

[Type text]

2nd November 2014

Dr Kevin Pelan

Clerk

Committee for Social Development

Northern Ireland Assembly

Room 284

Parliament Buildings

Belfast

BT4 3XX

Dear Kevin

Inquiry 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

I hereby submit for your Committee's attention and consideration my formal written evidence statement in response to your letter dated 7th July 2014 and the questions and matters requiring clarification as stated by the committee.

This is my personal record of events as the then Chairperson of NIHE (Northern Ireland Housing Executive) based on evidence only and no opinion is noted or offered by me on matters . I have however offered clarification on matters where necessary and posed questions that to this day remain unanswered during the process from 2010 to 2012.

This paper represents my formal engagement with the Committee by way of written submission only.

The written submission by me is based on evidence that was available to the Committee resulting from an extensive and robust audit trail within NIHE in line with proper corporate governance provisions put in place by the board of NIHE during my period as Chairperson.

In this submission I refer to the Board in its plural context as 10 members and I wish to confirm that in all stages of the investigation into response maintenance contracts and resulting termination of the Redsky Group Ltd contracts, the Board was united and

[Type text]

unanimous in all decisions and no board member objected or abstained from discussions or decision making.

The matters under review within NIHE in relation to response maintenance contracts had the full support of all board members and the board took its responsibilities seriously and the board operated within a framework of transparency and accountability in all dealings and took necessary legal advice at critical stages of the process.

I submit my response for the Committee's consideration.

Kind Regards

Brian

Brian Rowntree.

[Type text]

Decision in December 2007 to terminate the Redsky contract which was later rescinded in September 2008.

This matter was never a matter brought to the attention of the NIHE Board in 2007 and was not disclosed by management to the NIHE Board or the NIHE Audit Committee in 2008 and the decision to terminate and rescind the decision was purely down to management within NIHE .The Board of NIHE and the Audit Committee of NIHE were not made aware of this issue until it was referenced and outlined within the ASM Howarth Inspection Report..

The NIHE Audit Committee subsequently dealt with this matter in 2010/11.

Investigations into Redsky Group Ltd by the NIHE Repairs and Inspection Unit, NIHE Audit Committee, NIHE Internal Audit and ASM Howarth / VB Evans .

The Board of NIHE in 2010 following recommendations from the NIHE Audit Committee chaired by Mrs Anne Henderson approved the establishment of an investigation into the West Belfast Response Maintenance Contract of Redsky Group Ltd under the name of Project Amber. The NIHE Audit Committee had been considering NIHE Internal Audit Reports into alleged poor performance, alleged overcharging and alleged inappropriate standard of work in the Redsky Newtownabbey and Belfast Response Maintenance Contract. The Audit Committee of NIHE was approved to appoint external independent investigators via an approved procurement process and resulting from this exercise ASM Howarth were appointed as lead investigators .A project steering group was established for this process, Mrs Anne Henderson Audit Chair NIHE , CEO NIHE Mr P Mc Intyre , Board Chair B Rowntree , Mr S Cuddy Dep CEO NIHE , Mr C Bailey Finance Director NIHE and Head of Audit NIHE, plus DSD Grade 3 Mr Barney Mc Gahon. This project group was high level given the concerns raised by NIHE Internal Audit and the complaints received from Political and Community and Tenant sources in Belfast. The Minister in DSD Alex Attwood MLA and the Perm Sec in DSD Mr Will Haire were fully briefed on the project board and were fully supportive of its establishment, terms of reference and reporting framework. DSD insisted on project group representation and feedback via this group on progress. The Minister and Perm Sec of DSD were encouraged by this proactive approach by NIHE duly endorsed by the board of NIHE and the independence of the external investigators ASM Howarth who were supported by VB Evans for technical expertise. ASM Howarth also briefed the Audit Committee of NIHE on matters of concern during the process and the coordination with ASM Howarth was via the Head of internal Audit in NIHE .

