



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Inquiry into Allegations Arising from a BBC 'Spotlight'
Programme Aired on 3 July 2013 of Impropriety or
Irregularity relating to NIHE-managed Contracts and
Consideration of any Resulting Actions (Phase 2):
Northern Ireland Audit Office

11 September 2014

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Members present for all or part of the proceedings:

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

Witnesses:

Mr Kieran Donnelly	Comptroller and Auditor General
Ms Anu Kane	Northern Ireland Audit Office
Mr Brandon McMaster	Northern Ireland Audit Office
Mr Tomas Wilkinson	Northern Ireland Audit Office

The Chairperson: I formally invite Kieran Donnelly, Tomas Wilkinson, Brandon McMaster and Anu Kane to take their seats. You are all very welcome. This is in respect of phase 2 of our inquiry. I will basically characterise what phase 2 is really about, which is to try to establish that a range of deficiencies and problems were identified and a range of recommendations have been put forward by various bodies, including your own. We want to satisfy the Committee via the inquiry that all those measures and whatever other appropriate measures are taken on board to deal with the identified problems in the past. We have to satisfy ourselves as a Committee, as part of our role here, that, in phase 2, the Department and the Housing Executive are taking on board all the necessary precautions. To that extent, we wanted to hear from you because you have a critical role in all this. Without any further ado, I invite you, Kieran, and your colleagues to present to the Committee.

Mr Kieran Donnelly (Comptroller and Auditor General): Thank you very much, Chair, for the opportunity to address the Committee. My colleague Brandon McMaster, on my right, led the value for money inquiry that we did in 2012. That is the older material. Tomas Wilkinson and Anu deal with the up-to-date stuff. Tomas is the director of the audit of accounts, so he has the more up-to-date position.

The issues relating to contract management on planned maintenance and response maintenance are issues that we have been reporting on for some time. Back in late 2008, a whistle-blower first approached the Public Accounts Committee (PAC) about concerns relating to response maintenance,

and we brought those issues to the Housing Executive and the Department. The issues were then investigated by the executive and an independent firm, which was ASM Horwath.

Over the next year or so, we became increasingly concerned that there were general issues relating to the management of response maintenance contracts, and, in 2011, I decided that we should do a detailed value-for-money review. That report was published in September 2012 and led to a Public Accounts Committee hearing in the same month, and the report from the Public Accounts Committee followed shortly afterwards.

I will go through some of the key strategic issues that were raised by the Public Accounts Committee at that time. They go far beyond one particular contract or contracts in general. They get right into the heart of governance issues within the Housing Executive. So, there were some big wider governance issues, and I will mention four. The first was about the quality and reliability of information going up to the executive's board and audit committee. There were problems in respect of the right information going up. Important things were not being escalated, particularly where there were problems with contracts. In a sense, sometimes, the committees were bombarded with a mountain of paper, but there was a lack of clarity on what the key issues were. That was one of the big issues. Also, at that time, issues were being raised by the executive's internal audit unit and the corporate assurance unit (CAU), and we had concerns about the independence of both. That was a big issue at the time. We also said and the Public Accounts Committee said that the third point was that the Housing Executive should not be a cold house for whistle-blowers. There was a need to take whistle-blowers seriously. That was another key strategic point coming out at that time. Also, when the Committee reported, there were a lot of outstanding investigations into various contracts, and the Committee had recommended that those be completed as soon as possible and the weaknesses eradicated.

In each of the big strategic issues, progress has definitely been made. The papers now going to the board and the audit committee are much more succinct and highlight the key issues arising. There is also evidence that the internal audit and corporate assurance units do not have the same degree of challenge from line management that they had in the past, and their draft reports are being cleared quickly. In the past, if there were difficult issues in reports, sometimes, draft reports did not emerge for a very long time. That problem has been addressed.

There are revised whistle-blowing policies in place, and progress on whistle-blowing investigations is now discussed at the Housing Executive audit committee. Also, most of the various investigations that were outstanding at that time have been brought to conclusion.

At the same time, we have been carrying out each year an audit of the accounts, and there continue to be issues around planned maintenance and response maintenance. So, I have qualified my audit opinion on both response maintenance and planned maintenance every year since 2010-11. In 2011-12, I think that we stated that there were still systemic weaknesses in contract management. Bringing it right up to date, the 2013-14 accounts are being laid today in the Assembly. My opinion is still qualified on both response maintenance and planned maintenance, but we have seen considerable improvement, mainly in response maintenance. I would like that improvement to be sustained for another year before considering lifting the qualification. There are probably more unresolved issues in planned maintenance, so I will come to that in a minute.

The executive has taken various initiatives, and one of the most important is improved training for its staff. It has placed intervention teams in poorly performing districts, and that is beginning to work. You will see from the briefing paper that the results of the various inspections have lifted considerably. They were much better last year. Nonetheless, we qualify our opinion on response maintenance because we really want to see those improvements sustained. On planned maintenance, the executive's assurance unit has shown that 14% of schemes examined last year were given a limited or unsatisfactory opinion. That is a lot better than before, but we still have some concerns. That particular unit has not had a quantity surveyor on its team for some time, which has meant that the work has focused mainly on ensuring the quality of the work done and less on the financial aspects. The executive recognises this as an issue, but it is one that needs to be dealt with. Also, I think that there were gaps in coverage on certain types of work, particularly heating installations. Planned heating maintenance was 28% of the spend last year, but no work was carried out in this area by the corporate assurance unit.

