



Northern Ireland
Assembly

**COMMITTEE FOR
REGIONAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

**Water and Sewerage Services
Governance Issues**

16 February 2011

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR
REGIONAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Fred Cobain (Chairperson)
Miss Michelle McIlveen (Deputy Chairperson)
Mr Billy Armstrong
Mr Cathal Boylan
Ms Anna Lo
Mr Fra McCann
Mr Ian McCrea
Mr Conall McDevitt

Witnesses:

Dr Andrew Grieve)
Mr Gary Fair) Department for Regional Development
Mr John Mills)
Mr Stuart Wightman)

The Chairperson (Mr Cobain):

I invite the officials to begin their presentation on water and sewerage services governance issues.

Mr John Mills (Department for Regional Development):

We will start with the memoranda of understanding (MOU). Stuart will take us through the memoranda generally, then Andrew will talk about the memorandum with the regulator. If it is OK with the Committee, we will then take any questions on that, after which Gary will talk about

the revised governance letter with NI Water.

The Chairperson:

That is good.

Mr Stuart Wightman (Department for Regional Development):

The Water and Sewerage Services (Northern Ireland) Order 2006 says that bodies involved in the governance of water should make arrangements in the form of memoranda to promote co-operation between them. The Department has to lay any memoranda made before the Assembly. Four MOUs were agreed over the summer of 2010. The first was between the regulator and the Department of the Environment (DOE), effectively, the Environment Agency. The second was between the regulator and the drinking water inspectorate. The third was between the Department for Regional Development (DRD) and DOE about the drinking water inspectorate, which, effectively, regulates drinking water quality on the Department's behalf. The last was between the Department and the Utility Regulator.

The memorandum with the regulator covers areas such as sharing of information, enforcement, meetings, and so on, as do the other memoranda. However, the main provisions cover Northern Ireland Water's funding. Basically, the MOU says that DRD will support the price control process and that the regulator recognises that public expenditure ultimately determines funding. It says that funding changes during a price control period will be addressed jointly by DRD and the regulator. Normally, under regulation, the regulator would not change its price control settlement. The MOUs as agreements are not legally enforceable. The regulator has recently proposed changes to the company's licence, which is a legally enforceable document, to reflect what was agreed in the MOU. We are looking at that.

As I said, the Department is responsible for laying MOUs before the Assembly, even the MOUs that it was not directly involved in developing. The aim of the DRD/DOE MOU on drinking water quality is to ensure effective regulation of public drinking water in accordance with the requirements of the Water and Sewerage Services (Northern Ireland) Order 2006. Although the drinking water inspectorate sits within the DOE's Environment Agency, its main function is as the regulator of public drinking water quality. That function is carried out on behalf

of the Department.

The drinking water inspectorate also regulates private water supplies for DOE, but that is a much smaller function. For that reason, DRD and DOE act jointly in appointing the chief drinking water inspector. The MOU sets out the roles and responsibilities of each organisation and the agreed working arrangements between the two organisations. That includes the arrangements for business planning, briefing and sharing of information relating to drinking water regulation.

The second MOU is between the Environment Agency and the Utility Regulator and the third is between the drinking water inspectorate and the Utility Regulator. Again, those MOUs set out the agreed working arrangements between the regulator and the two quality regulators. The MOUs were laid before the Assembly under the 2006 Order, but we were not involved in developing them. Both MOUs focus on the arrangements for sharing information.

In monitoring Northern Ireland Water's performance, the regulator needs to collate compliance information on both waste water and drinking water. The MOUs help in attaining that goal. The regulator officials will be able to answer any detailed questions from the Committee on each of the MOUs when they meet you later.

Dr Andrew Grieve (Department for Regional Development):

I will move on to the specific MOU between the Department and the regulator. I hope that you all have a copy of it. It is the document dated November 2010. As Stuart has explained, the MOU is made under article 11 of the 2006 Order. It is about promoting co-operation and the exchange of information between the two bodies. It is also aimed at ensuring that there is consistent treatment of issues that are of mutual interest.

Section 2 of the memorandum indicates that both of the bodies recognise the respective roles of the Department and the regulator. It is about ensuring that we achieve a common objective, which is to ensure that the water and sewerage services that are being delivered are the right services for Northern Ireland and are delivered in the best way.

Section 3 of the memorandum states the five principles that we have agreed. They could be summarised with the words “working in partnership”. The MOU is about working together in partnership, and that is particularly important at the present time, because the practical arrangements on the ground are not precisely what was envisaged under the legislation, so partnership working is very important.

