



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
9 May 2022**

Day 8
Thursday 19 May 2022
Peter Reekie

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10:00

THE CHAIR: Good morning. Could I start with a matter of housekeeping? Two points, really: could I make clear that the access and egress from the Inquiry room, as far as legal representatives are concerned, is the door that faces me at the back. The door at my left is exclusively for witnesses and Inquiry staff, unless in particular circumstances where a legal representative might be with a member of the Inquiry team. So can I ask legal representatives to restrict themselves to the use of the door at the back?

Now, the other matter, which is connected, is that I do not expect legal representatives to approach or engage with witnesses within the Inquiry space, in any part of the Inquiry office. Now, there may be circumstances where the legal representative of a particular core participant whose employee is the witness may wish to speak to, I suppose, a core participant who is a witness, although it is more likely at this stage that it will be the employee of a core participant. There may be circumstances where the legal representative wishes to speak to, as it were, his or her, what one might regard as his/her witness in the sense of an employee, but I do not expect legal representatives to approach or

engage with witnesses who do not fall into the category of an employee of the core participant for whom they represent. If there needs to be contact with witnesses, it can be done through the legal representative of the relevant core participant or, as I say, by certain means outside the Inquiry offices. But I would wish witnesses to feel they are free from such approaches within the Inquiry offices, so if legal representatives could bear that in mind.

Now, with that by way of preliminary, Mr McClelland, we have Mr Reekie as our witness, is that right?

MR MCCLELLAND: That is right, my Lord, Peter Reekie.

THE CHAIR: Thank you. Good morning, Mr Reekie. As you appreciate, you are about to be asked some questions by Mr McClelland, who is sitting on my right. But, before that, would you make an affirmation?

THE WITNESS: Yes, absolutely.

REEKIE, Mr PETER

(Affirmed)

THE CHAIR: Thank you, Mr Reekie. Now, you should get help from the microphone, but could I ask you perhaps to speak a little louder than you would in normal conversation?

THE WITNESS: It's no problem at all.

THE CHAIR: That is excellent. If you maintain that level, I certainly will be able to hear you clearly and will be very appreciative of that.

THE WITNESS: I'm happy to do so.

THE CHAIR: Now, Mr McClelland.

MR MCCLELLAND: Thank you, my Lord.

Questioned by MR MCCLELLAND

Q Good morning.

A Morning.

Q Could you please confirm your name?

A Peter Reekie.

Q You are the Chief Executive Officer of the Scottish Futures Trust.

A Correct.

Q You have provided a statement to the Inquiry. I think a copy should be in front of you. For everybody else, the bundle references are pages 232 to 299. The contents of that statement, Mr Reekie, will form part of your evidence to the Inquiry. If you want to refer to it at any time today, then please feel free to say so. Could I begin by asking what your professional qualifications are?

A I'm a civil engineer by training, I have a degree in Engineering Science, and I'm a Fellow of the Institution of Civil Engineers.

Q When were you appointed a Fellow?

A I can't remember.

Q Okay. Recently or a long time ago?

A I was appointed a fellow relatively recently, within the last five years or so, I suppose.

Q Thank you. I think you also have a Diploma of Organisational Leadership, is that correct?

A That would be correct, yes.

Q Turning to your career experience, have you ever worked as a practicing engineer?

A Yes.

Q In what field?

A In civil engineering.

Q Give us a broad indication of the type of civil engineering work that you were doing.

A So principally when I was a civil engineer, between around about 1994 and 1999, I was involved in wastewater treatment, a little bit of nuclear engineering, some advice on commercial matters around public private partnerships in the engineering sense a long time ago, but mostly

water and wastewater, designing effluent treatment plants and visiting sewers.

Q Thank you. After that, I think you moved to an advisory role at PricewaterhouseCoopers, is that correct?

A Yes, it is.

Q What was the nature of the advisory work that you did?

A I started off in management consultancy and ended up in corporate finance advisory, advising on transactions mainly at the public private interface, of which public private partnerships formed a substantial element of my work with different forms of commercial deals between the public sector and the private sector.

Q Okay, and what sort of finance structures were you involved with?

A A range of financing structures, but I've been involved in PFI projects and other forms of public private partnerships, service contracts that require financing behind the scenes to deliver the services, but quite a lot of PFI-type projects, including in the healthcare sector.

Q Okay. Could you just give us a sort of overview of the sort of work that you did in the hospital sector

with particular reference to private finance?

A I guess the most relevant is that I was Lead Financial Advisor to the Forth Valley Royal Hospital, which was procured through PFI and reached financial close in 2007. I advised the health board on that project, including advising them on the business cases, advising them on the financial commercial aspects of their procurement.

Q Thank you. You mentioned there "advising a health board". What other sorts of clients did you advise?

A Central Government departments, Ministry of Defence, local authorities and private sector consortia that were involved in developing PPP-style projects. So I advised overseas governments that were involved in starting off towards doing PPP-type transactions, so providing training and advice to governments around Europe for public private partnerships.

Q Okay. Just to be clear, what was the focus of your advisory work? You said you were an engineer. Was it an engineering role or was it a financial role?

A Principally financial and commercial advisory, so I would advise on the financial structures, the

financial modelling, the business cases inasmuch as it was the value for money side of business cases I was particularly focused on, things like payment mechanisms and how the cash flows through the project agreement, and the commercial aspects of procurements and negotiations.

Q Over what period of time were you doing that work at PricewaterhouseCoopers?

A From probably 2000, I think, I was appointed until I left PricewaterhouseCoopers in 2009 to join the Scottish Futures Trust.

Q What role did you take on when you first came to the Scottish Futures Trust?

A Well, my first involvement with the Scottish Futures Trust was writing the business case for the organisation as a consulting assignment in PwC, I was then seconded to Scottish Government to help establish the organisation, and I was then appointed as its Director of Finance and Structures as employee number two.

Q When you say “structures”, is that structures in the financial sense or the engineering sense?

A Financial sense.

Q In general terms, what type of work did you do in that role?

A Well, one of the roles of the Scottish Futures Trust is to develop and implement innovative financial arrangements to bring additionality of investment into public sector infrastructure assets. So I was responsible for developing some of those structures and running programmes of investment that led to additional investments in Scotland's infrastructure, including the non-profit distributing programme of investment.

Q Okay. You have described there the NPD programme of investment. Can you just give us an overview of what that was?

A Would you like to know about the programme or what NPD is?

Q The programme.

A So the programme was announced in November 2010, and it was a programme of ten projects delivered as what I would call standalone procurements of individual high-value buildings and other infrastructure assets, roads, using the non-profit distributing form of public private partnership. Those projects totalled in the order of £2.5 billion. The ten projects, I could go through them, but they were in the healthcare, colleges and road sectors. We also

ran a sort of parallel programme of financed investment through what we call the “hub programme”, which is a slightly different route that delivers health centres and schools using private finance arrangements.

Q Was the work that you were doing at the level of individual projects or at the level of the whole programme?

A I managed the whole programme, but I was also involved in most of the individual projects in the programme in one way or another. We were a relatively small organisation, new organisation, at the time.

Q Were you involved with the project to develop the Sick Kids Hospital at Little France?

A I was.

Q In overview, what was the nature of your work on that project?

A I had it as part of the portfolio where I was operating at the programme level, so providing reporting to Scottish Government for governance purposes, and I worked with the Health Portfolio team in Scottish Government and, at specific times, I supported NHS Lothian itself on things like – and I come onto it – at the very early stages of the project, the

renegotiation of their existing PFI contract with Consort, and at various points during the project's life cycle – tending to be at the difficult points – I've had individual-- provided support to both our team that was helping with the project, principally Donna Stevenson, but also individually to senior executives in NHS Lothian.

Q You mentioned Donna Stevenson there. Who from the SFT was primarily responsible for the relationship between the SFT and NHS Lothian?

A That would be Donna, but at various times other members of the team were involved. So Andrew Bruce had a role, particularly in relation to the financing aspects of the project, so around about what we call the shadow bid model at the outline business case stage to understand the affordability of the project as a NPD project and also at the stage during the procurement of the funding competition to bring on the finances of the project company.

Q Okay, so----

A There were other members of the team involved at different times as well.

Q Okay, if we could just go through those: so we have got you, we have got Donna Stevenson and

Andrew Bruce, who you just mentioned.

Q Yes, Gordon Shirreff was involved for a short period of time when he was seconded into the NHS Lothian project team on an informal basis in the summer of 2011, Colin Proctor had a role as the second reviewer of the final Key Stage Review, Tony Rose had a role as second reviewer of the majority of the Key Stage Reviews. Tony Rose then went on to be the Public Interest Director for the project, and Colin Proctor was a member of-- was an advisor to the Scottish Government's Capital Investment Group who would have had an engagement in the business cases for the project.

Q You mentioned Donna Stevenson and Andrew Bruce at the same time, and then you gave a description of a role. I wasn't clear if that was Andrew Bruce's role that you were describing or whether that was the role carried out by both him and Donna Stevenson.

A Sorry, Andrew Bruce was particularly involved in the financing aspects of the project, so I mentioned the development of the shadow bid model to test the affordability and the competition for finance for the project. Donna had a role supporting the

project more generally through the pre-procurement and procurement stages where she was a member of the project board and assisted NHS Lothian in implementing the NPD arrangements for the project overall, things like the standard contract that Scottish Futures Trust owned, if you like, and providing general commercial support through the PPP, the NPD elements of that project, development and procurement.

Q What is Donna Stevenson's professional background?

A A lawyer.

Q Returning briefly to Andrew Bruce, you mentioned that he was involved in the work to test the affordability of the project. Could you just briefly explain what you mean by testing its affordability?

A Yeah. If you have a project that is procured as a capital project, then the affordability of the project is determined by an estimate usually done by quantity surveyors as to what the capital cost of the building will be. When you procure a project through a public private partnership like non-profit distributing, then the affordability of the project relates to what the annual payments would be for the building once it is in use. We call it the unitary charge, and the

unitary charge is a figure, an annual figure, that is derived from the capital cost of the building, the cost of finance that gets raised to pay the builder to build the building that then has to be repaid, and then the annual cost of maintaining the building and its lifecycle, so replacing bits of it over, let's say, a 25-year life of the contract.

So, by way of a very simple example, if you had a building that might cost £150 million as a capital project, then you would have to borrow that £150 million, you would repay that over the 25 years, you would also pay for the maintenance over the 25 years, and you might pay £15 million a year for 25 years rather than £150 million. So the act of determining the affordability is building an Excel financial model that contains all of those cost input lines in the financing, but turns the £150 million capital cost, plus an estimate of the maintenance costs and lifecycle costs, with some financing assumptions, into a fixed annual unitary charge, let's say £15 million, because it's usually about a ratio of 10 to 1. So, overall, you pay more than £150 million because you're paying for the building and the financing and the maintenance.

Q So, in short, would it be fair to describe that as a detailed task

of financial analysis?

A It's a financial modelling exercise, yes.

Q Turning then to Donna Stevenson----

THE CHAIR: Sorry to just interrupt----

A Of course.

Q -- because, I have to say, affordability is not something which I think maybe I had fully understood previously. I do understand that perhaps calculation has a number of elements, but what it really comes to is how much this building is going to cost, and you have expressed it in an annualised basis of how much is the building going to cost a year. Is that right or is that an oversimplification?

A That's right. It's not an over-- It's a good simplification. But I suppose the point is if a building is being bought using capital budgets, then the analysis of how much it's going to cost is adding up the cost of the steel, the brickwork, the design, etc. If we're trying to work out a unitary charge, then we have to add in significantly important assumptions around the cost of finance, for example, and how that finance will be structured in order to turn the £150 million that it might cost into the annual payment, and there's quite a lot of

financial modelling involved in that because the cost of servicing the building, of maintaining it over 25 years, is not a flat sum. It has spikes when the roof needs to be replaced or when the boilers need to be replaced or whatever it may be, and the financial model that's developed to understand the affordability takes out those spikes and flattens them through financial engineering, effectively, to turn it into a fixed sum that is paid annually to have the building made available. So we call it "pay-as-you-build", £150 million pay-as-you-build, or "pay-as-you-use", £15 million a year pay-as-you-use. Some of that £15 million is inflated because the cost of facilities management goes up every year, but it's basically a fixed annual payment for the availability of the building.

Q Thank you. Sorry, Mr McClelland.

MR MCCLELLAND: No, not at all. I am obliged, my Lord. (To the witness) You mentioned Donna Stevenson, and I think what you said was that she was providing more general support and helped NHSL implement the commercial aspect of the NPD arrangements. Could you just elaborate a little bit on her role, please?

A Yes. So it was-- There's quite a-- procurement of an NPD, a form of PPP project, is quite a different exercise from the capital project and it has a different risk arrangement between the public sector and the private sector, it has a whole different set of contractual arrangements through the NPD project agreement, and the procurement process was a competitive dialogue procurement process. So there's a whole bunch of aspects in how you specify the building differently, which is a technical side that we didn't get involved in, but also the commercial structuring of that transaction and procurement, if you like, that are different from if it was a capital building. Donna provided support to NHS Lothian in the restructuring of their procurement processes and of their commercial arrangements to help change the project from being a capital project into being a non-profit distributing PPP project. That involvement included acting, as I said, as a member of the project board, so being part of the governance arrangements, and support with understanding, as I said, the commercial elements of implementing the different project agreement that you need for a PPP-style project.

Q I realise it was a while ago, but do you know over what period Ms Stevenson was a member of the project board?

A Not off the top of my head, but my estimation is that she would've joined at some point in 2011 when the project was sort of more firmly established as an NPD project. I think I attended some of the early project boards during that period, and then she would have been there at least until financial close which, from memory, was 2015, was it? But I think she stayed on the project board thereafter as well during the construction phase because Donna's role now is in relation to operational PPP contract management where SFT has a centre of expertise, and she has provided ongoing support to NHS Lothian in relation to the operation of the contract and implementing their contract management arrangement. So I think she stayed on for-- after the financial close.

Q What was the nature of Donna Stevenson's role on the project board?

A To provide input and expertise in the NPD elements of considerations of that board.

Q Was she there to any extent in a decision-making capacity?

A I would've said no, but that board, at various times during its life, my understanding was that it was known as the project steering board and the project board. So I didn't sit around the table. I think I did go to a number of meetings, but I didn't sit around the table much, so I couldn't tell you the extent to which that was a decision-making board.

Q Do you recall performing any decision-making function when you were there?

A No.

Q Okay. Now, it is entirely my fault because I am the one asking the questions, but we have slightly gone off where I had intended to be. So, just returning to your position at the SFT, were you promoted in 2014?

A Yeah. I think I became the Deputy Chief Executive in 2014 and then the Chief Executive in, I want to say, 2018. Time flies.

Q After you were promoted to the position of deputy CEO, did you remain involved in the Sick Kids project?

A Yes.

Q Did the nature of your role change in relation to that project?

A I would say that coincided around about the time of the project moving into the construction

phase, so the nature of all of our roles changed because we had a particular involvement during the pre-contract stage.

Q Okay. If you just look briefly at the Scottish Futures Trust itself, you explain in your statement that it was set up in 2008. Can you just describe for us what the SFT is?

A The Scottish Futures Trust is a public body, a company wholly owned by Scottish Ministers, and our job is to help improve the value for money of infrastructure investment by the public sector in Scotland, to improve outcomes from infrastructure, both economic outcomes but also social and environmental outcomes from infrastructure. We do that by working sort of collaboratively and in between central government, local government, and industry to work on the planning of future infrastructure, how we can plan better, prioritise what we need, innovation in the funding, financing, and delivery of infrastructure. So different ways to fund things, different ways to finance things, and managing programmes of delivery – as we've already referred to – and optimising the maintenance and use of existing infrastructure.

Q To what extent is it under

the direction of the Scottish Government?

A The Scottish Government is the owner of the Scottish Futures Trust, but our activities are overseen by a board and the board are appointed by Scottish Ministers.

Q Are the Scottish Ministers ultimately accountable to Parliament for the activities of the SFT?

A I believe that the Scottish Parliament can inquire directly of us on our-- about our activities, and indeed they can inquire of Scottish Ministers about our activities.

