



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
25 April 2023**

Day 8
Friday, 5 May 2023
Donna Stevenson

C O N T E N T S

	Pages
Opening Remarks	1
<u>Stevenson, Ms Donna</u> (Sworn)	
Questioned by Mr MacGregor	2-46

10:00

THE CHAIR: Good morning, ladies and gentlemen, both to those who are with us in the hearing room in Edinburgh and to those who are following the proceedings through the live feed. We are ready to proceed with a witness. Mr MacGregor is taking the first witness, who I understand is Ms Donna Stevenson.

MR MACGREGOR: That is correct, my Lord.

THE CHAIR: Good morning, Ms Stevenson. As you understand, Ms Stevenson, you are about to be asked some questions by Mr MacGregor, the counsel to the Inquiry, but first of all I think you are prepared to take the oath?

Ms Donna Stevenson

Sworn

THE CHAIR: Now, Ms Stevenson, I anticipate, without giving you a guarantee, that your questioning probably will not go beyond about an hour. Once Mr MacGregor has concluded, I will take a break in order to check if there is any follow-up questions proposed by the other legal representatives. So, relatively speaking, it should not be long but, nevertheless, if at any stage you want

to take a break, just indicate that and we will take a break. Now, Mr MacGregor.

Questioned by Mr MacGregor

Q You are Donna Stevenson. Is that correct?

A That is correct.

Q And you have provided a witness statement to the Inquiry?

A I have.

Q And a paper copy should be available to you, Ms Stevenson. Equally, if there is any documents that I want you to look at, they should come up on the screens in front of you. If, for any reason, they do not, please just let me know and we can rectify that issue.

A Thank you.

Q For anyone that is following in the electronic bundles, Ms Stevenson's witness statement is in bundle 13 from pages 80 to 129. Now, Ms Stevenson, the content of your statement will form part of your evidence to the Inquiry, but I'm also going to ask you some questions today. If I could just begin by asking you some questions about your qualifications and career. What is your occupation?

A I'm a lawyer by

profession.

Q And approximately when did you qualify as a lawyer?

A The late Eighties.

Q And could you just give us a broad-- we will come on and talk about your time with the Scottish Futures Trust, but can you just give us a broad overview of your career?

A Sure. I qualified as a Scottish lawyer in the first instance at McGregor and Donald and became a partner in the 90s. I left there about 2004 and joined the director, then, in a third-party organisation and joined Scottish Futures Trust towards the end of 2010.

Q And when you were working as a lawyer, was there a particular area that you were working in at McGregor Donald?

A Yes, I started off in commercial property and then became involved in PPP contracts probably about the mid-to-late Nineties and was also involved in energy projects as well.

Q Okay, so started working in property, moved into public-private partnership-type work and then moved out of being in a law firm to work in, effectively, an industry. Would that be right?

A Yes.

Q When did you come to work for Scottish Futures Trust?

A I think it was the end of August 2010.

Q And when you joined Scottish Futures Trust what was your role with them?

A I was the associate director.

Q And what did and does your work with Scottish Futures Trust involve?

A When I joined, it was actually to do work on what we call operational contract management. So, that's once the PPP contracts are in their operational phase, how to make sure that the service is delivered and that the public bodies get the service they're paying for. So, I did some work with that and then, as the NPD program came into being, I was involved with colleagues and Scottish Futures Trust supporting the NPD programme, in particular this project from about 2010 onwards.

Q And can you just explain what was the NPD programme?

A The NPD programme was a series of PPP contracts, which SFT were sort of managing the overall programme as it were. So that was to deliver a number of projects, particularly in health and colleges.

Q So, again, just so I am understanding, this would be a revenue-funded model?

A Revenue-funded, yeah.

Q And I think you have mentioned PPP. For those of us that do not work in the space, we hear terms like PPP, PFI, NPD. Were there any differences in the NPD model as compared to a standard PFI or PPP deal?

A I mean, I suppose conceptually and structurally they were similar in the sense that it's about-- that the private sector borrows private finance to build the building in the first place and then deliver services over the concession period, which typically lasts about 25 years. The difference in the NPD program was around the structuring of that finance, in particular not paying out dividends, for example, having a private sorry-- public interest director and so on but, in terms of the delivery of the projects in terms of the concepts around payment mechanisms through the operational projects structurally, I think it's quite similar.

Q So, again, just so I am understanding things, an NPD would be the same concept as a PFI or a PPP – it is still a revenue funded model – but, within that-- within the

layers of the onion, there are slight nuances compared to other types of revenue funded model?

A Yeah, in terms of the delivery of the service, a similar concept.