Section 4 of the memorandum, from 4.1, deals, first, with the financial implications that arise from the treatment of NIW as both a regulated utility and a non-departmental public body (NDPB) for public expenditure purposes. First, 4.1.1 states that the regulator and DRD recognise that funding is subject to the Minister’s and Executive’s overall decisions as well as the regulator’s statutory duties. Stuart has touched on this, but what that really means is that the regulator will carry out the price control process and that will provide the information upon which DRD’s bids for funding will be based. It also states that the prices that the water company charges and the spending levels that it has available are based on the public expenditure that is available. That takes account of the reality of the situation, which is that the company is operating in a public expenditure environment.

The Northern Ireland Water licence, which is the basis upon which Northern Ireland Water can act as a water and sewerage undertaker within Northern Ireland, sets out what I will call a paraphernalia for dealing with funding and price levels, but it presupposes self-financing, and that is not the situation that we are in. The main feature of that paraphernalia is that the regulated company would have freedoms that would enable it to manage its spending right across the regulatory period, which is three years in the case of price control 2010 (PC10). That facility is not available to an NDPB that is managed on a year-to-year basis.

The MOU sets out what will actually be done, given that self-financing is not happening and that the Department continues to provide around three quarters of the company’s revenue through subsidy. That is set out at section 4.1.2. The main feature of that section is that the regulator and the Department will jointly review the need for alterations to funding levels, through either the company’s plans for the future or in-year alterations.

There is a fair amount of detail involved in that. We have set out the detail of the various

steps in an accompanying consequential written agreement. Those details are not in the MOU but in an accompanying written agreement. That document goes into a fair amount of technical detail on the criteria that will be considered by the regulator and the Department in assessing NIW's requirement for additional funding. It sets out the steps that will be taken in processing a submission and the timescales that need to be followed, which are, of course, tailored to the public expenditure process.

At section 4.1.4, the MOU includes recognition that, in the public expenditure scenario, there are items that cannot be reasonably anticipated and needs that will arise. Under that section, the Department undertakes to make provision for those relevant items. Through self-financing, the company will be able to provide for them in its three-year settlement, but not on the single-year basis that is available to a non-departmental public body.

The MOU goes on to deal with the need to provide information, as is specifically referred to in the legislation. It covers the need for a standard set of information, including financial information, against which NIW will be monitored. It aims to minimise the demand for information that is placed on the company, which takes it away from the actual delivery of water and sewerage services. It attempts to streamline the process of exchanging information.

Section 4.3.4 of the MOU details the various formal fora where the two parties will meet and liaise about areas of concern or mutual interest. It also covers the proper handling of customers' correspondence. Three other aspects are touched on at the tail end of the MOU. The first is the need to consult with the Department on the regulator's forward work programme, one of the objectives of which is to avoid duplication and inconsistency. It then deals with the need to ensure that the licence, which was based on self-financing, is amended to reflect what is set out in the MOU, particularly the financial aspects. The final issue dealt with in the MOU is consultation on enforcement actions, including clarification of which body will have responsibility for ensuring that proper controls are exercised.

That was a quick run-through of that MOU. We are happy to give further clarification or deal with any questions that members want to put to us.

The Chairperson:

I want to ask you about the memorandum that deals with funding issues. We all understand the public expenditure constraints that exist. However, under this methodology, the regulator will set what he believes are the price controls in the period. That will not change.

Dr Grieve:

Yes. He has done that for the three-year period of PC10.

The Chairperson:

If there are public expenditure constraints, the regulator will discuss with Northern Ireland Water what is possible within those and make adjustments.

Dr Grieve:

Correct.

The Chairperson:

The point that I am making is that the regulator will still have a role in setting the price control.

Dr Grieve:

The regulator will set the price control. What is in the price control is the basis for making public expenditure bids, but what is actually provided is up to the Executive.

The Chairperson:

We are going to come on to another matter that is completely contradictory to that.

Mr McDevitt:

On that specific point, may I ask Dr Grieve whether he believes that the MOU delivers on the Bill's stated aim of ensuring a predominance of public expenditure financial controls?

Dr Grieve:

It does. It states that specifically.

Mr McDevitt:

For clarity, does the memorandum of understanding require the Utility Regulator to amend the licence to reflect governance arrangements and public expenditure requirements?

Mr Mills:

It does not require the regulator to do so. It is not a legally binding document; it is an agreement. In that agreement, the regulator has agreed to change the licence to reflect the MOU.