THE CHAIR: Again, apologies for interruption. The question was "To what extent is the Scottish Futures Trust under the direction of Scottish Government?" You've explained that it's a non-departmental public body. You, I think, paraphrase that by saying that Scottish Government is the owner.

A Indeed, the shareholder.

Q It certainly is the owner in the sense of the----

A Yeah.

Q -- owner of the shares, and it appoints the board members. So do I conclude from these answers that you would consider it under the direction of Scottish Government?

A No. The Scottish Government and Scottish Ministers agree to our five-year corporate plan, which is the overall activities of the organisation, what we're trying to achieve over a five-year period. Then, after that sort of broad agreement of our activities, our annual business plan and our management of our activities is overseen by our board, who, as I say, are appointed by the Scottish Ministers, but it is our board that oversees our activity.

THE CHAIR: Thank you.

MR MCCLELLAND: Right, could we please have a document from bundle 7 at page 5, please?

THE CHAIR: Thank you.

MR MCCLELLAND: Mr Reekie, I hope that document's up on screen before you. Do you see it okay?

A Yes.

Q Do you recognise that document?

A Yes.

Q Can you tell us what it is, please?

A Management Statement and Financial Memorandum of the Scottish Futures Trust, which is our overall governing document between Scottish Government and Scottish Futures Trust.

Q We see on the page a

date, 26 October 2009.

A Yeah.

Q Is that the statement which has been in place since that date, and is it still in place now?

A Yes, it's currently being updated and remains in place.

Q Now, if we go to page 6, please. I'm just going to read from paragraphs 1 and 2. It says there:

"INTRODUCTION

1. This management statement and associated financial memorandum... have been drawn up by the Scottish Government Finance Directorate... in consultation with Scottish Futures Trust, a Public Corporation and company limited by shares.

2. Subject to the provisions of any future legislation relating to SFT, the management statement sets out the broad framework within which SFT will operate, in particular:

- SFT's overall aims, objectives and targets in support of the Scottish Ministers' wider strategic aims;

- the powers and guidelines relevant to the exercise of SFT's functions, duties and powers;
- the conditions under which any public funds are paid to SFT; and
- how SFT is to be held to account for its performance."

Now, there's a reference there to that being subject to the provisions of any future legislation. Is there anything of relevance in legislation subsequent to that document which we should be aware of?

A Not that I'm aware of.

Q We see at paragraph 6:

"The guiding principle shall be that, while at all times meeting high standards of propriety and of good financial management, SFT will have the maximum operational independence."

A Yeah.

Q So, whilst the-- You refer to the extent of the government's control over the governance, but there's a sort of day-to-day independence in the operations of the SFT.

A That's right. I described the five-year cycle with which ministers agree to our overall corporate plan, but at any more granular level than that, it's-- we operate with operational independence underneath our board.

Q Then if we move on to page 9, please, you see the section: "FUNCTIONS DUTIES AND POWERS", subheading "Status". At 1.1.2:

"SFT was established by the Scottish Ministers in September 2008 as a new arms' length body to support the efficiency and effectiveness of public infrastructure planning, funding and delivery, leading to real and improved value for money solutions."

Then further on, 2.1.1:

"The aim of the Scottish Futures Trust is to improve the efficiency and effectiveness of infrastructure investment in Scotland by working collaboratively with public bodies and commercial enterprises, leading to better value for money and providing the opportunity to

maximise the investment in the fabric of Scotland and hence contribute to the Scottish Government's single overarching purpose to increase sustainable economic growth"

Then, so on page 10, 2.2.1:

"SFT's key objectives across the infrastructure investment cycle are: (i) improved value for money in infrastructure investment..."

And so on. So do we have there a sort of fair overview of at least these functions of the SFT?

A Yeah, it's kind of-- I hope it's similar to what I said.

Q Yes. Well, indeed, indeed. How does the SFT go about improving efficiency and effectiveness of infrastructure investment?

A Our job is to help public bodies, by which I mean government departments, other public bodies, local government, to go about their infrastructure business across the whole lifecycle better. So, we're a centre of infrastructure expertise, and we do that by working with partners to innovate in new ways of doing things;

by managing programmes of activity effectively – so joining up activities that might have previously been done by individual bodies and turning them into programmes of activity across multiple bodies; by brokering collaborations on individual projects; and by helping those bodies to-- as I said before, manage their assets more effectively and make the best use of the assets we have. So we provide guidance; we publish guidance on how to do things, and we work with groups of bodies and individual bodies to implement best practice.

Q So, in broad terms, you're helping other bodies to deal with their investments.

A Yes. So we don't have a capital budget to make our own-- of our own infrastructure to invest. We don't have assets of our own. Our job is to help other bodies work better, to invest in, manage and maintain their assets, and also at the same time to work better with the private sector and industry to do that as well in the interests of the wider Scottish economy.

Q Approximately how many staff did the SFT have over the period it was involved with the Sick Kids project?

A I wouldn't like to say. We

have 75 now and we had zero in May 2009. My guess is that we would have been 40-ish maybe by that time. Bit speculative, I'm afraid.

Q No, that's understood. From what professional backgrounds did those staff generally come?

A We had a very wide range of infrastructure professionals, including people from a financial background, including accountants and financiers, lawyers, people from technical backgrounds, including quantity surveyors, project managers and architects. We had economists, planners. Probably one or two more – developers, people with property development experience, so a wide range of infrastructure-related professional backgrounds.

Q Was there anybody in the SFT from an engineering background who was using that engineering background in their role with the SFT?

A I don't believe so. Well, I mean, I use-- I can't avoid using my engineering background, but I was not employed directly to be an engineer.

Q Okay. Returning to the document that's on screen, if we go to 2.3.1, we see:

“Guiding Principles

2.3.1 In striving to meet its objectives, SFT will be guided by:

- (i) Proper recognition of the financial and non-financial aspects of value for money...
- (iv) The positive impact of high-quality design and space planning on people's lives...”

So do we see there that the SFT has at least some interest in design?

A Absolutely, yeah, we do.

Q To what end?

A To improve people's lives through high quality design. I guess the-- well-designed public infrastructure is good for meeting its purpose of delivering services to people, it's good for places; and have a positive impact on the environment, on places, and on people.

Q Okay, thank you. Now, you mentioned earlier in your evidence the budget announcement in 2011/2012, about the £2.5 billion programme of investment using the NPD model.

A So that was the 2011/12 budget in 2010, yeah.

Q Correct, thank you.

A All right.

Q Had the NPD model been used in Scotland before that?

A Yes.

Q To what extent?

A There was, I would say, five or six, in that order, of NPD projects before that time. It was first used in Argyll and Bute for a bundle of, I think, five schools. So the model was developed during the early to mid-2000s, and that Argyll and Bute schools project I think reached financial close-- so the deal was done in I believe 2005. It had used principally for schools, but it had also been used on health projects as well.

Q What health projects had it been used for?

A The project for a mental health facility in Tayside.

Q You say it's a mental health facility, so not an acute hospital like the Sick Kids?

A That's correct.

Q To what extent did the draft budget announcement herald in an increase in the use of NPD in Scotland?

A It heralded a significant increase in the use of NPD. That announcement of end projects at that one time was more than had been done before.

Q How similar to or

different from a traditional PFI structure was the NPD structure?

A It's in many ways very similar and it has a small number of quite important differences. So, overall, forms of public/private partnership are for the design, build, finance and maintain of a public asset, so it creates a contractual partnership, if you like, between public sector and the private sector for that design, build, finance, and maintain. The structure of the organisations that come together on the private sector side are relatively similar between PFI. The approach to procurement is similar, the approach to specification is similar. The differences are in the corporate structure of the project company that's brought together to deliver the project. Where, on a PFI project, that private sector project company has share capital equity in the normal sense of share capital, whereas-- where profits can be made from it. So, if the private sector party is able to deliver the services of designing, building, financing, and maintaining the asset at lower cost, then they get to make more profits than was originally anticipated. In an NPD arrangement, the NPD stands for "non-profit distributing", so the share capital of the project company is not allowed through the

articles of the company to distribute any profits that it makes. The investors in that company therefore receive a maximum of the fixed return that they tendered through returns on subordinated debt. If they are not able to perform, they still take the same risk of downside as was the case in PFI, but if they, if you want, over-perform, then any surpluses of cash developed by that company are returned to the public sector rather than going out as enhanced profits, if you like, to the private sector----

Q Okay, so----

A -- Non-profit distributing, profit cap, fixed-rate finance, and the second difference sorry, if I may, is the-- is that there is an enhanced level of transparency on the operation of that private sector company through having a public interest director on its board; and that public interest director is there to make sure that those non-profit distributing principles are upheld.

Q Okay. Now, if you look back from the detail at a higher sort of overview, if we take a public private finance project as involving the design, build, finance, and maintain aspects, are the main differences between NPD and the traditional models really in the finance part of that, and are the design and build elements broadly the same?

A The D&B subcontract in an NPD would be very, very similar to the D&B subcontract in a PFI project, as would the facilities management, yeah.

Q Thank you. If we could go, please, to bundle 7 at page 101. Now, Mr Reekie, what you're seeing there is a page in the middle of a document, and if you just take it from me that this is the Scottish Government's draft budget for 2011/2012----

A I recognise it.

Q You recognise it? Good. I just want to put to you the paragraph at the top of page 101, which reads:

"This new pipeline of NPD projects is being targeted to provide the maximum support for the wider capital programme and for Scotland's key public services. The Scottish Government will seek to deliver each project as early as possible in order to accelerate its benefits to citizens and to the wider economy."

I just want to ask you about that policy of delivering the projects as

early as possible. Can you comment on that, please?

A Well, if we had the time to go through the whole document, we would understand that it was in the context of an unprecedented reduction in budgets coming from Westminster through the immediately preceding spending review, for which the wider context was the global financial crisis of 2007/8. So, there was a substantial slowing of the economy at the time, there was a reduction in budgets; and there was a desire from the Scottish Government to support the economy through delivering capital investment, construction activity, and also to make sure that its aspirations for the benefits of capital investment to citizens, i.e. new schools, new health centres, new hospitals, new roads, were not delayed by the-- or not delayed any more than was necessary by that budgetary reduction that had come through the spending review.

Q To what extent was the desire to avoid delay a feature of the delivery of the Sick Kids project?

A It was part of the context of all of the projects in the programme.

Q Sorry, I did not quite understand that answer. Could you repeat it for me?

A It was part of the context

of all of the projects in the programme.

Q Okay, so it's part of the context, but to what extent did it feature as a driving force, if you like, of the Sick Kids project?

A It was one of the driving elements of that project. So the-- any project is primarily there to deliver the best outcomes, and the outcomes that were sought from that project are to deliver the benefits to citizens of having the new hospital. So, for that, it needs to be a high-quality asset that meets the service demands of the NHS that it was there to deliver for. The sooner those demands can be met and the new facility can be occupied, obviously we accelerate the benefits. So being able to accelerate benefits, and that-- the co-benefit of the economic activity that came through the delivery phase, were one of the things that were driving that project. But overall, it's about maximising benefits, so the programme element of it is one of the benefits, the quality element is one of the benefits, the cost element is one of the-- one of the drivers and benefits.

Q Okay, thank you. Did the announcement of the new NPD programme and, in particular, the role of the SFT in relation to it bring about a change in the SFT's role, either in

scope or in scale?

A We were a relatively new organisation at that stage, having become fully operational in 2009, after being formed, as you said previously, at the back end of 2008. So the organisation was changing quite rapidly at that time, and the introduction of this programme was one of those changes, absolutely, yes.

Q Is it fair to say that, at the time of the announcement, the SFT's role in relation to the new NPD programme was yet to be fully defined?

A Yeah.

Q Was it necessary following the announcement to do more to define that role----

A Yes.

Q -- for example, by putting in place policies and procedures?

A Yes.

Q How long did it take to complete that process?

A I would say that elements of that were developed over a number of years. Some of the key elements came through, for example, the March 2011 funding conditions letter from Scottish Government to NHS chief executives which set out, in broad terms, what SFT's role would be across the health elements of the NPD

programme; there were similar things going on with other portfolios that had projects in the programme. It was further defined through our value for money guidance, our assurance procedures that were published over the following months.

Q Yes, thank you. You say in your statement that the NPD model was familiar to the market – just for the record, the reference is paragraph 69 of your statement. First of all, by “the market”, who are you referring to?

A Can I just turn to that, please?

Q Yes, of course. It is page 258 of the witness statement bundle.

A The market being the parties who come together to do the designing, building, financing and maintaining in a PPP contract. So the- I mean, sponsors, people who provide risk capital and draw consortia together, the banks and other financial institutions that provide senior debt, the construction contracting marketplace, and the facilities management marketplace, were in general-- had been involved in PFI, and specifically most of them that had- that were active in Scotland were aware of the particular differences for NPD, and therefore the market was-- the bidding marketplace was informed

about that overall structure and was familiar with working within it.

Q Okay, and what about NHS Lothian itself? Are you able to say to what extent they were familiar with the NPD model?

A NHS Lothian had previously used the PFI, Private Finance Initiative, for the development of the Royal Infirmary of Edinburgh and other projects, and therefore had experience of design, build, finance, and maintain through PFI. We've already been through the level of difference between NPD and PFI; so they had that familiarity from having used PFI before, but I wouldn't like to say whether the individuals around were around and in what roles they were around last time they did a procurement of that nature.

Q Is the NPD model still used?

A No.

Q Why is that?

A The NPD model, as we've said, from the budgetary-- the budget document was there to deliver additionality of investment capacity over and above capital budgets, and due to a change in European accounting rules – technically a move from ESA 95 to ESA 10 which occurred in 2014 – the ability of NPD

and similar forms of contract to deliver additionality of investment was reversed. So they were they were no longer able to deliver more investment than we had capital budgets for at the time, because you would still need the capital budget. So, due to that change in accounting rules, the benefit of that additionality disappeared and we stopped using NPD.

Q Okay. You used the term there, “additionality”. By that do you mean add to the amount of capital investment that can be made beyond what's available in the public accounts?

A Yeah, so the draft budget that you're referring to previously was showing that capital budgets decreased, and the idea of the £2.5 billion programme of investment was that we would be able to make that amount more investment over those years than we had capital budgets.

THE CHAIR: Just so that I'm understanding, you refer to a change in the European accounting rules in 2014. So it was a change rather than a reinterpretation?

A That's correct.

Q Right, and the effect of the change was that funding through a mechanism such as NPD would no longer be regarded-- or rather would

henceforth be regarded as the equivalent of capital, or is that an over-simplification?

A No, that's a good simplification. Again, the point is that the-- even if you decided to pay as you use under the NPD model, then you would still need capital budget cover during the period at which the asset was constructed because, for budgetary purposes, the asset would be classified to the public sector. That was because of that change in European ruling, and the Eurostat, so the European body that looks after those rules, came and looked at one of our contracts, decided that, under those new rules, the assets would be classified to the public sector.

Q Thank you.

MR MCCLELLAND: If NPD is no longer available, are there any private finance structures which would be appropriate for the construction of hospitals in Scotland?

A Scottish Futures Trust gave advice to Scottish Government in, I think I would say, 2019 that another design, build, finance and maintain arrangement, which is again a further development of PPPs, called "MIM", the mutual investment model, would still be able to deliver additionality. The difference between

NPD and MIM is that the NPD arrangements, as we talked, financially cap the returns to the private sector through not having profit distributing equity. The mutual investment model moves from a capping to a sharing mechanism where the private sector can make a portion of the returns, public sector can also make a proportion, and the public sector returns are in a minority. Those arrangements have been assessed as still able to deliver additionality, to be classified to the private sector under the most recent ESA 10 European accounting rules.

Q Is the MIM structure one which is in use for any infrastructure projects in Scotland?

A Not currently being used, but it is in consideration by Scottish Government.

Q Okay, and then just in very general terms, how would we see, or how would you see rather, the role of the SFT in relation to those sorts of projects?

A Sorry, what sort of project?

Q MIM projects, if any come along.

A That would have to be determined at the time.

Q So yet to be determined.

Right, could we go, please, to a document in bundle 3, volume 1, at Page 1107. I hope, in front of you, Mr Reekie, you should see an email exchange between you and Mike Baxter from 22 and 23 November 2010.

