APPOINTMENT OF STATUTORY MANAGER

TO IDEA SERVICES LTD AND TIMATA HOU LTD

QUESTIONS AND ANSWERS

5 October 2010

What has happened?

The Employment Court has decided that support workers who sleep in homes at night should be paid an hourly rate rather than the allowance they are currently paid. The "Sleepover" case, as it is known, is due to go to the Court of Appeal before the end of the year. It is possible that the earlier decision will be upheld. This decision affects every organisation that provides services with sleepover staff.

This Employment Court decision has huge financial implications for the service arms of IHC – IDEA Services Ltd and Timata Hou Ltd. It means that IDEA Services and Timata Hou are liable for back pay of $176 million, as well as an extra $30 million per year in wages going forward. IDEA Services and Timata Hou quite simply do not have the money to meet these extraordinary costs.

A request to the Government to guarantee payment of this money in the event that the Court of Appeal upholds the earlier Employment Court decision was turned down.

IDEA Services and Timata Hou are not permitted by law to continue in business when they do not have the money to cover their costs. Accordingly, the Directors of both service companies sought advice as to the best way forward to ensure the services continue with no disruption in this time of uncertainty.

All the advice suggested that the best option available to the Directors was to request government appoint a statutory manager. Sir John Anderson has been appointed by the Government to this position.

What does statutory management involve?

- the appointment by the Government of Sir John Anderson as statutory manager to ensure that Timata Hou and IDEA Services can continue to operate legitimately.
- the appointment of an advisory committee comprising the current Directors to ensure their knowledge and contribution is available to assist during the statutory management process.

Why is statutory management necessary?

To assure the people supported by the IDEA Services and Timata Hou of continuing service. It means services can carry on when otherwise IDEA Services and Timata Hou would have to close down because of a contingent debt that massively exceeds the companies' assets.

Why Sir John Anderson?

Sir John Anderson KBE is well known in community and business circles.

Sir John is chairman of PGG Wrightson, Television New Zealand, Capital & Coast District Health Board, the New Zealand Venture Investment Fund and the Wellington Regional Strategy Committee. He is a Commissioner of the Hawke's Bay District Health Board and serves as a director of Commonwealth Bank of Australia and the Wellington Regional Stadium Trust.

Sir John was formerly chief executive of the ANZ National Bank until his retirement in 2005, chairman of New Zealand Cricket, New Zealand's representative director on the International Cricket Council and chairman of the New Zealand Sports Foundation.

He was knighted in 1994.

Who are the Directors of IDEA Services and Timata Hou?

Ralph Jones is the sole Director of Timata Hou.

Donald Thompson (IHC National President), Shelley Payne (IHC Vice President) and Ralph Jones are the Directors of IDEA Services.

Ralph Jones is the chief executive of IHC. He has been employed by IHC for 18 years and was appointed chief executive in 2002.

Donald Thompson has been IHC's national president since 2005 and became involved with IHC when his daughter was born, nearly 30 years ago. He was president of the North Otago branch from 1989 to 2001.

Shelley Payne is one of IHC's two vice presidents. Like Donald she is a volunteer and became involved with IHC when she was looking for support for her son when he left school. She joined the branch committee in Tauranga in 1995 and was appointed to the Board of Governance in 2001.

Aren't statutory managers appointed when there has been mismanagement?

Both IDEA Services and Timata Hou have been managed honestly and competently. There has been no mismanagement. The Employment Court decision will have implications for any organisation that currently employs sleepover staff. The size of IDEA Services and Timata Hou means the impact is greater for them than it is for others in the sector.

The law under which statutory managers are appointed has two parts. The well known and most used one is for situations of suspected wrongdoing. The less well known one is the one used for IDEA Services and Timata Hou and that is designed to protect companies and allows them to continue operating while an uncertainty is cleared up.

How long will IDEA Services and Timata Hou be in statutory management?

IDEA Services and Timata Hou will be in statutory management until the Court process is complete and the Government decides its course of action. It is hoped that will be for a few

months, but it could be for more than a year, depending on how fast the Courts deal with appeals.

If subsequent courts reverse the Employment Court decision there would be no reason for continued statutory management. Sir John Anderson would resign when the Government revoked statutory management and the advisory committee would resume control as directors in the ordinary way.

Is this an unusual step to take?

Yes, the section of the legislation used to appoint a statutory manager to IDEA Services and Timata Hou Limited has never been used. This less well-known limb of the Corporations (Investigation and Management) Act exists where the purpose is to protect a company, not find out what is wrong. It is this second limb of the Act that has been used.

Why was the decision taken now?