Mr McDevitt:

So, it is not a legally binding document, Mr Mills?

Mr Mills:

It is not.

Mr McDevitt:

Is it a legal agreement?

Mr Mills:

Is it a legal agreement? It is an agreement that is made under a statutory provision that is laid.

Mr McDevitt:

What remedy is available to any party to that agreement should they feel that they were hard done by under it?

Mr Mills:

I suppose that there is always judicial review. However, generally, there are not two bodies involved in the governance of a —

Mr McDevitt:

The document has legal standing. It is not just a simple contract. It is made under statute. It has

legal standing.

Mr Mills:

There is no enforcement mechanism if someone breaches it. It is, basically, an agreement.

Mr McDevitt:

So, you are saying that no remedy is available to anyone?

Mr Mills:

There is no statutory remedy for breaching —

Mr McDevitt:

No, I did not ask you that question, Mr Mills. I asked whether there would be no legal remedy available to anyone.

Mr Mills:

Right. Well, as I said, judicial review is always available.

Mr McDevitt:

Just so that I am clear, you are telling the Committee that the MOU does not require the Utility Regulator to amend the licence. In the memorandum of understanding, there is an agreement that the Utility Regulator amends the licence, but there is no requirement that the regulator does so.

Mr Mills:

The regulator, through the agreement, has agreed that it will put forward proposed licence amendments to reflect the memorandum of understanding.

Mr McDevitt:

So, there is an agreement that the Utility Regulator would amend the licence?

Mr Mills:

Yes.

Mr McDevitt:

OK. Thank you.

Miss McIlveen:

The agreement was signed on 22 or 23 of November. Is the document live now?

Mr Mills:

It is, yes.

Miss McIlveen:

Paragraph 4.4 of the memorandum of understanding states that the regulator will consult the Department on its forward work programme. Will the Department do likewise?

Mr Mills:

The Department's forward work programme is likely to be set, ultimately, through higher-level processes, such as the Programme for Government and the Budget. However, DRD water targets are already reflected through social and environmental guidance that the Minister has set. That, in turn, informs the price control process. The big target of 99.7% compliance is reflected in social environmental guidance. Therefore, you could say that the regulator is aware of DRD's targets and those targets have been incorporated into the general targets on water.

Miss McIlveen:

That is fine. Thank you.

Mr Gary Fair (Department for Regional Development):

I have been asked to give the Committee an update on the revised governance letter that issued in 2010. The original governance letter was issued when the company was established to reflect the go-co arrangements and the proposed commercial arrangements that were planned at that time, in which it was foreseen that self-financing would be in place by April 2010. It formalised the shareholder/company relationship based on the shareholder executive model. There was always recognition that the governance letter is not a legal document and does not override any of the

legal framework as set out in the memorandum and articles of association, the Companies Act 2006 and other relevant legislation. It clearly recognised the regulatory framework within which Northern Ireland Water would operate.

It highlighted a number of shareholder rights or roles, such as the appointment, appraisal and remuneration of board members and the composition of the board in discussion with the chairperson. It highlighted issues around approval of the business plan and budget on an annual basis, monitoring of performance, the financing and capital structure of the company and the dividend policy, to mention a few. As annexes to the original governance letter, the detailed financial delegations were included, as were the overall high-level shareholder objectives.

Since then, as members will be aware, the Executive have deferred domestic charging. As a result, the Department had to take steps to strengthen the governance arrangements based on the circumstances that were not foreseen when the company was established. For example, the quarterly shareholder meetings that were noted and in place from the outset have been strengthened. There has been more of a focus over the past couple of years on ensuring that the quarterly shareholder meetings, which are, as you are aware, meetings between the Department and the board of Northern Ireland Water, have become more strategic and forward-looking.

In order for that to be the case and for us not to ignore any detailed issues that are of significance to us in the Department, ground-clearing meetings were introduced in around January 2009, which normally happen a week to 10 days before the quarterly shareholder meeting. Those are handled by me, the director of finance and regulation and the company secretary, and others within the company as required. We go through a lot of the detailed papers to ensure that there are no issues of concern or to thrash out any issues of concern, so that the quarterly shareholder meetings do not become bogged down in a lot of detail.

As well as that, again from around January 2009, meetings were established between the Department as shareholder and the non-executive directors in advance of quarterly shareholder meetings. Those meetings were intended to give the permanent secretary an opportunity to reiterate the expectations of the shareholder about the role of non-executive directors, and to give an opportunity for open and frank discussion without any of the executive members present.