[Type text]

The ASM Howarth / VB Evans findings were conclusive and indicated overcharging and poor performance against agreed NIHE contractual standards within the Newtownabbey and Belfast Response Maintenance Contract of Redsky Group Ltd over a sample period of review in 2009/10. The findings showed a sample number of jobs under review highlighted overcharging of £40k approx but when extrapolated over a range of contracts and over an extended period of review could give rise to concerns in excess of £1m. ASM Howarth recommended further reviews. The Steering Group agreed to accept the ASM Howarth report and The NIHE Audit Committee also accepted the report in full and the Board of NIHE was in agreement with the Audit Committee and the Steering Group of Project Amber.

The Repairs Inspection Unit of NIHE (RIU) was enhanced by agreement with the CEO and Board of NIHE and supported by the Chair of Audit in NIHE ..This extended resource and remit would allow RIU to conduct a series of detailed reviews into all response maintenance contracts awarded to Redsky Group Ltd and also explore performance monitoring arrangements within NIHE by District Maintenance Mgrs across all contractors and highlight areas of concern..RIU would also report to the Audit Committee on progress..The Board of NIHE also decided to update and improve the performance measurement and monitoring criteria for Response Maintenance Contracts and a Senior Internal Officer was appointed to establish this process in light of the retendering of these contracts in 2011... This Officer worked closely with the Head of Procurement on new contract documentation in advance of retendering work .This Officer also updated the Audit Committee at regular intervals..

The Minister in DSD (2010) and the Perm Sec were fully briefed on the intention and also on the governance provisions surrounding the updates and internal investigations. Particular reference was made to putting new contracts in place as soon as possible and the Minister was keen to see such contracts being tendered in late 2011 .The Minister and Perm Sec were also informed of legal opinion that indicated that the Board was limited in its options on enhancing the existing performance regime for response maintenance contracts given their contractual nature. The outdated performance measures gave too much flexibility and too much reliance on goodwill within the existing response maintenance contracts across all contractors.

In 2010/11 the Perm Sec and Minister agreed to put in place a governance review of contract provisions in NIHE with a key emphasis on performance indicators.. The Head of DSD Internal Audit conducted this review with external support for quality and performance control measures. The review recommended a series of improvements none of which required major structural reform but more process revision and update.. The board and mgt of NIHE accepted all recommendations and all were put in place or had already been updated due to ongoing maintenance contract reform. In 2011 the Perm Sec confirmed he was satisfied that all reforms were in place.

[Type text]

The RIU (Repairs Inspection Unit) NIHE conducted a series of in-depth reviews of all Redsky Contracts and arrived at a series of conclusions that overcharging had taken place across the majority if not all contracts and that the performance within those contracts was not in areas in line with the standards required within the contract provisions ..As these contract reviews concluded they were shared with the Audit Committee of NIHE and the summary findings provided to the Board of NIHE ... Prior to the Administrators being appointed to Redsky Group Ltd final reports in terms of performance findings were shared with Redsky Group Ltd. Subsequent findings were shared with the Administrators to Redsky Group Ltd . At no stage did Redsky Group Ltd agree with the conclusions reached by NIHE RIU. The findings reached by RIU were also quality assured within NIHE matched against recorded District Maintenance Officer Reports and recorded Performance data. Internal irregularities were noted and where relevant these were explored in further detail and reports sent to the HR Directorate for consideration and in cases consideration of disciplinary action for staff involved . Such disciplinary processes were initiated . The Perm Sec and Minister were duly updated on all aspects of ongoing actions including numbers and scope of internal disciplinary provisions . The DSD and myself as Chair had an agreement to update on all issues that could give rise to concern.

The Board of NIHE had a robust audit trail around all dealings in relation to its investigations and reporting framework and this also informed the legal opinion it took in relation to the contractual aspects of the Redsky Contracts. The Audit Committee of NIHE was also heavily involved in the oversight arrangements and the RIU reported to the board through the Audit Committee in line with proper corporate governance.

Investigations into other NIHE contracts as requested by the Minister.