Recently, a whistle-blower came forward on issues around planned maintenance schemes, and that has resulted in the dismissal of two members of staff. The executive was concerned about the fact that it had been given a satisfactory rating in that area by corporate assurance unit, and it has launched a review into how these ratings were decided on planned maintenance. That review has still

to be completed, so that story is not finished. Because of the uncertainties around these issues, we again qualified our opinion on planned maintenance. So, there are more unresolved issues on planned maintenance than on response maintenance.

A significant issue that has been reported over the last year is the overpayments arising from planned maintenance schemes. We have discussed that in detail in part 3 of today's report. I am aware that the chair and the chief executive of the Housing Executive are coming up next week to go through that in detail. I think that the key point here is, regardless of the amount that was eventually recovered, it was very clear that the original contractual arrangements were not working. The way that the contract was supposed to have worked was that reimbursement was to be carried when the actual work was done for each scheme, and measurement at that stage would allow adjustments to be made against agreed standard costs. However, that was not done for a number of years. What was really happening was that the executive was going back in trying to do the calculations over time.

What we had, I suppose, was a light-touch regime that operated on trust. Had proper arrangements been in place at the outset, including remeasurement, the issue of overpayments and underpayments would not have emerged in the first place. So, there was really a whole mess around overpayments and underpayments, but the root cause of that problem was that there was not proper compliance: the executive was not managing the contracts properly in the first place. That was the root cause of the problem. I think that we said straight that it was unacceptable for that situation to have arisen. That is really all I want to say at this stage, Chair.

The Chairperson: OK. Thanks very much for that. I remind members that we have a significant amount of material provided by your office, so thank you for that. You have touched on issues that we are going to deal with next week in terms of the planned maintenance contract settlement. Whilst that is not specified in the inquiry, in the first instance, members should focus their minds on phase 2, which deals with the adequacy of the actions proposed by the Minister for Social Development and the Housing Executive to address the previous well documented failings in relation to the management. If I heard you right, Kieran, you are basically saying that there has been significant ongoing improvement, particularly in regard to response maintenance —

Mr Donnelly: Yes.

The Chairperson: — and you want to see that sustained, at least until next year, before you lift your qualification.

Mr Donnelly: That is a fair summary, Chair.

The Chairperson: You then want to see significant improvement in relation to planned maintenance.

Mr Donnelly: Yes. There are still some doubts about the planned maintenance regime; I want to see those sorted out.

The Chairperson: But, overall, it is certainly more positive. From our point of view, the key phase 2 issue that we must address is whether the actions that were identified have been taken. Have they been embraced and taken? Are they satisfactory? Of course, determining that will be an ongoing process. That is my understanding. So, it is an ongoing improvement situation, but you have identified specific areas where, clearly, more work needs to be done.

Mr Donnelly: It is fair to say that all of this started from a low base. It was a bit like turning around a tanker, and the whole approach to managing contracts had to be fundamentally reviewed. It is definitely going in the right direction.

The Chairperson: Yes. We all obviously welcome hearing that. However, one point that I want to make is that we recently met the chair of the Housing Executive, Donald Hoodless, and he was accompanied by Professor Peter Roberts, who was the chair of the audit committee. I specifically addressed the issue of whistle-blowers and the lessons learned. On reading your material, I have to say that I am not satisfied with the responses that I got that day. People can check the record, because I think that we were not given as much information as we should have been. So, I feel a wee bit blindsided. I will certainly write to the Housing Executive to ask for clarification. We will refer them to the Hansard report of that meeting. But, overall, you are saying that it is going in the right direction, I think—

Mr Donnelly: Yes

The Chairperson: — which is, I think, what everybody would want to hear.

Mr Allister: You described to us quite graphically in the documentation all the difficulties and deficiencies within the Housing Executive. The Department has a housing unit that is supposed to have an oversight role —

Mr Donnelly: Yes.

Mr Allister: Is it self-evident that it, too, fell down or do you make any criticism of it?

Mr Donnelly: I will go back to the PAC inquiry of 2012. The PAC was very clear that there were deficiencies in departmental oversight. In that earlier period, there was quite a hands-off regime. That has changed significantly over these past few years. For example, the Department is now copied into draft internal audit reports and reports from the corporate assurance unit. That is a much better regime. It is also attends the audit committee meetings, so there probably has been a sea change in departmental oversight, going back certainly the last four or five years.

Mr Allister: It is now doing what it always should have been doing.

Mr Donnelly: Absolutely, yes.

Mr Allister: Did any of the whistle-blowing implicate the corporate assurance unit?

Mr Tomas Wilkinson (Northern Ireland Audit Office): In terms of the recent whistle-blowing, there are issues relating to planned maintenance in one area, and that reflects on the people who work there. The investigation is still under way, so it would probably be unfair to get into too much detail on that. It identified wider issues in that the CAU had given that area a satisfactory rating. That may be partly to do with the fact that it did not have a quantity surveyor, because, had it had a quantity surveyor —

Mr Allister: It still does not have a quantity surveyor.

Mr Wilkinson: It does, I think, as of now.

Mr Allister: Right.

Mr Wilkinson: But it did not have a quantity surveyor then. Had it had a quantity surveyor, it might have been expected to identify those issues.

Mr Allister: How far was the work of the CAU and its predecessors hamstrung by the challenges of management?

Mr Donnelly: It certainly was hamstrung in the earlier period. There is absolutely no doubt about that.

Mr Allister: How high did that challenge go within management?

Mr Brandon McMaster (Northern Ireland Audit Office): That challenge was up at a senior level.

Mr Allister: How senior?

