

34. Furthermore, this request was subject to the Red Sky administrator being able to continue to service the Red Sky contracts during the proposed extended period.
35. **It is therefore clear to us that this represents a Minister acting objectively, pragmatically, in the best interests of tenants, the public purse and to protect jobs, in a short period of time after assuming office and before the termination notice for the Red Sky contracts had expired.** Indeed we believe that for him to have done otherwise would have been to neglect his duty.
36. In relation as to whether the comments made by the Minister regarding the establishment of a new company were compatible with the advice given to him by DSD officials, Mr Wilkinson stated:
- “The key thing is that the Minister expressed his view at the time”.*
37. And when asked if that was compatible with the line the Minister had been advised to take, Mr Wilkinson said:
- “I followed up why that was the Minister’s view and what he would like to achieve. We were quite clear that the decision making would be entirely a matter between the Housing Executive and the Administrator”*
38. **Therefore, not only was the Minister transparent about his actions and the reasons for taking them, it is clear that the final decision regarding the extension of the termination date was not actually his to take but lay entirely with the Housing Executive and the administrator.**

### Phone call between the Special Adviser and Councillor Palmer

39. Although the terms of reference of the inquiry refer to the actions of Ministers, considerable time was given to the consideration of the actions of the Minister’s special adviser, Stephen Brimstone. This related specifically to the phone call made by Mr Brimstone on 1 July 2011 to Councillor Palmer.
40. However, based on the evidence heard by the Committee the only undisputed fact about this phone call was that a phone call was made.
41. There was, and is, no agreement between Councillor Palmer and Mr Brimstone as to the nature or content of the phone call, nor is there any third party corroboration to support either’s account of the phone call.
42. Reference was made during the oral evidence sessions to the inability of Mr Brimstone to recollect the details of this phone call but we accept that it is reasonable to expect that a person may not recollect the detail of a phone call which lasted between 5 and 10 minutes, and which took place almost 4 years ago.
43. We also note that while Councillor Palmer’s account is clear and has been consistent this does not, in itself, make it accurate. Indeed the Committee heard evidence from Councillor Palmer in which she said that Michael Sands told her that Mr Brimstone had informed him of having made the phone call. However, Mr Sands subsequently denied he said this to Councillor Palmer.
44. However, there is no doubt that she was made aware of the Minister’s views on this matter and that the Minister did not have confidence in the NIHE Chairman to adequately convey these to the board.
45. We would also point out the futility of requesting a single member to vote against the board’s position on termination of the contracts given that there are ten members of the board and a single vote would not have changed the board’s ultimate decision.

46. While we do not make judgment on either account we simply highlight this to point out the potential impact the passage of time may have on the veracity of the evidence provided by individuals on this specific issue.
47. It could be argued that the more honest answer to a question about a conversation which took place nearly two years before would be to say that recollection was hazy at best which is the position adopted by Mr Brimstone.
48. **We therefore believe that any conclusions on this matter made on the basis of the evidence heard by the Committee are little more than speculation.**

### Issue of Overpayments

49. The Committee in its report on phase 2 of the inquiry referenced a number of previous reports which painted a picture of the Housing Executive as an organisation which exhibited significant failings in governance and contractual management.
50. The Minister explained the position clearly in his evidence to the committee when he was challenged about his querying of the NIHE decision to terminate the Red Sky contracts. He told the committee

*“The issue of overpayment was one which the NIHE had been partly responsible for because of the chaotic way in which it dealt with maintenance payments and its failure to address these issues.”*
51. Evidence from the Permanent Secretary, noted above, indicates that the issue of overcharging for work was not confined to Red Sky. It is also clear that the Housing Executive’s approach to the management of maintenance contracts also contributed to overcharging. It is therefore of concern that despite senior NIHE officials knowing this it was only Red Sky who were subject to the ultimate sanction of termination of contracts.
52. Mr Cooke, the former Managing Director of Red Sky, said in his oral evidence to the Committee:

*“What we could find — I can freely agree with this — was that there was massive difficulty in working those contracts in the way that they were written. Nobody was doing that. In fact, the Housing Executive had instructed a number of variances to make them operational, and the vast bulk of what was claimed as overcharging was actually down to contractors doing exactly what they had been told to do.”*
53. Peter Cooke of Red Sky in his evidence explained that the NIHE had various codes for specific jobs but that often the types of jobs that actually had to be done did not fall clearly into a specific cost code. He said, for example, that if a garden had to be cleared there was a certain code which applied regardless of whether it involved lifting one item of rubbish or a lorry load of rubbish. In order to address the disparity in the expected work with that which actually had to be done, contractors were simply told by the NIHE to claim for more than one garden if the standard charge did not cover the work done. This approach while convenient to ensure payment was made, presented problems when the official work requested and the actual costs were audited and found not to match e.g. ten gardens were claimed for when only one was cleared.
54. This left the transaction looking dubious and resulted in the appearance of overpayment and fraud by the contractor.
55. The surprising thing is that the NIHE management had not sought to remedy this problem but instead left contractors to bear the consequences.