, lied on this issue.
5821. **The Chairperson (Mr Maskey):** That's OK. That was in respect of another particular piece of evidence provided by Mrs Palmer, so nobody should be misrepresenting or misrepresenting ourselves in the questions that we pose as well. So Jim, I'm going to let you finish that question and move on to another member. I want to just tease out a couple of — I will come back to you again.
5822. **Mr Allister:** OK, sure. So, contrary to earlier evidence that this email would have been in the system and, therefore, no one would need to be going mad looking for it, do you now accept that, at that material time, it was not in the system?
5823. **Mr Brimstone:** Which system?
5824. **Mr Allister:** Which system do you think I might be referring to?
5825. **Mr Brimstone:** There's the email system, there's the TRIM system, there's a knowledge network system. With relation to the FOI, which I'm assuming you're getting around to, they searched the TRIM system for the particular email. That email would have been available from Mr Sands at any time from his sent items in his own personal email.
5826. **Mr Allister:** I don't think he told us that.
5827. **Mr Brimstone:** Well, anybody — I'm sure in your own inbox —
5828. **Mr Allister:** You know that. Is that how you found it?
5829. **Mr Brimstone:** Well, I'm assuming you have sent items —
5830. **Mr Allister:** Is that how it was found, Mr Brimstone?
5831. **Mr Brimstone:** Well, no. I'm assuming —
5832. **Mr Allister:** Is that how it was found?
5833. **Mr Brimstone:** What?
5834. **Mr Allister:** This missing email.
5835. **Mr Brimstone:** When?
5836. **Mr Allister:** Which couldn't be found for FOI and then suddenly, in April of last year, was found for this Committee. Is that where it was found?

5837. **Mr Brimstone:** I would argue that the email — I was aware of the email in July if not August of 2011.
5838. **Mr Allister:** Yes, but Mr Sands told us he didn't know how the email was found. Are you suggesting it was found in his sent box?
5839. **Mr Brimstone:** I can only assume. It wasn't in the TRIM system. I think that was the evidence that was given.
5840. **Mr Allister:** It wasn't in any system that was searched for those two years.
5841. **Mr Brimstone:** I'm not involved in that, so I don't know the process. But what I'm saying is the email was clearly there, because the email was able to be pulled out here.
5842. **Mr Allister:** No, sorry, with respect, the email was not clearly there, because what this Committee has been told is that a hard copy was eventually found, not that it was found on a system, unless you're suggesting to us that the Department has misled us on how this email was found.
5843. **Mr Brimstone:** Well, no, I'm not —
5844. **Mr Allister:** What do you know about how it was found?
5845. **The Chairperson (Mr Maskey):** For the record — just for the record — we were advised that the email was deleted after 90 days, or it would have been deleted after 90 days, but there was subsequently a hard copy. But in your evidence there, you're just saying you were aware of the email or seen the email some time before that, so —
5846. **Mr Brimstone:** In the month after it was sent.
5847. **The Chairperson (Mr Maskey):** Well, so — But we have been given evidence that there was no sight of the email. That's in evidence.
5848. **Mr Allister:** Where did you see it the month after it was sent?
5849. **Mr Brimstone:** Well, I'm assuming, after reading the minutes of the board minute — the board minute of the Housing Executive, where this email was referred to —
5850. **Mr Allister:** Yes.
5851. **Mr Brimstone:** — that I may have asked — and I don't recall ever doing this, by the way — but I may have asked to have seen it. It would have followed on naturally —
5852. **Mr Allister:** Why would you do that?
5853. **Mr Brimstone:** Because the chairman had made an accusation about an instruction given by the political adviser — I think was how he referred to me — in the board minutes.
5854. **Mr Allister:** So did you get a copy of it at that point?
5855. **Mr Brimstone:** Well, the board minutes are available in the Department.
5856. **Mr Allister:** No. Did you get a copy of the email at that point?
5857. **Mr Brimstone:** I can't recall if I actually — whether it was a hard copy or an electronic copy or whatever — but —
5858. **Mr Allister:** Was it your hard copy that was eventually found and handed over to this Committee, Mr Brimstone?
5859. **Mr Brimstone:** No, it wasn't.
5860. **Mr Allister:** It having been expunged from the record. Is that the case?
5861. **Mr Brimstone:** No, it's not, and I think you know that fine well.
5862. **Mr Allister:** Well, I don't.
5863. **Mr Brimstone:** I think you do.
5864. **Mr Allister:** How would I? All this Committee knows is it wasn't on the records in email form, and suddenly, mysteriously, a hard copy is whipped out and produced. Was that your hard copy?
5865. **Mr Brimstone:** No, it wasn't.
5866. **Mr Allister:** Whose hard copy was it?
5867. **Mr Brimstone:** I don't know. You can ask the Department whose hard copy it was, but it wasn't mine.

5868. **Mr Allister:** But you would have us believe that you saw this email on the system a month after it was sent.
5869. **Mr Brimstone:** Whether it was on the system or whether it was a hard copy or what, but I would've been —
5870. **Mr Allister:** Oh, so you want to change your evidence on that.
5871. **Mr Brimstone:** No, I don't think so.
5872. **Mr Allister:** It was now maybe a hard copy you saw.
5873. **Mr Brimstone:** Well, I said at the start that it may well have been a hard copy.
5874. **Mr Allister:** No, no. You were talking about it on the system and I said, "Did you get it printed out to make it a hard copy?".
5875. **Mr Brimstone:** No, I don't think —
5876. **Mr Allister:** And you said, "I can't recall". So the discussion was very much on the basis of it being within the system.
5877. **Mr Brimstone:** Well, we'll have to wait till Hansard comes out.
5878. **Mr Wilson:** I think Hansard will show that that question wasn't asked.
5879. **The Chairperson (Mr Maskey):** OK, well, I mean, I'm going to refer to Hansard in a moment or two, because I'm going to draw attention to some remarks made a few minutes ago. So, Jim, I'm going to move on.
5880. **Mr Allister:** OK.
5881. **The Chairperson (Mr Maskey):** Before I bring in Dolores, I want to just, Stephen, to tease out a couple of points there, because, in your evidence in respect of the email sent by Michael Sands — he was very clear in his evidence to the Committee that in no way would he have issued that email on his own volition — that the email was issued by himself following a conversation with you in his office at 7.30-ish in the morning. In your presentation of that, you're saying, in the first instance, you don't recall being in the office. There was certainly no instruction by yourself to Mr Sands to issue the email. I'm drawing to your attention a couple of things here. Michael Sands is adamant that there's no way would he have sent that unless he'd been advised or directed —
5882. **Mr Brimstone:** And I'm not arguing that.
5883. **The Chairperson (Mr Maskey):** Well, I'm just making a point, because I think, if you look back on your remarks around that, I would suggest — I mean, if I was not aware of other things that I read here, it would almost appear to be a neutral intervention by yourself, so —
5884. **Mr Brimstone:** Well, no, I don't — Sorry, if that's the case, then that's incorrect, and it's my failure if that is the case. I mean, clearly, there was a conversation that was had. Clearly, I had a view that this potentially — Six months was too long. There clearly had been some discussion around the fact that CPD had given advice around the 91 days, and this is where this email eventually came out of, but it was after a discussion. Where that discussion took place, at what time, even on what day, I can't answer.
5885. **The Chairperson (Mr Maskey):** But — And that's fair enough. Thank you for that. And further to that, in terms of who was the "our", I would draw your attention to the evidence presented to the inquiry by Will Haire, who, in his evidence, said that the key point for him is that, quotation:
- "I did not understand why the request had gone in in the process".*
5886. — that is the request around the four months And then I would draw to your attention evidence from Michael Jennings, the administrator — on behalf of the administrator — who had said that you had made a phone call to them looking for, essentially, a comfort letter. That would be in —
5887. **Mr Brimstone:** What — could you just read the words that Michael Jennings actually used?
5888. **The Chairperson (Mr Maskey):** I'll get that in a second. Because what I'm actually suggesting to yourself, Stephen,

- is that there was a lot more proactivity on your behalf than what may have been suggested by your evidence earlier on.
5889. **Mr Brimstone:** In relation to this email.
5890. **The Chairperson (Mr Maskey):** Yes.
5891. **Mr Brimstone:** But the email and Michael Jennings are two separate issues.
5892. **The Chairperson (Mr Maskey):** Because, remember, we're — It might be two separate issues, but it's on 28 June, which is just a number of days in advance of the email. So I'm making the point that the evidence that we would have received would show that there wasn't the casual — but in a way you've partly addressed that a moment ago. I'm saying is that, if I was not aware of all of this, listening to you earlier on, it would almost have come across as it was a neutral intervention.
5893. **Mr Brimstone:** Oh no.
5894. **The Chairperson (Mr Maskey):** But you've made it clear it's not. So you did instigate the discussion which resulted in an email to the Housing Executive.
5895. **Mr Brimstone:** But if it was just with him, I can't be certain. But, clearly, I had a view, and he was articulating that view. And, on the back of that view, CPD, whether on the back of that view or on the back of my query, CPD advice had been sought — I don't know. But, clearly, CPD advice was sought and provided.
5896. **The Chairperson (Mr Maskey):** And do you accept Michael Sands's evidence that in no way would he have issued the email on his own volition?
5897. **Mr Brimstone:** Without that conversation — Who all was in that conversation, I don't know, but without that conversation, I accept Michael likely wouldn't have issued that email.
5898. **The Chairperson (Mr Maskey):** You are aware he said it was he and yourself in the conversation.
5899. **Mr Brimstone:** Yes, yes.
5900. **The Chairperson (Mr Maskey):** OK. So I'm just drawing that to your attention.
5901. **Mr Brimstone:** Chair, you can accept if I can't recall the conversation, I can't recall the conversation. And that's not arguing against Michael, but if I can't recall the conversation, I can't come to this Committee and say —
5902. **The Chairperson (Mr Maskey):** But again, I'm just reminding you that, you know, whenever I have to come to looking at any — Like every other member around this table, I have to come to assess evidence, I have to give due weight to what somebody tells me very clearly and what somebody else doesn't contradict by way of saying they can't recall. So I'm reminding you repeatedly that that's the upshot of this. Dolores.
5903. **Mrs D Kelly:** Thanks, Chair. It is just a couple of points of clarification. On more than one instance, Mr Brimstone, you've relied upon "internal party matter" and, therefore, are unable to answer some of the questions that were put to you. Can I ask: are you under instruction from anyone else within your party to give that, or is this something you have taken upon yourself as an interpretation of how you should respond to the inquiry's questions?
5904. **Mr Brimstone:** I can't comment on any internal party matter.
5905. **Mrs D Kelly:** So you're not even going to tell me whether you've been instructed to do this or not.
5906. **Mr Brimstone:** Well, in my view, that'd be commenting on an internal party matter.
5907. **Mrs D Kelly:** OK. Thank you.
5908. And then the other one, in terms of the latter bit, in essence, in relation to the alleged meeting at 7.30 am between yourself and Mr Sands in his office, you're really saying that you're neither confirming nor denying, that simply you have no recollection.
5909. **Mr Brimstone:** It's more than that actually, Dolores. What I said in the previous evidence was I genuinely can recall only one instance when I was in the office at that time of the morning. I

- don't live in Belfast. So for me to be in the office at 7.30 am or before that, as I'm assuming it would've taken Michael some time to write up the email, short and all as it is, but it just likely didn't happen — I can only recall one instance when I was in the office between 7.00 am and 7.20 am or 7.30 am, and that's one instance separate to this.
5910. **Mrs D Kelly:** So, therefore, a 7.30 am meeting, it was and is a rare occasion, and I think it would be safe to assume that, if there was such a meeting at 7.30 am, people would remember why they were there.
5911. **Mr Brimstone:** Well, I know Michael is in early in the morning. I mean, there's some people in the office who are in early, but that's the way they choose to work. I mean, I don't think he said it was a meeting that took place. There was a — He says it was a conversation. But I'm just giving you my best recollection. I cannot recall any other instance other than the one that I gave at the last evidence session when I was in at that time of the morning.
5912. **Mrs D Kelly:** OK. Can I then ask: given that, in previous testimony to the Committee as part of the overall inquiry, the Minister has changed some of the evidence, really about whether or not he had asked you to phone Jenny Palmer. You know that — So, what I'm trying to ask now is: if you had the conversation with Mr Sands to issue that email — and you have already said in previous evidence that you had no powers to instruct a civil servant — were you then acting, or would you have been acting only on behalf of the Minister with his full support and, indeed, his instruction to do so?
5913. **Mr Brimstone:** Quite often, in my role as special adviser within a Department, it's seeking information, and I don't go to the Minister every time I seek information. Part of the role is delving for information and asking questions, and that can be directed to an individual or having a discussion with officials and, on the back of that, further questions are asked. So I don't know if that answers your question or not, but I mean —
5914. **Mrs D Kelly:** So sometimes you would be acting of your own volition.
5915. **Mr Brimstone:** Seeking information, yes.
5916. **Mrs D Kelly:** Yes. But given that the board of the Housing Executive had some concerns at the proposed extension of the contract, maybe outside current legal processes, would you have had any conversation with anyone as to whether or not the request and the content of the email was outside of legal processes, and had you sought any legal advice in relation to this particular methodology in relation to the Red Sky contract?
5917. **Mr Brimstone:** So was the Housing — and I'm just putting this back because I need to get clarification — was the Housing Executive's concern around potential legal issues around the content of that email or about wider issues?
5918. **Mrs D Kelly:** Probably both. But, I mean, that's up to the Housing Executive.
5919. **Mr Brimstone:** Yes, but I'm just reading —
5920. **Mrs D Kelly:** In this particular instance, I think it is the current legal process, that this request or instruction contained within the email was actually outside of a legal process.
5921. **Mr Brimstone:** So if we again go back to the email itself. And I'm looking for the — The only request there is — and it's not even a request; it's asking could the question be put to the administrator about four months as opposed to six months.
5922. **Mrs D Kelly:** But where I'm —
5923. **Mr Brimstone:** That may well have been an answer back from the Housing Executive saying, "No, that question can't be put", so I'm unsure as to how it's a breach of any legal —
5924. **Mrs D Kelly:** Well, the Housing Executive obviously had concerns that there'd be any legal process. So before any instruction was given or requests made to send this email, was there any legal advice sought by you or the Minister as

- to whether or not the proposed course of action was legal?
5925. **Mr Brimstone:** Just — you can see there — the advice from the Central Procurement Directorate, who deal with all that sort of thing for the Civil Service, had been around the 91 days.
5926. **Mrs D Kelly:** But would you have sought personally any legal advice or advice from the central procurement unit in relation to this course of action?
5927. **Mr Brimstone:** The Department would've done that.
5928. **Mrs D Kelly:** You didn't personally.
5929. **Mr Brimstone:** No. Well, in reading that email, it was our advice, so it was from Michael, so it must've —
5930. **Mrs D Kelly:** But you didn't.
5931. **Mr Brimstone:** — been the Department.
5932. **Mrs D Kelly:** Yes. You didn't.
5933. **The Chairperson (Mr Maskey):** Well, sorry, but again, Stephen, for the record, I mean, the issue that Will Haire, in his evidence, made it clear that he was — I'll get the right wording. I mean, I'll just quote to you Will Haire just saying:
- "Sorry. At some time, I heard about the issue"*
- which is the email —
- "whether it was that day or after the board met. I do not know when I heard it. I do not think that I was there at 7.30 am."*
- this is Will Haire saying he wasn't at the meeting —
- "However, the key point for me is that I did not understand why this request"*
- that we've just referred to again —
- "had gone in in the process, but the key issue was the letter from the Minister. As I say, you would need to ask"*
- and then it stopped at that point. So it was quite clear that Will Haire, in his evidence, said it wasn't — It would not have been the Department which made that request to extend the time for any number of months.
5934. **Mr Brimstone:** No, I'm talking about the advice from CPD. And —
5935. **The Chairperson (Mr Maskey):** Yes, but —
5936. **Mr Brimstone:** — Dolores had asked me about —
5937. **The Chairperson (Mr Maskey):** No, sorry, but you're preferring a suggestion that the "our" may have been the Department.
5938. **Mr Brimstone:** Yes, but the "our" —
5939. **The Chairperson (Mr Maskey):** What I'm saying is the permanent secretary's making it clear in his evidence that it wouldn't have been the Department. It's just —
5940. **Mr Brimstone:** But the "our" isn't relating to the request to ask the question; the "our" is relating to the advice from CPD around a technical matter of procurement.
5941. **The Chairperson (Mr Maskey):** But you've just said, in an answer to Dolores there, and you said earlier on there, that the "our" would've been perhaps the Department.
5942. **Mr Brimstone:** Yes, in relation to —
5943. **The Chairperson (Mr Maskey):** But you're not sure.
5944. **Mr Brimstone:** — the CPD advice.
5945. **The Chairperson (Mr Maskey):** You're saying you're not sure.
5946. **Mr Brimstone:** In relation to the CPD advice.
5947. **Mrs D Kelly:** Because that then would suggest that the Department — I mean, Will Haire's suggesting that the Department knew nothing about the email and therefore who would would've sought the advice from CPD. So maybe nobody sought the advice —
5948. **The Chairperson (Mr Maskey):** Sorry, Will Haire —
5949. **Mrs D Kelly:** — of CPD.

5950. **The Chairperson (Mr Maskey):** Will Haire's argument was that the Minister had made a request on six months, and this new request went in for four months. And I'm making the point that — And you read the evidence, and Will Haire's making it clear that the Department did not initiate the email to — which was sent by Michael Sands.
5951. **Mr Brimstone:** But I've never argued that.
5952. **The Chairperson (Mr Maskey):** Well, you did a minute ago. If you —
5953. **Mr Brimstone:** No, no. I argued the point that the advice — our advice from CPD — is departmental advice from CPD.
5954. **The Chairperson (Mr Maskey):** Well, OK. Well, sure, we'll reflect on that, but I'm drawing attention to what's the evidence presented by the permanent secretary.
5955. **Mr Brimstone:** And I think actually my written statement on 16 October — point 7 — makes reference to that as well.
5956. **Mrs D Kelly:** Could — sorry, then, could I ask, then — Obviously, there is conflicting evidence being given by Councillor Palmer and Michael Sands in relation to the email and the — I just wondered, in relation to any ongoing conversations you'd had with Mr Sands either at the time or subsequent, say even in September 2013, did you have any conversations with Mr Sands in relation to the email outside of the requests by the FOI from the BBC?
5957. **Mr Brimstone:** No. I don't believe I did, no.
5958. **Mrs D Kelly:** No. And the — How can you explain the different evidence and different understanding by Mr Sands, yourself and, indeed, the ultimate recipients of the Housing Executive in relation to the authority and the sender of the email?
5959. **Mr Brimstone:** Correct me if I'm wrong here, but I believe the only difference between myself and Mr Sands is around a time and location of a conversation, and it's more he's adamant it happened at a certain time, and I've no recollection. And I go further than that:
- I don't think I was in the Department at that time because I don't believe I was ever in the Department, except for one other occasion, at that time. So that's the only difference between myself and Mr Sands —
5960. **Mrs D Kelly:** But you're accepting, therefore, that —
5961. **Mr Brimstone:** — with the email. But I can't understand — and it's a question you need to put to the Housing Executive — I can't understand their interpretation of the email or the chairman's interpretation of the email.
5962. **Mrs D Kelly:** Because you had no concerns that what you were requesting them to do fell outside of any legal process.
5963. **Mr Brimstone:** Well, I wasn't even requesting them to do anything. I was — The question that was coming in Mr Sands's email was:  
*“Could the question — “*
5964. — this is to the Housing Executive —  
*“ — re 4 months be put to BDO as below rather than 6?”*
5965. So that would've been perfectly within the Housing Executive's rights to come back and say, “No, the question couldn't be put”.
5966. **Mrs D Kelly:** And you would've accepted that, or the Minister would've accepted that.
5967. **Mr Brimstone:** I'm — I can't answer that question because it's hypothetical.
5968. **Mrs D Kelly:** Just finally, Chair, the telephone call to Michael Jennings, can you shed any light on in relation to the letter of comfort? Who instructed you or asked you to make that call to Michael Jennings, and what would your expectations of a letter of comfort look like or contain?
5969. **Mr Brimstone:** And again, I haven't got —
5970. **Mrs D Kelly:** Mr Jennings.

5971. **Mr Brimstone:** Mr Jennings. Yes, sorry. Thank you.
5972. **The Chairperson (Mr Maskey):** Hold on —
5973. **Mr Brimstone:** I don't have his — But from what I can recall of his —
5974. **The Chairperson (Mr Maskey):** We'll give you — We'll get you the reference to that now. Just hold on till you get the reference in front of you.
5975. **Mr Brimstone:** Yes. In all of this, it would've been key, so the Minister was seeking a certain course of events — sorry, can I just — one second, if that's all right. The Minister was looking to extend the Red Sky contact beyond the time period of which the Housing Executive were wanting to terminate it to allow a piece of work to be conducted. But in all of that, Red Sky would be now under administration, the administrators being BDO. In all of that, none of this would've been possible if — And I can't recall the conversation with Mr Jennings, but I'm assuming that the conversation with Mr Jennings was to ascertain, if necessary, could a letter of comfort be issued to meet the terms of the company NIHE contracts up to 14 July 2011, because if they weren't in a position to be able to issue a letter of comfort to say, "As administrators, we are not able to run this company up until this date", then what the Minister was seeking just wasn't going to be doable.
5976. **Mrs D Kelly:** And on whose behalf did you make the phone call?
5977. **Mr Brimstone:** Listen, I — I can't recall. It may have been off my own bat. I can't recall. I mean, he wasn't actually asked to do anything; he was asked if something was possible.
5978. **Mrs D Kelly:** But the letter of comfort would've assisted the Minister in terms of the time frame.
5979. **Mr Brimstone:** He was asked — going on his evidence here — whether the administrators would be able to issue a letter of comfort, not to issue a letter of comfort; it was more a clarification of would they be in a position. There may have been some conversation with the Housing Executive saying, "We would require a letter of comfort from the administrator if this was going to happen". I can't recall that; I'm just trying to be as —
5980. **Mrs D Kelly:** And what would you have liked to have seen as the outcome of this letter of comfort? What would it have meant in relation to the resolution of the difference of opinion between the Housing Executive board and the Minister?
5981. **Mr Brimstone:** And this is not related in any way to this email.
5982. **Mrs D Kelly:** No.
5983. **Mr Brimstone:** OK. So, in essence, this would've been to clarify whether the administrator were able to provide comfort to the Housing Executive that, if the Housing Executive were going to extend the contract up until 14 July, because there must've been some query as to whether they were even able to do it up until 14 July, whether the administrator was in the position to run the company up until that date. Otherwise, it would've been a fruitless exercise looking to keep a contract going to 14 July if the company weren't in the position or the administrator weren't in the position to keep the company operational.
5984. **Mrs D Kelly:** OK. Thank you.
5985. **The Chairperson (Mr Maskey):** OK. Before we move on to Gregory, Stephen, would you — I mean, would you accept that this is all in the context of very clear advice and arguments, from the Housing Executive in particular but also officials, that people were straying into contractual matters — legal and contractual matters — which were outwith anyone else's responsibility with the exception of the Housing Executive? Do you accept that, because there was a flurry of activity? These — I mean, the point I tried to make earlier on, whether it's a conversation with Michael Jennings, whether it's an email, whether it's other discussion around that period, there was a flurry of activity in and

- around that period when it was being made very clear from officials that they wanted to be allowed to deal with that in a contractual manner within the law, which would have been a matter for the Housing Executive.
5986. **Mr Brimstone:** I am trying to find —
5987. **The Chairperson (Mr Maskey):** And anything beyond that, they were seeing as interference, which is, in essence, the core of this inquiry.
5988. **Mr Brimstone:** Yes. I am trying to find — there was a — I do not have it to hand at the moment. If you go to the briefing of the meeting that was had between yourself and the Minister, I think it was early July 2011, that briefing from officials to the Minister clearly outlines the rationale and the reasoning and their views on all of this, and I do not have it to hand, unfortunately, Chair. I had it, but I can't put my hand on it now.
5989. What I'm getting at, I think this clearly points that the Minister wasn't acting beyond his remit at all.
5990. **The Chairperson (Mr Maskey):** That's fair; that's your — you're stating that.
5991. **Mr Brimstone:** Yeah. The lines to take at annex A of that.
5992. **The Chairperson (Mr Maskey):** Well, that's your statement.
5993. OK; Gregory.
5994. **Mr Campbell:** Thanks. Mr Brimstone, there is obviously a very significant concentration today on the email trail, but maybe just to try and bring us back to the, and I would argue, very relevant issue of the overall context here. The programme appeared to infer that there was some sort of relationship between Red Sky and either the Minister or there was some form of discussions, debate, secret meetings going on with Red Sky. Had you any meetings or discussions with directors of Red Sky prior to the events that were contained in the programme?
5995. **Mr Brimstone:** No, and the only meeting that I had had or was involved with that
- had the former directors of Red Sky was the meeting that the Minister had with his officials with the east Belfast DUP MLAs. That was the only meeting I had with anyone relating to Red Sky.
5996. **Mr Campbell:** Right. Because, at the time there was the meeting that you've alluded to, which was with DUP MLAs for East Belfast, there was a letter from the Alliance MP for East Belfast, and the common thread there appeared to be the concern for jobs —
5997. **Mr Brimstone:** Yeah.
5998. **Mr Campbell:** — as well as the contractual work that Red Sky was carrying out in the area.
5999. **Mr Brimstone:** Yeah.
6000. **Mr Campbell:** To your knowledge, did anybody make any accusation of unsavoury approaches or dealings between either you or someone on your behalf in Red Sky?
6001. **Mr Brimstone:** No. The only — I remember the Chairman of the Committee at one point raising an issue around that, the start of July, that he was uncomfortable with the way this was perceived to be working out. That's the only — Obviously, there was the furore of all the street protests and the blockades and that sort of thing around city hall and Executive meetings up here by the Red Sky employees, but —
6002. **Mr Campbell:** But you see, the nub of this, Mr Brimstone, is that, for a long time now, there has been this sort of inference and insinuation that there is more to this than meets the eye. I've said in this Committee before, and I'll say it again today, nobody seems to be prepared to indicate what that might be. Now, you're saying you've had no approach, we haven't heard from anybody else about any approach, other than what has been stated in the meeting between DUP MLAs and in the letter by the Alliance MP for the area. You've said there's nothing in terms of what you've done. Well, how many times have you been before this Committee now, Mr Brimstone?

6003. **Mr Brimstone:** This is my fifth.
6004. **Mr Campbell:** This is your fifth occasion.
6005. **Mr Brimstone:** Yes.
6006. **Mr Campbell:** Now, it's just there was some reference publicly to your non-appearance. I think it was last week.
6007. **Mr Brimstone:** I wasn't available; it was unfortunate, but I just wasn't. I apologise to the Committee for that.
6008. **Mr Campbell:** Yes. Yes. I think you sent that apology in, didn't you?
6009. **Mr Brimstone:** Yeah, on the Monday of that week, yeah.
6010. **Mr Campbell:** Yeah. Are you aware of a tweet by a member of this Committee about your absence last week?
6011. **Mr Brimstone:** Someone made me aware of that tweet, yes.
6012. **Mr Campbell:** Right.
6013. **Mr Brimstone:** Reference to on-the-runs and making some jocular reference to on-the-runs.
6014. **Mr Campbell:** Yes, that was from Mr Allister.
6015. **Mr Allister:** Yes.
6016. **Mr Campbell:** And I have the tweet in front of me:  
  
*"OTR Brimstone: Stephen Brimstone has pulled out of his evidence session under oath before DSD committee on Thursday. Now not available!"*
6017. That would have been your fifth occasion here if you had been able to come.
6018. **Mr Brimstone:** Yes.
6019. **Mr Campbell:** Most of the OTRs were murderers and terrorists, Mr Brimstone.
6020. **Mr Brimstone:** Yes.
6021. **Mr Campbell:** How do you feel about being likened by Mr Allister to a murderer and a terrorist?
6022. **Mr Allister:** There was no such likening. Someone who was on the run.
6023. **Mr Brimstone:** By someone who defended murderers and terrorists over the years, I don't take it very kindly.
6024. **The Chairperson (Mr Maskey):** OK, folks. Sorry, just a wee second. Just a second. OK. If you could make a point, Gregory, relevant to what we're doing here this morning because —
6025. **Mr Campbell:** Yes, it is.
6026. **The Chairperson (Mr Maskey):** — because, I mean, you will appreciate that members around this table will occasionally make a number of statements, some of which we may agree with, some of which we may believe to be outlandish. So, if we want to go down the road of checking what everybody has tweeted or said publicly, even within the room, then we need to be careful because we could be spending an awful lot longer on this inquiry than what we might want to intend to do. So —
6027. **Mr Campbell:** Yeah. I'll bear that in mind, Chairman. So, you, I take it, you weren't overly happy about Mr Allister likening you to a murderer or a terrorist.
6028. **Mr Allister:** I did not liken him to a murderer or a terrorist.
6029. **The Chairperson (Mr Maskey):** For the record, I mean, I haven't read the tweet so —
6030. **Mr Campbell:** Chairman, the tweet's here: "OTR Brimstone". Unless —
6031. **Mr Allister:** On the run. That's quite different.
6032. **Mr Campbell:** On the run and —
6033. **Mr Allister:** Running away from this Committee.
6034. **The Chairperson (Mr Maskey):** OK. Sorry.
6035. **Mr Allister:** Running away from giving evidence.
6036. **The Chairperson (Mr Maskey):** Sorry, gentlemen —

6037. **Mr Campbell:** You don't like it now, Mr Allister, do you?
6038. **The Chairperson (Mr Maskey):** Sorry, gentlemen. Sorry, gentlemen.
6039. **Mr Campbell:** No.
6040. **The Chairperson (Mr Maskey):** I'm sorry gentlemen. Just stick to the questions. Jim, you've made it clear on the record you didn't refer to it in that context. So, let's take it back —
6041. **Mr Campbell:** That's what the tweet said, but however.
6042. **The Chairperson (Mr Maskey):** Right. OK. So, you've made your point and Jim's responded, and I want to move on from that point.
6043. **Mr Campbell:** I'm finished with my questions, Chairman.
6044. **The Chairperson (Mr Maskey):** OK. Thank you. OK. Jim, you were looking back in again.
6045. **Mr Allister:** Yes I was, briefly. The issue about the sending of the email and the permanent secretary's evidence to this Committee when he said in relation to the email:
- "What I did not understand was why the request was made. The Minister's letter said six months. That was what the board was looking at, and I could not understand it."*
6046. I infer from that the permanent secretary hadn't been told that the six months in the letter was going to be changed or being explored if it could be changed to four months, courtesy of the email. Is that fair? The permanent secretary was kept in the dark about this.
6047. **Mr Brimstone:** Well, the permanent secretary says he wasn't aware of it.
6048. **Mr Allister:** Yes. Would there be an expectation that an adjustment of policy of that nature on such a controversial issue would be that the permanent secretary would be kept in the loop?
6049. **Mr Brimstone:** I'm surprised that he wasn't, to be honest.
6050. **Mr Allister:** You certainly didn't keep him in the loop.
6051. **Mr Brimstone:** No, but if you look at that email, that email, not only was Michael Sands the sender of the email aware of it, Jim Wilkinson, the director of housing, was there.
6052. **Mr Allister:** But at what point did you tell the permanent secretary about that email?
6053. **Mr Brimstone:** I don't believe I'd ever any role to tell him about the email.
6054. **Mr Allister:** You didn't tell him.
6055. **Mr Brimstone:** Likely not.
6056. **Mr Allister:** All right. OK. And, as you were asked, that was a follow-up to the inquiries you had been spearheading with the administrators of 28 June.
6057. **Mr Brimstone:** One phone call. I think he referred to it as one brief phone call.
6058. **Mr Allister:** Yes, and who did you say asked you to make that call?
6059. **Mr Brimstone:** I didn't. I couldn't recall, and I said —
6060. **Mr Allister:** Couldn't recall. But do you think you did it of your own volition?
6061. **Mr Brimstone:** Well, potentially. I was seeking information.
6062. **Mr Allister:** Well, seeking information to what advantage?
6063. **Mr Brimstone:** As to whether the administrator was able to run the company Red Sky under administration until 14 July or not.
6064. **Mr Allister:** Yes, and, of course, you and the Minister were interested, in fact, in a longer period than that.
6065. **Mr Brimstone:** I do not know why 14 July was in the conversation, but, yes, we were — the Minister wanted a period in time in which the proper procurement exercise could be carried out at the same time an investigation into the issues pertaining to Red Sky could be

- carried out in regard to wider in the system.
6066. **Mr Allister:** So, in terms of extending the period and the procurement and all of that —
6067. **Mr Brimstone:** Reducing it.
6068. **Mr Allister:** Well, extending it initially by six months and then talk about four, that was an extension in the sense of beyond 14 July. It was beyond that period. Do you understand?
6069. **Mr Brimstone:** I think, though, that the contract — I am not sure; was it 5 July the Housing Executive were looking to terminate the contract?
6070. **Mr Allister:** No, no, I think the 14th was the termination date. So, the departmental — or the Minister's position was initially six months, then adjust it down to four months. And the advantage in that would be, of course, in part, not exclusively, to the new company that the Minister spoke of in the 27 June meeting that extra time would give the proposed new company time to progress matters. So, that is where this all ties together, isn't it?
6071. **Mr Brimstone:** No.
6072. **Mr Allister:** The Minister had an anxiety that the proposed new company might be able to progress matters. To buy time, Mr Brimstone explores with BDO how long they can carry on for —
6073. **Mr Brimstone:** Until —
6074. **Mr Allister:** Mr Brimstone advises the Housing Executive to look favourably or explores the possibility of this four-month extension.
6075. **Mr Brimstone:** I think my exploration with BDO was around 14 July, no further.
6076. **Mr Allister:** But is that not the framework within which we are operating, that all of this was motivated by this urge to buy more time for the successors to Red Sky?
6077. **Mr Brimstone:** No.
6078. **Mr Allister:** That never entered your head, Mr Brimstone, or can you not recall?
6079. **Mr Brimstone:** No, I am perfectly clear as to what the motivation —
6080. **Mr Allister:** You can recall that.
6081. **Mr Brimstone:** If I can answer the question —
6082. **Mr Allister:** I am glad that you can recall that.
6083. **Mr Brimstone:** Can I answer the question, Chair?
6084. **The Chairperson (Mr Maskey):** OK, sorry; a wee second. OK.
6085. **Mr Brimstone:** Can I answer the question?
6086. **The Chairperson (Mr Maskey):** Yes, please answer the question if you wish; yes.
6087. **Mr Brimstone:** No, I am quite clear as to what the motivation around all of this was. The Minister had concerns that have been backed up now by numerous reports as to the fact that the issues pertaining to Red Sky were more widely spread within the Housing Executive. The Minister was proved right in that. The Minister wanted a period of time in which we could, a, put in place the proper procurement exercise and, at the same time, explore the issues which have now come to light that they are much wider spread within the Housing Executive and the contractors associated with response maintenance.
6088. **Mr Allister:** Do you deny that the Minister wanted more time, in the words of this minute, so that:  
*“the proposed new company might also be able to progress matters”?*
6089. **Mr Brimstone:** I'm not aware of that.
6090. **Mr Allister:** What do you think that means, other than giving the successor to Red Sky time to get their act together?
6091. **Mr Brimstone:** You asked me a question, and I answered it.

6092. **The Chairperson (Mr Maskey):** OK. I mean, just for the record there, it is just, I mean, obviously, members around the table, including witnesses, may make statements, at times assertions. They are opinions. It does not necessarily mean it is fact. So, to suggest that subsequent reports, in the way in which you said there, back up whatever, that is not necessarily the case. So, I am just making that point. That is your view, and you may well very, very well hold that —

6093. **Mr Brimstone:** Is there an argument around that, Chair?

6094. **The Chairperson (Mr Maskey):** No, I am not making an argument. All I am saying is that you make a statement, it is your statement. It does not necessarily reflect the actual facts at the end of the day. I am not suggesting otherwise. I am making the point that other members, including witnesses, may make statements from time to time, so, again, just for the record, that does not necessarily mean that they are true or that they reflect the divine wisdom. That is all I am making the point.

6095. **Mr Campbell:** It can happen with questioners as well, Chairman.

6096. **The Chairperson (Mr Maskey):** Of course, and I made that point. So, I have made it, and I repeated it there again.

6097. I just want to go back to a point earlier on there again. This is just again because it has come up in this evidence session, and it is happening two weeks in a row. It is in relation to remarks Sammy Wilson made earlier on and made them last week. When you characterised — Sammy, when you characterised Michael Sands last week, and we will check the Hansard report because I think some of these matters are beginning to get serious. I mean, Michael Sands made it clear that he didn't accept your suggestion or your words around Jenny Palmer's remarks. In fact, he did — Mr Sands went on to say he:

*“can't say it's untrue”, and he talked about recollections. Equally, I didn't hear him saying at any point that Jenny Palmer was lying, so I'm just asking people to reflect on — when they're making statements, giving evidence, or*

*questioning witnesses, or making statements or assertions, because we can't have people round this table quoting someone else as suggesting that somebody was telling lies, because these are serious statements. Again, I'm just trying to remind ourselves to be professional and be able to stand over what we say, whilst at the same token being very robust and challenging of any witness, or, indeed, ourselves. That's what we're here to do, so I'm just asking people, and I will be reflecting on the Hansard remarks of this meeting to see the words that were actually used. I think they may well have been unfortunate and regrettable, but we'll check that and we'll come back. We will return to that on reading.*

6098. **Mr Wilson:** Chairman, I mean, what Michael Sands said — and this is what I quoted — first of all, he did not have such information that anybody was “going mad” looking for an email. There was no reason why anybody should be like that. Secondly, that he did not engage in such a conversation with Mrs Palmer. Thirdly, that he never ever said the words. My conclusion, then, is, if Mr Sands was so adamant — and he was not ambiguous. Hansard will show that he was not ambiguous. I didn't actually say that he said it. I put it to him and he didn't wish to make comment, but, if he didn't say the words, if he had no such conversation, if he, indeed, did not even remember anybody looking, or going mad looking, for an email, then what Mrs Palmer said was untrue, so she must be lying.

6099. **Mrs D Kelly:** Chair —

6100. **The Chairperson (Mr Maskey):** Well, I'm making a point. You brought it up — you raised it in the context of talking about people —

6101. **Mr Wilson:** I didn't say that he said she was lying, but I'm saying that —

6102. **The Chairperson (Mr Maskey):** Well, that's fair enough.

6103. **Mr Wilson:** — clearly, she is not telling the truth, because we've had one witness who's given a totally different —.

6104. **The Chairperson (Mr Maskey):** All I'm drawing attention to is that, in the

context of — Sammy, you raised it in the context of people misrepresenting other people's remarks or comments or evidence to the Committee. I'm just making a point that Michael Sands didn't use any words about lying or untruths.

6105. **Mr Wilson:** I never said he did.

6106. **The Chairperson (Mr Maskey):** He actually said he couldn't say it was untrue. I'm only making that point. I remind people we're still in an inquiry. We still have witnesses, perhaps, to come here. We certainly have to deliberate on what we're saying, so I'm just asking people to be professional and mindful of the remarks that they make, and not attribute them to other people. Dolores, you wanted a last point on that.

6107. **Mrs D Kelly:** Chair, it was just, I think, it is interesting how one member seeks to actually come to the conclusion that one person is not telling the truth and the other one is. I think that underscores the lack of objectivity amongst some members.

6108. **The Chairperson (Mr Maskey):** Well, people will make their own minds up on all that in due course. Stephen, there's no one else has indicated to ask any questions at this moment in time. Are you happy enough? Is there any final remarks you want to make this morning?

6109. **Mr Brimstone:** No.

6110. **The Chairperson (Mr Maskey):** You do fully understand that, if you so wish, you can come back to this Committee in the very near future. Hopefully we will be wrapping up the inquiry sooner rather than later, and, obviously, it will be within the decision of the Committee if we so wish to pursue anything else with yourself. OK, so thank you.

6111. **Mr Campbell:** He'll be coming back for a sixth time then, Chairman, if you did that.

6112. **The Chairperson (Mr Maskey):** That remains to be seen.



Northern Ireland  
Assembly

Appendix 3

# Written Submissions



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## List of Written Submissions

1. Councillor Jenny Palmer – Lisburn City Council
2. Ms Heather Cousins – Former Deputy Secretary, DSD
3. Mr Peter Robinson MLA
4. Mr Robin Newton MLA
5. Mr Sammy Douglas MLA
6. Mr Peter Cooke – Red Sky – Former Managing Director
7. Mr Stewart Cuddy – NIHE – Former Acting CEO
8. Permanent Secretary and Housing Officials - DSD
9. Mr Declan Allen – NIHE – Head of Procurement
10. Mr John McVeigh and Mr Raymond Kitson – NIHE – Head of Internal Audit / RIU Unit
11. Mr Clark Bailie – NIHE – Former Acting Head of Corporate Services
12. Mr Michael Sands – DSD – Deputy Director of Housing
13. Dr John McPeake – NIHE – Former Chief Executive
14. Mr Colm McCaughly – NIHE – Former Director of Housing and Regeneration
15. Mr Paddy McIntyre – NIHE – Former Chief Executive
16. Ms Naomi Long MP
17. Mr Stephen Brimstone – DSD – Special Adviser
18. Mr Brian Rowntree – NIHE – Former Chairperson
19. Mr Nelson McCausland MLA – Former Minister for Social Development

## Councillor Jenny Palmer – Lisburn City Council

Dr Kevin Pelan  
Clerk, Committee for Social Development  
Room 284  
Parliament Buildings  
BELFAST BT4 3XX

11 July 2014

Your ref: CSD/022/2013/3/CMC

To whom it may concern

**In relation to the decision by NIHE board on 13 April 2011 to terminate the response maintenance contract with Red Sky Group.**

I would respectfully suggest that you ask for a copy of the minutes as they are available from NIHE board secretary. Proper governance would not permit me to release the minute but I am content to give my account of the meeting.

The NIHE board met to confirm the intention to terminate the Red Sky contract following a long investigation by both internal RIU and external ASM Howarth. This was referenced as “Project Young” within NIHE and Mr Barney McGahan representing DSD attended all “Project Young” meetings and in advance of this final decision to terminate the contract the Permanent Secretary DSD met with NIHE Chairman, CEO and Chair of Audit to discuss termination actions.

As a member of the Audit committee I was fully aware of the gravity of the situation and also the sustained pattern of overcharging by Red Sky Group. In my opinion an extensive investigation was undertaken by NIHE and following extensive discussion and negotiation with Red Sky group who were unwilling to accept responsibility the decision was not taken lightly to terminate their contract. The minute of the meeting of 13 April will show that the board members unanimously agreed to this action. Further, the board could have terminated immediately but agreed to the maximum term notice of 3 months and also required the CEO to implement the process of TUPE to protect the workers involved in NIHE contracts.

**NIHE board meeting of 5 July 2011 regarding the Ministers request for an extension to the Red Sky contract.**

I made the chairman of NIHE aware in advance of the meeting of the 5 July 2011 of the direct approach made to me by the Ministers Special Advisor Mr Stephen Brimstone by

telephone on the 1 July 2011, in which he demanded I go into the board room of NIHE and vote against the termination and to further ask for the 3 month extension of Red Sky contract. I asked the chairman if he would rule if this approach constituted a conflict of interest or not, but it is my opinion that I found myself placed in a difficult position that I would not have participated in the meeting without being seen as acting on a party basis as opposed to that of the board member, thus damaging my integrity and that of the board and Audit committee. The chairman agreed with my concerns and when I turned up for the special board meeting on 5 July 2011 he asked me to remove myself from the board room. I duly obliged. That meeting was dealing with a direct request from the Minister via DSD to extend the contract of Red Sky Group and was effectively removing the termination.

I wish to state for the record I fully supported the NIHE board in its decision not to reinstate the Red Sky contract. As a member of the Audit committee I was further informed of the increasing level of overcharging with Red Sky contracts and I also had serious concerns around directors of Red Sky confirming on TV that they charged NIHE for work on buildings that didn't exist. Again I understand the board members at the meeting on 5 July 2011 voted unanimously to continue with the termination of the contract and not to reinstate.

As a board member of NIHE I was kept fully updated on replacement discussions and TUPE provision to protect workers. I was also aware NIHE board had sought Senior Council legal opinion confirming the actions taken by the board were correct and appropriate. I would refer you to the minutes of the Audit committee for the 18 months prior to concerns of Red Sky when and on numerous occasions NIHE RIU team raised concerns on Red Sky Group.

I wish to add that I fully complied with the DFP internal review on the allegations surrounding political interference of the board of NIHE. I was given an assurance that this review was confidential and that once the findings had been reported to the Permanent Secretary for DSD, I would receive a copy of the report at least for accuracy. To date I have not had feedback of the report. I gave 2 hours of my time to facilitate this review and feel cheated that it has been buried somewhere within DSD. I ask, have the social development committee had sight of this report as this will answer some of your queries.

Please do not hesitate to contact me if I can be of any further assistance to you.

I remain

Yours sincerely

**Jenny Palmer**

Councillor for Lisburn City

## Ms Heather Cousins – Former Deputy Secretary, DSD

**FROM THE DEPUTY SECRETARY**  
Heather Cousins



Adelaide House  
39-49 Adelaide Street  
Belfast BT2 8FD  
Tel: 028 9025 7870  
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Dr Kevin Pelan  
Northern Ireland Assembly  
Clerk Committee for Social Development  
Room 284 Parliament Buildings  
BELFAST  
BT4 3XX

Your Ref: CSD/022/2013/3/CMC

21 July 2014

Dear Kevin

Inquiry into allegations arising from a BBC NI Spotlight programme aired on 3 July 2013 of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions.

Your letter of 9 July 2014 refers. Please find attached as requested briefing on my knowledge of the events and decisions details in your letter.

Yours sincerely

A handwritten signature in black ink that reads "Heather Cousins".

**HEATHER COUSINS**

I have been asked to provide a briefing on my knowledge of the following key events and decisions. However, these events occurred more than three years ago.

They also related specifically to housing matters and my responsibilities in the Department at that time were much more than housing and also included Welfare Reform and turning around the performance of the Child Maintenance Service.

**1. NIHE Board's decision of 13 April 2011 to terminate the response maintenance contracts held by Red Sky**

*I was aware of the decision by the Housing Executive to terminate the Red Sky contracts and that the Chairman advised the Permanent Secretary of this on 13 April 2011. This was also widely covered in the Press at that time.*

**2. Letter dated 17 May 2011 from Robin Newton MLA to the Minister requesting a meeting with Red Sky representatives and Sammy Douglas MLA and the subsequent response dated 31 May 2011.**

*I was copied into the briefing forwarded to the Minister on 27 May 2011 recommending that the Minister declined this invitation as this was an ongoing contractual matter between the Housing Executive and Red Sky. I was copied into the Minister's response on 31 May 2011 which updated Councillor Newton MLA on the position and advised that if still felt a meeting would be beneficial, he should contact the Minister's diary secretary.*

**3. Meeting of 2 June 2011 with the Minister's Special Adviser regarding the termination of the Red Sky contract.**

*I was copied into a briefing paper dated 2 June 2011 to the Special Adviser which advised that Stewart Cuddy, Acting Chief Executive, would be happy to meet the Special Adviser that day to discuss. I did not attend any meeting to discuss this and I am not aware that there was a meeting.*

**4. Meeting of 27 June 2011 at Parliament Buildings between representatives of Red Sky and members of the DUP including the First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA.**

*I was copied into the briefing forwarded to the Private Office for this meeting but I did not attend this meeting.*

**5. Meeting of 30 June 2011 with the Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky Contract.**

*I attended this meeting on 30 June and the (draft) minute of the meeting records the discussion at that time.*

**6. Submission of 1 July 2011 from Will Haire to the Minister advising the Minister not to issue a direction to the Housing Executive in respect of the termination of the Red Sky contract.**

*I was copied into the submission on 1 July from Will Haire to Minister in which he set out the considerations in respect of the issue of a direction and recommended to the Minister that he did not believe that the reasons and supporting evidence was sufficiently rigorous to justify the issue of a direction under Article 10.*

**7. Meeting of 1 July 2011 with senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract**

*I forwarded a submission to Minister on 1 July with a draft letter to the Chairman advising of the Minister's decision to carry out a forensic investigation of a sample of NIHE contractors including the contractors who would be reassigned the Red Sky contracts and asking the Housing Executive Board to consider extending the termination date of the Red Sky contracts. I was also copied into the submission from Will Haire to Minister dated 1 July 2011 in relation to the*

*issue of a direction the Housing Executive. I do not recall the detail of discussions at a meeting held that day.*

- 8. Letters of 1 July 2011 to the Chairman of the NIHE requesting the extension of the Red Sky contract. In particular clarity is welcomed on the Minister's decision to amend the official's initial draft of the letter to extend the termination date from a period of 8 weeks to 6 months.**

*I forwarded my advice to Minister with a draft letter to consider and it was the Minister's decision to amend this.*

- 9. Email of 5 July 2011 from Michael Sands to the Chairman of the NIHE regarding the Special Adviser's request to amend the period of extension of the Red Sky contract from six months to four months**

*I was not copied into this email and was not involved in subsequent discussions as I was on Annual Leave until 7 July.*

- 10. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract**

*I am aware that a Board meeting was held on 5 July 2011. I did not attend this meeting as I was Annual Leave. I am also aware that the Chairman wrote to the Minister on 5 July 2011 following the Board meeting.*

- 11. Submission to the Minister dated 6 July 2011 regarding NIHE's decision not to extend the Red Sky contract pending an open procurement competition and the possible discussion of this at the Executive Committee on 7 July 2011**

*I was copied into the submission from the Permanent Secretary to the Minister dated 6 July 2011 setting the position at that time and advice on the way forward.*

**12. Letter of 7 July 2011 to the Chairman of the NIHE confirming that the NIHE should proceed with the termination of the Red Sky contract on 14 July and reassign the work to adjacent contractors**

*Following the Board meeting on 5 July and the Chairman's letter dated 5 July to the Minister I forwarded to the Minister a suggested draft reply which the Minister issued to the Chairman on 7 July 2011.*

**13. Submission dated 18 July 2011 regarding letter of response from the Permanent Secretary to a letter from the Chairman of the Housing Executive dated 1 July 2011 regarding the termination of the Red Sky contract.**

*I was copied into the submission to Permanent Secretary with a suggested draft reply to the letter to him from the Chairman dated 1 July 2011. The Permanent Secretary's reply to the Chairman issued on 31 August 2011.*

# Mr Peter Robinson MLA



Chairman  
Committee for Social Development  
Room 284  
Stormont Parliament Buildings  
Belfast BT4 3XX

30<sup>th</sup> July 2014

Dear Mr Chairman

I am in receipt of your letter of 3 July 2014 in which you request written evidence in relation to your Inquiry into the BBC Spotlight programme aired on 3 July 2014.