Mr McMaster: You are certainly talking about one down from the chief executive.

Mr Allister: One down. What director is that?

Mr McMaster: They have now gone; retired a number of years ago.

Mr Allister: In all of this what you called "mess", was anyone ever disciplined?

Mr McMaster: Not that we are aware of.

Mr Allister: Does that surprise you?

Mr McMaster: People had left the organisation before the reports were finalised.

Mr Allister: Were they facilitated to leave?

Mr McMaster: I cannot answer that. That is one you would really have to put to the Department or to the Housing Executive.

Mr Allister: You see, we are now going to have this overview again in regard to the CAU and all of that. Is that not right? A due diligence exercise. But that is going to be carried out by the head of internal audit, and that unit is now to be amalgamated with CAU. Is that not right?

Mr Donnelly: That is certainly a proposal, yes.

Mr Allister: What does that do for the — let us use a neutral word — efficiency of that due diligence exercise?

Mr Wilkinson: It will be looking at work that was done by the previous head of the corporate assurance unit. They used to be two separate divisions. I think this due diligence exercise was initiated before the two units merged. Obviously, they have now merged, but the head of internal audit is doing a full review of the methodology and the scoring methodology that was used in relation to planned maintenance. I do think he is independent of —

Mr Allister: Do you have no concerns there?

Mr Wilkinson: We have concerns that, because of what was being done in the corporate assurance unit in terms of the scoring, the results of the planned maintenance inspections appear to have been inconsistent. That is one factor in why we qualified our audit opinion this year. We will look closely next year at what it has done, what methodology has changed and the impact on the results. But it is fair to say that, in relation to planned maintenance, and the results of the CAU that are being reported this year, we have some doubts as to whether they may be more favourable than they might have been under a new scoring mechanism in the future.

Mr Allister: So, what does all that mean?

Mr Wilkinson: Fourteen per cent got limited or unsatisfactory. The Housing Executive is looking into whether that could have been higher had there been a different scoring mechanism. It is certainly what —

Mr Allister: So, was even the scoring mechanism tweaked to downplay these problems?

Mr Wilkinson: I honestly do not think that it was tweaked deliberately to do that because it went through a whole committee of people within the Housing Executive, but that may have been the result.

Mr Donnelly: It is the type of thing that we would always be sceptical about. You will see that, on response maintenance, the scores have also gone up. There is a footnote to table 1 that says that we reviewed the methodology and were content with it. We also want to satisfy ourselves about whether you would have got the same results if you had continued with the old methodology. We certainly think that that is the case on response maintenance. We were satisfied on the response maintenance. There is more doubt on the planned maintenance. When we see a change in methodology, we are always sceptical and want to satisfy ourselves that any improvement is genuine rather than because of a shift of the goalposts.

Mr Allister: Could I move on to ask you something different? How happy were you in your inspections with the Direct Labour Organisation (DLO), which has been enlarged?

Mr Donnelly: This is a whole new area. Because a number of contractors have got into financial difficulty, the work and the staff have transferred. So, the Direct Labour Organisation is much bigger

than in the past. That creates a new set of issues. How do we assess its efficiency vis-à-vis contractors? There are important issues for the executive there. Is the increase in the DLO's size temporary and some of that work will go back out, or is it a permanent shift? That is a new dimension that we have not really got into yet, but it will be very important to be alert to new risks there.

Mr Wilkinson: The teams on the ground, the district offices and the CAU inspect the work of the DLO in the same way as they inspect the work of a private contractor. The DLO is treated in the same way so there should be the same assurance, at least on the quality of its work. I know that the Housing Executive may have value-for-money or efficiency issues, but the quality of the work done is inspected.

Mr Allister: Have you any view on whether it is adequately inspected?

Mr Wilkinson: It is as adequately inspected as everybody else, so, within response maintenance, yes. We have some concerns about the CAU and its scoring mechanisms etc on planned maintenance, but it is inspected in the same way as everybody else.

Mr Allister: Is it outside your ambit to concern yourself with the huge growth that there has been in the DLO as a consequence of TUPE and everything else? Someone might be inclined to inspect and ask, "Why is it this big? Is this really value for money?". Do you do any of that?

Mr Donnelly: It is not something that we would look at in signing off the accounts; it is beyond that. We have not done any specific value-for-money work on that issue as yet, but that is not to say that we could not.

Mr Allister: Finally, are there still instances of whistle-blowing coming to your attention?

Mr Donnelly: No, they have stopped. I think that is a fair assessment. When I first came into this job in 2009, there were quite a number of serious whistle-blowing cases, but none has hit my desk directly in the last couple of years.

Mr Allister: Chair, I have questions on part 3, but I am happy to leave those for now.

The Chairperson: We might have to leave that anyway because, as I said, members and everybody else are scheduled to deal with phase 2, but we will try to deal with some stuff.

Kieran, I would not expect you would be able to give a full report on value for money in and around the TUPE arrangements and the DLO. From where I am sitting, I think those have been entirely ad hoc arrangements. We now have a third company that has gone into administration with requests around TUPE arrangements. I am certainly not satisfied that that has been organised in a thought-through or planned way. As I said, the arrangements are far too ad hoc and, in a way, maybe even unbalanced. I suggest to members that we clarify with the Department what its current status around the DLO is, how it expects to manage what is clearly now an enlarged unit, and all the arrangements around that. I appreciate that you are trying to deal with that, Kieran, but you would not be able to do it fully at this stage of the game.