Q Thank you. Now, I would like to move on and ask you some questions specifically about your involvement in the NPD project for the Royal Hospital for Children and Young People and the Department of Clinical Neurosciences. Can you just explain how you came to be involved in the project and what your role was?

A Yes, as I say, once I joined, a number of us who joined or were working with SFT became involved in the NPD team as it were. So, I was supporting the NPD project at the Sick Children's Hospital and also was the first reviewer in relation to the Key Stage Reviews.

Q We will come on to talk about the Key Stage Reviews in a moment, but if we can just think broadly about the role that Scottish Futures Trust had, you tell us within your statement that there was really two roles that Scottish Futures Trust had. There was, firstly, what you referred to as a project assurance role and then, secondly, a guidance and advice role. So, if we just take each in

turn, what was the project assurance role that Scottish Futures Trust was providing?

A The project assurance role was via Key Stage Reviews which were there as a, sort of, milestones at various levels, and there were five of them to test out the readiness of the project to move on, taking account of the commercial position that had been reached in terms of the procurement and a particular value for money aspects.

Q Okay. So, when we are talking about project assurance, we are talking about the Key Stage Reviews which, again, just so I am understanding, they are effectively a review of the project at various milestones to make sure that it is appropriate to move to the next level of the model?

A That's correct.

Q Thank you. Now, if we are talking not about the project assurance role but the guidance and advice role, what did that involve for Scottish Futures Trust?

A SFT published guidance on, for example, value for money. There was a standard form of PQQ, pre-qualification questionnaire, which would be near the beginning of the project and, in my role, I also attended

what I think was called a working group. So that would be with colleagues within NHS Lothian, and that would be to discuss issues and the stage it had reached in terms of various aspects of the project as it moved forward and, as I say in my statement, for example, I was involved with discussions and in supporting the Board in terms of, for example, the land issues, which were with concert at the very big outset of the project.

Q Okay, so, again, there is the assurance role through the Key Stage Reviews, but there is also, effectively, general advice that's being provided because of Scottish Future Trust's expertise in revenue-funded projects?

A Yes.

Q Thank you. Did you have any concerns in relation to the dual role, both providing guidance on the project and then also making an assessment through the Key Stage Reviews? Did you think there was any conflict of interest in the role of Scottish Futures Trust?

A No, I didn't think that to be the case. In terms of my support role, it meant that I had a knowledge of the project and of the various issues that had been dealt with in the period moving up towards each Key Stage

Review. So, I was able to then discuss those issues with NHS Lothian and, importantly, too, clear that the second reviewer for the Key Stage Reviews was someone who wasn't involved in supporting the project and, therefore, provided that independent assurance as well.

Q Thank you. I now want to move on and ask you some questions about the Key Stage Reviews. I am going to begin asking you some general questions about what Key Stage Reviews are, what your role was, and then we will move on to look at some of the specific Key Stage Reviews that you were involved in. So do not feel in the first set of questions that you need to refer to any of the detail because today is not a memory test, but we will come on and look at that. So, could you just explain in broad terms what the purpose of the Key Stage Reviews were?

A Yeah, the Key Stage Reviews looked at a number of aspects of the project, and there was a set list of questions at each milestone. So, for example, there was a pre-OJEU before the commencement of the formal commencement of the procurement. It was a series of questions which went through aspects of the project to identify what had been

done in the period up to that so that, as I say, it was ready then to move forward to the next process. Also, importantly, as it moved through, if there were aspects of the project which we thought was still to be dealt with in the next stage, there were usually a number of recommendations, and then I would then discuss those with NHS Lothian as we proceeded, and at the next Key Stage Review there would be a review of those recommendations as well as the questions that were in the next Key Stage Review.

Q And how did you determine when the key stages would be? Were they set at the beginning of the project or were they effectively developed as the project went on?

A The stages were pre-set, but the precise timing of it would be a matter of, as it were, the readiness of the project. So, if we take, for example, the pre-OJEU KSR, one of the issues that we covered off in that and that had been discussed at some length, as I say, with NHS Lothian was the land issues with concert. So there was an element of things had to be, you know, everybody had to be clear that we were at the point where it was then appropriate to move forward, so there wasn't a predetermined date to

do each of the Key Stage Reviews. It was really once it had moved up to the point where it was appropriate to do that, and then NHS Lothian would say, for example, "We're ready to close dialogue," and then we would do the Key Stage Review.

Q Okay, so, you have told us about the pre-OJEU. So, the stage before you actually issue the tender documents, someone would effectively issue a prompt to Scottish Futures Trust to say, "We think that we are ready to go out to tender now," and then the Key Stage Review's conducted at that point as an independent check before that stage of the project happens. Is that correct?

A Yeah.