There has been an overall sharpening of the information pack that is provided for quarterly shareholder meetings. Even in fairly recent months, there has been a new format for monitoring the various governance aspects and ensuring that delegations are being adhered to, etc. Since the company was established, there has also been an operational meeting, a bilateral meeting, between Northern Ireland Water and the Department, including Roads Service, to give a regular opportunity to discuss any operational issues.

Since the original governance letter was issued, the permanent secretary wrote to the chairperson of Northern Ireland Water in May 2008, highlighting the fact that there was a need for enhanced assurances from the company and outlining his responsibility as DRD accounting officer, specifically focusing on assurance statements, the audit committee, the audit programme and access to internal audit reports, risk management within Northern Ireland Water, business cases and post-project evaluations.

That was recognising what has been referred to already; the fact that Northern Ireland Water was reclassified to non-departmental public body status in public expenditure terms, and, as a result, the bulk of Northern Ireland Water's resource and capital spend has an impact on the Department's budget, so there was clearly a need to ensure that the governance arrangements were tightened to strengthen what would have been a more formal shareholder relationship.

One important milestone was the appointment of the then chief executive, Laurence MacKenzie, as accounting officer on 15 September 2009. That was as an assurance to the permanent secretary as departmental accounting officer that anything of concern would be drawn to his attention as a matter of urgency.

The revised governance letter of 18 November 2010 articulated a lot of what had happened over the preceding months. The timing of the letter was to take account of the fact that the PC10 process had been ongoing. The original governance letter focused on the strategic business plan years, which were the first three years of the company's establishment. So, around November, things were reasonably clear from the shareholder unit's perspective about the PC10 agreement and the memorandum of understanding that had been signed up to.

The revised letter makes reference to the hybrid, go-co and NDPB arrangements that now exist. It still acknowledges that the company was established under the Companies Act 2006 and that the legislative basis of the company still stands. That is the reality of the situation; there is a hybrid set of governance arrangements.

The shareholder relationship still stands, but, as I have illustrated, it is probably a lot stronger than what would have been originally anticipated. It reflects the primacy of public expenditure, which is critical in the current climate, because the focus in all Departments is on making sure that they do not overspend and, where possible, avoid underspends or keep them to an absolute minimum. That has required a lot more close monitoring on a monthly basis by the shareholder unit.

Although the letter states that the company has freedoms and flexibilities, or was created to have certain freedoms and flexibilities, such as the ability to move capital between years within a planning cycle, the reality is that that is not possible at the moment. That is noted and emphasised in the revised governance letter.

The letter refers to the chief executive being the accounting officer and the requirement for him and the company to adhere to the principles of managing public money in Northern Ireland. It also reflects the fact that the independent review team findings at the start of the previous calendar year also had an impact on the governance arrangements and led to an action plan that has resulted in some changes to the existing governance arrangements.

The letter reflects the fact that the relationship between the shareholder unit and the water policy division is much closer than what would have been anticipated originally. The intention would have been for the two units to be much more separate, but from a risk perspective they have to work more closely.

The letter includes an additional delegation in the financial delegations, basically asking the company to draw anything that could be deemed to be novel or contentious to the shareholders' attentions. That measure is all-encompassing but, to be honest, it is necessary in the current

environment because there has been a lack of clarity on when Department of Finance and Personnel approval has to be sought. We have had to adopt a pragmatic approach in many instances.

The letter highlights the role of the Department in the Northern Ireland Water audit arrangements. I have been attending the Northern Ireland Water audit committee meetings since March last year. The senior finance director in the Department meets with the chairperson of the Northern Ireland Water audit committee twice a year. From this year, the company will be required to give an opinion on regularity. That was not required last year, so there was an unusual set circumstances in which the Department's accounts were qualified but Northern Ireland Water's accounts were not, as a result of the procurement irregularities. The company is also required to produce a pay remit in line with public sector pay remit guidance. Those are things that would not have been anticipated at the outset, because Northern Ireland Water was set up to have the freedom to negotiate its own pay settlements.

The Committee will not be aware that the annexe on financial delegations was reissued last Monday to reflect a change in the Department's delegations. A decision was taken that the Minister will now need to approve all external consultancies regardless of value, excluding things that would normally be considered as capital spend apart from external consultancies involved up to the point of approval of a project. That is the main change.

There was no substantive change to the governance letter itself. The only other difference was that the accounting officer letter that was previously included as an annexe to the revised letter issued last November has been replaced by the accounting officer letter issued by Trevor Haslett, as interim chief executive, in January.

