

Dr Kevin Pelan
Committee Clerk
Committee for Social Development
Room 412
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

10 October 2014

Dear Kevin

SDC INQUIRY PHASE 3 EVIDENCE SESSION – 16 OCTOBER 2014

As part of the above Inquiry, the Committee has requested I attend on 16 October 2014 at 10.00 am to provide oral evidence in relation to Phase 3. In advance of my attendance, the Committee has also requested I provide a briefing on my knowledge of a number of key events and decisions.

I will attend the Inquiry meeting on 16 October 2014 and attached at Annex A is my written briefing.

Yours sincerely

STEPHEN BRIMSTONE

Response from Stephen Brimstone - SDC Inquiry Phase 3 meeting on 16 October 2014.

- 1. Minister's letter of 31 May 2011 to Robin Newton MLA declining his request for a meeting with representatives from Red Sky regarding the termination of the Red Sky contract. In particular, your request for an amendment to the draft letter of 27 May 2011;**

The Minister's letter to Robin Newton MLA on 31 May 2011 did not decline his request for a meeting. I am aware from the documents provided to the Committee that Robin Newton MLA wrote to the Minister on 17 May 2011 requesting an urgent meeting, along with Sammy Douglas MLA and representatives of Red Sky, in order to make the Minister aware of their concerns in relation to the termination of the NIHE's contracts and the implications for the company and employees. In line with Private Office procedures, the letter was forwarded to departmental officials in Housing Division on 17 May to provide advice to the Minister on the request and a draft reply.

Advice from an official was sent, through me, to the Minister on 27 May 2011 recommending that the Minister decline the invitation as this was an ongoing contractual matter between the NIHE and Red Sky. A draft reply was attached which set out the position with Red Sky and advised that "I believe a meeting would not be beneficial at this particular time".

I have previously advised the Committee in relation to my role as Special Adviser and that departmental officials' advice is forwarded to the Minister through me as my role includes reviewing papers going to the Minister and providing advice on any aspect of departmental business. The Minister then makes his decision.

I am aware from the documents provided to the Committee that the Private Office advised Housing Division on 27 May that I had requested an amendment to the letter and that the last line should read "If you feel a meeting would still be

beneficial, please contact...". The documents also note that a Housing official spoke to the Private Office and asked that the protocol on requests for amendments suggested by me should be checked and this request should be put to the Minister.

In line with my role, I had already discussed this with the Minister who agreed with my suggestion due to his concerns about the NIHE's management of contracts. Private Office advised officials on 1 June 2011 that the Minister agreed with my suggested amendment and that the letter had been amended and issued.

2. Meeting of 2 June 2011 between the Special Adviser and DSD officials regarding the termination of the Red Sky contract;

It is difficult to remember specific events after this significant passage of time – some three years. However I am aware from the documents provided to the Committee that on 2 June 2011 I requested an update from Housing officials in relation to Red Sky. NIHE were then asked to provide the update and also to confirm who I could speak to in the NIHE about this. I may have spoken to officials again about this as NIHE were further advised that I may wish to meet with the NIHE contact on 2 June or 3 June 2011. A memo was then forwarded to me on 2 June from an official providing the update and advising that the then Acting Chief Executive NIHE would be happy to meet that afternoon to discuss this. I do not recall speaking or meeting with the Acting Chief Executive that day.

3. Meeting of 27 June 2011 at Parliament Buildings between the Minister, representatives of Red Sky and members of the DUP, including First Minister Peter Robinson, Robin Newton MLA and Sammy Douglas MLA;

Following on from Robin Newton MLA's request on 17 May 2011 for a meeting with the Minister, this was arranged to take place on 27 June 2011. I am aware from the documents provided to the Committee that departmental officials were asked by the Private Office on 20 June 2011 to provide appropriate briefing and the names of any officials attending the meeting with the Minister.

The NIHE were advised of the proposed meeting on 20 June 2011 and were asked for an update on the NIHE's position in relation to their dealings with the Administrators. The Minister's Private Secretary also emailed a housing official on 21 June 2011 stating that I advised that a full briefing would be essential to include the current position of the Administrators.

The briefing for the meeting was sent through me to the Minister on 24 June 2011. I attended the meeting and the Committee has been provided with the note of the meeting which documents the discussions.

4. Meeting of 30 June 2011 with Chairman and Chief Executive of the Housing Executive and senior DSD officials to discuss the termination of the Red Sky contract;

I have had sight of the documents provided to the Committee and I am aware of the briefing prepared for the Minister in advance of the meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive. I was at the meeting and the note of the meeting records the discussion. The Minister advised the meeting that he had asked the Department for a forensic examination to take place on the management of contracts and it would be inappropriate therefore to change contracts until this was completed, in the region of eight weeks. The Minister asked the Housing Executive to take this proposal to the Board and recommend his proposal on the basis that the Administrator could guarantee to conduct the work.