Q And would that happen again at other key stages? So, for example, closing dialogue, there would be a prompt to Scottish Futures Trust to say, "NHS Lothian thinks that we are ready to close dialogue," and then the Key Stage Review takes place to see whether the project can move on to the next stage.

A Yes.

Q Thank you. You mentioned that your role was as the primary reviewer and that there was also a secondary reviewer. If we just take each of those jobs in turn, what

were you doing as a primary reviewer on a Key Stage Review?

A As a primary reviewer, I would draft the Key Stage Review so that, as I say, there were a number of questions that were pre-set. So, these were available, not just to SFT but obviously to NHS Lothian, typically, in advance, and there was an element of it being, I suppose, an iterative process. So, I would draft that, send a draft to probably-- most likely Brian Currie as the project director. We would discuss those issues. As I say, we did have reasonably frequent meetings in any event so that if there were issues then coming out of those discussions, we could then have a further discussion about that and that might then change the wording on the Key Stage Review. So, in a sense, the final or the signed Key Stage Review would be the product of that discussion so that that was then the position at the time that the Key Stage Review was signed off.

Q Okay, so you are asking questions, you're getting information back and you say it is an iterative process or a two-way process. How are you actually physically getting the information? Is it questions that you are asking and responses coming back from NHS Lothian, or are you

doing something different?

A Responses from NHS Lothian but, in addition to that, because of the support role I would be aware of things. For example, one of the issues that's dealt with in the Key Stage Review is what's the current capital cost, because that was an important value for money and affordability issue to be considered at that stage. So if there had been a variation on that, I'd have probably been aware of that from discussions that had already taken place.

Q Thank you. So that is what you are doing as the primary reviewer. You are asking the questions, reviewing the information, involved in the iterative process, drafting the report. What is the role of the secondary reviewer?

A The secondary reviewer, once I'd got the KSR to the point where I thought it was ready to go, as it were-- that it had reached the delivery point with recommendations, I would then submit that to the secondary reviewer, who would review the draft. It would be a draft KSR at that point. We would then have a meeting at which the secondary reviewer would then ask me questions and challenge certain points on what was happening or what was coming

out of the various responses. Then they may suggest further recommendations, for example, or further aspects that needed clarified and that would then get us to the point whereby we had a final KSR and the final KSR would then be signed off by, as I recall it, the first reviewer, the second reviewer and then NHS Lothian also signed the KSR.

Q Okay, and the secondary reviewer-- is that someone from within Scottish Futures Trust or someone external to Scottish Futures Trust?

A Someone from within Scottish Futures Trust.

Q Okay. So, again, just so I am understanding things, primary reviewer effectively produces the report, secondary reviewer provides some challenge and comment so that both primary and secondary reviewer are comfortable, and then there is also a sign-off from someone within NHS Lothian who is the procuring authority. Is that right?

A And that assumes that one gets to the stage where the KSR is actually signed off, really.

Q Yes. In terms of the work that you're doing, is that looking at commercial aspects of the project, or is it looking at technical aspects of the project, or is it looking at both?

A It'd be more the commercial aspects of the project. I didn't perform and it wasn't part of the remit of the KSR to do, for example, any technical reviews.

Q Again, just so I am understanding things, you are interested in the commercial side, but you are a lawyer working for Scottish Futures Trust. You are not receiving technical information or asking technical questions or conducting any form of technical review within the Key Stage Reviews?

A That's correct.

Q If I could move on now and just ask you to have in front of you some of the Key Stage Reviews that were completed for the project the Royal Hospital for Children and Young People and the Department of Clinical Neurosciences. If we could begin within bundle 9, please, at page 50. Bundle 9, page 50, you should have top right-hand corner, "Scottish Futures Trust." "Validation of Revenue Funded Projects: NPD Programme Pre-Close of Dialogue Key Stage Review." Do you see that?

A Yep.

Q So, is this the Key Stage Review that is taking place before competitive dialogue gets closed off?

A That's correct.

Q And what would you be looking to-- what information would you be looking for to make an assessment that the project was ready to have the dialogue stage closed off?

A As I say, the next series of pages on that Key Stage Review can contain a whole series of questions, which are various aspects to test whether or not the close of dialogue stage can come to an end. So things around, for example, the affordability in terms of the capital cost, things around the development of the discussions, how far the design has been, the position that's been reached in terms of "Have the commercial positions being closed off?" and so on and so forth. As I say, there's a whole series of pre-set questions to which responses would have been recorded.

Q Thank you. If we look on to page 55, please. We see there, "Pre-COD Key Stage Review List," and we see the SFT reviewer, you, Donna Stevenson, and then the SFT second reviewer, Tony Rose.

A Yes.

Q And then if we move on to page 59, please. If we could zoom in on question 2, beginning, "Is the Procuring Authority..." Do you see that?