Mr F McCann: Jim has touched on some of the stuff that I was going to say. I know that, in a past life, there was a DLO within the Housing Executive. That was people who near enough grew up with the Housing Executive and provided maintenance on a long-term basis. The difficulties that have arisen now may be because many of the people who have been TUPE'd across have come from companies where there were difficulties in the past. That is the point that we need to make. Is there value for money there? Is the quality of work checked on a regular basis? As Alec has said, there seems to be a new company that has come out of the difficulties in the construction industry.

Mr Donnelly: Just to recap, we can give some assurance that there is control on the quality side of it. I am not in a position to comment on the cost end of it but, if you are looking at value for money, there are three things: quality, cost and timeliness. It boils down to those three simple things. There has been a lot of debate about the key performance indicators for maintenance work. When we looked at this in 2012, there were not adequate KPIs on cost and timeliness, so those were deficient. What you have now is quite an elaborate set of eight or nine KPIs. The latest gateway review said that those need to be simplified. That sort of thing needs to be dealt with in a common sense way. You need

simple measures of those three things — quality, cost and timeliness — and not much more than that. Back in 2012, they were not measuring cost and timeliness.

Mr McMaster: Certainly, insufficient weight was given to those aspects. That is one of the flaws in the methodology that we identified in our report. In essence, you could have a district where poor-quality work that was coming through was still getting an overall assurance of satisfactory because the weighting given to it was insufficient and inappropriate. They were focusing on other areas of work: tenant satisfaction, how the contractor viewed the relationship with the Housing Executive, and how the Housing Executive viewed the relationship with the contractor. Those got much greater focus, so we said, "Your methodology is actually wrong here. You need to go back and look at quality and timeliness." The other factor that was not included when we started our review was errors in invoices coming in from contractors. That was not recorded. When they started recording that, there was a very significant spike in the rates of error coming through.

Mr F McCann: Going back a number of years, I remember standing in a constituent's hall. They had dug up the hall looking for the cause of a complaint. The argument was not about how best to repair the damage but the price that they were going to get for completing the thing. I remember the argument at the time: "I do not really care about your arguments; it is about how you repair this." So, there were problems. How much did the likes of the Egan contracts, or going for contracts that went for price rather than looking at the ability of the contractor to deliver, play a part in some of the problems that existed?

Mr Donnelly: I think we said in the report that it was not Egan, as such; it was how it was applied in practice. They took a very rough and ready approach to applying the Egan principles. I think that that was the problem.

Mr McMaster: Yes, they did. Egan was about partnership working, and the Housing Executive took a view that, in partnership working, contractors would be honest and open with them and that the same level of checks would not be required to be carried out. That is not what Egan was saying. The principles of Egan still required a level of checking to be done to verify that the work was being done properly and with regard to cost, quality and timeliness.

Mr F McCann: I thought that it was also about getting more for less in terms of how they dealt with and procured contracts. One of the other questions I wanted to ask was about the procurement of the Campbell Tickell report. Did it fall within DFP guidelines?

Mr Donnelly: Eventually, yes. It is consultancy. As you know, there is a low threshold for consultancy expenditure. The original bid was under the threshold, but the final amount was over.

The Chairperson: I am mindful that this is phase 2 of the inquiry; I do not want to be straying into matters that are not part of this inquiry. We will have the Minister, chair and permanent secretary here next week to deal specifically with that. We said to Kieran in advance of today that we may well get a question to him on this, but we cannot go into it in any depth. I am sure you will appreciate that. Other members wanted to ask the same question.

Mr F McCann: Chair, I understand what you are saying, but Kieran and his team have looked into this.

The Chairperson: I understand that.

Mr F McCann: Next week, we may not have the advantage of their experience in how we deal with this.

The Chairperson: We said to Kieran in advance of today's meeting that we might well try to deal with this peripherally, on the edge of the phase 2 inquiry. This is phase 2 of the inquiry, not the Campbell Tickell report.

Mr F McCann: Peripherally, I am asking —

The Chairperson: That is OK. I will decide how far we go with it, Fra. Kieran, can you give a brief answer, for the benefit of all of the members? We will not take another question on it this morning.

Mr Donnelly: Strictly speaking, because the out-turn was higher than what was budgeted, it should have gone back for approval.

Mr Wilkinson: It has gone back for approval

Mr Donnelly: It has gone back, retrospectively.

Mr Wilkinson: It was initially budgeted at around £40,000, which required approval by the head of DSD. However, it increased and has ended up costing more. I think that that means that it now needs approval through DFP and the Minister. I am not sure if that has been got —

The Chairperson: We are going to move on from this, but I think the point that Fra and other members were making was that the procurement was done within something like 48 hours, without even a question of a financial threshold. Anyway, that is the question that was in the back of people's minds. Obviously, you have to get yourselves back again to deal with other matters — including that, probably — but we have to hear from the Department and the Minister next week.

Mr F McCann: This is important. When the chair of the Housing Executive was in front of the Committee, I thought he said that he had spoken to the board when the decision was made, but I think your report says that he did not go to the board. The next question I was going to ask was about a conflict of interest that may exist between a member of the board and the relationship with Campbell Tickell.

The Chairperson: It is dealt with in the report. I will let you make one final — I do not mean to say "allow", but I only want to deal with this in one final comment, Kieran, because we will have to return to it once we have the Minister.

Mr Wilkinson: My understanding is that it was a single-tender action initiated by the chairman, who discussed it with the Department. I do not think that there was a detailed discussion with the board at the time the decision was made.

