



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
25 April 2023**

Day 6
Wednesday, 3 May 2023
Paul Serkis

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10:02

THE CHAIR: Good morning.

Good morning to those who are in the Edinburgh hearing room and good morning to those who are following proceedings on the live stream. Now, Mr MacGregor, I think we are in a position to lead, is it, Mr Serkis----

MR MACGREGOR: Yes, Mr Serkis, my Lord.

THE CHAIR: -- as our first witness. Good morning, Mr Serkis.

MR SERKIS: Good morning.

THE CHAIR: As you know, you are about to be asked questions by Mr MacGregor, the counsel to the Inquiry but, first, I think you are prepared to take the oath.

MR SERKIS: Yes, I am.

Mr PAUL SERKIS

Sworn

MR CHAIR: Thank you very much, Mr Serkis. Now, I do not know how long your questioning will take, but we will plan to take a coffee break about half past 11.

MR SERKIS: Okay.

MR CHAIR: If for any reason you want to take a break at any time, just say so and we can do that.

MR SERKIS: Okay, thank you.

MR CHAIR: Right. Mr

MacGregor.

Questioned by Mr MacGregor

Q Thank you. You are Paul Sarkis, is that correct?

A I am indeed.

Q You have provided a witness statement to the Inquiry, Mr Serkis?

A I have, yes.

Q You should have a paper copy available to you if you want to refer to it at any point.

A Yeah.

Q Equally, any document I want to take you to should come up on the large screens in front of you. If for any reason you cannot see those documents, please just do let me know.

A Okay.

Q For anyone that is following the electronic bundles, Mr Serkis' statement is in bundle 13 from pages 319 to 334. Mr Serkis, your statement is going to form part of your evidence to the Inquiry, and I am also going to ask you some questions today. If we could just begin with your career, you tell us at paragraph 2 of your statement that you have been involved in the construction industry for approximately 34 years. Is that

correct?

A It is, yes.

Q You currently work as a project director for an organisation called ISG?

A Yes, I've recently just taken on another appointment which is-- I'm still at ISG, but now I'm running all of the film and high-end television sector in terms of the film and media and projects that we're now delivering, so looking after all of those as well.

Q Okay. So, that was really what I was going to ask you. Firstly, what does ISG do as an organisation?

A So, ISG is a construction company as well, the main contractor in its own right, with a turnover of about two and a half billion a year.

Q Okay and, within ISG, what is your current role?

A So, now I'm the sector director for all the film and high-end television studios that we're building.

Q But originally you qualified as a quantity surveyor, is that correct?

A Correct. Yes.

Q Then moved on to do other roles including management roles but all really within the construction sector?

A Correct, that's correct.

Q So, if I could take you back to 2005, whenever you joined Multiplex as a commercial director for their public and private projects, can you just explain to the Inquiry what did that role involve?

A So, when I joined Multiplex it was to get involved in, at the time, PFI projects for healthcare projects that were being built out, and my role was from a commercial point of view, my background being surveying, and then I've gone into the sort of commercial director role and looking after the contracts and the money sides of the projects that we were looking at, bidding, getting involved in the in the pretenders and then taking those through to financial close.

Q Okay, so, just so I am understanding this, you are involved in PFI projects but, effectively, from the management side as opposed to being involved in any of the aspects of the technical instruction issues?

A Yeah, pretty much so, because I was bringing the teams together and using my expertise that I'd built up over doing PFI schools. When I was doing those at the previous company called Waits, I'd got involved in not only the delivery side but also the front-end side as well, so I

had a good understanding of how PFI projects were put together.

Q Just to be clear, what do you mean by that, the front-end side? What would front end be as opposed to the back end?

A Yeah, so the front-end bit was: when you identify an opportunity and a project, you put a pre-qualification together, you bring a team together, you put that pre-qualification in, hopefully you get selected, and then you go into what's called preferred bidder stage, and then you take that through to financial close, and at financial close the design and build element starts and the rest of the project is delivered out. So, from a construction point of view, I've been on both sides, where I'd gone through from what we call cradle to grave, where I'd started bidding, and then finished off from a delivery point of view, from a construction point of view, a number of school projects. So that's the differential; front-end being up to financial close and then delivery beyond that.