A Sorry, it's moving

between pages.

Q Yes. Let it calm down.

So, there is the question 2:

“Is the Procuring Authority, and are its advisers, satisfied with the overall quality and level of detail supplied by bidders during dialogue in respect of the design and build and service delivery solutions and the bidders’ proposals are capable of meeting its requirements.”

Do you see that?

A Yes.

Q And there is then a recommendation:

“That, prior to close of dialogue, the Board receives and copies to SFT, letters, in the form of the drafts which the Board have earlier provided to SFT from each of its financial, legal and technical advisers, confirming that each consider that it is appropriate for the Board to close dialogue.”

Do you see that?

A Yes.

Q Again, just so I am understanding things, you mentioned that this is a commercial review, but there is, sort of, a question there touching on technical issues, but is that really the limit of what the Scottish

Futures Trust would be doing, in terms of saying, effectively, “Have you thought about the technical issues and how are you going to comply with them?” as opposed to going into the very detailed issues of technical matters?

A Well, there were a series of questions which we were asking the Board to reflect on where it had come to and to give us responses. This particular one reflects the fact that, of course, the Board had its advisers in terms of financial, legal and technical and, in particular, we were then asked for direct confirmation from them that they had, as it were, been through all of the relevant aspects that would need to be dealt with up to that point. So, in a sense, that was an assurance from them that they too were satisfied that that was the position, rather than, for example, me getting drawings to look at. I wouldn't do a technical review in that sense, but we would nonetheless raise appropriate matters with the Board and, in this case, getting letters directly from the advisers so that there was assurance that they had satisfied themselves.

Q So, again, perhaps from a commercial point of view, making sure that technical issues have not been lost sight of, but you are not

conducting a detailed technical review yourself as the primary reviewer?

A Yes.

Q Thank you and again perhaps similarly if we look on to page 62 please and to question 16. Do you see question 16, "Please confirm..."?

A Yep.

Q

"Please confirm what further development of technical information is required from bidders between now and final tender submission and from the preferred bidder between appointment and financial close. Is the Procuring Authority and are its advisors, satisfied that this is achievable within the current project timetable?"

Do you see that?

A Yes.

Q And then the far-right hand box:

"100% compliance for operational functionality and minimum room layouts has now been achieved with all bidders. The Board has reviewed the bidders' programmes for design development through to financial close. The Board consider that the programme from preferred bidder to financial close is

challenging."

Do you see that?

A Yes.

Q And, again, why would you be asking that question at question 16?

A Sorry, why?

Q Why?

A Well, again, to get confirmation from the Board that they were satisfied that they got to the point whereby there was sufficient development – particularly, in this case, of the technical information – so that they were at a stage whereby they could see that the progress from now until final tender submission and then onto financial close was achievable and, in a sense, they had done what they needed to do to get to the point of, in this case, closing dialogue.

Q Thank you. If we could look onto page 77, please, and to question 26. Do you see question 26 beginning "Recommendation: that the Project team"? So, it says:

"Question 26:

Recommendation: that the Project team ensure that (1) the competitive dialogue is conducted in a robust, focussed and effective manner that maintains bidders' interest and encourages competitive

responses and that it is structured to ensure that bidders understand the basis of evaluation of the evaluation criteria and the standard of the applicable pass/fail tests and (2) that the competitive dialogue process is a standing item on the agenda of the Project Board and that the Board is updated at each meeting as to the issues and risks arising from the process.”

Do you see that?

A Yes.

Q The far-right hand box:

“The Board advises that this has been completed.” Do you see that?

A Yes.

Q So, again, just so I am understanding that, at this stage what you are being told is, as the primary reviewer, that there is going to have been robust competitive dialogue with clarity around what is going to be a pass and what is going to be a fail in relation to the assessment of tenders.

A Yes, so that recommendation, I would expect, would have been in a previous KSR in order to, as it were, inform and assist the board in terms of setting out their tendering process, in particular the competitive dialogue process. So, in a sense, this was signposting the

importance of those aspects of competitive dialogue and in number two the importance of the governance position in terms of the Project Board being updated as to issues and risks so that they could be discussed and dealt with at the appropriate stage during the competitive dialogue process and, as you see on the right-hand side, the Board has advised that that has been done.

Q Thank you. If we could look on to page 88, please, and to question 49. So, question 49:

“Please describe the risks that the Procuring Authority considers to be most significant to the success of the final tender and preferred bidder stages and the strategy for managing these risks.”

Do you see that?

A Yes.