Ms Anu Kane (Northern Ireland Audit Office): Our understanding is that when the chair went to the board, he agreed that they would need to appoint somebody. However, the actual decision to appoint Campbell Tickell was made by the chair himself. It was a single-tender action and got approval from the Social Development Minister — or, sorry, the permanent secretary.

The Chairperson: We will have them here next week, and they will have to explain their process and deal with members' questions. Following that, we will return to the issue in a formal and substantive way. That is the best way we can do it.

Mrs D Kelly: Thank you for your presentation. I want to clarify a couple of points. The reports in relation to the audit concerns go back to about 2004. Within your office and its powers, are there any shortcomings or any areas that the Assembly needs to strengthen in relation to your ability to ensure that Departments follow up and action the recommendations?

Mr Donnelly: That is a good point. You mentioned 2004; we had another report out that year on district heating schemes in the Executive. Some of the issues that were in the district heating report came up again in the 2012 report, particularly around the whole inspection regime. That report was done under direct rule, and, through the Assembly procedures and the work of the Public Accounts Committee, there has been a much more proactive follow-up on reports since devolution. I can honestly say that. Back in the direct rule days, action was not sufficient on occasions.

Mrs D Kelly: That is not surprising on some counts, because of the lack of scrutiny. Nonetheless, there were departmental heads and permanent secretaries charged with following up on that.

The second part of my question is around the powers that the Audit Office has for mandatory actioning of recommendations and whether or not there is a weakness.

Mr Donnelly: No, we work on the basis of influence. We have no mandatory powers, and that is consistent with how audit offices work throughout these islands. So it is on the basis of influence — not just our influence but the joint influence of the Audit Office and the Public Accounts Committee of the Assembly.

Mrs D Kelly: But obviously there would be —

Mr Donnelly: The process where we make recommendations is that they are considered at the lower level at the audit committees of the entities concerned. If we were making recommendations for a number of years that no one was taking any notice of, we would be prompted to go stronger and issue a public report. Since devolution, there has been quite a rigorous system for follow-up on tracking PAC recommendations and reporting back to the Assembly. That system, in general, is much better than it was back in the 1990s, for example.

Mrs D Kelly: That is reassuring. Would the Audit Office therefore have a chart in relation to the Housing Executive and/or DSD's housing division in relation to recommendations dating back to 2004? Would there be a progress chart? How are those recommendations red-flagged other than by having to research documents individually?

Mr Wilkinson: All recommendations that come up through our annual audit procedures are followed up and reported on annually. We go back, in our reports to those charged with governance each year, to what was recommended last year and ask whether that has been implemented or not. If something has not been implemented, we re-recommend it. We also follow up recommendations. For example, in the PAC report from 2012, we will follow up the issues raised. There are lots of issues regarding response and planned maintenance, and we follow those up as a matter of course in our audit work.

Mrs D Kelly: Thank you. OK. The report refers to one district remaining more problematic than the others. Can you share with us what that district is? Can I also express some concern that it seems to me that the members of staff who lost their jobs are relatively far down the food chain, while others seem to be able to be allowed to retire? Do you have any concerns around that?

Mr Donnelly: Do you want to take the first one? Are you aware of the district?

Mr Wilkinson: Yes. The district involved is the southern district. The investigations are under way. *[Interruption.]*

The Chairperson: You have excited the interests of members.

Mr Wilkinson: The individuals involved were people who were directly involved in this. The investigation continues, and it may well proceed to other disciplinary action. One permanent member of staff and one agency member of staff were disciplined.

The Chairperson: We need to be mindful that if there are ongoing investigations, we treat this information very sensitively, although I think overall — and I will put this directly to you, Kieran — that a lot of us have a picture that, over a significant period of time, when reports were being qualified and issues were being raised through PAC and other fora, a lot of problems were identified, but there does not seem to have been any accountability. I, personally, am not that confident yet, and I do not want to disrespect your last comment, but I am not so confident yet that all the system is entirely joined up. Where there are problems identified, they must be flagged across the piece and then there is accountability. If you look at a personnel chart on the wall, you can see some people involved in some of these things where you and others are expressing serious reservations and problems, but, in my opinion, people who should have gone out the door seem to be going up the ranks. There is no accountability. I think that the system has not generated accountability for a lot of these problems, but you might have a comment on that overall picture. That is the picture that most of us have over the last number of years.

Mrs D Kelly: There is just one final point before I respond to that. With regard to the concerns raised that important audit information was withheld from the former chairman of the executive, has that now been rectified? Do the board and the chair get full access to all relevant and pertinent information in a timely manner?

Mr Donnelly: I cannot give you a guarantee because it is only when something happens, but our general view is that where problems are emerging, they are escalated up to the top of the organisation, whereas previously they would have been filtered. Bad news would have been suppressed. We certainly have seen a sea change in that. Our own staff attend audit committees, so there is a change from four or five years ago.

Mr Wilkinson: You can see that the culture has changed. If you go back three years, any criticism was not welcomed at all, whereas now, in the audit committee, we are seeing a culture of, "If there are issues coming up, let's deal with them."

Mr Dickson: Just going back a little, I appreciate that people are coming next week and we will have an opportunity to ask questions in relation to the increase in the size of the Direct Labour Organisation, but it is a substantial change in a function of the Housing Executive.

Mr Donnelly: It is a substantial change. As the Chair suggested, it has happened by accident rather than by design because of firms going into financial difficulty.

Mr Dickson: Yes, but there may very well have been other ways of dealing with the situation than just simply taking these people on under TUPE.