From early 2010 to June 2011 the DSD Minister Alex Attwood MLA was informed of ongoing reviews in line with RIU and NIHE Audit reports and that these were risk based following audits and inspections and concerns from District Maintenance Officers and the Central Review team of NIHE .No individual contractor was singled out for specific attention but rather poor performance highlighted and financial irregularity investigated. Attention was drawn to Redsky Group Ltd given the scale of concern and the higher than normal degree of irregularity in their performance indicators. Other contractors were also under review and were programmed into the review team work plan..Given the scale and size of these contracts on an annual basis and reviews extending over a number of years the task for the team was extensive and required prioritisation. These were clearly matters for the Board of NIHE to highlight and decide upon and be accountable for. In July 2011 under a new

[Type text]

Minister Nelson Mc Causland MLA the emphasis changed and the Minister requested that his department seek to nominate contractors for further review and these nominations were not totally in line with the prioritisation and work plan in NIHE for response maintenance contracts as reported to the NIHE Audit Committee. NIHE had a dedicated work plan to review old style contracts but the emphasis within NIHE was about putting in place new contracts as part of a tendering process in 2011. This would give rise to enhanced performance indicators and a more rigid and robust oversight regime with proper sanctions applying for poor performance. I as Chair and the Board of NIHE were not involved in this nomination process but provided by a departmental request for contractor review . This was outside of our internal governance arrangements.

Investigations into other NIHE Contractors undertaken by NIHE Internal Audit and NIHE Repairs and Inspection Unit.

NIHE through the good offices of its Internal Audit team and Repairs and Inspection Unit NIHE had a series of planned reviews and inspections underway across a number of contractors whose performance indicators gave rise to concern .. One other Contractor in particular agreed not to compete for additional contract work within NIHE and was heavily involved with RIU in respect of poor performance indicators .. It is not correct to say that Redsky was the only contractor reviewed or singled out for review . It is also not correct to state that Redsky Group was reviewed for reasons outside of performance or financial irregularities . Sectarian bias or political intervention/ interference was muted during the meeting of 28th April 2011 in NIHE with First Minister Peter Robinson MLA , Robin Newton MLA , and Sammy Douglas MLA as per minute provided to your committee . NIHE strongly denied this and I as Chair will continue to deny this and the evidence and detailed audit trail within NIHE supports the NIHE position . This allegation of sectarian or political bias is totally incorrect and no evidence exists to support this statement .

[Type text]

Meetings with Redsky Group Ltd Directors to discuss the issue of overpayments . In particular , the meetings held on 4th and 16th February 2011 with representatives of Redsky Group Ltd.

At the request of directors of Redsky Group Ltd to meet with representatives of the Board I agreed as Chairperson that I would meet with the Chairperson and Managing Director of Redsky Group Ltd to outline the Board's position on the severity of the matters under review and to explore a way forward that could be brought to the board for further consideration . I had the Acting Chief Executive NIHE present to outline our position .. This meeting followed a previous update meeting with the NIHE Acting CEO and Redsky. It was evident from these meetings that Redsky Group Ltd were not in a position to accept the findings of the NIHE RIU and unable to reach a financial compromise and instead they continued to attempt to process counter claims against NIHE ... I as Chairperson confirmed to Redsky that I was keen that they accept our position and work with NIHE to improve their performance ...At no stage during these meetings did they assert that they were in a vulnerable financial position . At these meetings the final RIU reports had recently been shared with Redsky and the figure of approx £ 40k was the only overpayment referenced and evidenced at this stage but also referenced that this could be extrapolated to £1m plus ,along with high levels of poor performance against contract standards .. I as Chair of NIHE did confirm to the Directors that we did have the legal right under these contracts to terminate them but that our desire at this stage was to work to improve the situation but that the cooperation of Redsky was essential and immediate in that regard . The meetings were tension filled and a very anti NIHE position was evident from Redsky and no visible sign of a willingness to accept responsibility for poor performance and incorrect charging by Redsky.