A Yep.

Q Mr Baxter is saying:

“Pete

Do you have the proposal we discussed last week.

Following on from my meeting with Barry this afternoon I want to be clear prior to tomorrow’s meeting on the basis of your engagement with them and what we expect of Lothian over the next 4-6 weeks.”

Then you say: “In confidence for our discussion”. If we move on to page 1111, do we see there a paper that you forwarded to Mike Baxter?

A Yes.

Q That is headed up “Royal Hospital for Sick Children & Department for Clinical Neurosciences”. Given this is in and around November 2010, do we understand that this is coming very soon after the NPD announcement for

the Sick Kids?

A Yeah, I believe less than a week.

Q Less than a week, okay. Just reading the first couple of paragraphs, paragraph 1, “Introduction”:

“Following the announcement that the Sick Kids and DCN are to be delivered as revenue financed projects under the NPD structure, this note sets out *for discussion* thoughts on the potential way forward. It is based on SFT’s current understanding of the project’s scope and status.”

In paragraph 2, “Scope”:

“The project’s scope as an NPD and affordability need to be considered together.”

What was the SFT’s interest in scope?

A The scope of the project, i.e., in very broad terms, what the building would contain, how big it would be, what its nature as an asset would be, would obviously determine its cost. When looking at managing

the overall budgets for the programme, you need to understand the scale aspect of the scope to understand how it fits into the programme-level budgets and, therefore, its affordability. So, in my mind, when you're, at the very highest level, thinking about the affordability of a building, you usually work on its size in square metres and its cost per square metre. So a lot of people that work in the construction-related industries would be able to give you sort of rules of thumb on the cost per square metre for different sorts of buildings. So, if we get an idea of, as we say there, a 75,000-square-metre facility, then we can kind of understand, "It's 75,000 square metres big, and usually these things are in the order of £3,000 a metre," whatever it may be, so we can get a sense of the overall budget and therefore the scale of it as part of the programme.

Q At this point in time, how much did the SFT know about the Sick Kids Hospital?

A Not very much.

Q Right. If we move on then to page 1112, at paragraph 4, we have "Interface with existing Sick Kids procurement":

"There will need to be rapid consideration by NHSL and

its advisors of the exit from the current NHS framework contract. It may be beneficial to transfer elements of design work undertaken to the new procurement. SFT is not involved in the Framework and cannot really advise in this area."

Then at 5, "Preparing for Procurement":

"Consideration will be needed at an early stage of how much the design should be progressed in-house and how much in competition through the NPD procurement. There is an opportunity with recent accounting rules changes to undertake more design – especially overall massing, adjacencies and even layouts in-house with the preferred bidder taking on detailed design for construction."

Just in that context, what was the SFT's interest in the design?

A The acquisition, in the

broadest sense, of a building like a hospital, from the idea that you want to have a new one, has in many ways two parallel strands going along. One is the commercial approach to buying it, and the other is the design aspect of what it's going to look like from the initial idea to something that you can then build, and the interaction of those two things is particularly important during the early stages of the development of the project. We were interested in the programme and the approach to procurement and therefore understanding how the design was being developed or would be developed, and therefore that interaction between the procurement bit that we were particularly interested in and the other strand of development, the technical side, was important for our work.

A You were saying here that, “consideration would be needed at an early stage of how much the design should be progressed in-house and how much in competition through the NPD procurement”, and then you refer to an opportunity from recent accounting rules to do more in-house. Can you just expand on that point, please?

Q That's-- I mean, the reference to accounting rules is

unfortunately a deeply technical point that the-- In and around, I want to say, April 2009, the accounting in the UK for transactions of this nature, PPP projects, had changed and the accounting moved-- the budgeting moved from being considered under FReM, which is the government's accounting manuals and uses International Financial Reporting Standards, to the budgeting being considered under the mechanism I used-- I referred to before the Eurostat ESA, at that time ESA 95. The FReM arrangements, under International Financial Reporting Standards, are a control-based framework. The ESA 95 is a risk-based framework, and the implication of that change, when you filter it all down, was that it was possible to achieve the endpoint that we were looking for, which was that additionality of investment, so a private classification of the asset with a little bit more of the definition of the asset, so at the early stages of design, than in the public sector rather than under the previous IFRIC rules, a lot of that would've had to have been done by the private sector determining the nature of the asset in order to lead to a private classification. I'm sorry if that's a bit of a mouthful.

Q No, no, I think it is clear

enough. If the board undertook more design in-house, what impact would that have on design risk and, in particular, the allocation of design risk between the health board and the project company?

A So that has to be defined in the contract, and there's-- I guess there's two things: one is how much design work is done in the public sector and then shared with the private sector through the construction-- through the tendering phase, and the other is where, in the contract that comes at the end of all of that, the liability for that design work that has been undertaken sits, and those are two slightly different things. So we'd need to unpick all of that to understand the difference between-- contractually the difference in risk allocation.

Q Was advice on the allocation of design risk between the health board and the project company something which fell within the remit of the SFT?

A We were involved in the interaction between that and the rest of the commercial documentation.

Q You say you were involved in the interaction between that and the rest of the commercial documentation. What do you mean by the "commercial documentation"?

A The project agreement.

Q When you say you were involved in the interaction between that and the project agreement, could you just expand a little bit on what you mean by that?

A Well, the project agreement that was an SFT standard form document contained all of the main clauses of what you might call the front end of the contract, and it then pointed – which is the way of these things – to a whole bunch of schedules for the technical, financial, and other aspects, financing elements. The technical schedules at the back end of the contract were usually project specific and contained, as a generality, a set of authority's requirements and a set of project company's proposals that interacted together, but they also then had to interact with the front end, the main clauses of the contract. So the way that that interaction, through things like the definitions of terms, the front end and the back end fit together is obviously something that we, as the owners of the front end of the contract, were interested in.

Q Okay.

THE CHAIR: I wonder if maybe we might just tease that out just a little bit. The project agreement is the

eventual – tell me if I am wrong about this – is the eventual contract between the client, who in this case was NHSL-

A Yes.

Q -- and, in the context of the NPD, I think it's the special----

A For a project company, special purpose vehicle.

Q Special purpose vehicle. So, if I am understanding this, SFT had a standard form contract to take off the shelf to hand over to the parties.

A Yes.

Q But when we are talking – again, tell me if I am wrong about any of this – about allocation of design risk, that would depend on the specific terms of the appendices, which you have described as the back end of the contract.

A The schedules, yeah. So----

Q Sorry, so-- Yes, sorry.

A Or the parts of the schedule, if you want to----

Q You did use the word “schedules”. So----

A But the----

Q I think my question comes to be, as a matter of generality or particularity, does the SFT have any role in relation to the terms of the

schedules?

A No, the schedules-- the particular schedules that deal with design risk are the authority's requirements, contractor's proposals. So the technical schedules and the allocation of different elements of design risk, I suppose, run through an analysis of all of that, all of that element, and the technical parts of the schedule were developed by the authority, in this case Lothian, and their own technical advisors, but they had to interact with the front end of the contract, which was our standard form.

THE CHAIR: Sorry, Mr McClelland.

MR MCCLELLAND: I am obliged, my Lord. Mr Reekie, if I could have my own go at just teasing out some of that, did the SFT standard form contract have a settled position on the allocation of design risk between the health board and the project company?

A I feel that that's a very precise contractual question which I'd want to be able to do a precise contractual analysis to be able to give you the proper answer to.

Q Okay. Well, I do not want to put you on the spot and ask you to do something you are not comfortable with. But, in commercial

terms, did you at the SFT have a view on what the standard form contract was intended to do in terms of the allocation of design risk between the procuring body and the project company?

A The highest-level intent is that the responsibility for the design, the build, the finance and the maintain sits with the private sector parties. So that's-- the private sector, through their subcontract, obviously design facilities, that take the risk in that design meeting the authority's requirements, but the reason for detail(?) hesitancy is that if they-- if it's the private sector's responsibility to design to meet the authority's requirements, the way that the authority's requirements are expressed determines the exact nature of how different elements of risk are transferred.

Q Again, I do not want to ask you a technical legal question. The Inquiry can look at the contracts and take a view on that, but, just in commercial terms, was there an understanding about what the standard form contract or what element of design risk it left with the health board?

A So the generality of this position, I suppose, is that operational functionality, which is the nature of

how the different spaces in the building interact with each other, was a risk that would lie with the authority, the public sector, and the purpose of that is that the authority best knows how they want to use the building and therefore what should be next door to what and what size of a room is necessary to do certain activities in. How that is then delivered and how those-- how the detailed architectural design, structural design, services design, etc., turn that into a completed building sits with the private sector.

Q Yes.

A So the operational functionality is generally a spatial concept of what goes next to what, how the spaces interact with each other.

Q Okay. You have referred to the fact that the SFT – and this is my word rather than yours – essentially was the gatekeeper of the standard form contract terms.

A Yeah.

Q Would you agree with that term?

A Yeah.

Q So was the SFT interested in anything which, in a project-specific contract, altered that intended allocation of design risk?

A Yes, because that alters

the commercial position of the transaction and ultimately could affect, as we've talked about before, whether it could deliver additionality and meet the overall aims of the programme.

Q I think the phrase that you used earlier on was that the SFT was "involved in the interaction between the front end and the back end of the contract". Did I understand that correctly?

A Yeah, I did say that, I think, yeah.

Q Is that an element of it, that the project-specific elements in the back end of the contract in the schedules may have an impact on achievement of the intended design risk allocation between project company and procuring body, and is that the issue that you said the SFT had an interest in?

A Yeah. In broad terms, we were trying to maintain the concept of a design, build, finance and maintain contract. So, whilst there's an awful lot of technical detail that sits in how that's specified, in broad terms, how-- the commercial outcome of that was something that we were interested in, yes.

Q Okay, thank you. If you could go, please, to page 1113 of the bundle, that's paragraph 6 of the

document that we were looking at a while ago. What you have said here is:

"NHS Lothian will need appropriate advisory support – financial, technical and legal to bring forward a complex NPD procurement ..."

A Yes.

Q Just in broad terms, can you explain why, in your view, NHSL would need that sort of advisory support?

A Yes. The financing elements we've talked about already and the financial modelling that's required to understand the affordability of a unitary charge, that annual payment, the board would have to be able to evaluate tenders that came in which had financing elements in them – so rates of return and all of the other elements of a financing package – to analyse the bidders' financial models, so you would need financial advisors to be able to do that. The technical advice was wired both for the design and build element and for the maintenance element to be able to specify the design and build and specify the lifecycle maintenance that was needed in a way that suited the

NPD and wider PPP forms of contract that we've just talked about, and then to be able to evaluate tenders that came in and, ultimately, to score them. The legal advice is required to both deal with the legal issues of the procurement, adhering to procurement regulations, but also principally to create from our standard form a project agreement for the NPD contract and to evaluate any legal aspects that came in through the tendering process as well, in very high-level terms.

Q One of the aspects of advisory support you referred to there was to assist with specifying the design and build elements. I think what you said was to do that in a way which suited the NPD project.

A Yes.

Q Was there a difference in the way that you would specify things between a traditional capital-funded design and build and an NPD project?

A There's a difference in the way that you specify between different sorts of capital and indeed between capital procurement and the NPD. As I said, for PPP styles, you need to specify the lifecycle elements as well as the design and build element, yes.

Q Is that the main

difference, that you have got that lifecycle element involved?

A The lifecycle element is a big difference. The design and build is-- How you specify design and build is different between lots of different sorts of design and build contracts, and this would be-- the design and build element, as we've talked about, is a fixed-price, lump sum design and build contract with an authority's requirement and a project company's proposals for this form of procurement.

Q Thank you.

THE CHAIR: I am just wondering what I should take away from that answer. I take your point that one can, no doubt, write a variety of technical specifications in respect of, for example, a capital-funded design and build contract. But was Mr McClelland correct to say that in relation to the technical element of the advisory support, the difference introduced by, I suppose, either by an NPD or any other revenue-funded model would be specifying in such a way as to include the service element?

A Yeah, so it's-- There is a-- If you're just building a-- buying a capital project, you don't need to specify the facilities management aspect or the condition of the asset for 25 years. You just need to specify

how you want it to look when it's handed over to you.

Q Yes, thank you.

MR MCCLELLAND: Could we go, please, to bundle 3, volume 2, page 314? Mr Reekie, what you should have in front of you there is a paper to the Finance and Performance Review Committee of NHSL where they are meeting on 12 January 2011, so a couple of months or thereabouts after the draft budget announcement.

A Yes.

Q Just to put this in context, I will read from paragraph 1.1, which says:

“The purpose of this report is to provide the Finance & Performance Review Committee with an overview of the progress made over recent weeks to review the Royal Hospital for Sick Children (RHSC) and Department of Clinical Neurosciences (DCN) re-provision projects, following the Scottish Government announcement on 17 November 2010 that these projects would be funded under the Non Profit Distributing (NPD) model.”

We see there at paragraph 2.1, the second bullet.

“The Committee is invited to: ... Approve progressing with a detailed reference design for a combined project as a key component of the NPD procurement route ...”

Was that an approach which the SFT approved or supported at that stage?

A Yes. So we were keen on the approach of further developing a reference design.

Q Just elaborate on why the SFT was keen on that.

A Because the-- If you take a reference design forward further in the public sector, then the bidding costs and bidding period are likely to be reduced because there is less high-level design work during the competitive phase of the procurement and also, critically, there's less interaction needed with the clinical teams during the competitive phase of the procurement. Clinical teams have obviously got other things to do and being able to manage them, not having to interact with two or three different bidders as they developed a design

from scratch during the procurement phase, is good for clinical resources, so good for the delivery of the service overall. That's because the reference design would contain these principles of operational functionality that I talked about, so what needs to be next to what and what rooms do we need in order to make this building work for delivering the services. It allows the competitive phase to progress more quickly and with a lower element of cost or design cost for the private sector once they're still in competition. So it can be quite costly to do the design work and having bidders do it at risk when there's still into-- maybe a one-in-three chance of winning is quite a high investment level, so it's good overall for the market to be able to keep that to a minimum.

Q Okay, thank you. Then at page 316, at 4.3, the paper says:

“The key features of the current NPD model are:

- Traditional benefits of PPP with regard to risk transfer ...”

Now, I appreciate this is not a paper that you drafted, but what would you understand that to be referring to?

A At a high level, I suppose the-- we've talked about the design risk lying largely with the private sector; the price risk of the design and build element is very firmly with the private sector and the public sector does not pay anything until the asset is met its completion tests. The maintenance of the facility in a usable condition and available to be used for the full, in this case, 25-year term sits with the private sector. So the public sector, the authority, NHS Lothian in this case, only pays once the building is available to be used, and if any element of it ceases to be available to be used in the future, then they don't have to pay for that element at that time.

Q Thank you.

A They have a fixed price for that-- for 25 years.

Q Then at 4.4, just reading from that, it says:

“The (SFT) is to take a central role in the capital infrastructure programme across Scotland, and will provide advice and guidance on all NPD projects, of which a pipeline of projects is now anticipated. One of the key matters to be clarified is the

explicit roles and responsibilities of SFT and the distinct Board appointed technical, legal and / or financial advisors.”

Was that a point about the need to clarify the SFT’s role a fair comment at the time?

A Yes.

Q Was that because the SFT’s role-- or, rather, why was that? Why was there uncertainty?

A I guess we’ve already said that this was for a meeting that occurred a small number of weeks, with Christmas in between, after the programme was announced. We’ve also heard a few minutes ago to-- the guidance being developed over a period of time, and the critical point being the funding letter in March from Scottish Government to NHS. So over those low number of weeks during the early part of 2011, we were working with Scottish Government to better define the programme level, portfolio level, and project level roles at the Scottish Futures Trust on that-- across the programme.

Q Would you agree that there was a need to distinguish, in particular, the role of the SFT from the role of the technical advisors to be

appointed by NHSL?