Mr Wilkinson: Yes. The first preference of the Housing Executive is always to try to find adjacent contractors from nearby areas to take over contracts. That is what should happen in most cases. In two cases last year, it was not possible to get adjacent contractors to take over that contract for various reasons, including TUPE and the staff that they were going to have to take over and to do with the pricing of the contract, etc. Because of that, the Housing Executive was left with no choice but to TUPE in those staff and keep the service going.

Mr Dickson: The consequence of that is that those people who previously were not employees of the Housing Executive, were never recruited by the Housing Executive, were never interviewed by the Housing Executive and were never equality checked, through their recruitment processes, by the Housing Executive end up being not only Housing Executive employees but in the Housing Executive and public sector pension scheme, effectively by default.

I appreciate the power of TUPE, but, I am saying that, at that point in time, it was effectively doubling — nearly trebling — the workforce of the organisation, increasing the cost from £4.4 million to £11 million. Are you asking questions about the corporate governance and the decision-making processes that allowed that to happen in an incredibly short period of time? Was there an alternative to that which would have protected the public purse from that additional pension cost and potentially protected the public from a recruitment methodology which is perfectly correct but, nevertheless, has the potential to substantially skew already very balanced relationships in the organisation? Where are the management? Where are the management controls for nearly tripling the size of the organisation in that space of time?

Mr Donnelly: It is an issue that we have not delved into in depth, but I imagine that, as we go forward, we will look at that quite closely.

Mr Dickson: It is reassuring that you are telling us that you will do that.

Mr Wilkinson: The most recent contractor who went into administration was taken over by the adjacent contractor in that case. There were two cases last year. The Housing Executive is certainly aware of it now. It was very much a last resort.

Mr Dickson: It did not seem to be a last resort at the time.

Mr McMaster: One of the things to add is that, when the PAC considered our report, it was conscious that new contracts were being let. It expressed concern in the report that the pricing of contracts was unsustainable and that there was a danger of firms going into administration. In fact, I think that this raises a much broader question, which came up at yesterday's PAC meeting in a follow-up response from the Department to queries from PAC. It does raise queries over procurement where you have lowballing taking place at unsustainable rates. I think that that is maybe worthy of further consideration by, I suggest, the public service and, in particular, CPD in the Department of Finance and Personnel. Is this sustainable, and what can be done in the circumstances?

Mr Dickson: What you are actually saying is that the only alternative to a company going into administration or going bust is for the contract to be taken over by a public sector body. Surely there is an alternative, and that alternative is a reinvention of the company. It is in the private sector, so why did it not just go and reform the company, or why did somebody not start a new company? That is an alternative.

The Chairperson: I think, Stewart, that we are straying into —

Mr Dickson: I appreciate that, but I think, Chair, that this is important. We have a good message from the Audit Office that this is an area of future concern for it. The sad reality, of course, is that the Audit Office looks at things that have happened rather than predicting the future, and that is a problem for us.

The Chairperson: That is the key to it. I appreciate that Kieran has given us an assurance that he will deal with it, albeit more retrospectively. Part of the issue that we are dealing with this morning — it is the same thing as the question that Fra is raising — is that it is not specifically related to phase 2 of the inquiry. That is probably because we have not had the Audit Office here before. It strikes me that we probably should have had you in before now to have a fuller discussion, which we will return to, if you do not mind. We advised you before today that we might stray into some of those other issues, but, obviously, we cannot go into them in any real, big depth. What information you have given us so far has been very helpful, and I appreciate that. Obviously, I appreciate that members want to ask a lot of other questions, but we need to stick to the terms of reference this morning. We will return to those big questions later.

Mr Clarke: Thanks, Chairman. There is just one thing that has maybe been left hanging in relation to that. I agree wholeheartedly with the point that Stewart has made, however I think that any of us who have come through local government and have dealt with procurement there will know that the same shady practices happen there and that the issues with pricing and procurement in local government are the same. It seems that it is a problem throughout the public sector, and it should be addressed. I appreciate your guidance that we are straying from where we should be, but I want to put on record that it does not happen just in this contract but seems to be a problem throughout the public sector. It should be addressed.

Brandon, I apologise for missing the start of this. When I came in, you were talking about some invoices coming in, and you noticed that there was a trend of invoices being wrong. You were talking about duplicate invoicing earlier. Is this only in relation to this contract, or are you finding this elsewhere?

Mr Donnelly: This is the stuff that dates back.

Mr McMaster: This goes back to the historical cases in our report. It really started in 2010-11 and 2011-12. Prior to that, if an invoice came in from a contractor and was incorrect, it was not recorded as an error by the district staff. It was only from that point on that they started recording that. If I can read the graph that is in our report —

Mr Clarke: Sorry, what page is that on?

Mr McMaster: We have a proof copy of the 2012 Audit Office report. It is on page 14. We had rates running at up to 5% up to 2009-2010. In 2010-11, we were up to 10% and, from 2011-12, we were heading up towards 20%.

Mr Clarke: It would be useful to know what that 5% is of.

Mr McMaster: That is of the invoices that are coming in.

Mr Clarke: Yes, but what is the value?

Mr McMaster: I do not know the value of those. I do not think that we even have that information. We were interested in the trend. This was part of the information that was going up to management.

Mr Clarke: I appreciate that you were not expecting that question today. I ask that because, if you take the recent incident of £18 million that has been sorted out and which, obviously, was calculated down and there has been a trend since 2010 that has been 5% of something, what is it 5% of and how much is that worth? If it is up to 25% of something, how much is that worth? That will run into tens of thousands, if not millions, of pounds. I think that it would be useful to try to quantify that, because there definitely seems to have been a problem in the Housing Executive, certainly going back to 2010, over how it managed its contracts and its invoicing and how it managed the review of the jobs and the quality of the work that it was getting. So I think that it would be useful if we could get that information.