In particular you ask me to focus on two elements (1) a meeting on 28 April 2011 and (2) a meeting on 27 June 2011.

I welcome the opportunity to do so. Indeed immediately the programme was broadcast I instructed one of my lawyers, Mr Paul Tweed, to commence defamation proceedings. Mr Tweed drafted, for my approval, a letter to institute legal proceedings. Subsequently the Speaker confirmed after an Assembly debate that there would be no constraints imposed upon the Committee in investigating these matters. (see below)

*Mr P Robinson: On a point of order, Mr Speaker. Can you confirm that the outcome of the vote and defeat of the original motion now leaves no limitations on the Social*

*Development Committee in the carrying out of its investigation and that it has full powers to proceed with its investigation without any constraints?*

**Mr Speaker:** *I can confirm that the decision that the House has taken this afternoon certainly will not constrain the Social Development Committee in its inquiry, but I have no doubt that the Committee will want to take into account the debate in the House this afternoon as part of its inquiry.*

Your Inquiry allowed me an alternative outlet through which to state my case. The Committee and public can also judge the BBC by its appearance at the Inquiry and the truthfulness of its case as they attempt to stand over their outrageous claims about me.

Both of the meetings you have asked me to comment upon are covered by Official Minutes taken by others. The programme's scurrilous accusations are not supported by either Minute. Indeed the Minutes debunk the falsehoods in the Spotlight programme.

There should be serious concern that the BBC would intentionally manipulate, misrepresent and distort the factual position in order to make false and defamatory accusations against me.

In responding to your request I am making the working assumption that you want me to address the main claims made by the BBC in relation to me; namely that I breached the Ministerial Code and acted in an inappropriate manner by being present at meetings relating to a constituency matter. Such accusations are manifestly and self-evidently untrue.

However, by way of scene setting I shall set out my involvement with this issue.

I attended both meetings at the request of my East Belfast party colleague Robin Newton who had been dealing with the potential loss of 400 jobs in the constituency. Robin had, prior to these meetings invited both Sammy Douglas (my other East Belfast DUP colleague) and me to accompany him to meetings with both the management and workforce at Red Sky.

During those meetings at Red Sky's premises both the management and workforce representatives we met expressed, in the most convinced and resolute manner, the view that (1) the company was being singled out for sectarian reasons; (2) that other companies carrying out work of a similar nature, for the Housing Executive, were no better or worse than Red Sky in the way they were discharging their contracts and (3) the NIHE systems and staff were, in no small measure, to blame for the problem.

No elected representative who heard such charges could do anything other than robustly put the allegations to the NIHE.

The matter was even more vital given the impact on the livelihoods of hundreds of our constituents. I contend that responding to massive concerns from constituents is not a choice – it is a duty. I acted as any constituency member in my position should act by representing the concerns and interests of their constituents. For this I make no apology.

It is also worth noting that elected representatives from both the Ulster Unionist Party and the Alliance Party also made representations to the DSD about the fate of the company.

In meeting the NIHE we put the claims made by Red Sky's management and workforce and called for other contractors to be subjected to the same scrutiny.

While the Housing Executive denied the Red Sky accusations, events have shown that after detailed independent investigations were carried out similar assertions were subsequently made against the other companies carrying out comparable work. The NIHE representatives we met acknowledged that some NIHE staff had been partly responsible and investigations were underway. After further similar cases have been found it is clear there were procedural and systemic failings. However, while there might be circumstantial inferential details suggesting there was a sectarian motivation I have seen no conclusive evidence to prove this particular accusation.

The BBC claimed that I was **in breach of the Ministerial Code** because I attended a meeting alongside other East Belfast DUP Assembly Members with Minister McCausland in order that he should be made aware of our concerns about the impact on a company and workers in our constituency arising from the withdrawal of a NIHE contract.

There can be no doubt that I acted as a constituency representative. Both sets of Minutes show I attended as a constituency

representative and not as a Minister. The BBC's attempt to suggest I was acting in a Ministerial capacity is absurd and exposes either their complete ineptitude or an improper political motive.

The bogus accusation that I acted in a Ministerial capacity is discredited by the following proofs –

- The Minute shows I accompanied my two Party Constituency colleagues and was described in the Minutes as Peter Robinson MLA. (Note – no reference to my being a Minister)
- In contrast when the Minute refers to Mr Nelson McCausland he is referred to as Minister McCausland.
- I am a Minister in OFMDFM which is a joint department. There was no involvement of the deputy First Minister who, in line with protocols and practice, would be made aware of any meeting if I were acting in a Ministerial capacity.
- None of my Special Advisors was at either meeting – they would have been present if I was attending as a Minister. (Also it should be noted that Minister McCausland who was acting in his Ministerial role had his Special Advisor present.)
- While Minister McCausland had Departmental Officials present no OFMDFM Official was in attendance at either meeting. They would have been if I had been acting in a Ministerial role.
- No person in OFMDFM was involved in scheduling either meeting nor in taking any other action relating to the meetings - before or following them.
- If I was attending as a Minister my Officials would have set up the meeting - not Robin Newton.

To support their false accusations the BBC claimed **“both Ministers are listed on the leaked minute of the meeting”**. As a matter of indisputable fact anyone reading both Minutes will find that only one person at one of the meetings – Minister McCausland - is listed as being a Minister.

Spotlight then seek to prop-up their unsound hypothesis by claiming that **a leading QC has told Spotlight that by attending this meeting First Minister Peter Robinson was in breach of the Ministerial Code.**

Given the absence of any evidence that I was acting in a Ministerial capacity and the catalogue of evidences and signals that I was not, it defies credibility that any competent QC, properly instructed, who had been provided with the Minute of the meeting and is not politically motivated, could remotely or reasonably have reached such a conclusion.

The BBC needs to supply the name of the QC and provide the committee with the legal opinion of the unnamed QC who they claim made such an implausible remark. There is no substantiation that the BBC received any such considered legal opinion. This is important as the BBC sought to use the reference to the anonymous QC in order to suggest there was someone who was independent, of standing, credible, expert and authoritative who had robustly interrogated and evaluated the facts and was supporting – indeed making - the accusation.

In assessing the legal competence of this claim the Committee might wish to determine whether the Attorney General is prepared to share his advice on the BBC's claim as it relates to me.

If the Committee wishes me to respond to any further question I am, of course, happy to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter D Robinson', with a large, stylized flourish above the name.

Peter D Robinson MLA

## Mr Robin Newton MLA

**PLEASE REPLY TO:**  
**CONSTITUENCY OFFICE:**  
59 CASTLEREAGH ROAD  
BELFAST BT5 5FB  
Tel: (028) 90459500  
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website: [www.robinnewton.co.uk](http://www.robinnewton.co.uk)



Chairman  
Committee for Social Development  
Northern Ireland Assembly  
Room 284  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Wednesday 30 July 2014.

Dear Chairman

I acknowledge receipt of your letter dated 3 July 2014. I received this letter on the 22 July 2014.

The letter requests me to provide written evidence for your inquiry into allegations arising out of a BBC Northern Ireland Spotlight programme that was broadcast on the 3 July 2013.

I am pleased to respond to the letter and I acknowledge the Terms of Reference

1. *Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Minister were appropriate.*
2. *Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing*
3. *The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

And;

*Should the Committee identify any evidence of fraud or corruption in relation to the operation of NIHE maintenance contracts and / or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the authorities.*

You have specifically asked me to provide a written briefing regarding strand (1) of the Terms of Reference. Meetings held with NIHE senior management and Minister McCausland.

**IMPORTANT – Please quote our reference on all correspondence**

**LEASE REPLY TO:**  
**CONSTITUENCY OFFICE:**  
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- The meeting with Mr Brian Rowntree, then Chairman of the NIHE, Mr Stewart Cuddy Acting Chief Executive and Dr John McPeake Director of Housing and & Regeneration and Acting Deputy Chief Executive was held in the Headquarter offices of NIHE. The matters raised were recorded by an officer of NIHE and a minute of the meeting produced. I was prompted to request the meeting due to media coverage of a possible loss of circa 400 jobs and the potential of the company Red Sky closing due to contractual difficulties with NIHE. You will understand the negative impact this would have caused in my constituency. Although a lot of the employees were my constituents many travelled from across the city and further afield. The effects would therefore have been felt in the wider Northern Ireland economy. In addition the prospective closure of the business premises would have blighted the area with little prospect of the site being developed. Neighbouring shops and SMEs also relied on the day to day trade of employees to sustain their business. Local trade suppliers also depended on business orders from Red Sky for their sustainability. Within the local economy it was apparent the knock on impact of Red Sky closing would at the least be worrying. I was convinced the benchmarked performance of Red Sky against NIHE established criteria was in line with what was expected for a company undertaking this type of work and compared favourably when put side by side with other firms. Indeed faults within NIHE information and recording systems and decision making were outlined as examples inhibiting Red Sky in the efficient fulfilment of contracts. The strong feelings of many employees who eventually expressed their mood through protest at NIHE offices and at Stormont convinced me of the need to support their case. For all of these reasons I believed it was my responsibility as an MLA to raise issues with the NIHE and seek explanations for employees and the company management. My party colleague Peter Robinson MLA and Sammy Douglas attended at my request.
- Regarding the meeting of 27 June 2011 held at Parliament Buildings between Minister McCausland, Minister for Social Development, and representatives of Red Sky this followed on from my written request to the Minister for a meeting. The meeting was arranged through the Minister's diary secretary. The company at that stage had taken action to appoint an Administrator. Red Sky senior management wanted to make the Minister aware of the very serious situation facing the company. They believed their company operating standards were in line with, or better

**IMPORTANT – Please quote our reference on all correspondence**

**LEASE REPLY TO:**  
**CONSTITUENCY OFFICE:**  
**59 CASTLEREAGH ROAD**  
**BELFAST BT5 5FB**  
**Tel: (028) 90459500**  
**e-mail: [REDACTED]**  
**website: [www.robinnewton.co.uk](http://www.robinnewton.co.uk)**

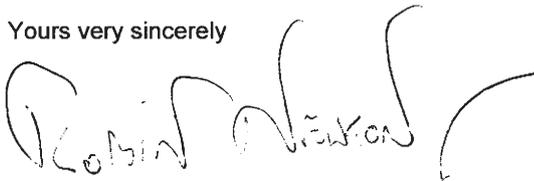


than, similar firms operating comparable NIHE contracts. I asked for an urgent meeting as it had become evident the company's business prospects and its overall ability to retain its core workforce were in jeopardy. This was due to the decision by the Board of the Northern Ireland Housing Executive to terminate the company's five contracts. The company had had three months notice of contract termination. These were response maintenance contracts that sustained a large % of the workforce in their day-to-day employment and obviously contributed to the overall financial performance of Red Sky. As an elected representative for the area in which the company had its headquarters it would have been remiss of me not to follow-up on requests from Red Sky senior management. This is what I believe responsible elected representatives do. I consider any MLA with the interests of their constituents and constituency at heart would have followed a similar course of action. Peter Robinson MLA and Sammy Douglas MLA were present at my request.

I trust this explains my actions in seeking the above two meetings and in looking for the support of my colleagues.

If you require any further information I am, of course, willing to respond to your request.

Yours very sincerely



**ROBIN NEWTON MBE, MLA**  
**ASSEMBLY MEMBER FOR EAST BELFAST**

**IMPORTANT – Please quote our reference on all correspondence**

# Mr Sammy Douglas MLA

Sammy Douglas MLA  
274 Newtownards Road  
Belfast  
BT4 1HE

T: +44 (028) 9046 7926

E: [sammy.douglas@MLA.niassembly.gov.uk](mailto:sammy.douglas@MLA.niassembly.gov.uk)

Chairman  
Committee for Social Development  
Room 284  
Parliament Buildings  
Belfast  
BT4 3XX

Dear Mr Chairman,

I acknowledge receipt of your letter dated 3 July 2014.

The letter requests me to provide written evidence for your inquiry into allegations arising from a BBC Northern Ireland Spotlight television programme that was broadcast on 3 July 2013.

I am happy to respond to the letter and I acknowledge the Terms of Reference:

- 1. Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Minister were appropriate.*
- 2. Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing*
- 3. The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

*And;*

*Should the Committee identify any evidence of fraud or corruption in relation to the operation of NIHE maintenance contracts and / or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the authorities.*

You have asked me to provide written evidence regarding strand (1) of the Terms of Reference and meetings held with NIHE senior management and Minister McCausland.

As a background to the first meeting on 28 April 2011, I should inform you that at this stage I had not yet been elected to the Assembly. My attendance at the meeting was a natural progression to my involvement with the Red Sky company over the years in my role as voluntary Chairman of East Belfast Partnership. During this time, a forum was established to engage private sector companies with training organisations in East Belfast. Red Sky, one of the largest employers in the area who provided jobs and apprenticeships for many of my constituents, played an important role in this forum.

With regard to the meeting of 28 April 2011, it is my understanding that matters raised during discussions were recorded by an officer of NIHE and minutes produced. These issues included: contractual difficulties between Red Sky and NIHE; the potential loss of over 400 jobs in an area

already suffering from high levels of unemployment; the loss of business to local suppliers and shops; and the anger of the Red Sky workforce who felt strongly that they were being discriminated against which had led to a number of public protests.

I attended a second meeting on 27 June 2011 at Parliament Buildings between Social Development Minister Nelson McCausland MLA and representatives of Red Sky following a request from my colleague Robin Newton MLA. At this stage, Red Sky had appointed an Administrator and senior management were anxious about the threat to the very existence of the company as a result of the decision by the Board of the Northern Ireland Housing Executive to terminate the company's five contracts. It was evident that the senior management team were determined to inform the Minister of the precarious situation facing the company and the potential loss of hundreds of local jobs. Red Sky senior management presented a very strong case that their company's operating standards were as good if not better than other contractors operating NIHE contracts.

As a newly elected representative for East Belfast, I was and still remain convinced that it was my role and duty to help and support the hundreds of workers, many of whom were my constituents.

I trust this explains my position in attending the above two meetings and if you require any further information please do not hesitate to contact me.

Yours sincerely,

  
Sammy Douglas MLA

# Mr Peter Cooke – Red Sky – Former Managing Director

## **Written statement by Peter Cooke in respect of the Committee of Social Development Enquiry:**

**Enquiry into allegations arising from a BBC Spotlight Programme aired on 3<sup>rd</sup>  
July 2013 of impropriety or irregularity relating to NIHE managed contracts  
and consideration of any resulting actions. Reference CSD/022/2013/2/SK  
Strand (i)**

### **BACKGROUND:**

I am a Northern Ireland born businessman with wide experience in managing companies large and small across Europe. I have particular expertise in growth, reconstruction, rightsizing, planning for survival, acquisition and disposal.

After an early career with ICI as a graduate trainee (Business degree from TCD) I joined Springvale EPS, my family business, in 1979, ultimately serving as Managing Director from the early 90's. I successfully sold Springvale EPS to CRH PLC in 2000, and for the next 5 years ran CRH's EPS insulation businesses across Europe, with overall responsibility for a business with €150m turnover and 17 manufacturing locations.

Since 2005, in addition to my own ventures, I have acted as a consultant or Director for a number of local companies. I have now been Chairman of Mash Direct Ltd for some 9 years, and recently took on the Chairmanship of Ampair Turbines Ltd.

In October 2010 I was invited by the Northern Bank to do some consultancy to see if there was a sustainable way forward for Red Sky Group. Prior to this I had no working knowledge of or direct acquaintance with the Red Sky Group, any of its owners or employees, or indeed the various politicians who later became involved. I was appointed as acting Managing Director in December 2010.

As acting Managing Director my clear brief was to do what I could to save the company and its ~500 jobs. I recruited a new independent Finance Director, John Rooney, at the end of March 2011 to assist me. I maintain that all the actions we took together were considered, independent, apolitical and entirely appropriate to attempt to safeguard a vital employment resource in East Belfast.

The scale of the contracts with NIHE were such that Red Sky Group could not have survived the loss of these contracts and the resulting loss of confidence across its other commercial client base, despite the fact that we had already turned the group around in those few months. Sadly we had no option but to put Red Sky Group into Administration as soon as we were informed that the NIHE contracts were to be terminated. We worked closely with BDO, the chosen Administrators, during the Administration period to continue to try and save what we could, and I remain fiercely proud of our achievement in safeguarding the vast bulk of non NIHE related jobs in extraordinarily difficult circumstances.

Much has been said and written in the media about Red Sky. In the light of what I learned, I believe much of the reporting was biased, ill-informed or incorrect, at times a witch hunt. I believe that Red Sky was treated inequitably compared with other response maintenance contractors, seemingly borne out by Minister McCausland's subsequent enquiry.

I am not and never was an apologist for Red Sky Group. In the short time that I worked there (less than 6 months before the Administrators were appointed) I found no evidence of deliberate attempts to defraud the Housing Executive. There were many examples of excellent work. The attached letter from the Lower Ormeau Residents Group is an example. There were, however, significant shortfalls in quality on some tasks for the Housing Executive, mainly as a consequence of inadequate management and supervision. I commented on this in the media at the time. Many of the tasks were very small in value, thus much of the work was dependent on operatives self policing. As a result all the work carried out was not always to the necessary quality standard, even though it was all signed off as such by NIHE maintenance staff. I found this unacceptable. Having said this, much of the work was to the required standard, and Red Sky benchmarked satisfactorily or better against NIHE's other response maintenance contractors. I can confirm that we were making good progress in improving this vital aspect when the termination notices were received.

In respect of the wide spread allegations of overcharging, the investigations during my time show these to be reckless and unsustainable, and the practices used were similar across all contractors and were in accordance with the Housing Executive's written instructions. It appeared to me that NIHE had a track record of erroneously alleging enormous sums had been over-charged by Red Sky. When subjected to independent scrutiny the amounts of the over-charge claims were generally reduced to relatively minor amounts.

The Northern Ireland Audit Office issued a report dated September 4<sup>th</sup> 2012 on "NIHE Management of Response Maintenance Contracts" and this report highlights some of these unrealistic allegations. In September 2006 (long before my time there) the Repairs Inspection Unit alleged Red Sky had been overpaid by £264,000. On foot of legal advice this overpayment became £20,000 [see pages 17 and 18 of the NIAO Report]. NIHE then engaged ASM Howarth to review work undertaken by Red Sky in the period May 2008 to October 2009. It was alleged that Red Sky had been overpaid by £924,000. Once again, on foot of independent scrutiny arising from the legal advice that was sought, the alleged overpayment dropped to £35,000 [see pages 20 and 21 of the NIAO Report]. These revised amounts are very small when bench-marked against a contract which was worth £35 million over 5 years.

In relation to alleged overpayments for the period January 2009 to July 2011, NIHE claimed to have recovered £650,000 from Red Sky [see page 21 of the NIAO Report]. It is misleading to say £650,000 had been recovered from Red Sky – the monies had in fact been forcibly withheld from payments due to Red Sky by NIHE, and this claim was never agreed.

The NIAO had issued another Report some weeks earlier on NIHE's 2011-12 Accounts. It was noted on page 10 of that Report that the Administrators of Red Sky had challenged the lawfulness of the deductions totalling £650,000 made by NIHE after the date of the Administration, and that legal advice was being sought on the matter by NIHE.

In my response I will deal in some detail with the first ASM Howarth overpayment claim which the Company rebutted on a line-by-line basis early in 2011. Shortly thereafter Red Sky was forced into Administration and thus did not have the capability to respond to further over-payment claims issued by NIHE, which then became the business of the Administrator.

Specific answers to questions set out in the letter from the Committee for Social Development

**1. Investigations into the Red Sky Group by the NIHE Repairs Investigation Unit. NIHE Internal Audit and ASM Howarth/VB Evans.**

NIHE apparently commissioned the ASM Howarth Report to examine a range of issues concerning how NIHE manages its maintenance contracts. Howarth (through QS VB Evans) investigated a sample of works carried out by Red Sky between 2009 and 2011 as part of their review and suggested that there could potentially be 'overcharging' to the value of up to £45,000 across the Red Sky contracts, later unilaterally reduced to £29,000 by NIHE.

Red Sky employed a professional Quantity Surveyor from GB to examine the detail of these suggested allegations on a line by line basis and he found that it owed nothing to NIHE- but that Red Sky Group had actually undercharged to the tune of £700. Undercharging was not taken into account by Howarth in their calculations.

A formal, detailed and carefully considered response to this effect was submitted as required. This was a very substantial piece of work carried out under extreme and unreasonable time pressure. NIHE was apparently incensed at this response and, although under the Egan Principles enshrined in the contract, Red Sky were entitled to further discussion, and if necessary arbitration, NIHE was neither prepared to discuss these counter claims nor to consider arbitration, instead moving to give immediate notice to terminate all contracts with Red Sky. Despite a number of requests NIHE had already refused to allow Red Sky sight of the context in which the allegations about the Company were being made.

Concurrent with the Howarth investigation, NIHE's RIU also carried its own investigations into work carried out by Red Sky on a district by district basis. This led to a rash of further claims in relation to overpayment on a similar basis. Adequate time was not given for these claims to be analysed before the termination notices were issued, and the Housing Executive subsequently unilaterally withheld some £650,000 of payments due to Red Sky from the Group's Administrators, treating the unsubstantiated claims as if they were valid. I am not aware if any or all of this was subsequently recovered for Red Sky's creditors.

It would be wrong to conclude that Red Sky was not responsible for a number of the issues highlighted in the Howarth Report, mainly matters of carelessness, poor supervision and poor quality, for which there should be no defence, but these were a minor part of the sums identified as 'overcharges'. Key elements making up the allegations of substantial overcharge are summarised below

The vast proportion of overcharge claims were either NIHE signed off 'pro-rata charges' (duplicated codes) or 'day works', which were part and parcel of the NIHE response maintenance system, as recorded under the instruction from Director McCaughley (attached). This requires some explanation.

The response maintenance contracts were created under the Egan Principles, giving both NIHE and its contractor mutual respect and a variety of means of constructive dispute resolution. In essence a contractor tendered for a schedule of rates (SOR) - with the intent that every conceivable job is quantified and given a fixed price. The tendering companies then would bid a 'plus' or 'minus' premium/discount on the book of rates, and the lowest approved tender won the contract. It might be at 105% of SOR, or 80% for example.

This system worked acceptably well, but with 2 areas of difficulty, codes not available and works more onerous than assumed, which were subsequently resolved as follows

- i. If a task had not been included in the book then **day rates** were to be used (labour and materials) as instructed in writing by Director McCaughley (attached), subject initially to a £150 limit and from 2007 a £500 limit per task. Effectively this gave the maintenance officer at NIHE discretion to spend up to £500 without referral in these circumstances. Many of the elements identified in the Howarth and RUI claims of overcharging were of this character, and were approved and signed off as correct by local NIHE maintenance staff. Red Sky were clearly following designated procedure along with all other response maintenance contractors and to the best of my knowledge there was no deliberate attempt to overcharge ever demonstrated in this regard. It is therefore unclear why Red Sky was singled out for attention in this respect.
- ii. If the scale of the identified task (which was in the SOR) was out of all proportion to what was normally to be expected, the contractor could ask the Maintenance Officer to agree **pro-rata rates** (ie to be paid a double rate for example). An example might be removing a scrap car or tree stump when cleaning a front garden, a considerable increase in the work and costs normally to be expected compared to just cutting the grass. This would mean that a certain job would show 2 front gardens cleaned to provide a fair rate to the contractor, one being effectively a duplicate with no address to attach it to. Again this process was carried out under the instruction of Director McCaughley (in the first paragraph of the attachment a clear reference is made to pro-rata pricing, and the rest of the Memo deals with the day works issue) and was operated for all maintenance areas and all response maintenance contractors. It was normal accepted and approved business practice to deal with an unduly onerous task in this way and was in no way fraudulent. Again Red Sky appears to have been singled out for being involved in this official and approved practice

For whatever reason, the Chairman and CEO of NIHE and the head of RIU consistently denied any knowledge of these practices, even though they were issued as instructions by a senior member of their team with the clear authority to issue such an instruction, and had been adopted as required for all contractors for quite a number of years already at the time of termination.

Another key area identified in the quantum of overcharges was to take the value of the entire job, rather than the value of the error to be fixed. For example, where a front door was replaced and a screw had been omitted from a hinge (an inexcusable quality error) the overcharge was taken by Howarth/VB Evans as the entire door (say £200) instead of the value of the screw (say 5p). This was not a fair reflection of the facts, but was the principle on which the overcharge was initially calculated, and explains why the quantum often dropped so radically under discussion between the parties. When this was raised, Red Sky simply visited the site and fitted the missing screw (or similar), so the overcharge disappeared.

There was one particular error made by Red Sky Group found by Howarth which was indeed embarrassing. The sums involved at c. £7/week were relatively small and whilst unacceptable I do not consider that this could be construed as deliberately fraudulent. Red Sky had been regularly paid for inspecting external light bulbs on 2 blocks of flats in a group

of several blocks and it appears that these 2 blocks no longer existed (demolished?). This demonstrated again the shortcomings in supervision.

I attach below what I previously wrote about this.

*"The irregularities were poor workmanship and supervision in general but in particular the discovery that Red Sky were being paid by NIHE for inspecting outdoor light bulbs on a small number of properties that no longer existed. This was a clear example of a lack of supervision. The value of the work was very small and the required inspections infrequent, so no supervisor had actually checked on the signing off by the operative, who had clearly never found the properties, and merely ticked them off rather than report back that he could not find them. Without doubt this was entirely wrong, and Red Sky was correctly required to refund these specific payments, but I do not think that a deliberate attempt to defraud was being made. Just as interesting is that NIHE had listed these properties in the contract (as we now know they had for the previous contractor), so as property landlords even they did not actually know which properties they owned! There is absolutely no excuse for either party in this instance."*

**2. Meetings with Red Sky Group to discuss the issue of overpayments. In particular, the meetings held on 4 & 16<sup>th</sup> February 2011 with representatives of Red Sky Group**

I attended both meetings. The owner of Red Sky Group, Mr Hayes, had requested the first meeting by telephoning the Housing Executive Chairman Mr Rowntree and the second meeting was a follow up of the first. Mr Rowntree opened the first meeting and instructed us that we were not permitted to take notes as his secretary would produce formal minutes for us. Despite this we never received a written record of either meeting which was evidence of the very bad faith between the parties.

I had not met any of the Housing Executive staff prior to that meeting and I led our position in the meetings. I was astounded at the extremely discourteous and bullying manner in which both meetings were conducted by the Housing Executive. They had clearly already decided that Red Sky Group was guilty of a number of serious transgressions, despite us demonstrating that we had evidence to the contrary. When we provided evidence that the way Red Sky were conducting their contracts was under a direct written instruction from Mr McCaughley, then Director of Housing & Regeneration, they said they had no knowledge of this and it was therefore untrue. I provide a copy of a later restatement of that instruction with this submission.

At one stage I instructed my team to leave the room, and pointed out that I had never been treated so offensively or unprofessionally in all my long years in business. What we experienced was a witch hunt, and we were the victims. What the motivation was behind this behaviour remains a mystery to me. The Housing Executive staff did not want to hear anything we had to say, just to threaten us of the dire consequences if we did not meet their very short and completely impracticable deadlines for full response to a variety of reports they had commissioned (with thousands of items requiring a line by line response, each of which required a site visit), of which the Howarth Report was but one.

**3. Decision by the NIHE Board on 13 April 2011 to terminate the Response maintenance Contract with Red Sky Group**

The notice of termination was delivered to Red Sky and came as a complete and total shock. We were already in a formal response process under the terms of our contract with respect to the Howarth findings, which we disputed at almost every level as explained above as being both inaccurate and misleading. Our surprise at the termination notices was extreme as only a week earlier we had received written notice extending all our contracts for a further period to September 2011 while NIHE arranged for new contracts and a tender

process. It was extraordinary that NIHE senior staff would make such a radical change in just one week.

NIHE were contractually bound to respond to our reply to the Howarth report. If we then still disagreed, we had contractual recourse to arbitration and were preparing for this with a consultant surveyor from Scotland. Contractually NIHE had no right to terminate the contracts in the manner they did, and Red Sky Group was denied its contractual rights under the Egan principles enshrined in the contracts to reply, discuss and if necessary seek arbitration. In my opinion the NIHE action was a gross breach of contract. It was also disturbing that our workers were hearing of the terminations in the media even before we had time to inform them.

**4. Meeting on 30<sup>th</sup> June 2011 between the Minister and Chairman and Chief Executive of the Housing Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract.**

I was not there, nor to my knowledge did I receive any information at the time on such a meeting. Through the local MLA for Red Sky I had been given the opportunity to brief both the First Minister and the Minister about the terminations and the potential impact on jobs. I imagine they arranged this meeting in response to my briefing. The briefing from me was essentially what I have stated here.

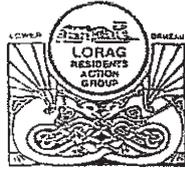
**5. Contact with the Red Sky Administrators, BDO, following their appointment on 20<sup>th</sup> April 2011.**

I was primarily responsible for appointing BDO as Administrators as we, the management team, were immediately aware of the potential impact of the termination of the NIHE maintenance contracts. Already in a very tight financial position, we realised that there would be demands by all our creditors for rapid repayment which we felt would lead to a less benign process where potentially all jobs might be lost. We cleared this with Northern Bank before acting.

Post the appointment of BDO John Rooney and I continued to carry on our previous roles under the overall direction of the Administrator. They did not take a large interest in the daily running of the business, but were more interested in the sale of the business at the highest price and the value they could find in the assets. They had a number of private meetings with the Chairman of NIHE to see if the termination notice could be lifted or extended if there were a purchaser of the NIHE maintenance part of Red Sky Group. We were not permitted to be present at these meetings, and thus cannot comment further. Our employment with Red Sky Group in Administration was terminated in the summer when they had made arrangements to sell the remaining parts of the business.

This completes my written statement

Peter Cooke  
2<sup>nd</sup> August 2014



Lower Ormeau Residents Action Group  
 Shaftesbury Community Centre  
 97 Barbour Avenue  
 Belfast BT7 2ED

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Spectrum  
 Robert McClintock,  
 The Grove Mill,  
 Grove Street East,  
 Belfast BT5 5GH

Thursday, 15 December 2005

Dear Robert

I am writing on behalf residents of the Lower Ormeau who had their homes destroyed in the out-of-sewers flooding that took place on Thursday 1<sup>st</sup> December. I would like to convey sincere and heartfelt thanks to you and your staff for the professional and caring way in which the cleanup and repairs were carried out following the flood.

It did not go unnoticed that many of your workers carried out duties over and above what was asked of them particularly in the immediate aftermath of the flood and that they did so in the knowledge they had your complete support. The sensitivity, understanding and supportive approach adopted by both yourself and your workers brought much comfort to those residents who found themselves virtually homeless in the run up to Christmas.

Much of the work has already been completed. Many families that believed little more than a week ago that they would be homeless for Christmas have already had their homes transformed by you and your staff. Kitchens, bathrooms, heating systems, doors and skirting have already been replaced at record pace and to the highest standard.

I would like to extend to all at Spectrum best wishes for the future and a wish that you all enjoy a Happy Christmas and prosperous New Year.

Yours Sincerely,

Gerard Rice,  
 Community Development Worker.

HRAN/RM/04/07

To Area Managers  
District Managers  
Grants Managers  
Area Programme Managers  
Land & Property Managers  
Area Management Accountants

Plus Normal Distribution

**DAYWORKS IN ACHIEVING EXCELLENCE IN CONSTRUCTION  
RESPONSE MAINTENANCE ALL TRADES CONTRACT**

**1.0 Background**

- 1.1 Dayworks are used where there is not a specific item in the Schedule of Rates (SOR), there are no pending requests for a new SOR rate or the works cannot be calculated using pro-rata rates.
- 1.2 Under current policy, the District Maintenance Manager (DMM) must ensure the attached Dayworks sheet is completed and the labour, plant and materials are agreed with the contractor.
- 1.3 Where the works exceed £150, the DMM forwards the completed Dayworks sheet to the nominated Quantity Surveyor to check that the costs are fair and reasonable. When agreed by the QS, the Dayworks sheet is returned by email to the DMM for signature/approval. Where materials exceed £40, an invoice is provided.

**2.0 Amendment to Policy**

- 2.1 The Dayworks policy remains as above, but the limit of £150 is now raised to £500. The limit of requirement for an invoice is also raised from £40 to £100. This policy is effective from 1<sup>st</sup> March 2007.

**PLEASE BRING THE CONTENTS OF THIS CIRCULAR TO  
THE ATTENTION OF ALL CONCERNED AFTER WHICH  
IT SHOULD BE PROPERLY INDEXED AND FILED**



**C. McCaughley**  
**Director of Housing & Regeneration**      Date: 17.04.07

# Mr Stewart Cuddy – Former Acting Chief Executive, NIHE

## Briefing by Stewart Cuddy (Former Acting Chief Executive, NIHE)

To: DSD Committee

Inquiry, Strand 1.

Strand 1

Decision making relating to the award, notification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and in particular whether the actions of Ministers were appropriate.

1. I was Acting Chief Executive of the NIHE from January 2011 to September 2011. It is mainly in this capacity and during this period that this briefing relates.

2. This briefing follows the order of the 11 bullet points contained in Dr.Pelan's letter to me dated 7th July 2014.

(i) Decision in December 2007 to terminate the Red Sky Contract which was later Rescinded in September 2008.

I had no involvement in nor knowledge at that time of the decision to terminate/rescind the Red Sky contract. I understand this matter was dealt with by the then Chief Executive Paddy McIntyre and the Director of Housing Colm McCaughley.

(ii) Investigations into the Red Sky Group by the NIHE Repairs Inspection Unit, NIHE Internal Audit and ASM Horwath/VB Evans.

The investigations into Red Sky Group by these parties all found serious issues around overcharging and poor workmanship leading eventually to the decision by NIHE Board to terminate the contract.

(iii) Investigations into Other Contractors as Requested by the Minister.

By the time these got underway i.e. Response Maintenance investigations, I was no longer Acting CX and the draft reports were only becoming available around the time I retired in march 2013.

(iv) Investigations into other NIHE Contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit.

At any point in time there are as part of the normal routine business audits, reviews etc. into contracts and contractor performance. However, the other significant investigation which was not part of this ongoing routine work was the investigation into a number of Planned Maintenance Contractors where there appeared to be overpayments/overcharging. This investigation had only got under way when I stepped down as Acting CX in September 2011 and was still ongoing when I retired in March 2013. The then CX and Director of Design and Consultancy Services are probably best placed to report on this.

(v) Meeting with Red Sky Group to discuss the issue of overpayments; in particular the meetings of 4th and 6th Feb. 2011 with the representatives of Red Sky Group.

The meeting on 4th February was to deal with the lack of response from RSG to the Repairs Inspection Unit report into overpayments in Newtonabbey District which had been due by the of Jan 2011 (The "minutes" in the papers are not official minutes of

the meeting but a note prepared by RSG). During the meeting I was repeatedly at pains to emphasize how the failure by RSG, one of our main contractors, to respond to such a serious and damning report was totally unacceptable and a response was required as soon as possible. I also explained that partnership under Egan did not mean that the Client i.e. NIHE had to seek the agreement of the contractor to every decision / conclusion relating to their performance.

It was clear that RSG did not get the message or more likely were not prepared to accept it and terminated the meeting. Even though it does not appear from the tone of the RSG notes of the meeting an extension to the deadline for a response was granted from the end of Jan.2011 to end of Feb.2011 (see para.81 of the RSG note and my letter dated 11th Feb.2011). Additionally Clarke Baillie, NIHE Director of Corporate Services also wrote to RSG extending the date for a response to the ASM Horwath report from the end of Jan. to the end of Feb.2011.

Meeting of 16 February 2011. The meeting was requested by RSG who clearly were unhappy with the message they received from me at the previous meeting. It was clear at the meeting, which I also attended, that the NIHE Chairman delivered the same message. The subsequent memo to me on the afternoon after the meeting indicated that RSG finally got the message.

- (vi) Decision by NIHE Board on 13th April 2011 to terminate the response maintenance contract with RSG.

The NIHE Board approved the termination of the contract as a result of the findings of the independent forensic investigation carried out by ASM Horwath/VB Evans, namely that there was significant overcharging and poor performance by RSG. These findings were further supported by a number of reviews/inspections carried out by NIHE Repairs Inspection Unit. This had led to an irrevocable breakdown and loss of confidence in the contractor.

- (vii) Meeting of 28th April 2011 between NIHE Chairman, Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA.

A detailed minute of the meeting was prepared and subsequently circulated to those attending the meeting. At the meeting NIHE explained the background to and the reasons for the contract termination. NIHE assured the Representatives that the decision was in no way influenced by sectarianism /bias and had been supported unanimously by the Board; and that the timing of the decision had been a wholly operational one not in any way related to 'purdah' in the run up to elections. NIHE also provided assurance that local jobs would have protection under TUPE provisions.

- (viii) Meeting of 30th June 2011 between the Minister, Chairman and CX, NIHE, and senior DSD Officials to discuss the Termination of the contract.

The draft minute of the meeting was to the best of my knowledge not circulated to NIHE for comment or accuracy.

At this meeting or previous meeting on Tuesday 28th June 2011(is there a minute of this meeting?) I asked why the Minister seemed to be so interested in the Red Sky contract. I was immediately accused several times by the Minister's Special Adviser and the Minister of making an allegation. I answered repeatedly that I was simply asking an obvious question.

I was extremely concerned that the Minister was getting involved not only in a NIHE operational matter but one relating to a specific contract and a particular contractor. This could readily be perceived as a Minister lobbying for that contractor and also directly influencing/compromising a public procurement process which would be a flagrant breach of public procurement rules and a serious violation of the Ministerial Code.

This intervention by the Minister was all the more surprising as the particular contractor concerned had been found to be overcharging and charging for work not carried out. I was also aware that the Minister had already met or was going to meet senior management from the Red Sky Group.

For these reasons as the draft minute of the meeting show I asked for the Permanent Secretary to attend this meeting(which he later joined as indicated by the draft minute) and for the Minister's request regarding the continuation of the contract to be put in writing to the NIHE Board.

As the Accounting Officer for NIHE I was acutely aware that the Permanent Secretary is the Senior Accounting Officer for DSD and those Bodies for which it has responsibility including the NIHE. As the Senior Accounting Officer he has a duty to ensure, inter alia, that matters involving public monies/expenditure including contracts and procurement are conducted in a proper, open transparent manner in compliance with best practice including the Nolan Principles relating to conduct in Public Life. He also has a duty to advise his Minister on such matters where appropriate.

- (ix) Letter of 1 July from the Minister to Chairman, NIHE, requesting the extension of the Red Sky Contract.

As stated in the NIHE Chairman's letter dated 1st July to the Permanent Secretary, DSD, it is incomprehensible why a Minister would intervene in a public procurement particularly when the Company concerned has been found guilty of serious overcharging and poor performance. Such intervention as I have noted earlier could be readily perceived as the Minister lobbying for a contractor and influencing a public procurement process which is a flagrant breach of public sector conduct and ethics and also a violation of the Ministerial Code. As far as I am aware no explanation has been received as to why the Minister wanted the Red Sky contract extended bearing in mind in his letter to Naomi Long, MP, dated 25th may he is supportive of the NIHE position.

- (x) NIHE Board Meeting of 5th July 2011

As detailed in the minute of that meeting the Board confirmed their earlier decision to terminate the Red Sky contract with no extension. When one reads the NIHE Chairman's letter dated 1st July 2011 to the Permanent Secretary, DSD, and to the Minister following the 5th July Board Meeting (these letters essentially summarize the whole event) the obvious questions are how was a Minister/Department able and allowed to act in this way and what steps need to be taken to prevent such abuse happening again? Furthermore does the NI Audit Office not have a role in such matters?

- (xi) Contact with the Red Sky Administrators, BDO, following their appointment on 20 the April 2011.

There were at least 6 meetings with the Administrators mainly to do with the ongoing management of the Red Sky contract. However bearing in mind that the Administrators were charged with the overall responsibility with running the Company pending a decision on its future there were a number of issues which caused me and the NIHE Chairman concern:

- Senior Management of RSG still appeared to be in charge or at least able to exert significant influence .For example photographs of the NIHE Chairman and a the manager of its Repairs Inspection Unit were posted on the gates of Red Sky's offices in East Belfast following the decision to terminate the contract was taken .This was considered intimidating and when representations to the Administrators proved fruitless the NIHE contacted the PSNI.

- I understand that the Administrators were not present at the meeting between the Minister and Red Sky senior management around June 2011. Why not?
- The Administrators appeared not to be dealing expeditiously with the transfer of TUPE data to adjacent contractors as part of the termination process, asking us to check whether our request conflicted with the “decision by the Minister to defer terminating the contract”. We had concerns that there were discussions/negotiations ongoing that NIHE were not party to.

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5 September 2014

Dear Kevin

**SDC Inquiry – Phase 3 evidence sessions – 16 and 18 September 2014**

I refer to your letters dated 4 July 2014 requesting Will Haire, Jim Wilkinson, Michael Sands and myself to attend Phase 3 Inquiry sessions on 16 and 18 September 2014. Billy Crawford previously advised on 7 July that I was not available.

I understand that Dave Wall spoke to you on 22 August and you have now agreed that the departmental officials will appear together on 18 September 2014.

Please find in advance of departmental officials attendance, a written briefing from Will Haire at Annex A and at Annex B a written briefing from Jim Wilkinson, Michael Sands and myself.

Yours sincerely



Susan McCarty

## Responses from Will Haire to key events and decisions referred to in SDC letter dated 4 July 2014

### **1. NIHE Board's decision of 13 April 2011 to terminate the response maintenance contracts held by Red Sky Group:**

The Department had been aware for some time about the issues relating to Red Sky and the investigations being carried out by ASM Horwath and the NIHE's Repairs Inspection Unit. I had been verbally informed, prior to the NIHE special Board meeting on 13 April 2011, that the Board that day were to consider the termination of the Red Sky response maintenance contracts.

Following the Board meeting on 13 April 2011, the then Chairman wrote to me that day enclosing a copy of a restructured Board paper which had been approved by the NIHE Board at the meeting. The Board paper sought the Board's agreement, on the basis that the NIHE considered it had lost all trust and confidence in the Red Sky Group, to issue a three month termination notice in respect of all the response contracts held by them. The Chairman in his letter advised me that the notice of termination in respect of the Red Sky contracts was effective from 12 noon on 14 April 2011 and that the contractor was being notified accordingly.

### **2. Request from the Chairman of the Oversight Group on 24 June 2011 that the NIHE should include a clause in the new response maintenance contracts regarding damages resulting from poor contractor performance:**

I chaired the Oversight Implementation Group which was set up to ensure the recommendations in the 2010 Review of Governance in the Housing Executive and the Gateway (Health Check) Review were implemented. The remit of the Oversight Implementation Group was to:

- 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 were appropriately implemented; and
- provide broad strategic advice and guidance.

At the meeting on 24 June 2011 the minutes, in relation to contract management issues note that the Group discussed in detail the issue of Key Performance Indicators (KPIs); how these work through and have a financial impact; financial penalties for breach of contract; and that I asked "for a draft letter to Stewart Cuddy to ensure the issues raised in relation to linking some elements of payment and /or abatement to service levels are taken forward urgently."

Whilst Stewart Cuddy, the then Acting Chief Executive had attended the meeting on 24 June, I subsequently wrote to him on 4 July 2011 to formalise this request and advised that "the Oversight Group believe that the Housing Executive must urgently explore whether it may be possible and more appropriate to link some elements of payment and/or abatement to service levels" I suggested that DFP may have similar scenarios as they had contracts which contained KPIs tied into a contract pain/gain and that it would be useful if he contacted DFP to discuss this further.

I received a reply from the Acting Chief Executive on 6 July 2011 in relation to the suggestion that where the contractor had delivered poor customer service NIHE should consider retaining a percentage of monies due to the contractors as damages and advised that this suggestion had been put to the Procurement and Contract Management Project Board and the NIHE Board and both parties felt that there was merit in the Project Team considering the proposal, though careful consideration had to be given as to how the contractors' poor performance could be interpreted as a loss to NIHE and that it would also be necessary to seek legal advice. He also advised that this could cause delay to the delivery of the project and that response maintenance contracts should not therefore commence on 1 December 2011 but be deferred until 1 February 2012.

Jim Wilkinson, Director of Housing, replied to this letter and advised that at the meeting on 24 June NIHE had not advised that this aspect would significantly delay the project and asked NIHE for a full and detailed explanation in relation to the delay. This was forwarded to the Department on 1 August and indicated that if Board approval was secured in November the contracts start date could be advanced to 9 January 2012.

The NIHE's response maintenance contracts now have:

- provision for Low Performance Damages (LPD) to be applied in line with the terms of the contract; and
- in line with Procurement Guidance Note (PGN) 01/12 contractors not delivering on contract requirements may be issued with a Certificate of Unsatisfactory Performance and the contract may be terminated. The issue of a Certificate will result in their exclusion from all procurement competitions being undertaken by Centres of Procurement Expertise (CoPEs).

These two significant developments in relation to new contracts had been identified as key failings in the previous contracts.

**3. Your decision not to attend the meeting of 27 June 2011 at Parliament Buildings between representatives of Red Sky and members of the DUP including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA:**

I was aware that Minister McCausland had agreed to meet representatives of Red Sky and Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA on 27 June 2011 as I was copied into the briefing prepared by departmental officials for the Minister in advance of the meeting.

I do not necessarily attend meetings, such as this, arranged with the Minister and it is difficult to remember such details with the passage of time. However, I note that my Personal Secretary was asked to put this in my diary on 23 June and was then advised on 24 June 2011 that I was no longer attending this meeting. My diary on 27 June 2011 records that I had another meeting scheduled at 4pm in Belfast City Centre. The Minister's meeting was at 5pm in Parliament Buildings and it would therefore have been impractical for me to attend. However, I was aware of the briefing that had been provided for the Minister in advance of the meeting and that two senior departmental officials were to attend the meeting.

**4. Meeting of 30 June 2011 with the Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract:**

I was copied into a briefing prepared for the Minister in advance of the meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive. The Minister's diary records that this meeting was scheduled to be held from 16.30 – 17.30. I had another engagement in my diary that day and, as the minutes record, I joined the meeting in the latter part of discussions.

The note of the meeting records the discussion and that the Minister advised the meeting that he had asked the Department for a forensic examination to take place on the

management of contracts and it would be inappropriate therefore to change contracts until this was completed, in the region of eight weeks. The Minister asked the Housing Executive to take this proposal to the Board and recommend his proposal on the basis that the Administrator could guarantee to conduct the work.

The note of the meeting at the end also records that I “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”.

**5. Your submission of 1 July 2011 advising the Minister not to issue a direction to the Housing Executive in respect of the termination of the Red Sky contract:**

I forwarded a submission to Minister McCausland on 1 July in relation to a “Direction to the Northern Ireland Housing Executive to defer the termination of the Red Sky contract”. In the submission I set out the background to the issues in relation to the termination of the Red Sky contracts by the Housing Executive, the potential use of a Direction and the consideration of this in relation to Government Accounting and Use of Public funds; Contract, Procurement and Insolvency issues; Potential Legal Challenge; and other issues, for example, potential resignations from the NIHE Board.

As Accounting Officer I advised that the Minister’s wishes, namely a forensic investigation and continuation of services to tenants, could be achieved more appropriately through the proposed assignment of the Red Sky contract to neighbouring contractors and recommended that a Direction should not be issued to the Housing Executive in relation to this matter.

The response from the Private Office issued to me on 6 July 2011 advised that; “The Special adviser has commented as follows: ‘Minister’s letter to NIHE may change the context of this paper? Minister’s position is that due to his concerns re NIHE handling of and monitoring of maintenance contracts he wishes DSD to instigate forensic investigations of both NIHE and contractors and at the same time a procurement exercise which is open and transparent for the interim contract should be commenced”

**6. Meeting of 1 July 2011 with senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract:**

This was a follow on meeting from the meeting on 30 June 2011. There were a number of meetings during this period and it is difficult with the passage of time to recall the specific discussions. However, Minister McCausland issued the letter to the NIHE Chairman on 1 July 2011 which advised that;

“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.”