Q So, front-end to financial close, and then back-end – from a contractor's point of view – from that point until you finally complete the project?

A Correct.

Q Okay. Now, you mentioned in your statement that you worked at Multiplex for 16 years. Were you in, effectively, their healthcare team for the entirety of the time you were with Multiplex?

A Quite a lot of the time. So, when I started-- A bit of background, having done sort of PFI schools, I saw the healthcare sector as the sort of next-- I saw it as the Premier League, moving into delivering healthcare, and so I then went into looking at healthcare projects with Multiplex initially and probably did that for a good, sort of, 10 years and then went into the operation side and then started looking after other projects like offices and residential and that side of it.

Q Okay, and you give us some examples of projects that you had worked on. So, you mentioned that you worked in the Queen Elizabeth University Hospital in Glasgow. Again, just in general terms, can you explain what your involvement was in that project?

A Yeah. So, that project was slightly different to the NPD model that we have on Edinburgh. That was a capital expenditure project, so there were less stakeholders involved, and my role was there as the commercial

director for the project and I, again, took that from the initial pre-qualification stage through to financial close. I also stayed on for a year while we were setting the team up and setting up the project because one part of the project had started being the FM building and then the rest of the main adult and children's hospital was going to be started a year later. So I was then involved in that transition year as well.

Q Thank you. You mention in your statement from effectively 2000 onwards that you had an involvement--an interest in PFI contracts. Am I right in thinking that they are structured effectively so that private capital can be used to finance public sector projects? You mentioned within your statement at paragraph 9 that it is really like paying for a facility through a mortgage. Again, for those of us that do not work in that sector, can you just explain in very simple terms what you mean by that and how the project is structured?

A Yeah, certainly. So, with a PFI model, you're effectively allowing a project to be built using finance from investors at that time, and then the NHS trust, or the Board, will pay that money back over a period of time, and so it allows projects, if there isn't

private investment, to tap into private--sorry, public investment that you tap into private investment, and then that money is paid back over a long duration. It might be 25 years. It could be 30 years/35 years depending on what the tenure is that the trust or Board wish to do or school if it's a PFI school.

Q Just in terms of how the project would be structured, you cover some of this in in your statement, but you mentioned a number of players that would be involved. So, there is the special purpose vehicle or the company. What is that, and why is it formed?

A So, for each project a special purpose vehicle, an SPV, or special purpose company, SPC, is set up and that is the contracting body with the trust or the Board or the school, and they are effectively the lead that, once construction is complete, you still have that link between the delivery of that project and then the ongoing tenure for 20/25 years after the construction period, and they organise and sometimes put in a bit of equity. So, typically, they might put 10 per cent equity in, and the balance of that 90 per cent investment they go out and they source from other investment vehicles, and they bring all

of that funding in and then have the financial model that basically sets out how this is going to be paid back over the 25 or 30 years.

Q So the company is set up, effectively, so that the private capital can go in, and then the company would contract with the public sector organisations, such as the Health Board?

A Correct. Yeah.

Q Well, if we think-- We will come on and talk about the project for the Royal Hospital for Children and Young People and the Department of Clinical Neurosciences. If I refer to "the project" at any point, that is what I am referring to.

A Okay.

Q We have heard evidence about Integrated Health Solutions Lothian, IHSL. Is IHSL the SPV or the company that was formed?

A Correct. It is, yeah.

Q In terms of other entities that we hear about-- So, you work for Multiplex. Where does Multiplex sit, and what is it doing relevant to IHSL?

A Yeah, okay, so Multiplex was the design and build contractor, so you have the SPV or SPC, which was IHSL in this instance. You have the main contractor who were doing the design and build contracts, which

was Multiplex, and then you had Bouygues in this instance doing the facilities management and the life cycle maintenance, and then they contracted direct with IHSL, and there was an interface agreement between Multiplex and Bouygues, who were the FM side of it. So, once the job is built, Bouygues would then take on the facilities management and have obligations through the SPV, SPC in this instance, through to NHS Lothian.

Q Again, just so I am understanding things because often at times IHSL and Multiplex can get lumped together, but just in terms of strict technicalities, you have got IHSL as the entity that is going to put the bid in, and then you have Multiplex as the design and build contractor sitting as a separate entity, but doing the key aspect of the project, the design and build of the hospital, if IHSL is successful in the tender process?