Q And then in the right-hand box:

“The red risks which were reported to and discussed at the November Project Steering Board meeting were:

- (1) Programme delayed due to protracted or inconclusive closure of dialogue and/or negotiations to reach

financial agreement: the Project Team continue to be sceptical regarding delivery of FC in less than six months from the appointment of Preferred Bidder: third-party involvement in town planning process or the funding competition are of particular concern.”

Do you see that?

A Yes.

Q Just to explain, what was your understanding in terms of the concerns at this stage in relation to the programme to financial close?

A Yeah, I mean, that risk addresses the programme and the time scale to financial close rather than issues that were thought to be problematic in terms of actually getting to financial close or, importantly, issues which were outstanding in terms of at this stage. So, the third party involvement in town planning is part of the process, and the funding competition, as I understand it, took place during the preferred bidder stage. So these were things that were still to happen, and there was an issue being raised about, “Would that all be done within six months?” but it was things that were prospective rather

than retrospective.

Q Yes, so, at this point, it was things that might be on the horizon that would be problematic, as opposed to things that were truly an issue at that stage?

A Yes.

Q Thank you. If we could put that document to one side. Can I ask you to have in front of you, now, please, bundle 7 at page 3. So, this should be the “Pre-Preferred Bidder Appointment Key Stage Review” from 28 February 2014. If I could ask you to look onto page 5, please. Under the heading 1.2, you see it states:

“This review is required to be completed following evaluation of Final Tenders and in advance of the appointment of a Preferred Bidder.”

A Yes.

Q So, that is the stage that we are at. If we look on to page 7, you see that, again, you are the SFT reviewer with Tony Rose as the second reviewer.

A Yes.

Q Look onto page 9, please, and it is the box 2 just between the bottom of page 9 and over onto page 10. 2 states:

“Is the Procuring Authority satisfied that the proposed

preferred bidder's solution will satisfy its operational and functional requirements (including in relation to matters below) and deliver the project objectives, benefits and outcomes."

Do you see that?

A Yes.

Q And in the right-hand boxes, "The position remains as at the Pre COD, KSR, except for the catering proposal noted above." Do you see that?

A Yes.

Q So, apart from an issue round about the catering issue, were you being told as primary reviewer, effectively, there was nothing to be updated in relation to that matter?

A That's correct.

Q If you look on to page 11, please, box 3, there is an entry:

"Is the Procuring Authority, and are its advisers, satisfied that any further development of technical information required from the preferred bidder appointment to financial close is achievable within the current project timetable?"

Then we see in the right-hand box:

"The Board has confirmed that all bidders have provided

detailed programmes to cover the activities for the period until FC and that the development of the technical information is at least as advanced as the Board anticipated at this stage.

"The Board and its advisers are satisfied that any further development of technical information from PB appointment to FC is achievable within the current project timetable."

Do you see that?

A Yes.

Q So, again, just so I am understanding, obviously the issue has been raised again about getting to financial close and technical development. The information that you have been supplied with as primary reviewer is that this is a matter that the Board have considered. Technical solutions are as developed as they would have expected at this stage, and there is nothing being highlighted as a major problem in terms of the development for the period to financial close. Is that correct?

A Yes.

Q Again, just so I am understanding you, from your perspective, you have asked the question, you have got the response

but, as a lawyer working for Scottish Futures Trust, you would not be the person to interrogate the response that comes back from NHS Lothian?

A Yes. I mean, I think the other point to bear in mind is if there was information available to me, which I knew about, which was inconsistent with this statement, then that would have prompted me to ask further questions to the Board. If, as in this case, it's simply the Board's confirmed the position, that is then proceeded on that basis.

Q Thank you. If we could look on to page 26, please, to question 25 beginning, "Please demonstrate..." Do you see that question 25?

A Yeah.

Q

"Please demonstrate that a programme has been agreed with the proposed preferred bidder for the various due diligence processes required to reach financial close and that these are realistic and synchronised with the overall procurement timetable."

Then the response in the box on the right-hand side:

"A programme

capturing the processes required from PB to FC formed part of the Final Tender submission. The Board has provided a consolidated programme which sets out the main activities. Programme is however currently light on detail for due diligence processes. This will need to be further developed with the Preferred Bidder, and in consideration of the strategy to secure senior debt funding, to ensure this activity is synchronised with the overall procurement timetable."

We then see a recommendation.

It says:

"Recommendation: It is recommended that provision of a detailed programme and work plan for the project, to include the capture of diligence and agreed funding procurement route is prioritised for agreement at the first meeting with the PB."

Do you see that?

A Yes.

Q We see the response,

and then we see the recommendation. Why would that type of recommendation be included in a Key Stage Review?