Mr McMaster: We will certainly look to see whether we have it. The title of that graph is:

"The percentage of failed post-inspections of response maintenance jobs".

That includes a range of things, one of which is incorrect invoices. It only started recording the incorrect invoices from 2010-11. Prior to that, it was not recorded; it was not counted.

Mr Clarke: So, you could describe it as a blank cheque prior to 2010.

Mr McMaster: There was certainly a lack of proper control.

The Chairperson: It is important to understand that context so that we can assess for ourselves, ultimately, as a result of phase 2 of this inquiry, that all of those issues, having been identified, are now being properly addressed.

Mr Clarke: Yes, that is useful, Chair, to give confidence, but it shows you how little control there was in the Housing Executive prior to 2010. Given that it is recording its failings from 2010-11, it shows how out of control that Department was.

The Chairperson: That is one of the reasons why we are all where we are today. Absolutely.

Mr F McCann: One of my questions is as a matter of interest. Running through your report is the importance of not having a quantity surveyor, but this seems to have been going on forever and a day. I cannot understand why people just did not go out and hire quantity surveyors or a quantity surveyor if they were so important to finding out the difficulties or identifying the problems that there were with maintenance.

Mr Donnelly: I understand that, at one stage, there was a cutback in running costs and that a lot of quantity surveyors left the organisation. Technical skills are really important in this area. That is much more important for planned maintenance than for response maintenance, which is low-value jobs.

Mr Wilkinson: Just to be clear, the Housing Executive does have quantity surveyors at district level who carry out work. In our report, at least for 2013-14, we refer to the lack of a quantity surveyor in the CAU team to review their work and to check that their work was being done properly. The CAU team was unable to check that work. There are quantity surveyors. Maybe there were not enough historically, but there are some at a district level.

Mr F McCann: You would think that they would lift the phone to say, "Could you send one of your quantity surveyors?" As Mickey says, maybe I am after quality rather than quantity.

The Chairperson: The point you are making, Fra, is that the clue is in the title; it is the central assurance unit. You cannot get assurance if they do not have the personnel.

Mr F McCann: A lot has been said about the Housing Executive. Comments have been made that it is rotten to the core — certainly not by you, but by others. When you were looking at the thing, were there problems at district level, regional level, executive level or all three?

Mr McMaster: I go back to the report that we did in 2012. When we looked at the findings from the repairs inspection unit, which basically involved going out and re-checking the work that had been done at a district level, it identified problems at district level in the quality of the inspection that was being done. The repairs inspection unit was passing that information up within the chain of command, which was the regeneration division, which was by far the largest division in the Housing Executive

and dwarfed every other division. Basically, at that stage, we found that its findings were not being passed on from that division up to the audit committee and the board. We make the point in the report that key issues were being glossed over. So, an element of censorship was taking place in that division and the information that it was passing on. Therefore, the audit committee and the board were not being made aware of the issues that were coming through.

Just to put that in context, when we started looking at this and the performance, it was quite a simple thing. In our report, we set out graphically the expenditure over the year, and we had high, satisfactory, limited and unacceptable assurance ratings. In each of those districts, of the £42 million of overall expenditure, we show graphically that £16 million was covered by a limited and unacceptable assurance rating. That sort of information should have been going up to the audit committee and the board. The directorate should have been looking for that sort of information and the information was there if it wanted it in that way, but it did not pass that information on. It did not look at it in that way.

Mr Donnelly: It was more than just the report; it was acting on it. There was loads of inspection going on, but the reports were just going into the cupboard. There was a lack of action on the findings.

Mr F McCann: I will make a final point. There is a trail going back quite a number of years, and obviously there are problems. There seems to be a blockage in the flow of information at a level in the Housing Executive. Some people have classed the Housing Executive and the Department's relationship as a parent/child relationship in many ways in that, whilst the Housing Executive is an arm's-length body, the Department has a say in things, especially in terms of auditing and other aspects. Does the Department share any responsibility for some of the difficulties? This goes over a fairly lengthy period.

Mr Donnelly: When serious problems erupt in an arm's-length body, the background is usually lack of departmental oversight. Sometimes, when there is a problem, the pendulum will swing the other way, and I think that the pendulum actually needed to swing and, at a certain point, the Department needed to be much more actively involved. But when things settle down, there needs to be equilibrium. A parent Department cannot micromanage a large non-departmental public body (NDPB), but it needs to manage or oversee in a strategic way.

Mr F McCann: Kieran, I am sorry for cutting across you, but are you saying that, despite the extent of the problems in the Housing Executive, which, in effect whistle-blowers were trying to highlight, the Department missed them? Or, did it know about them? I read a report that, going back a number of years, the Department had knowledge of there being problems there but did not act on it.

Mr Donnelly: There is substance to some of that being the case in the earlier period.

Mr McMaster: There is, and the Public Accounts Committee picked that up. One of the recommendations, which the Committee reiterates, is that it is the responsibility of the sponsor Department to regularly review its processes for gaining assurance on sponsored bodies' management of risks. The Committee highlighted that there were problems with the Department's oversight going back over time, but, as the Comptroller and Auditor General (C&AG) said, it is not the role of a sponsor Department to get into micromanaging, but it needs to be aware —

Mr F McCann: — that there are problems.