A I wouldn’t see that as any more significant than legal and/or financial. So there were advisors that the board had that was able to give them what I might call capital-A “Advice” that has professional indemnity, etc. behind it and is the-- and is professional advice to the authority, and there’s the role that we had across the programme which was to share information between projects and to provide general support in relation to the NPD elements of the programme. So it was important for the board to understand what they could rely on commercially, if you like, and what the scope was required of all of their advisors versus what we were able to assist them with from the expertise that was held in SFT.

Q Thank you. Did you see scope for overlap between the sort of advice the SFT was to give and the sort of advice that NHSL would be likely to get from its technical advisors?

A I think the scope for overlap with technical advisors was very low if at all. There are elements that the technical advisors would traditionally be involved in around, for example, a payment mechanism which has a strong commercial aspect as

well. So the development of a-- I'm trying to think of areas where SFT might interact with technical advisors, and payment mechanism is a particularly-- a particular example of that, where the commercial and the technical come together. It was-- It required to be clear that the advice the board could rely on-- commercially rely on, if you like, came from its advisers.

Q Then did you understand that, prior to the NPD announcement, NHSL had made progress towards procuring the hospital as a capital funded project? Well, did you understand that?

A Yes.

Q Yeah, and were you aware that was using the Framework Scotland procurement route which would have involved the use of an NEC3 contract?

A We were, yeah.

Q Was it the case that the switch to NPD funding meant that it was no longer appropriate to use the NEC3 contract and the Framework Scotland procurement route?

A Correct.

Q Could you just explain why that was?

A Because the NEC3 contract is a contract for design and build, and the framework-- the NHS

Scotland frameworks is a framework for design and build, and the NPD arrangement is for design and build, and finance, and maintain. So it's an entirely different scope of activity that requires a different procurement approach.

Q Thank you. If we could go, please, to page 321, paragraph 7.3, there the paper says: "We will continue to work with both SFT and SGHD..." which I think must be the Scottish Government health directorates.

A You're right, yep.

Q

"... to agree the appropriate procurement approach. However, one of the key pieces of advice from SFT and other parties is to ensure the support of appropriately experienced team and technical advisers at an early stage. This is also essential for the development of the Reference Design."

Do you agree with that statement?

A Yes.

Q Why was experience needed in particular for development

of the reference design?

A I wouldn't want to use inexperienced designers.

Q Yes, as simple as that? I mean, was there any particular difficulty associated with a reference design on an NPD project to distinguish it from any other construction project?

A We've talked about the interaction between the design element and the commercial element, so the development of reference design and how it sits within the procurement process was important to understand.

MR MCLELLAND: Okay, thank you. My Lord, I note the time and I am aware of the Inquiry's practice of taking breaks in the morning. That may be a convenient time to break.

THE CHAIR: Thank you, Mr McClelland. Mr Reekie, I should have mentioned this at the beginning, but we usually take a coffee break at about half-past-11. It is a little bit past half-past-11, so we will sit again at ten-to-12.

THE WITNESS: Perfect. Thank you.

(A short break)

THE CHAIR: Mr Reekie. Mr

McClelland.

MR MCLELLAND: Thank you, my Lord. Could we go, please, to bundle 3, volume 2, page 354? Mr Reekie, you should see on screen that this is a note of a project discussion on the 1 February 2011 with various people in attendance. You were not one of them, but Donna Stevenson from the SFT was there----

A Yeah.

Q -- and others included Jackie Sansbury, Susan Goldsmith, Mike Baxter, Iain Graham. If you could go, please, to page 355, second paragraph on that page, the note records this:

"This meeting then discussed the design position in terms of work done and required before procurement commences. The ongoing work from BAM through Framework Scotland remains possible to add in DCN aspects. However there are a range of risks around timescale, etc."

It was really this sentence I want to ask you about:

"Donna Stevenson said that

while she supported the concept of a reference design she was surprised as to the extent of the design development being proposed.”

Were you aware of the SFT being surprised at the extent of design development being proposed around that time?

A Yeah, I think that the-- at this point in time, the approach to reference design and the sort of breakpoint in design between what was done by NHS Lothian and what was done in competition by the bidders was still in discussion. There were a range of views expressed at different times, and I think in general, at that point in time, SFT were keen that the reference design was done. I've talked about supporting it, but that we stuck to the level of operational functionality in the adjacencies of rooms, and the rooms-- the schedule of accommodation, the general arrangement, rather than getting too much into the detail of other aspects of the design. I couldn't tell you exactly what details of other aspects of design were being talked about in that meeting.

Q What was the SFT's

interest in the project getting that division right between the mandatory and the non-mandatory elements of the design?

A So how far the reference design was developed is slightly different from what's mandatory and non-mandatory.

Q That is a fair point. I will rephrase the question. Ms Stevenson is raising a concern about the extent of design development; what is the SFT's particular interest in the extent of design development?

A Well, to-- I guess there's a couple of interests, but to do more design than is required at that stage would cost more and take longer and risk wasted effort again if the design went to a stage that was not required for the commencement of the procurement process. So some of it will have been about cost and programme, but also, if the design goes too far, then the authority, NHS Lothian in this case, has to think really carefully about whether they are getting people that are involved in that process. Talked about the clinicians being involved, quite wedded, if you like, to a design development that they might not eventually get because the bidders could come and redesign elements during the procurement

period. So it's about managing expectations, managing cost and programme at that stage.

Q If we could go to page 377 of that bundle, please. It is bundle 3, volume 2.

THE CHAIR: Sorry, my fault. What page?

MR MCCLELLAND: Sorry, it is bundle 3, volume 2, page 377.

THE CHAIR: Thank you.

A It's the funding letter that I've referred to a couple of times, I think.

Q Yeah, thank you, Mr Reekie. I was going to ask you if you recognise the document, and obviously you do. It is the funding letter from the Scottish Government to health boards dated 22 March 2011. Do we understand that this sets out the Scottish Government's funding conditions for NPD projects being delivered by health boards?

A Yes.

Q If you go to page 378, please. The second-- or the first paragraph that begins on that page, let's read from there:

"The programme is being supported by the Scottish Futures Trust... SFT provides a valuable centre of

expertise and advice on the development, funding, structuring, procurement and management of these projects. Procuring bodies are therefore asked to work closely with SFT throughout the development of the project. SFT's approval will be required at specific points, as detailed in section 2 and 5 of the attached guidance, in order for the project to proceed to delivery. A table outlining the forms of support which SFT can provide to procuring bodies is enclosed in a separate annex."

There is a reference there in that paragraph to both advice and approval. Does that identify two different aspects to the SFT's role?

A Yes. I would say that the approval was an assurance role that we had that would feed into Scottish Government's approval, and advice was the advice and support we could give to individual projects that we've talked about, yeah.

Q Okay. If we go forward to page 379, please, you see there, headed up "Anticipated scope,

construction and building operating costs for the project". There is a reference-- If I just read the paragraph or "Condition 1.a)": "Revenue support will be provided to the procuring body from the Scottish Government up to an agreed level based on the agreed project scope, using the standard form NPD / hub DBFM contract developed by SFT."

A Yeah.

Q Is that a reference there to the SFT standard form that we were discussing earlier today?

A Yep.

Q Then, at paragraph b) it says: "Derogations which relate to the underlying principles of the standard form NPD... contract, as noted below, will require sign off from the Scottish Ministers who will take advice from SFT."

A Hang on one second, we're just going back to-- Going up, keep going, keep going. There, that's it. Thank you. Sorry.

Q I am sorry, do you have the page?

A Yeah, we're back.

Q You are back, so you are on "Conditions". Do you see "Condition 1.b)"----

A Yes.

Q -- about derogations.

A Yeah.

Q Right, can you just explain what procedure applied if a health board wanted to derogate from the principles of the standard form contract? The derogations process ran through the procurement period from the form of contract that went out with the invitation to participate in dialogue, and then right up to the point of agreeing the final terms with the preferred bidder. The standard contract had a whole range of clauses in obviously; and if the authority wanted to change one of those, then they would have to make a submission to SFT as to why they thought they wanted to-- why they wanted to change it. That was generally done through the authority's legal advisors, through the SFT team. In an instance where that change or derogation was for a project-specific reason, then we would allow that to be made because some particular project circumstances required changes, but if it was because of a difference in risk allocation or just a difference in drafting style or a difference in commercial position, then we would not allow that because we wanted to have the market understand the nature of the commercial deal that they were getting into, and for that commercial

deal to be same across all of the projects so that the bidding market could understand it well, so that we could keep the contracts more similar for a variety of reasons, from ongoing contract management to the generality of achieving value for money.

Q If the health board wanted to depart from standard form design risk allocation, that is something which would require the approval of the SFT.

A The design risk allocation, as I've said, is sort of sprinkled throughout the contract in both the front end, at a very high level, and in the details of what the-- the back end of the contract, the technical schedules, the technical parts to the schedule, include. If they had wanted to change the very high-level principles that are included in the clauses of the contract, then that would have required SFT's signoff as a derogation. But again, as I've said, the technical schedules were developed by the authorities and their technical advisors.

Q Yes, and so you understand from that that the allocation of risk, insofar as it derived from the technical schedules, is not something that would require discussion with the SFT, or would it?

A There was an intention to

have a risk transfer that we've talked about, where design risk other than operational functionality rested with the private sector but the elements of the document that Scottish Futures Trust owned and controlled, if you like, were the front end of the contract. So it would be possible, for something that was included in a technical schedule that SFT didn't manage a derogations process for, to alter the risk transfer in relation to design and-- because it could happen through a schedule where SFT didn't have oversight. That's why I'm-- That's why there's different-- We didn't completely control that design risk allocation because we didn't have ownership and oversight of the whole of the contract, we just looked at the front end.

Q Thank you. If we look at "Condition 1.e)", it reads:

"In order for the project to enter procurement, the procuring body must satisfy both the Scottish Government and SFT that it has sought to minimise construction costs and operating costs within the agreed project scope and has undertaken a whole of life cost analysis. This will

form part of the scrutiny of the Outline Business Case prepared for the project before approval is given for any procurement to commence.”

So do we see there a role for the SFT prior to the approval of the outline business case?

A Yes.

Q How did the SFT go about forming that part of its role?

A That was principally through design review.

A Okay, and that’s a subject we’ll come back to. If we go, please, to page 380, paragraph 2.e), this section is headed up “Capacity and governance required to deliver the project effectively”. At paragraph e):

“The project will be required to go through Gateway Review, Key Stage Review or Post Project/Occupancy Evaluation, as directed by the Scottish Government through the development phase until financial close is reached. The review process should be undertaken in full from the earliest applicable

milestone.”

Did the SFT play a role in relation to any of these reviews?

A Yes, SFT operated the Key Stage Review process.

Q If we go to page 382, please, we should see there a heading: “Project assurance”.

A Yeah.

Q Then the third paragraph there discusses Key Stage Review. If I just read from that:

“Key Stage Review provides a structured, independent ‘due diligence’ review of projects, supporting Project Managers and Sponsors at commercially critical procurement stages. Key Stage Reviews help to ensure that procuring authorities are sufficiently advanced in the project development and have put in place the necessary delivery arrangements and documentation in order to secure high quality, sustainable bids. They also ensure that authorities are adequately resourced to effectively and efficiently

carry out the procurement, construction and operational stages of the projects. Key Stage Reviews are a formal requirement for all projects delivered through the NPD model and will be conducted by SFT.”

Does that paragraph accurately describe the Key Stage Review role formed by the SFT?

A Yes.

Q Was the SFT’s approval needed for a project to pass the Key Stage Review?

A The SFT would say whether we believed the project was ready to proceed, and that was taken account of by Scottish Government when-- as one of the funding conditions.

Q Was this set of funding conditions the first time that progress of a project was contingent on the views of the SFT?

A I believe so, yes.

Q What was your understanding of the purpose of the Key Stage Reviews?

A Key Stage Review was a commercially led review to understand the readiness of a project to progress to different stages through the

procurement process. It looked at the management arrangements in place, the resources in place for readiness. It looked at affordability and value for money, so did the project-- was it still on track to be within the affordability envelope, were the commercial terms in line with the standard terms in the contract that we’d put in place and did it look like the procurement process was robust and going to deliver value for money in competition?

Q There is a reference in that paragraph to Key Stage Reviews being carried out at “commercially critical procurement stages”, and I think you set these out in your statement at paragraph 41, which is page 248 of the bundle.

A Yes.

Q Do we see there a table of the different Key Stage Reviews which were actually carried out?

A Yes.

Q The conditions refer to commercially critical procurement stages. We see that each of the key milestones there is a stage in the procurement process. So we have got the issue of the OJEU notice first of all, then the issue of the Invitation to Participate in Dialogue, and so on.

A Yes.

Q The Invitation to

Participate in Dialogue stage, in very broad terms, is that when documents are issued to bidders setting out what the procuring body wants?

A Yes.

Q The paragraph that we looked at in the funding conditions letter, it says that one of the functions of the Key Stage Review is to “ensure that the procuring authorities have put in place the necessary documentation in order to secure high quality sustainable bids”. What was the SFT's role in performing its Key Stage Review in relation to that documentation?

A I think to look at the overall suite of documents and to consider whether that overall suite of documents looked appropriate to go out to a procurement for this-- for a project of this nature.

Q What sort of factors would be relevant in assessing whether it looked appropriate?

A Whether it contained the sorts of information that bidders would need to bid and whether the evaluation questions and the-- looked like they were the right sort of questions, and the scoring mechanism, as between cost and quality, for example, looked like it was in a position to drive value for money.

Q Is it important in general terms that documents issued to bidders accurately, clearly and unambiguously communicate the intentions of the procuring body?

A Yes.

Q Was it an aspect of the SFT's role at the ITPD Key Stage Review to consider that issue?

A I would say at a high level it was, but we did not review all of the detail of all of the documents.

Q So what would be the sort of documents that you would not consider to be part of the SFT's review role?

A I'm struggling to call to mind the totality of an ITPD pack, but our focus would be on the procurement, evaluation and commercial elements of that documentation rather than the quite substantial volumes of technical information that would be included at that stage.

Q When you refer to “technical information”, would that include design and specification information?

A Yes.

Q At the close of the-- I will leave that for now, thanks. There was a reference in the letter in the paragraph above to Gateway Review.

A Yes.

Q Was the SFT involved to any extent in Gateway Review?

A No. The Gateway Review is operated by Scottish Government's Programme Management Centre of Expertise(?) and was a long-standing assurance approach that works across all investment projects, whether they're capital projects, policy developments or IT projects, for example.

Q Do you have any knowledge of their purpose or is that a question we should leave for others?

A You're probably best leaving it to others.

Q If we go to page 380, please, there is a section there headed, "Guidance" and "Project resourcing". Just reading parts of that, we have a paragraph that begins:

"The project team should:

- have knowledge and experience of revenue financed procurement to be able to provide a challenge function to advisers and bidders ..."

Then, reading on:

"The project team should have the experience and expertise necessary to successfully manage and deliver the key phases in project procurement; specifically ..."

Then, reading on:

"... the Competitive Dialogue process (as appropriate) and have the confidence and experience to lead detailed, wide-ranging and complex negotiations with bidders in relation to the technical, commercial and financial aspects of the project ..."

A We're struggling to keep up a wee minute, if you don't mind, sorry.

Q Sorry, sorry.

A We're still here, just a wee bit further down the page.

Q It is the same document, so bundle 3, volume 2, page 380.

A Just a bit further down. That's it. Yes.

Q Would it be helpful for me just to read out the parts again?

A Yes.

Q So you see the section headed, “Guidance” and “Project resourcing,” Mr Reekie.

A Yes.

Q Then, below that, we have:

“The project team should:

- have knowledge and experience of revenue financed procurement to be able to provide a challenge function to advisers and bidders,”

Then, below that:

“The project team should have the experience and expertise necessary to successfully manage and deliver the key phases in project procurement; specifically ...”

Then, reading on:

“ ... the Competitive Dialogue process (as appropriate) and have the confidence and experience

to lead detailed, wide-ranging and complex negotiations with bidders in relation to the technical, commercial and financial aspects of the project ...”

Then, carrying on over the page:

“In addition to the expertise outlined above, the project team must have sound knowledge of these important aspects of securing revenue finance projects:

- design;
- risk transfer ...”

Would you agree that those are all requirements of the project team?

A Yes.

Q Was it any part of the SFT’s Key Stage Review process to assess the knowledge and experience of the project team in relation to these issues?

A Yes.

Q Would that include their ability and experience in relation to design and risk transfer issues?

A It would look at the generality of the skills and experience

of the project team, yes. It would include those elements.

Q To what extent did, in your view, NHSL's team have that expertise?

A Well, that-- There's several parts to that question, I guess, and at the very earliest stages, from when the project had been announced as an NPD project, we were recommending that NHS Lothian brought in-- augmented their team with people who had specific experience of PPP procurement, and that was documented in December 2010. I also wrote in 2011 that we advised that the project team should have more experience of PPP project delivery and that we wanted to agree a change to resource at the earliest opportunity. So it was a discussion that was ongoing between NHS Lothian and SFT during the early parts of 2011.

We seconded, briefly and informally, a staff member with PPP experience into the project team in June/July 2011--time, a colleague, Gordon Sherriff, who I referred to earlier. Gordon was not with the team very long. There were some differences of opinion on how to-- and personalities on how to make things work in the project team that was an existing project team in NHS Lothian.

Gordon went on to work with the two other acute hospital projects in the NPD programme. But the-- So, as I understand it, as I recall, NHS Lothian augmented its project team with the Director of Capital Planning and some more input from the-- it would be the Deputy Director of Finance to bring more commercial expertise and understanding to their project team, and at the point of the OJEU ASR, when the advisory teams were all in place, we acknowledged that we'd made a number of recommendations as to the resourcing throughout the project and that we were content with the resourcing that was in place by that stage in December 2012. So it was an ongoing discussion about the team resourcing for that period of 2011 and 2012.

Q Okay. In your answer there, you made reference to NHSL augmenting its team with, I think, two of its employees, and I think the positions you gave were Director of Capital Planning and perhaps a Deputy Finance Director?

A I believe so.

Q Are you able to recall their names?

A I think that was Iain Graham and Carol Potter.

Q Iain Graham and

Carol...?

A Carol Potter.

Q Carol Potter, okay. One of the passages that we read out from the letter referred to the need for the project team to have sound knowledge of design and risk transfer in the context of revenue-financed projects. Why is that important?

A Because the interaction we talked about between the technical design aspects and the procurement commercial side is really important in any project development, and the-- so knowing how that works and what are the expectations in the PPP arrangements is one of the things that the team would have to have an understanding of, the interaction between the commercials and the technical development.

Q Is it the case that a mishandled procurement might lead to the health board taking on more risk for design than they intended?

A Yes.

Q If we could go on, please, to page 383 of that document, which is still at bundle 3, volume 2, but we are in page 383. You should see there, Mr Reekie, a page headed up, "3. Requirements for a value for money assessment and business cases".

A Yes.

Q Reading, first of all, under the heading, "*Outline Business Case stage*", Condition 3(a):

"The procuring body is required to submit an Outline Business Case (OBC) to the Scottish Government, with a shadow bid model, which demonstrates how the project will deliver value for money in quantitative and qualitative terms. The OBC must be in line with Green Book guidance, the Scottish Public Finance Manual and appropriate sector specific guidance as outlined in Section 4."

Then, (b):

"Before for the project can enter procurement, the Outline Business Case must be approved by the procuring body and ultimately Scottish Ministers. SFT will have an oversight role and will provide comment to Scottish Ministers prior to

their formal approval.”

Without reading them out, we can see below that paragraphs (e) and (f) are to similar effect but in the particular context of the full business case, do you see that?

A Yes.

Q Do those paragraphs accurately describe the role performed by the SFT at each of these stages?

A Yes.

Q How did the SFT go about that role at those stages?

A We ran at the outline business case stage a design review which looked at the high-level space required to deliver the outcomes that the project was looking for and the cost implications of that space as a high-level assessment of value for money. Then we used the Key Stage Review process to be able to feed in, particularly at the full business case stage where there is a Key stage Review aligned with the full business case for the project, at the point of the selection of or the signature of the contract

Q The SFT’s role at the OBC and FBC stages is described as an “oversight role”. Did that mean that their approval was needed for the project to progress?

A It meant that Scottish Government would take account of our comments in deciding about the project of the-- the progress of the project.

Q Do we understand that the Scottish Government had a decision-making role at each of these stages?

A Yes.

Q And the SFT were feeding in advice to that process, is that a fair summary?

A I guess. Yeah, “SFT will have an oversight role and will provide comment to Scottish Ministers prior to their formal approval.”

Q Do you know if the Scottish Government process referred to there is the one conducted by the Capital Investment Group?

A I would expect that to be the case, yeah.

Q On what sort of issues was the SFT expected to provide comment at each of these stages?

A On value for money, on affordability, on the commercial terms and on the readiness of the documentation seen to proceed to the next stage.

Q Excuse me just a moment, Mr Reekie.

A No problem.

Q (After a pause) If I could refer, please, to the witness statement of Brian Currie, which starts at page 201 of the witness statement bundle, but the particular paragraph I would like to go to is paragraph 28, which is at page 210. I am just going to read what Mr Currie says there. He says:

“The Project Team initially intended to complete the reference design within 12 months based on three rounds of consultation with clinical staff ... The Project Board immediately sought to reduce this period to eight months with two rounds of clinical engagement. My recollection is that it was SFT (who sat on the Project Board) who were keen to shorten the programme of activities in relation to the reference design production, competitive dialogue and between preferred bidder and financial close, rather than NHS Lothian.”

Do you accept what Mr Currie says there as accurate?

A Could we go to another document to have a look at that?

Q Would you like to go to the document that is referred to in that paragraph or is it another one?

A Yeah, I think it's the-- Yes, please.

Q Okay, so if we could go to bundle 7, page 687, please.

A So if we just look at the “Strategic Programme” there, number two, heading two--

Q Sorry, Mr Reekie, just bear with us a moment until His Lordship has the document.

THE CHAIR: I have got that document but, Mr Reekie, is that the document you want to look at or----

A Yes, there's a heading two, “Strategic Programme”.

THE CHAIR: Right.

MR MCCLELLAND: Just to put this in its context, do we see here that this is headed up, “Action Notes,” and it is given a meeting title, “RHSC + DCN – Little France – PROJECT BOARD #2,” and it is dated 13 May 2011?

A Yes.

Q There are various attendees at the meeting including, from the SFT, Donna Stevenson and Andrew Bruce, but you yourself were not at the meeting.

A Correct, yes.

Q Okay, so please take what you wish from this document.

A So in heading two, “Strategic Programme,” the second paragraph says: “As presented the programme is unacceptable to NHSL, SFT and SGHD given the estimated slippage in operational date from the previous Treasury funded project.” So, whilst I wasn't at the meeting, from that I take it that all of the parties involved – the government, NHS Lothian and Scottish Futures Trust – were not content with the programme and therefore wanted to see it accelerated.

Q So when Mr Currie says it was his recollection that it was the SFT who wanted to shorten the programme of activities and so on rather than NHS Lothian, would you, based on what is said in that minute, disagree with what Mr Currie has to say?

A I think there's a further-down part that says we-- “SFT and SGHD expressed a strong view that the period indicated for ‘Competitive Dialogue’” at the generality of the programme issue. It seems to me, from that note, that all parties wished to see the programme accelerated.

Q Okay. Do you accept that the SFT wanted to shorten the

programme of activities in relation to reference design production, competitive dialogue and the period between preferred bidder and financial close?

A SFT- Yes, acting on the funding letter and the position that the government had taken overall and that we all had taken in relation to the need to do this work as quickly as possible – which we talked about much earlier on – we did want to make sure that there was no unnecessary floating programmes and that programmes were compressed as far as they could reasonably be, yes.

Q So was the SFT bringing to this desire to make progress experience and expertise about the timescales needed to conduct a procurement process properly?

A Yes, we had experienced of that.

Q Was there any extent to which the SFT's recommendations for timescales or ways in which they might be shortened was in any sense against the wishes of NHSL?

A I don't recall the detail of those discussions. I'm afraid I wasn't in them.

Q Thank you. Could we go, please, to bundle 3, volume 2, page 399? You can take it from me,

Mr Reekie, this is a letter from you. We see your signing block on page 408 of the bundle. It is to Jackie Sansbury of NHS Lothian dated 1 June 2011. Just reading from the first page of that letter, you say:

“Further to the letter NHS Lothian received on 22nd March 2011 from the Scottish Government with regard to the funding conditions for delivering projects through the non profit distributing model ...”

Pause there, that’s the funding letter we looked at a moment ago.

A Indeed.

Q “... we are following up on certain specific matters as they relate to the funding of the combined... project...” Then reading down, under the heading “Funding Conditions” and “Construction Costs”:

“The letter of 22nd March 2011 made it clear that the Scottish Government would fund 100% of construction costs subject to a scope for construction being agreed between the procuring body and Scottish Government

(which will be supported by SFT in this assessment). Below is set out how we propose to reach agreement on the scope of the project and therefore how a cap on this element of funding will be set.”

Then reading on over the next page:

“As part of an updated Key Stage Review process, that will be applied uniformly on NPD projects in the health sector, we propose to engage in the ongoing design process of the Project to provide an independent review and challenge to the overall size of the facility and its specification on behalf of the ultimate funder of the project. To do this we are likely to employ an external adviser. This should provide independent validation of some of the key high level metrics of the proposed design and a valuable external benchmark on value for

money.

The output from this review will be a report giving an opinion as to the efficiency of the design.”

A If I may, there was a bit at the top of that page that you-- I know you didn't read all of it, but there was a bit of that which says "... and its specification (using the cost per m2 as a measure)."

Q Yes.

A So the element of size and, as I've said, at a very high level-- the highest level of "What's the cost of the building going to be?" is the cost per square metre, which is a very high-level proxy for the level of the specification. So that's the level we were looking at it.

Q Okay, thank you. What is being described in this letter, does this relate to the Scottish Government funding conditions?

A Yes.

Q What is the relationship between what is proposed here and those funding conditions?

A The funding conditions would provide a funding envelope for the project, the maximum amount of capital cost equivalent that would be

funded through the NPD program. The review-- The independent review that we that we mention in here would be a benchmarking of the capital cost to support the Scottish Government's assessment of whether that was reasonable to deliver the Sick Children's Hospital and Department of Clinical Neurosciences, and therefore should be funded 100 per cent as part of the programme.

Q Did that proposed design review take place?

A It did.

Q Who did it?

A That was done by a company called Atkins on behalf of and contracted to the Scottish Futures Trust.

Q Okay. You may already have dealt with this, so apologies if I am asking you to repeat yourself, but the description in that letter talks about a review and challenge to the overall size of the facility and its specification. What aspects of the specification were the subject of the review?

A The specification being the overall costing of the building which-- the size plus the cost per square meter, as a very high-level proxy for the level of a specification, is what we were looking at. So you can-- There are general benchmarks, and

the Atkins report will contain a number for what is a reasonable cost per square meter for an acute healthcare building, and if you have what I suppose some would call an “over specified” building then it could cost more, or if you have an under specified building that doesn’t look like it’s of the required quality then it might have a much lower cost per square meter than a normal benchmark for that sort of facility.

Q Okay. To what extent would an assessment of cost at that level include consideration of such things as the specification of the ventilation system in the hospital?

A It wouldn’t.

Q One presumes that the costing would assume the hospital would feature a ventilation system.

A So the cost per square metre of the average acute hospital would include the ventilation system of the average acute hospital. So, at that very high level of proxy for specification, then, if there had been no ventilation system in the costings, then it would have looked-- the costings might have looked a bit low.

Q Yes. Thank you. If we could go on to page 406 of that letter, please. The second paragraph, just picking up about-- well, I think it is the

third sentence, about four lines from the top; the sentence begins at the right hand side:

“We are also concerned that the architects employed to carry out the reference design for the Project are not restricted from working for one of the bidders once this stage is complete. This will make it difficult to create a level playing field amongst bidders for the Project, as at least the perception will be that whichever bidder employs this architect will be at a significant advantage. We would welcome a dialogue with you as to how these issues are resolved.”

Can you just explain that concern and if and how it was resolved?

A Yeah. The concern was that, if a firm of architects developed the reference design for the authority working on contract to the health board and were then free to join a bid team, then they would understand at a lot more detailed level what the authority was looking for because they would have worked with them already to help

develop the reference design, would have a much greater knowledge of the things that were important to the individuals who would be assessing the bids than would be the case for an architect who hadn't had that previous insight. So it would-- it could have the potential to create an uneven playing field between the consortium that had the services of that architectural firm and those that did not and make them more likely to win the tender competition.

Q Was this concern addressed in any way?

A I can't recall the detail of that, I'm afraid.

Q If you could go, please, to bundle 3, volume 2, page 484. You should see there, Mr Reekie, that this is a paper for the Infrastructure Investment Board dated 26 September 2011----

A Yep.

Q -- and it is discussing the outline project. If we could just go to paragraph 13, please, on page 486. I will let you read that paragraph if you want to, Mr Reekie, but all I want to ask about it is-- it is referring to the reference design being developed by NHS Lothian, and then in the final sentence it says this is "... part of a 'needs not wants' challenge SFT is

undertaking an independent review of the design."

A Yeah.

Q Do you accept the description of the SFT Review as a "need not wants challenge" and, if so, what do you understand by that?

A That was language that we used at the time, and it was intended-- We've already been through that the funding was based on minimising the cost to deliver the outcomes -- I think that was in the Scottish Government's funding letter that we've reviewed already -- and therefore our review was to ensure that the cost envelope that was being put forward by the procurement authority reflected actually what was needed to deliver those outcomes and not anything else that people might want to add in along the way-- was not actually needed to deliver the outcomes of the overall project.

Q Okay, and then slightly higher up in the paragraph, just starts on the third line, it says:

"This means that most of the design development (except in relation to mechanical and electrical design) will be done before the project enters procurement, rather

than bidding contractors preparing detailed designs themselves.”

Do you know whether the design and specification information reviewed by Atkins included or excluded any mechanical and electrical design?

A I don't know whether the information that was given to them included any mechanical or electrical design. I wouldn't have expected them to need to review any element of mechanical or electrical design to fulfil the requirements of the contract that we had with them for the design review.

Q I think you have perhaps already explained it, but could you just explain why you would not have expected that?

A Yes, because the review is principally a spatial review to understand whether the size of the building is-- and that number of square meters, which is a big driver of cost, was about right to deliver the clinical services of the Royal Hospital to Children and the Department of Clinical Neurosciences. So the specialties involved the throughput of patients, the amount of treatment, and all of the ancillary services that go along with that, and whether the cost per square

meter for that space benchmarked to a reasonable level for an acute hospital facility. That is about spatial design and costing, not about the detail of any structural or mechanical or electrical design elements.

Q Okay, thank you. If we could go next, please, to bundle 7, page 455. We can see that this is headed up: “SCOTTISH GOVERNMENT GOVERNANCE ARRANGEMENTS FOR ROYAL HOSPITAL FOR SICK CHILDREN... OUTLINE BUSINESS CASE”. If we scroll forward to page 457, I hope you can see there that the paper is prepared by Mike Baxter of Scottish Government and is dated the 7 October 2011. The recommendation is inviting the project board to note the arrangements for outline business case consideration within the Scottish Government. If we could just go, please, to paragraph 10, what Mr Baxter says there is: “The process--” Sorry, that's on page 456:

“The process within Scottish Government for consideration of the OBC is unchanged from that which NHS Lothian colleagues would be familiar with. At present a number of other

bodies, including
 Architecture and Design
 Scotland... and Health
 Facilities Scotland... feed
 into the overall approval
 process. It is expected that
 the SFT consideration of
 VFM..."

I think it's "value for money".

A Value for money.

Q "... and other issues
 referred to in the 22 March
 letter, will form part of the
 overall CIG assessment
 process. In that regard
 there is therefore no
 separate Board approval
 within SFT for approval of
 the RHSC/DCN project and
 that this will be part of the
 Scottish Government's
 consideration as normal."

First of all, do you agree that the
 SFT design review would feed into the
 Capital Investment Group process for
 approval of the business case?

A Yes.

Q There's reference in this
 paragraph to the involvement of
 Architecture & Design Scotland, Health
 Facilities Scotland. What would your
 understanding of their role in the

context of that business case review
 process?

A I believe they have a role
 providing advice to Capital Investment
 Group on design and technical aspects
 of business cases, but I'm not
 particularly familiar with that.

Q If you take-- If you do not
 know them, then please just say. I do
 not want you to feel compelled to
 answer questions you do not know the
 answers to, but if you take HFS in
 particular, what do you know of their
 area of expertise insofar as it pertains
 to hospital design?

A That Health Facilities
 Scotland is the health service's central
 grouping of technical expertise on
 health facilities.

Q Are you aware of what
 role, if any, they would have in relation
 to, for example, technical guidance for
 engineering installations and hospitals?

A I believe they have
 ownership and the-- of the design
 standards, the Health-- Scottish Health
 Technical Memoranda.

Q From your point of view,
 how was the SFT design review carried
 out by Atkins intended to relate to the
 rules of HFS and Architecture & Design
 Scotland?

A We knew what our design
 review was for and what the

specification for it-- of it was going to do in relation to value for money, and we've talked through that. We didn't have a view of how that would interact with other reviews that may or may not have been going on. We wanted to be clear that other parties, like Health Facilities Scotland and Architecture & Design Scotland, knew what we were doing and knew what the Atkins review had said and did, but we didn't-- we weren't able to give a view on what that meant for other parties' reviews.

Q Who was responsible, in your view, for understanding how all three of these bodies' design input related to one another?

A Given that they all fell in-- fed into the CIG process, which was operated by Scottish Government, I would have said that they were responsible for that overall coordination, but Scottish Government would have fulfilled that role by setting out the overall framework or business case process in documentation such as the Scottish Capital Investment Manual and the letters to chief executives, which it would have then been the responsibility for health boards to follow.

Q Are you aware of any document which demarcates the redesign-- or the input on design from

the three bodies being the SFT, Architecture & Design Scotland, and Health Facilities Scotland?

A I'm not.

Q Could we go, please, to bundle 4, page 99? Now, you should have in front of you there, Mr Reekie, a letter dated the 2 June 2010 from the Health Finance Directorate of the Scottish Government. You can see, in the column down the right-hand side, that it is addressed to various bodies including NHS boards, Health Facilities Scotland, Architecture & Design Scotland, and so on. The Scottish Futures Trust is not listed there as a recipient. Is this a document that you have seen before or are familiar with?

A I believe I've seen it as part of this process, but I don't believe I'd seen it before that.

Q Okay. It is headed up: "A POLICY ON DESIGN QUALITY FOR NHSSCOTLAND: 2010 REVISION". I'll just read some passages from it then come to some questions. If we could go, first of all, to page 100, paragraph 6, just picking up from the sentence that begins on page 100:

"Support for the implementation of the design agenda will be provided by means of a

coordinated, tripartite working arrangement between Scottish Government Health Directorates... Health Facilities Scotland... and Architecture and Design Scotland... to facilitate the procurement of well-designed, sustainable, healing environments which support the policies and objectives of NHS Boards and the Scottish Government Health Directorates.”

Then reading down at paragraph 10 on page 100, it says that:

“In order to meet the above objectives, (Architecture & Design Scotland) will deliver 3 main activities on behalf of SGHD...

Activity 2

Providing, in partnership with HFS, a co-ordinated assessment of the potential quality of proposed projects to support those responsible for decision making within the business case process.

This will involve contributing particular expertise on the aspects of design relating to Government policy on design and place making to a process administered and led by HFS who will, in addition to the administrative elements, provide particular expertise on the aspects of design relating to functionality, particularly technical and sustainability standards developed by HFS and the Department of Health in England.”

Then paragraph 11 on page 101, headed up “Design Assessment and the Business Case Process”:

“An assessment of design quality is now part of the SGHD Business Case process. All projects submitted to the SGHD Capital Investment Group for approval are now subject to an assessment of design quality and functionality, including technical and sustainability standards. This Design Assessment

will take place at the Initial Agreement, Outline Business Case and Full Business Case stages of approval.”

Now, with apologies for the length of that introduction, I will now come to the questions. To what extent was SFT’s design review through Atkins intended to fulfil the objectives of this policy?

A The Atkins review was very particularly in relation to value for money and an affordability envelope for the project and not to assess design quality.

Q To what extent was the SFT’s design review through Atkins intended to consider compliance with technical standards developed or published by HFS, such as Scottish Health Technical Memoranda?

A It wasn’t.

Q What, if anything, was the intended relationship between the SFT’s design review and this policy?

A It’s separate. The SFT’s design review was in relation to value for money applied to the NPD projects and the affordability within the overall program, whereas this, I think, if go back to the title, was a policy around design quality.

Q Was it ever suggested or understood by you that SFT were to be involved in the design assessment process referred to in this policy?

A I believe so.

Q If we could go, please, to page 122 of that bundle. This is the design policy document which is attached or enclosed with the letter that we have just been looking at. There is a section here headed up “Role of the Scottish Futures Trust”. Just reading from that, it says:

“The Scottish Futures Trust is an independent company, established by the Scottish Government with a responsibility to deliver value for money across all public sector investment. SFT operates at arms length from the Government but works closely with the public sector to seek and deliver improved value for tax payers.”

I think that’s an overview you would accept to be accurate.

A Indeed.

Q Then there is various other bits and pieces said there, and then right at the bottom it says: “SFT

may also get involved in an advisory or validation rule on other projects, and therefore has an interest across all healthcare work.” Do you accept that as a general statement?

A It’s a very general statement, but yes.

Q Do you know why the SFT was mentioned in this particular design policy?

A I guess because design is an aspect of infrastructure investment, and SFT has a role-- and has an-- also an interest in infrastructure investment, therefore there is an interaction of those two things. The high-quality design was a generality of a thing that everyone involved in the infrastructure environment is looking for.

Q Was it a matter of interest or relevance to the SFT in performing its function whether or not a project-- a hospital project complied with technical guidance?

THE CHAIR: Sorry, could you just repeat that? It is my fault, Mr. McClelland. Could you just repeat the question?

MR MCCLELLAND: Right. Indeed. I stumbled over it so it is probably helpful to do it again. Was it a matter of interest or relevance to the SFT, when performing its function, whether or not a hospital project

complied with technical guidance?

A It has to be a matter of interest because the-- it’s not value for money to pay for something that doesn’t do the job that it’s intended to do, and the standards and guidance that are in place across a whole variety of sectors are there to try and make sure that the things that we buy do the job that they’re there to do.

Q Was it any part of the function to check or confirm whether a hospital project was complying with technical guidance?

A No.

MR MCCLELLAND: My Lord, I note the time and, as it happens, that’s a convenient break in my own examination, so my Lordship may wish to stop for lunch.

THE CHAIR: Yes, Mr McClelland. We’ll take about an hour for lunch, Mr Reekie, so can I ask you to be back by two o’clock?

THE WITNESS: Absolutely.

THE CHAIR: Thank you very much. Perhaps Mr Reekie could be taken out.

(A Short Break)

THE CHAIR: Good afternoon, Mr Reekie.

A Hello.

THE CHAIR: Mr McClelland.

MR MCCLELLAND: Thank you, my Lord. Good afternoon, Mr Reekie.

A Hello.

Q Could we have a look at the document at bundle 3, volume 2, page 567, please? Do you recognise that document, Mr Reekie?

A I do.

Q Can you tell us what it is, please?

A That's the design review that we were speaking about before lunch performed on behalf of the Scottish Futures Trust by Atkins.

Q Do we see from the cover sheet that it is dated 12 December 2011?

A Indeed.

Q If we could go to page 571, please, I am just going to read out from the text under the heading, "Summary and Recommendations".

"The purpose of this Independent Review was to assess the design brief for the project to replace the Royal Hospital for Sick Children and the Department of Clinical Neurosciences (RHSC/DCN) on the Little France site. The review

assessed the capacity of the project to deliver value for money by meeting the strategic aims of the programme; by making best use of space and opportunities for maximising sharing with other assets; and by minimising the whole-life costs.

The recommendations are intended to indicate actions which will help to de-risk the specification and the reference design as the project progresses towards OBC and the preparation of tender documentation and to improve value for money."

Does that accurately summarise what you understood to be the purpose of this report?

A Yes.

Q It is said there that Atkins assessed the design brief of the hospital. What was comprised in that design brief?

A I can't tell you exactly what was in the design brief, but that would be the expression of the requirements for clinical services and

other services to be delivered by the building, what was it-- what it was trying to achieve in the brief.

Q That introduction also said that the recommendations were in part intended to “help de-risk the specification and the reference design as the project progresses towards OBC and the preparation of tender documentation”. What do you understand there to be meant by “de-risking the specification and reference design”?

A I think “de-risking the specification” is probably not language I would’ve used myself, but it’s about the idea of getting-- making sure that the reference design as expressed appeared to be meeting the brief in as efficient a way as possible, such that it didn’t have to go through any cycles or iterations during the progress of the project beyond the OBC and into the preparation of the tender documentation, which would have potentially led to delay and rework.

Q What risks might arise in relation to the specification and reference design which it would be within the remit of Atkins and the SFT to raise?

A If it didn’t look like the spatial representation in the reference design was a diagram, a spatial

arrangement, that met with the design brief, overall, there might have to be iterations in that as the project went forward.

Q So would the particular risks then be associated with delay and cost of having to revisit the design?

A Or even progressing further and not meeting the overall requirements for the project to be able to deliver the capacity of clinical services that the design brief expressed.

Q If you go forward, please, to page 576, there is a heading two-thirds of the way down, “Reference Design,” and Atkins say this:

“At the point of our review the Reference Design was relatively under-developed considering the stage of the project. There was no clear and settled building diagram. This means that ...”

Then there are three bullets:

“There is not an understanding of how departments can be developed in detail within

the current blocks ...”

And so on. Are you able to say what state or stage of development the design had reached at the time of this review?

A Not in detail.

Q In overview?

A I would guess that-- It looks like they had potentially an understanding of the schedule of accommodation, but not yet at the level of getting to the detailed interaction of how the spaces fit with each other and go next to each other. So it appears to me that they were almost at a concept stage of having a schedule of accommodation and a diagram of the building, but not quite yet understanding how the-- the adjacencies. So the ways that the individual rooms and the departments interact with each other didn't appear yet to be wholly resolved to meet the clinical needs.

Q Is the understanding that you are expressing just now based on what you have just read there or your recollection of the position at the time?

A Very much based on what I've just read there.

Q Do you know to what extent the design at that stage included specification of details

relating to technical standards for ventilation, for example?

A No.

Q If you go, please, to page 627, do we see there a table headed up, “Technical Costs Summary 4”?

Are you able to explain what this table shows?

A That's a cost breakdown structure for the elements of the building and a-- what we call “a rate and a measure”. So the amount of that element expressed in square metres and the rate as in the general cost per square metre of that element, which sum-- which multiplies together to form the overall cost of the different elements. So how many square metres of frame and helipad are there and what's the price per square metre for frames and helipads in general, if you multiply those two together, you get the total cost of the helipad, and if you add those up across all the different elements of the structure, you get to a total cost for the building. The number of square metres is specific to the spatial design of the building and the cost per square metre is taken from reference material that generally quantity surveyors hold for the market costs of different elements of buildings.

Q Okay. Do you see at item 5.7 there is an entry for ventilating

systems?

A I do.

Q There is a cost given there and a cost per square metre. You have explained the generality but, in relation to that specific example, could you just explain to us what the basis for that cost estimate would have been?

A No.

Q Is that because you do not know?

A I don't know.

Q Do you know whether an assessment of the cost of ventilation would have made assumptions about the extent to which the ventilation system would comply with technical guidance such as SHTMs?

A I would imagine that at this stage of development, the rates, so the costs per, were very much based on what was normally expected for the sector. So, inasmuch as hospital ventilation generally complies with the standards for hospital ventilation, you would expect that those rates would incorporate compliance with the specification, but it wouldn't go down to anywhere near the level of detail of individual items of compliance with specifications. Indeed, the rates here, for example, may well include projects in different

jurisdictions like England that have slightly different technical standards, but at the level of the generality of a hospital ventilation system costing this much per square metre, that's all lost in the rounding, if you see what I mean.

Q If we go forward, please, to page 636, we see a section headed up, "Reference Design," and then just below that:

"The aim of this section of the review is to assess value for money in the creation of the environment for patients and staff."

A Sorry, one second. Up a wee bit. Yes, thank you. Yes.

Q Then, reading down, there is a subheading, "AEDET". Then what it says there is, "The Achieving Excellence Design Evaluation Toolkit (AEDET Evolution) is published by the Department of Health."

A Yes.

Q Are you familiar with the AEDET?

A No.

Q Taking that answer into account, of course, if we move forward to the next page, page 637, the text there at paragraph 7.2.2 says: "NHS

Lothian undertook an AEDET on 12th of August 2011,” and so on. Then there is a table below that, and do you see at line F there is a line marked “Engineering,” and then at the end it says, “0 of 5 scored”?

A Mm-hm.

Q Then, below that at section 7.2.3, the text reads:

“A number of elements are unable to be scored at this stage because the design is insufficiently developed. In particular performance, engineering and construction cannot be scored at this stage.”

Is that something that you are able to comment on?

A Well, the design development of the reference design and the work that Atkins was doing was spatial based on the amount of space to carry out a function, and the cost element was about what we've talked about already. But the design that it was looking at was very much a spatial design to understand whether the number of rooms, the size of rooms, looked reasonable to carry out the volume of clinical activity across the specialties that was being

discussed. So I don't see that that would've required engineering design in order to make that assessment.

Q Then if we move forward, please, to page 644, at paragraph 7.8, “Building Services and Progress to BREEAM,” the text reads:

“The approach to building services design and progress towards a high BREEAM score was not assessed as it anticipated this will form part of the technical monitoring of the project by both the Scottish Government and HFS.”

Do you understand what the reference to “technical monitoring” is referring to?

A I would imagine that that is the processes of design assurance that might be run by Health Facilities Scotland that we've referred to previously. But, as you said, it wasn't in scope for this particular exercise.

Q I cannot remember if we mentioned it this morning, but are you familiar with the process called the NDAP, the NHS design assessment process?

A I've heard of it, but I'm not familiar with it.

Q Could we go, please, to bundle 3, volume 2 at page 650? Is this a document that you recognise, Mr Reekie?

A Yes.

Q Can you explain to us what it is, please?

A This is a document that sets out the Scottish Futures Trust approach to, as it says, the validation of revenue-funded projects, which includes those in the NPD programme through the Key Stage Review process that we've spoken of.

Q Okay, so is that the same Key Stage Review process that we saw outlined in the Scottish Government's funding letter for NPD projects?

A Yes, it is.

Q Do we see there on the front page that this is dated December 2011?

A Yes.

Q So would this be the guidance that applied to the Key Stage Reviews undergone in relation to the Sick Kids project?

A I would expect so. I can't tell you whether there was a further iteration before the end of the last review of the Sick Children's Hospital project, but I think this was the one that applied throughout.

Q (After a pause) If we go, please, to paragraph 1.2, which is on page 652, just picking up the paragraph four lines from the top, there is sentence that begins, "SFT's role". Do you see that?

A Not at the minute. It's very-- Yes.

Q So:

"SFT's role is to carry out a high level review of the outline business case. In relation to centrally funded health projects SFT may conduct a detailed review of the proposed design and specification and provide comment to the Scottish Ministers or Project Sponsor in order to inform their own approval processes. SFT's role in that regard is part of its general project support function and does not form part of the KSR. The KSR process starts after the outline business case (or sector-specific equivalent) has been approved."

The reference there to the "detailed review of proposed design and specification", is that referring to

the same sort of process as Atkins carried out?

A Yes.

Q Then if we could move forward, please, to page 653, in paragraph 1.3, first paragraph, just reading from part of that:

“The reviews will be carried out at no cost to the Procuring Authority by the member of the Scottish Futures Trust team who normally provides support to the project (Reviewer). The process involves the assessment of the readiness of projects against the pro-forma list of questions at each case at each key stage of the procurement.”