A Well, again, if the judgment, as in this case, is that the project is at a point when it can move on to the next stage, as I'd said earlier, quite often we would include a number of recommendations which would provide us-- A recommendation to the Board, as in this case, having identified in its response an issue around it being light on detail, the recommendation therefore is to prioritise the production of a detailed programme. So, in other words, it was recommended to the Board that they action that issue in order to deal with the point which had been raised, which was the lack of detail at this stage.

Q Thank you. If we could then look on to page 41, please, we see an "Annex B: Key Risks." Do you see that?

A Yes.

Q If we look at-- the first risk highlighted is "Programme delay in reaching Financial Close." If you look a couple of boxes over, we see "Adequacy of Controls," which are described as:

"Not satisfactory at present.

"The Project Team continue to be sceptical regarding delivery of FC in less than six months from appointment of Preferred Bidder."

We see the status of that being "red." Can you explain your understanding of why this was included as a kind of key red risk in the Key Stage Review?

A Yeah, my recollection is that this key risk would have come from the project risk register, which one would look at at the Key Stage Review stage as a matter of course at each stage. The point I made earlier, which is the risk here is a programme delay in reaching financial close, not a programme delay in reaching the stage which one needed to be at at this Key Stage Review point, so there are a number of issues which have been highlighted, there, by the Board to say that "There's things to be done. Are we able to do this in six months?" So, that was being highlighted. The programme, as I recollect, at that point was six months. The point being that even if it wasn't achieved within the six months, it didn't mean that you wouldn't start moving towards financial close, which is what this Key Stage Review was about.

Q Thank you. We can put that document to one side. The next document that I ask you to have in front of you, please, is in Bundle 9, page 3. Bundle 9, page 3, which should be the "Pre-Financial Close Key Stage Review." Do you see that?

A Yes.

Q If we could look to page 11, please. Entry 2:

"Is the Procuring Authority satisfied that the preferred bidder's solution satisfies its operational and functional requirements and delivers the project objectives, benefits and outcomes?"

Do you see that?

A Yes.

Q The response is, "Yes," with the comments being:

"The detail of the design has been discussed with user groups to ensure clinical support and the Board confirms that has received appropriate internal sign off."

Do you see that?

A Yes.

Q So, no concerns being raised in the information that you have received in relation to any issues

concerning the preferred bidder's solution. Is that correct?

A That's my understanding, yes.

Q Thank you, and then box three, below that:

"Please confirm the status of the technical documentation (i.e. design, construction and FM requirements). Is the Procuring Authority, and are its advisers, satisfied that further development / document production (if any) is achievable within the current project timetable?"

Then the response in the comments box is:

"The Board has confirmed that the technical documentation is at a level of development consistent with the current stage of the Preferred Bidder to Financial Close programme. The Board advises that they are content with the documentation subject to further development through RDD following Financial Close and that the construction proposals are of sufficient detail to provide

sufficient certainty to the Board as to what is to be provided and to permit a timely start on site. The Board has also confirmed that the FM Service Level Specification is agreed and that the FM Method Statements have been completed and agreed.”

So, again, in terms of the development of the documentation, what you were being told as primary reviewer is that there was sufficient certainty that had been provided to the Board in relation to the technical solution. Is that correct?

A Yes.

Q And that that was going to be subject to review through the reviewable design data process, but that there is no specific concerns being raised to you as the primary reviewer?

A Yes, I mean, it says that the Board is satisfied that there's sufficient certainty as to what is to be provided, and we would expect that the Board would have taken advice from its technical advisors in coming to this view.

Q Thank you, and then if we could look on to page 19, please, box 6, we see the entry:

“What are the key risks

/ outstanding issues that may have an impact on the affordability of the project and what strategy is in place to manage these?”

Then we see in the comment section:

“The latest risk register for the project contains the following risk that is relevant to affordability:

Specification changes post financial close: there is a process for dealing with change to the Project Board and the Board's governance arrangements in place.”

Do you see that?

A Yes.

Q So, again, just so I am understanding things, in terms of one of the key risks that is being flagged, is that: if there was to be a change in specification, that would be relevant to the affordability of the project? That is being flagged up as an issue at this stage?

A Yes, and my understanding being that that would be a change by the Board, as opposed to a change that was required to comply with other matters. So that was if the Board changed its position, there could be a cost – potentially a time –

implication of that.

Q One issue that I would wish to raise with you is the Inquiry has heard evidence from other witnesses that have suggested in 2014 – so in the period prior to financial close which takes place in February 2015 – that there were poor relations potentially between NHS Lothian and IHSL, who was the preferred bidder. Minutes recording that there was paranoia, lack of trust, and documentation suggesting that the ventilation design being proposed potentially gave rise to the risk of infection such as MRSA and Norovirus. Was any information like that being fed back to you in your position as primary reviewer?