The Chairperson: Before bringing Trevor in to follow on that, you mentioned a directorate in which there was a logjam or blockage. Do we know what directive that was? Can you share that with us?

Mr McMaster: Yes, it was the regeneration directorate within the Housing Executive.

The Chairperson: OK. Trevor, you wanted to follow up on that, before I bring Jim in.

Mr Clarke: In response to Fra's question, Brandon, you talked about district level inspections. I thought that our district inspectors did not do planned maintenance; I thought that they brought in the teams that were responsible for the planned maintenance, as opposed to district officers.

Mr McMaster: I was referring to the response maintenance. Our 2012 report dealt with response maintenance.

The Chairperson: Are you happy enough? Jim, you wanted in.

Mr Allister: I want clarification. You have restricted us on asking questions on part 3. Are we restricted in asking questions about part 4 of the report dealing with housing benefit?

The Chairperson: It is not that I am restricting you; we are dealing with phase 2 of the inquiry. We alerted Kieran and his team to the fact that we might want to have a little bit of information on things such as the TUPE arrangements, the DLO and the issues that Fra McCann raised. We could not labour on those, but we appreciated some initial response. We are dealing with those in a substantive matter next week. We have already agreed that we are going to be dealing with the Department around the whole question of the DLO and how that is evolving to make sure that there is no "ad hocery" and to make sure that it is properly planned, thought through and worked out. We have to remind ourselves that we are dealing with phase 2 of the inquiry; we are not dealing with phase 3, phase 4 or any other phase, if you know what I mean, Jim.

Mr Allister: Perhaps this is something that does not fall into any phase. We have the Audit Office in front of us; it is dealing with fraud, error and housing benefit. I want to ask a couple of questions on that.

The Chairperson: We have given a bit of latitude, as you will appreciate, so put the question and, if Kieran could give us a bit of an initial response, that would be good. We will follow up with a written question.

Mr Allister: OK. Part 4 of your most recent report, at page 25, identifies that there was £25.9 million of irregular payments of housing benefit. They were made up of £21 million of overpayments and almost £5 million in underpayments. Of the overpayments, £11.7 million is customer fraud. Is that correct? That is a huge increase from, say, two years ago, when customer fraud was £2.8 million; indeed, it is a 27% increase on last year. What does that tell you about the adequacy of the checking processes within the Housing Executive and the efficiency of the follow-up for recovery and prosecutions? It has radically increased from £2 million to £11 million in two years. Is that sending any message?

Mr Wilkinson: I suppose that there will always be an element of fraud and error. The Housing Executive has pointed out that if you compare those figures with GB, they will compare reasonably favourably. These figures are based on a sample that is tested in the Social Security Agency. It has a special unit that does statistical sampling to try to estimate the amount of fraud and error, so there will be some movement from year to year. We take the mid-points of all these figures, so it could be slightly less. What does seem to have happened is that there has been some increase in fraud. It may not be just as stark as those figures because there is a statistical degree of error.

Mr Allister: The statistical degree of error must be modest, surely?

Mr Wilkinson: They produce a range in each year, so if you take the lower end of this year's range to the higher end of the range two years ago, there would still be a rise, but it may not just be as stark at this one. The Housing Executive does have a strategy in place as to how it will tackle all this.

Mr Allister: Is it working if historic fraud has risen from £2.8 million to £11.1 million in two years?

Mr Donnelly: We look at this, not just the Housing Executive but the Social Security Agency, which has been bearing down on fraud and error, so that is going in the other direction. There is an issue here, I suppose in the context of welfare reform. Benefits are not the Housing Executive's core business, in a sense, but a huge amount of expenditure is going through here, so it is important that —

Mr Allister: Is it falling between two stools?

Mr Donnelly: There is a bit of that, yes, in that it does fall between the Social Security Agency and the Housing Executive, so there are issues there. We found the same trends with rates on the Land and Property Services (LPS) side. There are genuine issues there that need to be borne down on.

The Chairperson: Jim, if I remember correctly, there was some suggestion, not that long ago, when some of these figures were publicised — in fact, I think we dealt with it at the Committee — that there

was a different mechanism or method for counting this. It was something to do with taxation or HMRC.

We will need to follow that through because it is important. On paper, we are being presented with a stark increase, and we need to drill down on that to get the correct picture. Again, that goes to the heart of the point that I think Jim is making, that we need to satisfy ourselves that all the relevant and appropriate mechanisms are in place to prevent these types of problems from continuing.

Mr Allister: Why are underpayments classified as irregular and overpayments are not?

Mr Donnelly: It is the other way around. Oh, sorry, do you want to take that?

Mr Wilkinson: They are both counted as irregular.

Mr Allister: Sorry, at the bottom of page 25, the report states:

"All of the overpayments are irregular, whereas only underpayments made as a result of official error are deemed irregular."

Mr Wilkinson: Yes. All overpayments are irregular, and underpayments due to official error are irregular. An underpayment due to a customer error, for example, is not irregular.

Mr Allister: Yes, I understand now.

The Chairperson: Kieran, Tomas, Brandon and Anu, I thank you for attending the Committee this morning and helping us in our deliberations, particularly in relation to phase 2 but dealing with the other matters as well. You will appreciate that there are a number of substantive issues that we have covered this morning and we will deal with them one by one, partly as a result of this inquiry and sometimes separately, although they are in a way all inter-related in one way or another. We need to stick to our processes. You will appreciate that we will probably follow up on some of the questions in writing and invite you back again.

Mr Donnelly: Chair, we are happy to answer further written queries.

The Chairperson: OK, Kieran, I thank you and your team.