

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1 Decision in December 2007 to terminate the Red Sky contract, which was later rescinded in September 2008.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Come September, a position was adopted that sufficient progress had been made allowing the termination decision to be rescinded.

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.

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.

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 14th 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,

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.