

**Written Briefing from Nelson McCausland MLA in relation to the SDC Inquiry
Phase 3 meeting on 16 September 2014.**

The Committee has requested a briefing on my knowledge of a number of key events and decisions relating to actions that occurred more than three years ago. I would therefore record at the outset that it is difficult with the significant passage of time to recall now specific details and discussions in relation to these events and decisions. I have had sight of the documents provided to the Committee in relation to Phase 3 of this Inquiry which I have used to inform my knowledge and recollection.

1. Letter of 31 May 2011 from the Minister to Robin Newton MLA declining his request for a meeting with representatives from the Red Sky regarding the termination of the Red Sky contract.

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

The advice from departmental officials was sent to me on 27 May 2011 recommending that I 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".

The Private Office advised Housing Division on 27 May that my Special Adviser 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...". I am aware,

from the documents provided to the Committee, that a Housing official at that time spoke to my Private Office and asked that the protocol on requests for amendments by the Special Adviser should be checked and this request for an amendment should be put to me. I agreed to the suggested amendment as I had concerns about the NIHE's management of contracts. My reply issued to Robin Newton MLA on 31 May 2011 providing him with an update on the issues and advising that I would keep him updated in relation to this matter. I also advised that if he felt that a meeting would still be beneficial he should contact my diary secretary to arrange this. A meeting was subsequently arranged for 27 June 2011.

2. Meeting of 27 June 2011 at Parliament Buildings between 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 me, this was arranged to take place on 27 June 2011. Departmental officials provided me with briefing in advance of the meeting (copied to the Committee) and senior housing officials also attended the meeting. A view was also sought from the Departmental Solicitors Office in relation to the meeting and whilst the legal advice has not been provided to the Committee, Members will be aware that I advised the NI Assembly on 8 July 2013 of the following;

"Before the meeting took place, legal advice was sought from the departmental solicitors. I sought that advice in the light of the fact that I was being asked to meet individuals from a company in administration, and I wanted to be assured of the probity of my actions. It advised me that Ministers may meet such persons as they choose."

The Committee has also been provided with the note of the meeting which documents the discussions and records that I asked officials to instruct the NIHE to rigorously review all existing contracts to the same level of scrutiny and that I would like to have the Administrator in place until the end of August to allow all issues relating to the handover of the contracts to be considered. The official

attending the meeting also advised that the proper route for the consideration of contractual matters was between the NIHE and the Administrator.

3. 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 received a briefing from officials in advance of the meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive and the note of the meeting records the discussions. These documents have been provided to the Committee.

The briefing from my official records that I had requested the meeting with NIHE officials to ask them to consider extending, through the administrator, the Red Sky contract beyond the termination date of 14 July to enable investigations to be undertaken with the adjacent contractors to give me assurances that the problems identified in Red Sky were not endemic across NIHE contractors.

The note of the meeting records that I had asked my officials for a forensic examination to take place on the management of contracts and that it would be inappropriate therefore to change contracts until this was completed, in the region of eight weeks. I asked the Housing Executive to take this proposal to the Board and to recommend my proposal on the basis that the Administrator could guarantee to conduct the work.

4. Meeting of 1 July 2011 with 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;

There were a number of meetings during this period and it is difficult with the passage of time to recall the specific discussions. However, having reviewed the papers which have been copied to the Committee, this was a follow on meeting from my meeting with the Housing Executive on 30 June 2011. My officials prepared a draft letter for my consideration which formally put to the Chairman

my request to extend the termination of the Red Sky contract. The submission to me from my official with the draft letter has been copied to the Committee along with the letter I issued 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.”

5. 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 my meeting on 30 June 2011 with the Chairman and Chief Executive of the Housing Executive, a letter to the Chairman was drafted by my official. I am aware from the documents provided to the Committee that the original draft by my official was to extend the contract for a period of eight weeks. This was the period that had been discussed at my meeting with the NIHE on 30 June 2011 and was referred to in the note of the meeting.

I am also aware from the documents provided to the Committee that my Private Office advised officials on 1 July that I had amended the letter which issued on the 1 July 2011. The amended letter asked that the termination date would be extended for six months. It is difficult with the passage of time to recall specific details such as this but I assume this may have been changed as it more likely to take six months for a procurement period for new contracts, rather than just eight weeks.

6. 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 my request to extend the Red Sky contract and following the meeting the Chairman wrote to me to advise of the Board's deep concern at the stance I had taken and that the Board that morning had 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. The Chairman's reply focused on the issue of a direction, which I had not in fact issued, and did not answer my specific request in relation to the Administrator's ability to continue to service the contract.

7. Submission dated 6 July 2011 from the Permanent Secretary regarding NIHE's decision not to extend the Red Sky contract pending an open procurement competition and the possible discussion of this at the Executive Committee on 7 July 2011;

My Permanent Secretary briefed me on 6 July 2011 on the current position following the letter from the Chairman on 5 July 2011. A copy of the briefing has been provided to the Committee. In this he advised me that the Board of the Housing Executive had met and responded to my request to extend the contract. Their response had highlighted a number of issues:-

- a) The Board advised that they remained content that the action they had taken against Red Sky has been appropriate in light of the issues that investigations had revealed and that the steps taken to re-assign the contracts to adjacent contractors had been the most appropriate approach to both ensure continuation of services and offer exiting employees protection under TUPE;*

- b) The Board had confirmed that adjacent contractors stood ready to take over the contracts from the termination date. These contractors had also indicated that they had already incurred significant expenditure in preparing for these contracts. The Board had suggested that they and the Department could face legal challenge as the contractors, in relation to their losses, sought redress for breach of their legitimate contractual expectations;*
- c) Public confidence in the Board's ability to discharge its statutory function could be eroded in the absence a coherent rationale for extending those contracts;*
- d) Red Sky had not mounted any public or private law challenge to the Boards' decision to terminate their contract;*
- e) The extension of the contract could secure a benefit for a particular contractor or purchaser; and*
- f) The Board considered that this was a significant and controversial matter as defined in paragraph 2.3 of the Ministerial Code.*

The Board had therefore concluded it was not in a position to take forward my request in relation to extending the termination of the Red Sky contracts to allow an open competition for the contracts to be undertaken with immediate effect.

Separately, by email to my official, the NIHE answered my question in relation to the Administrator's ability to continue and advised my official that the Administrator was only able to provide a service up to 31 July 2011 and that this would not meet the NIHE's specifications or those specified by me.

The Permanent Secretary therefore recommended that I 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. In his submission he also advised me that this may be raised at the Executive Committee meeting on 7 July 2011.

I considered this advice and subsequently 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. I also issued a press release on 7 July 2011 which stated that I continued to have concerns about how maintenance contracts were managed and that I raised these concerns at the Executive meeting and they were shared by Executive colleagues.

8. 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.

As previously referred to, following my Permanent Secretary's briefing on the 6 July 2011 in relation to the Chairman's letter to me on 5 July 2011, my official provided a draft reply from me to the Chairman. The accompanying submission records "I understand that the decision is that the Housing Executive move forward with their proposals to re-assign contracts to adjacent contractors to ensure continued provision of services to tenants". I subsequently issued the reply 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.