**7. Your discussions with the Chairman of the Housing Executive on 5 July 2011 regarding the extension of the Red Sky contract:**

Whilst there were a number of meetings and discussions around this time, my diary does not record a meeting with the Chairman on 5 July 2011. However, on 4 July 2011 I, along with Michael Sands, met with the Chairman at lunchtime to discuss the Minister’s letter of 1 July and to ensure that the nature of the Minister’s request, set out in his letter, was fully understood by both the NIHE and the Department.

**8. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract:**

I am aware that the NIHE Board met on 5 July 2011 to consider the Minister's request to extend the Red Sky contract and following the meeting the Chairman wrote to the Minister to advise of their deep concern at the stance he had taken and that the Board that morning has reconfirmed their view that the trust and the confidence necessary for the satisfactory operation of the contracts had been profoundly undermined. The Board had also instructed their legal representatives to take the necessary preparatory steps to present a challenge to the legality of any Article 10 direction and had directed that the adjacent contractors should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14 July 2011.

**9. Your submission to the Minister dated 6 July 2011 regarding NIHE's decision not to extend the Red Sky contract pending an open procurement competition and the possible discussion of this at the Executive Committee on 7 July 2011:**

I submitted a briefing to the Minister on 6 July 2011 on the current position following the letter from the Chairman on 5 July 2011. I advised the Minister that the Board of the Housing Executive had met and responded to his request to extend the contract. Their response had highlighted a number of issues:-

- a) The Board advised that they remained content that the action they had taken against Red Sky has been appropriate in light of the issues that investigations had revealed and that the steps taken to re-assign the contracts to adjacent contractors had been the most appropriate approach to both ensure continuation of services and offer exiting employees protection under TUPE;
- b) The Board had confirmed that adjacent contractors stood ready to take over the contracts from the termination date. These contractors had also indicated that they had already incurred significant expenditure in preparing for these contracts. The Board had suggested that they and the Department could face legal challenge as the contractors, in relation to their losses, sought redress for breach of their legitimate contractual expectations;
- c) Public confidence in the Board's ability to discharge its statutory function could be eroded in the absence of a coherent rationale for extending those contracts;
- d) Red Sky had not mounted any public or private law challenge to the Boards' decision to terminate their contract;
- e) The extension of the contract could secure a benefit for a particular contractor or purchaser; and
- f) The Board considered that this was a significant and controversial matter as defined in paragraph 2.3 of the Ministerial Code.

The Board had therefore concluded it was not in a position to take forward the Minister's request in relation to extending the termination of the Red Sky contracts to allow an open competition for the contracts to be undertaken with immediate effect.

The NIHE also advised the Department that the Administrators were only able to provide a service up to 31 July 2011 and this would not meet the NIHE's specifications or those specified by the Minister.

I therefore recommended that the Minister should advise the Housing Executive to move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants.

In the submission I also advised the Minister that this may be raised at the Executive Committee meeting on 7 July 2011.

Minister McCausland then wrote to the Chairman on 7 July 2011 confirming 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. The Minister also issued a press release on 7 July 2011 which stated that he continued to have concerns about how maintenance contracts were managed and that he raised these concerns at the Executive meeting, and they were shared by Executive colleagues. He advised that the reassignment of the contracts due to expire on 14 July was not the ideal option but the only practical approach under current circumstances and he had written in these terms to the Chairman of the Housing Executive.

**10. Your letter of 31 August 2011 in response to a letter from the Chairman of the Housing Executive dated 1 July 2011 regarding the termination of the Red Sky contract.**

The then Chairman wrote to me on 1 July 2011 in relation to the notice of termination of the Red Sky contract. In his letter he set 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 14 July and asked that I step back and withdrew the Department's involvement and that of the Minister in this matter. I therefore responded to the Chairman as I was concerned about statements in his letter, particularly in relation to my role in this matter. (The Committee have had sight of the relevant papers, in particular my submissions to the Minister on 1 and 6 July 2011, and will be aware of the advice I provided to the Minister at that time.)

In my reply, I advised the Chairman that the standards expected of me in my role as Accounting Officer was at all times to act within the authority of the Minister to whom I was responsible and to support the Minister with clear, well reasoned, timely and impartial advice. It was, however, ultimately the Minister's decision to accept or reject that advice. I stated that I believed I acted appropriately in my role as Accounting Officer in relation to this matter, but that the substance of his letter called that into question along with my integrity. I asked that he should withdraw the remarks, particularly as his final sentence advised that if I did not do as requested he would seek legal advice on the matter.

The Chairman replied to my letter on 2 September 2011 advising that he was satisfied that the tone of the letter reflected the challenging circumstances which the Department and the NIHE faced in relation to the termination of the Red Sky contract. He assured me that in no way was there any direct or implied intention to impugn the propriety of my conduct as Accounting Officer or my personal integrity

## Annex B

**Responses from Jim Wilkinson, Michael Sands and Susan McCarty to the additional key events and decisions in the SDC letter dated 4 July 2014, not included in Annex A responses.****1. Letter dated 17 May 2011 from Robin Newton MLA to the Minister requesting a meeting with Red Sky Representatives and Sammy Douglas MLA and the subsequent response dated 31 May 2011;**

Robin Newton MLA wrote to the Minister on 17 May 2011 requesting an urgent meeting, along with Sammy Douglas MLA and representatives of Red Sky, in order to make the Minister aware of their concerns in relation to the termination of the NIHE's contracts and the implications for the company and employees. In line with Private Office procedures, the letter was forwarded to departmental officials in Housing Division on 17 May to provide advice to Minister on the request and a draft reply.

Advice from officials was sent to the Minister on 27 May 2011 recommending that the Minister decline the invitation as this was an ongoing contractual matter between the NIHE and Red Sky. A draft reply to Mr Newton was attached which set out the position with Red Sky and advised that "I believe a meeting would not be beneficial at this particular time".

The Private Office advised Housing Division on 27 May that the Special Adviser had requested an amendment to the letter and that the last line should read

"If you feel a meeting would still be beneficial, please contact ...". A Housing official spoke to the Private Office and asked that the protocol on requests for amendments by the Special Adviser should be checked and that this request for an amendment should be put to the Minister. Private Office advised on 1 June 2011 that the Minister agreed with the Special Adviser and the letter had been amended and issued. The Minister's reply to Robin Newton MLA issued on 31 May 2011 advising that if he thought a meeting would still be beneficial he should contact the Minister's diary secretary to arrange a suitable date and time.

**2. Meeting of 2 June 2011 with the Minister's Special Adviser regarding the termination of the Red Sky contract;**

The Special Adviser on 2 June 2011 requested an update in relation to Red Sky. NIHE were asked to provide an update and also to confirm who he could speak to in the NIHE about this. NIHE were further advised that the Special Adviser may wish to meet with the NIHE contact on 2 June or 3 June 2011. A memo from an official was then forwarded to the Special Adviser on 2 June providing the update and advising that the then Acting Chief Executive of NIHE would be happy to meet that afternoon to discuss this. Departmental officials are not aware if this meeting took place.

**3. Meeting of 27 June 2011 at Parliament Buildings between representatives of Red Sky and members of the DUP including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA;**

Following on from Robin Newton MLA's request on 17 May 2011 for a meeting with the Minister, this was arranged to take place on 27 June 2011. In line with Private Office procedures, departmental officials were asked by the Private Office on 20 June 2011 to provide appropriate briefing and the names of any officials attending the meeting with the Minister.

The NIHE were advised of the proposed meeting on 20 June 2011 and were asked for an update on the NIHE's position in relation to their dealings with the Administrators. The Minister's Private Secretary also emailed a housing official on 21 June 2011 stating that the Special Adviser advised that a full briefing would be essential to include the current position of the Administrators. The NIHE were then advised on 23 June that the input from them would need to reflect the current position with the company and the proposed buyers.

NIHE provided input that day on the current position; meetings with the Administrators; legal proceedings; and requests to meet potential bidders for Red Sky. A housing official asked for some further information in relation to the potential bidders which the NIHE provided.

The briefing for the meeting was sent to the Minister on 24 June 2011. This also included a view from the Departmental Solicitors Office in relation to the meeting. Whilst the legal advice has not been provided to the Committee the Minister did advise the NI Assembly on 8 July 2013 of the following;

*“Before the meeting took place, legal advice was sought from the departmental solicitors. I sought that advice in the light of the fact that I was being asked to meet individuals from a company in administration, and I wanted to be assured of the probity of my actions. It advised me that Ministers may meet such persons as they choose.”*

The briefing also suggested that the Minister’s line to take should be:

*“Issues regarding the termination of the contract with Red Sky by the Northern Ireland Housing Executive are contractual matters between the two parties concerned. An Administrator has been appointed to oversee the affairs of the company and their activities and role is governed by the laws of insolvency. These matters are subject to ongoing legal processes in which the Department has no role.”*

The Committee has been provided with the note of the meeting which documents the discussions and records that the proper route for the consideration of contractual matters was between the NIHE and the administrators.

**4. Letter of 1 July 2011 to the Chairman of the NIHE requesting the extension of the Red Sky contract. In particular, clarity is welcomed on the Minister’s decision to amend the officials’ initial draft of the letter to extend the termination date from a period of 8 weeks to 6 months.**

The Minister held a meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive. The note of the meeting records the discussion and that the Minister advised the meeting that he had asked the Department for a forensic examination to take place on the management of contracts and it would be inappropriate therefore to change contracts until this was completed, in the region of eight weeks. The Minister asked the Housing Executive to take this proposal to the Board and recommend his proposal on the basis that the Administrator could guarantee to conduct the work.

Following on from the meeting, departmental officials prepared a draft letter from the Minister to the Chairman confirming that he had asked officials to carry out a forensic investigation of a sample of NIHE contracts and asking the Chairman to ask the Board to extend the termination date of the Red Sky contract for a period of eight weeks. The Private Office advised on 1 July that the Minister had amended the letter which issued on the 1 July 2011 and stated:

*“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.”*

Officials cannot recall with the passage of time why the eight week period was amended to six months, although with hindsight it might be assumed that this may have been to take account of the procurement period for new contracts.

**5. Email of 5 July 2011 from Michael Sands to the Chairman of the NIHE regarding the Special Adviser's request to amend the period of extension of the Red Sky contract from six months to four months.**

Following on from the Minister's letter to the Chairman on 1 July, the Housing Executive Board were meeting on 5 July 2011 to discuss the Minister's request. The departmental official emailed the Chairman that morning, prior to the Board meeting, stating that the Special Adviser believed that six months (as per the Minister's letter) was too long a timeframe for continuation of the contracts by the Red Sky Administrator. Advice had been sought from Central Procurement Directorate (CPD) which indicated that 91 days was required to complete a tender exercise once all the paper work had been prepared. Therefore allowing one month for the paperwork and three months for the tender exercise, four months was more appropriate. The Chairman was asked if the question could be put to the Administrator to ascertain if they would be able to continue with the response maintenance service for a minimum period of four months rather than the six months referred to in the Minister's letter.

**6. Letter of 7 July 2011 to the Chairman of the NIHE confirming that the NIHE should proceed with the termination of the Red Sky contract on 14 July and reassign the work to adjacent contractors.**

The Permanent Secretary submitted a briefing to the Minister on 6 July 2011, following the letter from the Chairman to the Minister after the Board meeting on 5 July 2011. He recommended that the Minister should advise the Housing Executive to move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants.

Following the Permanent Secretary's submission on 6 July, a further submission was prepared by officials on 7 July which recorded that the decision was the NIHE should move forward with their proposal to reassign the contracts to adjacent contractors. A draft reply was also attached for the Minister to consider to reply to the Chairman's letter on 5 July 2011. Minister McCausland then wrote to the Chairman on 7 July 2011 confirming 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.

**7. Submission dated 18 July 2011 regarding letter of response from the Permanent Secretary to a letter from the Chairman of the Housing Executive dated 1 July 2011 regarding the termination of the Red Sky contract.**

Refers to number 10 in Annex A

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11 September 2014

Dear Kevin

**SDC Inquiry – Phase 3 evidence session – 23 September 2014**

I refer to your letter dated 7 July 2014 requesting Mr Declan Allen, NIHE, to attend a Phase 3 Inquiry session which is to be held on 23 September 2014. I can confirm that Mr Allen will attend as requested.

In advance of his attendance a written briefing is attached at Annex A.

Yours sincerely



Susan McCarty

## Annex A

**Briefing for the Social Development Committee Session on the 23rd September 2014 – Declan Allen, Head of Procurement NIHE****1. Investigations into the Red Sky Group by the NIHE Repairs Investigation Unit, NIHE Internal Audit (IA) and ASM Horwath/VB Evans;**

As Head of Procurement, Declan Allen was involved in the appointment of ASM Horwath. ASM was appointed in September 2009 and their terms of reference were amended in October 2009 following various meetings between NIHE personnel including the Head of Internal Audit. The revised terms required ASM to include details of a report written by Central Procurement Directorate (CPD) on the procurement process carried out by the NIHE to let Response Maintenance Contracts. In addition they were also asked to carry out interviews with NIHE staff who had an in-depth knowledge of the workings of maintenance contracts.

In order to satisfactorily carry out the investigation ASM retained the Services of VB Evans, a quantity surveying company, to carry out reviews of all work done including re-measurement to ensure that work that was ordered was carried out and paid for.

**2. Investigations into other NIHE contractors as requested by the Minister;**

The Head of Procurement was not involved in any other investigations requested by the Minister, into our contractors.

**3. Investigations into other NIHE contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit;**

The Head of Procurement was not involved in any other investigations carried out by the RIU or IA into other contractors.

**4. NIHE Board's decision of 13 April 2011 to terminate the response maintenance contracts held by Red Sky Group;**

A paper was submitted to the Board at its meeting of the 13th April 2011 which recommended the termination of Red Sky. The Head of Procurement provided advice to the senior management team in the drafting of this Board paper relating to the operational implications if termination was to go ahead.

The Head of Procurement was not involved in the Board's discussion at this meeting.

**5. Your contact with the adjacent contractors regarding the transfer of Red Sky Maintenance work following the decision to terminate the Red Sky contract on 13 April 2011;**

Following the decision to terminate the contracts the Head of Procurement held discussions with adjacent contractors to discuss the provision of maintenance services in each of the affected districts. These discussions continued throughout the termination notice period and culminated in the issue of letters to each adjacent contractor on the 11th July 2011. These letters set out the terms of the back-up/support provision they would provide while a new procurement exercise was carried out.

**6. Your contact with the Red Sky Administrators, BDO, following their appointment on 20 April 2011;**

The Head of Procurement attended a meeting with the BDO on 5th May 2011 in a support capacity to the senior management team members present.

As Head of Procurement, Declan Allen had e-mail correspondence with the administrator relating to the supply of information on TUPE matters and the completion of outstanding response maintenance jobs.

**7. Your contact with the adjacent contractors and BDO regarding the TUPE arrangements;**

The Head of Procurement was in contact with BDO in regard to the transfer of employees from Red Sky in Administration to each of the adjacent contractors. This was to ensure that the TUPE liability information was passed to the contractors to enable those eligible employees in the affected districts to transfer to the adjacent contractors.

**8. Confirmation of the number of Red Sky employees who transferred to adjacent contractors under the TUPE arrangements;**

Some 133 employees transferred to the adjacent contractors. The breakdown of this figure was Carillion employed 65, H & A Mechanical, 15 and PK Murphy, 53.

**9. Request from the Chairman of the Oversight Group on 24 June 2011 that the NIHE should include a clause in the new response maintenance contracts regarding damages resulting from poor contractor performance;**

Following the DSD Health check of December 2010 the Housing Executive commenced a full review of Contract Management, including contracts, and in turn the use of KPIs. The request from the Chairman of the Oversight Group was taken into account when the new approach was being developed. The Board in July 2011 approved the procurement strategy for the new Response Contracts which included a new set of KPIs based on the Government Construction Clients Group KPIs. In addition, the provision for the application of low performance damages was added.

**10. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract;**

The Head of Procurement attended this meeting in an advisory capacity. Discussion ensued regarding e-mails between the Head of Procurement and the administrator on the potential for Red Sky in Administration continuing to provide the Response Maintenance services for a period of 6 months.

The Head of Procurement had issued a further e-mail to BDO regarding the length of time they could provide the services for. The response from BDO was received on the 4th July and outlined that they could provide a service to the 31st July 2011. They could provide a service past this date only if a new company took on Red Sky's business. The Head of Procurement then e-mailed early on the 5th July 2011 to outline that it was not clear whether the administrator could provide a service for a further period past the 31st July 2011.

A further response from the administrator was received later on the 5th July 2011 again confirming that the administrator could only provide a service to the 31st July 2011 and that post this date it would require the assistance of a new company. The Board concluded that, from the information received, they had no guarantee that a service could be provided past the 31st July by the administrator.

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11 September 2014

Dear Kevin

**SDC Inquiry – Phase 3 evidence session – 18 September 2014**

I refer to your letter dated 7 July 2014 requesting Housing Executive officials to attend a Phase 3 Inquiry session which is to be held on 18 September 2014.

Attending will be:

John McVeigh – Head of Internal Audit

Raymond Kitson – Repairs Inspection Unit

In advance of their attendance a written briefing is attached at Annex A.

Yours sincerely



Susan McCarty

## Briefing for the Social Development Committee 18 September 2014

### **John McVeigh and Raymond Kitson SDC Inquiry Phase 3**

This briefing takes into account:

- 1 Investigations into the Red Sky Group (RSG) by the NIHE Repairs Inspection Unit (RIU), NIHE Internal Audit and ASM Horwath/VB Evans;
- 2 Investigations into other NIHE contractors as requested by the Minister;
- 3 Investigations into other NIHE contractors undertaken by NIHE Internal Audit and the RIU;
- 4 Meeting with the RSG to discuss the issue of overpayments; and
- 5 Decision by the NIHE Board on 13 April 2011 to terminate the Response Maintenance Contract with RSG.

This evidence has been provided by John McVeigh and Raymond Kitson.

John McVeigh is Head of Audit and Assurance which provides the Internal Audit, Technical Inspection and Risk Management functions. Raymond Kitson is the Repairs Inspection Unit Manager with responsibility to provide an independent assurance that the Response Maintenance contracts are operating effectively and that staff and contractors are in compliance with the requirements of the contract.

#### **1. Investigations into the Red Sky Group (RSG) by the NIHE Repairs Inspection Unit (RIU), NIHE Internal Audit and ASM Horwath/VB Evans**

##### **RIU Investigations into Red Sky Group (South Belfast) (2005)**

In the latter part of 2005, an anonymous telephone call was received by the Housing Executive alleging that there was an inappropriate relationship between South Belfast maintenance staff and the Response Maintenance Contractor (Spectrum) including the inappropriate acceptance of hospitality.

The former Director of Housing & Regeneration (DoHR) Colm McCaughley in January 2006 instructed the Repairs Inspection Unit to undertake an investigation into these allegations.

The inspection findings indicated substantial overpayments to the sum of £209k had been claimed by RSG and paid without challenge. A substantial percentage of these overpayments was relating to kitchen units. RIU identified that the kitchen units being fitted were of a standard type. However, RSG was claiming from a schedule of rates code which was substantially more expensive.

This practice was also identified in North Belfast, East Belfast and Newtownabbey 1 and 2 which generated an estimated overpayment sum of £54,500. This brought the revised overall estimated overpayment to £263,500.

In September 2006, RIU met with RSG in their offices to ascertain why these alleged overpayments occurred.

**Meeting with RSG to Negotiate A Settlement Figure (March 2007)**

The former Director of Housing and Regeneration (DoHR), Colm McCaughley, in March 2007, called a meeting between RSG management and NIHE in an attempt to bring closure to the investigation. Persons present during the meeting being:

- a. Former NIHE (DoHR);
- b. NIHE RIU Manager – Raymond Kitson;
- c. Red Sky Group, 2 Senior Managers; and
- d. Red Sky Group (Chairman).

**RIU Investigation into RSG (2009)**

In November 2008, the Northern Ireland Audit Office (NIAO) received a whistle-blowing letter, voicing concerns regarding RSG performance in the West Belfast Area.

The former DoHR (Colm McCaughley) during April 2009, requested that RIU conduct a preliminary investigation into these complaints.

The outcome of the small sample indicated that there had been inappropriate payments estimated at £10.2k.

These findings were initially documented in a draft report and presented to the former DoHR, (Colm McCaughley) and former Chief Executive (Paddy McIntyre) for consideration.

RIU included in the draft report the percentage errors identified, this was calculated using the failed jobs only. RIU was asked by the former Chief Executive (Paddy McIntyre) to recalculate this figure using the entire inspected sample.

**Internal Audit Involvement with Red Sky Group Issues**

Following the completion of the draft RIU report, NIHE Internal Audit was asked to review the inspection findings and provide their professional opinion on the accuracy. This followed a request for independent review of the RIU report by the NI Audit Office (NIAO).

In general, Internal Audit was content that the methodology applied by RIU appeared to be sound.

**ASM Horwath/VB Evans Investigations into Red Sky Group (2009)**

Following consideration of the RIU report (2009), the NIHE Audit Committee recommended that ASM Horwath should conduct an independent forensic review of RSG contracts.

Objectives were to review:

- a. Quality of workmanship;
- b. Ensure the invoices submitted by the contractor were appropriate;
- c. The inspection regime was fit for purpose;
- d. Whether the contracts were properly awarded; and
- e. Review personnel and the processes.

VB Evans identified a potential £45,000 as being overpaid. These findings were issued to RSG for a response.

On receipt of a response, RIU was asked to quality assure the RSG response. On completion of this exercise, the overpayment figure was reduced to £29,085.

### **RIU Investigation into Red Sky Group (Newtownabbey 1) (2010)**

The Director of Finance (DoF) (Clark Bailie) requested RIU to review the RSG contract in Newtownabbey 1 in June 2010, as there was concern that RSG had been incorrectly coding work.

### **RIU Identified Potential Overpayments**

On conclusion of the review RIU findings found that £71k was overpaid, 22.5% of the value of jobs contained in the sample. These issues were referred to RSG for comment.

### **RIU Investigation into Other Red Sky Group Contracts (2010)**

The DoF (Clark Bailie) requested in September 2010 that RIU should widen the scope of the investigation to include all of RSG contracts.

In general the investigation into the RSG's other contracts proved similar substantial overpayments.

Based on the individual District investigation reports, RIU estimated an overpayment value of £477k across all five Districts.

## **2. Investigations into Other NIHE Contractors as Requested by the DSD Minister (October 2011)**

In October 2011, ASM Chartered Accountants were appointed by the DSD to undertake a forensic accounting review into the works carried out by 6 NIHE response maintenance contractors.

At the request of the DoHR (Gerry Flynn), RIU was asked to undertake quality assurance work on the inspection and document our findings in a 'Scott schedule' detailing VB Evans issues, the Districts comments and the contractors' comments.

RIU's observations agreed in general with the District office comments. In conclusion after reviewing 20% of the ASM inspections that almost £3.5k has been overpaid to the contractors. This is significantly less (38%) than ASM figure of £9k from the same sample.

## **3. Investigations into Other NIHE Contractors Undertaken by NIHE Internal Audit and the Repairs Inspection Unit**

The DoHR (Gerry Flynn) instructed RIU (December 2012) to conduct further inspections following the ASM report.

RIU's conclusions to these investigation proved that the contractors' quality of work and overpayments was in general of reasonable standard taking account of the RIU benchmarks.

As a result of concerns from Central Maintenance Unit, RIU conducted a preliminary investigation which identified potential overpayments to the Shankill District contract, Leeway Maintain Ltd. While the investigation was progressing a whistle-blower made a number of allegations relating to Leeway Maintain Ltd and the District Management.

On completion of the investigation into these allegations, RIU reported that a potential £243k may have been overpaid.

A number of other investigations are ongoing, so NIHE is unable to comment on the detail at this time.

During the period, 2011-2012 Internal Audit carried out a number of investigations linked to issues relating to Planned Maintenance contracts. This was covered within strand two of the SDC inquiry.

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**4. Meetings with Red Sky Group to Discuss the Issues of Overpayments**

The commentary throughout the enclosed report has already made various references to meetings with RSG.

In September 2006 RIU met with RSG in their offices to ascertain why these overpayments occurred.

In March 2007 the former DoHR (Colm McCaughley) called a meeting between RSG's management and NIHE in an attempt to bring closure to the investigation.

On 4 February 2011 the former Acting Chief Executive (Stewart Cuddy) invited RSG to the Housing Executive to discuss RSG's position in regard to responding to the Newtownabbey 1 report and the ASM report. Persons present were:

- a. Former Acting Chief Executive (Stewart Cuddy);
- b. Finance Director, Clark Bailie;
- c. RIU Manager; and
- d. 3 RSG Senior Managers.

The former Acting Chief Executive, Stewart Cuddy, had expressed concern that RSG has failed to respond to either of the reports in a timely manner.

The NIHE eventually received a response from the RSG to the Newtownabbey 1 investigation in March 2010 and the ASM report in April 2010.

**5. Decision by the NIHE Board on 13 April 2011 to Terminate the Response Maintenance Contract with RSG**

Neither RIU nor Internal Audit had any involvement in the eventual termination decision other than briefing the Chief Executive Business Committee on relevant RIU/Internal Audit investigation findings.

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11 September 2014

Dear Kevin

### **SDC Inquiry – Phase 3 evidence session – 23 September 2014**

I refer to your letter dated 7 July 2014 requesting Clark Bailie, NIHE to attend a Phase 3 Inquiry session which is to be held on 23 September 2014. Mr Bailie will attend as requested.

In advance of his attendance a written briefing is attached at Annex A.

Yours sincerely



Susan McCarty

## Briefing for Social Development Committee – 18th September 2014 Clark Bailie – Director of Finance (NIHE)

### **1. Director of Corporate Services (Acting)**

- 1.1 Clark Bailie took up post as Director of Finance in the Housing Executive on 1st December 2007, a post which he has held continuously except for the period 1st February – 23rd September, 2011, during which time he served as Acting Director of Corporate Services. This temporary re-assignment came about as a result of the substantive post holder, Mr Stewart Cuddy, being asked to serve as the Acting Chief Executive.
- 1.2 The Director of Corporate Services post had responsibility for Secretariat and Information, Strategic Partnerships, Internal Audit, Corporate Planning and Performance and the then newly established Corporate Assurance Unit.

### **2. Investigations into the Red Sky Group by the NIHE Repairs Investigation Unit, NIHE Internal Audit and ASM Horwath / VB Evans.**

- 2.1 Following an Audit Committee meeting on 3rd March 2010, Clark Bailie was asked by the then Chief Executive (Paddy McIntyre) to lead a small team to consider and implement the recommendations made in the ASM Horwath draft report on allegations about the management and delivery of the Red Sky Maintenance Contracts. ASM Horwath had been appointed by the Housing Executive in August 2009 and had submitted its initial draft report on 1st March 2010. The first meeting of the team took place on 12th March 2010.
- 2.2 The team comprised of Senior Housing Executive officers covering Personnel, Maintenance, Legal and Procurement.
- 2.3 The main responsibility of the team was to review the draft report and advise ASM Horwath of any factual inaccuracies, omissions and any other significant points. These comments/ suggestions were shared with ASM Horwath to confirm the accuracy and completeness of the report. It was intended that the report's findings would be used to support a recovery process for any agreed overpayments.
- 2.4 The team met on a regular basis, including several contacts with ASM Horwath and VB Evans. Part of this work was also focused on identifying why the suspected overpayments had occurred and what should be done to prevent reoccurrence. Consideration was also given to the possibility of fraudulent activity. The ongoing and previous work on Red Sky contracts carried out by the Housing Executive's Repairs Inspection Unit was also reviewed. In addition, previous work undertaken by the Housing Executive's Counter Fraud Unit was also revisited. The latter largely related to events before Clark Bailie's appointment to the Housing Executive in 2007.
- 2.5 During the review of the draft report, management responses to recommendations made by ASM Horwath were prepared and incorporated into an action plan. This was later considered by the Board at its Special Meeting on 27th October 2010, using a paper submitted by the then Acting Director of Housing and Regeneration (Stephen Graham).
- 2.6 ASM Horwath submitted its Final Report on 21st October 2010. This was also considered at the Special Board Meeting.
- 2.7 As part of the project governance arrangements set up by the Board and Senior Management, a 'Project Young<sup>1</sup> Steering Group' was established and met regularly from November 2010 until April 2011. Membership of the group included the Chair and Vice Chair, Chief Executive,

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1 The Red Sky investigation was initially identified as "Project Young"

Deputy Chief Executive, Director of Finance, Director of Housing and Regeneration, Director of Personnel, Chief Internal Auditor and Under Secretary (DSD). Clarke Bailie provided the group with regular updates on progress made against the work plan. The group exercised an oversight function and approved the general strategy and key decisions relating to the implementation of the ASM Horwath report and related recommendations.

- 2.8 Following receipt of the ASM Horwath final report in late October 2010, Clarke Bailie was instructed to meet with Red Sky Senior Management. This took place on 24th November. The purpose of the meeting was to advise the company of the results of the site inspections undertaken by VB Evans under ASM Horwath's direction and provide an opportunity for Red Sky to offer a response, particularly if the company wanted to provide an alternative explanation for the alleged overpayments.
- 2.9 In April 2011, Red Sky submitted a response but it was not considered to be satisfactory and was not accepted by the Housing Executive.
- 2.10 As a result of the serious concerns identified by ASM Horwath in its draft report, Clark Bailie instructed the Repairs Inspection Unit to undertake detailed investigations into each of the District Response Maintenance Contracts served by Red Sky. The investigations started in June 2010 and continued into 2011. This work identified further suspected overpayments.
- 2.11 From 1st February 2011, Clark Bailie was temporarily assigned to the post of Acting Director of Corporate Services. While the Repairs Inspection Unit had by then been relocated to Internal Audit (which fell within his responsibility as Acting Director of Corporate Services), the Repairs Inspection Unit generally reported to the then Acting Chief Executive (Stewart Cuddy) with regard to the Red Sky investigations. However, Clark Bailie was kept informed about the investigations and was aware that further suspected overpayments had been identified.
- 2.12 Upon Clark Bailie's return to his substantive post of Director of Finance in September 2011, He resumed his responsibility for the Counter Fraud Unit which had been undertaking an investigation into the Red Sky contracts. As a result of this work, a case file was submitted to PSNI which, after consideration, concluded there was insufficient evidence to support a criminal investigation.

### **3. Investigations into other NIHE Contractors as requested by the Minister**

- 3.1 Clark Bailie was aware of the nature and scope of the DSD commissioned investigation undertaken by ASM Horwath but was not directly involved in the process.

### **4. Investigations into other NIHE Contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit (RIU)**

- 4.1 Clark Bailie was aware of the following investigations, as a member of the Investigation Strategy Group (ISG) and through the work of the Counter Fraud Unit, which sits in the Finance Division,:
- A response maintenance contractor, following concerns identified by the Repairs Inspection Unit regarding the installation of showers.
  - A response maintenance contractor, following concerns identified by the Repairs Inspection Unit regarding potential overpayments and concerns identified by a Whistleblower. This case was subsequently extended to include an investigation by the Counter Fraud Unit which prepared an evidence file which identified suspected fraudulent activity. The contractor was by then in administration and, on the basis of Queen's Counsel advice, it was decided there was not sufficient evidence to support a referral to PSNI. An amount was subsequently recovered through negotiation with the administrator.

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- A planned maintenance contractor, following concerns raised by an internal inspector about suspected overcharging on a kitchen replacement scheme. This was extended to include an investigation by the Counter Fraud Unit which identified a number of issues. However, Queen's Counsel advised that there was not sufficient evidence to support a referral to PSNI.

## **5. Meetings with the Red Sky Group to discuss the issue of overpayments**

5.1 Clark Bailie attended two meetings with Red Sky Group officials.

- 24th November 2010: meeting to advise Red Sky of the ASM Horwath Report. Clark Bailie was accompanied by the Housing Executive's Contract Claims Manager (Peter Craig). Red Sky was provided with only the findings of the site inspections undertaken by VB Evans and not the full ASM Horwath Report. Red Sky was asked to submit a response to the findings which was not received until April 2011.
- 4th February 2011: Clark Bailie attended the meeting with the then Acting Chief Executive (Stewart Cuddy) and the Repairs Inspection Unit Manager (Raymond Kitson). The purpose of the meeting was to discuss the issue of overpayments as identified by ASM Horwath and the Repairs Inspection Unit, and confirm the timescales for responses by Red Sky.

Clark Bailie did not attend any other meetings with Red Sky officials although he was aware that a further meeting did take place on or about the 16th February 2011.

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27 October 2014

Dear Kevin

### **SDC Inquiry – Phase 3 evidence session**

I refer to your letter dated 16 October 2014 advising that the Committee agreed that it should hear oral evidence from me on 6 November 2014.

I confirm that I will attend and in advance of my attendance please find a written briefing at Annex A.

Yours sincerely



Michael Sands

## Annex A

Written Briefing from Michael Sands in advance of attendance at the SDC Inquiry meeting on 6 November 2014.

- A conversation I had with Cllr Jenny Palmer about the telephone call by Mr
- Brimstone to Cllr Palmer regarding termination of the Red Sky contract.
- My account of what was discussed during my conversations with Mr Brimstone and Cllr Palmer.
- My discussions / communications with Mr Brimstone that led to an email being sent by me to Mr Rowntree on 5th July 2011, in which I outlined the views of the Special Advisor in relation to the timeframe for continuation by the Red Sky Administrator.

On the 19th September last year I attended a monthly meeting of the Housing Council Housing and Regeneration Committee in Banbridge Council offices. As was usual, lunch was provided for the Councillors and officials who attended the meeting. At the lunch table I was seated beside Jenny Palmer. This was the first meeting of the Committee since June following the Summer Recess. This was a casual conversation over lunch about how the summer had been. Jenny Palmer raised the Spotlight programme and her interview which was broadcast. During this conversation she mentioned an e-mail which had been sent to the Chair of the NIHE on the morning of the Board meeting when the Red Sky contract was terminated. To get clarity around whether she was referring to another e-mail I may not have been aware of, or the e-mail which I sent to the Chairman, I asked her if she was aware of an e-mail sent by the Department to the Chair. I did not mention that I was the sender.

Jenny Palmer confirmed that it was my e-mail and that it should be in our system. I did not say that Mr Brimstone was “going mad” trying to find it as I was fully aware that my e-mail was in our system and available to anyone to see under FOI. Jenny Palmer went on to ask me if I was in the room when Mr Brimstone rang her. I said most definitely not and that officials in the Department only learned of the phone call after the event when Brian Rowntree informed Will Haire. Mr Brimstone did not come to me personally, at any time, to inform me of the phone call; neither did I have any discussion with Mr Brimstone about this issue.

Following on from the Minister’s letter to the Chairman on 1 July, the Housing Executive Board were meeting on 5 July 2011 to discuss the Minister’s request. Mr Brimstone arrived into my office on the morning of 5 July and asked that I email the Chairman that morning, prior to the Board meeting, suggesting that six months (as per the Minister’s letter) was too long a timeframe for continuation of the contracts by the Red Sky Administrator. Advice had been sought from Central Procurement Directorate (CPD) which indicated that 91 days was required to complete a tender exercise once all the paper work had been prepared. Therefore, allowing one month for the paperwork and three months for the tender exercise, four months was more appropriate. The Chairman was asked if the question could be put to the Administrator to ascertain if they would be able to continue with the response maintenance service for a minimum period of four months rather than the six months referred to in the Minister’s letter.

# Dr John McPeake – NIHE – Former Chief Executive

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## **Social Development Committee Meeting 9 October 2014 Briefing Note – John McPeake**

I have been asked to attend the Committee and provide a briefing on my knowledge on 9 identified events or decisions in pursuance of its inquiry into allegations arising from a BBC Spotlight programme.

I am happy to assist the Committee in any way that I can. However, as I retired from the Housing Executive in March I no longer have access to diaries, reports and correspondence that may have been relevant in helping me prepare for my attendance.

Accordingly, my briefing note that follows relies largely on my memory of the events and decisions in question, aided by the materials provided by the Committee in advance, a courtesy for which I am grateful.

For your convenience I have set out my comments in respect of each of the 9 matters included in the letter from the Committee Clerk.

### **1 Decision in December 2007 to terminate the Red Sky contract, which was later rescinded in September 2008.**

During that period I was the Director of Design and Property Services, and had no direct involvement in response maintenance issues.

However, when I was Chief Executive I appeared before a Public Accounts Committee (PAC) on a NIAO report on the NIHE's management of response maintenance. The report included a case study on Red Sky, which covered the initial decision to terminate the contract in December 2007, and the subsequent decision in September 2008 not to terminate the contract.

Specifically, these matters relate to the West Belfast contract awarded to Red Sky in March 2007. The contract was problematic from the outset with complaints from tenants, their elected representatives and staff within the NIHE who were managing the contract.

These concerns ultimately culminated in a decision by NIHE in December 2007 to terminate the contract with three months notice. This decision was challenged by the contractor, and after legal advice, the NIHE agreed to postpone the termination to September to enable Red Sky to resolve the problems.

Come September, a position was adopted that sufficient progress had been made allowing the termination decision to be rescinded.

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Without access to the relevant briefing materials I am not able to offer and further comment on these matters.

**2 Investigations into the Red Sky Group by the NIHE Repairs Investigation Unit, NIHE Internal Audit and ASM Horwath/VB Evans.**

RIU Reports

The Repairs Investigation Unit (RIU) was initially established to facilitate business improvement but over time its remit morphed to more of an audit and compliance role.

In outline terms, the RIU has two main functions: First, to provide an annual assurance at district office level that the response maintenance contracts were being managed appropriately; Second, to conduct more detailed investigations arising from the routine assurance work or in response to other concerns.

For the most part, RIU's assurance and investigatory work relied on the selection of a sample of jobs, which were then analysed in detail, including physical inspection and a review of all associated documentation. Any errors were recorded and subsequently extrapolated to provide an overall quantum.

In terms of the Red Sky Group RIU conducted detailed investigatory studies of each of the contracts held by the RSG (Newtownabbey 1, Belfast 2, Belfast 7, Belfast 1, Belfast 3, Belfast 6 and Newtownabbey 2). I no longer have access to these reports save the extract from the reports on the Newtownabbey 1 and Belfast 2 investigations, which were provided to me in advance of the hearing by NIHE acting on behalf of the SDC.

To the best of my recollection, the types of issues identified in the other reports are broadly similar to those in the Newtownabbey 1 and Belfast 2 reports.

In short, the following issues emerged:

- Over specification, which is where material or products beyond the requirements of the contract were specified.
- Exaggerated quantities, which could be linear metres, square metres or number of items.
- Claims for work not done or not fully done.
- Incorrect use of the Schedule of Rates (SOR) codes which resulted in items being paid for that should have been "deemed to be included" had the correct code been used or applied.
- Duplicate orders for the same work.

I recall that in total some £570k of overcharging was the estimated quantum for the RSG response contracts. As noted above, this is an extrapolated figure based on sample investigation.

There is no doubt that errors were made by some NIHE staff engaged in managing, supervising or quality assuring aspects the RSG's work under their various contracts. Part of this was down to inadequate training. Equally, however, the contract places obligations on the contractor to bill only for work done, including correcting any errors in work orders to ensure that the required specification is delivered.

It is important to note that whilst the RSG accepted a number of the findings in the reports, they disputed the great majority.

#### Internal Audit

As a general rule Internal Audit did not examine the work of contractors directly, focusing instead on the internal processes of contract management.

However, in more recent years, Internal Audit's resources were augmented through access to technical specialists, which enabled them to examine aspects of contractors' work in a number of cases, including heating, planned and response maintenance.

As a result of their actions, NIHE Internal Audit raised a number of concerns about the work of contractors and the management of the contracts by NIHE staff.

I do not have access to the reports and, therefore, cannot comment beyond the general observations above.

#### ASM

The ASM report stemmed from concerns that had been raised regarding the performance of the RSG in terms of their response contracts. Issues had been raised with the PAC and others, and this promoted an initial investigation by RIU in 2009 following which the NIHE Audit Committee requested an independent review be undertaken.

ASM's final report was completed in October 2010. The report itself was very detailed but in large measure it mirrors the findings of the RIU reports. The ASM report was also critical of inspection and contract management arrangements.

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**3 Investigations into other NIHE contractors as requested by the Minister.**

The Minister expressed a desire to identify if the problems apparent in the work of the RSG were present in the work of other response maintenance contractors. To that end, the DSD commissioned ASM to conduct a further study.

I do not have access to the report or the NIHE's analysis of the findings but my recollections are that some of the issues identified with the RSG were apparent in the work of other contractors, but to a lesser extent.

Whilst there were many points of detail where the Housing Executive did not agree with findings in respect of certain specific jobs, the broad findings and recommendations of the report were accepted. Notwithstanding this broad acceptance, the disagreement re the findings on specific jobs meant that ASM's overall extrapolated quantum, in the Housing Executive's view, was likely an over-statement of the actual position.

Beyond this general observation I am unable to offer a more substantive commentary given that I do not have access to the relevant materials.

**4 Investigation into other NIHE contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit.**

I am assuming that this issue relates to response maintenance.

Again, because I no longer have access to the relevant materials I am able only to offer the following general comments:

- I am aware that RIU conducted investigatory work in respect of several other response maintenance contractors, including one where issues similar to those identified with the RSG were identified, although, on the basis of my recollection, not to the same extent. The firm in question subsequently entered Administration, which was grounds for contract termination.
- I am also aware that RIU conducted investigatory work with a number of contractors that focused on single elements of work (as opposed to the whole contract).

**5 Meetings with the Red Sky Group to discuss the issue of overpayments. In particular, the meetings held on 4 and 16 February 2011 with representatives of the Red Sky Group.**

As I understand the situation, the context for these meetings was passing of a deadline set by the NIHE for the RSG to respond on the ASM report and an RIU report on the Newtownabbey 1 contract, both of which had

been issued to RSG in the last quarter of 2010. By the 31 January 2011, the deadline date, no response from had been received from RSG.

At the start of February 2011 I took up the temporary position of Acting Director of Housing and Regeneration, but, at that time, responsibility for progressing the resolution of the RSG matters rested primarily with the Acting Chief Executive (Stewart Cuddy) and the Chairman (Brian Rowntree), with support from the Director of Finance (Clark Bailie).

I understand that Stewart Cuddy (Acting CX), Clark Bailie (DoF), and Raymond Kitson (RIU Manager) represented NIHE at the meeting on 4 February, and that Norman Hayes, Peter Cooke and Pauleen Gazzard represented the RSG.

I believe that the meeting on 16 February was to facilitate a request by principals of the RSG to meet with the Chairman of the NIHE. I understand that the Acting CX also attended the meeting.

Not having been present at the meetings, I am unable to offer any comment on what was discussed but I do recall that, following the meeting on 16 February, the NIHE agreed to extend the time given to RSG to respond to the findings the RIU report on Newtownabbey 1 and the ASM report.

The RSG provided preliminary comments on the RIU report by the agreed revised date, with a further material provided several weeks later. In essence, RSG accepted some of the findings, disputed many others, and took the view that majority of issues were related to existing custom and practice and/or the actions of NIHE staff.

Likewise, in respect of the ASM report, my recollection is that the RSG responded by the agreed revised date. But here also, RSG disputed the findings.

**6 Decision by the NIHE Board on 13 April to terminate the Response Maintenance Contract with the Red Sky Group.**

The meeting of the Board on 13 April was a special meeting convened as an extraordinary meeting in advance of the scheduled meeting of 27 April.

The future of the contracts with the RSG was the substantive matter to be considered. Not having access to the NIHE records I cannot recall what additional matters were discussed.

At the outset of the meeting the Chairman, Brian Rowntree, indicated that he had had been approached by Jenny Palmer (Board Member) in advance of the meeting and that she had advised him that some political pressure had been brought to bear on her to persuade her not to support a proposal to terminate the RSG contracts.

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I do not recall the detailed dialogue but the Chairman made clear his view that this pressure placed the board member in an intolerable position and it was his view that she should not attend the meeting.

At the meeting itself, there was a detailed discussion of RSG issue and it is my recollection, which you should be able to confirm via the minutes of the meeting, that the Board was unanimous in its decision to terminate the contracts.

RSG was advised immediately after the Board meeting, and formal letters of termination were hand delivered that afternoon. With 3 months notice, the contracts were due to expire on 14<sup>th</sup> July 2011.

Although there was no requirement in the contract to provide reasons for termination, the Board's position was that the trust and confidence necessary for the successful operation of the contracts was no longer present.

**7 Meeting of 28 April 2011 between the Chair of the NIHE Board, Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA.**

I was present at the meeting.

It was convened in Brian Rowntree's office. In addition to the elected members noted in the question, the meeting was attended by the NIHE Chairman, Brian Rowntree, the Acting Chief Executive, Stewart Cuddy, the Acting CX's PA, Maureen Lucas, and myself, who at that time was Acting Director of Housing and Regeneration / Deputy Chief Executive.

A detailed Minute of the meeting is available.

It would be fair to say that the political delegation was not happy with the NIHE's decision to terminate the contracts of the RSG. Mr Robinson in particular regarded it as a sectarian decision, which he believed stemmed from concerns over the west Belfast contract and that the decision reflected the Housing Executive bowing to political pressure from west Belfast politicians.

The Chairman categorically denied any suggestion that the decision was sectarian and stressed that this was an operational and contractual dispute.

That was and remains my personal view. There is no doubt that there was much political interest in the decision, but for the Housing Executive it was a contractual matter and the organisation's desire was to ensure that tenants got the service to which they were entitled and that the NIHE got the service for which it was paying.

There seemed to be an undercurrent at the meeting that the political representatives believed that the NIHE was in some way picking on the RSG. This was not the case and it was explained that the RSG was not the only contractor under investigation or review.

**8 Meeting of 30 June 2011 between the Minister and the Chairman and the Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract.**

I was not present at the meeting on 30 June and therefore have no first hand knowledge of its purpose or what was discussed.

I believe the Chairman, Brian Rowntree, and the Acting CX, Stewart Cuddy represented the NIHE at the meeting.

However, following the meeting, I was advised by the Acting CX that the Minister intended to launch a further and wider review of NIHE response contracts and that it was his desire that until this was done there should be no changes to the existing arrangements.

I was advised that BDO were to be approached to determine if they could run the contracts in administration for an extended period. Following discussion with the Administrator, NIHE concluded that extending the contracts beyond the termination date was not feasible or practical, and I also recall concerns about whether such an action would be legal.

**9 Contact with the Red Sky Administrators, BDO, following their appointment on 20 April 2011.**

Without access to my NIHE diary I cannot comment in any detail.

However, it is my recollection that during the period of Administration NIHE officials, including myself, and the Chairman of NIHE met regularly with representatives of BDO, the appointed administrators.

One of the items regularly discussed was the weekly deduction by NIHE of £25k from RSG (In Administration) invoices in lieu of the overpayments previously identified. I believe that these deductions began around the middle of May.

Another matter regularly discussed was the on going performance of the contract, which remained problematic, particularly in terms of meeting the service times for the various categories of work.

For their part, the Administrators advised NIHE on their efforts to sell the RSG and they raised the prospects of a successful buyer taking on the NIHE contracts. NIHE's position on this was that the contracts were terminated and could not be extended even if that part of the RSG that serviced NIHE work was sold to a third party. However, at BDO's request,

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there was a meeting that involved a potential bidder for the RSG, but it came to nothing in the end.

NIHE advised that the contract provided for negotiations with adjacent contractors to take on the work until retendering could be completed and that this was the approach that would be taken. With that in mind, NIHE used the regular meetings to encourage BDO to provide the necessary TUPE information that would allow the discussions with adjacent contractors to proceed and ultimately to conclude with satisfactory continuity arrangements.

I am also aware that there was correspondence between the two parties throughout the period, but I do not have access to those records.

# Mr Colm McCaughly – NIHE – Former Director of Housing and Regeneration

DSD Committee hearing – 2nd October 2014

**I have been asked to provide a briefing to the Committee on my knowledge of a number of key events and decisions relevant to the hearing .I have set out those events as they have been advised to me.**

## Context

As Director of Housing and Regeneration I was responsible for recommending ,planning and implementing the Egan programme .This was part of a wider modernisation programme which was designed to improve services to tenants,and reduce programme / overhead costs.This represented a period of unprecedented change for NIHE.

## Specific Events/Decisions

**Decision in Dec 2007 to terminate a Red Sky contract which was later rescinded in Sept 2008.**

1. The background to difficulties between Red Sky (and its prior entity Spectrum) and NIHE has been well documented but can be summarised as
  - the company operated a policy of “strategic pricing “ which in itself led to persistent disputes on specifications ,measurements and what was deemed to be included in certain contract items.
  - the company”s management and accounting system continually displayed inaccuracies which led to disputes on coding ,invoicing and payment .
  - the company struggled to grow its skills base to match its business growth and
  - the company”s relationship with some individual NIHE staff was unacceptable.
2. On the basis of these problems I sought in 2006 with the agreement of the Chief Executive to exclude Spectrum/Red Sky from tendering for further tranches of Egan contracts.In the event legal advice prohibited such an approach .
3. Accordingly Red Sky was able to tender for and secure a number of contracts which were let in March 2007.At this stage I instructed the Repairs Inspection Unit to prioritise the Red Sky contracts in its inspection programme .
4. In the Autumn of 2007 following a briefing by West Belfast maintenance staff I commissioned the Repairs Inspection Unit to carry out a specific investigation in relation to changes of tenancy and backlogs in West Belfast.The findings were presented in Nov 2007 and from them it was clear that Red Sky did not have the capacity or skills to fulfil the contract.
5. Therefore I offered the company the opportunity to withdraw from the contract ( an approach which was adopted in other contracts )but they declined .Accordingly I issued instructions to terminate the contract in Dec 2007 with a 3 month notice period.
6. Following a legal challenge by Red Sky a six month “ standstill agreement “ was put in place .The NIHE legal advice made it clear that we had to give Red Sky the opportunity to devise and implement an improvement plan ;to be seen to be assisting them in meeting the

requirements of the contract and to take action to reduce or eliminate errors which could undermine effective action against the contractor .