The adverse decision in the Employment Court meant that the possibility of being required to pay the more than $176 million owing was becoming increasingly likely. This forced the Directors of IDEA Services and Timata Hou to consider the risks of continuing in business without the funds to meet the costs. Statutory management of IDEA Services and Timata Hou provided a vehicle to continue providing services over a time of uncertainty pending the Court process and the Government's confirmation of the course of action they plan to take.

Why wasn't this done earlier?

Until the Employment Court decision the likelihood that IDEA Services and Timata Hou would have to meet the extraordinary costs of the sleepover decision was less likely. Once the Employment Court decision came out and an approach to Government to meet the shortfall was declined the Directors needed to move to protect the services. IDEA Services and Timata Hou are not permitted by law to continue in business when they do not have the money to cover their costs.

Could the Government pay the debt?

The Government has to consider the whole picture. The Employment Court decision does not just have an impact on IDEA Services and Timata Hou - it impacts schools, the aged care sector, hostels and other business that have sleepover staff. The Government has made it clear that any decision they make has to await the conclusion of court proceedings. The Government is naturally wary of the consequences when parties to a dispute think there may be a cheque book available.

Do IDEA Services or Timata Hou have any assets that could be liquidated or sold?

IDEA Services and Timata Hou have no assets to pay the debt. This is why they've had to take this action. The homes that people live in are not owned by IDEA Services and Timata Hou. They are rented by them to provide homes in the community for people with intellectual disability.

Was an agreement with the union attempted?

IDEA Services and Timata Hou have been informed that the union remains committed to seeing the case through all the courts. They have met with the union many times and have not managed to find another way forward.

Will there be any changes in current management?

Ralph Jones remains as CEO of IHC New Zealand Inc. Ralph Jones and the two other Directors of IDEA Services and Timata Hou will be members of the Advisory Committee set up to work with the statutory manager.

There will be no changes to the roles and responsibilities of IDEA Services and Timata Hou managers.

Could staff lose their jobs?

At the moment it is business as usual. The Directors have taken these steps to ensure that services continue without disruption. But depending on the outcome of the Court process there is no guarantee there will be no impact on staff. IDEA Services and Timata Hou will need to look at the sleepover rosters to ensure the increased costs can be met in the future and to ensure further debt is not accumulated.

Will staff continue to get paid?

There will be no disruption to services. IDEA Services and Timata Hou still have government contracts for services that meet staff costs, so staff will continue to be paid in accordance with the terms and conditions in the Collective Employment Agreement and staff policies. The increases that occur on 6/11/10 will proceed as documented in the CEA.

What will happen to annual leave and sick leave?

Staff entitlement to annual leave and sick leave will not change.

Will services close?

It's business as usual and there is no reason to close services.

Sir John Anderson and the Directors will be considering how best to prepare for any changes needed if the case goes against IDEA Services and Timata Hou. Services may have to be delivered differently, for example by cutting the number of sleepover staff. But such changes would be forced by the court case, not the statutory management.

Will the government help further down the track?

The Government has acknowledged that this is a significant issue for a large number of people and organisations with an impact far broader than the impact on IDEA Services and Timata Hou. Eventually they will be obliged to offer a solution subject to the outcome of the litigation.

What about other providers. Why aren't they seeking to go into statutory management?

Other providers will be facing the same decisions as to whether they are running their operations with insufficient funds. It will be for each organisation's trustees and/or directors to determine the prudent course of action.

Will this affect fundraising?

There is a concern that people will think this is about IHC. The decision does not affect IHC and its charitable activities. IHC properties (Accessible Properties) and IHC Programmes will continue work as usual, along with the local membership associations.

IHC's Board of Governance will continue to oversee the business of IHC on behalf of its 3,500 members.

What does IDEA Services do?

IDEA Service provides a range of services to nearly 6000 people with intellectual disability to help them lead lives in the community. Services include accommodation, day services, supported employment, foster care, contract board and home support. IDEA Services has around 6000 staff and is funded primarily by government. It is a service delivery arm of IHC NZ Inc.

What does Timata Hou do?

Timata Hou is a rehabilitation service for just over 60 people with intellectual disability and other complex needs. It is funded by government and has 240 staff. It is a service delivery arm of IHC NZ Inc.

What is the Sleepover case?

The Service & Food Workers Union has taken a legal challenge against IDEA Services over the practice of paying an allowance to employees for sleeping over in residences. The Employment Court has ruled that sleepover hours are work for the purpose of the Minimum Wage Act (currently requiring a minimum payment of $12.75/hr). IDEA Services is appealing this decision to the Court of Appeal.

IHC was started over 60 years ago with a group of families who set out to get a better deal for their children. In that time the organisation has been through many ups and downs. We remain committed and passionate about including everyone with intellectual disability in the life of their local community.