Decision By the NIHE Board on April 13th 2011 to terminate the response maintenance contracts with Redsky Group Ltd

This decision by NIHE was based on firm evidence from a series of reviews and reports both internal and external on matters of inadequate performance and financial overcharges for work not done and incomplete. (reports and reviews as noted to this committee) These reports were ongoing but the Audit Committee was deeply concerned about the continuing risks and the apparent inability of Redsky to correct and improve the situation . The Board of NIHE was also supplied with legal opinion to support any process to terminate the contracts and the implications for NIHE in continuing to provide a response maintenance service in the regions covered by the existing Redsky Contracts . This legal opinion commented on termination reasons , notice periods and the capacity to reappoint other contractors within the existing contract . This legal opinion although not shared outside of NIHE was discussed with Senior Counsel present in NIHE HQ in March 2011 and attended by senior DSD officials and NIHE executive team and Chair of NIHE Audit and Head Of Internal Audit NIHE and Myself as Board Chair NIHE . DSD officials were informed that contract termination may take place as soon as was practical but that the ongoing risks needed to be evaluated. The DSD officials supported the termination position as the most practical option but did acknowledge that this was a matter for the NIHE Board to decide in line with proper governance . DSD officials and all NIHE Executive Officers and board members present agreed to advise the Minister that the NIHE Board would discuss the possible termination of the Redsky Contracts at its meeting of 13th April 2011. As DSD were key participants in the Review group on the Redsky Investigation it was good governance to inform the Perm Sec and The Minister of the escalation of the risk to its highest level .

The Board of NIHE at its meeting of April 13th received a comprehensive briefing on the options before them including contract termination and the board was fully briefed on the legal provisions as well as the ongoing reviews and investigations internal to NIHE on the Redsky Response Maintenance contracts . The Board was updated on the meetings with DSD and their support for whatever decision the Board makes and the options open to it in respect of re-nomination of other contractors and the time scales involved . The Board maintained its independence in this decision making process and no external influences were present. The Board of NIHE took time over its deliberations and considered all the evidence before it and agreed unanimously to terminate the Response Maintenance Contracts of Redsky with the maximum 13 week notice period within the existing contract provisions applying to allow for the re-nomination of contractors to complete the remaining timeframe of these contracts and to put in place the TUPE Provisions to protect the workers engaged on NIHE contracts estimated at 200.

[Type text]

The Board was in full agreement on the way forward and instructed Officials and myself as Chair to deal directly with the Minister and inform him of the decision and write accordingly to Redsky under legal cover ..This was not an easy decision for the Board but the decision was based on the evidence before the board in terms of reports and reviews as previously provided to this committee .

I as Chair duly notified both Redsky and Minister Alex Attwood MLA of the board decision. The Minister was satisfied that careful consideration had been given by the board to all subject matter and he was keen to see that TUPE provisions would be honoured as detailed within the existing contract to protect the relevant workers engaged within NIHE Response Maintenance Contracts ... The Directors of Redsky were also made aware of these provisions .

Meeting of 28th April 2011 in NIHE HQ between the Chair of NIHE Board Brian Rountree , Peter Robinson MLA , Robin Newton MLA , and Sammy Douglas MLA .

I can confirm that this meeting did take place and that the request for this meeting came from the DUP in east Belfast to meet and outline concerns around the termination of the Redsky Response Maintenance Contract and the implications for the Redsky workforce and the local economy . I do not intend to go into the detail of this meeting as a minute is available and in the committee records . This minute is evidence of the tension and sensitive subject matter discussed. I as board Chair again refute any allegation that the Board of NIHE acted improperly or with sectarian or political bias in the decision it reached . The decision by the NIHE Board was unanimous and was evidence based and in terms of community background on the board of NIHE it had full cross community support .It was the correct and proper decision in this instance and a brave and responsible decision by all board members. No evidence in support of allegations to the contrary have ever been presented to NIHE . I as the then Board Chair fully accept that it is the right of local and regional political representatives to meet with NIHE to discuss the implications of a Board Decision and to have concerns for the welfare of workers in a company which now finds itself in administration due to financial difficulties . However I do not accept that Political Representatives can make allegations of sectarian and or political bias without evidence to support such statements and not to provide any such evidence if available to NIHE. To also dilute in those representations the evidence of wrong doing and poor performance by Redsky in relation to the audit and investigation reports before the Board of NIHE is unfair in terms of public responsibility. Redsky were in receipt of £150k per week of public funds for contract works . Mr Peter Cooke Director of Redsky did admit on TV in an interview that

[Type text]

NIHE had been charged for work on a building that didn't exist . This was highlighted in reports to NIHE and was a matter of serious concern . The Minute clearly refers to NIHE stating that members of its own staff may be subject to disciplinary action as a result of poor internal monitoring . The Board of NIHE also reject the claim in this meeting by Mr Peter Robinson MLA that the decision to terminate the contract could have been taken one month later after the election .. I as the then Chair of the board of NIHE again state that no political or sectarian influences were present in this termination decision process . I as Chair of the Board of NIHE also confirmed to the political representatives at this meeting that comments made by other MLAs in Belfast naming a Contractor during a board investigation process were not helpful .