7. The RIU inspections had confirmed those contract management issues at District level .Therefore a range of measures were put in place ,in particular,
  - Central contracts management support was provided to Districts with Red Sky contracts
  - Quarterly performance meetings with District Maintenance Managers and Area Managers were arranged to discuss the findings of the latest RIU reports and identify corrective action including any special training requirements.
  - Retraining programmes (as part of the wider modernisation programme )were carried through and
  - the sampling methodology for District inspections was varied to avoid over-familiarisation by contractors
8. A review of Red Skys performance against the improvement plan by central contract management staff recommended the “ re-instatement” of the contract which was put into effect in Sept 2008.
9. As a separate and side issue Red Sky advised that a particular maintenance officer was deliberately trying to undermine their efforts to meet the terms of the contracts .I had the matter investigated by the Asst Director who could find no evidence to support the claim .As I understand it Red Sky was advised of the outcome although I am led to believe a formal reply was not issued.

**Investigations into the Red Sky group by the NIHE Repairs Inspection Unit,Internal Audit, and ASM Howarth/VBEvans**

10. The NIHE Repairs Unit operated an annual ,cyclical programme of District Office inspections and the results were advised to the relevant managers and Internal Audit.In addition I commissioned numerous separate investigations into Spectrum/Red Sky .
11. In early 2009, subsequent to the “ re-instatement “ of the contract, quality issues and work backlogs began to re-emerge.In April 2009 I instructed RIU to set aside the cyclical programme and commissioned a detailed investigation into the operation of the Red Sky contracts.
12. The RIU reported in June 2009 and this made it clear that significant overcharging was still prevalent particularly in one District and the measures to improve contract management (which had set out clearly the standards expected ) had in the most part been ineffective .
13. In advance of an action plan being put in place the Chief Executive advised that he had decided to seek an external ,independent review of the Red Sky contracts .
14. In advance of the completion of that report (which I understand was Nov2010) it was necessary to extend two Red Sky contracts for a further year from August 2009.In addition RIU were instructed to recover known overpayments and carry out an investigation into the recurrence of duplicate payments across all Districts. My involvement in the contracts ended in Mar 2010.

**Investigations into other NIHE contractors as requested by the Minister**

15. This took place after my involvement in the management of the contracts.

**Investigations into other NIHE contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit**

16. In so far as this relates to post-Mar 2010 this was after my involvement.

**Meetings with the Red Sky group to discuss the issue of overpayments. In particular meetings held on 4th and 16th Feb 2011**

17. In so far as this relates to post –Mar 2010 this was after my involvement.

**Decision by the NIHE Board on 13th April 2011 to terminate the Response Maintenance contract with the Red Sky group**

18. This took place after my involvement.

C Mc Caughley  
September 2014

# Mr Paddy McIntyre – NIHE – Former Chief Executive

## Red Sky Hearing

You asked me to provide a briefing on my knowledge of 3 key events and decisions. My submission is structured around the first 2 of these. The 3rd I believe relates to work commissioned into other NIHE contractors by the Minister /NIHE after the termination of the Red Sky contract at which stage I had retired.

### 1. **Context – Egan Contracts.**

You will no doubt have been briefed about the nature and form of this form of contract which was introduced in the Public Sector under the banner “Achieving Excellence in Construction” in 1999.

- The Housing Executive, from around the year 2000, gradually introduced this form of contract to all of its construction contracts on a phased basis over a number of years, having first piloted and trialled them.
- Key benefits of this form contract were a significant reduction in the number of contracts/contractors managed; cost efficiencies; improved tenant satisfaction and service delivery .There is no doubt there were improvements in these areas over the years.
- A key principle of Egan style contracts was Partnership which was intended to replace the adversarial style of the traditional form of contract which frequently lead to claims, counter claims, and arbitration.
- The contract form adopted by NIHE was the subject of legal advice obtained from a firm of leading London solicitors.

### 2. **Context-Red Sky and their Track Record.**

- Red Sky in its various forms had carried out work for NIHE for a number of years. Over these years it presented a number of management and performance difficulties.
- In 2000 it was alleged that an NIHE Maintenance Officer had a close relationship with the company and had gone on holiday abroad with Red Sky Directors. He was disciplined, sacked but was subsequently reinstated at a lower grade following the findings of an Independent Appeals Panel
- In 2005 an allegation was made that District Office staff had received excessive hospitality from the company. Allegations of overcharging also emerged at the same time. These were investigated by the RIU and at one stage overpayments of circa £200k were estimated. Following involvement of NIHE Contracts dept and legal advice a settlement of £20 k was agreed. A number of staff was disciplined. The matter was referred to PSNI who recommended no further action.
- Prior to the further award of contracts in 2006 legal advice was sought as to whether the company could be barred from tendering for any further work. The advice was that this was not possible.

### 3. **Proposed Contract Termination West Belfast – December 2007**

- Almost uniquely amongst the entire District maintenance contracts the Belfast West contract generated from the outset significant complaints from tenants, Community representatives and politicians regarding quality of work, completion of work and the attitude of Red Sky staff. In addition the relationship between local NIHE staff and the contractor staff was poor.
- I was advised by the Director of Housing and Regeneration in December 2007 that it was proposed to serve a 3 month notice to terminate the contract. The Company made

representations and on legal advice the termination was deferred for 6 months. A number of special oversight measures were put in place by the Director to improve performance and subsequently the termination notice was withdrawn.

#### **4. Investigations into the Red Sky Group by NIHE RIU, Internal Audit, and ASM Howarth**

- My recollection is that there were ongoing problems with the performance of Red Sky in West Belfast and a Community Group in West Belfast had raised issues with NIAO.
- In April 2009 the Director following discussion with me commissioned RIU to carry out an investigation of all Red Sky contracts (5 in all in Belfast/Newtownabbey)
- The RIU report was finalised in June 2009 and found that 25% of inspections had some form of overpayment and 9% of work orders had been overpaid. It was also critical of high levels of non –compliance with performance standards.
- Following discussions with the Director, RIU, and the Chair of the Audit Committee it was agreed to appoint independent consultants to take this work forward. I took the view that based on past experience with Red Sky solid independent evidence would be required to take effective action against Red Sky. In addition there was ongoing public/private interest in the matter.
- ASM HOWARTH/VB EVANS was appointed following a procurement exercise. Their draft report was received in March 2010 and was finalised in October 2010. It confirmed the Findings of the RIU report and was forwarded to Red Sky sometime after that for comment. This process was still ongoing when I retired in November 2010.

#### **5. Annual Assurances**

- As Chief Executive of a large multimillion, multi function organisation, I obtained annual assurances from Internal/External Audit on the systems within the Organisation.  
  
Internal Audit produce an annual report as part of the Annual Account process indicating their overall classification of the systems of control within NIHE. This report would highlight any significant Audit issues identified in their Audit work to both the Audit Committee and myself as Chief Executive.
- On reviewing these reports from 2005 and Response Maintenance was not raised as a significant issue until 2010 when the Red Sky issue was emerging.
- The Internal Audit Annual Programme of work would have included individual office Response Maintenance audits and these were generally rated as satisfactory.
- NIAO by Statute is the NIHE external auditor and certifies its Annual Accounts. As part of this role it issues a Management (now called report to those charged with Governance) letter to the Chief Executive which would highlight any significant audit issues. I have checked these letters back to 2005 and Response Maintenance was not raised as a significant matter until 2010 when the Red Sky issue had emerged.
- I did not rely on these measures alone to identify problems. Weekly visits to District Offices, monthly meetings with the Housing Council, meetings with District Councils, Politicians and Community groups identified where we had particular problems with the
- service or with a contractor.

In addition, the system of management and performance reports, produce monthly on a provincial basis provided assurance on performance across the whole range on of NIHE functions

### Inquiry into Red Sky Spotlight programme

I refer to your letter of 24th October regarding evidence I gave to the Committee on 2nd October regarding Gary Ballentine

When I was asked to appear before the Committee I was not notified that this would be an area that I would be asked about and accordingly did not seek information about this from official NIHE records.

At the beginning of my evidence I indicated that these events took place some time ago and I was working from memory and thus might not always be accurate.

I totally forgot that at the Special Board meeting of October 2010 a Consultant's report regarding the circumstances of Gary's move was considered. Therefore my response to Mr Allister was incorrect and I wish to apologise to Mr Allister and the Committee for this . To the best of my recollection the matter was not dealt with at a normal scheduled Board meeting.

You ask for my comments on the Management response and statement. I am not quite sure what you mean by this. Whilst I mistakenly gave evidence that the consultants report had not gone to the Board during my tenure I am aware and have since confirmed that the issue was not resolved until after I left.

Again my apologies for the inaccurate reply I gave to the Committee and Mr Allister on this matter.

Yours etc

# Ms Naomi Long MP



## NAOMI LONG MP

Alliance Party Deputy Leader  
Member of Parliament for Belfast East

Dr. Kevin Pelan  
Committee Clerk, Social Development  
Room 284, Parliament Buildings,  
Ballymiscaw, Stormont,  
Belfast, BT4 3XX

Date: 8<sup>th</sup> October 2014

Dear Kevin,

Thank you for your letter dated 15<sup>th</sup> September regarding the Committee's inquiry into allegations of impropriety or irregularity relating to NIHE managed contracts. I have addressed each of your points under the headings you provided, which I trust is helpful:

**1. My knowledge of the detail behind my letter of 26 April 2011 to Minister Attwood regarding the notice of termination of the contract with Red Sky:**

This is as detailed within the letter. The concerns set out therein were raised with me by employees of Red Sky who, having staged protests at the constituency offices of all East Belfast MLAs when the termination of the contract became public knowledge, in April 2011, later met with me as a small delegation.

**2. How I became aware of the decision by NIHE to terminate the Red Sky contract:**

I became aware of the decision by NIHE to terminate the Red Sky contract through media reports. There were also protests staged by Red Sky employees outside each of the MLAs' constituency offices in East Belfast, where the company was based, raising concerns about the job losses and the audit process.

**3. Details of any meetings you might have attended with either Red Sky representatives and/or NIHE officials in respect of the Red Sky contract.**

**NIHE:**

- I did not engage NIHE officials in respect of the Red Sky contract and the audit thereof. I directed concerns raised with me regarding this matter to the Minister/s for Social Development.
- During this period I would have routinely raised concerns on behalf of constituents regarding the quality of work completed by Red Sky under this contract, with the maintenance manager and staff and NIHE, on a case-by-case basis.

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**RED SKY Representatives****a/ Management**

- Brendan Mulgrew of Stakeholder Communications contacted my office by e-mail on 15<sup>th</sup> October 2010, on behalf of Red Sky, seeking an urgent meeting. The previous week, the BBC had broadcast information regarding a leaked NIHE interim audit report into Red Sky. I have enclosed a copy of the e-mail and of my reply herewith for the Committee's convenience.
- I had a short meeting with Brendan Mulgrew and representatives of Red Sky management on Thursday 21<sup>st</sup> October 2010. Whilst expressing my concern for the ultimate fate of the employees, I reiterated my view that the audit and investigation were entirely appropriate actions for NIHE to take in the context of seeking to protect public funds where any allegation of impropriety had been made and that political intervention in any outcome was not appropriate. They raised a number of concerns about the manner in which the audit had been conducted.
- I wrote to then Minister, Alex Attwood MLA, (Ref: L211010RedSky) and raised their specific concerns regarding the need for due process and received a reply from the Minister on 24<sup>th</sup> November 2010 (Ref: COR/713/2010)
- I forwarded this letter to Red Sky and had no further meetings or correspondence with them on the matter.

**b/ Employees**

- As set out above (1) and (2), I met with a small delegation of Red Sky employees in the period prior to 26<sup>th</sup> April 2011, after the termination notice was issued and had become public knowledge.

If I can be of any further assistance on this matter, please do not hesitate to contact me at any time.

Best Regards,

**Naomi Long MP**



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Mrs Naomi Long MP  
Alliance Party East Belfast Constituency  
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Our ref: COR/1004/2011

25 May 2011

Dear Naomi

Thank you for your letter of 26 April to my predecessor, Alex Attwood, about a number of issues in relation to the independent review of Red Sky commissioned by the Housing Executive.

I share your concerns in relation to the 400 plus employees of Red Sky, though I am aware that not all are engaged on response maintenance contracts with the Housing Executive. However, I can assure you that the Housing Executive is 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.

You are also concerned in relation to the knock on effect to the wider local economy and in this regard I think it is important to stress there will still be an on-going need for response maintenance services for those properties currently serviced by Red Sky and this will continue to provide business for suppliers and sub-contractors.

In relation to the investigation process, it is correct that Red Sky has not been provided with a copy of the terms of reference for the work undertaken by the forensic accountants, ASM Horwath, or with a copy of the full report. This decision was made by the Housing Executive because the report provides an independent, professional review of a range of issues concerning the management of these contracts and it would not be appropriate to disclose all the documentation.



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I have, however, been assured by the Housing Executive that Red Sky were provided with sufficient extracts from the ASM Horwath report, together with supporting documentation, to allow the Company to undertake its own assessment of the findings. The same is equally true for additional and subsequent reviews undertaken by the Housing Executive's own Repairs Inspection Unit. In all cases Red Sky has been given the opportunity to consider and examine the evidence collected across those Districts for which it provided maintenance services.

As part of this process Red Sky was invited to provide explanations of the evidence presented to them and their responses were carefully considered and, in a few cases, accepted and appropriate adjustments made. In some cases, Red Sky accepted responsibility for the overpayments. However, in most cases, the company's explanations were simply not acceptable. The fact that the Housing Executive responded quickly to submissions received from Red Sky does not indicate any lack of rigour in assessing those submissions which I am assured were given all due consideration.

With regard to your comments about the role of Housing Executive staff in the management of these contracts, the Housing Executive specifically asked ASM Horwath to investigate this matter and their findings are presented in the report. It would not be appropriate to allow Red Sky to have access to this information, especially as internal disciplinary action is underway.

The Housing Executive does not accept Red Sky's suggestion that some form of arbitration should have been applied. The review of these contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office and a preliminary review considered both the substance and seriousness of these claims. I am advised that before external reviewers were appointed, the process has been conducted throughout in a fair and careful manner and Red Sky has been given ample opportunity to respond at the appropriate times.

In relation to the apparent lack of benchmarking against performance of other contractors. The Housing Executive has advised that there is on-going benchmarking and review of all contractors' performance and that any concerns about quality or invoicing practices would be dealt with appropriately.

The Housing Executive assures me that it firmly believes its management of what is a very serious matter was demonstrably fair, open and transparent and that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence has been identified, validated and evaluated. They have advised that they provided Red Sky sufficient information to respond to any claims against the Company and those responses were given due consideration before any decisions were made.

I hope this information is helpful and provides the assurances that you seek.

*Yours sincerely*  
*Nelson M'Cauleland*

**NELSON McCAUSLAND MLA**  
**Minister for Social Development**

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**Cllr Naomi Long MP**  
Alliance Party Deputy Leader  
Member of Parliament for Belfast East

Tuesday 26 April 2011

Mr Alex Attwood  
Minister for Social Development  
5<sup>th</sup> Floor, Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Rd  
Belfast BT7 2JB

Our Ref: L260411RedSky  
Your Ref: COR/713/2010

Dear Minister,

I am writing, further to my previous letter of 21<sup>st</sup> October 2010, regarding the NIHE internal audit of Red Sky, in which I raised with you a number of issues regarding the impact of the leaking of information to the press ahead of completion of the report, my concerns at the narrow remit of the audit which appeared to be restricted to Red Sky work only, and in which I also raised the need for a full and proper opportunity for Red Sky to respond to any interim report and provide rebuttal and/or refutation of any allegations made in order to ensure that due process is followed.

As you will be aware, the situation has now moved on and NIHE has now served a notice of termination of the contract with Red Sky and I understand that the company has since entered into voluntary receivership.

As you will appreciate, I am concerned for the jobs of the 400-plus employees of the firm which are now clearly in jeopardy and for those suppliers and sub-contractors whose businesses will now also be under significant pressure, not to mention the knock-on effect of job losses on this scale to the wider local economy.

I have also always acknowledged that it is crucial that NIHE, as with all other Government agencies and Departments, fulfils its duty to ensure that value for money is obtained in all its activities, that robust checks and balances are in place to safeguard public finances and that those processes are fair and equitable.

I, along with my colleague, Chris Lyttle, met recently with employees of Red Sky and they expressed to us their view that the process which has been followed to date in this case has not been fair, open or transparent and they were keen that I would raise those concerns with you directly.

They firstly indicated that it is their understanding that Red Sky has not been permitted to see either the full terms of reference of the internal audit conducted or the entire report which was submitted to NIHE by the auditor. Whilst I understand that they did have access to the section of the report relating to the work of Red Sky specifically, they were unable to consider the contents in the wider context of the full report and any other issues raised therein with respect to issues relating the running of the contracts more generally.

Furthermore, whilst they confirmed that Red Sky were afforded an opportunity to provide rebuttal to NIHE, as you had assured me in your last letter would be the case, this was, in their view, not afforded any serious consideration, as only 4 days later a final position was taken by NIHE with respect to the contract.

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**Clr Naomi Long MP**  
Alliance Party Deputy Leader  
Member of Parliament for Belfast East

They expressed significant concern that each job undertaken was subject to a pre- and post-contract inspection before being passed for payment and yet, to the best of their knowledge, the District Managers and Maintenance Managers employed by NIHE have not been approached or interviewed in relation to their role in approving any alleged over-payments or poor workmanship or to give their view of the performance of Red Sky. Indeed, the staff representatives stated that it is their understanding that Red Sky's key performance indicators against the contract were good across all Districts but that these were not included or considered as part of the investigation.

They also stated that they understand that Red Sky senior management had challenged the value of disputed work and they feel that, as a result, the company should have had access to some form of arbitration process regarding the disputed amount before the value was deducted from their most recent payment run.

Finally, they remain extremely concerned that the apparent lack of benchmarking against the performance and claims of other contractors operating the same contracts as part of this audit, as they feel that to consider Red Sky in isolation could lead to problems with the contract itself being interpreted unfairly as problems with Red Sky's operation of the contract. The staff representatives who met with me and with my colleague, Chris Lyttle, have stated that they would welcome a fair comparison of the company's performance against that of other contractors and believe that the only way to achieve this is through an independent review of all maintenance contracts and contractors.

I realise that at the time of your last response you were constrained in terms of a detailed response by the fact that my query related to matters which were part of an on-going investigation and by the confidentiality issues which surround such a case, and I recognise that, in addition, you may now be further constrained by potential legal implications of what is now a contractual dispute.

I would not seek in any way to interfere with due process in this regard, but would simply seek your reassurance that the issues which the staff members have raised with me will be fully and fairly considered and responded to as far as is possible within those constraints and your further assurance that the company has been and will continue to be treated in a fair and equitable manner when compared to other contractors.

I look forward to your response in due course.

Best Regards,

**Naomi Long MP**

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29 NOV 2010

Mrs Naomi Long MP  
c/o Alliance Party East Belfast Office  
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Our ref: COR/713/2010

24 November 2010

*Dean Naomi*

Thank you for your letter of 21 October requesting the terms of reference in relation to the Red Sky investigation and raising a number of other issues.

I am sorry but I am unable to provide you with a copy of the Terms of Reference at this time as it is inappropriate to release the report or any part of the report given the requirements of due process and the constraints imposed by its confidential nature.

You also asked that the operation of the contract with Red Sky should not be considered in isolation and I can assure you that, whilst this investigation is being carried out as a result of specific concerns, the Housing Executive will consider any wider issues which may apply to all contractors.

I can also confirm that the Housing Executive will share the findings of the review with the contractor and afford them the opportunity to comment as they see appropriate. The contractor has already been advised of this.

Finally, in relation to the security of the final report, I have asked the Housing Executive to be very conscious of its responsibilities regarding the security of the documentation associated with this review and to make every effort to ensure this remains the case.

*Sincerely  
Alex*

**ALEX ATTWOOD MLA**  
Minister for Social Development



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**Naomi Long MP**  
Alliance Party Deputy Leader  
Member of Parliament for Belfast East

Thursday, 21 October 2010

Mr Alex Attwood MLA  
Minister for Social Development  
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1 Cromac Place  
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Ormeau Road  
Belfast BT7 2JB

Our Ref: L211010RedSky

Dear Minister,

I am writing to you with respect to the current NIHE internal audit of Red Sky, the interim report of which was recently leaked into the public domain.

I would be grateful if you could provide me with a copy of the terms of reference for the auditors. In particular, I would be grateful for your reassurance that the operation of the maintenance contract with Red Sky will be compared with the operation with other maintenance contractors and not merely considered in isolation, as flaws in the operation of the contract could be construed as flaws with one contractor, if such a comparator were not available.

I would also be grateful if you could confirm that, in line with good practice, a copy of the interim audit report will be made available to Red Sky to give them the opportunity to provide any clarification or rebuttal for consideration by the auditors in drawing up their final report, to ensure that it is as comprehensive and robust as possible.

I trust that you are also making every possible effort to ensure that there are no further leaks ahead of the publication of the final report, to ensure that the outcome of the investigation can be considered properly when published in full.

With thanks in advance for your assistance with this matter.

Best Regards,

Naomi Long MP

*C/O Alliance Party East Belfast Constituency Office 56 Upper Newtownards Road Belfast BT4 3EL  
Tel: 028 90472004 Fax: 028 90656408 Email: belfast.cast@allianceparty.org*

19/9/2014

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## RE: Red Sky Group

From: Naomi Long ( [REDACTED] )  
Sent: 17 October 2010 17:43:10  
To: [REDACTED]  
Cc: belfast.east@allianceparty.org; chris.lyttle@allianceparty.org

Dear Brendan,

Thank you for your e-mail. I would be happy to meet with the owners of Red Sky to hear their concerns if they feel that this would be helpful; however, given that there is an ongoing audit and investigation, any political intervention would not only be impossible but also inappropriate.

I am of course concerned about the impact that this situation, being leaked into the public domain, could have upon those employed by Red Sky in my constituency; however, the NIHE have a responsibility to ensure that public money is seen to spent in an appropriate way and, where concerns are raised, have a duty to their tenants and tax payers in general to investigate them.

If you feel that a meeting would be useful, please contact Judith Cochrane at my office on 02890472004.

Best Regards,

Naomi

**Naomi R Long MP**

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**Alliance Party Deputy Leader  
Member of Parliament for Belfast East**

*"Alliance - building a united community"*

**E-mail: [naomi.long@allianceparty.org](mailto:naomi.long@allianceparty.org)**

Office: 02890 472004 Mobile: 07810 396566 Fax: 02890656408

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Subject: Red Sky Group  
Date: Fri, 15 Oct 2010 14:22:06 +0100  
From: [REDACTED]  
To: [naomi.long@allianceparty.org](mailto:naomi.long@allianceparty.org)

Hi Naomi

19/9/2014

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I am writing regarding Red Sky Group, in relation to the allegations which were aired by the BBC and other media last week.

Red Sky have written to the Chairman and Chief Executive of Red Sky and have copied the correspondence to the DSD Minister, Alex Attwood. A copy of the letter is attached and it goes a long way to setting out the Red Sky response to the allegations and how in their view they have been treated unfairly and in a way which is very damaging to their reputation and to their status as a major employer in east Belfast.

Media reports last week revealed that the BBC had seen an 'interim report' of an audit which has apparently been ongoing for a period of months and which, according to the NIHE, is due for completion within 6 weeks. Yet Red Sky have never been formally notified that an investigation is taking place, they do not know who is carrying it out and that have been denied access to the interim report.

On behalf of the management team at Red Sky I would request an urgent meeting with you, as we feel that a political intervention is necessary to protect the reputation of the company. Red Sky currently employs more than 350 people from its Grove Street headquarters, and frankly the allegations aired last week serve to destabilise the company and jeopardise those jobs.

Thanks Naomi,

I can be contacted in this email or on 

**Brendan Mulgrew**

Stakeholder Communications

**Belfast Office**

The Newsroom

Fountain Centre

Belfast

BT1 6ET

Tel 028 9033 9949

F: +44 (0) 28 9033 9959

19/9/2014

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## Mr Stephen Brimstone – DSD – Special Adviser

Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

10 October 2014

Dear Kevin

### **SDC Inquiry Phase 3 Evidence Session – 16 October 2014**

As part of the above Inquiry, the Committee has requested I attend on 16 October 2014 at 10.00 am to provide oral evidence in relation to Phase 3. In advance of my attendance, the Committee has also requested I provide a briefing on my knowledge of a number of key events and decisions.

I will attend the Inquiry meeting on 16 October 2014 and attached at Annex A is my written briefing.

Yours sincerely

**Stephen Brimstone**

**Response from Stephen Brimstone - SDC Inquiry Phase 3 meeting on 16 October 2014.**

**1. Minister's letter of 31 May 2011 to Robin Newton MLA declining his request for a meeting with representatives from Red Sky regarding the termination of the Red Sky contract. In particular, your request for an amendment to the draft letter of 27 May 2011;**

The Minister's letter to Robin Newton MLA on 31 May 2011 did not decline his request for a meeting. I am aware from the documents provided to the Committee that Robin Newton MLA wrote to the Minister on 17 May 2011 requesting an urgent meeting, along with Sammy Douglas MLA and representatives of Red Sky, in order to make the Minister aware of their concerns in relation to the termination of the NIHE's contracts and the implications for the company and employees. In line with Private Office procedures, the letter was forwarded to departmental officials in Housing Division on 17 May to provide advice to the Minister on the request and a draft reply.

Advice from an official was sent, through me, to the Minister on 27 May 2011 recommending that the Minister decline the invitation as this was an ongoing contractual matter between the NIHE and Red Sky. A draft reply was attached which set out the position with Red Sky and advised that "I believe a meeting would not be beneficial at this particular time".

I have previously advised the Committee in relation to my role as Special Adviser and that departmental officials' advice is forwarded to the Minister through me as my role includes reviewing papers going to the Minister and providing advice on any aspect of departmental business. The Minister then makes his decision.

I am aware from the documents provided to the Committee that the Private Office advised Housing Division on 27 May that I had requested an amendment to the letter and that the last line should read ".....If you feel a meeting would still be beneficial, please contact.....". The documents also note that a Housing official spoke to the Private Office and asked that the protocol on requests for amendments suggested by me should be checked and this request should be put to the Minister.

In line with my role, I had already discussed this with the Minister who agreed with my suggestion due to his concerns about the NIHE's management of contracts. Private Office advised officials on 1 June 2011 that the Minister agreed with my suggested amendment and that the letter had been amended and issued.

**2. Meeting of 2 June 2011 between the Special Adviser and DSD officials regarding the termination of the Red Sky contract;**

It is difficult to remember specific events after this significant passage of time – some three years. However I am aware from the documents provided to the Committee that on 2 June 2011 I requested an update from Housing officials in relation to Red Sky. NIHE were then asked to provide the update and also to confirm who I could speak to in the NIHE about this. I may have spoken to officials again about this as NIHE were further advised that I may wish to meet with the NIHE contact on 2 June or 3 June 2011. A memo was then forwarded to me on 2 June from an official providing the update and advising that the then Acting Chief Executive NIHE would be happy to meet that afternoon to discuss this. I do not recall speaking or meeting with the Acting Chief Executive that day.

**3. Meeting of 27 June 2011 at Parliament Buildings between the Minister, representatives of Red Sky and members of the DUP, including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA;**

Following on from Robin Newton MLA's request on 17 May 2011 for a meeting with the Minister, this was arranged to take place on 27 June 2011. I am aware from the documents provided to the Committee that departmental officials were asked by the Private Office on

20 June 2011 to provide appropriate briefing and the names of any officials attending the meeting with the Minister.

The NIHE were advised of the proposed meeting on 20 June 2011 and were asked for an update on the NIHE's position in relation to their dealings with the Administrators. The Minister's Private Secretary also emailed a housing official on 21 June 2011 stating that I advised that a full briefing would be essential to include the current position of the Administrators.

The briefing for the meeting was sent through me to the Minister on 24 June 2011. I attended the meeting and the Committee has been provided with the note of the meeting which documents the discussions.

**4. Meeting of 30 June 2011 with Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract;**

I have had sight of the documents provided to the Committee and I am aware of the briefing prepared for the Minister in advance of the meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive. I was at the meeting and the note of the meeting records the discussion. The Minister advised the meeting that he had asked the Department for a forensic examination to take place on the management of contracts and it would be inappropriate therefore to change contracts until this was completed, in the region of eight weeks. The Minister asked the Housing Executive to take this proposal to the Board and recommend his proposal on the basis that the Administrator could guarantee to conduct the work.

**5. Meeting of 1 July 2011 between the Minister and senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract;**

This appears to be a follow on meeting from the meeting on 30 June 2011 with the Chairman and the Chief Executive. There were a number of meetings during this period and I may have attended this meeting but it is difficult with the passage of time to recall if I attended or the specific discussions.

From the documents provided to the Committee it appears that officials were asked to draft a letter to the Chairman formally setting out the Minister's request in line with the discussion at the meeting on 30 June 2011.

Minister McCausland issued the letter to the NIHE Chairman on 1 July 2011 which advised that;

*"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."*

**6. Letter of 1 July 2011 from the Minister to the Chairman of the NIHE requesting the extension of the Red Sky contract. In particular, clarity is welcomed on the Minister's decision to amend the initial draft of the letter to extend the termination date from a period of 8 weeks to 6 months;**

As previously referred to, following on from the Minister's meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive a letter to the Chairman from the Minister was drafted by officials. I am aware from the documents provided to the Committee that the original draft by officials was to extend the contracts for a period of eight weeks. I am

also aware that the Private Office advised officials on 1 July that the Minister had amended the letter which issued on the 1 July 2011. The letter amended asked that the termination date would be extended for six months or until the new contract procedures could be put in place.

It is difficult to recall with the passage of time why the eight week period was amended to six months. However, I believe the eight week period referred to in the draft letter related to the timescale for an investigation to be carried out and I assume that the change to six months was to take account of a more appropriate procurement period for new contracts.

**7. Email of 5 July 2011 from Michael Sands to the Chairman of the NIHE regarding the Special Adviser's request to amend the period of extension of the Red Sky contract from six months to four months;**

Following on from the Minister's letter to the Chairman on 1 July, the Housing Executive Board were meeting on 5 July 2011 to discuss the issues raised. I am aware from the documents provided to the Committee that an official emailed the Chairman that morning, prior to the Board meeting, stating that "Minister's SpAd thinks that six months is too long a time frame for continuation by the Red Sky Administrator." This also advised that advice from Central Procurement Directorate (CPD) indicated that 91 days was required to complete a tender exercise once all the paper work had been prepared. Therefore allowing one month for the paperwork and three months for the tender exercise, four months was more appropriate. The Chairman was asked if the question could be put to the Administrator to ascertain if they would be able to continue with the response maintenance service for a minimum period of four months rather than the six months referred to in the Minister's letter.

**8. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract;**

I am aware that the NIHE Board met on 5 July 2011 to consider the Minister's request to extend the Red Sky contract and following the meeting the Chairman wrote to the Minister to advise of their deep concern at the stance he had taken and that the Board that morning has reconfirmed their view that the trust and the confidence necessary for the satisfactory operation of the contracts had been profoundly undermined. The Board had also instructed their legal representatives to take the necessary preparatory steps to present a challenge to the legality of any Article 10 direction and had directed that the adjacent contractors should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14 July 2011.

**9. Letter of 7 July 2011 from the Minister to the Chairman of the NIHE confirming that the NIHE should proceed with the termination of the Red Sky contract on 14 July and reassign the work to adjacent contractors.**

I am aware that the Permanent Secretary submitted a briefing to the Minister, through me, on 6 July 2011 on the current position following the letter from the Chairman after the Board meeting on 5 July 2011. He recommended that the Minister should advise the Housing Executive to move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants. I am also aware that an official on 7 July prepared a draft letter for the Minister to send to the Chairman. The submission accompanying the draft letter advised that "I understand that the decision is that the Housing Executive move forward with their proposals to re-assign contracts to adjacent contractors."

Minister McCausland then wrote to the Chairman on 7 July 2011 confirming 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.

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## Mr Brian Rowntree – NIHE – Former Chairperson

Dr Kevin Pelan  
Clerk  
Committee for Social Development  
Northern Ireland Assembly  
Room 284  
Parliament Buildings  
Belfast BT4 3XX

2nd November 2014

Dear Kevin

Inquiry into allegations , arising from a BBC Spotlight Programme aired on 3rd July 2013, of impropriety or irregularity relating to NIHE Managed Contracts and consideration of any resulting actions .....

I hereby submit for your Committee's attention and consideration my formal written evidence statement in response to your letter dated 7th July 2014 and the questions and matters requiring clarification as stated by the committee.

This is my personal record of events as the then Chairperson of NIHE ( Northern Ireland Housing Executive ) based on evidence only and no opinion is noted or offered by me on matters . I have however offered clarification on matters where necessary and posed questions that to this day remain unanswered during the process from 2010 to 2012.

This paper represents my formal engagement with the Committee by way of written submission only.

The written submission by me is based on evidence that was available to the Committee resulting from an extensive and robust audit trail within NIHE in line with proper corporate governance provisions put in place by the board of NIHE during my period as Chairperson.

In this submission I refer to the Board in its plural context as 10 members and I wish to confirm that in all stages of the investigation into response maintenance contracts and resulting termination of the Redsky Group Ltd contracts, the Board was united and unanimous in all decisions and no board member objected or abstained from discussions or decision making.

The matters under review within NIHE in relation to response maintenance contracts had the full support of all board members and the board took its responsibilities seriously and the board operated within a framework of transparency and accountability in all dealings and took necessary legal advice at critical stages of the process.

I submit my response for the Committee's consideration.

Kind Regards

**Brian**

Brian Rowntree.

**Decision in December 2007 to terminate the Redsky contract which was later rescinded in September 2008.**

This matter was never a matter brought to the attention of the NIHE Board in 2007 and was not disclosed by management to the NIHE Board or the NIHE Audit Committee in 2008 and the decision to terminate and rescind the decision was purely down to management within NIHE. The Board of NIHE and the Audit Committee of NIHE were not made aware of this issue until it was referenced and outlined within the ASM Howarth Inspection Report..

The NIHE Audit Committee subsequently dealt with this matter in 2010/11.

**Investigations into Redsky Group Ltd by the NIHE Repairs and Inspection Unit, NIHE Audit Committee, NIHE Internal Audit and ASM Howarth / VB Evans.**

The Board of NIHE in 2010 following recommendations from the NIHE Audit Committee chaired by Mrs Anne Henderson approved the establishment of an investigation into the West Belfast Response Maintenance Contract of Redsky Group Ltd under the name of Project Amber. The NIHE Audit Committee had been considering NIHE Internal Audit Reports into alleged poor performance, alleged overcharging and alleged inappropriate standard of work in the Redsky Newtownabbey and Belfast Response Maintenance Contract. The Audit Committee of NIHE was approved to appoint external independent investigators via an approved procurement process and resulting from this exercise ASM Howarth were appointed as lead investigators. A project steering group was established for this process, Mrs Anne Henderson Audit Chair NIHE, CEO NIHE Mr P Mc Intyre, Board Chair B Rowntree, Mr S Cuddy Dep CEO NIHE, Mr C Bailey Finance Director NIHE and Head of Audit NIHE, plus DSD Grade 3 Mr Barney Mc Gahon. This project group was high level given the concerns raised by NIHE Internal Audit and the complaints received from Political and Community and Tenant sources in Belfast. The Minister in DSD Alex Attwood MLA and the Perm Sec in DSD Mr Will Haire were fully briefed on the project board and were fully supportive of its establishment, terms of reference and reporting framework. DSD insisted on project group representation and feedback via this group on progress. The Minister and Perm Sec of DSD were encouraged by this proactive approach by NIHE duly endorsed by the board of NIHE and the independence of the external investigators ASM Howarth who were supported by VB Evans for technical expertise. ASM Howarth also briefed the Audit Committee of NIHE on matters of concern during the process and the coordination with ASM Howarth was via the Head of internal Audit in NIHE.

The ASM Howarth / VB Evans findings were conclusive and indicated overcharging and poor performance against agreed NIHE contractual standards within the Newtownabbey and Belfast Response Maintenance Contract of Redsky Group Ltd over a sample period of review in 2009/10. The findings showed a sample number of jobs under review highlighted overcharging of £40k approx but when extrapolated over a range of contracts and over an extended period of review could give rise to concerns in excess of £1m. ASM Howarth recommended further reviews. The Steering Group agreed to accept the ASM Howarth report and The NIHE Audit Committee also accepted the report in full and the Board of NIHE was in agreement with the Audit Committee and the Steering Group of Project Amber.

The Repairs Inspection Unit of NIHE ( RIU) was enhanced by agreement with the CEO and Board of NIHE and supported by the Chair of Audit in NIHE ..This extended resource and remit would allow RIU to conduct a series of detailed reviews into all response maintenance contracts awarded to Redsky Group Ltd and also explore performance monitoring arrangements within NIHE by District Maintenance Mgrs across all contractors and highlight areas of concern..RIU would also report to the Audit Committee on progress..The Board of NIHE also decided to update and improve the performance measurement and monitoring criteria for Response Maintenance Contracts and a Senior Internal Officer was appointed to establish this process in light of the retendering of these contracts in 2011... This Officer worked closely with the Head of Procurement on new contract documentation in advance of retendering work .This Officer also updated the Audit Committee at regular intervals..

The Minister in DSD (2010) and the Perm Sec were fully briefed on the intention and also on the governance provisions surrounding the updates and internal investigations. Particular reference was made to putting new contracts in place as soon as possible and the Minister was keen to see such contracts being tendered in late 2011. The Minister and Perm Sec were also informed of legal opinion that indicated that the Board was limited in its options on enhancing the existing performance regime for response maintenance contracts given their contractual nature. The outdated performance measures gave too much flexibility and too much reliance on goodwill within the existing response maintenance contracts across all contractors.

In 2010/11 the Perm Sec and Minister agreed to put in place a governance review of contract provisions in NIHE with a key emphasis on performance indicators.. The Head of DSD Internal Audit conducted this review with external support for quality and performance control measures. The review recommended a series of improvements none of which required major structural reform but more process revision and update.. The board and mgt of NIHE accepted all recommendations and all were put in place or had already been updated due to ongoing maintenance contract reform. In 2011 the Perm Sec confirmed he was satisfied that all reforms were in place.

The RIU ( Repairs Inspection Unit ) NIHE conducted a series of in-depth reviews of all Redsky Contracts and arrived at a series of conclusions that overcharging had taken place across the majority if not all contracts and that the performance within those contracts was not in areas in line with the standards required within the contract provisions ..As these contract reviews concluded they were shared with the Audit Committee of NIHE and the summary findings provided to the Board of NIHE ... Prior to the Administrators being appointed to Redsky Group Ltd final reports in terms of performance findings were shared with Redsky Group Ltd. Subsequent findings were shared with the Administrators to Redsky Group Ltd . At no stage did Redsky Group Ltd agree with the conclusions reached by NIHE RIU. The findings reached by RIU were also quality assured within NIHE matched against recorded District Maintenance Officer Reports and recorded Performance data. Internal irregularities were noted and where relevant these were explored in further detail and reports sent to the HR Directorate for consideration and in cases consideration of disciplinary action for staff involved . Such disciplinary processes were initiated . The Perm Sec and Minister were duly updated on all aspects of ongoing actions including numbers and scope of internal disciplinary provisions . The DSD and myself as Chair had an agreement to update on all issues that could give rise to concern.

The Board of NIHE had a robust audit trail around all dealings in relation to its investigations and reporting framework and this also informed the legal opinion it took in relation to the contractual aspects of the Redsky Contracts. The Audit Committee of NIHE was also heavily involved in the oversight arrangements and the RIU reported to the board through the Audit Committee in line with proper corporate governance.

#### **Investigations into other NIHE contracts as requested by the Minister.**

From early 2010 to June 2011 the DSD Minister Alex Attwood MLA was informed of ongoing reviews in line with RIU and NIHE Audit reports and that these were risk based following audits and inspections and concerns from District Maintenance Officers and the Central Review team of NIHE .No individual contractor was singled out for specific attention but rather poor performance highlighted and financial irregularity investigated. Attention was drawn to Redsky Group Ltd given the scale of concern and the higher than normal degree of irregularity in their performance indicators. Other contractors were also under review and were programmed into the review team work plan..Given the scale and size of these contracts on an annual basis and reviews extending over a number of years the task for the team was extensive and required prioritisation. These were clearly matters for the Board of NIHE to highlight and decide upon and be accountable for. In July 2011 under a new

Minister Nelson Mc Causland MLA the emphasis changed and the Minister requested that his department seek to nominate contractors for further review and these nominations were not totally in line with the prioritisation and work plan in NIHE for response maintenance contracts as reported to the NIHE Audit Committee. NIHE had a dedicated work plan to review old style contracts but the emphasis within NIHE was about putting in place new contracts as part of a tendering process in 2011. This would give rise to enhanced performance indicators and a more rigid and robust oversight regime with proper sanctions applying for poor performance. I as Chair and the Board of NIHE were not involved in this nomination process but provided by a departmental request for contractor review . This was outside of our internal governance arrangements.

**Investigations into other NIHE Contractors undertaken by NIHE Internal Audit and NIHE Repairs and Inspection Unit.**

NIHE through the good offices of its Internal Audit team and Repairs and Inspection Unit NIHE had a series of planned reviews and inspections underway across a number of contractors whose performance indicators gave rise to concern .. One other Contractor in particular agreed not to compete for additional contract work within NIHE and was heavily involved with RIU in respect of poor performance indicators .. It is not correct to say that Redsky was the only contractor reviewed or singled out for review . It is also not correct to state that Redsky Group was reviewed for reasons outside of performance or financial irregularities . Sectarian bias or political intervention/ interference was muted during the meeting of 28th April 2011 in NIHE with First Minister Peter Robinson MLA , Robin Newton MLA , and Sammy Douglas MLA as per minute provided to your committee . NIHE strongly denied this and I as Chair will continue to deny this and the evidence and detailed audit trail within NIHE supports the NIHE position . This allegation of sectarian or political bias is totally incorrect and no evidence exists to support this statement .

**Meetings with Redsky Group Ltd Directors to discuss the issue of overpayments . In particular, the meetings held on 4th and 16th February 2011 with representatives of Redsky Group Ltd.**

At the request of directors of Redsky Group Ltd to meet with representatives of the Board I agreed as Chairperson that I would meet with the Chairperson and Managing Director of Redsky Group Ltd to outline the Board's position on the severity of the matters under review and to explore a way forward that could be brought to the board for further consideration . I had the Acting Chief Executive NIHE present to outline our position .. This meeting followed a previous update meeting with the NIHE Acting CEO and Redsky. It was evident from these meetings that Redsky Group Ltd were not in a position to accept the findings of the NIHE RIU and unable to reach a financial compromise and instead they continued to attempt to process counter claims against NIHE ... I as Chairperson confirmed to Redsky that I was keen that they accept our position and work with NIHE to improve their performance ...At no stage during these meetings did they assert that they were in a vulnerable financial position . At these meetings the final RIU reports had recently been shared with Redsky and the figure of approx £ 40k was the only overpayment referenced and evidenced at this stage but also referenced that this could be extrapolated to £1m plus ,along with high levels of poor performance against contract standards .. I as Chair of NIHE did confirm to the Directors that we did have the legal right under these contracts to terminate them but that our desire at this stage was to work to improve the situation but that the cooperation of Redsky was essential and immediate in that regard . The meetings were tension filled and a very anti NIHE position was evident from Redsky and no visible sign of a willingness to accept responsibility for poor performance and incorrect charging by Redsky.

**Decision By the NIHE Board on April 13th 2011 to terminate the response maintenance contracts with Redsky Group Ltd**

This decision by NIHE was based on firm evidence from a series of reviews and reports both internal and external on matters of inadequate performance and financial overcharges for

work not done and incomplete. ( reports and reviews as noted to this committee ) These reports were ongoing but the Audit Committee was deeply concerned about the continuing risks and the apparent inability of Redsky to correct and improve the situation . The Board of NIHE was also supplied with legal opinion to support any process to terminate the contracts and the implications for NIHE in continuing to provide a response maintenance service in the regions covered by the existing Redsky Contracts . This legal opinion commented on termination reasons , notice periods and the capacity to reappoint other contractors within the existing contract . This legal opinion although not shared outside of NIHE was discussed with Senior Counsel present in NIHE HQ in March 2011 and attended by senior DSD officials and NIHE executive team and Chair of NIHE Audit and Head Of Internal Audit NIHE and Myself as Board Chair NIHE . DSD officials were informed that contract termination may take place as soon as was practical but that the ongoing risks needed to be evaluated. The DSD officials supported the termination position as the most practical option but did acknowledge that this was a matter for the NIHE Board to decide in line with proper governance . DSD officials and all NIHE Executive Officers and board members present agreed to advise the Minister that the NIHE Board would discuss the possible termination of the Redsky Contracts at its meeting of 13th April 2011. As DSD were key participants in the Review group on the Redsky Investigation it was good governance to inform the Perm Sec and The Minister of the escalation of the risk to its highest level .

The Board of NIHE at its meeting of April 13th received a comprehensive briefing on the options before them including contract termination and the board was fully briefed on the legal provisions as well as the ongoing reviews and investigations internal to NIHE on the Redsky Response Maintenance contracts . The Board was updated on the meetings with DSD and their support for whatever decision the Board makes and the options open to it in respect of re-nomination of other contractors and the time scales involved . The Board maintained its independence in this decision making process and no external influences were present. The Board of NIHE took time over its deliberations and considered all the evidence before it and agreed unanimously to terminate the Response Maintenance Contracts of Redsky with the maximum 13 week notice period within the existing contract provisions applying to allow for the re-nomination of contractors to complete the remaining timeframe of these contracts and to put in place the TUPE Provisions to protect the workers engaged on NIHE contracts estimated at 200.

The Board was in full agreement on the way forward and instructed Officials and myself as Chair to deal directly with the Minister and inform him of the decision and write accordingly to Redsky under legal cover ..This was not an easy decision for the Board but the decision was based on the evidence before the board in terms of reports and reviews as previously provided to this committee .

I as Chair duly notified both Redsky and Minister Alex Attwood MLA of the board decision. The Minister was satisfied that careful consideration had been given by the board to all subject matter and he was keen to see that TUPE provisions would be honoured as detailed within the existing contract to protect the relevant workers engaged within NIHE Response Maintenance Contracts ... The Directors of Redsky were also made aware of these provisions.

**Meeting of 28th April 2011 in NIHE HQ between the Chair of NIHE Board Brian Rowntree, Peter Robinson MLA, Robin Newton MLA, and Sammy Douglas MLA.**

I can confirm that this meeting did take place and that the request for this meeting came from the DUP in east Belfast to meet and outline concerns around the termination of the Redsky Response Maintenance Contract and the implications for the Redsky workforce and the local economy. I do not intend to go into the detail of this meeting as a minute is available and in the committee records . This minute is evidence of the tension and sensitive subject matter discussed. I as board Chair again refute any allegation that the Board of NIHE acted improperly or with sectarian or political bias in the decision it reached . The decision by the NIHE Board was unanimous and was evidence based and in terms of

community background on the board of NIHE it had full cross community support .It was the correct and proper decision in this instance and a brave and responsible decision by all board members. No evidence in support of allegations to the contrary have ever been presented to NIHE . I as the then Board Chair fully accept that it is the right of local and regional political representatives to meet with NIHE to discuss the implications of a Board Decision and to have concerns for the welfare of workers in a company which now finds itself in administration due to financial difficulties . However I do not accept that Political Representatives can make allegations of sectarian and or political bias without evidence to support such statements and not to provide any such evidence if available to NIHE. To also dilute in those representations the evidence of wrong doing and poor performance by Redsky in relation to the audit and investigation reports before the Board of NIHE is unfair in terms of public responsibility. Redsky were in receipt of £150k per week of public funds for contract works . Mr Peter Cooke Director of Redsky did admit on TV in an interview that NIHE had been charged for work on a building that didn't exist . This was highlighted in reports to NIHE and was a matter of serious concern . The Minute clearly refers to NIHE stating that members of its own staff may be subject to disciplinary action as a result of poor internal monitoring . The Board of NIHE also reject the claim in this meeting by Mr Peter Robinson MLA that the decision to terminate the contract could have been taken one month later after the election .. I as the then Chair of the board of NIHE again state that no political or sectarian influences were present in this termination decision process . I as Chair of the Board of NIHE also confirmed to the political representatives at this meeting that comments made by other MLAs in Belfast naming a Contractor during a board investigation process were not helpful .

