

Briefing by Stewart Cuddy (Former Acting Chief Executive, NIHE)

To: DSD Committee

Inquiry, Strand 1.

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

1. I was Acting Chief Executive of the NIHE from January 2011 to September 2011. It is mainly in this capacity and during this period that this briefing relates.
2. This briefing follows the order of the 11 bullet points contained in Dr.Pelan's letter to me dated 7th July 2014.

- (i) Decision in December 2007 to terminate the Red Sky Contract which was later Rescinded in September 2008.

I had no involvement in nor knowledge at that time of the decision to terminate/rescind the Red Sky contract. I understand this matter was dealt with by the then Chief Executive Paddy McIntyre and the Director of Housing Colm McCaughley.

- (ii) Investigations into the Red Sky Group by the NIHE Repairs Inspection Unit, NIHE Internal Audit and ASM Horwath/VB Evans.

The investigations into Red Sky Group by these parties all found serious issues around overcharging and poor workmanship leading eventually to the decision by NIHE Board to terminate the contract.

- (iii) Investigations into Other Contractors as Requested by the Minister.

By the time these got underway i.e. Response Maintenance investigations, I was no longer Acting CX and the draft reports were only becoming available around the time I retired in march 2013.

- (iv) Investigations into other NIHE Contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit.

At any point in time there are as part of the normal routine business audits, reviews etc. into contracts and contractor performance. However, the other significant investigation which was not part of

this ongoing routine work was the investigation into a number of Planned Maintenance Contractors where there appeared to be overpayments/overcharging. This investigation had only got under way when I stepped down as Acting CX in September 2011 and was still ongoing when I retired in March 2013. The then CX and Director of Design and Consultancy Services are probably best placed to report on this.

- (v) Meeting with Red Sky Group to discuss the issue of overpayments; in particular the meetings of 4th and 6th Feb. 2011 with the representatives of Red Sky Group.

The meeting on 4th February was to deal with the lack of response from RSG to the Repairs Inspection Unit report into overpayments in Newtonabbey District which had been due by the of Jan 2011 (The "minutes" in the papers are not official minutes of the meeting but a note prepared by RSG). During the meeting I was repeatedly at pains to emphasize how the failure by RSG, one of our main contractors, to respond to such a serious and damning report was totally unacceptable and a response was required as soon as possible. I also explained that partnership under Egan did not mean that the Client i.e. NIHE had to seek the agreement of the contractor to every decision /conclusion relating to their performance.

It was clear that RSG did not get the message or more likely were not prepared to accept it and terminated the meeting. Even though it does not appear from the tone of the RSG notes of the meeting an extension to the deadline for a response was granted from the end of Jan.2011 to end of Feb.2011 (see para.81 of the RSG note and my letter dated 11th Feb.2011). Additionally Clarke Baillie, NIHE Director of Corporate Services also wrote to RSG extending the date for a response to the ASM Horwath report from the end of Jan. to the end of Feb.2011.

Meeting of 16 February 2011. The meeting was requested by RSG who clearly were unhappy with the message they received from me at the previous meeting. It was clear at the meeting, which I also attended, that the NIHE Chairman delivered the same message. The subsequent memo to me on the afternoon after the meeting indicated that RSG finally got the message.

- (vi) Decision by NIHE Board on 13th April 2011 to terminate the response maintenance contract with RSG.

The NIHE Board approved the termination of the contract as a result of the findings of the independent forensic investigation carried out by ASM Horwath/VB Evans, namely that there was significant overcharging and poor performance by RSG. These findings were further supported by a number of reviews/inspections carried out by NIHE Repairs Inspection Unit. This had led to an irrevocable breakdown and loss of confidence in the contractor.

- (vii) Meeting of 28th April 2011 between NIHE Chairman, Peter Robinson MLA, Robin Newton MLA and Sammy Douglas MLA.

A detailed minute of the meeting was prepared and subsequently circulated to those attending the meeting. At the meeting NIHE explained the background to and the reasons for the contract termination. NIHE assured the Representatives that the decision was in no way influenced by sectarianism /bias and had been supported unanimously by the Board; and that the timing of the decision had been a wholly operational one not in any way related to 'purdah' in the run up to elections. NIHE also provided assurance that local jobs would have protection under TUPE provisions.