That covers most of the points. Leaving aside the short-term legislation, the next step in short-term governance is the ongoing work with our internal audit team to develop a financial management statement, a financial memorandum, although that is still in early stages of development.

The Chairperson:

Gary, will you outline briefly what exactly you are responsible for doing as the shareholder?

Mr Fair:

Fundamentally, we need to be getting assurances from the company that it is adhering to what it is required to adhere to; namely, that it is using the public funds that it has been given to good purpose.

The Chairperson:

You are the representative of the shareholder, but not the Department: is that right?

Mr Fair:

The shareholder is part of the Department. Ultimately, the Minister is the shareholder; so, when it comes to shareholder approval, the Minister gives that approval. I represent the Minister and the Department in the shareholder unit.

The Chairperson:

There are issues around your responsibility to the shareholder in respect of the composition of the board. Clearly, you were not involved in the appointment of the new non-executive members.

Mr Fair:

I assisted with the interim process.

The Chairperson:

According to the memoranda, you have a role to play as a shareholder.

Mr Fair:

Yes.

The Chairperson:

You meet and talk to the chairperson of the nominations committee or to the relevant non-executive directors. You manage the appointments process. The document does not say that the

Minister does it; you do it. Is that right?

Mr Fair:

I represent the Minister; so, obviously, I carry out a lot of day-to-day operations.

The Chairperson:

Was any of that process followed in the appointment of the non-executive directors?

Mr Fair:

I was involved in the process.

The Chairperson:

You met the board to discuss issues about —

Mr Fair:

As far as the interim process is concerned, the Department's main concern was to discuss the matter with the Commissioner for Public Appointments and get her agreement to running an emergency process.

The Chairperson:

Did she agree to the appointments?

Mr Fair:

She agreed to an emergency process on condition that the appointments would be short-term and that a full appointments process would be run as soon as possible.

The Chairperson:

I have two further quick questions, one of which is important to us. We have discussed the risk register before, and the Committee has talked to a number of people about the emergency plan that was provided by Northern Ireland Water. I assume that it would be considered as a major risk.

Mr Fair:

Yes. It is identified as a risk in the company's corporate risk register.

The Chairperson:

The trade unions, which would be a big factor in dealing with an emergency — and that emergency did happen — are not consulted on the emergency plan.

Mr Fair:

I do not know. The Committee will need to ask Northern Ireland Water about its emergency plan. It is an operational issue.

The Chairperson:

Do you not, as a shareholder —

Mr Fair:

From a shareholder perspective, my antennae would have been raised had the corporate risk register indicated that a problem was foreseen. The corporate risk register was noted as amber, which indicated that there was a medium risk; it did not indicate that there was a significant risk. We do not micromanage the company; we look for indications of problems, after which we pursue the company on the specifics.

The Chairperson:

So, you wait until the accident happens and then look to see what is wrong?

Mr Fair:

The board of Northern Ireland Water runs the company. It is not our responsibility to do that. Although we have a responsibility to ask the right questions, we cannot be aware of things that we are not made aware of, essentially.

The Chairperson:

If the company does not tell you, you do not know: is that what you are saying?

Mr Fair:

As regards the company's emergency plan, there was no indication in the corporate risk register, and nothing had been drawn to my attention —

The Chairperson:

I have a final question about shareholder rights. The document talks about commercial freedom for Northern Ireland Water. It states:

“While NIW continues to be classified as an NDPB, the commercial freedoms will be restricted by the constraints of the PE system.”

Will you explain that?

Mr Fair:

The company, because of the way that it was established, had freedom to move capital between years during the strategic business plan period, except for the last year. That is a very significant issue for the company moving forward, and it is one that it raises with the Department regularly. At the moment, that facility cannot be guaranteed. Obviously, it is something that the Executive can consider, but it is not something that can be guaranteed because of the constraints of the Executive's Budget.

The Chairperson:

Are any other commercial freedoms restricted?

Mr Fair:

The company had a facility, which it has not been able to use, to draw down additional cash if needed. For instance, if the NIW makes more profit than anticipated, it can put that to reserves. At the moment, it cannot use those reserves without the Department having to bid for additional budget cover to enable the company to use them because it cannot spend without the budget cover agreed by the Executive.