Meeting of 30th June 2011 between the Minister Nelson Mc Causland and Chairman and Chief Executive of NIHE and Senior DSD Officials to discuss the Termination of the Redsky Contract .

The note of this meeting is in the records made available to this committee and I can again confirm that this meeting did take place and that the atmosphere in this meeting was tense and was uneasy given that the Minister and Special Advisor were clearly in the mind to seek to influence the Board Room of NIHE in terms of potentially lobbying for the reinstatement of the Redsky Contract to be undertaken by the Administrator BDO . This was an operational matter for NIHE and as the then Chairperson of NIHE I could not allow this external influence to continue without written formal direction from the Minister . There were no viable grounds presented to myself and the Chief Executive at this meeting that supported consideration of this request.

The reference to the Administrators BDO was concerning also and gave grounds for further reflection that possible contact may have been made to BDO Administrators to Redsky Group Ltd on matters of an operational and contractual nature that were matters for NIHE and its executive team. NIHE had established a positive working and communication frameworks with BDO which was essential to manage the notice period of the contracts to termination date July 13th.

I understand that a meeting may have taken place with former directors of Redsky Group Ltd with DSD officials present but no NIHE staff or Board members present and matters relating to NIHE response Maintenance Contracts were discussed . I understand a note of this meeting may be on record .

Letter of 1st July 2011 from the Minister to the Chairman of NIHE requesting the extension of the Redsky Contract .

This letter is a matter of public record and is included in the documentation provided to this committee. The request by the Minister was a matter of serious concern to myself as the then Chairperson of NIHE , my fellow board members , the Chief Executive Stewart Cuddy and the Audit Chair Mrs Anne Henderson . This effectively was a request to suspend or remove the notice of contract termination and to seek assurances from the Administrator that Redsky Group in Administration could continue to service the contract beyond the termination date of 13th July 2011. This effectively reinstated the original contract but was providing this contract to a non viable entity in the form of Redsky Group Ltd in Administration which would clearly breach the monitoring and procurement provisions within NIHE . We also had concerns around possible ongoing overcharging continuing as well as possible poor performance against contract standards. NIHE also had serious overcharges accumulated against Redsky Ltd and these were being pursued against the Administrator in terms of recovery of Public monies ...The Board also were concerned that the Minister was possibly directing in this instance and that this direction if such was one that could not be honoured by the board as it was seeking to reinstate a contractor who had significant failings under the contract provisions and that the correct action had previously been taken in the form of termination and approved by the then Minister with full Departmental support .. Why was the Department now changing course and why was the board of NIHE being placed in this situation and why were contractual decisions of NIHE being considered for reverse by the department days before the closure of the termination period 13th July 2011.? Why was the department and its officials involving itself in operational matters of NIHE ? Surely NIHE must be held to account for its own decision making . ?

This letter was copied to all Board Members of NIHE and I as Chairperson agreed to host a Special Board Meeting to consider this Ministerial request . In advance of this Special Board meeting Scheduled for 5th July 2011 Senior Counsel Legal opinion was sought on the issue and the contractual implications for NIHE .

NIHE Board Meeting 5th July 2011 regarding the Minister's request for an extension to the Redsky contract .