**Meeting of 30th June 2011 between the Minister Nelson Mc Causland and Chairman and Chief Executive of NIHE and Senior DSD Officials to discuss the Termination of the Redsky Contract .**

The note of this meeting is in the records made available to this committee and I can again confirm that this meeting did take place and that the atmosphere in this meeting was tense and was uneasy given that the Minister and Special Advisor were clearly in the mind to seek to influence the Board Room of NIHE in terms of potentially lobbying for the reinstatement of the Redsky Contract to be undertaken by the Administrator BDO . This was an operational matter for NIHE and as the then Chairperson of NIHE I could not allow this external influence to continue without written formal direction from the Minister . There were no viable grounds presented to myself and the Chief Executive at this meeting that supported consideration of this request.

The reference to the Administrators BDO was concerning also and gave grounds for further reflection that possible contact may have been made to BDO Administrators to Redsky Group Ltd on matters of an operational and contractual nature that were matters for NIHE and its executive team. NIHE had established a positive working and communication frameworks with BDO which was essential to manage the notice period of the contracts to termination date July 13th.

I understand that a meeting may have taken place with former directors of Redsky Group Ltd with DSD officials present but no NIHE staff or Board members present and matters relating to NIHE response Maintenance Contracts were discussed . I understand a note of this meeting may be on record.

**Letter of 1st July 2011 from the Minister to the Chairman of NIHE requesting the extension of the Redsky Contract .**

This letter is a matter of public record and is included in the documentation provided to this committee. The request by the Minister was a matter of serious concern to myself as the then Chairperson of NIHE , my fellow board members , the Chief Executive Stewart Cuddy and the Audit Chair Mrs Anne Henderson . This effectively was a request to suspend or remove the notice of contract termination and to seek assurances from the Administrator that Redsky Group in Administration could continue to service the contract beyond the termination date

of 13th July 2011. This effectively reinstated the original contract but was providing this contract to a non viable entity in the form of Redsky Group Ltd in Administration which would clearly breach the monitoring and procurement provisions within NIHE . We also had concerns around possible ongoing overcharging continuing as well as possible poor performance against contract standards. NIHE also had serious overcharges accumulated against Redsky ltd and these were being pursued against the Administrator in terms of recovery of Public monies ...The Board also were concerned that the Minister was possibly directing in this instance and that this direction if such was one that could not be honoured by the board as it was seeking to reinstate a contractor who had significant failings under the contract provisions and that the correct action had previously been taken in the form of termination and approved by the then Minister with full Departmental support .. Why was the Department now changing course and why was the board of NIHE being placed in this situation and why were contractual decisions of NIHE being considered for reverse by the department days before the closure of the termination period 13th July 2011.? Why was the department and its officials involving itself in operational matters of NIHE ? Surely NIHE must be held to account for its own decision making . ?

This letter was copied to all Board Members of NIHE and I as Chairperson agreed to host a Special Board Meeting to consider this Ministerial request . In advance of this Special Board meeting Scheduled for 5th July 2011 Senior Counsel Legal opinion was sought on the issue and the contractual implications for NIHE .

**NIHE Board Meeting 5th July 2011 regarding the Minister's request for an extension to the Redsky contract .**

The Minutes of this meeting are a matter of record and have been supplied to this committee . A full attendance of all board members was confirmed and a special notice was issued to members on the 2nd July 2011. The day before the Special Board Meeting Cllr Jenny Palmer, Board Member of NIHE contacted me as Chairperson to request an urgent meeting .. Jenny confirmed that she had been approached by the Ministerial Special Advisor Stephen Brimstone to vote in favour of the Ministerial request and not support the board in continuing the Redsky notice period . Jenny was very upset and felt that her position was compromised and that her independent board membership had not been respected and appreciated . Jenny also confirmed that she was supportive of the Board's stance and did not agree with the Ministerial request ..I as Chairperson was very annoyed that this approach had taken place and felt further annoyed that a board member had been compromised in this way . This was a complete breach of governance provisions and as Chairperson I agreed that Jenny would attend the meeting but record a compromised position and leave before the discussion . Jenny agreed with this decision and was thankful of the understanding and support . No Board member of any public body should be placed in this position ..Board decisions are simply that BOARD DECISIONS and the independence of the Board and its decision making framework must be respected . I had no reason to doubt the integrity and honesty of Cllr Jenny Palmer and the debate at board level would have been further enhanced by Jenny's input.

The morning of the Special Board Meeting ( prior to the meeting ) an email was received in NIHE from Michael Sands DSD again proposing a further suggestion for consideration by the board in support of the extension of the Redsky contract ..The email referred to matters that were operational to NIHE and not the concern of DSD officials .. This again caused me concern as Chairperson as there appeared to be a dedicated attempt to lobby for this extension in favour of Redsky. Why ?

The Special Board meeting was an informed debate and all members spoke on the issue and there was unanimous agreement to not accept the Ministerial request and continue with the termination notice via the Administrators BDO ... BDO had confirmed in advance of this meeting that they could not guarantee the continued viability of the delivery of the contract beyond the termination date 13th July 2011. The Board Members were each supplied

with a copy of the legal advice on the issue and a suggested form of words was tabled for agreement . All present unanimously agreed to refuse the Ministerial request and write to the Minister outlining the Board's concern about this approach by his office . It was agreed that I would respond on behalf of the Board.

There was considerable media interest on this issue and unfortunately the Minister stated that my response was a “ Declaration of War “...This was far from the reality of the situation and I simply highlighted Board concerns and the independence and governance that the matter required . The matter was personalised and the resulting relationship with the Minister was challenging from hereon . The Board was expecting the Minister to reply with a formal written direction . This did not prove to be the case and the intention of the Minister was withdrawn and the contract ran its course and terminated through the Administrator on the 13th July 2011. The individual contracts were allocated to adjacent contractors in line with the contract provisions and in line with procurement and legal advice to the board . The Board also set about developing the tendering process for the new and improved Response Maintenance Contracts.

#### **Contact with the Redsky Administrators, BDO following their appointment on 20th April 2011.**

NIHE put in place a positive and structured communication framework with the Administrator Michael Jennings BDO and BDO Managing Partner . This was to ensure that NIHE could continue to provide a much needed response maintenance service to the tenants serviced by the Redsky Contract .

This communication framework had three distinct and separate strands ;

Chair of NIHE and CEO NIHE .... Strategic issues on Contract Termination deadline and Overpayments on past Redsky contracts .

Procurement Manager NIHE ...Transfer of Contracts to adjacent contractors and relevant TUPE provisions and payroll evidence on employee numbers affected .

Director Housing and Regeneration NIHE on contract performance during the notice period and payment process for authorisation of approved works .

All of the above were distinct individual contacts and did not overlap .

Regular meetings were held with the Administrators and the process proved successful as the transition to new contractors went smoothly ..These were dedicated NIHE interventions with the Administrator and as these were all NIHE related there was no requirement for Departmental or Political interventions with the Administrator . NIHE was not informed of Departmental or Political contacts with the Administrators .

The NIHE Board was kept up to date on progress with the Administrators .

#### **Personal**

The termination of the Redsky contract in April 2011 was a corporate decision of the Board yet following this decision posters on the gates of Redsky in East Belfast had my name on them claiming I had terminated 400 jobs.

This personal campaign continued with a motor cavalcade through Belfast with the same posters attached to Redsky Vans and Cars.

I also had to leave my home for two nights due to fear of possible intimidation ...

Again I reaffirm through this submission that the Board of NIHE was united in its decision making on this termination and it was a unanimous decision in all cases.

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# Mr Nelson McCausland MLA – Former Minister for Social Development

## **Written Briefing from Nelson McCausland MLA in relation to the SDC Inquiry Phase 3 meeting on 16 September 2014.**

The Committee has requested a briefing on my knowledge of a number of key events and decisions relating to actions that occurred more than three years ago. I would therefore record at the outset that it is difficult with the significant passage of time to recall now specific details and discussions in relation to these events and decisions. I have had sight of the documents provided to the Committee in relation to Phase 3 of this Inquiry which I have used to inform my knowledge and recollection.

### **1. Letter of 31 May 2011 from the Minister to Robin Newton MLA declining his request for a meeting with representatives from the Red Sky regarding the termination of the Red Sky contract.**

My letter to Robin Newton MLA on 31 May 2011 did not decline his request for a meeting. Robin Newton MLA wrote to me on 17 May 2011 requesting an urgent meeting, along with Sammy Douglas MLA and representatives of Red Sky, in order to make me aware of their concerns in relation to the termination of the NIHE's contracts and the implications for the company and employees. Having had sight of the documents provided to the Committee, I am aware that, in line with my Private Office's procedures, the letter was forwarded to departmental officials in Housing Division on 17 May to provide me with advice in relation to this request and a draft reply.

The advice from departmental officials was sent to me on 27 May 2011 recommending that I decline the invitation as this was an ongoing contractual matter between the NIHE and Red Sky. A draft reply was attached which set out the position with Red Sky and advised that "I believe a meeting would not be beneficial at this particular time".

The Private Office advised Housing Division on 27 May that my Special Adviser had requested an amendment to the letter and that the last line should read ".....If you feel a meeting would still be beneficial, please contact...". I am aware, from the documents provided to the Committee, that a Housing official at that time spoke to my Private Office and asked that the protocol on requests for amendments by the Special Adviser should be checked and this request for an amendment should be put to me. I agreed to the suggested amendment as I had concerns about the NIHE's management of contracts. My reply issued to Robin Newton MLA on 31 May 2011 providing him with an update on the issues and advising that I would keep him updated in relation to this matter. I also advised that if he felt that a meeting would still be beneficial he should contact my diary secretary to arrange this. A meeting was subsequently arranged for 27 June 2011.

### **2. Meeting of 27 June 2011 at Parliament Buildings between representatives of Red Sky and members of the DUP including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA;**

Following on from Robin Newton MLA's request on 17 May 2011 for a meeting with me, this was arranged to take place on 27 June 2011. Departmental officials provided me with briefing in advance of the meeting (copied to the Committee) and senior housing officials also attended the meeting. A view was also sought from the Departmental Solicitors Office in relation to the meeting and whilst the legal advice has not been provided to the Committee, Members will be aware that I advised the NI Assembly on 8 July 2013 of the following;

"Before the meeting took place, legal advice was sought from the departmental solicitors. I sought that advice in the light of the fact that I was being asked to meet individuals from a

company in administration, and I wanted to be assured of the probity of my actions. It advised me that Ministers may meet such persons as they choose.”

The Committee has also been provided with the note of the meeting which documents the discussions and records that I asked officials to instruct the NIHE to rigorously review all existing contracts to the same level of scrutiny and that I would like to have the Administrator in place until the end of August to allow all issues relating to the handover of the contracts to be considered. The official attending the meeting also advised that the proper route for the consideration of contractual matters was between the NIHE and the Administrator.

**3. Meeting of 30 June 2011 with Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract;**

I received a briefing from officials in advance of the meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive and the note of the meeting records the discussions. These documents have been provided to the Committee.

The briefing from my official records that I had requested the meeting with NIHE officials to ask them to consider extending, through the administrator, the Red Sky contract beyond the termination date of 14 July to enable investigations to be undertaken with the adjacent contractors to give me assurances that the problems identified in Red Sky were not endemic across NIHE contractors.

The note of the meeting records that I had asked my officials for a forensic examination to take place on the management of contracts and that it would be inappropriate therefore to change contracts until this was completed, in the region of eight weeks. I asked the Housing Executive to take this proposal to the Board and to recommend my proposal on the basis that the Administrator could guarantee to conduct the work.

**4. Meeting of 1 July 2011 with senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract;**

There were a number of meetings during this period and it is difficult with the passage of time to recall the specific discussions. However, having reviewed the papers which have been copied to the Committee, this was a follow on meeting from my meeting with the Housing Executive on 30 June 2011. My officials prepared a draft letter for my consideration which formally put to the Chairman my request to extend the termination of the Red Sky contract. The submission to me from my official with the draft letter has been copied to the Committee along with the letter I issued to the NIHE Chairman on 1 July 2011 which advised that;

“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.”

**5. Letter of 1 July 2011 from the Minister to the Chairman of the NIHE requesting the extension of the Red Sky contract. In particular, clarity is welcomed on the Minister's decision to amend the initial draft of the letter to extend the termination date from a period of 8 weeks to 6 months;**

As previously referred to, following on from my meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive, a letter to the Chairman was drafted by my official. I am aware from the documents provided to the Committee that the original draft by my official was to extend the contract for a period of eight weeks. This was the period that

had been discussed at my meeting with the NIHE on 30 June 2011 and was referred to in the note of the meeting.

I am also aware from the documents provided to the Committee that my Private Office advised officials on 1 July that I had amended the letter which issued on the 1 July 2011. The amended letter asked that the termination date would be extended for six months. It is difficult with the passage of time to recall specific details such as this but I assume this may have been changed as it more likely to take six months for a procurement period for new contracts, rather than just eight weeks.

**6. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract;**

I am aware that the NIHE Board met on 5 July 2011 to consider my request to extend the Red Sky contract and following the meeting the Chairman wrote to me to advise of the Board's deep concern at the stance I had taken and that the Board that morning had reconfirmed their view that the trust and the confidence necessary for the satisfactory operation of the contracts had been profoundly undermined. The Board had also instructed their legal representatives to take the necessary preparatory steps to present a challenge to the legality of any Article 10 direction and had directed that the adjacent contractors should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14 July 2011. The Chairman's reply focused on the issue of a direction, which I had not in fact issued, and did not answer my specific request in relation to the Administrator's ability to continue to service the contract.

**7. Submission dated 6 July 2011 from the Permanent Secretary regarding NIHE's decision not to extend the Red Sky contract pending an open procurement competition and the possible discussion of this at the Executive Committee on 7 July 2011;**

My Permanent Secretary briefed me on 6 July 2011 on the current position following the letter from the Chairman on 5 July 2011. A copy of the briefing has been provided to the Committee. In this he advised me that the Board of the Housing Executive had met and responded to my request to extend the contract. Their response had highlighted a number of issues:-

- a) The Board advised that they remained content that the action they had taken against Red Sky has been appropriate in light of the issues that investigations had revealed and that the steps taken to re-assign the contracts to adjacent contractors had been the most appropriate approach to both ensure continuation of services and offer exiting employees protection under TUPE;
- b) The Board had confirmed that adjacent contractors stood ready to take over the contracts from the termination date. These contractors had also indicated that they had already incurred significant expenditure in preparing for these contracts. The Board had suggested that they and the Department could face legal challenge as the contractors, in relation to their losses, sought redress for breach of their legitimate contractual expectations;
- c) Public confidence in the Board's ability to discharge its statutory function could be eroded in the absence a coherent rationale for extending those contracts;
- d) Red Sky had not mounted any public or private law challenge to the Boards' decision to terminate their contract;
- e) The extension of the contract could secure a benefit for a particular contractor or purchaser; and
- f) The Board considered that this was a significant and controversial matter as defined in paragraph 2.3 of the Ministerial Code.

The Board had therefore concluded it was not in a position to take forward my request in relation to extending the termination of the Red Sky contracts to allow an open competition for the contracts to be undertaken with immediate effect.

Separately, by email to my official, the NIHE answered my question in relation to the Administrator's ability to continue and advised my official that the Administrator was only able to provide a service up to 31 July 2011 and that this would not meet the NIHE's specifications or those specified by me.

The Permanent Secretary therefore recommended that I should advise the Housing Executive to move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants. In his submission he also advised me that this may be raised at the Executive Committee meeting on 7 July 2011.

I considered this advice and subsequently wrote to the Chairman on 7 July 2011 confirming 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. I also issued a press release on 7 July 2011 which stated that I continued to have concerns about how maintenance contracts were managed and that I raised these concerns at the Executive meeting and they were shared by Executive colleagues.

**8. Letter of 7 July 2011 from the Minister to the Chairman of the NIHE confirming that the NIHE should proceed with the termination of the Red Sky contract on 14 July and reassign the work to adjacent contractors.**

As previously referred to, following my Permanent Secretary's briefing on the 6 July 2011 in relation to the Chairman's letter to me on 5 July 2011, my official provided a draft reply from me to the Chairman. The accompanying submission records "I understand that the decision is that the Housing Executive move forward with their proposals to re-assign contracts to adjacent contracts to ensure continued provision of services to tenants". I subsequently issued the reply to the Chairman on 7 July 2011 confirming 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.



Northern Ireland  
Assembly

Appendix 4

# DSD/NIHE Correspondence and Memorandum



# DSD Letter 14.03.14

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Dr Kevin Pelan  
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Committee for Social Development  
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Parliament Buildings  
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Belfast BT4 3XX

14 March 2014

Dear Kevin

### **Social Development Committee Inquiry – Phase 3**

Thank you for your letter dated 26 February 2014 in which you requested information from the Department and the Housing Executive in relation to Phase 3 of the Inquiry. You have also requested that information is provided when it becomes available.

We are still liaising with the Housing Executive for documents and still searching the departmental records in relation to the requests in your letter. However, in relation to the requests listed below, the documents now available for these are attached. I have indicated where the search for documents is ongoing.

Please find attached in the first instance documents in relation to the following:-

2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
  - the NIHE Board;
  - the Ministers for Social Development (former and present);
  - the Ministers' Special Advisers
  - senior DSD and NIHE officials.

**Please see PDF document attached. Search for other documents is ongoing.**

3. Copy of all correspondence between the Minister, Mr Brimstone and DSD and NIHE Senior Housing Officials and Ms Jenny Palmer in respect of the decision by the NIHE Board to terminate the Red Sky contact.

*The Department does not have any documents in relation to Ms Jenny Palmer and the Red Sky contract.*

*The Housing Executive does not appear to have any documents in relation to Ms Jenny Palmer and the Red Sky contract but are still checking.*

4. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 28 April 2011. The meeting was to discuss Red Sky at the office of the Chairman of the NIHE. Those present included: Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA, Stewart Cuddy Acting Chief Executive, Dr John McPeake- Director of Housing & Regeneration and Acting Deputy Chief Executive

*Please see PDF document attached.*

5. Copy of all documentation, including draft responses, accompanying submissions etc regarding the letter from Robin Newton MLA to the Minister on 17 May 2011 and the Minister's response dated 31 May 2011.

*Please see PDF document attached for Number 5 and 6.*

6. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 27 June 2011 - Meeting between representatives of Red Sky, Minister McCausland, Peter Robinson, Sammy Douglas, Robin Newton, Jim Wilkinson and Michael Sands.

*Please see PDF document attached for Number 5 and 6.*

*Please note legal advice has not been included. However, the Minister did advise the NI Assembly on 8 July 2013 of the following;*

*"Before the meeting took place, legal advice was sought from the departmental solicitors. I sought that advice in the light of the fact that I was being asked to meet individuals from a company in administration, and I wanted to be assured of the probity of my actions. It advised me that Ministers may meet such persons as they choose."*

7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.

*Please see PDF document attached. The note of the meeting on 30 June 2011 refers to a meeting on 28 June 2011. We are searching for any documents in relation to this meeting.*

8. Copy of the ASM Horwath investigation commissioned by the NIHE in 2009.

*Please see PDF document attached.*

10. All correspondence between Red Sky's administrators and DSD and NIHE – particularly any correspondence in relation to the purchase of contracts.

*Please see PDF document attached. Search for other documents is ongoing.*

11. Agenda and all papers produced for the papers and minutes of the NIHE Board meeting on Tuesday 5 July 2011

*Please see PDF document attached.*

12. All correspondence between Red Sky and the Minister and his Special Adviser from May 2011.

*Please see PDF document attached.*

14. Copies of the letters from the BBC to Minister McCausland and Mr Brimstone in November 2012 in connection with the Spotlight investigation. These letters were referred to in the letters of 7 June 2013 from the BBC to Minister McCausland and Mr Brimstone.

*Please see PDF document attached.*

- 15 The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts

*Please see PDF document attached. Search for other documents is ongoing.*

16. Agenda and Minutes of the Performance Review meetings between Minister McCausland and the Chair of the NIHE Board from May 2011 and 2012. Including all correspondence between Minister McCausland and the NIHE as a result of these meetings

*Please see PDF document attached.*

I hope this information is helpful.

Yours sincerely

A handwritten signature in black ink that reads "Susan McCarty". The signature is written in a cursive style with a large, sweeping flourish at the end.

Susan McCarty

## DSD Letter 03.04.14

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Committee for Social Development  
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3 April 2014

Dear Kevin

### **Social Development Committee Inquiry – Phase 3**

Thank you for your letter dated 26 February 2014 in which you requested information from the Department and the Housing Executive in relation to Phase 3 of the Inquiry. I forwarded part of the information you requested on 14 March and now attach further information.

Please find attached information and documents in relation to the following:-

3. Copy of all correspondence between the Minister, Mr Brimstone and DSD and NIHE Senior Housing Officials and Ms Jenny Palmer in respect of the decision by the NIHE Board to terminate the Red Sky contact.

*Letter of 14 March refers. The Housing Executive has advised they have no documents in relation to Ms Jenny Palmer and the Red Sky contract.*

7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.

*Please see PDF document attached. Documents were previously forwarded on 14 March 2014.*

*The note of the meeting on 30 June 2011 previously forwarded referred to a meeting on 28 June 2011. The Housing Executive advises that the Chairman and Chief Executive diaries record they met with the Minister on 28th June to discuss Red Sky. They do not have any documents in relation to this.*

*There is no record of a note of the meeting on 28 June 2011.*

*The Housing Executive also advised that there were no meetings on 30th June recorded in either the Chief Executive or Chairman's diaries.*

*However, the note of the meeting attached records their attendance on 30 June 2011.*

*I have attached the screen shots of the Minister's diary for the 28 June and 30 June 2011.*

10. All correspondence between Red Sky's administrators and DSD and NIHE – particularly any correspondence in relation to the purchase of contracts.

*Documents were previously forwarded on 14 March. However, documents in relation to Number 2 may correlate with this request. Search is ongoing.*

13. A copy of the dossier that the former Chairman of the Housing Executive, Mr Brian Rowntree, sent to the PSNI and the Serious Fraud Office in November 2011.

*This information is not available. The Housing Executive advises that their understanding, following legal advice, is that the issues under scrutiny would not be disclosable. The Dossier is in two sections, one relates to land sales and the other Red Sky. In respect of that part relating to land it is clearly of no relevance to the issues under scrutiny. In respect of the section relating to Red Sky it post-dates the making of the decisions in respect of the award or modification. The report focuses on the response maintenance contract management procedure which can reasonably be said not to be relevant to the issues.*

15. The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts

*Please see PDF document attached. Documents in relation to the first and second meetings will be forwarded shortly.*

17. All correspondence in respect of the outcome of the internal investigation in May 2013 which found that contract management weaknesses led up to £18m of overpayments. In particular correspondence between:

- The NIHE and Senior DSD officials
- Senior NIHE officials and the NIHE Board
- Senior DSD and NIHE officials and the Minister
- The Minister and the NIHE Board

*Please see PDF document attached. I spoke to you on 26 March about the appropriateness around the provision of this documentation at this time ahead of the rescheduling of the Chairman of the Housing Executive's briefing to the Committee on this issue, which was previously deferred pending the resolution of the negotiations with contractors. I understand that you have advised the DALO that this information relating to Phase 3 of the Inquiry will not be shared with Committee Members at this time and should be forwarded.*

18. All correspondence in respect of the decision by the NIHE Board to commission Campbell Tickell to review the organisation's planned maintenance contracts in June 2013: In particular correspondence between:

- The NIHE and Senior DSD officials
- Senior NIHE officials and the NIHE Board
- Senior DSD and NIHE officials and the Minister
- The Minister and the NIHE Board

*Please see PDF document attached. I spoke to you on 26 March about the appropriateness around the provision of this documentation at this time ahead of the rescheduling of the Chairman of the Housing Executive's and the Permanent Secretary's briefing to the Committee on this issue, which was previously deferred pending the resolution of the negotiations with contractors. I understand that you have advised the DALO that this information relating to Phase 3 of the Inquiry will not be shared with Committee Members at this time and should be forwarded.*

I hope this information is helpful and I will write to you again shortly in relation to the outstanding information.

Yours sincerely

A handwritten signature in black ink, appearing to read "Susan McCarty". The signature is fluid and cursive, with a large loop at the end of the last name.

Susan McCarty

## DSD Letter 11.04.14

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Belfast BT4 3XX

11 April 2014

Dear Kevin

### **Social Development Committee Inquiry – Phase 3**

Thank you for your letter dated 26 February 2014 in which you requested information from the Department and the Housing Executive in relation to Phase 3 of the Inquiry. I forwarded part of the information you requested on 14 March and 3 April and now attach further information.

Please find attached further documents and information in relation to the following:-

2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
  - the NIHE Board;
  - the Ministers for Social Development (former and present);
  - the Ministers' Special Advisers
  - senior DSD and NIHE officials;

In relation to your request for an update on the Department's Fact Finding exercise in respect of the Minister's Special Adviser Stephen Brimstone, this is an internal departmental matter relating to a member of staff. Therefore, it would not be appropriate at this time to provide a commentary on the matter. However, at the conclusion of the matter it is the Minister's intention to inform the Committee of any outcome.

I hope this information is helpful. There are further documents in relation to numbers 1, 2, 9 and 15 which I will forward to you as soon as possible.

Yours sincerely



Susan McCarty

## DSD Letter 15.05.14

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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

15 May 2014

Dear Kevin

### **Social Development Committee Inquiry – Phase 3**

Thank you for your letter dated 26 February 2014 in which you requested information from the Department and the Housing Executive in relation to Phase 3 of the Inquiry. I forwarded part of the information you requested on 14 March, 3 April and 11 April and now attach further documents.

Please find attached further documents in relation to the following requests:-

1. All correspondence between the former Minister for Social Development (Alex Attwood) and NIHE Senior Officials regarding the NIHE contract management regime. This should include but not be limited to correspondence relating to the Minister's decision to carry out a review into the NIHE in October 2010.
2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
  - the NIHE Board;
  - the Ministers for Social Development (former and present);
  - the Ministers' Special Advisers
  - senior DSD and NIHE officials;
9. Copy of all correspondence regarding the outcome of the ASM Horwath and VB Evans investigation and the Repairs Inspection Unit Investigation. This should include correspondence between the following parties:
  - NIHE Officials
  - DSD Officials
  - The Ministers for Social Development (former and present)
  - Red Sky Ltd.

15. The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts.

Please note as these documents relate to a previous administration, these should be handled in line with the Guidance on Assembly Committees, Annex B: Categories of Information which may Need to be Handled Sensitive: para 10.

I hope this information is helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read "Susan McCarty". The signature is fluid and cursive, with a large loop at the end.

Susan McCarty

# Letter to DSD 26.02.14

**Committee for Social Development**

Room 412  
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Our Ref: CSD/ 022/2013/CMcC

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast BT7 2JB

26 February 2014

Dear Billy,

**Committee Inquiry – Request for Information under Phase 3**

At the Committee meeting of 13 February 2014, the Committee considered the evidence required under Phase 3 of the Inquiry into allegations arising from the Spotlight Programme.

The Committee agreed that it would write to the Department to request the following:

1. All correspondence between the former Minister for Social Development (Alex Attwood) and NIHE Senior Officials regarding the NIHE contract management regime. This should include but not be limited to correspondence relating to the Minister's decision to carry out a review into the NIHE in October 2010.
2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
  - the NIHE Board;
  - the Ministers for Social Development (former and present);
  - the Ministers' Special Advisers
  - senior DSD and NIHE officials;
3. Copy of all correspondence between the Minister, Mr Brimstone and DSD and NIHE Senior Housing Officials and Ms Jenny Palmer in respect of the decision by the NIHE Board to terminate the Red Sky contact.
4. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 28 April 2011. The meeting was to discuss Red Sky at the office of the Chairman of the NIHE. Those present included: Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA, Stewart Cuddy Acting Chief Executive, Dr John McPeake- Director of Housing & Regeneration and Acting Deputy Chief Executive
5. Copy of all documentation, including draft responses, accompanying submissions etc regarding the letter from Robin Newton MLA to the Minister on 17 May 2011 and the Minister's response dated 31 May 2011.

6. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 27 June 2011 - Meeting between representatives of Red Sky, Minister McCausland, Peter Robinson, Sammy Douglas, Robin Newton, Jim Wilkinson and Michael Sands.
7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.
8. Copy of the ASM Horwath investigation commissioned by the NIHE in 2009.
9. Copy of all correspondence regarding the outcome of the ASM Horwath and VB Evans investigation and the Repairs Inspection Unit Investigation. This should include correspondence between the following parties:
  - NIHE Officials
  - DSD Officials
  - The Ministers for Social Development (former and present)
  - Red Sky Ltd.
10. All correspondence between Red Sky's administrators and DSD and NIHE – particularly any correspondence in relation to the purchase of contracts
11. Agenda and all papers produced for the papers and minutes of the NIHE Board meeting on Tuesday 5 July 2011
12. All correspondence between Red Sky and the Minister and his Special Adviser from May 2011.
13. A copy of the dossier that the former Chairman of the Housing Executive, Mr Brian Rowntree, sent to the PSNI and the Serious Fraud Office in November 2011.
14. Copies of the letters from the BBC to Minister McCausland and Mr Brimstone in November 2012 in connection with the Spotlight investigation. These letters were referred to in the letters of 7 June 2013 from the BBC to Minister McCausland and Mr Brimstone.
15. The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts
16. Agenda and Minutes of the Performance Review meetings between Minister McCausland and the Chair of the NIHE Board from May 2011 and 2012. Including all correspondence between Minister McCausland and the NIHE as a result of these meetings.
17. All correspondence in respect of the outcome of the internal investigation in May 2013 which found that contract management weaknesses led up to £18m of overpayments. In particular correspondence between:
  - The NIHE and Senior DSD officials
  - Senior NIHE officials and the NIHE Board
  - Senior DSD and NIHE officials and the Minister
  - The Minister and the NIHE Board

18. All correspondence in respect of the decision by the NIHE Board to commission Campbell Tickell to review the organisation's planned maintenance contracts in June 2013: In particular correspondence between:

- The NIHE and Senior DSD officials
- Senior NIHE officials and the NIHE Board
- Senior DSD and NIHE officials and the Minister
- The Minister and the NIHE Board

The Committee also requested an update on the Department's Fact Finding exercise in respect of the Minister's Special Adviser Stephen Brimstone.

To assist the Committee with its Inquiry, we would appreciate if this information is provided to the Committee as soon as possible. To assist with the work of the Inquiry, we would appreciate if the information is forwarded to the Committee as soon as it is available, rather than information being delayed pending the collation of all documents.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

## DSD Letter 06.06.14

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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
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Belfast BT4 3XX

6 June 2014

Dear Kevin

### **Social Development Committee Inquiry – Phase 3**

I refer to our meeting on 28 May to discuss Phase 3 of the SDC Inquiry.

At the meeting we discussed the provision of a memorandum from the Department for Phase 3 and I now attach draft terms of reference for consideration.

Yours sincerely



Susan McCarty

## Draft

### Terms of Reference – Social Development Committee Inquiry – Phase 3 Memorandum

#### 1. Background

The Committee for Social Development Terms of Reference for the Inquiry are:

- i. Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.*
- ii. Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing.*
- iii. The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

*Should the Committee identify any evidence of corruption in relation to the operation of NIHE maintenance contracts and/or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.*

Phase 3 of the Inquiry will consider:

*“Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.”*

#### 2. Purpose

In line with Phase 3 of the SDC Inquiry, to develop and prepare a memorandum which sets out the departmental activities and interaction with the Housing Executive in relation to the award, modification and cancellation of NIHE maintenance contracts. This is to enable the Social Development Committee to interpret the documents listed at Annex A.

#### 3. Scope

In line with Phase 3 of the SDC Inquiry, the memorandum will set out the relevant actions and communications etc between the Department and the Housing Executive in relation to the award, modification and cancellation of NIHE maintenance contracts since October 2010.

#### 4. Objectives

In line with Phase 3 of the Committee’s terms of reference, the objectives are:

- To provide a contextual overview to the Committee by way of a memorandum setting out the actions and communications etc between the Department and the Housing Executive in relation to the award, modification and cancellation of NIHE maintenance contracts.
- To provide the Committee with the relevant documents associated with the memorandum.
- To assist the Committee to interpret the context of the key documents and information provided.
- To assist the Committee to identify any other key documents or information they require to be made available.
- To ensure the Committee has access to all appropriate information and documentation to enable Phase 3 of the Inquiry to be completed.

**5. Methodology**

- i. Agree the terms of reference.
- ii. Prepare the memorandum in line with the agreed terms of reference.
- iii. Provide a timeline of key events.

**6. Timescales**

To be completed by 22 August 2014

## Documents requested by SDC

## Annex A

1. All correspondence between the former Minister for Social Development (Alex Attwood) and NIHE Senior Officials regarding the NIHE contract management regime. This should include but not be limited to correspondence relating to the Minister's decision to carry out a review into the NIHE in October 2010.
2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
  - the NIHE Board;
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  - the Ministers' Special Advisers
  - senior DSD and NIHE officials;
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5. Copy of all documentation, including draft responses, accompanying submissions etc regarding the letter from Robin Newton MLA to the Minister on 17 May 2011 and the Minister's response dated 31 May 2011.
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7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.
8. Copy of the ASM Horwath investigation commissioned by the NIHE in 2009.
9. Copy of all correspondence regarding the outcome of the ASM Horwath and VB Evans investigation and the Repairs Inspection Unit Investigation. This should include correspondence between the following parties:
  - NIHE Officials
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  - The Ministers for Social Development (former and present)
  - Red Sky Ltd.
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12. All correspondence between Red Sky and the Minister and his Special Adviser from May 2011.

- 
13. A copy of the dossier that the former Chairman of the Housing Executive, Mr Brian Rowntree, sent to the PSNI and the Serious Fraud Office in November 2011.
  14. Copies of the letters from the BBC to Minister McCausland and Mr Brimstone in November 2012 in connection with the Spotlight investigation. These letters were referred to in the letters of 7 June 2013 from the BBC to Minister McCausland and Mr Brimstone.
  15. The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts
  16. Agenda and Minutes of the Performance Review meetings between Minister McCausland and the Chair of the NIHE Board from May 2011 and 2012. Including all correspondence between Minister McCausland and the NIHE as a result of these meetings.
  17. All correspondence in respect of the outcome of the internal investigation in May 2013 which found that contract management weaknesses led up to £18m of overpayments. In particular correspondence between:
    - The NIHE and Senior DSD officials
    - Senior NIHE officials and the NIHE Board
    - Senior DSD and NIHE officials and the Minister
    - The Minister and the NIHE Board
  18. All correspondence in respect of the decision by the NIHE Board to commission Campbell Tickell to review the organisation's planned maintenance contracts in June 2013: In particular correspondence between:
    - The NIHE and Senior DSD officials
    - Senior NIHE officials and the NIHE Board
    - Senior DSD and NIHE officials and the Minister
    - The Minister and the NIHE Board

## DSD Letter 01.07.14

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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

1 July 2014

Dear Kevin

### **SDC Inquiry Phase 3 - Contact Details**

Thank you for your letter dated 13 June 2014 in which you ask for advice on how to obtain contact details, or what process you need to follow, in order to write to some of the former Housing Executive management team. The Committee would like to write to:-

- Mr Paddy McIntyre
- Mr Stewart Cuddy
- Dr John McPeake
- Mr Colm McCaughley
- Ms Dolores Ferran
- Mr Brian Rowntree

The Housing Executive has advised that in relation to supplying addresses of former employees and the former Chairman they need to ensure they comply with legal obligations relating to data protection. Therefore, in order to assist the SDC, the Housing Executive has offered to act as a conduit, in the first instance, and forward the relevant letters from SDC to the individuals at their home address, by recorded delivery. In the letters you may also wish to consider requesting that the individuals provide their addresses to you.

However, in relation to Dolores Ferran, she is still currently a Housing Executive employee and her address is The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB and her email address is Dolores.Ferran@nihe.gov.uk.

You have also requested contact details for Heather Cousins, former Deputy Secretary within the Department. Her address is Department of Employment and Learning, Adelaide House, 39–49 Adelaide Street, Belfast, BT2 8FD and her e-mail address is Heather.Cousins@delni.gov.uk.

In addition you have requested details of who held the position of Director of Corporate Services in 2011/12. This position was held by Clark Bailie who was acting Director from February 2011 to September 2011. Clark is the current Director of Finance within the Housing Executive and his address is The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB and his email address is Clark.Bailie@nihe.gov.uk. From September 2011 to March 2012 this position was held by Stewart Cuddy.

Finally, in relation to your request about investigations, I will write to you separately on this issue.

I trust this is helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read "Susan McCarty". The signature is fluid and cursive, with a large loop at the end of the last name.

Susan McCarty

## Letter to DSD 13.06.14

### **Committee for Social Development**

Room 284  
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Our Ref: CSD/022/2013/2/SK

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast BT7 2JB

13 June 2014

Dear Billy,

Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions

In preparation for Phase 3 of the Committee's inquiry, I would be grateful if you could advise me how I would obtain contact details or what process I would need to follow in order to write to some of the former NIHE management team.

The Committee would like to write to the following former senior NIHE officials:

- Mr Paddy McIntyre
- Mr Stewart Cuddy
- Dr John McPeake
- Mr Colm McCaughley
- Ms Dolores Ferran
- Mr Brian Rowntree

The Committee may also wish to contact the former NIHE Director of Corporate Services Division (the person who would have held this post in 2011/12). Can you advise who this is?

I would also be grateful if you could advise whether you can provide contact details for Ms Heather Cousins, former senior DSD official.

Finally, could you advise me of any Departmental officials who are the subject of ongoing investigations, conducted by either the Department or by the PSNI, relating to any issues relevant to the Committee's inquiry.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan

Clerk, Committee for Social Development

## DSD Letter 21.08.14

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Dr Kevin Pelan  
Assembly Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX      21 August 2014

Dear Kevin

**SDC Inquiry Phase 3**

Please find attached the memorandum in relation to Phase 3 of the Inquiry.

I hope this is helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Susan McCarty', with a large, stylized flourish at the end.

Susan McCarty

# DSD Inquiry Phase 3 Memorandum

## Department for Social Development Committee for Social Development - Inquiry Phase 3 - Memorandum

20 August 2014

### Contents

1. Background and context
2. Key contract management issues and departmental oversight in relation to contract management
3. History of contract problems and Red Sky contract
4. Termination of Red Sky contract

### Annexes

- a. Terms of reference – Phase 3 Memorandum
- b. Timeline of events
- c. Abbreviations

## 1. Background

- a) The Social Development Committee (SDC) Terms of Reference for the Inquiry are:

- i. *Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.*
- ii. *Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing.*
- iii. *The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

*Should the Committee identify any evidence of corruption in relation to the operation of NIHE maintenance contracts and/or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.*

- b) Phase 3 of the Inquiry will consider:

*“Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.”*

## 2. Context

- a) It was agreed that the Department for Social Development (DSD) would develop and prepare a memorandum, in line with Phase 3 of the Committee's terms of reference,
- b) Terms of reference for the memorandum are attached at **Annex A**.

## 2. Key contract management issues and departmental oversight in relation to contract management

### **Review of Governance in the NIHE and Gateway Review 2010**

1. From the Spring of 2010 there was a growing number of concerns in relation to the Northern Ireland Housing Executive's governance and contract management regime that culminated in the then Minister, Alex Attwood, commissioning in October 2010 a review of Governance in the Housing Executive. This followed a series of internal and external investigations into the Housing Executive which raised concerns that its governance systems were not sufficiently robust.
2. Therefore, the Permanent Secretary, in October 2010, asked the Department's Senior Internal Auditor to lead a team to examine and report on whether:
  - the information and structure was available to the Board to ensure that it did and could: effectively identify and manage risk; prevent and detect fraud and error; hold senior managers to account; and ensure that the organisation operated and would operate at the highest standards of Corporate Governance;
  - there were adequate 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 had, or had 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;
  - the seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership – were being effectively implemented throughout the organisation.
3. A major part of the Review was carried out by a team of NI Civil Service specialists, headed by the Department's Senior Internal Auditor.
4. In addition, external specialist assistance was secured through the Central Procurement Directorate, Department of Finance and Personnel, for a Gateway Review (also known as a Healthcheck) of procedures for letting and managing EGAN contracts, including controls over the prevention and detection of fraud and error. The Gateway Review was carried out by independent experts in this field and the scope of the Gateway Review was:

#### Establishment of Contracts

- to review the procurement strategy for maintenance, repairs and support works;
- to review the method for letting of contracts including consistency of approach and best practice application;
- to assess if types of contracts used were appropriate for the services being delivered; and
- to determine if the contract terms provided adequate protection from poor performance.

#### Management of Contracts

- to review the framework under which contracts were managed to consider if management of contracts was in line with best practice;

- to consider whether or not a consistent method of contract management was applied to different types of procurement i.e. response maintenance versus adaptations or scheme works (e.g. kitchen replacement);
  - to identify the key controls in place to manage contracts to ensure that quality of works undertaken was monitored and price variations were identified, valued and approved;
  - to consider whether or not current management information on the delivery of contracts was adequate to support robust contract management and the degree to which this was used to inform management decision making processes and systems;
  - to establish what information was received by the Board and/or audit committee and if it was fit for purpose;
  - to assess whether staff had the required knowledge and skills and were supported by appropriate training processes in order to effectively manage contracts;
  - to make any recommendations on further actions to improve outcomes; and
  - to recommend further reviews considered necessary and the timescale.
5. An oversight panel chaired by the Permanent Secretary, which also included independent membership, was reported to by the audit review team on an ongoing basis. The purpose of this work was to provide a quick, robust, searching assessment of where the Housing Executive was on contracts and governance and, critically, where it needed to be.
6. The Review of Governance in the Housing Executive was completed in December 2010 and both it and the Gateway Review were published in January 2011. The then Minister, Alex Attwood, on 25 January 2011, made an oral statement in the NI Assembly in relation to the findings.
7. There were 75 recommendations in the Governance Review of which 16 related to critical control issues and 59 related to developing existing policies and procedures to embrace latest best practice. The report acknowledged “much evidence of good practice”, that “management are being challenged and held to account” and had “appropriate structures to effectively detail and manage risk”.
8. However, the Review Team identified a range of critical control issues which weakened the Governance structures and their effective operation. Recommendations in relation to this included: formal Terms of Reference to be developed for the Board and all Management Committees; a comprehensive review of the Board’s Standing Orders and Scheme of Delegations; and a review of Risk Management arrangements.
9. In relation to land and property, the procurement of repairs, maintenance, miscellaneous works and adaptations, there were also a number of recommendations. For example, whilst the control framework established by the Housing Executive provided adequate controls over performance of maintenance works and the prevention and detection of fraud and error, there were a number of areas where controls could be strengthened. These included recommendations in relation to the level of information provided to both the Executive’s Board and Chief Executive Business Committee; greater use of the work of the Repairs Inspection Unit; and a review of the Key Performance Indicators used to measure the performance of Contractors.
10. In relation to Human Resources, the review found that the Housing Executive had a number of effective Human Resources systems and processes in place, but there was imbalance in the workforce, particularly in relation to the ageing profile of the organisation which, if not addressed, created a risk that the organisation would lose significant knowledge, skills and experience.
11. In relation to the Gateway Review, the Specialist Team concluded that, whilst enthusiastically embracing the ‘partnership’ principles of Egan contracts, the Housing Executive did not

give attention to the clear objectives set out in the Egan report or the nature of some of the maintenance contracts. The failure to deliver fully Egan objectives was also partly a consequence of the nature of contracts which were drafted to implement the change which meant that significant reliance was placed on mutual trust and cooperation between contractors and client.

12. A major change in management style was effected with the move to Egan contracts and the Team found that the day to day contract management of suppliers had been, and was, conducted in an appropriately non-adversarial manner, consistent with good practice. It appeared that contract management, over the ensuing years, had been localised to the point of service delivery and became reliant on the effectiveness of relationships with contractors, rather than having an underpinning contractually supported and enabled performance regime.
13. The Team concluded that the culture of non-adversarial management, as the primary technique for managing contractor behaviour, had created a weakness in the system which needed to be addressed. Fourteen recommendations were made which included:
  - that the Housing Executive produced and adopted a new corporate procurement vision and strategy;
  - that all future contracts were drafted on the basis of the detail set out in the procurement strategies and that there was a report produced to confirm that they met the need and, insofar as can be determined, they would be enforceable;
  - that the contract manager ensured that processes were put in place to recognise and collect the evidence that may be needed to enforce any provision of the contract.
14. In line with the Minister's statement on 25 January 2011, a number of oversight arrangements were then put in place to ensure the recommendations in both reviews were appropriately implemented. These were:
  - Oversight Implementation Group, chaired by the Permanent Secretary;
  - Accountability Group, chaired by the Permanent Secretary; and
  - Performance Review Meetings, chaired by the Minister.
15. Following receipt of the Review of Governance in the Housing Executive and the Gateway Review Reports, the Housing Executive was tasked with the preparation of an Implementation Plan and with putting in place an oversight framework to ensure the recommendations were implemented.

#### **Housing Executive Framework**

16. The Housing Executive oversight arrangements included the Housing Executive Oversight Board to approve and oversee the implementation plans and to address any cross cutting issues that may arise. The Board met fortnightly, chaired by the Chief Executive and members included Housing Executive Directors, and Board members. The Board also reported on progress to the Department's Oversight Implementation Group. (see para 23)
17. The Housing Executive also appointed a full time Programme Manager to oversee the implementation and three Housing Executive Project Boards were established on;
  - Procurement and Contract Management;
  - Good Governance; and
  - Personnel Strategies:

#### **Housing Executive Implementation Plan**

18. The Permanent Secretary, in February 2011, then asked a Gateway Review team member to conduct a short review of the Housing Executive's draft Implementation Plan. His report

advised that the Plan did capture all of the recommendations made in the reviews with very high level target milestone dates for resolution. He was reasonably satisfied that there was an overall framework being put in place to deliver the recommendations and that the overarching Governance Structures for the change programme and its individual projects appeared fit for purpose, with significant management engagement and Senior Responsible Officers (SROs) identified for each individual project. However, more detailed planning work was to be completed, for example, the development of the Project Implementation Documents (PIDs) which was to be achieved within the following three - four weeks.

19. The Housing Executive Board, at its meeting on 23 February 2011, approved the Implementation Plan which indicated that the overall framework was in place along with the appropriate oversight arrangements to ensure the recommendations from the Review of Governance and the Gateway Review were implemented appropriately.
20. The Implementation Plan was forwarded to the Department and the Permanent Secretary then submitted this to the then Minister, Alex Attwood, and also met with the Minister to discuss this.

#### **DSD Oversight Arrangements**

21. An Oversight Implementation Group was set up and chaired by the Permanent Secretary and included cross departmental and independent membership. The remit of the Oversight Implementation Group was to:
  - 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 were appropriately implemented; and
  - provide broad strategic advice and guidance.
22. The Oversight Implementation Group first met on the 18 February 2011 and considered in detail the draft Implementation Plan provided by the Housing Executive. The Housing Executive was then advised of the views of the Group including:
  - The Housing Executive need to have a more strategic approach to procurement. The focus rather, than on 'Egan,' should be on Procurement and Contract Management.
  - The draft implementation plan should set out in more detail the reporting arrangements both in the Housing Executive and to the Department.
  - The Housing Executive should consider external input in relation to the review of Risk Management arrangements and how it aligns with the HM Treasury Orange Book: Management of Risk – Principles and Concepts.
  - The Housing Executive should consider how risk is dealt with and how the quality of data presented to the Board is interrogated.
  - The Procurement and Contract Management Board would benefit from external expertise and the Oversight Group will consider suitable nominees.
  - Recognition that the implementation of the Gateway Review is a major change exercise affecting a wide range of areas in the Housing Executive.
  - Monitoring and evaluation processes should be built in to the Plan to ensure recommendations are implemented and new processes are embedded

23. The Housing Executive was also advised that the reporting arrangements should include the provision of a monthly situation report to the Oversight Implementation Group and attendance at meetings, when required, to update on issues/progress.
24. It was also agreed that the DSD Director of Housing Division would become a member of the Housing Executive's Oversight Board and the Head of DSD Housing Director's Office would liaise regularly with the Housing Executive's Programme Manager.
25. The DSD Oversight Group met regularly and the Housing Executive's then Acting Chief Executive attended the meetings to provide reports and an update on the implementation of the recommendations. Whilst acknowledging that the Housing Executive had set aside the resources to take this forward, the Oversight Group reinforced to the Housing Executive the need to take forward the recommendations proficiently and within the necessary timescales, particularly in relation to procurement and contract management.
26. The Permanent Secretary also held an Accountability meeting with the Chairman, Vice Chairman and Chief Executive in April 2011 to discuss a number of key strategic issues, which included the Gateway Review. The then Minister, Alex Attwood, also held performance review meetings with the Chairman and Chief Executive on 23 February 2011 and 3 May 2011.
27. A Gateway Review 3 was then carried out in October 2011 which made seven recommendations and confirmed that the project had made considerable progress and, subject to the recommendations from the review, it was considered that this would proceed to a successful conclusion.
28. At its meeting in November 2011, taking account of the progress made, the Oversight Group agreed it was time to take stock in relation to the continued need for their oversight role and that the Housing Executive would take this forward, with monitoring of the implementation of the outstanding recommendations through the Accountability meetings.