5. Meeting of 1 July 2011 between the Minister and senior DSD officials to discuss the letter to the NIHE advising of the forensic investigation into the adjacent contractors and the extension to the Red Sky contract;

This appears to be a follow on meeting from the meeting on 30 June 2011 with the Chairman and the Chief Executive. There were a number of meetings during this period and I may have attended this meeting but it is difficult with the passage of time to recall if I attended or the specific discussions.

From the documents provided to the Committee it appears that officials were asked to draft a letter to the Chairman formally setting out the Minister's request in line with the discussion at the meeting on 30 June 2011.

Minister McCausland issued the letter to the NIHE Chairman on 1 July 2011 which advised that;

"I have asked officials to carry out a forensic investigation of a sample of Housing Executive contracts including those of the contractors to whom it is proposed to reassign the Red Sky contract on termination. Following our discussions and subject to the Administrator stating that he can continue I would now ask you to put to the Housing Executive Board that the termination date of the Red Sky contract should be extended from 14 July 2011 to allow an open procurement competition for the Red Sky contracts to be undertaken with immediate effect. This contract would be for a period of six months or until the new contract procedures can be put in place."

- 6. Letter of 1 July 2011 from the Minister to the Chairman of the NIHE requesting the extension of the Red Sky contract. In particular, clarity is welcomed on the Minister's decision to amend the initial draft of the letter to extend the termination date from a period of 8 weeks to 6 months;**

As previously referred to, following on from the Minister's meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive a letter to the Chairman from the Minister was drafted by officials. I am aware from the documents provided to the Committee that the original draft by officials was to extend the contracts for a period of eight weeks. I am also aware that the Private Office advised officials on 1 July that the Minister had amended the letter which issued on the 1 July 2011. The letter amended asked that the termination date would be extended for six months or until the new contract procedures could be put in place.

It is difficult to recall with the passage of time why the eight week period was amended to six months. However, I believe the eight week period referred to in the draft letter related to the timescale for an investigation to be carried out and I assume that the change to six months was to take account of a more appropriate procurement period for new contracts.

7. Email of 5 July 2011 from Michael Sands to the Chairman of the NIHE regarding the Special Adviser's request to amend the period of extension of the Red Sky contract from six months to four months;

Following on from the Minister's letter to the Chairman on 1 July, the Housing Executive Board were meeting on 5 July 2011 to discuss the issues raised. I am aware from the documents provided to the Committee that an official emailed the Chairman that morning, prior to the Board meeting, stating that " Minister's SpAd thinks that six months is too long a time frame for continuation by the Red Sky Administrator." This also advised that advice from Central Procurement Directorate (CPD) indicated that 91 days was required to complete a tender exercise once all the paper work had been prepared. Therefore allowing one month for the paperwork and three months for the tender exercise, four months was more appropriate. The Chairman was asked if the question could be put to the Administrator to ascertain if they would be able to continue with the response maintenance service for a minimum period of four months rather than the six months referred to in the Minister's letter.

8. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract;

I am aware that the NIHE Board met on 5 July 2011 to consider the Minister's request to extend the Red Sky contract and following the meeting the Chairman wrote to the Minister to advise of their deep concern at the stance he had taken and that the Board that morning has reconfirmed their view that the trust and the confidence necessary for the satisfactory operation of the contracts had been profoundly undermined. The Board had also instructed their legal representatives to take the necessary preparatory steps to present a challenge to the legality of

any Article 10 direction and had directed that the adjacent contractors should continue to make preparations to assume the contractual obligations previously held by Red Sky until 14 July 2011.

9. Letter of 7 July 2011 from the Minister to the Chairman of the NIHE confirming that the NIHE should proceed with the termination of the Red Sky contract on 14 July and reassign the work to adjacent contractors.

I am aware that the Permanent Secretary submitted a briefing to the Minister, through me, on 6 July 2011 on the current position following the letter from the Chairman after the Board meeting on 5 July 2011. He recommended that the Minister should advise the Housing Executive to move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants. I am also aware that an official on 7 July prepared a draft letter for the Minister to send to the Chairman. The submission accompanying the draft letter advised that “I understand that the decision is that the Housing Executive move forward with their proposals to re-assign contracts to adjacent contractors.”

Minister McCausland then wrote to the Chairman on 7 July 2011 confirming that the Housing Executive should proceed to the termination of the Red Sky contract on 14 July and move forward with the proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants.