



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
25 April 2023**

Day 1
Tuesday 25 April 2023
Iain Graham

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14:00

THE CHAIR: Before we begin, Mr MacGregor drew my attention to the fact that in order to take instructions, legal representatives might find it convenient if we allow, let us say, five minutes after the witness has concluded. I now appreciate, having been reminded by Mr MacGregor, that some legal representatives will be dependent on their mobile phone or a device to check with those instructing them, so I would propose that after Mr MacGregor has finished his questioning, we will rise for five minutes to allow legal representatives to communicate or consider as they may wish to do, but we now have Mr Graham. Good afternoon, Mr Graham. As you appreciate, you are shortly going to be asked some questions by Mr MacGregor, who is the Deputy Counsel to the Inquiry but, first of all, I understand you are prepared to take the oath. If you would just remain seated where you are.

Mr Iain Graham

Sworn

THE CHAIR: Thank you very much. Now, we may or may not take the whole of the afternoon, but could I

just say that if you want to take a break for any reason whatsoever at any time, just indicate that and we will take a break. You will feel that you are in control, as it were. Now, Mr MacGregor.

MR MACGREGOR: Thank you.

Questioned by Mr MacGregor

KC

Q You are Iain Graham. Is that correct?

A That's correct.

Q You have provided a witness statement to the Inquiry to cover the procurement stages of the Royal Hospital for Children and Young People and the Department of Clinical Neurosciences.

A Yes.

Q Thank you. We do not need to go to it at the minute, but for anyone following electronically it is in bundle 13, pages 167 to 186. You should have a paper copy available to you, Mr Graham. The content of that statement will form part of your evidence to Inquiry. If you want to refer to your statement at any time, please do. Just let me know. You have obviously previously provided a statement and given evidence at the previous hearing of the Inquiry in May

2022, and within that statement you set out your work for the NHS as a director of capital planning projects. So, effectively, for the purposes of today, I will take it as read, effectively, your background qualifications and involvement in the project, unless there is anything that you feel that you would want to update the Inquiry on at this stage.

A Nothing's changed.

Q Okay. Thank you. So, I think if we then just begin with the procurement stage of the project, you tell us at paragraph 5 of your statement that competitive dialogue was utilised for the project. For those of us that do not work in that sphere, what do you mean by competitive dialogue? What is it and why was it appropriate for the project?

A It was a way of ensuring that there's an open competition for the work. Competitive dialogue refers to the production of a tender document, and then a phase of interaction with any bidders that are interested in the project and have got through the first round of pre-qualification. So, we have a series of dialogue sessions. Thereafter, a tender is submitted and that's what's finally evaluated.

Q Is that a process of,

effectively, submissions being made, meetings taking place, and feedback going back to interested bidders?

A Yeah, a very, very structured approach, but it gives the bidders opportunities to ask questions and for them to develop their proposals.

Q Would it be an oversimplification to say it is a two-way dialogue to try to make sure that that tenderers understand what the procuring authority wants and, equally, an opportunity for procuring authorities to interrogate potential solutions?

A Yes.

Q Thank you. You explain at paragraph 7 of your statement that there was a 60/40 split between price and quality – so, 60 per cent weighting for price, 40 per cent weighting for quality. Now, you described that as a requirement of the Scottish Futures Trust. However, as I understand it, the Inquiry may hear evidence from Scottish Futures Trust witnesses who indicate that they did not think it was a requirement. It was a standard procedure, but it could be departed from. Can you just explain your understanding of why it was a requirement for the project?

A In previous capitally funded projects we did it the other way

around, which was 40 per cent price/60 per cent quality, so it was a surprise to see that as part of the conditions for PD, that it was the other way around. We did engage with SFT to say, "This doesn't work for health," and, for us, we would prefer more score and more focus on the quality, but were told, in certain terms, that the focus was the economics of the tendering process.

Q Again, just to make sure that I am understanding you, is it correct in assuming that your position is that, effectively, the 60/40 split on price and quality was imposed on NHS Lothian?

A Yes.

Q It was not something that they would have chosen?

A It was not something we would have chosen.

Q So, in terms of trying to address the quality aspect, how was quality going to be assessed and scored during the procurement exercise?

A So, in order to try and ensure that we could maximise the benefit of the 40 per cent, we set pass-fail thresholds for the majority of areas and the percentage, the 40 per cent, was then allowed to apply to areas where bidders would differentiate

where there was a quality improvement threshold above base standards, so it became a two-stage process.

Q So, certain issues on a pass-fail basis, so there is effectively a base level of quality baked into all tenders. Is that correct?

A Yes.

Q Then, once you are through that base level, there is then a separate scoring exercise for the 40 per cent.

A That, in itself, if a very poor-quality score was obtained, that would fail as well.

Q Thank you. Now, within your statement you mentioned that what, really, NHS Lothian was aiming at was compliance with and delivery of the board construction requirements. What were the board construction requirements?

A They were our output specification, as it's called: the general requirements that we had where there were specific guidances to be met, and because we had a history with the project and had developed a reference design, there were elements of that brought in as well. The main focus was to get an operational and working hospital. That was our requirements around it.

Q The board construction requirements, were they a pass-fail element or were they scored element?

A The board construction requirements were our part that goes out to the bidders and each of the bidders would respond to that with what was called project co-proposals, and that was their response to that and both of those formed part of the contract.

Q In terms of the assessment of compliance with the board construction requirements, was that pass-fail, or is that part of the 60/40 split?

A It was part of the overall scoring package because the elements of that would form part of the scoring matrix.

Q Thank you. You mentioned at paragraphs 11 and 12 of your statement that you were involved in certain of the workshops for the drafting of the evaluation criteria. Can you just explain to us what was happening at that stage? What is happening in the workshops and what is the output of them?

A Over a period of what was probably weeks, we were trying to get – I suppose in simple terms – scores that added up to the 40 per cent, but spread over all the areas of

interest where we had that design, development, innovation elements. So, they fell into three categories: strategic management, which was around the special purpose vehicle and the management approach of the organisation; design and construction; and facilities management. So, we ended up with individual questions against each of those categories that were then given a percentage, and part of the workshop was working out the percentage, but also the wording that we would use to get the best out of the responses from bidders.

Q We will come on and look at some of the percentages but, in terms of mechanical and electrical engineering, if we look at that in isolation in the scored element, it comes out at around about 1 per cent. Why was that scoring allocated to mechanical and electrical engineering?

A The principal reason that a lot of the engineering and some of the other compliance issues were scored relatively low was that there was a whole raft of guidance and requirements sitting behind those, which meant that the pass-fail threshold was taking precedent there and the percentage points applied were then just for the refinement of that design process.

Q We will look at the procurement documents in greater detail in a moment but, just for the moment, if we could look within bundle 2 to page 1005, we see a whole host of criteria there. If we perhaps just look at C8, first of all, which is “Clarity, robustness and quality of M&E engineering design proposals.” We see the quality weighting there is 1.06. Do you see that?

A Yes.

Q Above that we have got C7, which is, “Clarity, robustness and quality of interior design proposals,” and the quality evaluation criteria there is 2.6, so it is more than double. Now, if you look to that in isolation it might look like the procuring authority was more interested in how something looked than how it functioned, but am I correct in saying that would be an oversimplification because you are explaining that there was the pass-fail criteria that had a base level of quality for everything that was then going to be further assessed at C8.

A Yes, and more subjectivity around the area with a higher score.

Q In relation to the preparation of the tender documents themselves, were you involved in that aspect of the procurement exercise:

the drafting and the input and the reviewing?

A I was involved as part of the wider project team. I looked principally at the strategic management and the legal and commercial side of things, but part of the team that was overseeing it and ensuring that everything fitted together.

Q So, again, just so I understand, there is obviously a team approach. You say you were leading in the strategic management. You were possibly at meetings where other aspects are being discussed, but they would not be your focus.

A My focus wasn't on the technical areas.

Q Yes. So, in terms of decisions like including an Environmental Matrix within the procurement documents, the technical context of the board construction requirements, are you able to speak to those at a level of generality as opposed to a level of detail?

A Yes, there were certain elements that went into detail, but mostly at the generality level.

Q Yes. So, I have got some questions I want to ask you but if, at any point, you think, “I just don't know” or “I'm not the right person to

answer,” you should just feel free to say that. So, one issue, obviously, that the Inquiry is interested in is the inclusion of an Environmental Matrix within documents to go out to prospective tenderers. Do you know why an Environmental Matrix was included?

A At the generality level, it was felt that it was a way to put in a table all the elements of the engineering into one place, rather than have multiple room data sheets that wouldn't necessarily bring it all together for ease of reference.

Q Do you know, is that decision that NHS Lothian took in isolation or is that something that was recommend to NHS Lothian technically?

A It was certainly part of discussions where the technical advisors were giving us their experience, and my recollection is that it came from the technical advisors' experience.

Q Just to be clear, who are you talking about in terms of technical advisors?

A It would have been David Langdon, Mott MacDonald at the time. Certainly, Mott MacDonald were the technical advisors appointed at the procurement.

Q Thank you. Now, the status of the Environmental Matrix, both in procurement documents and in the contract, is a controversial issue between core participants but at this stage what I would be interested in is on the NHS Lothian side, what was the intention in terms of the status of the Environmental Matrix? Was it meant to be a prescriptive, mandatory set of requirements or was it simply something provided as a guide that could not be relied on. What was the intention?

A It was intended to be information that had been gathered that would enable the project bidders to have a starting place to look into the development of their design. It was disclosed data. It wasn't our prescriptive specification of space, and each of the-- You know, the obvious disassociation with our specification was that the contractors, the bidders, were to come forward with a design which would have different rooms on it than was in our Environmental Matrix which had been brought forward from a previous iteration. The plus point for us was to save engaging with a lot of clinical time, reviewing lots of information. It gave us something to work from.

Q Was that always the plan

or is that thinking that developed over time?

A I think it possibly developed over time. I couldn't honestly put a pin in the timeline to say that that was when the decision was. That's what went out the door.

Q Yes. No, that is helpful. Perhaps just to assist in jogging your memory, if I can ask you to look at bundle 2 at page 605, please. Bundle 2, page 605. This is a document called "RHSC + DCN – Approach to Reference Design, May 2012" and at the bottom it seems to be a Mott MacDonald document. Is this a document that you have seen before?

A Yes.

Q Can you just explain at a general level what this document was and the context in which you saw it around about May 2012?

A I believe the start of this was to help to explain to our project team and Project Steering Board what the reference design was, but also a way of capturing and discussing with Scottish Futures Trust how to maximise the benefit of all the work that had been done on the children's hospital without effectively starting from square one again, and that's where we ended up, with a reference design output.

Q If we look to page 610, which is the "Executive Summary" of that document, we see right at the start:

"This report builds upon the discussions at the Project Board in July 2011 regarding procurement options for the RHSC + DCN NPD Project where it was agreed that a Reference Design would be developed to mandate elements as they relate to clinical functionality which NHSL would be required to sign off in any event under the Project Agreement."

Do you see that?

A Yeah.

Q Again, we see here this reference to the "clinical functionality." Can you just explain your understanding of what that meant?

A Well, clinical functionality is effectively how the healthcare spaces were to be used and ensure that the building could provide the functionality needed to undertake operations, treatments, etc. When we actually went to procurement, it changed from clinical functionality to operational functionality to ensure that we were approaching the service spaces, the facility spaces in the same way, and also to emphasise the

adjacencies between departments as much as within the departments, which is where the clinical functionality comes from.

Q So, again, just to be clear, your understanding at the time is that what is mandated is what you have explained as being operational functionality.

A That's what our focus was.

Q Still within page 610, if we look below the bullet point, we see it states, "The Reference Design comprises Mandatory and Non-mandatory elements." Do you see that?

A Yes.

Q Again, just to be clear, what was your understanding of what the mandatory elements were?

A This would've been-- This was part of the guidance to-- internal guidance. This wasn't a document for part of the procurement going out to bidders but to help advise us, and it was primarily trying to explain that "mandatory" meant that the bidders had to provide or deliver and "non-mandatory" were what you might call enhancements – improvements or things that might well be omitted by the bidder as part of that process.

Q Then if we look to the bottom paragraph on page 610, it states:

"It is recognised that Bidders are likely to suggest revisiting the Reference Design during the Competitive Dialogue in order to differentiate themselves from other Bidders. NHSL will resist any such suggestions on the basis that the Reference Design represents the operational and clinical solution agreed by NHSL and Stakeholders."

A That was to emphasise to our internal stakeholders that all their positions that they'd worked hard to get to a common understanding on, as a project team, we would be standing up for that position.

Q Over the page onto page 611, the paragraph just above the bullet points begins:

"The release of the Reference Design Team to join bidding teams requires both NHSL and Technical Advisory Team to ensure that the Reference Design is fully compliant and fully understood in preparation for procurement commencing."

Do you see that?

A Yes.

Q So, the reference design team were going to be released at a certain point in the project. Did you have any concerns in relation to that?

A We were very mindful that there will be inherent knowledge within the team that had provided the reference design and could that be seen as providing an advantage to one party if they joined a bidding team, which was why effectively a line was drawn in terms of time between the reference design team and the bidding team.

Q If we could look on to page 625, which has the subheading at the bottom, "Room Information." Do you see that? Paragraph 4.3, it states, "The specific room requirements (the '**Room Information**') will be detailed in a combination of..." and then there's various documents set out: the first bullet point, "The General Requirements"; secondly, "The Clinical Output Specifications"; over the page onto page 626, "The Adjacency Matrix"; and then the fourth bullet point, "The Environmental Matrix (appendix B to the BCRs)." Do you see that?

A Yeah.

Q So, the room information is going to include the Environmental

Matrix.

A At that point in time, yeah.

Q Indeed, and just to complete that, on page 626 we see highlighted text in the next box which states:

"Similarly the Environmental Matrix specifies parameters and criteria that need to be met and for which the Bidders will be required to advise the levels that will be achieved in their particular design."

Do you see that?

A Yeah.

Q Again, it is my understanding that at this point in time that was going to be a fixed requirement, but you are telling us that thinking on the part of NHSL moved on?

A Yeah, I think "the Environmental Matrix specifies the parameters and criteria," so to an extent that's the headings, and "the Bidders are required to advise the levels that they will achieve in their design" is their response to those headings.

Q Within your statement at paragraph 15, you describe the Environmental Matrix as "disclosable data" and you state that "it was not a

warranted document.” If you wanted to look up it, it is bundle 13, page 170, but it is really just to try and understand what are you talking about there? What do you mean by “disclosable data” and it not being a warranted document?

A There was a number of areas of information that we had gained as part of the development of the project that, because time had moved on or the design had developed out of sync with it, there was information that we would provide to the bidders, but we wouldn't say, “That's 100 per cent.” They had to satisfy themselves on it. The clear obvious one that was disclosable data and not warranted was the site investigation information because we didn't know where the builder would put all the foundations, taking a guess and dug certain trial pits, etc. The same was in terms of the Environmental Matrix. It was our position that we understood it at the time based on a schedule that we had at that time, but we couldn't warrant it.

Q I think one question that the Inquiry would be interested in your views on is if the intention is that the Environmental Matrix cannot be relied upon, what is the point in providing it to bidders?

A Yeah, very good point. I think that earlier section that you highlighted was, “These are the areas that we will expect to see the bidders coming back with to respond to explain what their proposals are for the various departments and the various engineering criteria on that basis.”

Q Maybe we can just look at some of the documents that went out to the prospective tenderers. If we could begin firstly in bundle 4, page 132. So, this is the Environmental Matrix itself and we are within the Guidance Notes section.

A Mm-hmm.

Q Thank you. It is helpful if you can zoom in because it is small text. I will read it out just so there is no difficulty. So, page 132, Guidance Note 1:

“This workbook is prepared for the Reference Design Stage as an easier reference tool to replace ADB RDS M&E Sheets for the Environmental Criteria elements as described on these sheets.”

Now, can you help us with-- There is a reference here to it being prepared for the reference design stage. When would the reference design stage finish and what would come after the reference design

stage?

A So, the reference design finished before procurement started, and that was the time difference to allow the team to go off and work for bidders. So, I can't think of the exact number of weeks or months between it, but it finished in advance.

Q It says that it is prepared instead of ADB RDS M&E sheets. Why were room data sheets not being prepared? Do you know why that was the case?

A Well, at the end of the contract or as part of the project agreement contract, there will be room data sheets provided by the builder as the record of that. Sorry, is there any chance that that could go back on the screen again? Sorry, just----

Q Yes.

A Thank you. Sorry, it went there.

Q No, sorry.

A So-- Sorry, I lost my thread there because the screen went blank. Sorry, it's myself that's switching it off with the paper, I think. Sorry, I've got-- I've blanked.

Q I think I was just asking you why a decision was taken not to have room data sheets for the procurement stage.

A The room data sheets

would be provided at the end of the project as part of the contract position, so there were going to be room data sheets. At that point, the schedule of accommodation, the list of rooms and their adjacencies was part of the reference design and we could fulfil that in terms of the front part of the room data sheets. But the engineering part that's provided by the Environmental Matrix, because it's very complicated to do that on the Activity Database software, it's not an easy thing to do several hundred rooms on that. It's easier in the matrix.

Q Thank you. The next document I would ask to have in front of you, please, is in bundle 2 and it begins at page 773, so this is the Invitation to Participate in Dialogue, Volume 3. So, bundle 2, page 773. Do you see that?

A Yeah.

Q Is this-- Effectively, Volume 3 goes out as the Invitation to Participate in Dialogue. What was your understanding of this document?

A So, this is the Board Construction Requirements section, so that clinical/operational functionality and the expectations of the board, the output specification for the contractor to deliver against.

Q So, if we look on to page

781, we see----

A I'm presuming this is the version that was actually issued to bidders.

Q It is.

A Yeah.

Q If we look on to page 781, please, we see the definition of "Environmental Matrix." It says:

"Means the Environmental Matrix, which details the room environmental condition requirements of the Board required within each department / unit / space / area. The title is Reference Design Envisaged Solution – RHSC / DCN Environmental Matrix version third issue as set out in Appendix C of this Section 3 (*Board's Construction Requirements*) of Schedule Part 6 (*Construction Matters*) (as varied, amended or supplemented from time to time in accordance with the Project Agreement)."

Do you see that?

A Yes.

Q If the intention was that bidders had to create their own Environmental Matrix, why is the defined term "Environmental Matrix" referring to a very specific document included as a schedule?

A I can't recall.

Q If we look on at page 791, please, do you see a reference to "Project Wide Requirements"? I will not read everything out, but perhaps just look two paragraphs up from "2.1 Approach to Design" – do you see a paragraph beginning, "Project Co shall ensure"?

A Yes.

Q So, in the project wide requirements, what prospective tenderers are being told and it includes this:

"Project Co shall ensure that the design of the Facilities draws upon and endeavours to further develop, improve and exceed current best practice (and Good Industry Practice) standards achieved in other similar schemes, and meets the requirements of prospective patient groups, staff and the public."

Do you see that?

A Yes.

Q Was that really the overriding requirement that NHS Lothian wanted to achieve throughout this procurement exercise?

A Best practice, absolutely.

Q If at this stage of issuing the tender document you had been

told that you were going to get a solution that did not comply with relevant published guidance, what would your reaction have been at the meetings you were attending?

A We would-- I would certainly anticipate that that would be flagged if there was any anomalies or any challenges and that there were differences between multiple areas of guidance and lots of new guidance coming out that will ask questions about, "How did this apply?", etc.

Q So, if we look on to page 794, please, do you see paragraph 2.3, "NHS Requirements"?

A Mm-hm.

Q So, it states:

"In addition to the standards listed in paragraph 2.4 of this Sub-Section C, unless the Board has expressed elsewhere in the Board's Construction Requirements, a specific and different requirement, the Facilities shall comply with but not be limited to the provisions of the NHS Requirements as the same may be amended from time to time..."

Do you see that?

A Yes.

Q Then, at subparagraph (h), there is a reference to "HTM and

SHTM."

A That's correct.

Q Why was there the wording "unless the Board has expressed elsewhere in the Board's Construction Requirements"? Was there any potential for NHS Lothian to want a standard that would be lower or different to HTMs or SHTM?

A No, I think the expectation would be that there were perhaps higher standards than the SHTMs, HTMs or indeed any of the other guidance rather than diminution in specification.

Q If we then look on to page 799, please, do you see the subheading, "2.5 Hierarchy of Standards"?

A Yeah.

Q Again, I will not read it all out, but if we perhaps skip to the third paragraph beginning, "Where there is a conflict." Do you see that?

A Yeah.

Q It states:

"Where there is a conflict of interest resulting from the use of the standards / advice Project Co shall involve the Board in the decision making process. The Board shall be entitled to make the final decision regarding the standards / advice to be used for

the Facilities including any contradictions that may arise between items (1) and (2) above.”

Do you see that?

A Yes.

Q If we skip the next paragraph, it also says:

“In certain instances, NHS publications include a number of options or alternative solutions. Where the Board has defined their preference specifically, Project Co shall adopt these preferences as a mandatory requirement. Where no Board preference is stated, Project Co shall engage the Board in the design development process to seek and incorporate the Board's preference within the Facilities.”

Can you just explain, why is that hierarchy of standards being included and what is the intention behind it on the NHS Lothian side?

A The intention was to recognise that building a hospital such as this was very complex and there's multiple levels of guidance and requirements that designers and contractors have to meet, and occasionally elements of the guidance may conflict between energy efficiency and infection control, for example. So,

it's a really important requirement to have that there is a hierarchy which sets at the top level of best practice guidance and then comes down the way from that, and if there is any queries or decisions, it's effectively flagged as a concern and a decision has to be made so that it's formalised as part of the project.

Q If we look on to page 814, please, page 814 towards the bottom, do you see, “3.6.3 Room Data Sheets”?

A Yeah.

Q It is:

“Project Co shall provide Facilities that, as a minimum, meet all the requirements specified in the Room Data Sheets included in this Schedule Part 6 Section 6. Room Data Sheets not included in Schedule 6 Part 6 Section 6 shall be provided through RDD.

Project Co shall provide fully developed Room Data Sheets submitted to the Board as Reviewable Design Data for review by the Board in accordance with Schedule Part 8 (Review Procedure) and clause 12.6 of the Project Agreement.” Then over the page, page 815:

“As part of the

commissioning process, Project Co shall be responsible for demonstrating compliance with the requirements included within the Room Data Sheets.”

Then the final paragraph:

“For the avoidance of doubt, Project Co shall provide mechanical ventilation, comfort cooling and air conditioning to suit the functional requirements of the rooms in the Facilities. Irrespective of the ventilation requirements in Room Data Sheets, where rooms are clearly intended to be occupied and / or become internal spaces during design development and natural ventilation is not possible, mechanical ventilation and / or extract ventilation will be provided as appropriate to suit the function of the space.”

Do you see that?

A Yeah.

Q So, why was that reference included in relation to room data sheets? What was the thinking and purpose behind it?

A My recollection is that this was a reference to the operational phase as much as the construction phase to ensure that ventilation is maintained and provided throughout.

That would be my recollection of that paragraph.

Q If we could look on to page 839, please, you should see a subheading “5.2 Infection Prevention & Control.”

A Yeah.

Q If we could look to the second full paragraph, it states:

“Project Co shall ensure all aspects of the Facilities allow for the control and management of any outbreak and/or spread of infectious diseases in accordance with the following...”

Then if we look to (f), do you see “Ventilation in Healthcare Premises (SHTM 03-01)”?

A Yeah.

Q In terms of the board's thinking and intention, was there any solution that could be provided by a tenderer that did not comply with SHTM 03-01 that would still be able to manage an outbreak or spread of infection in accordance with that guidance?

A No(? 01:11:34).

Q If we could look on to page 873, please, do you see the section at the end entitled, “Mechanical & Electrical Engineering Requirements”?

A Yeah.

Q It states: "Project Co shall provide the Works to comply with the Environmental Matrix." Do you see that?

A Yeah.

Q If the Environmental Matrix that was provided was just a guide, it was not warranted, it could not be relied upon, why is the ITPD telling prospective bidders that they have to comply with the Environmental Matrix?

A Because at the time of the contract being signed at financial close, there would be an Environmental Matrix, capital "E", capital "M", you know, a defined document that would be-- would have come from the bidder and been signed off by us at that point.

Q Just at this stage, if we think back, it's capital "E", capital "M", and when we look back, we looked at the very start at the defined term "Environmental Matrix," that did not say, "The document will be provided."

A That should have been a lowercase on that page.

Q So that should have been lowercase?

A Not this one, the other one.

Q So, thinking back to the defined term we looked at, which said

effectively, "See the document in Schedule C," are you telling us that was a mistake?

A No, I think the reference in that to "Environmental Matrix" was correct. That ties in. The expanded reference to a specific document, that doesn't seem to chime with this.

Q Okay.

THE CHAIR: Sorry, I am not quite sure where we have got to.

MR MACGREGOR: So, we are at page 873, my Lord.

THE CHAIR: Yes. I mean, I have the reference. I am not quite sure where the questioning and answering----

MR MACGREGOR: I think where the questioning was going and I was looking for Mr Graham's views on was the statement that says, "Project Co shall provide the Works to comply with the Environmental Matrix."

THE CHAIR: Yes.

MR MACGREGOR: We had previously looked at the defined term "the Environmental Matrix," which was a reference to a specific document included in the schedule to the ITPD. I was really just asking for your comments whether that provision was really asking prospective tenderers to comply with the document that you say is just simply a draft that was not

warranted and could not be relied upon.

A And I think what I'm saying is the defined term is right but not the reference to that document, which was a draft – on the face of these.

Q Thank you. So, still within section 8, just after the section I have read out, if we skip the next paragraph, you should see a section saying, "Project Co shall provide mechanical and electrical systems that help create a 'state-of-the-art' building with innovative design." Do you see that?

A Yes.

Q So, again, is that really back to that general point that we talked about or that is really what Lothian wanted?

A Yes.

Q Then if we look over the page onto page 874, just above "Minimum Engineering Standards," we see the reference again: "For the avoidance of doubt the hierarchy of standards and advice detailed in paragraph 2.5 shall apply to this paragraph 8."

The next document I want to take you to, please, Mr Graham, is in bundle 2 and it begins at page 942. This is Volume 1 this time of the

Invitation to Participate in Dialogue. If we could pick matters up at page 951, we see at the bottom of page 951, again, there is a defined term of "Environmental Matrix" – do you see that?

A Yeah.

Q It "means the matrix contained in ITPD Volume 3, Schedule Part 6, Section 3, Appendix C." Do you agree that that is referring the prospective tenderer to a specific document being included in the schedule of the document we just looked at?

A (No audible response).

Q If we then look on to page 953. Can you see it, a definition of "Operational Functionality"? See that just towards the bottom of the page, onto page 900-- it is 953 into 954. I will not read it all out but, again, just for completeness, could you summarise what your understanding of the intention behind including "Operational functionality" in this document was(? 01:16:37)?

A So this was our starting point to explain what operational functionality was to bidders which was different from clinical functionality. So it is that bit about how the building fits together, how it sits on the site with the fixed points that were identified in the

reference design because we were putting one building into adjacency in connection with another building, and how the schedule of accommodation fitted together as the department adjacencies and such like.

Q Thank you. If we could look on to page 963, please. See the bold heading, “**2.5 Reference Design and Mandatory Reference Design Requirements.**”

A Yeah.

Q If we go to the third paragraph beginning, “The Mandatory Elements of the Reference Design...” See that?

A Yes.

Q “The mandatory elements of the Reference Design (the “**Mandatory Reference Design Requirements**” are those elements of the Reference Design relating to Operational Functionality. The definition used in the NPD Project Agreement is being applied to define the agreed Operational Functionality included in the Reference Design and is generally set out in the following constituent documents of the Reference Design.”

There is three documents listed: Departmental Adjacency Layouts;

secondly, Departmental Layouts; and, thirdly, Generic and Key Room Layouts. Do you see that?

A Yes.

Q There is no reference to the environmental matrix. Why not?

A I am assuming, at this point, this is because that was part of the development from bidders to come forward.

Q If we look still within page 963, the final paragraph states:

“For the avoidance of doubt, the Board will not enter any dialogue on alternative solutions to the Mandatory Reference Design Requirements. Bidders’ proposals must be developed to comply with these Mandatory Reference Requirements. Bidders will be fully responsible for all elements of the design and construction of the Facilities including being responsible for verifying and satisfying themselves that the Mandatory Reference Design Requirements can be designed, built, and operated to meet the Board’s Construction Requirements.” Do you see that?

If we look on to 965, see it, section “**2.5.3 Room Data Sheet.**” It

states:

“Standard format Room Data Sheets have not been prepared by the Board for the Project. The specific room requirements (the “**Room information**”) are detailed in a combination of the following documents:

- Boards Construction Requirements;
 - The Environmental Matrix.”
- Again, defined term with a capital “E” and a capital “M.” Do you see that?

A Yes.

Q I will not read out everything else, but the paragraph continues:

“During Dialogue Bidders will be required to develop Room Data Sheets, incorporating the Room Information, for those rooms for which 1:50 layout drawings have been prepared. For the avoidance of doubt this shall include all Key Rooms and Generic Rooms in addition to those rooms identified in the table at paragraph 2.5.2 above. The Room Data Sheets will form part of the Bidders proposals. The Preferred Bidder will be required

to complete Room Data Sheets for all remaining rooms prior to Financial Close.”

Do you see that?

A Yes.

Q In relation to the room data sheet that had to be created, if the Environmental Matrix was simply a draft, a guide, something that could not be relied upon, why were bidders being told that room data sheets had to be created in terms of room information which included that document?

A All of these documents and those bullet points are documents to be provided, some jointly but a lot by the bidder as part of the final bid and then the project agreement. So those are all outputs, the whole dialogue process, not the start of the process.

Q In the final section, it says that “The Preferred Bidder will be required to complete Room Rata Sheets for all remaining rooms prior to Financial Close.”

A Yeah.

Q Why did the Board want a complete suite of room data sheets at financial close?

A For certainty and risk avoidance. It was an onerous task that we were up front saying we

required, and it gave us then the full suite to review.

Q Was that achieved on the project at financial close?

A No.

Q Still within the same document if we could look on to page 1050, please. See at the very bottom a reference to the submission requirement reference "C8.3"? It should be page 1054. Bottom entry, "C8.3 Whilst bidders..." at the bottom of the page?

A Yeah.

Q It states:

"Whilst Bidders are required to undertake their own design, the Board has provided a [and then over the page, onto page 1055] draft Environmental Matrix as part of the ITPD documentation. Bidders must confirm acceptance of the Board's Environmental Matrix, highlighting any proposed changes on an exception basis." See that?

A Yes.

Q Why do we see a reference there to "draft Environmental Matrix"? What was the Board's thinking behind that provision?

A Because there was a draft Environmental Matrix produced in

the disclosable data and it was for the bidder to highlight anything that needed to change as part of that, as part of their design development and as part of their commercial approach to the project.

A Thank you. I think we can put that document to one side now. I really want to return to some comments that you made within your statement, particularly at paragraph 18, whereby you say that your understanding was that the requirements of NHS Lothian and its understanding as we have explored, was communicated to prospective bidders through the competitive dialogue process and at the bidders' day. Now, the Inquiry may hear evidence from other witnesses that have a different recollection of underlying events. So just to explain throughout the competitive dialogue process, what is it that the bidders are being told about what they need to do?

A In simple terms, comply with what the Board had put out in terms of the ITPD and to ensure that the mandatory elements of the reference design, the operational functionality was being met, and a number of times that had to be explained and reinforced as a concept that it wasn't just a case of taking one

little element. It was, "Look at the documents as a whole and how they all sit together." So, you mentioned the hierarchy of standards, etc. and bringing all that into play but, the bidders' day started with explaining the operational functionality and what that meant because that was seen by us, or understood by us, to be different from what might have been used on other projects.

Q Do you recall at the bidder's day what, if anything, were bidders being told about the status of the Environmental Matrix?

A I can't recall the specifics of that day.

Q You mentioned, though, that there were similar discussions taking place throughout competitive dialogue.

A Yeah.

Q So were there discussions that you recall with respective tenderers in relation to the status of the Environmental Matrix during competitive dialogue?

A Yes, because we were asking for the updates to Environmental Matrix in line with their design development, both in terms of the architectural side of things, the room layout, the room designs, the space designs, but also the

engineering development as well. So, that that came up a lot.

Q I appreciate this is a long time ago, but one of the things that the Inquiry might be interested in is who is having those discussions on the NHSL side when bidders are being told this. Now, I appreciate it is a long time ago, but can you shed any light on that issue?

A I wasn't in the technical work stream that would have been going into the detail of it, but I do recall that it was part of the introductory and the end "wrap-up" sessions where I was party to that as part of the team but my colleagues, Janice MacKenzie and Brian Currie, would probably be able to answer in terms of the technical discussions.

Q And just, again, to try and explore that a little further, who is it that is making these statements on behalf of NHS Lothian to the prospective bidders?

A It would be Janice or Brian.

Q Again, just maybe to look within the bidders day in slightly more detail, if we look at bundle 2, page 750, these are effectively notes from the bidders day of 13 December 2012. Did you attend the bidders day?

A Yes.

Q And who was really conveying NHSL's views through prospective tenderers at the bidders day?

A It was principally Brian Currie as programme project director.

Q So if we look within the bidders' day notes to page 759, please. See at the top, "Slide 39 – Reference Design"?

A Yeah.

Q

"To clarify what we really mean by Reference Design. What were the attractions given the departure from previous PPP/PFI projects where an "exemplar" design was the norm?

- assists with the OBC and accuracy of pre-procurement costing.
- provides greater certainty over the final design solution.
- assists significantly in defining a quality threshold."

Do you see that is that?

A Yeah.

Q Is that your recollection of what bidders were being told that day?

A In generality, yes. I

couldn't say word for word whether that was covered. This looks like preparation notes as opposed to a script.

Q And if we look slightly further down, still on page 759, you see the heading:

"Mandatory Requirements Comprises the information that defines Operational Functionality* and is indicated in:

- Interdepartmental Layouts
- Departmental Layouts
- Room Layouts."

Do you see that?

A Yes.

Q Do you have any recollection of bidders being told that the Environmental Matrix would be a mandatory requirement that they comply with?

A No. By "No," I mean I can't recall it. I don't know whether there was discussion.

Q Thank you. If we then look on to page 760 towards the bottom. You see the subheading:

"Room Data Sheets
Standard format Room Data Sheets have not been prepared by the Board for the project

instead specific room requirements are detailed in a combination of the following documents:

- General Requirements
- Clinical Output Specification
- Environmental Matrix.”

And it continues. Again, is that your recollection of what bidders were being told in relation to the room data sheets?

A It’s generality, yes.

Q If we look on to page 772, there is a heading, “**We must be able to afford it.**” See that? Page 772, middle of the page, “**We must be able to afford it.**”

A Yes.

Q Second bullet point, “This drives us strictly along a path of realising our “needs” not “wants.” See that?

A Yes.

Q What was that conveying to prospective bidders?

A That was an expression from Scottish Futures Trust that we had to ensure that the message got over that there was an economic imperative to this and a price, a

significant determining factor, and we weren’t, as a health board, able to put our wants in, only what we needed.

Q If I can move on and ask you some questions about the key stage reviews. Could you just explain to the Inquiry, what was your understanding of the key stage reviews for the project?

A So the key stage review came in as part of the NPD programme from Scottish Government and we were, if not the first, one of the first healthcare projects to follow this programme and the key stage reviews were led by Scottish Futures Trust project manager, or our point of contact, going through a questionnaire with us and then going back to colleagues in SFT who either signed it off or not. A final document came to us-- was signed by our senior responsible officer. That then went to Scottish Government and some of them were related to the business case stages or financial close and so, for us, it was a “You must pass this to the next stage” type thing.

Q Scottish Futures Trust, their position articulated is that the key stage reviews did not really involve any form of a technical assessment of solutions being put forward by bidders. Would you agree with that

characterisation of key stage review?

A Of the bidders, one is correct.

Q Yes. If I could ask you to have in front of you, please, the minutes of the Project Steering Board from 22 August 2014. So, that is bundle 8, page 11. So, at this point in time, the procurement exercise has run its course. IHSL has been appointed as preferred bidder and is really the stage between preferred bidder and financial close.

A Yeah.

Q Can you just explain, before we look at the detail of the minutes, at that point, so summer 2014, what was happening at the project at that point in time? How were things progressing?

A There was a lot of work underway. The project team were reviewing information as and when it came in, in order to turn it around and ensure that timelines were met, but there was a developing degree of frustration around us being able to pin down when this preferred bidder stage would finish and effectively construction or financial close and then construction would start and there were considerable tensions between ourselves and IHSL and what appeared to be challenges within

IHSL, the financiers and contractors as well.

Q What was giving rise to those tensions?

A From our point of view, we weren't getting-- What we kept asking for was the programme because part of the preferred bidder requirement is to provide the programme between preferred bidder and financial close and we weren't having sight of that and we weren't getting what we're expecting by way of design development from IHSL.

Q If we think specifically about the room data sheets, we have seen the provision and the tender documents said 100 per cent room data sheets by financial close. How was that progressing?

A It wasn't. They weren't appearing.

Q Was that a sense of frustration for NHS Lothian?

A Absolutely.

Q How was that issue resolved?

A Ultimately, we ended up at financial close with having insufficient room data sheets provided but agreeing that we would review those as part of the next stage, i.e. post financial close.

Q Why was that acceptable

to NHS Lothian given that it was a specific provision in the procurement document that the preferred bidder had to complete 100 per cent of room data sheets by financial close?

A It was one of the many compromises we had to make to move the project and programme forward if the other party doesn't want to deliver what it was required to do. We were attempting, as ever, to get a mitigated solution that helped move things forward.

Q Was that a departure then from the stated requirements within the procurement document?

A Yes. It was a compromise.

Q How serious did you think the issues were in terms of relations between NHS Lothian and IHSL at this point in time?

A I would describe them as challenging – it's probably the best word – and commercial. It was very, very clear that there was a commercial driver and that was bumping up against what they tendered.

Q So, if we look at what is being discussed at the Special Project Steering Board on 22 August 2014. So that is bundle 8, page 11. You see from the attendees Susan Goldsmith from NHSL, Mike Baxter from Scottish

Government and yourself and Brian Currie as well. If we look to the issue of "Programme" in section two, first paragraph:

"SG noted that NHSL had significant concern about the project programme and that this meeting was an opportunity for IHSL to discuss progress with the Steering Board. Being a major project the milestones in the public domain and NHSL needed to have confidence in IHSL to deliver this."

Do you see that?

A Yes.

Q So, at this point in time did the Project Steering Board have that confidence that the IHSL were going to deliver what they had said they would when they were appointed as preferred bidder?

A No, and what we'd agreed within the NHS Lothian Project Board was to convene a meeting with senior representatives of IHSL and unusually for us supported by senior officers from Scottish Government and SFT, who equally were concerned at the matter.

Q At this point, summer 2014, NHS Lothian is concerned, Scottish Futures Trusts are concerned and Scottish Government's got

concerns about the project.

A Yeah.

Q If we look on to page 12, see the subheading, "Production of room data sheets." It is:

"RB noted that NHSL the PB had reached agreement on the content of room data sheets (RD) the day before, and so the production of RDS could begin. This was on track for completion by 05/09/14. BC noted that NHSL are comfortable that 100 per cent will not be completed for financial close, although the prioritisation of what was definitively required was still to be agreed."

Do you see that?

A Yes.

Q Do you understand that statement, that NHSL were comfortable without having 100 per cent room data sheets? Was that a view that you shared?

A That was the position that that we got to in order to move things forward. It was a compromise from what we'd asked for, but it was compromised to move the project forward. I think there are two things to highlight about that paragraph: one was we only got agreement the day before this meeting, so calling this

meeting had helped bring it to a head and; secondly, that there was still prioritisation to be done with the room data sheets because we weren't wanting, as part of this, less important rooms to come forward because they were nice and easy; we wanted the important rooms.

Q If we look over the page, still within the minutes, page 13, first full sentence on page:

"BC noted that in dialogue and the invitation to submit final tenders NHSL had been clear on the requirements and deliverables for the programme and that IHS had been slow to get started. SG was concerned that this updated programme would also prove impossible to deliver.

RB stated that there was a genuine mismatch in NHSL's and IHS's expectations, where IHS were being asked to deliver much more than on other projects, and considerably more than was required for comfort of operational functionality. He felt that this demonstrated a 'paranoia and lack of trust in IHSL.'"

Do you see that?

A Yes.

Q But would you agree?

Was there a “paranoia and a lack of trust in IHSL” at this point in time?

A It wasn’t paranoia because failure was out there. They had failed to deliver so we were holding them to account to what they had actually did.

Q And “lack of trust,” would you recognise that?

A There was a lack of trust, I think-- is a fair expression, but it was born from frustration that the information wasn’t coming forward. We couldn’t pin down exactly why.

Q Did NHS Lothian still have faith that IHSL could deliver the programme at this point?

A We were starting to question it but, in the round, yes.

Q If we look on-- skip the next paragraph and then the last line in the next paragraph, “RB responded that NHSL needed to be pragmatic or this programme would fail as well.” Do you see?

A Yes.

Q And it continues:

“MB asked if there was a common understanding of the requirements to sign off operational functionality and BC responded that he didn’t think this

was the case. GW expressed his concern that the programme tabled was not achievable if IHSL were still looking to negotiate terms. PR noted that changes in design development would always happen.”

And it continues. At this point it seems that there is a genuine mismatch between expectations on the part of NHS Lothian and IHSL. Is that correct?

A I think in terms of the people around the table are the representative from IHSL at that point, yes.

Q And this reference to, “IHSL were still looking to negotiate terms,” was that your understanding of matters at this point?

A Yeah, absolutely. Yeah.

Q How could IHSL be seeking to negotiate terms given that all the requirements had been published in the procurement document, the invitation to participate in dialogue and the invitation to submit final tenders? Had that not already been fixed at that stage of the process?

A That was our position. Whether the contractor and the project co were negotiating, that seemed to be where there was an issue.

Q Did NHS Lothian get drawn into negotiating terms with IHSL then?

A Not in this connection, no.

Q Can I ask you to have a look at another set of minutes please? It is still within bundle 8. This time it is at page 15. This is a Steering Board Commercial -Sub-Group that met on 31 October 2014. Can you just remind me what was the purpose of the Steering Board Commercial Sub-Group?

A This was the same group as the previous one which was the escalation and meeting with senior representatives of IHSL.

Q If we look on to page 16 of bundle 8, it says that "GW." Who was GW? George Walker?

A Yes. The non-executive director----

Q And he was a non-executive director of NHS Lothian?

A Yeah.

Q "GW stressed the importance of understanding if 12/12/1 was really feasible, as failure to meet this third attempt at FC would make all parties look foolish."

Was that a genuine concern of all

parties?

A Yes.

Q We then look to the next paragraph, the minutes record, "All agreed that slippage into 2015 would cause significant problems with the Board and IHSL. Reputational risk was discussed." Do you see that?

A Yes.

Q So, what were the risks to the Board and IHSL at this point in time?

A From the Board perspective, we were publicly announcing when construction would start as part of the overall programme and that both motivated and didn't happen-- demotivated the staff in the existing facility. That was the significant reputational risk from our point of view. In terms of IHSL, it would be a failure of their bid.

Q If we look within bundle 8, page 16, to the next paragraph:

"GW stated that he was disappointed by the lack of progress since the previous meeting in reassurances from IHSL, and losing confidence in their ability to propose an honest and realistic programme, and deliver to it."

Do you see that?

A Yes.

Q Was that a common view on the part of participants from NHS Lothian? Was NHS Lothian losing confidence in IHSL at this point?

A Yeah, I think George, as a non-exec director on the main board, was articulating where our board was at the time.

Q At this point in time it is late October 2014, with financial close being achieved in early 2015. What changed between this loss of confidence and financial close?

A We started seeing design development. We got a programme which was achievable, and things started to firm up.

Q We are still within the minutes, bundle 8, page 16. If we skip the next paragraph, there is the paragraph beginning, "PR asked JB." Do you see that?

A Mm-hmm.

Q "PR asked JB if, in his opinion the Board had changed what it was asking for since the invitation to tender." Do you see that?

A Yes.

Q In your view, had the Board changed what it was looking for since the invitation to tender? Sorry, in your view, had the Board changed

what it was asking for since the invitation to tender?

A No, we tried very, very hard to be consistent but, where we weren't getting information, it was difficult to articulate it, other than to express frustration that we're not getting what we need.

Q The minute continues:

"JB replied that there was a difference of opinion over the level of detail expected in Project Co's Proposals (PCPs) but the open-ended requirement that 'the Board has to be satisfied' was difficult to achieve. JB acknowledged that the board had agreed latitude on signing off operational functionality where 100% technical info not yet produced. Also, the Board's Construction Requirements have been updated in dialogue with IHSL, which reduced the extensive list of derogations that would be required of IHSL. These were examples of Board / IHSL negotiation to reach a pragmatic position in technical documentation for

FC.”

Do you see that?

A Yes.

Q In your statement, you make reference to the full business case and financial close. Can you just explain, in a project of this nature, what the full business case is and how you would move to financial close?

A So, can I take one step back and explain the earlier stages of the business case? So, there's three steps to the business case: the initial agreement, which is about the strategy; the outline business case defines the options; full business case confirms the price for delivering that preferred option and, as a result, of this tender process through competitive dialogue and the NPD programme, we ended up with what amounts to a fixed price for delivering the building, effectively, plus all the operational costs for it, on top of which we've got other costs that the government met such as capital, cost of equipment, and so on.

The bit that we didn't have until this point was the construction cost that would enable us to then say to government, “This is the price for it,” and go through all the approvals for that, which results in a full business case approval and authority to then go

to financial close. There are parameters around the financing which government approves as part of that and Scottish Futures Trust controls. We then go to financial close, and the deal is done and the financial numbers are fed into it, and then we go back to Scottish Government with what's called an addendum, which basically said, “We said it was going to be that fixed price with a range for the finance. This is the actual cost, and it sits within it.” Sorry.

Q Final business case, and effectively you then get the final approval to sign the contract and move to financial close.

A Yes.

Q Thank you.

A Sorry, that would have been it, yeah.

Q I think that the final issue that I would wish to raise with you is, as I understand it, NHS Lothian accepts that, in relation to the project, there were errors in the Environmental Matrix. Do you think that there were any issues during the procurement phase of the project that resulted in those errors and, if so, do you have any reflections on how things could be done differently in future projects to try to avoid those issues?

A There were certainly

inconsistencies in the Environmental Matrix. Some of the things were right; some of them weren't. They were then covered with other areas, so that meant that there were inconsistencies. As you've gone through this with me today, one of the areas that I would reflect on is our use of the same term for different documents, or the same output but different versions of the document, so that perhaps might improve. I think that we took all advice, obtained all the assurances, followed due process. The bit that we didn't get was any reaction to the anomalies, so there's a kind of a duty of candour of professionals to ensure that, if there are things that are wrong, it's flagged, and we didn't get that. That's probably my main reflection.

Q Thank you, Mr Graham. I don't have any further questions, but Lord Brodie may have some questions or, equally, there might be some questions from core participants.

THE CHAIR: I do not think I have any questions at this stage. Mr Graham, what I propose to do is we will take a break for about five minutes to allow people to reflect on your evidence. I will find out whether any other questions are likely to come or will(? 01:54:10) come forward, and I invite you to go to the witness room. I

will also retire and will give parties about five minutes to consider their position. Thank you.

A Thank you.

(Short break)

THE CHAIR: Now, looking to the room, do any of the legal representatives wish to raise further questions?

MR MACGREGOR: Lord Brodie, there has been a couple of issues that have been raised with me that I am happy to deal with. It is just three points. I think that would negate the need for any applications to be made.

THE CHAIR: Right. So, you are quite content that you can deal with them and we need not call on any of the other legal representatives? All right. In that case, could I ask Kirsten to invite the witness? (After a pause) Mr Graham, there will be just a few more questions, but they will be directed by Mr MacGregor.

MR MACGREGOR: Mr Graham, the first would really just be asking for a point of clarification in relation to one of the answers that you gave. I had been asking you about the Board's construction requirements and whether they were assessed on a pass or a fail basis. If we could look within bundle 2

to page 1006, please, we see C21, “Compliance with Board's Construction Requirements,” and they're set out on a pass or a fail basis. Again, was that your understanding of it?

A Yes.

Q Second document I would invite your attention to is bundle 2, page 965. We are in the Invitation to Participate in Dialogue. If we could look to the bottom to paragraph 2.6. Do you see that? “Indicative Elements of the Reference Design.” We looked at the section 2.53 on the room data sheets, 2.6:

“During the preparation of the Mandatory Reference Design Requirements, other information has been generated both as a by-product during the Reference Design itself and as a general Project requirement as follows...”

Then do you see (iii), “Building services engineering solutions”? In your view, was there an intention on the part of NHS Lothian that documents such as the Environmental Matrix would fall within that definition of building services engineering solutions?

A I think building services engineering solution is a broader term that would probably encompass the Environmental Matrix, yes.

Q You see there it continues:

“This constitutes the ‘Indicative Elements of the Reference Design’.

Such information is issued to the Bidders for ‘information only’ so that they may understand the intent of the Reference Design.”

Do you see that?

A Yeah.

Q If I could ask you to go to the final document, please, within the same bundle 2, this time page 873. We had looked at section 8, “Mechanical & Electrical Engineering Requirements.” I had read out certain sections, but if we look at paragraph 2, it says, “Project Co shall in carrying out the Works comply with the following non-exhaustive list of mechanical & electrical requirements.” Do you see that?

A Yes.

Q Then if we look over the page onto page 874, paragraph 8.1, “Minimum Engineering Standards”:

“In addition to the publications in paragraph 2 of this Sub-Section C Project Wide Requirement, Project Co shall ensure that the design, construction and selection of

components for the mechanical and electrical works comply with, including but not limited to the following design reference documents...”

Do you see that?

A Yes.

Q Then there is a whole list of items set out over the page onto page 875. Just above letter (a) it says, “The following is a non-exhaustive list of SHTM’s, HBN’s and HTM’s applicable to the Facilities.” Do you see that?

A Yes.

Q Then item (h), “SHTM 03-01: Ventilation in Healthcare Premises.” Do you see that?

A Yes.

Q Again, I would just be interested in your views in terms of whether it was the intention of NHS Lothian that this document would convey that there was a requirement to comply with SHTM 03-01.

A Yes.

Q Thank you. I do not have any further questions but there may be some questions from Lord Brodie or, equally, some applications from core participants, but thank you, Mr Graham, for your time this afternoon.

THE CHAIR: I have no further questions and, as I understand it, that

addresses the points raised by legal representatives. Am I right about that? Right, I am getting a nod from at least one significant corner, so I think that closes your evidence, Mr Graham, and I thank you for it. In thanking you for it, I recognise that it is not just a question of turning up on an afternoon or turning up for a second afternoon, it is a product of a great deal of work. I just thank you for that work as well as for your (inaudible 02:15.41). You are free to go.

A Thank you.

(The witness withdrew)

THE CHAIR: Now, we plan to sit tomorrow, I think.

MR MCGREGOR: Yes, Lord Brodie, it will be Janice MacKenzie in the morning and then Mr William Stevenson in the afternoon.

THE CHAIR: Well, thank you, and I look forward to seeing you tomorrow.

(Session ends)

15:50