#### **Response Maintenance concerns**

29. During this period, on taking up post in May 2011, Minister McCausland then expressed his concerns about the issue of contract management, both on foot of briefing on the governance review findings and implementation, and on the issues leading to the termination of the Red Sky contract in July 2011. In light of his continuing concerns that the issues which led to the termination of the Red Sky contract by the Housing Executive may be present in other contracts which had not been the subject of any full investigation, he asked that a forensic investigation was carried out of a sample of Housing Executive maintenance contracts to provide him with assurances in relation to the other contracts, the quality of services to tenants and the proper use of public funds. (The subsequent findings and the evidence in the ASM report demonstrated that there were considerable issues and shortcomings in relation to the Housing Executive's management of response maintenance contracts.)
30. The Permanent Secretary, who had chaired the Oversight Group, still had concerns in relation to the effective implementation of the recommendations made in the 2010 Governance Review in relation to the management of maintenance contracts. In particular, he had concerns that the Housing Executive was not making full use of its internal assurance regime to improve contract management. As part of its monitoring regime, the Department had received assurances from the NIHE Chief Executive that the recommendations were being implemented effectively.
31. The Permanent Secretary wrote to the Chief Executive, in January 2012, about contract management arrangements and wrote again in April 2012 to advise of his serious concerns in relation to the implementation of the governance arrangements in place, particularly in relation to contract management. He increased the Accountability meetings from twice yearly to quarterly and advised that the meetings should now be between Accounting Officers, instead of with the Chairman.

32. The Permanent Secretary also wrote to the Chief Executive on 8 May 2012 following a discussion he had with the NI Audit Office that morning where they provided him with a copy of a letter from the Audit Office to the NIHE Chief Executive on 26 April 2012. The letter was in relation to further information required on a number of areas relating to work in progress by the NIHE Corporate Assurance Unit and NIHE Internal Audit. The Audit Office in the letter advised that if this information was not available by the 1 June 2012 there was an increased risk that they would qualify or disclaim the audit opinion for 2011-12. The Permanent Secretary asked the Chief Executive for all draft internal audit and draft inspection reports and a list of those outstanding by 10 May 2012.
33. The Permanent Secretary then wrote again on 14 May 2012 in relation to the reports on the inspection of kitchen schemes which identified a range of findings relating to work not being done to contract specifications and that the reports did not quantify the levels of overcharging. The Permanent Secretary also requested sight of the report on the kitchen replacement scheme in Ballynahinch.
34. The Permanent Secretary then wrote on 17 May 2012 to the then Chairman seeking a meeting to discuss his concerns. The Permanent Secretary subsequently met separately with both the Chief Executive and the Chairman to discuss his concerns in detail.
35. The Permanent Secretary then wrote again to the Chief Executive on 29 May 2012 in relation to his concerns about the information provided in the Stewardship Statements by the Chief Executive to the Department.
36. Therefore, the evidence gave the Department cause for concern about the effectiveness of the implementation, especially with reference to maintenance contract management. As a result of these concerns, the Permanent Secretary instructed the Department's Senior Internal Auditor to conduct an independent review of the actions taken by NIHE to implement those particular recommendations relating to the operating of the independent inspection function. The review commenced on Wednesday 30 May 2012.
37. The Permanent Secretary also suggested, on 7 June 2012, that the Minister's scheduled performance review meeting with the then Chairman and the Chief Executive should be brought forward to 26 June 2012 where these issues were discussed in detail and the Minister asked the then Chairman to consider a number of issues. The then Chairman wrote to the Minister on 29 June 2012 in relation to the issues raised at the Performance Review meeting.
38. The Chairman submitted his resignation to the Minister on 29 June 2012. (the then Vice-Chairman was appointed by the Minister as Acting Chairman from 9 July 2012 to 4 November 2012).
39. The Minister then made an oral statement in the NI Assembly on 3 July 2012 in relation to the Housing Executive management of contracts, the outcome of the review by the DSD Internal Auditor and the introduction of his special accountability measures.

**DSD Internal Audit independent review of the actions taken by NIHE to implement those particular recommendations relating to the operating of the independent inspection function**

40. This review was completed in July 2012 and the scope of the investigation included the following:
  - Repairs Inspection Unit Reports;
  - Scheme Inspection Unit Reports; and
  - Implementation of related recommendations made in the 2010 Government Review.

The aim of the review was to establish the facts in relation to the following objectives:

1. To consider the work undertaken by the Repairs Inspection Unit / Scheme Inspection Unit, their findings and the extent to which management had taken action to deal with issues identified in their reports;
  2. To identify what information the Board had received in relation to the work of the Repairs Inspection Unit/ Scheme Inspection Unit;
  3. To determine why Repairs Inspection Unit reports dating back to November 2011 had not been finalised;
  4. To identify if the Board was aware of any problems with clearance of Repairs Inspection Unit reports;
  5. As appropriate, to identify what action the Board had taken to deal with this issue;
  6. To determine the current methodology under which the Repairs Inspection Unit operated and reported and to clarify the nature of the issue identified by NIHE management with the methodology of the unit and what steps had been taken to resolve this issue in a timely manner;
  7. To determine if the current methodology for the agreement and finalisation of reports was fit for purpose; and
  8. With specific regard to the current draft NIAO report and the issue relating to the scheme inspection report for Ballynahinch, to determine what, if any, changes were made from draft to final report and how the revised figure for contractor error was arrived at.
41. In the opinion of the Review Team, Senior Management within the Northern Ireland Housing Executive had not acted quickly enough to resolve the issue of the agreement of the draft reports from the Repairs Inspection Unit. In expending so much effort in debating the methodology used in producing the reports NIHE had failed to focus on the significant findings in the reports. Time that could have been better spent addressing the issues identified had instead been lost in internal debate.
42. The Review Team welcomed an action plan which had been proposed by the then Chairman in a letter to the Permanent Secretary on 21 June 2012. However, the Review Team considered that it was only in response to the Permanent Secretary's letter of 8 May 2012, that the Chairman and the Chief Executive became aware of the scale of delay in agreeing reports and that a significant number of those draft reports contained a negative classification. In all, eleven of the twelve reports issued in the 8th round of inspections contained a negative rating and of these, 10 remained in draft at the end of June 2012.
43. The Housing Executive advised that the creation of an Intervention Team would ensure that the findings of these reports were addressed within the Districts; however, the Review Team considered that the simplest action to take to send a message to staff on the importance of the independent Corporate Assurance Unit was to issue the reports, as agreed reports.
44. The Review Team was asked to consider the actions taken by the Northern Ireland Housing Executive to implement those recommendations in the 2010 Governance Review which related particularly to the operation of the independent inspection function. The key critical recommendation in the Governance Report relating to the Corporate Assurance Unit was;
- “The Housing Executive should ensure that the work and results of the Repairs Inspection Unit are utilised to the best effect, both as a source of management information for Housing and Regeneration Division but also allow the Chief Executive and the Board to challenge the effectiveness of the management of response maintenance”.*

The recommendation went on to state that;

*“The Board will also wish to ensure, in establishing the Corporate Compliance Unit (Corporate Assurance Unit) that best use possible is made of the information generated by this unit to challenge management, identify areas of concern and direct the work of other review bodies such as internal audit”.*

45. Given the lack of concrete action taken to either ensure agreement of these reports or act on the findings of the reports, prior to May 2012, the Review Team advised that it was hard to avoid reaching the conclusion that the “best use possible” had not been made of this unit or of the information it provided.
46. Finally, with specific regard to objective 8, the Review Team noted that NIHE did not have agreement on the quantum of the overpayment in relation to the Ballynahinch scheme. The Review Team had significant concerns over how this matter had been dealt with by NIHE and recommended that the Department sought confirmation from NIHE as to the total amount of overpayments and the total amount to be written off.
47. The review team considered that the financial implications would be significant if the issues in the Ballynahinch scheme were extrapolated over the potential population of 245 schemes. It was recommended that the Department ensured that NIHE expeditiously concluded its investigation into how this information had been brought to the attention of the Board.
48. The Report was forwarded to the Vice- Chairman on 5 July 2012 to consider any actions to take in line with the Minister’s special accountability measures workplan.

#### **Special accountability measures**

49. Following his oral statement in the NI Assembly on 3 July 2012, the Minister also introduced special accountability measures to bring about improvements efficiently and effectively. These measures took account of the recommendations in the DSD Internal Audit Review and were to enhance significantly the oversight arrangements between the Department and the Housing Executive. For example, in view of the fact that there were significant delays in the implementation of the recommendations in Internal Audit and Repairs Inspection Unit reports, the Department now has sight of all draft Internal Audit reports and Repairs Inspection Unit reports as soon as these are produced, along with a timetable to ensure that the reports and the recommendations are agreed and implemented immediately. There was also an increase in the accountability meetings from quarterly to monthly between the Department and the Housing Executive. The Housing Executive was also required to prepare a workplan for the implementation of the special accountability measures and to submit fortnightly reports to the Department.
50. The Permanent Secretary then met again with the Chief Executive in July 2012 to discuss the issues and the Chief Executive advised that a workplan was being prepared for the Board to take forward the recommendations.
51. The workplan was then submitted to the Minister by the then Acting Chairman on 27 July 2012. The Permanent Secretary discussed the workplan at an Accountability meeting on 1 August 2012 and the Minister then approved the workplan on 7 August 2012 on the basis that this would be monitored by the provision of fortnightly reports to the Permanent Secretary and discussion at the monthly accountability meetings.

#### **NIAO Report and PAC**

52. During this period, the Northern Ireland Audit Office, following significant concerns raised by whistleblowers, MLAs and the media, had also decided to examine the Housing Executive’s management of response maintenance contracts, in view of the seriousness of the problems identified in the management of specific contracts and the potential for important lessons to be learned across the public sector.

53. The Audit Office report was published in September 2012 and focussed on;
- management of response maintenance contracts and termination of the Red Sky contracts;
  - inspection of repairs and maintenance work;
  - whistleblowing and complaints; and
  - contract management and governance in NIHE.
54. This was then the subject of a PAC hearing on 5 September 2012 and the Committee's report was published on 20 March 2013 and the memorandum of reply was laid in the Assembly on 24 May 2013.
55. The Committee, in their report, stated that the management and oversight of the response maintenance service had been abjectly poor. Despite serious problems with the management of response maintenance contracts being evident to NIHE's senior management for many years, nothing was done to address them. The PAC felt that oversight by the Board of NIHE and DSD was also inadequate and significant failings within the organisation were not identified and left unchallenged. The Committee was also very concerned that the weaknesses and failings in the management of response maintenance contracts extended into other areas of NIHE activity, such as planned maintenance and land deals.
56. PAC made 10 recommendations and the implementation of the recommendations is monitored regularly by the Department.

#### **NIHE - Reports to those charged with Governance – NIAO**

57. During this period issues in relation to contract management in the Housing Executive were identified by the NI Audit Office in their annual Report to those charged with Governance.
58. In 2010/11 the Report records that the audit was completed and resulted in a qualified audit opinion which included weaknesses in the control of expenditure on response maintenance. A number of significant weaknesses in relation to planned maintenance were also identified.
59. In 2011/12 the Report records that the Comptroller and Auditor General (C&AG) certified the 2011-12 financial statements with a clear financial audit opinion and a qualified regularity audit opinion. The latter included significant issues relating to contract management of response and planned maintenance.
60. In 2012/13, the Report records that the C & AG certified the 2012-13 financial statements with a clear financial audit opinion and a qualified regularity audit opinion. The latter included significant issues relating to contract management of response and planned maintenance.
61. The 2013/14 Report is not yet available.
62. Monitoring of the Housing Executive's implementation of the priority 1 recommendations from the Report to those charged with Governance is currently a standing agenda item on the monthly progress meeting between the Permanent Secretary and the NIHE Chief Executive.

#### **Planned Maintenance**

63. Issues around the potential overpayments in planned maintenance were identified as far back as early 2010 when the NIHE Scheme Inspection Unit inspected five kitchen replacement schemes. As part of the inspection a review of the Price Product Lists ("PPLs") was conducted on four of the schemes. This review identified a combined potential overcharging by the contractors of £196,422.
64. During July and August 2010 more work was conducted on potential overcharging. Five further schemes were considered and potential overcharging of £513,200 was identified. The

Ballynahinch scheme was one of the schemes inspected during this time and the inspector identified potential overcharging amounting to £79,160.

65. On 7 December 2011 the NIHE Head of Internal Audit presented a paper to the NIHE Audit Committee. “Review of possible overcharging in Planned Scheme Contracts – Kitchen Scheme Replacement” and also on 7 March 2012 the Head of Internal Audit reported to the Audit Committee that he *“has used the Ballynahinch scheme as a worked example to gain an understanding of the process, the controls in place and to determine the likelihood of overpayment.”* Internal Audit recommended that an Independent Quantity Surveyor should perform site visits to kitchens in the Ballynahinch scheme.
66. The Department became aware of this issue on receipt of copies of the relevant minutes of the NIHE Audit Committee.
67. On 24 May 2012 the Department received a draft copy of an NIHE Contract Claims Manager report which determined that the contractor had overcharged by approximately £27,000. However, at that time, the NIHE Scheme Inspection Unit disputed this finding and a final figure was not agreed. NIHE Internal Audit reviewed this again and the figure was identified in December 2012 as £61,124.
68. NIHE then appointed an external resource to carry out a further sampling review, which informed the current estimated £18m potential overpayment figure.
69. These issues were reported on and discussed regularly at the then monthly Accountability meetings held by the Permanent Secretary with the NIHE Chief Executive. The new Chairman of NIHE also advised the Department that he had requested a report for the Board on the overpayments, and the Department had sought that the Board addresses the issues.
70. Following a Board meeting in May 2013, the Chairman of the Housing Executive advised the Minister that an internal report to the Board had indicated a potential £18m had been overpaid to planned maintenance contractors. Minister then made an oral statement in the Assembly on 10 June in relation to this matter and his concerns about the Housing Executive’s management of maintenance contracts.
71. In June 2013 the Board of the Housing Executive then commissioned an external independent review into how the organisation had been dealing with planned maintenance contracts over the last five years following this evidence of substantial over claiming by contractors. The Housing Executive commissioned Campbell Tickell to;
  - review the information received by the Board;
  - confirm whether or not the information was accurate and complete;
  - consider the reliability of the Housing Executive’s information on overcharging;
  - consider the suitability of actions taken to recover the overpayments;
  - consider whether management weaknesses led to this situation; and make recommendation to deal with actions or identified weakness
72. At its Board meeting on 29 October 2013 the Board was advised that the Campbell Tickell report concluded that;
  - shortcomings in management and governance within the Housing Executive have led to a situation where there have been substantial overpayments to contractors on planned maintenance contracts;
  - a lack of understanding and implementation of a new form of partnering contracts was the root causes of the failings;
  - the current situation appears to have improved but is not yet fully satisfactory;
  - they found no evidence of fraud or corruption;

- the sum of over claiming was estimated to be within a range of £9m to £13m; and
- in order to remedy the situation a wide-ranging programme of change and transformation is required.

73. The Chairman of the Board briefed the Minister on 13 November in relation to the findings and then briefed the Social Development Committee on 21 November and also published the report. The Board asked that a new business area was established to focus solely on maintenance contracts and that a separate task force was set up to deal with the overpayments.
74. In relation to the overpayments, the Housing Executive held negotiations with its four planned maintenance contractors since July 2013. A settlement agreement was reached and, based on advice provided by Queen's Counsel, was accepted by the Board of the Housing Executive at its meeting in March 2014, subject to approvals being obtained from DSD and DFP. The initial business case was forwarded to the Department for consideration on 23 May 2014 and, following due diligence and analysis by the Department, a revised business case was subsequently forwarded to DFP to consider on 23 July 2014. This was approved by DFP and the settlement was announced by the Chairman on 5 August 2014 and Minister McCausland also welcomed the conclusion of the negotiations.

#### **Review of Governance in NIHE - Follow-up Report**

75. In September 2013 Permanent Secretary instigated a further governance review by the Department's Head of Internal Audit to assess the outcome of the implementation of the recommendations of the Housing Executive governance review in 2010, the special accountability measures and the ASM Report recommendations. It also looked at the lessons learned by the Housing Executive in respect of the management of response maintenance and the extent to which they have been applied to the management of planned maintenance contracts.
76. The objectives of the Follow-up Report were to establish the progress made in implementing the 75 recommendations in the 2010 report on the Review of Governance in the NIHE and the recommended actions in the Work Plan agreed with the NIHE Chief Executive in 2012. In addition, Internal Audit was asked to consider the extent to which lessons learned by NIHE in respect of Response Maintenance, had been applied to the management of Planned Maintenance Contracts.
77. The Report provides an overall summary and conclusion for each of the three objectives. The report also provides a one page summary for each recommendation and items in the Work Plan. These summaries state the original recommendation, the progress NIHE has made and the opinion of the Head of Internal Audit on whether or not sufficient progress has been made to consider the recommendation implemented.
78. The Review Team concluded that the Housing Executive had made progress in implementing the recommendations of the 2010 review and made good progress in implementing the actions in the Ministerial Work Plan. They also concluded that NIHE could be said to have learnt proactively lessons from their experience with Response Maintenance and applied these to Planned Maintenance. However, some of the more cultural issues, that could be seen in Response Maintenance, such as over reliance on contractors, skills and knowledge of staff, culture and structures are ones to which NIHE have taken time to understand. On receipt of the DSD follow up review, the NIHE's Internal Audit prepared a Validation Report for the Chairman which sets out the actions to be taken by the NIHE in relation to any outstanding recommendations and their timescales for completion. These are expected to be completed by the end of 2014.

### **NIHE Structural Reform to Improve Contract Management**

79. In addition to the Department's review of oversight arrangements, the Board of the Housing Executive has taken a number of actions to improve its oversight arrangements of contract management. This has included;
- the implementation of new contracts for response maintenance;
  - training for all maintenance staff on contract management;
  - internal restructuring to bring maintenance contract management within a new asset division;
  - a transformation programme; and
  - the Chairman has led on a fundamental review of the agenda and the format of papers to give the Board clearer sight of contract performance.
80. The NIHE's Internal Audit and Corporate Assurance Unit have merged into a single unit. The new Audit and Assurance department will continue to deliver an independent inspection programme designed to provide assurance on the delivery of planned, response and heating maintenance contracts. The unit will review its inspection methodologies to ensure alignment with the contracts and contract delivery processes as these evolve within the new Asset Management Division. This will be more closely linked to the work of Internal Audit to provide greater, seamless assurance over these key business areas.
81. This alignment will focus and strengthen assurance through active cross-functional participation between professional audit staff and expert maintenance technicians as well as with staff and suppliers. This will enable better intelligence-led governance of reporting business areas and provide strong assurance in that area.

### **Gateway 5**

82. In relation to response maintenance, a Gateway 5 Review: Operations review & benefits realisation was carried from 1st April to 4th April 2014. This found that the Response Maintenance Contracts (RMC) 2 and 3 (operational from August 2012) are delivering improvements against the previous arrangements. These include better contract management, and supplier/contractor performance against KPIs throughout the period of the contract. Individual office performance has notably improved. These improvements are considered to be, in part, a result of the training and changes which have been achieved to date.
83. NIHE has commenced an organisational review which will impact on the overall approach to asset management and the delivery of maintenance support. This will result in an opportunity to refresh the overall vision for the delivery of asset management and the strategy for the procurement of maintenance. This is considered to be a positive approach.
84. In the meantime, there remains an opportunity for significant benefit to both NIHE and their contractors to review and improve the operation of the current contract arrangements and, in particular, the current KPIs. These should aim to:
- reduce the administrative burden of contract management;
  - improve overall performance;
  - provide the opportunity for innovation,
85. It is essential that this is done quickly if the NIHE is to realise the opportunity of including findings in time for inclusion in the phase of response maintenance contracts which are set to be renewed in September 2014 and any subsequent procurements.

86. In line with the original Business case, a reconfirmation of the benefits resulting from this work it will be essential that the Benefits Realisation Plan is updated (ensuring SMART objectives) and its delivery is regular reviewed.
87. A number of the issues raised in previous reports remain along with new items highlighted in this report. These include issues such as contractor administration, contractor sustainability, contract administration costs, performance and supplier management, and TUPE. Based on this situation and the organisational change process within NIHE the review team consider the delivery confidence to be Amber Red. Prompt key actions by the team, when successfully completed will give opportunity for this status to be reviewed by an AAP (Assurance of Action Plan).
88. NIHE has prepared an Action Plan to take forward the Gateway Review 5 recommendations.

### 3. History of contract problems and Red Sky contract<sup>1</sup>

#### **Response Maintenance Contracts - Egan Contracts Background**

1. Before 2001, repairs work for NIHE was undertaken by a large number of single trade contractors. However, in 2001, NIHE adopted the Egan principles for contracting and a pilot scheme was undertaken to let All Trades response maintenance contracts applying these principles. Based on the recommendations of the Egan Report 'Rethinking Construction', this approach included partnering concepts and use of Key Performance Indicators (KPIs). Following the pilot scheme, phased procurements for All Trades contracts were rolled out over the following two years from June 2003. This led to a rationalisation of the number of response maintenance contracts and contractors. At April 2011, there were 16 contractors with 27 contracts.
2. The basis for the costing of maintenance jobs is a schedule of rates (SOR) set by NIHE. Contractors are paid at the SOR plus a percentage uplift; this uplift is set out in the contract between NIHE and each contractor and ranges from zero percent to 45 percent. In addition, during the period of the contract, annual inflationary increases are applied to the uplift and these have ranged from 3.1 percent to 7.6 percent.

#### **Contract management issues**

3. Poor contract management combined with laxity of organisational culture contributed to a range of problems which impact on the delivery of services for tenants and value for money, including:
  - duplicate orders approved despite alerts being raised by NIHE's management systems;
  - post-completion inspections not carried out by District staff but recorded as having been done;
  - poor work not challenged yet approved for payment;
  - excessive hospitality accepted; and
  - maintenance staff who have challenged contractors' performance have, in some cases, not received adequate support from NIHE management.
4. NIAO also raised concerns in their Reports to those Charged with Governance following the audit of NIHE's annual accounts. These included contractor performance issues and non-rotation of Maintenance Officers in Districts. In addition, the Comptroller and Auditor General gave a qualified opinion on the regularity on response maintenance expenditure on the NIHE Annual Accounts for 2010-11 and 2011-12.

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1 Extracts from NIAO Report – NIHE Management of Response Maintenance Contracts September 2012

5. Furthermore, reviews of NIHE contracts identified weaknesses in the performance management regime and KPIs. A review by Internal Audit in 2010 found that:
  - measures had not been objective - only two of the KPIs were calculated using data from the computerised repairs system;
  - measures had not been independently validated - there was no independent validation process in place for District Office assessment of KPIs; and
  - poor performance has been difficult to pursue against contractors - the subjectivity of KPIs and lack of validation process would make it difficult for NIHE to pursue a default of contract case against a contractor.
6. KPIs were reported monthly to NIHE's Housing and Regeneration Review Group. However, these returns were not always complete. Between April 2011 and November 2011, and following the Internal Audit report in 2010 and criticisms in the Office of Government Commerce (OGC) Healthcheck report, the number of KPIs in contracts was reviewed and reduced from nine to six. From November 2011 new contracting processes were introduced by NIHE which were intended to address weaknesses.
7. Under the new arrangements, performance was to be assessed on a monthly basis with an annual review of each contract to monitor overall performance. There would be eight KPIs covering client satisfaction, quality, cost predictability, time predictability and tenant satisfaction. KPI failures may be considered as a breach of contract and damages applied if a cost has been incurred by NIHE. The changes were to be applied to new response maintenance contracts implemented from November 2011. However, letting these contracts was delayed until August 2012 due to a challenge by one of the applicants.
8. NIHE reviewed the performance of the 16 contractors providing response maintenance over the period April 2011 to March 2012 and found:
  - 1 in 5 inspections recorded a failure;
  - for 13 contractors, the fail rate was greater than NIHE's target of 10 percent ranging from 14.8 percent to 32.0 percent;
  - this contrasts with overall rates of 2 percent to 5 percent in the period 2006-07 to 2009-10; and
  - the significant increase is due to accuracy of contractor invoices now being recorded – such errors had not previously been recorded as they were not used as a measure of contractor performance.

### **Red Sky**

9. The contractual relationships between NIHE and Red Sky, including its previous related trading entities, dates back to the mid 1990's. As far back as 1996, NIHE had concerns regarding performance of the maintenance service<sup>2</sup>; these included alleged continual overcharging and claiming for additional works. In February 2000, Spectrum Premier Services (later to amalgamate with two other companies in 2006 to form the Red Sky Group) was awarded four year maintenance contracts for Belfast East (2), Belfast North (6), Belfast Shankill (5), Bangor and two Newtownabbey Districts.
10. Since then, there have been a series of concerns and investigations involving the company. Red Sky was formed in June 2006, with the amalgamation of three companies - Spectrum, Image Technical Services and AJ Kramer.

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2 At that time the company was named Clear It Services.

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## Chronology of events

### **Allegations of impropriety and payments dispute**

In early 2000, a whistleblower alleged that a NIHE Maintenance Officer had a close relationship with the directors of Spectrum and had accepted excessive hospitality from the company, including staying at accommodation in the USA owned by a director of the company and going on a Caribbean cruise with the director. Photographic evidence was provided in support of the allegations. The case was investigated by NIHE Fraud Unit; Spectrum declined to comment.

**Outcome:** NIHE found that the officer had breached the NIHE Code of Conduct. He was disciplined and was to be dismissed. However, following appeal, he was given a final written warning and offered relocation to another post within NIHE. Subsequently, the officer took a career break and later resigned as he was then employed by Spectrum.

In another District, also in 2000, a NIHE Maintenance Officer was dismissed for breaching the NIHE Code of Conduct. The officer had deliberately split a payment to Spectrum, for drainage works, in order to keep payment authorisation limits within his control. There was also evidence of overcharging on this work.

Concurrently, NIHE was in dispute with Spectrum over alleged outstanding payments due to the company. Spectrum initially claimed that £173,000 was being withheld but after scrutiny by NIHE officials, the company revised this to £68,000. NIHE was able to show that £30,000 of this amount had already been paid, £6,000 had been cancelled, £14,000 had been paid under another project reference and £10,000 related to the drainage works which had been subject to investigation. The inaccurate claims were attributed by Spectrum to failures within its accounting system.

### **Award of contracts**

In August 2004, Spectrum was awarded five year maintenance contracts for Belfast East (2) and Belfast South (7).

### **Belfast South investigation**

In November 2005, NIHE received an anonymous allegation that Maintenance Officers in the Belfast South (7) District Office had accepted excessive hospitality at the Odyssey complex in Belfast from Spectrum and in turn would raise work orders for the company. NIHE initiated an investigation to establish if there was substance to the allegations. The investigation involved the NIHE Fraud Unit and Repairs Inspection Unit (RIU).

RIU had conducted a routine programmed audit in the District, which identified inappropriate charges valued at £3,230 for duplicate payments, incorrect measurements and additional unnecessary work. The team undertook a more detailed investigation, including inspection of 250 jobs across all of the districts in which Red Sky was the contractor. A draft report was completed in September 2006 and estimated total overpayments to Red Sky of £264,000.

Internal Audit and the Audit Committee were briefed, for the first time, on this investigation in October 2006. The Committee agreed that the Director of Housing and Regeneration "should bring a paper back to Committee outlining the case and the investigations undertaken to demonstrate proper investigation". The Board was informed of the conclusions of the investigation in December 2006, some 12 months after the whistleblower's allegations.

Following internal discussions, NIHE decided that work on kitchens had been approved by District Maintenance Officers and, although the officers did not have the authority to make such approvals, the contractor may have been under the impression that they did. As a result, this element of the overcharging claim was dropped. The RIU report finalised in November 2006 attributed irregularities totalling £81,476 to Red Sky.

The then District Maintenance Manager for Belfast South (7) received a written warning, was removed from his post and relocated. All other Maintenance Officers received written warnings.

RIU also provided a report to the Police Service of Northern Ireland (PSNI) who took the view, at the time, that there was insufficient evidence to establish a criminal investigation. Following further research, negotiations and meetings the Red Sky overcharge was further reduced to £61,000.

At the December 2006 Audit Committee meeting an independent member declared “a possible association with one of the parties referred to in the late paper circulated on Fraud Investigation Good Practice”. The matter was discussed by the Committee after the member had left the meeting. The member resigned from the Audit Committee prior to its March 2007 meeting. He became Chairman of the Red Sky Group in April 2007. He told NIAO that he had been approached by the company in December 2006 with a view to him joining its Board, but at that time he had had only limited initial discussions with the company. He also advised that it was at the December 2006 Audit Committee meeting that he was first made aware of the ongoing issues with Red Sky and left the meeting when that was being considered.

NIHE officials met with Red Sky in January 2007 and March 2007. At the March 2007 meeting the NIHE Director of Housing and Regeneration agreed a settlement figure of £20,000 with Red Sky. This meeting was also attended by the ex- independent member of the NIHE Audit Committee. He told NIAO that he had attended this meeting after discussion with two of the most senior executives of NIHE as it was considered that his participation would be beneficial to both NIHE and Red Sky in seeking to diffuse a divisive and contentious issue.

Legal advice at the time was that it was reasonable to accept the offer from Red Sky. The sum of £20,000 was repaid to NIHE in four instalments of £5,000 between April 2008 and August 2008.

#### **Award of West Belfast response maintenance contract**

11. The letting of several maintenance contracts to Red Sky, which were tendered in May 2006, had been delayed pending the outcome of the Belfast South investigation. In light of the PSNI opinion that there was insufficient evidence for a criminal investigation of the irregularities, Red Sky was awarded four year maintenance contracts for Belfast West (1 and 3), Belfast North (6) and both Newtownabbey Districts in March 2007.
12. The West Belfast contract soon ran into problems with numerous complaints both from tenants and local representatives about the standard of work. The Belfast West District Maintenance Manager’s assessment concurred with tenants’ views and this was reflected in the scoring of Key Performance Indicators for Red Sky. This resulted in difficulties in the working relationship and disputes between Red Sky and NIHE District staff around interpretation of contractual specifications. These led to a significant backlog of jobs.

#### **West Belfast – Communal Areas Cleaning**

13. One aspect of the backlog work and subsequent withheld payments to Red Sky, related to communal cleaning of flats in West Belfast. In January 2008, NIHE engaged consultants to independently review and inspect this work. The inspection report concluded that cleaning was not being done consistently to the contract specification and there was a need in some blocks to have a one- off comprehensive clean to bring blocks to a state where they could be regularly maintained to a satisfactory standard. There were weaknesses in the NIHE specifications and sub-standard work was done by Red Sky or jobs were not carried out.
14. Cleaning was undertaken weekly and unsuccessful jobs, which failed post inspections, were overtaken by new orders, leading to backlogs of work and payments being withheld by NIHE.

15. A pilot exercise to refurbish the communal area of poorer blocks was agreed and completed by Red Sky. This provided a better base from which to start routine cleaning. NIHE drafted a new specification moving cleaning to a monthly rota and this along with a separate programme of refurbishment of blocks was agreed with Red Sky.
16. Outstanding invoices for cleaning were dealt with by payment of a percentage against specific time periods: 60% (£41,768.60) before March 2008 and 90% (£35,100) after March 2008. These payments were based on the assessment that cleaning had taken place but was ineffective in some cases because of the condition of the communal areas.

**Outcome:** In December 2007, NIHE served three months notice of termination of the contract. This was challenged by Red Sky and, after taking legal opinion, NIHE agreed with the company to postpone the termination notice for 6 months, to September 2008. This was to allow Red Sky time to resolve performance problems and both parties time to productively re-engage. This process was to be administered by a group of senior officials from both organisations but Belfast West District staff refused to participate due to grievances with Red Sky staff. A review by the NIHE Contracts Policy Manager recorded that there had been improvements in performance although some key areas required further attention from Red Sky. These areas included quality control, post inspections, outstanding works, backlogs, dayworks and out of hours service. In September 2008, NIHE wrote to Red Sky stating that it was no longer seeking to terminate the contract.

17. The District Manager in Belfast West District Office was subsequently moved from this post and relocated within NIHE in August 2009. NIHE advised NIAO that the decision to rotate the manager was taken by the Area Manager as part of a planned rotation. However, an independent review found that while the Area Manager did act within the established process in relocating this officer, a letter from Red Sky to the NIHE Director of Housing and Regeneration dated November 2008 could be interpreted as potentially exerting influence in NIHE's staffing decisions. The review noted that the tone of the letter inferred that some level of success was expected and it was a concern to NIAO that no reply was sent from NIHE refuting this expectation. NIHE subsequently told NIAO that a robust reply was drafted but this appeared not to have been sent and that this oversight or misjudgement was regrettable.

#### **Concerns raised with PAC**

18. In late 2008, the Public Accounts Committee was contacted by a whistleblower with concerns about work being done by Red Sky. In response, in April 2009 NIHE requested an investigation by RIU into all Red Sky maintenance contracts. RIU reported in June 2009, identifying around £10,000 of overpayments across all five Districts in which the company worked. Belfast East District accounted for over £7,000 of the total; RIU concluded that, *"performance across contracts is variable and particular attention needs to be paid to East Belfast"*.
19. Notwithstanding this, in August 2009, the Belfast East and Belfast South maintenance contracts with Red Sky were extended for twelve months. In 2009, NIHE extended a total of 14 contracts, including the Red Sky contracts. Extensions were issued for the period up to 31 March 2010 or until the new contracts were let to allow completion of the renewal procurement process.

#### **Investigations**

20. During this period the Department was aware of the concerns being raised with the Housing Executive in relation to the response maintenance work carried out by Red Sky. These concerns were raised with the Minister who answered a number of Assembly questions in relation to Red Sky. For example, in March 2009 an Assembly question was answered in relation to the NIHE's monitoring of the progress of work carried out by Red Sky. The answer advised that the Assembly's Public Accounts Committee Office had received a letter from the West Belfast Housing Community Network complaining about the lack of cleaning

services provided by the contractor at several flat complexes in the Housing Executive's Belfast District's 1 and 3 estates. Because of the 'whistleblower' nature of the letter the Public Accounts Office had referred it to the NIAO for investigation. The Housing Executive had commissioned a consultancy firm to assess whether the periodic cleaning schedule was in fact being complied with and whether any work was carried out in accordance with the specification set out in the contract with Red Sky and a number of concerns were raised in the Consultants report. However, as the NIAO were investigating the Minister was not in a position to comment further.

21. As a result of continuing concerns NIAO asked that NIHE carry out further forensic investigation of the work done by Red Sky. In June 2009, the NIHE Audit Committee agreed that an independent examination should be carried out. NIHE engaged ASM Horwath to conduct the investigation.
22. When the ASM Horwath draft report was received in March 2010, NIHE set up a Project Steering Group to determine and oversee the next steps. Whilst the investigation was an operational matter for the NIHE a senior departmental official was asked to be a member of the Group. The overall aim of the Project was to ensure that all matters raised by ASM Horwath in connection with its review of contracts awarded to Red Sky were fully addressed to provide assurance to the NIHE Board and Chief Executive that proper and effective management arrangements were in place to control the contracts. The NIHE Chief Executive reported to the Chairman on the activities of the Group.
23. The ASM Horwath report was submitted to NIHE in October 2010 and was forwarded to Red Sky on 24 November 2010. There were discussions, meetings and letters between NIHE and Red Sky during the following period and Red Sky then provided a detailed response to the report to the NIHE on 7 April 2011.
24. The ASM Horwath's review found overpayments across all of the work undertaken by Red Sky in the period May 2008 to October 2009. Based on the sample of jobs examined, the extrapolated total level of overpayments was estimated to be £924,000. However, based on legal advice, NIHE could only recover the specific actual overpayments identified which amounted to £35,000. (It recouped this sum from the company in April 2011).
25. In response to the Horwath report, RIU carried out seven further in-depth investigations of the Red Sky maintenance contracts. This uncovered significant over-claims to the value of £573,000 for an 30-month period (January 2009 to July 2011). Despite the extent of the irregularities found, KPIs for the contractor in all Districts, with the exception of Belfast West, were broadly rated as excellent. An investigation by RIU focusing on communal lighting found that a number of inspections had been issued by NIHE District Maintenance staff and subsequently claimed for by Red Sky for a block of flats which had been demolished and for flats with no communal lighting.
26. Following these investigations a file was prepared and submitted to the PSNI. NIHE was subsequently advised by PSNI that there was not sufficient evidence of criminality and "that there had been systematic errors within NIHE in relation to accounting and supervision procedures relating to contracts for maintenance involving Red Sky". Consequently, the PSNI would be taking no further action. On the basis of this NIHE decided it would not be appropriate to submit any further files to the PSNI relating to recent alleged overcharging in other Districts served by the same contractor.
27. On 13 April 2011 the NIHE Board considered a proposal to terminate the response maintenance contracts held by Red Sky Group Ltd. The Board paper sought the Board's agreement, on the basis that the NIHE considered it had lost all trust and confidence in the Red Sky Group, to issue a three month termination notice in respect of all the response contracts held by them. The then acting Chief Executive recommended that the Board approved the termination of the five "All Trades " response maintenance contracts held by Red Sky on three months' notice and authorised officers to prepare and issue the relevant

notices as soon as practical following the Board meeting which would initiate the formal notice period. This was approved by the Board and the notice of termination was effective from 12noon on 14 April 2011.

### **ASM Report 2012**

28. On taking up post in May 2011, Minister McCausland then expressed his concerns about the issue of contract management, both on foot of briefing on the governance review findings and implementation, and on the issues leading to the termination of the Red Sky contract in July 2011. The Minister also became aware that the NIHE was investigating allegations against another contractor which dated back to October 2010.
29. In light of his continuing concerns that the issues which led to the termination of the Red Sky contract by the Housing Executive may be present in other contracts which had not been the subject of any full investigation, he asked that a forensic investigation was carried out of a sample of Housing Executive maintenance contracts to provide him with assurances in relation to the other contracts, the quality of services to tenants and the proper use of public funds. The subsequent findings and the evidence in the ASM report demonstrated that there were considerable issues and shortcomings in relation to the Housing Executive's management of response maintenance contracts.

## **4. Termination of Red Sky Contract**

1. On 16 May 2011, the DSD Permanent Secretary was briefed by departmental officials on the issues relating to the NIHE's termination of the Red Sky contracts in advance of his first day briefing meeting with Minister McCausland. The Permanent Secretary was advised that the review of the Red Sky contracts was prompted by concerns raised by a Whistleblower through the Northern Ireland Audit Office. In response to the 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. Red Sky were provided with copies of the findings and invited to respond.

### **Background**

2. On 13 April 2011 the NIHE Board considered a proposal to terminate the response maintenance contracts held by Red Sky Group Ltd. The Board paper sought the Board's agreement, on the basis that the NIHE considered it had lost all trust and confidence in the Red Sky Group, to issue a three month termination notice in respect of all the response contracts held by them. The then acting Chief Executive recommended that the Board approved the termination of the five "All Trades " response maintenance contracts held by Red Sky on three months' notice and authorised officers to prepare and issue the relevant notices as soon as practical following the Board meeting which would initiate the formal notice period.
3. The then Chairman wrote to the DSD Permanent Secretary on 13 April and advised that the paper had been duly approved by the Board and the notice of termination in respect of the Red Sky contract was effective from 12noon on 14 April and the contractor was being notified accordingly.
4. The Acting Chief Executive wrote to the Red Sky on 13 April 2011 advising that:

*"The NIHE has received reports and analysis of issues around performance and overpayments in relation to all of the above contracts. Following receipt of these the Executive sought to give the Red Sky Group an opportunity to comment and have taken into account the replies received. The Board of the NIHE, having considered the matter carefully, now wishes to invoke the provisions of Clause A20/6.2 of the Conditions of Contract. We*

*are, therefore, under separate cover serving Notices of Termination in respect of each of the above contracts.”*

5. It was then announced on 14 April 2011 that the Housing Executive had terminated all its maintenance contracts with Red Sky. It was further reported on 19 April 2011 that Red Sky had gone into voluntary administration and an Administrator had been appointed.

6. On 21 April 2011, Solicitors for the Administrator wrote to the Chairman to advise they had been instructed to advise on the lawfulness of the purported service of the notices of termination and cited reasons why the services of the notices were ineffective and unlawful. The Chairman was asked to confirm that he would not seek to terminate the contracts as proposed and if he did not provide this reassurance to confirm on whom any legal proceedings should be served.

7. On 28 April 2011 a meeting was held in the NIHE offices to discuss the termination of the Red Sky contract. Attendees included:

- Brian Rowntree Chairman
- Stewart Cuddy Acting Chief Executive
- John McPeake Director of Housing & Regeneration/Deputy Chief Executive
- Peter Robinson MLA
- Robin Newton MLA
- Sammy Douglas MLA

Discussions at the meeting were lengthy and serious concerns about the termination of the Red Sky contract and the NIHE processes were expressed by the MLAs.

8. On 5 May a meeting was held between the NIHE and the Administrator to discuss a number of issues including breach of contract arising from the voluntary administration, meeting with adjacent contractors and TUPE. Following this meeting the NIHE wrote to the Administrator on 9 May 2011 advising that;

*“the five response maintenance contracts, as detailed in the schedule below, automatically determined pursuant to condition A20/29.2 of the general conditions of the Contracts as a consequence of RSG limited entering into voluntary administration. Notwithstanding the determination, the Board of the Housing Executive would wish to reinstate all of those contracts subject to your consent and on the clear understanding that the reinstatement in subject to the termination notices served on 13 April terminating the Contracts on 14 July 2011.”*

9. The NIHE wrote again to the Administrator on 10 May 2011 in relation to the reports covering those Districts for which Red Sky held contracts which indicated overcharging/overpayments at an estimated value of £250,000. The NIHE proposed to withhold weekly payments of £25,000 against these overpayments. The Administrator would be given an opportunity to respond to these reports and a final decision would be made on the final amount of overcharging/overpayments.

10. The Director of Housing & Regeneration/Deputy Chief Executive emailed the Administrator on 11 May 2011 in relation to a letter from the Administrator on 4 May 2011 advising that there was a payment of £42,675 due and seeking settlement of this. This email advised the Administrator that the sum of £29,665 was potentially outstanding, though offered to check if there were any other outstanding payments if details were provided. He also reminded the Administrator about the weekly withholding of £25,000.

11. On 12 May 2011, the NIHE wrote again to the Administrator about the RIU investigations into overpayments made to Red Sky from the East Belfast District Office. A report was attached which quantified the overpayments identified. The Report recommended that the NIHE

- sought to recover in full the overpayment of £108,524 by withholding and/or deducting that amount in accordance with the relevant contract provisions. The letter also advised that the process of deduction of weekly payments of £25,000 would commence on 16 May 2011. The Administrator would be given an opportunity to comment upon and explain the overpayments which may then be taken into account in a final reconciliation of the withholding or deduction of money payments by NIHE to Red Sky.
12. The NIHE on 16 May 2011 replied to the Administrator's Solicitors letter of 21 April responding to the reasons they alleged the Notices to be ineffective and unlawful and advising that the NIHE would strenuously defend any action that was taken against it whether in public or private law.
  13. On 17 May 2011 Robin Newton MLA wrote to Minister McCausland requesting an urgent meeting, along with Sammy Douglas MLA and representatives of Red Sky, to make the Minister aware of their concerns regarding the termination of the NIHE's contracts and the implications for the company and the employees. On 27 May 2011, departmental officials advised Minister McCausland that he should decline the invitation from Robin Newton MLA as this was an ongoing contractual matter between the Housing Executive and Red Sky. On 27 May 2011 the Minister's Special Advisor requested an amendment to the draft letter to Mr Newton stating that the last line should read "if you feel that a meeting would still be beneficial please contact...." The draft letter was amended by the Private Office and the Minister's reply issued on 31 May 2011.
  14. Minister McCausland also wrote to Naomi Long MP on 25 May following her letter to his predecessor on 26 April 2011 in relation to Red Sky. The Minister's reply related to the impact of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), the concerns in relation to the knock on effect to the wider economy and the investigation process around the termination of the Red Sky Group contracts.
  15. On 26 May 2011 the Administrator wrote to the NIHE. This letter referred to meetings on 17 and 25 May and advised that they would be unable to meet the timescale for response in relation to the report on overcharging/overpayments. The Housing Executive replied on 2 June 2011 and agreed to leave open the response dates in respect of the East Belfast and subsequent reports.
  16. On 2 June 2011 the Special Adviser asked departmental officials for an update in relation to Red Sky and this was forwarded advising that the Acting Chief Executive NIHE would also be happy to meet to discuss this.
  17. On 3 June 2011 NIHE wrote again to the Administrator advising that RIU had conducted an investigation into overpayments made to Red Sky from the South Belfast District Office. A report was attached which quantified the overpayments identified. The report recommended that NIHE should seek to recover in full the overpayment of £119,917 by withholding and/or deducting that amount in accordance with the relevant contract provisions. The letter advised that the process of deduction of weekly payments of £25,000 would continue until all overpayments had been recovered and the Administrator was asked for comments.
  18. The Administrator emailed NIHE on 17 June 2011 providing a briefing in advance of a meeting with Red Sky setting out brief details of the proposed bidding team for the potential acquisition of Red Sky in administration. This advised that, if successful, the management team together with proposed investors would acquire the business through Newco. NIHE responded that day and advised that, whilst they were prepared to facilitate the meeting, it was clearly inappropriate for the NIHE to discuss future contractual arrangements with the successor to Red Sky and that it was therefore premature to meet at that time.
  19. NIHE wrote again to the Administrator on 21 June 2011 advising that RIU had conducted an investigation into overpayments made to Red Sky Group from the South Belfast District Office. A report was attached which quantified the overpayments identified. The report recommended

- that NIHE should seek to recover in full the overpayment of £70,106 by withholding and/or deducting that amount in accordance with the relevant contract provisions. The letter advised that the process of deduction of weekly payments of £25,000 would continue until all overpayments had been recovered and the Administrator was asked for comments.
20. Minister McCausland met with MLAs and Red Sky representatives on 27 June 2011. The MLAs advised that the Company considered it had 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. Discussion took place around the current position with the contract. During the meeting departmental officials contacted NIHE to seek clarity directly from the NIHE on whether new contracts were due to be signed that Friday and if new contracts were due to be in place for 1 November 2011. Minister McCausland also advised that he had asked officials to instruct the NIHE to rigorously review all existing contracts to the same level of scrutiny and that he would like the Administrator to be in place until the end of August. Departmental officials advised that the proper route for the consideration of contractual matters was between the Housing Executive and the Administrator.
  21. Subsequently on 28 and 30 June 2011 the Minister met with the Chairman and officials to discuss the Red Sky contract. At the meeting on 30 June 2011 the Minister advised that he wanted to ensure he had public and personal confidence in relation to NIHE contracts. He also advised that he had received information from NIHE which indicated that there were emerging issues with another Company. He advised that he had asked his Department for a forensic examination to take place on the management of contracts and it was therefore inappropriate to issue/change contracts until this examination was completed – in the region of eight weeks. The Minister asked the NIHE officials to take this proposal to the NIHE Board and to recommend his proposal on the basis that the Administrator could guarantee to conduct the work. The NIHE officials expressed concerns with this and departmental officials agreed to work through the issues and report back to the Minister in 24 hours.
  22. On 29 June 2011 NIHE advised the Administrator that they were well advanced in their dealings with the adjacent contractors and were seeking to finalise the TUPE undertakings. The Board meeting that day was to formally endorse the process and to seek its completion as soon as possible. NIHE also raised an issue relating to a conflict of interest in relation to TUPE and the existing senior management team who were also a purchaser of one part of the business.
  23. NIHE emailed the Administrator on 30 June and advised of confirmation that the Red Sky contracts would terminate on 14 July 2011 and that it was imperative the Administrator began to expedite the TUPE requirements in conjunction with the adjacent contractors.
  24. On 1 July 2011, NIHE emailed the Administrator and asked if they could advise and confirm in writing whether or not they could continue to provide the full range of response maintenance and repair works across the current contract areas for a period of 8 weeks with effect from 14 July 2011.
  25. On 1 July 2011, Minister McCausland wrote to the NIHE Chairman advising that he had asked officials to carry out a forensic investigation of a sample of NIHE contracts including those contractors to whom it was proposed to reassign the Red Sky contract on termination. He also asked the Chairman 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 contract to be undertaken with immediate effect. This would be subject to the Administrator stating that they could continue. The contract would be for a period of six months or until the new contract procedures could be put in place.
  26. Minister McCausland also issued a press statement on 1 July 2011 expressing his significant concern over the NIHE's process for managing contracts. He advised that he had asked the Housing Executive to suspend any actions to reassign current contracts, provided services to

tenants were maintained, until detailed investigations had been carried out in relation to all contracts.