Mr Boylan:

Thank you very much for your presentation. I listened to all of it. We have a lot of documents to

get through, but we need to try to put this issue in context so that a layperson can understand it. The original model was set up under direct rule, and the Utility Regulator deals with it. The Minister has decided to go in a different direction and has brought a draft Bill to the Executive. I want to know about the main changes for the way ahead and how they will impact on the Utility Regulator's role in the PC10 process. I will ask the Utility Regulator that question later.

We have agreed a PC10 process. Is there, or will there be, any flexibility in that to move forward in light of what has happened? Over the past number of years, most of the finance has been geared towards wastewater and sewage treatment. I think that we need be looking further than that. You talked about the governance arrangements, and the Chairperson asked about the emergency plan. People want to know whether an operational plan is in place to address the issues.

Mr Fair:

I will ask John Mills to answer the questions on PC10. I will pick up on the last point, Mr Boylan. In the risk register, emergency planning was worded in such a way that it incorporated business continuity planning, which is more of an internal issue for the organisation. Since the water supply incident at Christmas, the board has decided to split that into two risks, which is the way that it used to be, so that emergency planning is identified separately. At the moment, it is noted as red, which is the highest risk category. That is our main way of knowing how the company is dealing with the matter. The risk has been escalated now.

The Chairperson:

The Minister's time is restricted. Are members happy to hear from the Minister now and come back to this issue later?

Mr Boylan:

Yes, as long as you can remember my questions.

Mr Mills:

Fortunately, I noted them.

The Chairperson:

Unless you want me to tell the Minister that he will have to wait, Mr Boylan.

Mr Boylan:

I would not be in favour of that.

The Chairperson:

Gary, do you want to finish answering that question? The Minister is on his way down.

Mr Fair:

That is all that I was going to say about emergency planning.

Mr Boylan:

I wanted to ask about the role of the Utility Regulator under the new proposals.

Mr Mills:

The new short-term proposals still leave regulation in place. The Minister has said that he will bring forward long-term proposals in this mandate. The MOU was a deal whereby the Department recognised the price control process and, in return, the Utility Regulator recognised the predominance of public expenditure. That is, basically, what the MOU does.

You asked about redirecting investment. Of course, the draft Budget is out for consultation. Even if one wanted to invest in something other than wastewater treatment and water treatment, one would be stuck with EU demands. There must be continuing investment in those areas otherwise we will face infraction procedures. Did you have another question about governance arrangements?

Mr Boylan:

The new proposals —

Mr Mills:

I am sorry. The link between short-term legislation and what Gary talked about as possibly replacing the governance letter is that the short-term legislation will be at a higher level than what replaces the governance letter. There is a relationship there that the Minister will touch on.

Mr McDevitt:

Is it OK to keep going? I got relaxed there, gentlemen. I will ask Mr Fair to confirm something for me? The governance letter sets out specifically that the shareholder appoints the chairman and all non-executive board members and approves the appointment of all executive directors. Is that correct?

Mr Fair:

Yes — to the board.

Mr McDevitt:

The governance letter also contains a series of specific steps that outline how that happens. It says:

“the Shareholder Unit and the Chairman will agree on Board composition and any succession issues at least each year in the light of the requirements of the Plan and the future actual performance of NIW”.

It is quite specific. It goes on to say that shareholder unit officials — Mr Fair and his colleagues:

“will meet the Chair of the Nominations Committee or relevant Non-Executive Director as necessary to discuss any proposed Board changes before they become subject to the formal consent procedure — this will include approving the necessary specifications for any additions to the Board”.

Did any of that take place in connection with the appointments of the interim non-executive directors?

Mr Fair:

The formal approval process took place. As you are aware, we did not comply with the full requirements of the commissioner’s code, but she did agree that an emergency procedure —

Mr McDevitt:

I am asking specifically, in the context of the governance letter, whether the shareholder unit met the chairman of the nominations committee or relevant non-executive directors, as necessary, to discuss the proposed board changes before they became subject to the formal consent procedure.

Mr Fair:

The answer is no, because it was an unusual set of circumstances. We were left with one non-executive director. There was no longer a chairperson of the nominations and remunerations committee.

Mr McDevitt:

So, did you set aside the governance letter in its entirety?

Mr Fair:

No; they were still approved by the shareholder within the confines of the emergency process. We still followed the procedures.

Mr McDevitt:

As shareholder, do you also control board remuneration?

Mr Fair:

Yes; under normal circumstances, the shareholder would have to approve board remuneration. We do not control it, as such. The nomination and remuneration committee would recommend to the shareholder.

Mr McDevitt:

Will you confirm that you also, as shareholder, have the right to approve the business plan and budget?

Mr Fair:

Yes.