The Minutes of this meeting are a matter of record and have been supplied to this committee . A full attendance of all board members was confirmed and a special notice was issued to members on the 2nd July 2011. The day before the Special Board Meeting Cllr Jenny Palmer, Board Member of NIHE contacted me as Chairperson to request an urgent meeting .. Jenny confirmed that she had been approached by the Ministerial Special Advisor Stephen Brimstone to vote in favour of the Ministerial request and not support the board in continuing the Redsky notice period . Jenny was very upset and felt that her position was compromised and that her independent board membership had not been respected and appreciated . Jenny also confirmed that she was supportive of the Board's stance and did not agree with the Ministerial request ..I as Chairperson was very annoyed that this approach had taken place and felt further annoyed that a board member had been compromised in this way . This was a complete breach of governance provisions and as Chairperson I agreed that Jenny would attend the meeting but record a compromised position and leave before the discussion . Jenny agreed with this decision and was thankful of the understanding and support . No Board member of any public body should be placed in this position ..Board decisions are simply that BOARD DECISIONS and the independence of the Board and its decision making framework must be respected . I had no reason to doubt the integrity and honesty of Cllr Jenny Palmer and the debate at board level would have been further enhanced by Jenny's input .

The morning of the Special Board Meeting (prior to the meeting) an email was received in NIHE from Michael Sands DSD again proposing a further suggestion for consideration by the board in support of the extension of the Redsky contract ..The email referred to matters that were operational to NIHE and not the concern of DSD officials .. This again caused me concern as Chairperson as there appeared to be a dedicated attempt to lobby for this extension in favour of Redsky. Why ?

The Special Board meeting was an informed debate and all members spoke on the issue and there was unanimous agreement to not accept the Ministerial request and continue with the termination notice via the Administrators BDO ... BDO had confirmed in advance of this meeting that they could not guarantee the continued viability of the delivery of the contract beyond the termination date 13th July 2011. The Board Members were each supplied with a copy of the legal advice on the issue and a suggested form of words was tabled for agreement . All present unanimously agreed to refuse the Ministerial request and write to the Minister outlining the Board's concern about this approach by his office . It was agreed that I would respond on behalf of the Board .

[Type text]

There was considerable media interest on this issue and unfortunately the Minister stated that my response was a “ Declaration of War ”...This was far from the reality of the situation and I simply highlighted Board concerns and the independence and governance that the matter required . The matter was personalised and the resulting relationship with the Minister was challenging from hereon . The Board was expecting the Minister to reply with a formal written direction . This did not prove to be the case and the intention of the Minister was withdrawn and the contract ran its course and terminated through the Administrator on the 13th July 2011. The individual contracts were allocated to adjacent contractors in line with the contract provisions and in line with procurement and legal advice to the board . The Board also set about developing the tendering process for the new and improved Response Maintenance Contracts .

Contact with the Redsky Administrators , BDO following their appointment on 20th April 2011.

NIHE put in place a positive and structured communication framework with the Administrator Michael Jennings BDO and BDO Managing Partner . This was to ensure that NIHE could continue to provide a much needed response maintenance service to the tenants serviced by the Redsky Contract .

This communication framework had three distinct and separate strands ;

Chair of NIHE and CEO NIHE Strategic issues on Contract Termination deadline and Overpayments on past Redsky contracts .

Procurement Manager NIHE ...Transfer of Contracts to adjacent contractors and relevant TUPE provisions and payroll evidence on employee numbers affected .

Director Housing and Regeneration NIHE on contract performance during the notice period and payment process for authorisation of approved works .

All of the above were distinct individual contacts and did not overlap .

Regular meetings were held with the Administrators and the process proved successful as the transition to new contractors went smoothly ..These were dedicated NIHE interventions with the Administrator and as these were all NIHE related there was no requirement for Departmental or Political interventions with the Administrator . NIHE was not informed of Departmental or Political contacts with the Administrators .

The NIHE Board was kept up to date on progress with the Administrators .

[Type text]

Personal

The termination of the Redsky contract in April 2011 was a corporate decision of the Board yet following this decision posters on the gates of Redsky in East Belfast had my name on them claiming I had terminated 400 jobs.

This personal campaign continued with a motor cavalcade through Belfast with the same posters attached to Redsky Vans and Cars .

I also had to leave my home for two nights due to fear of possible intimidation ...

Again I reaffirm through this submission that the Board of NIHE was united in its decision making on this termination and it was a unanimous decision in all cases.