27. The NIHE then issued a statement acknowledging the Minister's announcement on contract management and advising that their commitment to address any failures in contract management had been clearly demonstrated with robust actions against contractors and staff. The statement also advised that, following a number of investigations earlier this year, NIHE terminated contracts relating to one major response maintenance contractor where there was clear evidence of significant overcharging and serious irregularities to the extent that a referral file was being prepared for the attention of the PSNI.
28. On 1 July 2011 the Permanent Secretary wrote to Minister McCausland on the issue of a Direction, under Article 10(1) of the Housing (NI) Order 1981, should the Housing Executive refuse his request not to terminate the Red Sky contract. Minister McCausland had indicated that his reason for seeking an extension of the termination of the Red Sky contract and the proposal to assign this to neighbouring contractors was to allow officials to carry out a forensic investigation of a sample of contractors, including those who would be taking forward the Red Sky contract, to give him assurances that the problems identified in Red Sky were not endemic across Housing Executive contractors. The Permanent Secretary set out a number of factors to be taken into account in relation to the issue of a direction, including that the Housing Executive would be likely to challenge this and there was also the potential for resignations from the Board. The Permanent Secretary recommended that a Direction should not be issued to the Housing Executive in relation to this matter as he did not believe that the reasons and any supporting evidence was sufficiently rigorous in this matter to justify the issue of a Direction.
29. The then Chairman wrote to the Permanent Secretary on 1 July 2011 to register his serious concerns and misgivings and that of his Board and Senior Management Team in relation to why the Minister and the Department would seek to direct the NIHE to allow the Administrator to continue to deliver the contract past the termination date of 14 July 2011. The Chairman set out his reasons why such an approach would compromise not only the NIHE but also the Minister and the Department. He asked the Permanent Secretary to step back and withdraw the Department's involvement and that of the Minister and allow the NIHE to proceed to manage what was an operational business matter. He advised that if the Permanent Secretary was not disposed to do this he would have no other choice but to seek legal advice as to how the NIHE should proceed in order to protect and not compromise its integrity and contractual/procurement obligations in this matter.
30. Following on from the email on Friday 1 July 2011 from NIHE to the Administrator and Minister McCausland's letter on 1 July 2011 to the NIHE Chairman asking that he puts to the NIHE Board that the termination date of the Red Sky contract should be extended from 14 July 2011 there was a series of emails between the NIHE, the Administrator and the Department.
31. On 4 July 2011 the Permanent Secretary and a housing official met with the Chairman at lunchtime to discuss the Minister's letter of 1 July and to ensure that the nature of the Minister's request, set out in his letter, was fully understood by both the NIHE and the Department.
32. On Monday 4 July 2011 the Administrator advised NIHE that they were reviewing the trading performance of the Company that day with the Bank and would be in a better position to answer if the works could continue for a period of 8 weeks after that. The Administrator also confirmed that an offer to acquire the business had been received and would be at a stage to complete by the end of July. A number of options needed to be considered including:
  - a sale of the business excluding all NIHE work with this remaining to be undertaken by the Administrator; or
  - a sale of the business with the NIHE work undertaken by the purchaser on a sub contract basis; or

- a sale of the business including the NIHE work if the NIHE could be satisfied regarding the credentials of the purchaser between now and the completion of the sale at the end of July.
33. The Housing Executive replied to the Administrator that day and advised that the Department had asked the 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 they were already be aware of. NIHE sought, by close of business, the Administrator's express guarantee that should it be required, the company in administration could continue for a minimum period of 6 months. NIHE also confirmed that the request relates to the Administrator for Red Sky in Administration and not to any new entity or buyer of Red Sky.
  34. The Administrator replied that day following the meeting with the Bank, at which it was agreed that the Administrator would continue to services the contracts until the sale of Red Sky business to Newco, which was likely to be completed by the end of July 2011. It was also confirmed that they did discuss the question as to whether trading for a further 8 weeks post 14 July or if necessary even longer for a 6 month period could be facilitated and that this could be facilitated with the assistance of Newco acting as a managing agent on behalf of the Administrator, albeit the weekly payments from NIHE would still be made to the Administrator account and the Newco would be utilising the Administrator employees to fulfil the contract requirements.
  35. NIHE replied that day and advised that, from the response, the Administrator was unable to provide the required service without subcontracting to another contractor. It was therefore clear that they were unable to provide a Response Maintenance Service to the NIHE during the next six months. NIHE asked the Administrator to confirm that the NIHE's understanding was correct or alternatively to confirm that the Administrator solely and without subcontracting or relying on new enterprises could provide the required Response Maintenance Service to the NIHE for the minimum period of 6 months commencing from the 14 July 2011.
  36. A departmental official then emailed the Chairman on 5 July and advised that the Special Adviser thought that 6 months was too long a time frame for continuation by the Administrator. Advice from Central Procurement Directorate was it took 91 days to complete a tender exercise, so taking account of preparing paper work and 3 months for the tender exercise could the question be put to the Administrator to see if they could continue with the response maintenance service for a period of 4 months rather than 6 months.
  37. NIHE also emailed the Administrator on 5 July and advised that, as they had not provided any clarity as to their ability to provide a response maintenance service from 14 July, it must be assumed that they were unable to do.
  38. The Administrator responded on 5 July and advised that their objective was to sell the Red Sky business as a going concern and they had agreed to do so with a new purchaser. Red Sky in Administration would be able to continue to service the NIHE Response and Maintenance Service until the date the sale completed (likely to be 31 July) and thereafter Red Sky in Administration could continue to service the NIHE contract albeit they will be working with the new purchaser to utilise their location and central overhead function. The Company would have the capacity and competency to continue to provide the service required. NIHE responded to this and advised that they acknowledged that the Administrator for Red Sky could only provide a response maintenance service to the NIHE to the end of July 2011.
  39. The NIHE Board met on 5 July to discuss the situation and the Minister's letter to the Chairman on 1 July 2011. The Chairman then wrote to the Minister that day and advised that the Board had asked that he express their deep concern at the stance that had been taken by his office in relation to the termination of the Red Sky contract. The contract had been terminated following thorough and extensive forensic investigations and the Board formed the view that the trust and confidence necessary to the satisfactory operation of those contracts

had been profoundly undermined and Red Sky had been advised of this on 13 April 2011. The Board that morning had reconfirmed that view with respect to Red Sky in administration. Their response also highlighted a number of issues:-

- a) The Board advised that they remained content that the action they had taken against Red Sky had been appropriate in light of the issues that investigations had revealed and that the steps taken to re-assign the contracts to adjacent contractors had been the most appropriate approach which ensured continuation of services and offered exiting employees protection under TUPE;
- b) The Board had confirmed that adjacent contractors stood ready to take over the contracts from the termination date. The contractors had also indicated that they had already incurred significant expenditure in preparing for these contracts. The Board suggested that they and the Department may face legal challenge as the contractors, in relation to their losses, sought redress for breach of their legitimate contractual expectations;
- c) Public confidence in the Board's ability to discharge its statutory function could be eroded in the absence of a coherent rationale for extending those contracts;
- d) Red Sky had not mounted any public or private law challenge to the Boards' decision to terminate their contract;
- e) The extension of the contract could secure a benefit for a particular contractor or purchaser;
- f) The Board considered that this was a significant and controversial matter as defined in paragraph 2.3 of the Ministerial Code and the Minister had a duty to bring the proposed decision to issue an Article 10 Direction to the Executive Committee for approval; and
- g) The Board considered that the issuing of a statutory direction, pursuant to Article 10 of the Housing (NI) Order 1981, for the purpose of securing the continuity of a contract for a single discredited contractor amounted to unwarranted and improper interference in an operational matter.

40. Furthermore, the Board had resolved that if a direction was issued, they would immediately challenge the legality of such a direction in the High Court and had instructed legal representatives to take the necessary preparatory action and had put the High Court on notice that it may be necessary to convene an urgent judicial review hearing at short notice. The Board had directed that the adjacent contracts should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14 July 2011.
41. On 6 July 2011 NIHE, by email, provided the Department with clarification on the ability of the Administrator for Red Sky to provide a response maintenance service to the NIHE after 14 July 2011. Several email communications between NIHE and the Administrator were forwarded. In relation to the specific questions the Minister had raised in relation to the ability of the Administrator to service the Housing Executive's contracts during the period whilst an open procurement exercise was undertaken, the NIHE responded that they had only received assurance that the Administrator could provide such services up to the end of July, thereafter it was intended that the Company would be sold. The Administrator had indicated the contracts could only be serviced thereafter through the new company acting as "managing agent" / "facilitating" the Administrator. The Housing Executive considered that this did not offer the assurances that they or the Minister required.
42. Further they advised that the letting of a new contract that would deliver a response maintenance service until their main procurement was complete could take in the region of four months. This could in effect allow a maximum contract period of two months to be let ending 31 January 2012 to align with the new main contract starts of 1 February 2012, which

- were going to tender imminently. They considered that such a contract period would not be commercially viable.
43. Minister McCausland also met with the Chair of the Social Development Committee on 6 July 2011 to update him and discuss the issues in relation to the Red Sky contracts.
44. On 6 July 2011 the Administrator emailed the NIHE in relation to TUPE and their discussions with the adjacent contractors as they understood that the contracts and the staff would remain with Red Sky in administration in light of the Minister's decision to defer the transfer of the contracts. They sought confirmation that these discussions did not conflict with the instructions to the NIHE by the Minister to defer the transfer. NIHE replied advising that the Administrator was being unhelpfully obstructive and that the relationship and discussions between NIHE and the Department should not in any way prevent them from carrying out their role in a fair, efficient and objective manner. NIHE expected the adjacent contractors to take over the provision of the response maintenance service with effect from the 14 July 2011 and had repeatedly advised the Administrator of this position over the past three months.
45. On 6 July 2011 the Permanent Secretary briefed Minister McCausland on the NIHE Board's response of 5 July 2011 to the Minister's letter dated 1 July 2011 and also in advance of any possible discussion at an Executive Committee meeting on 7 July 2011. The Permanent Secretary set out the response from the NIHE Board and that the Board had concluded it was not in a position to take forward the Minister's request in relation to extending the termination of the Red Sky contracts to allow an open competition for the contracts to be undertaken.
46. The Permanent Secretary advised the Minister that the Housing Executive had provided assurances that it considered these matters in a fair and reasonable manner with significant care and time taken to ensure all the relevant evidence had been identified, validated and evaluated. The Department had been regularly briefed by the Housing Executive as it brought forward its investigations into Red Sky and of the action it took on foot of these findings, including the termination of the contract. The Department considered these to be appropriate contractual matters which rightly fall to the Housing Executive to deal with.
47. In relation to the Administrator, the Housing Executive considered that the Administrator could not service the contracts after the end July without entering into management arrangements with Newco. Whilst the Department was advised this was within the powers of the Administrator, it did raise issues of procurement and could have been liable to challenge by any contractors who felt they had been affected by such arrangements. There were also clear concerns from the Housing Executive around the continuation of the existing contract via the Administrator via a new company that might potentially have strong links with the management of the Red Sky with whom a contract was cancelled.
48. The Permanent Secretary recommended that the Minister should advise the Housing Executive to move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants and to seek assurance from the Chairman and Chief Executive that:
- Neighbouring contractors had put in place the appropriate TUPE arrangements with the Administrator; and
  - They would put in place robust and appropriate contract monitoring arrangements that would provide assurance on the operation of the contract.
49. The then Chairman emailed the Permanent Secretary on 7 July to advise that the Administrator confirmed that TUPE final interviews with staff transferring would be held in the next few days to achieve the targeted transfer deadline of 14 July 2011 and that staff would be transferring to the NIHE adjacent contractors. He advised that these were a series of significant developments and further confirmation that the Administrator was unable and unwilling to continue beyond the 14 July termination date. A further email was received from

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NIHE confirming that the Administrator was working with the adjacent contractors to assume provision of response maintenance service with effect from 14 July 2011

50. Minister McCausland wrote to the Chairman on 7 July 2011 and advised that when he took up Office he was briefed on the issues surrounding the Red Sky contract and also the Gateway Review completed by his predecessor which contained recommendations that were being taken forward to ensure that an appropriate procurement and contract management regime was in place in relation to response maintenance contracts. He had also become increasingly concerned that the issues which led to the termination of the Red Sky contract may be present in other contracts which had not been the subject of any full investigation and he had instructed officials to carry out a forensic investigation of a sample of Housing Executive response maintenance contracts in order to provide him with reassurances in relation to the other contracts, the services to tenants and the use of public funds. He also pointed out that, in parallel to this, was the implementation of the recommendations from the Gateway Review which must be taken forward as a priority to ensure that a new procurement and contract management regime and new contracts was in place.
51. In relation to his letter on 1 July, he was explicit in his request that, subject to the Administrator stating that he could continue to service the contract, the Chairman 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. The Minister found it regrettable that the Chairman's reply on 5 July did not cover the matters he raised but focused on a potential future issue of a Direction under Article 10 of the Housing (NI) Order 1981.
52. The Minister further advised he had fully considered the response to his letter and also the advice from the Housing Executive's Head of Procurement which stated that NIHE had only received assurance that the Administrator could provide such services up to the end of July, thereafter it was intended that the Company will be sold. The Administrator had indicated the contracts could only be serviced thereafter through the new company acting as "managing agent" / "facilitating" the Administrator. The NIHE Head of Procurement had further advised the letting of a new contract, that would deliver a response maintenance service until the main procurement is complete, would take in the region of four months and such a contract period would not be commercially viable. The Minister confirmed 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.
53. In taking this action he asked that NIHE sought an assurance from the adjacent contractors as to the application of TUPE arrangements and also asked the Chairman to provide an assurance that NIHE had in place robust and focused contract monitoring arrangements for all response maintenance contracts and to provide the details of those arrangements.
54. The Minister restated that the primary concern must be to ensure that tenants receive the best possible service in relation to response maintenance and he intended to ensure that the Performance Review meetings were held bi-monthly. The focus of reporting by the Housing Executive at these meetings would 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 were in place.
55. Minister McCausland then issued a press statement on 7 July restating his serious concerns over Housing Executive maintenance contracts and that he continued to have concerns about how maintenance contracts had been managed. He advised he had raised these concerns at the Executive meeting, and they were shared by his Executive colleagues. His Department had commenced the forensic investigation into contracts which he announced on 1 July. The outcome of these investigations would determine if further action needed to be taken to ensure best use was made of public money. His preference was for an open and transparent contracts process rather than reassigning the Red Sky contracts to adjacent contractors. He

- had been advised that the Administrator could not provide assurances that he could maintain the existing contract until a new procurement exercise was completed. He advised that taking all the additional information into account, reassignment of the contracts due to expire on 14 July was not the ideal option, but the only practical approach under current circumstances and that he had written in these terms to the Chairman of the Housing Executive.
56. On 15 July 2011 the Chairman replied to the Minister's letter on 7 July 2011 and confirmed that the contract had been reassigned to the adjacent contractors with effect from 14 July 2011. He provided an update on TUPE and also attached a short summary of the NIHE monitoring arrangements for response maintenance contracts which he advised were very thorough and that any recommendations for improvement from the Gateway Review were being implemented.
57. Following the Chairman's letter to the Permanent Secretary on 1 July 2011 to register his serious concerns and misgivings and that of his Board and Senior Management Team in relation to why the Minister and the Department would seek to direct the NIHE to allow the Administrator to continue to deliver the contract past the termination date of 14 July 2011, the Permanent Secretary replied on 31 August 2011 in order to put his position clearly on the record. He advised that the standard expected in his role as Accounting Officer was at all times to act within the authority of the Minister to whom he was responsible and to support the Minister with clear, well reasoned, timely and impartial advice. It was, however, ultimately the Minister's decision to accept or reject that advice. He also advised the Chairman that, in practice, whilst the Housing Executive, as a Non Departmental Public Body, operates with some independence under its Board, the Minister was nevertheless, ultimately accountable to the Assembly for the Housing Executive's efficiency, effectiveness, activities and performance.
58. He further advised that he was very concerned about the tone and references in the letter and that he had acted appropriately in his role as Accounting Officer. The Chairman responded on 2 September 2011 advising that he had reviewed the correspondence again and was satisfied that the tone reflected the challenging circumstances which the Department and NIHE faced with respect to the termination of the Red Sky contract. He assured the Permanent Secretary that in no way was there any direct or implied intention to impugn the propriety of his conduct as Accounting Officer or his personal integrity.
59. On 8 July 2011 NIHE wrote to the Administrator in relation to an investigation into overpayments made to Red Sky from the North Belfast District office and in relation to overpayments for additional communal lighting checks in Newtownabbey 1 District Office. This advised that the NIHE sought to recover in full the overpayment of £70,705 and sought comments from the Administrator.
60. On 4 August 2011 the Administrator sought confirmation from NIHE that their agreement to keep open the date for responses, in relation to the reports and overpayments, remained. The NIHE replied on 8 August and advised they would keep the date open but asked for a timetable for the proposed response.
61. NIHE then wrote to the Administrator on 9 August 2011 asking on what basis and on what evidence that a report by the Administrator advised that the administration of Red Sky was a direct result of the NIHE's decision to stop its contract with Red Sky. The Administrator replied on 11 August 2011 advising that the social housing work was such a substantive part of Red Sky's work that following the notice of termination the Directors had no alternative than to place the Company into administration in an effort to avoid an immediate cessation of trade and closure.
62. NIHE then wrote to the Department in October 2012 seeking approval for the write-off of £375,000 in respect of an abandoned claim for Red Sky. This advised that, due to the Housing Executive carrying out detailed district-based internal reviews into the services provided by the Red Sky, a sum of £649,239.42 was retained from payments due to Red Sky in administration. The Housing Executive had put in place arrangements to secure

the recovery of £649,239.42 (including VAT) relating to overpayments made to Red Sky by making retentions from a series of amounts from payments due. A significant proportion of these retentions were made from payments received by and due to the Court appointed Administrators after the date of their appointment.

63. There was a dispute about the Housing Executive's entitlement to have taken these actions given the requirements of the Insolvency Rules. Following protracted negotiations, the Housing Executive and the Administrators had proposed that the Housing Executive should repay £375,000.00 (which includes VAT) to the Administrators. It was understood that this would be acceptable to what was believed to be the only secured creditor in this case and, on the basis of legal advice, represented a prudent and reasonable way forward where there was a high risk of having to repay all the monies given the protections afforded to insolvent companies.
64. The NIHE were advised on 18 October 2012 that the write off of £375,000 to be paid to the Administrator was approved.

## Terms of Reference – Social Development Committee Inquiry – Phase 3 Memorandum

### 1. Background

The Committee for Social Development Terms of Reference for the Inquiry are:

- iv. *Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.*
- v. *Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing.*
- vi. *The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

*Should the Committee identify any evidence of corruption in relation to the operation of NIHE maintenance contracts and/or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.*

Phase 3 of the Inquiry will consider:

*“Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.”*

### 2. Purpose

In line with Phase 3 of the SDC Inquiry, to develop and prepare a memorandum which sets out the departmental activities and interaction with the Housing Executive in relation to maintenance contracts. This is to enable the Social Development Committee to interpret the documents listed at Annex A.

### 3. Scope

In line with Phase 3 of the SDC Inquiry, the memorandum will set out the relevant actions and communications etc between the Department and the Housing Executive in relation to maintenance contracts since October 2010.

### 4. Objectives

In line with Phase 3 of the Committee’s terms of reference, the objectives are:

- To provide a contextual overview to the Committee by way of a memorandum setting out the actions and communications etc between the Department and the Housing Executive in relation to maintenance contracts.
- To provide the Committee with the relevant documents associated with the memorandum.
- To assist the Committee to interpret the context of the key documents and information provided.
- To assist the Committee to identify any other key documents or information they require to be made available.
- To ensure the Committee has access to all appropriate information and documentation to enable Phase 3 of the Inquiry to be completed.

**5. Methodology**

- i. Agree the terms of reference.
- ii. Prepare the memorandum in line with the agreed terms of reference.
- iii. Provide a timeline of key events.

**6. Timescales**

To be completed by 22 August 2014.

Initial Documents requested by SDC

Annex A

1. All correspondence between the former Minister for Social Development (Alex Attwood) and NIHE Senior Officials regarding the NIHE contract management regime. This should include but not be limited to correspondence relating to the Minister's decision to carry out a review into the NIHE in October 2010.
2. All correspondence from April 2011 to September 2011 relating to the decision to terminate the Red Sky contract. This should include correspondence between the following parties:
  - the NIHE Board;
  - the Ministers for Social Development (former and present);
  - the Ministers' Special Advisers
  - senior DSD and NIHE officials;
3. Copy of all correspondence between the Minister, Mr Brimstone and DSD and NIHE Senior Housing Officials and Ms Jenny Palmer in respect of the decision by the NIHE Board to terminate the Red Sky contact.
4. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 28 April 2011. The meeting was to discuss Red Sky at the office of the Chairman of the NIHE. Those present included: Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA, Stewart Cuddy Acting Chief Executive, Dr John McPeake- Director of Housing & Regeneration and Acting Deputy Chief Executive
5. Copy of all documentation, including draft responses, accompanying submissions etc regarding the letter from Robin Newton MLA to the Minister on 17 May 2011 and the Minister's response dated 31 May 2011.
6. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 27 June 2011 - Meeting between representatives of Red Sky, Minister McCausland, Peter Robinson, Sammy Douglas, Robin Newton, Jim Wilkinson and Michael Sands.
7. Copy of all documentation including briefing papers, correspondence, minutes, list of attendees for the meetings of 30 June 2011 - Meeting between Minister McCausland, Brian Rowntree, Stewart Cuddy (Acting Deputy Chief Executive), Will Haire and Senior DSD Housing Officials to discuss response maintenance contracts.
8. Copy of the ASM Horwath investigation commissioned by the NIHE in 2009.
9. Copy of all correspondence regarding the outcome of the ASM Horwath and VB Evans investigation and the Repairs Inspection Unit Investigation. This should include correspondence between the following parties:
  - NIHE Officials
  - DSD Officials
  - The Ministers for Social Development (former and present)

- Red Sky Ltd.
10. All correspondence between Red Sky's Administrator and DSD and NIHE – particularly any correspondence in relation to the purchase of contracts
  11. Agenda and all papers produced for the papers and minutes of the NIHE Board meeting on Tuesday 5 July 2011
  12. All correspondence between Red Sky and the Minister and his Special Adviser from May 2011.
  13. A copy of the dossier that the former Chairman of the Housing Executive, Mr Brian Rowntree, sent to the PSNI and the Serious Fraud Office in November 2011.
  14. Copies of the letters from the BBC to Minister McCausland and Mr Brimstone in November 2012 in connection with the Spotlight investigation. These letters were referred to in the letters of 7 June 2013 from the BBC to Minister McCausland and Mr Brimstone.
  15. The Terms of Reference for the Oversight Group chaired by the Permanent Secretary and the minutes and reports produced by this Group including any correspondence to the Minister or Senior DSD and NIHE officials regarding the management of maintenance contracts
  16. Agenda and Minutes of the Performance Review meetings between Minister McCausland and the Chair of the NIHE Board from May 2011 and 2012. Including all correspondence between Minister McCausland and the NIHE as a result of these meetings.
  17. All correspondence in respect of the outcome of the internal investigation in May 2013 which found that contract management weaknesses led up £18m of overpayments. In particular correspondence between:
    - The NIHE and Senior DSD officials
    - Senior NIHE officials and the NIHE Board
    - Senior DSD and NIHE officials and the Minister
    - The Minister and the NIHE Board
  18. All correspondence in respect of the decision by the NIHE Board to commission Campbell Tickell to review the organisation's planned maintenance contracts in June 2013: In particular correspondence between:
    - The NIHE and Senior DSD officials
    - Senior NIHE officials and the NIHE Board
    - Senior DSD and NIHE officials and the Minister
    - The Minister and the NIHE Board

## Annex B

**Timeline of key events in relation to the termination of the Red Sky contract**

<b>Date</b>	<b>Action</b>
Late 2008	PAC contacted by a whistleblower with concerns about Red Sky's work
April 2009	NIHE request RIU to investigate all Red Sky contracts.
June 2009	RIU report and identify overpayments
2009	NIAO ask NIHE to carry out further investigation of Red Sky work
June 2009	NIHE Audit Committee agreed that an independent examination should be carried out and subsequently ASM Horwath are appointed
1 March 2010	Draft ASM Horwath report received and NIHE set up Project Steering Group with departmental membership.
21 October 2010	ASM Horwath final report received
24 November 2010	ASM Horwath report forwarded to Red Sky
Dec 2010 – April 2011	Meetings/ discussions/letters between Red Sky and NIHE
7 April 2011	Red Sky provide detailed response to ASM Horwath Report
13 April 2011	NIHE Board approve the termination of the Red Sky contract
28 April 2011	Meeting with NIHE Chairman and Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA
16 May 2011	Minister McCausland appointed
17 May 2011	Robin Newton MLA writes to ask to meet Minister McCausland
25 May 2011	Minister McCausland replies to Naomi Long MP who had written to the previous Minister
31 May 2011	Minister McCausland replies to Robin Newton MLA
27 June 2011	Minister meets with Robin Newton MLA, Peter Robinson MLA, Sammy Douglas MLA and representatives of Red Sky
28 June 2011	Minister meets with Chairman NIHE to discuss the termination of the contract
30 June 2011	Minister meets again with Chairman NIHE
1 July 2011	Minister writes to Chairman NIHE asking that the termination date be extended
1 July 2011	Minister McCausland issues a press statement
1 July 2011	Permanent Secretary briefs Minister on potential issue of direction
1 July 2011	NIHE Chairman writes to Permanent Secretary asking him to step back
4 July 2011	Permanent Secretary meets with NIHE Chairman to discuss the Minister's letter
5 July 2011	NIHE Board meeting held
5 July 2011	NIHE Chairman writes to Minister following Board meeting advising that Board had reconfirmed their view and the termination was going ahead.
6 July 2011	Permanent Secretary briefs Minister
7 July 2011	Minister decides that NIHE should proceed and writes to NIHE Chairman

<b>Date</b>	<b>Action</b>
7 July 2011	Minister issues press release
14 July 2011	Red Sky contract terminated and assigned to adjacent contractors
31 August 2011	Permanent Secretary replies to NIHE Chairman's letter of 1 September
2 September 2011	NIHE Chairman replies to Permanent Secretary's letter of 31 August 2011

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## Annex C

### Abbreviations

AAP	Assurance of Action Plan
C & AG	Comptroller & Auditor General
DFP	Department of Finance and Personnel
DSD	Department for Social Development
KPIs	Key Performance Indicators
MLAs	Members of the Legislative Assembly
NI	Northern Ireland
NIAO	Northern Ireland Audit Office
NIHE	Northern Ireland Housing Executive
OGC	Office of Government Commerce
PAC	Public Accounts Committee
PID	Project Implementation Document
PPL	Price Product Lists
PSNI	Police Service of Northern Ireland
RIU	Repairs Inspection Unit
RMC	Response Maintenance Contracts
SIU	Scheme Inspection Unit
SDC	Social Development Committee
SMART	Specific Measurable Achievable Realistic Time-bound
SOR	Schedule of Rates
SRO	Senior Responsible Officer/Owner
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
VAT	Value Added Tax

## Letter to DSD 04.07.14

### Committee for Social Development

Room 284  
Parliament Buildings  
BELFAST BT4 3XX

Email: kevin.pelan@niassembly.gov.uk  
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Our Ref: CSD/022/2013/3/CMC

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Ormeau Road  
Belfast BT7 2JB

4 July 2014

Dear Billy

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013,  
of impropriety or irregularity relating to NIHE managed contracts and consideration of any  
resulting actions**

I write to inform you that the Committee has requested oral evidence from Mr Will Haire for the above Inquiry at the Committee meeting to be held at 10.00am on Tuesday 16 September 2014, in Room 29, Parliament Buildings.

At a meeting on 4 July 2013, the Committee for Social Development agreed to hold an Inquiry into allegations regarding NIHE contracts and agreed the following Terms of Reference on 3 October;

- i. Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.*
- ii. Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing.*
- iii. The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

And;

*Should the Committee identify any evidence of fraud or corruption in relation to the operation of NIHE maintenance contracts and /or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.*

The Committee would like to hear oral evidence from Mr Haire regarding strand (i) of the above Terms of Reference. Mr Haire is asked to provide a briefing on his knowledge of the following key events and decisions:

- NIHE Board's decision of 13 April 2011 to terminate the response maintenance contracts held by Red Sky Group;

- Request from the Chairman of the Oversight Group on 24 June 2011 that the NIHE should include a clause in the new response maintenance contracts regarding damages resulting from poor contractor performance;
- Your decision not to attend the meeting of 27 June 2011 at Parliament Buildings between representatives of Red Sky and members of the DUP including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA;
- Meeting of 30 June 2011 with the Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract;
- Your submission of 1 July 2011 advising the Minister not to issue a direction to the Housing Executive in respect of the termination of the Red Sky contract;
- Meeting of 1 July 2011 with senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract;
- Your discussions with the Chairman of the Housing Executive on 5 July 2011 regarding the extension of the Red Sky contract;
- NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract;
- Your submission to the Minister dated 6 July 2011 regarding NIHE's decision not to extend the Red Sky contract pending an open procurement competition and the possible discussion of this at the Executive Committee on 7 July 2011; and
- Your letter of 31 August 2011 in response to a letter from the Chairman of the Housing Executive dated 1 July 2011 regarding the termination of the Red Sky contract.

I would appreciate if you would forward me a copy of the briefing in advance, to arrive no later than 31st July 2014. Members will be provided with a copy of your briefing beforehand and the briefing will be followed by a question and answer session.

As the meeting will be held in public session, you may wish to sit in the public gallery before and after you have briefed the Committee. Please also find attached a guide for witnesses appearing before Committees.

If you have any other requirements, or if I can be of any further assistance, please do not hesitate to let me know.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk Committee for Social Development

## Letter to DSD 04.07.14

### Committee for Social Development

Room 284  
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Our Ref: CSD/022/2013/3/CMC

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Ormeau Road  
Belfast BT7 2JB

4 July 2014

Dear Billy

### **Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions**

I write to inform you that the Committee has requested oral evidence from DSD Officials for the above Inquiry at the Committee meeting to be held at 10.00am on **Thursday 18 September 2014** in Room 29, Parliament Buildings.

At a meeting on 4 July 2013, the Committee for Social Development agreed to hold an Inquiry into allegations regarding NIHE contracts and agreed the following Terms of Reference on 3 October;

- i. Decision making relating to the award, modification and cancellation of NIHE maintenance contracts to establish any impropriety or irregularity and, in particular, whether the actions of Ministers were appropriate.*
- ii. Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double glazing.*
- iii. The adequacy of actions proposed by the Minister, DSD and the NIHE to address previous, well documented failings in relation to procurement and contract management.*

And;

*Should the Committee identify any evidence of fraud or corruption in relation to the operation of NIHE maintenance contracts and /or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.*

The Committee would like to hear oral evidence from the following DSD officials regarding strand (i) of the above Terms of Reference:

- **Jim Wilkinson** - Director of Housing
- **Michael Sands** - Deputy Director of Housing
- **Susan McCarty** - Deputy Director of Housing

The officials are asked to provide a briefing on their knowledge of the following key events and decisions:

- NIHE Board's decision of 13 April 2011 to terminate the response maintenance contracts held by Red Sky Group;
- Letter dated 17 May 2011 from Robin Newton MLA to the Minister requesting a meeting with Red Sky Representatives and Sammy Douglas MLA and the subsequent response dated 31 May 2011;
- Meeting of 2 June 2011 with the Minister's Special Adviser regarding the termination of the Red Sky contract;
- Meeting of 27 June 2011 at Parliament Buildings between representatives of Red Sky and members of the DUP including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA;
- Meeting of 30 June 2011 with Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract;
- Submission of 1 July 2011 from Will Haire to the Minister advising the Minister not to issue a direction to the Housing Executive in respect of the termination of the Red Sky contract;
- Meeting of 1 July 2011 with senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract;
- Letter of 1 July 2011 to the Chairman of the NIHE requesting the extension of the Red Sky contract. In particular, clarity is welcomed on the Minister's decision to amend the officials' initial draft of the letter to extend the termination date from a period of 8 weeks to 6 months.
- Email of 5 July 2011 from Michael Sands to the Chairman of the NIHE regarding the Special Adviser's request to amend the period of extension of the Red Sky contract from six months to four months.
- NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract.
- Submission to the Minister dated 6 July 2011 regarding NIHE's decision not to extend the Red Sky contract pending an open procurement competition and the possible discussion of this at the Executive Committee on 7 July 2011;
- Letter of 7 July 2011 to the Chairman of the NIHE confirming that the NIHE should proceed with the termination of the Red Sky contract on 14 July and reassign the work to adjacent contractors.
- Submission dated 18 July 2011 regarding letter of response from the Permanent Secretary to a letter from the Chairman of the Housing Executive dated 1 July 2011 regarding the termination of the Red Sky contract.

I would appreciate if you would forward me a copy of your briefing in advance, to arrive no later than 31 July 2014. Members will be provided with a copy of your briefing beforehand and the briefing will be followed by a question and answer session.

As the meeting will be held in public session, you may wish to sit in the public gallery before and after you have briefed the Committee. Please also find attached a guide for witnesses appearing before Committees.

If you have any other requirements, or if I can be of any further assistance, please do not hesitate to let me know.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan

Clerk Committee for Social Development

## DSD Letter 11.09.14

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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

11 September 2014

Dear Kevin

### **SDC Inquiry Phase 3 – Request for further information**

Thank you for your letter dated 6 August 2014 in which you requested further information in relation to Phase 3 of the Inquiry.

The information requested was:

1. Minutes of the NIHE Board meeting of 13 April 2011;
2. Minutes of the Audit Committee meetings in which concerns regarding NIHE contractors were raised;
3. Outcome of the investigations by the Repairs Inspection Unit into other contractors suspected of potential overcharging and other contractual issues;
4. Copy of the DFP internal review on the allegations surrounding political interference of the NIHE Board and DSD's response; and
5. Update on the Department's Fact Finding exercise in respect of the Minister's Special Adviser Stephen Brimstone

In relation to numbers 1- 3 the documents requested are attached separately in a number of emails. Please let me know if you have any difficulty in receiving these.

In relation to number 4 and 5, I note that Alex Maskey, Chairperson SDC, also wrote to the Minister on 8 September 2014 in relation to the Fact Finding Exercise. The Minister will therefore respond in due course.

Yours sincerely



Susan McCarty

## Letter to DSD 06.08.14

### **Committee for Social Development**

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Our Ref:CSD/ 022/2013/CMcC

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast BT7 2JB

6 August 2014

Dear Billy,

### **Committee Inquiry – Request for Information under Phase 3**

Further to the Committee's request for information under Phase 3 of the Inquiry we would be grateful if you could provide the Committee with the additional information:

1. Minutes of the NIHE Board meeting of 13 April 2011;
2. Minutes of the Audit Committee meetings in which concerns regarding NIHE contractors were raised;
3. Outcome of the investigations by the Repairs Inspection Unit into other contractors suspected of potential overcharging and other contractual issues;
4. Copy of the DFP internal review on the allegations surrounding political interference of the NIHE Board and DSD's response; and
5. Update on the Department's Fact Finding exercise in respect of the Minister's Special Adviser Stephen Brimstone.

To assist the Committee with its Inquiry, we would appreciate if this information is provided to the Committee as soon as possible.

Yours sincerely

### **Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

# Letter to DFP 11.9.14

**Committee for Social Development**

Room 284  
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11 September 2014

Our Ref: CSD/022/2013/2/SK

Mr Oswyn Paulin  
Departmental Solicitor  
Department for Finance and Personnel  
Victoria Hall  
12 May Street  
Belfast  
BT1 4NL

Dear Mr Paulin,

Thank you for your letter dated 10 July 2014 which the Committee for Social Development considered at its meeting on 4 September.

The Committee has instructed me to respond as follows and to point out that this response relates only to the conduct of this specific inquiry.

**Procedures required by a public inquiry – Salmon Principles**

You refer on a number of occasions to procedures that relate to a public inquiry and ask *“that the Salmon Principles will be applied by the Committee in the carrying out the second phase of its inquiry”*.

The Committee is set to conclude the second phase of its inquiry and to embark on the third phase of its inquiry. I therefore assume that you are actually referring to the third phase of the inquiry.

In any case, you will be aware that the Committee agreed guidelines on procedural fairness, based on the principles of natural justice, which it has sought to apply throughout its inquiry. The Committee is not engaged in a public inquiry and does not therefore accept that it would be appropriate for the standards applicable for public inquiries to be applied to this inquiry. However, the Committee is content to address the points you raise which are relevant to this inquiry, specifically how the Committee proposes to ensure procedural fairness in relation to witnesses and, in particular, procedures for taking evidence under oath.

**Explanation to witnesses under oath/affirmation**

Where a witness is asked to give evidence under oath/affirmation the Committee, in keeping with its established practice, will explain the reasons for this decision to the witness in writing. Any relevant documentation that underpins this decision, such as evidence from other sources, will be provided to the witness in advance of the evidence session.

### **Informing witnesses of the nature of evidence to be sought from them**

When witnesses are invited to attend Committee they are currently advised in their letter of invitation of the nature of the evidence sought from them and this approach will be maintained. Witnesses are also advised of the general guidance which apply to evidence sessions <http://www.niassembly.gov.uk/Assembly-Business/Committees/Guide-for-Witnesses-appearing-before-Assembly-Committees/>.

This approach also applies to those witnesses who have been asked to give evidence under oath. However, it should be noted that, as previously advised, it is not possible to anticipate all lines of questioning in advance of the evidence session and it will be for the chairperson to determine whether a particular line of questioning is in order, taking account of the terms of reference of the inquiry and the committee's agreed approach to procedural fairness.

The Committee has already established that where a witness feels a line of questioning is not relevant or inappropriate they should ask the chair for a ruling. Again, this approach will be maintained in phase 3 of the inquiry.

### **Powers to compel witnesses**

You state that the Committee has not set out its limits in respect of its power to compel evidence. The Committee would point out that it has not used section 44 powers to compel witnesses to give evidence. Rather, the Committee has invited witnesses to give evidence and all persons so invited have agreed to attend.

### **Privileges afforded to witnesses**

- Potential for evidence to be used in other proceedings

You note, again in relation to public inquiries, that witnesses are told that evidence will not be held against them and that this is supported by a statement from the DPP and the disciplinary authority for the relevant witness. The Committee would reiterate that it is not engaged in a public inquiry and that it would therefore be inappropriate for the standards applicable for public inquiries to be applied to this inquiry.

The Committee would also point out that it is a creature of statute and has no power to give an assurance to DSO or individual witnesses that evidence, written or oral, could not be used against a witness in court or in disciplinary proceedings.

The Committee would further add that all of the evidence sessions that relate to this inquiry take place in public and transcripts of the evidence are published online. The Committee has no power to dictate what action external authorities may take on the basis of such evidence.

- Legal Assistance

The Committee believe that should a witness be accompanied by a legal adviser there is the potential for proceedings to become adversarial and this is a situation the Committee would seek to avoid. The Committee is also unaware of issues related to this inquiry which would necessitate the attendance of legal advisers. However, the Committee accepts that witnesses may apply to the Committee to be accompanied by a legal or other adviser and to consult any such adviser in the course of the meeting.

### **Allegations made against witnesses**

The nature of Committee inquiries is to gather evidence and establish facts and subsequently draw conclusions or make recommendations based on these facts. That is broadly the approach that applies to the current inquiry. The exception to this is contained in the Committee's terms of reference and relates to phase 1 of the inquiry which is explicit in setting out the allegation that the Minister misled the Committee:

Allegations that the Committee was misled by the Minister for Social Development over his decision to seek a review of the specification for the supply and fitting of double-glazing

The Committee notes that the Minister was fully aware of this allegation. However, again as noted previously, the Committee accepts and recognises the need, where evidence is taken under oath, to provide notice in writing of the matters in relation to which evidence will be sought. In addition, the Committee conducts its inquiries through public evidence sessions which are transcribed by the Assembly's Official Report and will publish substantive and relevant written evidence on its website. Witnesses will thereby be afforded access to relevant evidence.

Witnesses who have been asked to give evidence under oath/affirmation have been informed in writing, prior to attending the meeting, of the potential legal implications of giving false evidence under oath/affirmation. In addition, given these potential legal implications the Committee has advised witnesses that they may wish to seek their own legal advice prior to attending the meeting to give evidence under oath/affirmation. The Committee will continue to offer this advice to witnesses.

#### **Consideration of witness responses by Committee to draft report**

In its agreed guidelines on procedural fairness the Committee has stated that "Where the Committee's findings refer adversely to an individual, and those findings are to be included in the Committee's report to the Assembly, the Committee may wish to give that person the opportunity to comment on those findings before publication."

The Committee agrees that it will amend these guidelines to include giving consideration to witness comments before publishing its report providing the responses are provided in a timely manner.

#### **Opportunity for witnesses to be examined by their own solicitor and to state their case**

As already noted the Committee does not believe that it is appropriate to apply the principles of a public inquiry to a committee inquiry and therefore do not accept that it is appropriate for witnesses to be examined by their own counsel.

Furthermore, in relation to the opportunities afforded to witnesses to state their case the Committee would again point out that prior to giving evidence all witnesses are provided with the issues on which the Committee is seeking information and are afforded the opportunity to make a written submission to the Committee and an opening statement prior to being questioned by members. Witnesses are also provided with a copy of the official report of the meeting at which they give evidence and have the opportunity to provide further information or clarification in writing after the evidence session and such submissions will be considered by the Committee when developing its report.

Yours sincerely

Kevin

**Kevin Pelan**

Dr Kevin Pelan, Clerk, Committee for Social Development

## Letter from DFP 10.7.14

### Departmental Solicitor's Office



**Dr Kevin Pelan**  
**Committee Clerk**  
**Social Development Committee**  
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**10 July 2014**

**Dear Sir**

#### **INQUIRY INTO ALLEGATIONS ARISING FROM BBC "NI SPOTLIGHT"**

In the light of experience to date, and with the aim of assisting the Committee in fulfilling its role of undertaking this Inquiry, the Department for Social Development has asked me as its legal adviser to set out in detail the reasons for its concern that the procedures of the Committee Inquiry do not meet the requirements for fairness for witnesses, whether they are from the Department or not, that would be applicable if the inquiry were a public inquiry conducted, for example, under the Inquiries Act 2005 and to raise a number of significant issues in relation to the inquiry process. The Department does this also very much in light of its duty of care to all its staff involved.

As this inquiry may set precedents for any subsequent inquiries by Assembly committees it is important to ensure that difficulties are fully considered and addressed, before the Committee hears evidence again in September. I would therefore on behalf of the Department ask for a response at least a fortnight before the first planned witness session.

The Committee will be familiar with the Salmon Principles on the conduct of public inquiries. As the Committee will be aware the principles are set out in the *Report of the Royal Commission on Tribunals of Inquiry*, published in 1966. The Commission recognised that it was necessary for better safeguards for those involved in public inquiries and since then the principles set out in the report have informed the policy of successive administrations when establishing public inquiries. The principles are as follows:

Before any person becomes involved in an inquiry, the tribunal must be satisfied that there are circumstances which affect them and which the tribunal proposes to investigate.

Before any person who is involved in an inquiry is called as a witness, they should be informed of any allegations made against them and the substance of the evidence in support of them.

They should be given an adequate opportunity to prepare their case and of being assisted by legal advisers and their legal expenses should normally be met out of public funds.



They should have the opportunity of being examined by their own solicitor or counsel and of stating their case in public at the inquiry.

Any material witnesses they wish to call at the inquiry should, if reasonably practicable, be heard.

They should have the opportunity of testing by cross-examination conducted by their own solicitor or counsel any evidence which may affect them.

The Commission also recommended that evidence whether given by written statement or orally should not be capable of being used against the witness in court proceedings, criminal or civil, with the exception of a prosecution for perjury in relation to the evidence given to the inquiry.

I should be grateful if you would confirm that it is the Committee's intention to apply these principles in carrying out its inquiry and that the framework for the inquiry will be developed and adapted with that objective.

The application of these principles and the conduct of the inquiry to date leads the department to raise a number of issues which I should be grateful if you would address.

Taking the second principle, before any person who is involved in an inquiry is called as a witness, they should be informed of any allegations made against them and the substance of the evidence in support of them, I should be grateful if you would confirm that the inquiry will address this issue in all future phases of its work and ensure that witnesses are fully informed before being asked to give evidence in the next phase of the inquiry.

In relation to the third principle, witnesses should be given an adequate opportunity to prepare their case and of being assisted by legal advisers and their legal expenses should normally be met out of public funds, I should be grateful again if you would confirm that the inquiry will address this issue.

Again in relation to the fourth principle, they should have the opportunity of being examined by their own solicitor or counsel and of stating their case in public at the inquiry, I should be grateful if you would inform me how the inquiry intends to approach this.

I make the same request in respect of the remaining principles.

In addition to the Salmon principles there are a number of other issues which I would suggest the inquiry needs to address before commencing the second phase of its work.

It has not been the case to date that the inquiry has fully explained to witnesses the reasons why some witnesses are required to give evidence on oath nor the limitations on the inquiry's power to compel evidence. The department considers that the process for disclosure of potential criticisms to be made of any witness when giving evidence should be clarified. There are also issues that the department wishes to raise in relation to the process by which a report is finalized.

In relation to evidence on oath, this is an exceptional power for an Assembly or Parliamentary inquiry to exercise and accordingly I would suggest that witnesses should be informed precisely why it is being invoked. To date the explanation appears to have been given that their evidence is in conflict with that of other witnesses. However full particulars

of which aspects of their evidence are in conflict and with whom have not been given. I should be grateful if you would confirm that the inquiry will address this issue.

The Committee has not set out the limits on its powers to compel evidence in particular, the provision in section 44(a) of the Northern Ireland Act 1998 that a witness is not obliged to answer questions or produce documents which he would be entitled to refuse to answer or produce in court proceedings. This privilege extends to legal advice but also to documents or evidence which might incriminate a witness and there is authority that the privilege against self-incrimination may extend beyond purely criminal prosecutions to disciplinary proceedings. The Committee has not referred to this privilege at all and it is not sufficient to say that this is the employer's responsibility. The Committee's view of the extent of the privilege is the view that is likely to prevail when the witness is giving evidence and so it is important that Committee makes its position clear on the application and extent of the privilege so that witnesses are fully informed prior to giving evidence. This issue is of particular importance in view of the inquiry's terms of reference which include:

Should the Committee find any evidence of fraud or corruption ... or any actions indicating possible breaches of a relevant code of conduct, these will be reported directly to the relevant authorities.

It is the normal practice with public inquiries that witnesses are told that their evidence will not be used against them and this is usually supported by statements from the Director of Public Prosecutions and the disciplinary authority for the relevant witnesses.

Regarding potential criticism earlier correspondence from the Committee indicates it may have difficulty in anticipating criticism. However the Committee is conducting an inquiry and if it may be difficult to anticipate criticism for members of the Committee, it will be equally difficult, if not more so, for witnesses. It cannot be fair to surprise witnesses with criticism which even Committee members cannot anticipate. To conduct an inquiry in this way, would contravene the approach to fairness to be found in public inquiries. It does not accord with the principles of natural justice for witnesses not to know the case to be made against them before giving evidence. If the Committee can provide details of the areas on which it is likely to question witnesses, it surely is equally possible to anticipate lines of questioning and comments which amount to criticism of the witness.

I understand that the Committee will provide copies of any draft report on a confidential basis to any person criticized in the report to enable them to make representations. I should be grateful if you would confirm that the Committee will give due consideration to the representations on behalf of the witnesses as to the evidence in the report and its analysis, and where the Committee is satisfied that relevant evidence has been omitted or that criticisms made in the draft report are not justified, the Committee will then make appropriate amendments to its report. I understand this issue was raised with you by the department on 27<sup>th</sup> June in relation to the interim report.

In summary, I should be grateful if you would confirm:

that the Salmon Principles will be applied by the Committee in carrying out the second phase of its inquiry;

that you will set out how those principles will be applied;

that the Inquiry will explain to any witnesses to be asked to give evidence on oath the reasons for that decision with the details of any conflict of evidence;

that any witnesses asked to give oral evidence will be informed of the nature of the evidence to be sought from them and the areas in which they will be questioned;

that the privileges that witnesses are entitled to will be explained by the inquiry prior to the witness giving evidence;

that prior to giving evidence witnesses will be told of any allegations against them and the substance of the evidence supporting those allegations; and

that a draft of the report will be provided to any person criticized in it and the Committee will take any response into account in its final report.

I look forward to hearing from you prior to the resumption of the inquiry.

**Yours faithfully**

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

**OSWYN PAULIN  
DEPARTMENTAL SOLICITOR**

## DSD Letter 16.09.14

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Dr Kevin Pelan  
Social Development Committee Clerk  
Northern Ireland Assembly  
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BELFAST BT4 3XX

Date: 16 September 2014

Dear Kevin,

I understand that your letter of 11 September to Oswyn Paulin is being considered.

In the interim, the Department would wish on behalf of all members of the Department called as witnesses to the inquiry to apply to the Committee to be accompanied to the hearings by a legal adviser and that they can consult their legal adviser during the course of the meeting.

I presume that other witnesses will be advised of the same facility so that they can make similar arrangements if they wish.

Yours sincerely



Billy Crawford

cc Alastair Newell  
Mick Shine

## DSD Letter 04.11.14

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Dr Kevin Pelan  
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4 November 2014

Dear Kevin

### **Committee Inquiry – Phase 3 Evidence Sessions**

Thank you for your letter dated 9 October 2014 in which you ask the Housing Executive to carry out a check for any correspondence to them in support of Red Sky that would be considered political lobbying and to provide any material to Committee.

The Housing Executive has advised that the Committee is already aware of correspondence and meetings in 2011 with political representatives from East Belfast following the decision to terminate the contract. The relevant documents were provided to the Committee on 14 March 2014.

However, the Housing Executive has no evidence of any political lobbying on behalf of Red Sky, nor have they been able to locate any correspondence or records of meetings on this issue. Current employees of the Housing Executive are not aware of any lobbying taking place.

I hope this is helpful.

