

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 3rd 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 4th 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 & 16th 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 30th 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.

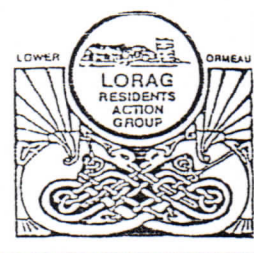
5. Contact with the Red Sky Administrators, BDO, following their appointment on 20th April 2011.

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
2nd August 2014



Lower Ormeau Residents Action Group
Shaftesbury Community Centre
97 Balfour Avenue
Belfast, BT7 2ED

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 1st 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 1st 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