Then, moving on to paragraph 2:

“The Reviewer will also prepare a short report and make recommendations as to whether in his or her view the project is ready to proceed to the next stage of procurement and what actions may be required to achieve the appropriate

state of readiness either to proceed to the next stage or in advance of the next review.”

Then if we go on to paragraph 1.4 on page 654, just reading from there:

“SFT staff members supporting individual projects will at the start of each project jointly review the list and explain to project teams what information the Reviewer requires to see in order to recommend projects for approval. The overall role of the Reviewer is to ensure that best practice and relevant guidance are applied and to advise projects in this regard throughout the procurement process.”

Now, those passages that have been read out, would those all have applied to the Key Stage Reviews carried out on the Sick Kids project?

A Yes.

Q There was a reference there to the reviewer's overall role

being “to ensure that best practice and relevant guidance are applied”. What is “best practice and relevant guidance” referring to?

A In relation to the non-profit distributing aspects of the project that SFT was overseeing.

Q When you say----

A So the commercial terms and the value for money.

Q If the review is to be carried out by the SFT team member who ordinarily supported the project, how independent or objective could the review be?

A The idea was to have the reviewer that’s supporting the project team and working most closely with the project team complete the elements of the Key Stage Review so that we didn’t overly burden the team that was being reviewed and were trying to move through the process, as we’ve all talked about, at the most-- the fastest possible pace consistent with getting the right outcome. So we were trying not to overburden the team being reviewed by asking the reviewer to fill in the paperwork and complete the reports, asking questions where necessary of the project team and asking questions of the project manager as required. What we then did was pass that completed review

onto a member of the Scottish Futures Trust Senior Management Team who hadn’t been involved in the project to review the completed form, such that we brought that level of independence that might not otherwise have been the case had it just been the member of the team who spent their time working – as, in this case, Donna Stevenson did – with that project.

Q So if there were flaws in the approach which had been devised by a team including the SFT team member, how likely would the review process be to detect those flaws?

A I find that a very difficult question to answer. I would say that any review process is quite likely to catch flaws in processes, but no review process is 100 per cent infallible. So, in relation to the aspects that the review was covering, which was the value for money, the compliance with the NPD principles, the readiness to move to the next stage, the documentation, I would say that it was well set up to be able to capture those things. I say that for a couple of reasons. Firstly, because the team member who was with the project team completing the form meant that it wasn’t just the view of the project team who may be trying to get through a review that was filling in the

form. It was filled in by part of the team that was doing the review as well. So we captured, in my view, a better set of information in those documents by having someone from our team who was close filling in the form. We weren't just relying on what someone else had said about the project. Then by bringing that third-party scrutiny from a member of SFT's leadership team who had relevant experience to question the-- what had been completed in the form and to question the reviewer as to what they were seeing on the ground, I think that that was quite a good review process, although I absolutely would not say it was infallible.

Q If we just go back briefly to page 653, the final paragraph there says that:

"Projects that are also subject to Gateway Reviews will in future follow a single Integrated Project Assurance Model (IPAM) process. This process is currently under development."

Do you know-- Well, first of all, did that merger of review processes happen?

A The integration of reviews between KSR and Gateway was something that was happening during 2012/2013, and I believe it didn't lead to a single process. The points of potential overlap were Gateway 2, which aligns with the very first Key Stage Review, but I would say Gateway 2 is probably closer to the OBC, whereas the pre-OJEU(?) Key Stage Review is after OBC. The final Gateway in the-- Gateway 3 is pre-financial close, which is the same as the pre-financial close KSR. So there is a potential for two reviews at that final stage, and the idea of the integration was to put the onus on the reviewers, the Gateway team and the SFT team, to make sure that they coordinated those to the extent possible and didn't, again, over-impose on the project teams.

Q To what extent was the review process merged in that way for the Sick Kids project?

A I'm afraid I can't remember how that went all the way through the process. As I was saying, that process of bringing the two together and developing the Integrated Project Assurance Model was ongoing during 2012/2013, which is exactly the period that this project would have been going through its procurement

and therefore its Key Stage Review process.

Q Could we go, please, to bundle 7, page 463? Do you recognise this document?

A Yes, I think so, yeah.

Q Can you explain to us what it is, please?

A It looks to me like it may - I'd have to maybe go to the document itself a wee bit.

Q Well, if it would be helpful, perhaps liaising with the document reviewer beside you, you could scroll through it, if that would help you remind yourself about it.

A Yeah. Can we keep going? It looks like it's the Scottish Futures Trust's report on the back of the Atkins design review.

Q So to whom would this report have been addressed or sent?

A The Scottish Government Health Directorate.

Q What was the purpose of the report?

A To draw together SF-- the findings of the review and provide input to the scrutiny of the outline business case, I would expect. I'm maybe not as familiar with this one document as I should be.

Q Do we take it from what you have said that this is not a

document for which you were responsible?

A It was not one that I wrote.

Q Okay. Do you know who would have done?

A I can't recall which member of the team wrote this document. I'll almost certainly get the hang of it if I spend a few minutes with it, but I can't-- just off the top of my head, it's not something I'm familiar with every paragraph.

Q Well, I will go through it and read out some paragraphs and we will see where we are once that has been done.

A Thank you.

Q At paragraph 1.4, it says:

“SFT engaged Atkins Consultants Limited to act as its consultants in relation to the review. Following the review by Atkins of a significant number of background documents and three structured interviews with members of NHSL's project team and advisers, the workshop was held ...”

And so on.

A Yes.

Q Then if we move over to page 465, there is a heading, “Review Recommendations”. At 2.1:

“The Atkins Report contains 20 principal recommendations which SFT endorses.”

Then, 2.3:

“A number of the recommendations raise issues for NHSL to consider when further developing its Reference Design and Authority’s requirements for the purposes of the ITPD documentation, which will be finalised and issued before competitive dialogue commences. In this regard, the delineation of negotiable and non negotiable elements will be of importance ...”

That final sentence there, “the delineation of negotiable and non negotiable elements will be of importance,” what is your understanding about that point?

A Well, once the reference design had been developed, that

provided a design that would meet the authority’s requirements. It was important for bidders to know what they could change in relation to that design and what they were not able to change in relation to that design in order to put in a compliant tender. So a mandatory element or a non-negotiable element – I think the two words were used at different times – was something characteristic of that design that was required to be incorporated into the bidder’s tenders in order to be compliant, and a negotiable item or a non-mandatory item was one which was an example of how the brief could be met, but the bidders were free to adopt a different approach to meeting that requirement in their tender submission.

Q What was the SFT’s interest in getting that delineation correct?

A It was a matter of value for money because if the bidders were able to meet the requirements of the NHS and deliver the requirements of the project in a design that may be more space efficient or cost efficient, then, to the extent that was possible, they should be able to use that-- their own innovation, to bring greater efficiency to the design process. So we were interested in ensuring that the

mandatory elements, to the extent possible, only represented what was clinically required for that clinical functionality that we've talked about, operational functionality, and in this project, some other elements that related to the interaction of the building that was going to be built with the other buildings on the site, notably the connection to the existing Royal Infirmary of Edinburgh. So we wanted to allow for innovation amongst bidders for as much as possible other than those core elements.

Q Then if we move forward, please to page 466. Paragraph 3.2:

"SFT will provide this report to SGHD as part of its comments on the outline business case, which HSL is to submit.

3.3 Subject to approval of the OBC, SFT will then carry out a pre OJEU Key Stage Review at which time SFT will consider progress which NHSL has made in addressing the 20 Recommendations...

3.4. It is expected that all of the Recommendations will

be capable of been addressed by the time the ITPD documentation has been finalised by NHSL."

So do we see there that the SFT were to check on progress made following their recommendations----

A Yeah.

Q -- and that the recommendations were expected to be addressed by the time that the ITPD documents were issued?

A Yes.

Q Now, if we go forward, please, to page 468, this appears to be the appendix to what we have just been looking at. Do we see there a list of issues and then beside that a list of recommendations?

A Yep.

Q Yep. If we just scroll down through that list, are those, as far as you know, the recommendations from the Atkins report?

A I believe so, yeah.

Q If we go, please, to page 473, do we see that some of those recommendations relate to the reference design?

A Yes.

Q The Inquiry and the parties can read the detail of that for themselves, but there's no comment

there about ventilation specification or compliance with guidance.

A No, it's speaking to the spatial elements of the reference design that we've talked about today.

Q Yeah. Thank you. Could we go, please, to bundle 3, volume 2, page 655? You should see in front of you there an exchange of emails between-- amongst a number of parties. The email at the bottom is from Donna Stevenson of the SFT, Jackie Sansbury at NHSL, dated the 22 December 2011.

A Yeah.

Q Her email has the subject heading: "RHSC /DCN Project SFT Design Review..." She says:

"Jackie
Further to earlier
correspondence I am
pleased to enclose our
report on the Project
Review together with a final
version of the report from
Atkins."

Those are the two documents that we have been looking at earlier today.

A Yes.

Q Then the email above that is from Donna Stevenson to Mike Baxter at the Scottish Government, and

I will just read what she says to him:

"Mike

In August Colin, Viv and I met with Bettina and Heather of (Architecture & Design Scotland) and Peter Henderson of (Health Facilities Scotland) to discuss the relationship between the SFT design review and the input of (Architecture & Design Scotland) and (Health Facilities Scotland) to the project review. At the meeting we agreed that we would send A&DS and HFS the independent design review report once it was completed and they will consider the gaps which still need to be covered. At the time we sent on the remit of the review to Heather.

In view of the time which has elapsed since then (as the costing information became available) I do not know whether matters have developed. Perhaps when you are back after the festive season you could let

me know whether you wish me to send on the report or whether you wish to do so in the context of any other discussions which may have taken place.”

Were you aware of what happened in response to this email and what was being suggested in it?

A Yes. So that was-- The discussion earlier in the year looks like it was a discussion between-- well, was a discussion between ourselves, SFT, and A&DS and HFS to talk through the interaction or lack of interaction between the design review that Atkins were carrying out on our behalf and what you've already mentioned are the review processes that A&DS and Health Facilities Scotland undertake. Now that our report done by Atkins had been completed, Donna was offering to Mike Baxter, who sat in Health-- in Scottish Government Health Directorate, to send that report to him so that he could potentially, if you wish, to pass it on to those other parties. I believe that was then done.

Q Yes, indeed. As you say in your statement-- it is paragraph 165, page 297 of the witness statement bundle, you refer to comments made by A&DS and HFS on the Atkins

Report. If we could go, please to bundle 3, volume 2, page 883. Is this a document you have seen before?

A Yes.

Q Do we see it is headed up with logos of Health Facilities Scotland and NHS NSS, and that it's headed up: "HFS comments on the RHSC/DCN Independent Design Review carried out by Atkins for SFT"? Just reading from there, it says:

“(The following comments relate to the Atkins Independent Design Review Dated 12th December 2011. The drawings and detailed information on which the Atkins report was based were not available to HFS other than a set of Proposed Reference Design drawings dated June/July 2011 previously submitted to (Architecture & Design Scotland) for their design review.)”

Do you know what the purpose of that review by HFS was?

A I think it was done because they were they were invited to do so by Scottish Government, but I don't know exactly what instructions or

questions they were asked.

Q Were you aware of HFS being asked to carry out that review?

A I don't believe I was aware of this at the time.

Q Would it have been a matter of interest to the SFT, even if not you, perhaps somebody else at the SFT?

A Well, you can see from the previous correspondence that we were keen to follow up on potential for Health Facilities Scotland and Architecture & Design Scotland to want to be aware of the review that Atkins had done. I think, for our purposes of assessing the value for money affordability that we've talked about, the Atkins review had done that job inasmuch as it was useful to others to review it; that was fine that they had to look at it, but it didn't increase the-- it wasn't necessary for SFT's purposes.

Q If we just go further up that bundle to Page 880 and page 881, it just starts at the bottom of page 880. There is an email from Peter Henderson who is described as the "Principal Architect" HFS----

A Yeah.

Q -- to Donna Stevenson at the SFT, copying in various others. He says:

"Donna

As requested by Mike at last week's meeting my comments on Atkins' report are attached. These mostly reinforce Atkins' comments rather than adding anything new as I haven't seen the latest detailed drawings or specification information. If they have not already prepared one, I think it would be useful for the Board/Design Team to produce a comprehensive schedule of the guidance documents they are following in order for future bidders to be clear on the standards that they are expected to comply with."

Do you know why Mr Henderson was giving those comments to Donna Stevenson?

A No. I guess it's something that he thought of while he was reading that paper because it didn't contain all of those sorts of things and he thought it would be useful if that was done, but I don't know why that comment would have gone to Donna Stevenson other than that she was the person that passed him the Atkins

material.

Q Who would you consider would be the appropriate recipient of that message?

A Well, it speaks to what he thinks the board and design team should do, so I would think that-- the board or the design team.

Q Yeah. Then if we go further up, again, the next email straddles two pages, but at the bottom of page 879, we see an email from Heather Chapple who appears to be from Architecture & Design Scotland. She is replying to Peter Henderson, Donna Stephenson, copying in various others. If we could just read partway through her email, this is on page 880, she says: "We understand it is expected that the recommendations in relation to the reference design and the brief will be addressed by the Board prior to the ITPD." Then she says: "We would be happy to do..." various things. At the second bullet, she says:

"(We would be happy to)... help the pre-ITDP KSR consider if the 'design' recommendations (... being those most within our area) have been addressed before the reference design scheme and briefing

documents are presented to bidders; and Pete has suggested the HFS can carry out a high level check of the reference scheme against guidance at this point if this is not being done by others."

That offer being made appears to be an offer of assistance in relation to the pre-ITPD Key Stage Review. Do you agree with that?

A It does.

Q Are you aware if input from HFS was obtained in the context of the pre-ITPD Key Stage Review?

A I don't believe it was, but I can't be 100% confident.

Q Then reading on, third bullet, she is saying:

"(We would be happy to)... help with evaluating the bidders' responses to the develop design brief: for our part in relation to the design quality standards etc & HFS could carry out a high level check against guidance if this is not being done by others."

There is no explicit

reference there to a Key Stage Review, but----

A It does-- It does say-- it's in "help with evaluating bidders' responses", so it looks like it's help with evaluation during the procurement process.

Q Yes.

THE CHAIR: Sorry, I missed that answer.

A It looks like that final bullet there is referring to the potential for Architecture & Design Scotland to help with the evaluation of bids during the tender process.

THE CHAIR: Thank you.

Q One of the other Key Stage Reviews occurred at the close of the competitive dialogue procedure, is that right?

A Yes.

Q Do you know if any input was taken from HFS at the stage of the SFT's Key Stage Review at the close of the dialogue?

A I don't think so, but I don't know why that's relevant to this.

Q Well, if we take the previous bullet makes an offer of assistance from HFS in the context of the pre-ITPD Key Stage Review----

A Yeah.

Q -- then the third bullet makes a similar offer of assistance

from HFS in the context of bidders' responses----

A Yeah.

Q -- whilst there is not an explicit reference to the Key Stage Review in relation to that offer, it simply prompted my question as to whether you knew if input from HFS had been taken at the stage of the SFT Key Stage Review at the close of the dialogue.

A Again, I very much doubt it would have been. I think that those offers, in relation to what are quite technical elements of design, would be not something that we would have been covering at the level of the Key Stage Review at either the pre-ITPD or the close of dialogue Key Stage Review. So it wouldn't surprise me that those offers were not taken up.

Q Okay. Then if we just go to the top of the page, page 879, there is an email from Donna Stevenson to Colin Proctor and Andrew Bruce. Are Mr Proctor and Mr Bruce both at the SFT?

A Yes.

Q What she-- So this is an internal SFT email----

A Yeah.

Q -- and of course you are not a party to it, so it's perhaps a little unfair to ask you about it, but you can

tell us whether you do or do not know.

The email says:

“Colin

Perhaps we could pick up on these Design issues and the process for interface with (Architecture & Design Scotland)/HFS when we meet on Thursday discuss the KSR/Funding conditions points.”

Do you know anything about that issue and how it was taken forward within the SFT?

A I don’t, but I haven’t got any information in SFT that it was taken forward substantively. I think our view at that stage was that SFT did one element that we’ve talked about at length, of design review that fed into the outline business case and review by Capital Investment Group of Scottish Government Health Directorate, and that A&DS and Health Facilities Scotland provided separate advice to that business case process. We were content that our process had been done and that we had shared the results of our process with the other parties who may have similar processes. We thought that, at that stage, we had done enough to satisfy

that interaction and interface, my understanding

Q Could we go, please, to bundle 7, page 493? So you should see there, Mr Reekie, that this appears to be a letter to Mike Baxter. If we scroll down through it to page 502, you see that it is a letter from you? Do you see that?

A Not quite got there yet, but-- Yes, indeed.

Q Is this a letter that you recognise?

A Not the detail of it, no.

Q If we just go back to page 493, please, final paragraph on that page. Just reading from there:

“SFT have also carried out a Project Review, having engaged Atkins as consultants for the review and SFT’s report (to which the report from Atkins... is appended) was issued to the board and copy to you on 22 December 2011. Annex A to this letter comprises a list of the recommendations of the Project Review with comments from SFT on the Board’s responses to them. The recommendations of

the Project Review form the basis of a number of comments in this response to the OBC.”

A Yeah.

Q Then, if we read forward to page 496, about two thirds of the way down that page, there is a recommendation which is:

“That the Funding Conditions include a provision that all of the Recommendations are to be implemented by the Board, to the extent not already dealt with, and that SFT at the pre OJEU KSR, consider the progress which the Board has made to that time and at the Pre ITPD KSR consider whether the Recommendations have been satisfactorily addressed by the development of the Reference Design and the Authority’s requirements and as reflected in the ITPD documentation.”

The reference there to “Funding Conditions”, what does that refer to?

A That would have been the letter from March 2011 that we reviewed earlier on, I would imagine. That funding conditions letter would then flow through to, I think, the approvals that were given by the Scottish Government Health Directorate in that they might refine those conditions into a specific letter or condition relating to this individual project.

Q If we go forward to page 503, do we see there an annex headed up “Recommendations of the Project Review” and columns listing recommendations, then at the right-hand side: “SFT Comment at 12 January 2012”?

A Yeah.

Q You see that? Then if you go to page 511, and if you just scroll over from page 511 into 512, do we see there the recommendations relating to the reference design?

A Uh-huh.

Q Then a column at the right-hand side to that says: “SFT to review the Authority’s Construction Requirements at the Pre ITPD KSR and obtain confirmation from the Board that this issue has been satisfactorily addressed.”

So do we understand from that that one of the things the SFT was

going to do at the pre-ITPD Key Stage Review was to review the health board's construction requirements?

A In relation to this recommendation, yes, and to confirm that the board had this-- that that recommendation had been satisfactorily addressed.

Q As you fairly point out, the recommendations relate to specific points on the reference design. Was the SFT's review of the construction requirements go beyond that or was it to be confined only to those issues?

A I wouldn't expect us to do anything beyond reviewing the recommendations that the Atkins report had made; and I would expect us to do that at the level of a Key Stage Review through a combination of seeking assurance from the board, and potentially reviewing the individual documents.

Q Can we go please to bundle 5, page 61? Now, this is a page with two emails on it at the bottom. One is from a Thomas Brady at Davis Langdon to various individuals, none of whom, as I understand it, are at the SFT, so you may not have seen this before. Do you recall having seen it before?

A I think I've looked at it as part of this bundle.

Q Okay. Well, the email is headed up "NDAP review", and it says:

"All
The reference design team have been trying to ascertain, for some time now, if we need to complete a NDAP (NHS Design Assessment Procedure) review of the scheme.

David was advised that a meeting was to be held on 20th Jan between SFT / HfS / A+DS / Scottish government to discuss if the NDAP review procedure was a requirement for NPD Contracts.

Can either of you raise this with BC..."

Which I think may be a reference to Brian Currie, the project director at NHSL----

A That seems reasonable.

Q -- "... to allow the date to be arranged." Then the email above says:

"Meeting did take place on 20th January and I spoke to

Peter Henderson... at HFS on 23rd January. No clear way forward came out of the meeting but he did say that everyone present appreciated that RHSC/DCN project had been reviewed "to death".

I was unable to get a definitive answer from him before the last RDT meeting..."

Which I think is probably reference design team meeting.

"... as he wanted to discuss further with SFT. I think it now falls to NHSL, probably Brian, to move this forward with SFT. I imagine he's reluctant to raise the issue in case it prompts a further round of review meetings."

Q Were you aware of uncertainty or debate about whether an NDAP was required for the project?

A No.

Q Were you aware of a view that the project had been "reviewed to death" as it is put there?

A I wasn't aware of it, you

know-- the sense that it had been reviewed to death, but you will recall the discussion of the interaction between the Key Stage Review and the gateway review process. So, I could understand why the project team might feel that they have been subject to a number of reviews, but all of the reviews had particular purposes that were designed to, in the end, help meet the requirements of the project and deliver value for money and a workable project.

Q The email finishes up with a line that that:

"I think it now falls to NHSL ... to move this forward with SFT."

Do you know if the matter was taken up with the SFT?

A We don't have any recollection of it having been further taken up with SFT.

Q Was it a matter for the SFT to decide whether or not an NDAP was to take place?

A No.

Q If it was not a matter for the SFT, do you know for whom it was a matter?

A I believe that would have been the Scottish Government

because they were the party that, as we've looked at the documentation before, wrote to health boards asking them to do those sorts of reviews under specific sets of circumstances.

Q Does it appear from this that there was some confusion about the roles of the different parties in relation to an NPD?

A It does.

Q Could you go, please, to bundle 5, page 117? Again, these are emails to which you are not a party, so you may not have seen them before, Mr Reekie. The bottom one is from a David Stillie at Mott MacDonald to Brian Currie, copied to various others. The subject, again, "NDAP Review," the date 2 May 2012.

"Brian

Further to yesterday's discussion I have spoken with Peter Henderson at HFS who confirmed that the requirement for NDAP review on NPD projects has still to be discussed with SFT. However, he was of the opinion, given the review by Atkins at OBC stage, there is no likelihood of further review until at

least FBC stage and even that at the moment is doubtful.

He agreed to take this up with the SFT and A&DS but the focus at the moment is on the Community Care Facilities and the NPD Projects have not featured on recent agendas."

Can you comment on what Mr Stillie says there about the involvement of the SFT?

A Much the same as my previous comment, that we were not aware of any further discussion with ourselves and it wouldn't have been a matter for us to decide about the NDAP review in relation to NPD projects. Had anyone asked us about that, we would have directed them towards Scottish Government.

Q Okay. What is recorded in this email, is that an opinion was expressed that, because the review by Atkins had taken place, there was no likelihood of further review until later on, and that opinion is being expressed in the context of a question about whether an NDAP review was required. Do you have any view on the extent to which the fact that Atkins

had carried out their review had any bearing on the need for an NDAP review?

A From what I understand of the scope of an NDAP review, it's very different from the scope of the Atkins review, so I would not be of the opinion that because Atkins had undertaken their review that it would affect whether an NDAP review should or shouldn't be done.

Q Could we go, please, to bundle 3, volume 2 at page 889? On the bottom half of that page, there is an email from Donna Stevenson to Colin Proctor, dated 26 April 2012. Again, you are not a party, but this is an exchange between two people in the SFT.

A Yes.

Q If you just go down to paragraph 8 of Stevenson's email at page 890, to put this in context, she says at the outset of her email:

"Colin

As arranged I note below the key issues which we discussed at our meeting with Peter and Andrew yesterday. I have left a copy of the plans on your seat for the meeting at

10am."

It is not clear whether that Peter is you or Peter Henderson. Do you know whether it was you?

A No, but, given the context that this has been an internal set of correspondence and discussion, it might well have been me.

Q Okay. If we scroll back down to paragraph 8, the issue that she has noted here is:

"Has NHSL now addressed all of the recommendations of the Project Review as brought out in the Atkins report. Bearing in mind that the Reference Design team will be disbanded at the issue of the OJEU? SFT will look to NHSL to confirm that these have been implemented at the Pre ITPD KSR."

There is a reference there to the disbanding of the reference design team. What do you understand about that?

A That at the point that the project went into procurement, the reference design would have been completed as far as it was going to be

taken, so I would imagine that NHS Lothian decided that they no longer needed the services of the designers who had been developing that reference design.

Q Going up to paragraph 6, it says:

“Given the departure of the reference design team, is NHSL satisfied that it has sufficient technical support to evaluate the bids and the sufficient information is available to enable that process to be carried through effectively?”

What is the issue being referred to there?

A That if NHS Lothian were going to disband the team, which would have been the technical people involved in developing the design, once they got further through the procurement and had technical proposals made back to them by the bidders, that in some way they would need to have the capacity and capability to review those tenders as part of the procurement process.

So it would have been necessary for them still to have some people with that right technical-- that level of

technical understanding on the team somewhere; that needn't necessarily have been from the same people that did the reference design, but it seems relevant that, as some technical people were moving on or being disbanded, that it was important that NHS Lothian maintained some element of technical capability in order to be able to assess the bids that came back.

Q Then returning again to paragraph 8, Ms Stevenson's final sentence is: "NHSL should note that SFT is not signing off on the design." What do you understand her to be referring to there?

A That's the fact that we had the design review undertaken for us by Atkins to talk about-- to do the job it was intended to do on value for money, the overall size and scope of the project, and that the recommendations in that report had bearing on the ongoing design and the reference design, but just because we were accepting that the recommendations had been undertaken does not mean that SFT was in any way capable of or did sign off or approve the design in any way.

Q Does the fact that she saw fit to make that point explicitly suggest that there was some room for doubt and uncertainty about that point?

A I think it suggests that she's a good lawyer by training.

Q Could we go please to volume 3-- sorry, bundle 3, volume 2, page 896. Do we see there that this is headed up: "ACTION NOTES", date: 11 May 2012, and just above that: "PROJECT STEALING BOARD #13"?

THE CHAIR: Sorry, my fault, Mr McClelland. The page?

MR MCCLELLAND: Page 896, my Lord.

THE CHAIR: Thank you.

MR MCCLELLAND: Then, amongst the list of attendees, there are various names that will be familiar to people who have sat through these hearings, but one of them is you, so----

A Yeah.

Q Do we take this, then, as minutes of a meeting of the project steering board on 11 May 2012.

A We do.

Q If we go to page 897, we see there: "Approach to Reference Design: Paper as tabled was approved."

A Mm-hm.

Q So do you recall that meeting approving a paper about the approach to be taken on the project towards the reference design?

A I don't recall it but I don't doubt the minute.

Q If we go, please, to page 892. This is a paper to that meeting of the project steering board headed "REFERENCE DESIGN". If you scroll down to page 895, we see that it has been prepared by Brian Currie, the project director. Do you recall that paper, Mr Reekie?

A I'm afraid I don't.

Q Perhaps it is possible, then, to take this a very general level. Did the SFT approve the approach taken to the reference design which had been devised for and on behalf of NHS Lothian?

A I wouldn't have said that SFT approved the approach to reference design. I know that we were involved in discussing it, and I can see there that the project board, of which-- on which I was at the meeting, did approve it, but I wouldn't say that SFT approved the approach to the reference design.

Q This comes back to a question we asked earlier about the role of the SFT at these board meetings. Do you recall if you were involved in a vote about whether to approve that paper?

A I don't recall any votes at project board meetings.

Q If you had any difficulty with the approach proposed, would you

have raised it at that meeting?

A I believe I would.

Q Do you recall doing that?

A I have no recollection of the meeting.

Q Bear with me a moment, please, Mr Reekie. Of course, it is not the intention at this hearing of the Inquiry to consider what the ITPD documents actually said or the detailed state of the reference design at that point in time; those are matters which will be addressed at future hearings. I would like, if I can, to ask you about your understanding of what was intended at the time that the steering board made that decision about the reference design. It may be you don't recall the meeting itself, but I'll put these questions to you anyway. Were you aware at that stage that NHS technical guidance on ventilation existed?

A Yes, I'd say, yeah.

Q There was some uncertainty, but just at a general level.

A Well, I know that-- I've known that the NHS has a suite of technical guidance in relation to engineering systems and would have expected ventilation to be one of those pieces of guidance. I wasn't aware of the detail of what it said.

Q Okay. Were you aware

of any intention by NHSL to derogate or depart from or to fail to comply with any such guidance?

A No.

Q Were you aware of any intention by NHSL to require bidders to derogate or depart from any such guidance?

A No.

Q If there had been any such intention, would you expect that you or somebody else at the SFT would have been made aware of it?

A Not necessarily, no.

Q If I could then turn to the question of the environmental matrix, and again I am just going to ask you at the level of generality rather than the specifics: are you familiar with the term "environmental matrix"?

A I-- In the context of this project, I've seen it-- discussed it, yes.

Q To what extent is it a term which you recognise as a concept from the from PFI and PPP projects generally?

A My experience of PFI and PPP projects has been on the financial and commercial side, not on the technical side, so it's not something of which I'm specifically aware.

Q Have you ever come across the term "environmental matrix" before outside of this project?

A Not that I recall, but I wouldn't-- it's not within my general scope of work.

THE CHAIR: Just to understand the question and answer, I take it, Mr McClelland, that what you are putting to Mr Reekie is whether he is aware of it as a term of art; in other words, something having a special and well recognised meaning.

MR MCCLELLAND: Yes, my Lord. That is what I was attempting to put to Mr Reekie.

THE CHAIR: I am sure you succeeded very well, but just want to make sure I'm keeping up.

MR MCCLELLAND: Yes. I am obliged, my Lord. To be clear, that was the intent of my question. Are you aware of it as a term of art in the context of PFI and PPP projects?

A No.

Q One final point, Mr Reekie, and it concerns something said in your statement. If you go, first of all, to paragraph 129, which is on page 278 of the statement bundle. You refer there to a draft invitation to participate in dialogue volume 1. You say: "... (we have a copy of (Revision) K but not the final version of the ITDP)..." Then there is a document reference given but that document reference appears to be to a "Revision A" whereas what you refer to

in your statement is a "Revision K". Can I just clarify that the document you are referring to there was a draft of the ITPD rather than the ITPD actually issued to the bidders?

A I'm aware that we had a copy, and the document that I was referring to at the time – I was reviewing this to make my statement – was Revision K. I guess we referred to that because it was Revision K. I don't know whether that became the final version or whether there was another version after the Revision K that became the final version. All I know is that I had K and I couldn't be sure that it was the final version.

Q Yes. Okay----

A I'm not the document controller, though, unfortunately, so I need to be a little bit careful what I say on version control.

Q Okay. Then moving on, at paragraph 147, which is at page 290 of the bundle, what you see there is:

"In the version of the ITPD ((Revision) K) that we have, the list of Deliverables in Appendix E that were stated to be mandatory included the environmental matrix even though it was not included within the definition

of Operational
Functionality.”

Now, the preceding paragraphs all put that in context and explain it, but all I want to clarify at this stage is that you are referring to the draft of the ITPD that the SFT had, and that you are not purporting in your statement give evidence about what the ITDP actually issued to bidders said about that subject.

A I'm not. I'm merely saying what the Revision K that I was looking at when I made that statement said.

MR MCCLELLAND: Thank you, Mr Reekie. I have no more questions for you. My Lord, as previously, I have attempted to give effect to lines of questioning identified by core participants, but my Lordship may wish to check that I have done that to their satisfaction.

THE CHAIR: Does anything arise from the questioning of Mr Reekie that anyone would wish to draw to our attention? Right, I take that as a negative. Thank you. Thank you very much, Mr Reekie. Thank you for coming and giving your evidence, but it is now concluded, at least for this stage, and you are free to go. Thank you very much, Mr Reekie.

THE WITNESS: Thank you.

(The witness withdrew)

THE CHAIR: Now we have one witness for tomorrow, but perhaps Mr MacGregor is taking that witness.

MR MCCLELLAND: Mr MacGregor tomorrow, my Lord.

THE CHAIR: Right, and ten o'clock as we understand it.

MR MCCLELLAND: Yes, indeed.

THE CHAIR: Well, thank you very much for your attendance and we will see each other at ten o'clock tomorrow. Thank you very much.

15:20

(Session ends)