Yours sincerely



Susan McCarty

## Letter to DSD 09.10.14

### Committee for Social Development

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Our Ref:CSD/ 022/2013/3/SDT

Mr Billy Crawford  
Department for Social Development  
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Gasworks Business Park  
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Belfast BT7 2JB

9 October 2014

Dear Billy,

### Committee Inquiry – Phase 3 Evidence Sessions

At its meeting on 18 September 2014, the Committee for Social Development took evidence from representatives of the NI Housing Executive in respect of Phase 3 of its Inquiry.

During this briefing a line of questioning was pursued regarding whether there had been any political lobbying to the Housing Executive in support of Red Sky, specifically with regards to contesting levels of overpayments. NIHE representatives noted that no meetings of this nature had taken place, but that they could check for any relevant correspondence. I have included the excerpt from Hansard below:

**Mr Allister:** I want to take you back to the matter that we were discussing of the pattern, over the years, of Red Sky successfully negotiating down overcharging etc and getting a pretty good result for itself. Gentlemen, was there any pattern of political lobbying in support of Red Sky at those times when it was looking to get the figures reduced?

**Mr Bailie:** For part of that period, I was not employed by the Housing Executive, but I am personally not aware of any lobbying that went on.

**Mr Allen:** I am not aware of any, either.

**Mr McVeigh:** Raymond and I were never involved in any meetings or discussions with any political representatives.

**Mr Allister:** Not necessarily meetings; could there have been correspondence?

**Mr McVeigh:** There may well have been correspondence, but nothing that would have been directed to anyone at this table.

**Mr Allister:** Could that be checked?

**Mr Bailie:** Yes. I am not aware of anything, but we can check it.

The full transcript of the meeting is available to view on the Assembly's website at the link below:

<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2014-2015/September-2014/Spotlight-Inquiry-Northern-Ireland-Housing-Executive/>

I would be grateful if, as noted in the Hansard extract above, a check could be carried out for any correspondence to the Housing Executive that would be considered political lobbying and provide this material to the Committee.

I would be grateful if you could provide a response within 10 working days of receipt of this letter.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

## DSD Letter 04.11.14

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Committee Clerk  
Committee for Social Development  
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Ballymiscaw  
Belfast BT4 3XX      4 November 2014

Dear Kevin

### **SDC Inquiry Phase 3 – Evidence Session**

The Committee Chairman advised officials at the SDC Inquiry session on 18 September 2014 that officials should feel free to come back to the Committee at any time. Therefore, in reviewing the Hansard from the SDC Inquiry session on 25 September 2014, in relation to Phase 3 of the SDC Inquiry, the Department believes it may assist the Committee if clarification is provided were the evidence given appears to be inconsistent with the relevant documentation already provided to the Committee and the Phase 3 Memorandum provided to the Committee on 21 August 2014.

### **Role of the Accounting Officer**

In relation to the evidence provided by Stewart Cuddy on 25 September 2014, comments were made at the outset in relation to the period in July 2011 when the then Minister indicated he would like the Chairman of the Housing Executive 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. These comments referred to the Permanent Secretary's role as Accounting Officer and the role of civil servants.

For example at page 2, in relation to the role of the Accounting Officer, Mr Cuddy stated:

*"I felt that it was absolutely vital for him to advise the Minister that he needed to be very careful and that he was getting involved in a very detailed operational contract issue, particularly when that contractor was subject to an investigation, had been found to have been providing a service that was of poor quality and was overcharging. That was the one thing that I was really very concerned about."*

He also stated:

*"We were hoping at that stage that perhaps the Civil Service would speak to the Minister and explain, if it had not done already. Of course, nobody had done. We were not aware of any discussions or written advice that may have come from the permanent secretary. In fact, I am still not aware if the permanent secretary had given the Minister advice in writing or orally, or what the content of that was."*

There is further reference to the role of the Accounting Officer on page 9 and, in order to ensure the Committee has clarity on the Accounting Officer's role, I would refer the Committee to the Department of Finance and Personnel's guidance: Managing Public Money Northern Ireland (MPM NI). This was forwarded to the Committee on 14 February 2014 and I would specifically refer you to Chapter 3 which sets out the personal responsibilities of all Accounting Officers.

Mr Cuddy on page 9 also states: "my understanding is, and the Committee may want to check this out, that there are protocols and policies whereby if a Minister is not prepared to accept advice, there is recourse for the Civil Service to refer that matter up the line in some way. Now, I do not know what that protocol or procedure is, but there is a way of dealing with this"

Again MPM NI at Chapter 3 provides guidance were if, despite the Accounting Officer's advice, a Minister decides to continue with a course the Accounting Officer has advised against. This advises that the Accounting Officer should ask for a formal Ministerial Direction to proceed. The Committee will be aware that on 11 April 2014 the Department provided a copy of a submission, from the Permanent Secretary as Accounting Officer to the then Minister, advising that a Direction should not be issued to the Housing Executive and if the Minister wanted the Department to issue a Direction to the Housing Executive, under Article 10(1) of the Housing (Northern Ireland) Order 1981, the Permanent Secretary himself would require a formal Ministerial Direction, as Accounting Officer, from the Minister to that effect. This is also referred to at Page 48 to 49 in the Phase 3 Memorandum.

The Permanent Secretary also advised the Committee on 9 July 2014, in relation to the Committee's report on Phase 1, that the principles that apply to Civil Servants in relation to the role of Civil Servants with regard to their Ministers is defined in the guidance and principles for managing public resources set out MPM NI which states that Ministers are not accountable to the Accounting Officer and have wide powers to make policies and to issue instructions to their officials. He also advised that the role of Civil Servants is at all times to act within the authority of the Minister to whom they are accountable and to support the Minister with clear, well reasoned, timely and impartial advice. It is the Minister's role to consider that advice, take decisions and then for Civil Servants to implement the Minister's decision. This is the prevailing principle across the Northern Ireland Civil Service.

There also appeared to be some confusion (pages 2 - 4) in relation to the letter Mr Cuddy referred to from the Chairman to the Permanent Secretary on 1 July 2011 and his subsequent response. The Committee were forwarded on 14 March 2014 a copy of the Chairman's letter to the Permanent Secretary on 1 July and the Permanent Secretary's reply to the Chairman on 31 August 2011. These are also referred to at Page 49 and Page 58 in the Phase 3 Memorandum. His reply advised that the standard expected of him in his role as Accounting Officer was at all times to act within the authority of the Minister to whom he was responsible and to support the Minister with clear, well reasoned, timely and impartial advice. It was, 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, operated with some independence under its Board, the Minister was nevertheless, ultimately accountable to the Assembly for the Housing Executive's efficiency, effectiveness, activities and performance. He also assured the Chairman that he was well aware of the serious concerns of the Housing Executive Board and the Senior Management Team in relation to this matter and that the Minister was fully briefed on these issues and had clearly stated that his primary concern was to ensure that the best possible value for money services are provided to tenants.

#### **Ministerial Request to the NIHE**

Mr Cuddy also stated he did not know why the then Minister wanted to extend the contracts (pages 4 – 5). However, I believe the note of the meeting on 30 June 2011, forwarded to the Committee on 14 March 2014, and the letter from the Minister to the Chairman on 1 July 2011, forwarded to the Committee on 11 April 2014, clearly advises the Housing Executive of

the Minister's position at that time. This is also referred to at Pages 46 to 49 in the Phase 3 Memorandum.

### **Meeting on 27 June 2011**

Mr Cuddy also advised (page 5) in relation to the Minister's meeting on 27 June 2011 that:

*"I think that perhaps the meeting had already taken place by the time that we met the Minister at the end of June or beginning of July. So we felt that there was clearly something happening — something going on. We did not have all the facts and figures. We also asked the Department if it was at the meeting. From memory, I think that it was, but it did not want to come up front and say, "Yes, we were there and everything was fine".*

Mr Cuddy also advised that he was concerned about the meeting that the Minister held on 27 June 2011 with Red Sky representatives and local MLAs and he was also concerned that the Administrators were not at the meeting.

The Committee will be aware that the Housing Executive had been made fully aware of this meeting before it took place. The Department, on 14 March 2014, forwarded the relevant documents to the Committee where the Housing Executive was advised of the meeting and subsequently provided the briefing for the then Minister for this meeting. This is also referred to at Pages 44 to 46 in the Phase 3 Memorandum.

### **Contract difficulties**

At page 14 in relation to investigations into other contractors, Mr Cuddy stated that

*"I have one query on my desk at the moment with a particular contractor" and "I have an invoice query on my desk at the moment", but I made the point that I did not believe that it was material in terms of the wider cost of the contract."*

The Committee will be aware from documents forwarded on 14 March 2014, that in a briefing submission on 30 June 2011, the then Minister was advised that there were two contract related response maintenance investigations in relation to another Company dating back to October 2010. This information was provided at that time by the Housing Executive who also advised that a preliminary investigation suggested that there were serious issues to be addressed and a full investigation was underway. Issues identified included payment for work not completed, overcharging and poor workmanship.

### **Role of Administrators**

At page 20 there was also discussion in relation to a statement attributed to the Administrators which stated:

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

*"The Administrators appeared not to be dealing expeditiously with the transfer of TUPE data" on the basis that, as is in inverted commas in your submission, there was a:*

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

Mr Cuddy was then questioned as to how the Administrators were aware of the then Minister's request and where would they be getting their information from. Mr Cuddy advised he believed that some discussions were going on that NIHE were not privy to and advised that *"Well, there may have been some informal, throwaway line — "Well, do you know that the Minister wants us to ..."*.

However, I would point out that the statement referred to by the Administrators was in an e-mail dated 6 July 2011 from the Administrators to the Housing Executive's Head of Procurement after the then Minister had already written to the Housing Executive on 1 July 2011. Mr Cuddy replied to Administrators on 6 July 2011.

The Committee was provided, on 14 March 2014, with copies of the relevant documents i.e. the series of e-mails between the Housing Executive and the Administrators from 4 July onwards in relation to the Minister's request on the 1 July. This demonstrates that the Housing Executive were formally in discussions with the Administrators in relation to the Minister's request on 1 July 2011. The then Chief Executive and Chairman were aware of these emails, indeed Mr Cuddy emailed the Administrators on 4 July asking if the Administrators could continue the NIHE work for a further eight weeks after 14 July 2011 and the Head of Procurement emailed the Administrators on 4 July 2011, copied to the then Chief Executive and Chairman, which stated that the Department had asked the Chairman to ascertain if Red Sky would be able to continue with the response maintenance service for a minimum period of 6 months. These e-mails are also referred to at Pages 47 to 54 in the Phase 3 Memorandum.

### **Newco**

At page 30 Mr Cuddy was asked when he first became aware of Newco and he stated:

*"There had been a rumour that, following the meeting with the Minister, a new company was to be formed."*

However, in documents provided to the Committee on 14 March 2014, the Committee will be aware that the Housing Executive advised the Department on 23 June 2011 that BDO had asked them to meet a potential bidder who they understood comprised of previous owners/managers of the Red Sky Group who were hoping to set up a new company. This preceded the Minister's meeting which was on 27 June 2011. This is also referred to at Page 45 in the Phase 3 Memorandum.

I hope this is helpful and clarifies the evidence provided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Susan McCarty', with a large, stylized flourish at the end.

Susan McCarty

## DSD Letter 19.11.14

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Belfast BT4 3XX

19 November 2014

Dear Kevin

### **SDC Inquiry – Phase 3 Evidence Sessions**

I refer to your letter of 7 October 2014 in which you advised that the Committee has requested further information in relation to Phase 3 of the Inquiry following the evidence session attended by Mr Paddy McIntyre and Mr Colm McCaughley.

Responses to the questions raised are attached at Annex A. The relevant documents are attached separately (PDF doc).

Yours sincerely



Susan McCarty

## Annex A

**1 Any prior correspondence or an explanation of what prompted Paddy McIntyre's letter to Barney McGahan on 10 March 2009 expressing concern about the Red Sky West Belfast contract.**

The Department and the Housing Executive have been unable to locate any documents.

**2 A copy of the instructions from Ms Frances Gallagher to Brett Lockhart QC which requested legal opinion on the termination of the Red Sky contract.**

The legal advice and opinion and associated correspondence relating to the Red Sky contract is information covered by legal privilege. Disclosure to the Committee of the legal opinion and related communication was provided in error and the Housing Executive did not and has not consented to its public dissemination.

The Housing Executive would therefore request that the Committee does not copy or circulate any legal communications, advice and opinion it may have been provided with outside of the Committee or disclose its content in open session. The Committee will be aware of the joint guidance issued by the Assembly and Departments on the provision of information and evidence to Assembly Committees, Annex B refers to "Categories of Information which may need to be handled sensitively" which includes legal privilege.

See attached the instruction given to Senior Counsel by the Head of Legal Services on 23 November 2010. The Housing Executive is providing this in good faith and on a confidential basis without waiving legal privilege on both sets of documents or on all other legally privileged material held regarding this matter.

**3 A copy of the briefing paper and minutes of the meeting held on 16 June 2009 between Minister Ritchie, Permanent Secretary, Deputy Secretary and NIHE officials**

The Department has no record of a meeting taking place on 16 June 2009. Whilst an email between the Department and the Housing Executive on 16 June 2009 refers to a meeting, this appears to be a reference to the arrangements for a meeting which is recorded in the former Minister's diary for the 23 June 2009. A copy of the email and the former Minister's diary are attached. The Department and the Housing Executive have been unable to locate a briefing paper or minutes of the meeting.

**4 A copy of the letter sent from Frank Cushnahan to Paddy McIntyre in February 2008 about the dispute in West Belfast in which Mr Cushnahan states that "one can avoid having to wash dirty linen" in public".**

Copy of the letter is attached. This letter refers to three letters as attachments. I have attached two of the letters referred to and the Housing Executive is unable to locate the third letter.

**5 Detail of the signoff limits for the Chief Executive, Directors and Contract Managers within the Housing Executive during the period of 2006-2010 in respect of negotiating down and the signoff of newly installed kitchens.**

Under Housing Executive Standing Orders and the Board Scheme of Delegations covering 2005-2010:

- The Chief Executive at the Chief Executive's Business Committee had a general authority to incur expenditure between £50,001 and £100,000.
- Directors had a general authority to approve expenditure up to £50,000
- Generally, expenditure in excess of £100,000 required Board approval.

- In relation to claims and arbitrations (outside the context of litigation), Board approval was required for the waiver or abandonment of any claim if the amount waived or abandoned was in excess of £10,000.

In terms of approving the installation of kitchens carried out through response maintenance (e.g. through Change of Tenancy or repair requirements), kitchens would have been signed off by the District Maintenance Manager.

In terms of planned schemes from 2005 – 2008 kitchens were signed off by consultants or in-house contract administrators depending on who managed the schemes. In the period 2005 – 2010 the Clerk of Works accepted the work by completing the Notice of Completion and the Area Project Manager administered the Dwelling Completion Certificate.

**6 A table showing the figures of overpayments and complaints in the West Belfast District in comparison with other Districts where Red Sky had contracts.**

District	Total value of the jobs in the sample	overpayments identified	% on average overpaid
Newtownabbey 1	£315,447.73	£70,983.30	22.5%
East Belfast	£586,069.13	£108,524.08	18.5%
South Belfast	£276,858.16	£119,917.18	43.3%
West Belfast	£231,895.71	£70,106.88	30.2%
North Belfast	£275,117.07	£70,605.64	25.6%
Newtownabbey 2	£156,186.97	£37,166.19	23.7%
<b>Totals</b>	<b>£2,155,006.77</b>	<b>£506,388.85</b>	<b>23.4%</b>

In this period the Housing Executive have advised they did not maintain a record of complaints against contractors therefore no table is available.

**7 Confirmation of which draft of the RIU Report was issued to Minister Ritchie and which report was issued to the Audit Committee – the original draft prepared by the RIU or the draft amended by the former chief executive and director of housing and regeneration.**

The Housing Executive cannot find any record of the Report being issued to the former Minister Ritchie. Whilst the findings of the report were discussed at the Audit Committee meeting in June 2009 the report was not issued to members.

**8. In addition you sought clarification on oral evidence received from the Housing Executive during the evidence session on 18 September 2014. This relates to what kitchens were being installed and what payment the contractor was entitled to receive.**

In this evidence session, Mr Kitson referred to how £264,000 was negotiated down to £20,000 as a result of re-evaluation of kitchen replacements. He stated that there were two types of kitchen provided in Housing Executive properties: post-formed (a “fairly expensive, elaborate-type kitchen”), and a standard kitchen. Mr Kitson went on to say that west, north, east Belfast and other districts were getting standard kitchens fitted. However, Mr Kitson stated that the Housing Executive was paying the rate of a post-formed kitchen.

In their evidence to the Committee on 2 October 2014, both Mr McIntyre and Mr McCaughley stated that Red Sky was entitled to be paid, as it was installing the higher specification kitchen. As there appears to be a contradiction in evidence between the manager of RIU and the former Director of Housing and Regeneration, the Committee agreed to seek clarification on what kitchens were being installed and what payment the contractor was therefore entitled to receive.

The Housing Executive is satisfied, that based on the evidence supplied by the Repairs Inspection Unit (previously known as the Repairs Monitoring Unit (RMU)) that Raymond Kitson's evidence is accurate. The site inspection findings proved that the kitchens installed were not post formed. The evidence that RMU provided, confirmed they met the basic standard as per the specification and did not exceed the standard to warrant paying extra for these units. To support the conclusions of RMU, the Unit arrived at their decision following consultation with the Housing Executive's Material Manager and Quantity Surveyor by getting their professional opinion.

To understand the payment issue it is necessary to clarify the negotiations between the Housing Executive and Red Sky around the £264,000 worth of discrepancies for work carried out and paid for, as identified by the RMU following their 2006 inspections . At the time it was considered that the Housing Executive would face considerable difficulties in any litigation claiming the amount relating to kitchen type i.e. the difference between the standard rate and the higher rate as paid. This was due to the arrangements under which the kitchens and prices were informally agreed by Housing Executive staff and Red Sky. The disputed amount was therefore adjusted to £81,000 to take this into account.

## Letter to DSD 07.10.14

### **Committee For Social Development**

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Our Ref:CSD/ 022/2013/3/SK

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast BT7 2JB

7 October 2014

Dear Billy,

#### Committee Inquiry – Phase 3 Evidence Sessions

At its meeting on 2 October 2014, the Committee for Social Development received oral evidence from Mr Paddy McIntyre and Mr Colm McCaughley on Phase 3 of the Committee's Inquiry.

The Committee agreed that I should write to the Department to request the following:

1. Any prior correspondence or an explanation of what prompted Paddy McIntyre's letter to Barney McGahan on 10 March 2009 expressing concern about the Red Sky West Belfast contract. I have enclosed a copy of this letter for your information;
2. A copy of the instructions from Ms Frances Gallagher to Brett Lockhart QC which requested legal opinion on the termination of the Red Sky contract. I have enclosed a copy of an email from Ms Gallagher to Paddy McIntyre for your information;
3. A copy of the briefing paper and minutes of the meeting held on 16 June 2009 between Minister Ritchie, Permanent Secretary, Deputy Secretary and NIHE officials;
4. A copy of the letter sent from Frank Cushnahan to Paddy McIntyre in February 2008 about the dispute in West Belfast in which Mr Cushnahan states that "one can avoid having to "wash dirty linen" in public";
5. Detail of the signoff limits for the Chief Executive, Directors and Contract Managers within the Housing Executive during the period of 2006-2010 in respect of negotiating down and the signoff of newly installed kitchens;
6. A table showing the figures of overpayments and complaints in the West Belfast District in comparison with other Districts where Red Sky had contracts; and
7. Confirmation of which draft of the RIU Report was issued to Minister Ritchie and which report was issued to the Audit Committee – the original draft prepared by the RIU or the draft amended by the former chief executive and director of housing and regeneration.

The Committee also agreed that I should write to the Department to seek clarification on oral evidence received from the Housing Executive during the evidence session of 18 September 2014.

In this evidence session, Mr Kitson referred to how £264,000 was negotiated down to £20,000 as a result of re-evaluation of kitchen replacements. He stated that there were two types of kitchen provided in Housing Executive properties: post-formed (a “fairly expensive, elaborate-type kitchen”), and a standard kitchen. Mr Kitson went on to say that west, north, east Belfast and other districts were getting standard kitchens fitted. However, Mr Kitson stated that the Housing Executive was paying the rate of a post-formed kitchen.

In their evidence to the Committee on 2 October 2014, both Mr McIntyre and Mr McCaughley stated that Red Sky was entitled to be paid, as it was installing the higher specification kitchen. As there appears to be a contradiction in evidence between the manager of RIU and the former director of regeneration and housing, the Committee agreed to seek clarification on what kitchens were being installed and what payment the contractor was therefore entitled to receive.

I would be grateful if you could provide a response within 10 working days of receipt of this letter.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

Enc.

## DSD Letter 25.11.14

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Dr Kevin Pelan  
Social Development Committee Clerk  
Northern Ireland Assembly  
Room 412  
Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST BT4 3XX

25 November 2014

Dear Kevin

### **Inquiry By The Committee For Social Development Into Allegations Of Impropriety Surrounding NIHE Contracts**

I refer to your letters dated 18 November 2014 requesting the attendance of Michael Sands and Stephen Brimstone on 4 December to provide further evidence under oath/affirmation. I would like to raise a few issues.

#### **Explanation to witnesses under oath/affirmation**

In your letter to the Departmental Solicitor on 11 September you advised that, where a witness is asked to give evidence under oath/affirmation, the Committee will explain the reasons for the decision to the witness in writing.

However, in your letter to Mr Brimstone on 18 November, in relation to the reasons for Mr Brimstone to provide evidence under oath/affirmation, the contradiction in evidence cited at paragraph 3 appears to be related to a contradiction in evidence between Councillor Palmer and Mr Sands and it is not clear how this relates to evidence provided by Mr Brimstone.

#### **Privileges afforded to witnesses**

In your letter you also advised that the Committee cannot give any assurance that evidence will not be used against witnesses in other proceedings. However, if the Committee expected to obtain such evidence (and this appears to be the case from the Terms of Reference which state: *“Should the Committee identify any evidence of corruption in relation to the operation of NIHE maintenance contracts and/or any actions indicating possible breaches of relevant codes of conduct, these will be reported directly to the appropriate authorities.”*) then in order to encourage witnesses to give such evidence it would have been prudent for the Committee to ask the prosecuting authorities for an undertaking not to use such evidence. However, since this has not been done, it is all the more important that witnesses should be told by the Committee that they do not have to answer any questions that might incriminate them or expose them to disciplinary or other civil action. I should be grateful if you would confirm by return that at a future evidence session for these witnesses, if they attend voluntarily, it is the Committee’s view that they are not obliged to answer any question that may expose them to civil, disciplinary or criminal proceedings.

**Legal Assistance**

You also advised that the Committee accepts that witnesses may apply to the Committee to be accompanied by a legal or other adviser and to consult any such adviser in the course of the meeting and I would remind you that the Department applied to the Committee on 16 September on behalf of all members of the Department called as witnesses to the Inquiry to be accompanied to the hearings by a legal adviser and that they could consult their legal adviser during the course of the meeting.

The Committee considered this request on 18 September when the following motion was proposed:

*‘Having considered the request from the Department in a letter dated 16 September 2014, that the Committee for Social Development is in favour of agreeing to the Department’s application for legal representation at Inquiry evidence sessions’*

After a vote the motion fell. However, no written response was received from the Committee setting out the Committee’s reasons for this. The witnesses have requested that the Department apply to the Committee to permit them to be accompanied to the hearings by a legal adviser and that they can consult their legal adviser during the course of the meeting. Clearly this cannot wait until the day evidence is to be given and I should be grateful for your response by return.

An early response would be appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Billy Crawford', with a stylized flourish at the end.

Billy Crawford

## Letter to DSD 18.11.14

### Committee for Social Development

Room 284  
Parliament Buildings  
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Our Ref: CSD/022/2013/3/SK

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Ormeau Road  
Belfast BT7 2JB

18 November 2014

Dear Billy

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013,  
of impropriety or irregularity relating to NIHE managed contracts and consideration of any  
resulting actions**

I write to inform you that the Committee has requested further oral evidence from Mr Sands under oath/affirmation for the above Inquiry at the Committee meeting to be held at 10.00am on Thursday 4 December 2014, in Room 29, Parliament Buildings.

The reasons for requesting Mr Sands to attend and give evidence under oath/affirmation relate to contradictions in evidence between Mr Sands and other witnesses as follows:

1. In her evidence to the Committee on 9 October, Cllr Palmer told the Committee that she had spoken to Mr Sands about his knowledge of a telephone call by Mr Brimstone to Cllr Palmer regarding termination of the Red Sky contract. She said that Mr Sands told her *“Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board”*. However, in his oral evidence to the Committee on 6 November, Mr Sands said that *“I never said the words to her”*.
2. The Committee will also wish to seek clarification from Mr Sands on his discussions / communications with Mr Brimstone that led to an email being sent by him to Mr Rowntree on 5th July 2011 at 7.40am. In his evidence to the Committee on 6 November, Mr Sands said that *“I can only say that, in working with Mr Brimstone since May 2011, he has been in my room twice. Once was on the morning of 5 July to send that email, which you are well aware of.”*

However, in his oral evidence on 13 November, Mr Brimstone was of the view that he would not have been in Mr Sands’ office at that time in the morning. He said that he could not recall the conversation however he accepted that it was clear from the official record *“that I had a conversation with Mr Sands and that the outcome of that conversation was that he [Mr Sands] would send an email to the Chairman to ask if certain things were possible”*.

While members may focus on this contradictory evidence it is not possible to anticipate all lines of questioning in advance of the evidence session and it will be for the Chairperson to determine whether a particular line of questioning is in order.

To aid with his preparation for the evidence session I would refer Mr Sands to the attached transcripts of evidence. I would highlight that transcripts of the most recent evidence session (13 November) are not yet available but we will forward them to you, for Mr Sands' consideration, as soon as possible.

While the Committee received a submission from Mr Sands for his evidence session on 6 November the Committee would be happy to receive any further written evidence that Mr Sands may wish to submit. If this is the case I would ask that it is submitted by Monday 1 December 2014.

I would also advise that both Cllr Palmer and Mr Brimstone have also been invited back under oath/affirmation on these matters.

Mr Sands can opt to swear an oath or take an affirmation and I would appreciate if he would indicate which option he intends to choose. He should also be aware that there are legal implications for a witness giving false evidence or making a false statement, which he/she knows to be false, under oath/affirmation to the Committee. In such circumstances it is possible that a complaint could be made to the PSNI to investigate whether an offence has been committed under the Perjury (NI) Order 1979, however, he may wish to seek his own legal advice on this issue.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

## Letter to DSD 18.11.14

### Committee for Social Development

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Our Ref: CSD/022/2013/3/SK

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Ormeau Road  
Belfast BT7 2JB

18 November 2014

Dear Billy

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013,  
of impropriety or irregularity relating to NIHE managed contracts and consideration of any  
resulting actions**

I write to inform you that the Committee has requested further oral evidence from Mr Brimstone under oath/affirmation for the above Inquiry at the Committee meeting to be held at 10.00am on Thursday 4 December 2014, in Room 29, Parliament Buildings.

The reasons for requesting Mr Brimstone to attend and give evidence under oath/affirmation relate to contradictions in evidence between Mr Brimstone and other witnesses as follows:

1. The Committee will wish to seek clarification from Mr Brimstone on a telephone call by Mr Brimstone to Cllr Palmer regarding termination of the Red Sky contract. In his evidence to the Committee on 16 October Mr Brimstone said that he had no recollection of using the phraseology described by Cllr Palmer in her account of the telephone call. He also stated that at a subsequent meeting, when he met with Cllr Palmer, Mr Robinson and others, that contrary to Cllr Palmer's statement, he did not acknowledge that her account was essentially accurate.
2. The Committee will also wish to seek clarification from Mr Brimstone on his discussions / communications with Mr Sands that led to an email being sent by Mr Sands to Mr Rowntree on 5th July 2011 at 7.40am.

In his evidence to the Committee on 6 November, Mr Sands said that *"I can only say that, in working with Mr Brimstone since May 2011, he has been in my room twice. Once was on the morning of 5 July to send that email, which you are well aware of."*

However, in his oral evidence on 13 November, Mr Brimstone was of the view that he would not have been in his office at that time of the morning and therefore did not personally go to Mr Sands' office. He said that he could not recall the conversation, however he accepted that it was clear from the official record *"that I had a conversation with Mr Sands and that the outcome of that conversation was that he would send an email to the Chairman to ask if certain things were possible"*.

3. In her evidence to the Committee on 9 October Cllr Palmer told the Committee that she had spoken to Mr Sands about his knowledge of a telephone call by Mr Brimstone to Cllr Palmer regarding the termination of the Red Sky contract. She said that Mr Sands told her *“Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board”*. However, in Mr Sands’ oral evidence to the Committee on 6 November, Mr Sands said that *“I never said the words to her”*.

While members may focus on this contradictory evidence it is not possible to anticipate all lines of questioning in advance of the evidence session and it will be for the Chairperson to determine whether a particular line of questioning is in order.

To aid with his preparation for the evidence session I would refer Mr Brimstone to the attached transcripts of evidence. I would highlight that transcripts of the most recent evidence session (13 November) are not yet available but we will forward them to you, for Mr Brimstone’s consideration, as soon as possible.

While the Committee received a submission from Mr Brimstone for his evidence session on 16 October the Committee would be happy to receive any further written evidence that Mr Brimstone may wish to submit. If this is the case I would ask that it is submitted by Monday 1 December 2014.

I would also advise that both Cllr Palmer and Mr Sands have also been invited back under oath/affirmation on these matters.

Mr Brimstone can opt to swear an oath or take an affirmation and I would appreciate if he would indicate which option he intends to choose. He should also be aware that there are legal implications for a witness giving false evidence or making a false statement, which he/she knows to be false, under oath/affirmation to the Committee. In such circumstance it is possible that a complaint could be made to the PSNI to investigate whether an offence has been committed under the Perjury (NI) Order 1979, however, he may wish to seek his own legal advice on this issue.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

## DSD letter 26.11.14

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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 412  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

26 November 2014

Dear Kevin

### **SDC Inquiry Phase 3**

At the Social Development Committee meeting on 18 September 2014 evidence in relation to Phase 3 of the Inquiry was provided by Housing Executive officials. The Chairman at the end of the evidence session advised the NIHE officials that *“the door is open to you to come to us if you want to change, correct or add anything.”*

I have now been advised by Clark Bailie that in his written briefing to the Committee on 11 September, prior to his attendance on the 18 September, he had advised the Committee that he had attended two meetings with Red Sky. However, on reviewing other NIHE records now available, he wishes to inform the Committee that he inadvertently misinformed them as he did in fact meet Red Sky on three occasions.

As previously advised in his written evidence, the first meeting took place on 24 November 2010 and was an initial meeting at which the findings of the independent review undertaken by ASM Howarth were made available to Red Sky. A second follow-up meeting then took place on 20 January 2011. At this meeting some of the issues contained within the ASM findings were discussed and a draft timetable for the Red Sky responses was set out. The third meeting on 4 February 2011, as also previously advised, was to discuss the issue of overpayments as identified by ASM Horwath and the Repairs Inspection Unit and confirm the timescales for responses by Red Sky.

Mr Bailie wishes to apologise for this error and hopes that this has not inconvenienced the work of the Committee.

Yours sincerely



Susan McCarty

## DSD Letter 28.11.14

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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
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Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

28 November 2014

Dear Kevin

### **SDC Inquiry – Phase 3 – BBC FOI information**

I refer to the e-mail received from Stewart Kennedy on 11 November 2014 which provided additional evidence in relation to your request for a copy of December 2010 minutes of a meeting between the Northern Ireland Housing Executive (NIHE) and Red Sky. You have also requested copies of any minutes of meetings between NIHE and Red Sky in January and February 2011.

The NIHE has advised that the reference in Jim Johnston's e-mail dated 14 June 2013 to Darren Marshall referring to "minutes of NIHE meeting with Red Sky management in Dec 2010" was in fact an error. The NIHE has advised that they have no records relating to a meeting with Red Sky in December 2010 and the minutes attached to that e-mail related to a meeting on 4 February 2011 and were a copy of minutes taken by the Red Sky Group. These are attached and the NIHE has been unable to trace any minutes taken by them for this meeting in February 2011.

The NIHE has also advised that they do not have minutes relating to meetings with Red Sky in either January or February 2011. However, to assist, the NIHE has provided handwritten notes taken by an NIHE official at meetings with the Red Sky Group on 24 November 2010 and on 20 January 2011.

I hope this is helpful.

Yours sincerely



Susan McCarty

## Email to DSD 11.11.14

Billy,

I refer to the letter of 6 November from Susan McCarty which asks for any additional information about a meeting held in December 2010 between the NIHE and Red Sky. Please find attached the additional evidence provided by the BBC to the Committee. In its response to a BBC FOI request, the NIHE references the minutes of a meeting held in December 2010.

In addition to the request for December 2010 minutes, the Committee has also asked for minutes of any meetings held with NIHE and Red Sky in January and February 2011.

I would be grateful if you could follow this up with the NIHE.

Regards

Stewart.

# DSD Letter 04.12.14

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Dr Kevin Pelan  
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Belfast BT4 3XX

4 December 2014

Dear Kevin

## **SDC Inquiry – Phase 3 FOI Request**

I refer to your letter dated 14 November 2014 in which you have sought clarification about an e-mail on 5 July 2011 from Michael Sands to Brian Rowntree and whether this was released to the BBC under a Freedom of Information request.

## **Records Management**

By way of background and to provide clarity to the Committee, the record management system which has been implemented across the Northern Ireland Civil Service is called TRIM. This system was rolled out in this Department in 2007 and established a single, virtual repository to file all corporate and operational electronic information contained in e-mail accounts, network devices and hard disks etc - enabling the Department to meet its statutory obligation in relation to records management.

Record and Information Management Guidance issued to staff states that it is the responsibility of all staff to manage their e-mails and for individual users to distinguish between those that are departmental records, which need to be catalogued in TRIM, and those which are of a temporary nature and can be deleted.

Also, with the introduction of Network NI and IT Assist, a 90 day rule has been imposed on all e-mail accounts within the Northern Ireland Civil Service. Therefore, if the individual user does not save e-mails at the time of sending or shortly thereafter, e-mails will be automatically deleted from inboxes and associated folders, sent items and deleted items after 90 days expire.

## **Freedom of Information request**

When the Department receives a request for information under the terms of the Freedom of Information Act (2000), the relevant business area tasked with responding will search the Departmental Electronic Records system (known as TRIM) to identify potential records which comply with the terms of the applicant's request.

The Department has established that this e-mail was not catalogued in TRIM at the time of its issue on 5 July 2011 and, as e-mails are automatically deleted from inboxes and associated folders after 90 days, this would have been automatically deleted after this period of time. Therefore, when dealing with the FOI request from the BBC, responded to on 11 April 2013, the e-mail in question was not recovered in the search of TRIM to identify records which complied with the terms of the applicant's request and consequently could not be released. When the subsequent Internal Review of the Department's response to the BBC took place in August 2013 this e-mail record was still not present in the TRIM system and consequently could not be released.

In relation to the release of a copy of the e-mail to the Committee, extensive research was carried out in order to provide the appropriate documents to the Committee as part of the evidence gathering in response to the Committee's letter on 26 February 2014 for information in relation to Phase 3 of the Inquiry. Resulting from this research, a hard copy print of the e-mail was recovered but I am unable to be specific as to when this was located. As this fell within the scope of the Committee's request, it was therefore provided to the Committee on 11 April 2014 as part of the evidence in relation to Phase 3 of the Inquiry. At that time the e-mail was then catalogued in TRIM in line with the Record and Information Management Guidance.

I also understand that a copy of the e-mail on 5 July 2011 was provided to the BBC by the Housing Executive in response to an FOI request in November 2012.

I hope this information is helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read "Susan McCarty". The signature is fluid and cursive, with a large loop at the end.

Susan McCarty

# Letter to DSD 14.11.14

**Committee for Social Development**

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Our Ref:CSD/ 022/2013/3/SK

Mr Billy Crawford  
Department for Social Development  
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1 Cromac Place  
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Ormeau Road  
Belfast BT7 2JB

14 November 2014

Dear Billy,

**Committee Inquiry – Phase 3 FOI Requests**

At its meeting of 13 November 2014, the Committee noted correspondence and enclosures from Susan McCarty dated 6 November 2014 in relation to BBC FOI Information. I attach the items for ease of reference

I also attach an email which the Department supplied to the Committee as evidence in relation to its Inquiry. The email is dated 5th July 2011 and is from Michael Sands to Brian Rowntree.

There appears to be a lack of clarity as to whether the Department supplied this email to the BBC as part of its original FOI request or as part of the subsequent review in August 2013. I would ask you to clarify if, or when, this email was released to the BBC by the Department.

If it was the case that the Department released this email to the Committee and not to the BBC then the Committee would like an explanation as to why this was the case.

Furthermore, the Committee would like to know when this email was uploaded to the TRIM system and if it has ever been deleted from this system.

I would be grateful if you could provide a response within 10 working days of receipt of this letter.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

## DSD Letter 23.12.14

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Dr Kevin Pelan  
Social Development Committee Clerk  
Northern Ireland Assembly  
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BELFAST BT4 3XX

23 December 2014

Dear Kevin

**Inquiry by the Committee for Social Development into Allegations of Impropriety  
Surrounding NIHE Contracts**

Further to your letter of 18th December in reply to mine of 25th November, you refer to Mrs Palmer's allegation in relation to a conversation with Mr Sands. I would be grateful for any copies of written statements Mrs Palmer has given the Committee in addition to her written submission of 11 July and the recorded Hansard transcript of 09 October, including contemporaneous notes that she or any other person has supplied to the Committee which relates to this issue.

**Legal Assistance**

I note that the Committee is not prepared to assure Mr Sands and Mr Brimstone that they are not obliged to answer any question which might expose them to civil, disciplinary or criminal proceedings if they attend voluntarily. For this reason the Department feels that they should be entitled to legal advice during the course of their evidence to the Committee.

The Department, on behalf of the Departmental witnesses therefore asks that the Committee review its position.

Yours sincerely



Billy Crawford

# Letter to DSD 18.12.14

**Committee for Social Development**

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Our Ref:CSD/ 017/2011/4/SDT

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
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Gasworks Business Park  
Ormeau Road  
Belfast BT7 2JB

18 December 2014

Dear Billy,

**Inquiry by the Committee for Social Development into Allegations of Impropriety Surrounding NIHE Contracts**

I refer to your letter of 25 November 2014 regarding the above, and address the issues you raised in that letter:

**Contradictory evidence**

In relation to point 3 of the commissioning letter of 18 November 2014 I would highlight that Mrs Palmer alleges a conversation took place between her and Mr Sands in which Mr Sands said he had spoken to Mr Brimstone about the phone call Mr Brimstone had made to Mrs Palmer on 1 July 2011. She said that Mr Sands told her *“Mr Brimstone came to me personally, and he told me the very next day that he had phoned you and instructed you to go to the board to ask for an extension of the contracts and stand against the board”*. However, in Mr Sands’ oral evidence to the Committee on 6 November, Mr Sands said that *“I never said the words to her”*.

In relation to the alleged conversation between Mr Brimstone and Mr Sands, Mr Brimstone told the Committee in oral evidence on 13 November, that he *“has no recollection”* and *“does not believe”* that he told Mr Sands about the conversation (with Mrs Palmer). There is therefore a contradiction between the evidence given by Mrs Palmer, in which she alleges that Mr Sands told her that he and Mr Brimstone had a conversation about the phone call, and the evidence given by Mr Brimstone, in which he states that he does not believe this conversation took place.

**Privileges afforded to witnesses**

In your letter of 25 November 2014 you seek an assurance from the Committee that at a future evidence session for Mr Sands and Mr Brimstone, if they attend voluntarily, it is the Committee’s view that they are not obliged to answer any question that may expose them to civil, disciplinary or criminal proceedings. The Committee has given careful consideration to this request and has decided that it would not be appropriate for it to give such an assurance.

You will be aware that a witness giving evidence voluntarily, whether under oath/affirmation or not, may refuse to answer any question including answering questions that may expose him/her to civil, disciplinary or criminal proceedings.

If, however, such a witness refuses to answer any question, the Committee may, depending on the particular circumstances, consider utilising its powers under section 44 of the Northern Ireland Act 1998.

It is therefore the Committee's view that this is a matter upon which the witnesses, if they attend voluntarily, can if they choose seek their own legal advice before attending the meeting and answer or decline to answer questions accordingly.

**Application for witnesses to be accompanied by legal advisers**

The Committee has also noted the Department's application for departmental witnesses to be accompanied to the hearings by a legal adviser and to be able to consult their legal adviser during the course of the meeting.

The Committee has noted that this is a broad, generic request for a legal adviser to attend with each of the witnesses. There is no specific reason or detail provided as to why the witnesses each require a legal adviser to accompany them to the evidence session or why they would need to consult a legal adviser during the course of the meeting.

Therefore, given the lack of detail in respect of the application the Committee does not accede to this request for legal advisers to attend.

A formal letter inviting Mr Sands and Mr Brimstone to give evidence to the Committee on 8 January 2015 will be issued in due course.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development

## DSD letter 19.2.15

2nd Floor  
Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast  
BT7 2JB

Telephone: 028 9082 9325  
Facsimile: 028 9082 9324  
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19 February 2015

Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 284  
Parliament Buildings  
Ballymiscaw  
Belfast  
BT4 3XX

Dear Kevin

### **SDC Inquiry – Phase 3**

Thank you for your letter dated 30 January 2015 in which you have requested clarification in relation to the reference to “strong political pressures being exerted” in a letter dated 26 November 2010 from Mr Brett Lockhart QC to Ms Frances Gallagher, Head of NIHE Legal Services.

The Northern Ireland Housing Executive has advised that in responding to the Committee’s request the Housing Executive is maintaining legal privilege and the associated confidentiality as previously asserted. The November document to which you refer is one to which legal professional privilege attaches. It has been disclosed to the Committee in error and as such privilege has not been waived by its inclusion in the papers. In the circumstances, section 44(9) of the Northern Ireland Act 1998 applies to the request and its refusal.

Without waiving that privilege, the Housing Executive would advise by way of background and context that there was political focus on the Red Sky contract at that time as evidenced by the number of Assembly Questions and correspondence cases. Over the period September to October 2010 the Housing Executive received requests from the Department for information to answer six Assembly Questions as well as supplying briefing to the Department for five requests for information in relation to correspondence cases. In addition, in October 2010, the then Minister announced two major investigations into governance and procurement processes in the Housing Executive.

I hope this information is helpful.

Yours sincerely



Susan McCarty

## Letter to DSD 30.1.15

Committee for Social Development  
Room 284  
Parliament Buildings  
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BT4 3XX

Email: kevin.pelan@niassembly.gov.uk  
Tel: 028 9052 1864  
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30 January 2015

Our Ref: CSD/022/2013/3/SK

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Ormeau Road  
Belfast BT7 2JB

Dear Billy

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013,  
of impropriety or irregularity relating to NIHE managed contracts and consideration of any  
resulting actions**

At its meeting on 29 January 2015, the Committee for Social Development continued its review of evidence relating to Phase 3 of its Inquiry.

As part of this review, the Committee further considered correspondence of 26 November 2010 from Mr Brett Lockhart QC to Ms Frances Gallagher, Head of NIHE Legal Services, regarding the termination of the Red Sky contract. For your information, the Committee received this letter from the Department on 15 May 2014 as part of its evidence gathering process.

In his letter Mr Lockhart refers to a telephone conversation he had with Ms Gallagher in which she indicated that the NIHE Board wished to revisit the issue of immediate termination and whether it would be possible. The letter also refers to “**strong political pressures being exerted**”.

At its meeting on 29 January 2015, the Committee agreed that I should write to Ms Gallagher to seek clarification on the reference to “strong political pressures being exerted”. The Committee would like to ascertain if she can shed light on what these “strong political pressures” were that Mr Lockhart refers to.

For your information the Committee has also written to Mr Lockhart on this matter.

I would be grateful if you could provide this information within 10 working days of receipt of this letter.

Yours sincerely

Kevin Pelan

**Dr Kevin Pelan,**  
Clerk, Committee for Social Development

## Email from Nelson McCausland 18.02.15

From: McCausland, Nelson [nelson.mccausland@mfa.niassembly.gov.uk]  
Sent: 18 February 2015 11:19  
To: Mitford, Ashleigh  
Subject: Correspondence  
Alex Maskey  
Chair, Social Development Committee

Dear Alex

My response to Mr Carruthers was on the basis that I did not recollect any such conversation and so when I was asked if I knew the phone call was going to be made, or was made at my behest, the answer was 'no'.

As I indicated in my evidence to the committee, I had and have no recollection of this matter. With the benefit of hindsight, rather than answering 'no' I could have replied that I had no memory of any such calls, though many would believe that the addition of such implicit qualifications to this or any other question are unnecessary. However, I went on to explain to the committee what normal practice would have been.

I believe therefore that in the circumstances there is no difficulty in a reasonable person reconciling the answers given to the two questions.

As regards the e-mail that was sent to Brian Rowntree on 5 July 2011, that was more than three and a half years ago and I cannot recall after all this time any conversations about this matter.

Yours sincerely

Nelson McCausland

# Letter to Nelson McCausland

**Committee for Social Development**

Room 284  
Parliament Buildings  
Belfast  
BT4 3XX

Email: kevin.pelan@niassembly.gov.uk  
Tel: 028 9052 1864  
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23 January 2015

Our Ref: CSD/022/2013/3/AM

Mr Nelson McCausland MLA  
Room 359a  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Dear Mr McCausland

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013,  
of impropriety or irregularity relating to NIHE managed contracts and consideration of any  
resulting actions**

As you are aware the Committee has heard extensive evidence about a phone call from Mr Brimstone to Cllr Palmer on 1st July 2011 in relation to the NIHE board meeting on 5th July 2011. During oral evidence to the Committee, Mr Brimstone has been clear that, although he couldn't recall whose idea it was to call Cllr Palmer, it was a course of action agreed after discussion with you.

This was not disputed by you in oral evidence on 13 November 2014. At the evidence session you were asked:

*"So you are accepting his evidence that it was the product of discussion between you and him."*

You responded:

*"Yes, I accept that entirely."*

You also said:

*"I have no real recollection of it, but that would have been the normal practice."*

However the Committee has since had sight of a transcript from The View programme aired on 4 July 2013 in which you denied that the call was made at your behest and denied knowing that Mr Brimstone was going to make the phone call.

This is a clear contradiction between your evidence given to the Committee on 13 November 2014 and your statements on The View in July 2013. The Committee would therefore ask you to provide clarification on the matter.

I enclose an extract of the transcript of 'The View' programme referred to above for your information.

You will also be aware that Michael Sands sent an email to Mr Rowntree on the morning of 5 July 2011 regarding advice received on the length of the proposed extension to the termination date of the Red Sky contracts. The Committee would ask that you clarify whether you had discussed with Mr Brimstone if such an email should be sent and when you became aware that this email had been sent.

I would be grateful if you could provide this information within 10 working days of receipt of this letter.

Yours sincerely

Kevin Pelan

**Dr Kevin Pelan**

Clerk, Committee for Social Development

Enc.

<b>Programme</b>	<b>The View – Nelson McCausland</b>
<b>Date &amp; Time</b>	<b>4.7.13 – 22.39</b>
<b>Subject</b>	<b>NIHE Contracts</b>

**Mark Carruthers**

Okay, did Mr Brimstone make that phone call at your behest?

**Nelson McCausland**

No.

**Mark Carruthers**

Did you know he was going to make that phone call?

**Nelson McCausland**

No.

**[EXTRACT]**

## Letter from DSD 9.3.15

2nd Floor  
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Dr Kevin Pelan  
Committee Clerk  
Committee for Social Development  
Room 284  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

9 March 2015

Dear Kevin

### **Social Development Committee Inquiry – Phase 3**

Thank you for your letter dated 3 March 2015 in relation to the email sent by Michael Sands to Brian Rowntree on 5 July 2011.

The Committee wishes to establish whether any investigation was undertaken by the Department in relation to the email being sent or in relation to any meeting that took place that led to the email being sent. In particular, the Committee has asked for any information the Department can provide in relation to where and when that meeting took place, what was discussed and who attended.

The Department has not undertaken any investigation in relation to the email being sent or in relation to any meeting that took place that led to the email being sent. In relation to this matter, the Department would refer the Committee to the evidence already provided by Mr Michael Sands and Mr Stephen Brimstone.

Yours sincerely



Susan McCarty

## Letter to DSD 3.3.15

**Committee for Social Development**

Room 284  
Parliament Buildings  
BELFAST BT4 3XX

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Our Ref: CSD/022/2013/3/AM

Mr Billy Crawford  
Department for Social Development  
Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast BT7 2JB

03 March 2015

Dear Billy,

**Inquiry into allegations, arising from a BBC NI Spotlight programme aired on 3 July 2013, of impropriety or irregularity relating to NIHE managed contracts and consideration of any resulting actions**

The Committee considered evidence in relation to Phase 3 of its Inquiry at its meeting on 26 February 2015 and agreed that I write to you in relation to the email sent by Michael Sands to Brian Rowntree on 5 July 2011.

The Committee wishes to establish whether any investigation was undertaken by the Department in relation to the email being sent or in relation to any meeting that took place that led to the email being sent.

In particular the Committee would be grateful for any information the Department can provide in relation to where and when that meeting took place, what was discussed and who attended.

I would be grateful if you could provide a response within 10 working days of receipt of this letter.

Yours sincerely

**Kevin Pelan**

Dr Kevin Pelan  
Clerk, Committee for Social Development







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