A In relation to the ventilation, no. I mean, in relation to the relations and the time scales to get financial close, I've seen, as a result of preparing for today, you know, for example, the minutes of various meetings, such as the commercial subgroup, I think, which I think had a representative of ACFT. So having reviewed that documentation, I'm aware that those sorts of discussions took place. In terms of the ventilation, as is clear from the KSRs, that wasn't flagged up as being an issue.

Q In terms of the issues

that you have talked about from the minutes that you have now reviewed about the potential relationships and tensions between NHS Lothian and its preferred bidder, were you aware of any of those issues at the time you were producing the Key Stage Reviews?

A I don't recall precisely what I recalled those number of years ago but, in terms of discussions that I would have had regularly with Peter Reekie, typically-- I can't say by reference to a particular one but, typically, if he would go along to a meeting, for example, to the Project Steering Board, as I understand it, that was a commercial subgroup, it would be common for him to have a discussion with me if issues came out of those sorts of meetings.

Q Would those types of issues be relevant to the Key Stage Review that you were conducting?

A Well, as I said, if at the point in time of the Key Stage Review there were responses which were coming from confirmations from the Board, and I had information at that time that was not accurate, then I would expect that I would have then raised that with the Board. My recollection, from what you said of the time scales there, is that the timing of

the meetings to which you refer took place in 2014, I think, and this is now February 2015. So the point of the KSR is it records the position at the date of the KSR so that if matters had been outstanding, which then had been developed to the point where the Board was able to provide the confirmations, for example, that we've looked at in relation to the development of the design, that might be a product of the fact that things had moved on between 2014 and 2015.

Q Again, just so I am understanding things, Key Stage Review is effectively a snapshot in time on the basis of the information you are being provided with when the Key Stage Review is conducted. Is that fair?

A Yes.

Q Thank you. I would ask you to have in front of you, please, within bundle 10, volume 1, page 283. This is a document called "Healthcare Associated Infection System for Controlling Risk in the Built Environment." It is often referred to as an HAI-SCRIBE Report. Now, I am not suggesting that you have seen this document before; there is just one entry in it that I wanted to take you to. This was a document that was produced on 19 November 2014. If we

could look on to page 286, please, and it is entry 2.2. So entry 2.2 is:

"Is the ventilation system design fit for purpose, given the potential for infection spread via ventilation systems?"

Do you see that?

A Yes.

Q The box is ticked as "no."

So, at this point in time, on 19 November, there was an issue as to whether the ventilation system design was fit for purpose, given the potential for infection spread via the ventilation systems. The Inquiry has heard evidence from at least one individual who said that this issue is identified, there is a disagreement between NHS Lothian and Mott MacDonald on the one hand and IHSL on the other as to whether the proposal either was or was not going to lead to a risk of spread of infection. The Inquiry has heard evidence that that issue was not resolved before financial close. Were you aware of any such issues when you were conducting your pre-financial close Key Stage Review?

A As I say, I don't have any recollection of being aware of that position, and as we looked at-- the financial close confirmation that's recorded in the KSR doesn't flag that

up as being an issue.

Q So, if there was an issue, you are not aware of it when you are conducting that Key Stage Review. Is that correct?

A That's my recollection.

Q Okay, and if that was an issue-- Let us just assume pre-financial close, there was a recognised issue of the ventilation system design potentially not being fit for purpose because it gave rise to a potential risk of the spread of infection. That would be a technical issue. Would that be something that you would think would be relevant for your Key Stage Review?

A Although it might be a technical issue, I would expect that if it was a technical issue which gave rise to what I might call a commercial issue – so, in other words, if there was a point of unclarity as to the specification at that point – that is the sort of thing that I would have expected might well have been elevated by the Board in terms of saying-- If it was still outstanding at the point of the KSR, then that could-- a technical issue can give rise to a commercial issue-- give rise to an issue that needs to be sorted for the purpose of the contract. If that makes sense.

Q Again, just so I am

understanding you, are you saying that, obviously, there is some technical issues that are relevant to technical people, and they would not be on your horizon, but there can be some really big technical issues that would effectively bleed over, and they do become commercial issues that would be relevant for a Key Stage Review?

A That could occur.

Q Now, can I ask you to have your statement in front of you, please? So, we are within in bundle 13, and the passage I would like to pick up with you is on page 104, and it is in paragraph 10, just above the red wording at (b). It is just the final sentence in the bold text. I think we have covered this already, but it is just to be absolutely clear, there is a statement there that you make where you say, "The risks identified here"-- so, you are referring a key state review. You say:

"The risks identified here are presented as risks to financial close not risks at financial risk [I think that means financial close] – this is a key difference."

Could you just explain what you mean by that key difference that a risk to financial close is not the same as a risk at financial close?