- (viii) Meeting of 30th June 2011 between the Minister, Chairman and CX, NIHE, and senior DSD Officials to discuss the Termination of the contract.

The draft minute of the meeting was to the best of my knowledge not circulated to NIHE for comment or accuracy.

At this meeting or previous meeting on Tuesday 28th June 2011 (is there a minute of this meeting?) I asked why the Minister seemed to be so interested in the Red Sky contract. I was immediately accused several times by the Minister's Special Adviser and the Minister of making an allegation. I answered repeatedly that I was simply asking an obvious question.

I was extremely concerned that the Minister was getting involved not only in a NIHE operational matter but one relating to a specific contract and a particular contractor. This could readily be perceived as a Minister lobbying for that contractor and also directly influencing/compromising a public procurement process which would be a flagrant breach of public procurement rules and a serious violation of the Ministerial Code.

This intervention by the Minister was all the more surprising as the particular contractor concerned had been found to be overcharging and charging for work not carried out. I was also aware that the

Minister had already met or was going to meet senior management from the Red Sky Group.

For these reasons as the draft minute of the meeting show I asked for the Permanent Secretary to attend this meeting(which he later joined as indicated by the draft minute) and for the Minister's request regarding the continuation of the contract to be put in writing to the NIHE Board.

As the Accounting Officer for NIHE I was acutely aware that the Permanent Secretary is the Senior Accounting Officer for DSD and those Bodies for which it has responsibility including the NIHE. As the Senior Accounting Officer he has a duty to ensure, inter alia, that matters involving public monies/expenditure including contracts and procurement are conducted in a proper, open transparent manner in compliance with best practice including the Nolan Principles relating to conduct in Public Life. He also has a duty to advise his Minister on such matters where appropriate.

- (ix) Letter of 1 July from the Minister to Chairman, NIHE, requesting the extension of the Red Sky Contract.

As stated in the NIHE Chairman's letter dated 1st July to the Permanent Secretary, DSD, it is incomprehensible why a Minister would intervene in a public procurement particularly when the Company concerned has been found guilty of serious overcharging and poor performance. Such intervention as I have noted earlier could be readily perceived as the Minister lobbying for a contractor and influencing a public procurement process which is a flagrant breach of public sector conduct and ethics and also a violation of the Ministerial Code. As far as I am aware no explanation has been received as to why the Minister wanted the Red Sky contract extended bearing in mind in his letter to Naomi Long, MP, dated 25th May he is supportive of the NIHE position.

- (x) NIHE Board Meeting of 5th July 2011

As detailed in the minute of that meeting the Board confirmed their earlier decision to terminate the Red Sky contract with no extension. When one reads the NIHE Chairman's letter dated 1st July 2011 to the Permanent Secretary, DSD, and to the Minister following the 5th July Board Meeting (these letters essentially summarize the whole event) the obvious questions are how was a Minister/Department able and allowed to act in this way and what steps need to be taken to prevent such abuse happening again?

Furthermore does the NI Audit Office not have a role in such matters?

- (xi) Contact with the Red Sky Administrators, BDO, following their appointment on 20 the April 2011.

There were at least 6 meetings with the Administrators mainly to do with the ongoing management of the Red Sky contract. However bearing in mind that the Administrators were charged with the overall responsibility with running the Company pending a decision on its future there were a number of issues which caused me and the NIHE Chairman concern:

- Senior Management of RSG still appeared to be in charge or at least able to exert significant influence .For example photographs of the NIHE Chairman and a the manager of its Repairs Inspection Unit were posted on the gates of Red Sky's offices in East Belfast following the decision to terminate the contract was taken .This was considered intimidating and when representations to the Administrators proved fruitless the NIHE contacted the PSNI.
- I understand that the Administrators were not present at the meeting between the Minister and Red Sky senior management around June 2011.Why not?
- The Administrators appeared not to be dealing expeditiously with the transfer of TUPE data to adjacent contractors as part of the termination process, asking us to check whether our request conflicted with the "decision by the Minister to defer terminating the contract". We had concerns that there were discussions/negotiations ongoing that NIHE were not party to.