A It's part of the timing piece again. Just a little bit further up there it says:

"The Pre-FC KSR dealt with the risks on the Project Risk Register at that time."

So, what we would expect is that the project risk register would be updated. So, there might be issues which arose in 2014 which were resolved by the Board in the period coming up to February 2015. If, however, there were risks which were identified which hadn't been resolved, we would expect that those risks, if they were material, would be on the project risk register, and we reviewed the project risk register for the purpose of the KSR. So that's the sort of flow of it.

So, you could have a situation whereby there's a risk to financial close – in other words, these things had to be-- I took from that that that was risk which required to be dealt with adequately before reaching financial close. There's a separate set of risks, which are risks which arise at financial close. So, we looked, a few moments ago, for example, at changes by the Board leading to affordability issues. That would be a risk which would still be outstanding at financial close in the sense that there was the

whole construction period still to go.

So that's a risk that's still-- is still apposite at financial close, which we would then look at and say, "Well, how are you managing that risk?"

Alternatively, there may be risks which were risk to financial close, which either would be resolved by financial close, in which case they would be resolved, or if they were material and they weren't resolved, we would have expected them to see them on the project risk register.

Q Thank you. Final issue that I wish to pick up with you is-- It is really, almost, looking to the future. NHS Lothian's position before the Public Inquiry is that there were some errors in a spreadsheet in an Environmental Matrix, a technical document, which did not get spotted during the procurement exercise. You have obviously told us today about the Key Stage Reviews that are a commercial review. There does not seem, from the information provided to the Inquiry to date, that there is an independent technical assessment that is being taken place before financial close. Do you see that as being a gap in governance and projects of this nature?

A As I say, the essence of the KSR and the remit of the KSR was

to deal with the matters, including technical matters, which we would have expected the Board to flag up, as it were. So that's really how that was dealt with within the KSR.

Q Thank you. I guess what I am trying to explore is-- You have explained very, very clearly what you did, what Scottish Futures Trust's role was, and why you were not doing a detailed technical assessment or appraisal. I guess what I am asking is, as someone who works in this space on revenue funded projects, do you think there should be some form of independent technical review before contracts are signed?

A Well my understanding, for example, is that there has now been-- I don't know the detail, but the NHS Assure now looks at various matters, which is certainly beyond my remit.

Q Thank you. I do not have any further questions at this stage, but Lord Brodie might have some questions or, equally, there might be some questions from core participants, but thank you for answering my questions today.

THE CHAIR: I do not have any questions at this stage, Ms Stevenson, but, as I indicated before you began your evidence, I would like to give the

opportunity to those in the room just to consider their position and check whether there is anything that arises that they would wish to be raised. So what I will ask, first of all, is that you be taken back to the witness room. We will take a break of about 10 minutes, and you will then come back. You may be asked further questions or you may not, but I will ask you to go and come back, if you could give us 10 minutes.

USHER: Please stand.

THE CHAIR: See you in about 10 minutes.

(Short break)

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Lord Brodie, there is one point of detail that I would raise. Other than that, there is nothing else to raise and no applications, as far as I am aware.

THE CHAIR: Right. Ms Stevenson, I understand there is just one question that Mr MacGregor would wish to ask in addition. Mr MacGregor.

MR MACGREGOR: It is just one point of detail to pick up with you. Within the Key Stage Reviews, we saw that there were some recommendations that were made

within the Key Stage Reviews. Were those mandatory for NHS Lothian to follow, or were they simply included there as a guide or a classic recommendation?

A I suppose it's fair to say that we would expect them to follow the recommendations. The way it would work, though, would be that I would always review those recommendations at the next stage. So if the recommendations hadn't been followed, it's not so much that it would be mandatory or non-mandatory, it's that that would then be taken into account at the next Key Stage Review and, in particular, I suppose, the purpose of the recommendations were then to assist the process to get to the next stage. So, if they weren't followed, then that might have an impact in terms of the timing or, indeed, achieving the next stage.

Q Thank you very much. I do not have any further questions for you.

THE CHAIR: Ms Stevenson, that is now the end of your evidence, but before you leave us can I say thank you, not just for your attendance this morning. I very much appreciate that giving evidence to the Inquiry involves a great deal more than being with us

for an hour and a half. You will have put in a lot of work, so thank you for that in addition, but you are now free to go.

MS STEVENSON: Thank you.

THE CHAIR: Now, as I understand it, Mr McClelland is pretty well ready to slip into the questioner's chair. I will withdraw for what may just be a matter of minutes, but we will not adjourn beyond that. So, it is just a question of swapping places and making sure that the correct devices are correctly attached, and then we will proceed directly to Mr Reekie's evidence.

MR MACGREGOR: Yes, my Lord.

(Session ends)