A Correct. Yes.

Q I think you mentioned within your statement that you had worked on standard PFI or PPP projects before. That project was going to be an NPD project, which you say is similar but slightly different----

A Yeah.

Q -- to a standard PFI or PPP project. Can you just explain, in

general terms, your understanding?
What is the difference with an NPD project?

A So, just the terminology of NPD is non-profit distribution, whereas a PFI model there would be more return of investment for the equity stakeholders. From an NPD point of view, it was less money going back into the private sector.

Q Effectively, the same structure----

A Pretty much.

Q -- but just the amount of money that may flow is different, perhaps capped as opposed to a standard PFI/PPP project?

A Yeah.

Q Is that correct?

A Yes.

Q Thank you. Just, again, drawing on your experience working within revenue funded projects, did you have an appreciation of both? Where would design risk generally sit if one is dealing with that type of project whereby you have got procuring authority and they want a private sector organisation to come in and build a project for them that will be paid back over a number of years? What was your understanding as a generality of where design risk would sit in a project like that?

A So, as a generality, you have the risk that is passed down from the contracting board, or NHS trust or Board, and that would then be passed down to the SPV company and, in turn, under the project agreement which is the main agreement between the SPV and the client, they would step down whether it's the DMB obligation-- So, in this instance, the design and build obligations would step down to Multiplex, and the FM facilities management obligations would be stepped down to Bouygues in this instance.

Q Again, just so I am understanding this, as a generality, design risk would be passed from the public sector to the private sector----

A Correct.

Q -- but in terms of exactly how any deal is structured, presumably that depends on the individual procurement exercise and the individual contract?

A Correct, yeah.

Q Working within that sector, were you familiar with the term "operational functionality"? Was that an industry-wide term that you were aware of?

A Yeah. I mean, as-- in experience, operational functionality is about how the building is going to

work, how it's going to be used, all the different departments and how they integrate with each other, and there is links to how those rooms in a particular building will be used, and so the design of those rooms will influence-- For example, if you had a four-bed ward or a single bed ward the operational functionality of that particular ward would be passed down to the design and build contractor to start with to make sure that it's built in accordance with the requirements, and then from an operational point of view that would then switch to facilities management team who would then manage and make sure that those rooms are functionally/operationally-wise-- they all work and they're all maintained properly.

Q Thank you. If I can ask you to have your statement in front of you, please. It is bundle 13, page 322, and paragraph 14. So, bundle 13, page 322, paragraph 14.

A Yeah.

Q Do you see the sentence beginning, "To be successful in a bid you have got to get the money right to start with...?"

A Yeah.

Q Again, for those of us that do not operate in that same-- What do you mean about getting the

money right to start with?

A Yeah. So, you've got to be competitive, and by that I mean the project will have a certain amount that they can spend – so if you go back to the mortgage concept, you'll have a certain amount of money that they can afford – and so if you're positioning, in terms of your submission, isn't there i.e. you haven't got the design and build cost, the operational cost and the finance cost through the financial model in the right ballpark, and that's where I've probably use my words "the money right," as in that the cost to the trust or the Board that they will have to pay back. If that's not right, then generally you don't get considered.

Q Within the project, there was a 60:40 split in terms of price to quality, that is how tenderers were going to be assessed. Were you surprised to see that split in the tender documents?

A I wouldn't say I was surprised. I mean, every project has a difference. You know, no project is the same. There's no panacea for every single project, so you might see different weightings depending on different projects.

Q We will come on, perhaps, just to ask you some more specific questions about the project

itself.

A Sure.

Q You have explained that Multiplex were in as the design and build contractor. You also mentioned that Macquarie were involved. What was Macquarie's role? Who are they, and what was their role?

A So, Macquarie, they were part of the SPV, or SPC in this instance, so they were putting up some of the equity. So they were acting as the lead across the whole of this project. We'd worked with Macquarie's in the past, having done Peterborough Hospital; in the same vein, they were part of the equity funding and part of the SPV on Peterborough. So there was a working relationship with them, and when we were looking at opportunities, we were talking about the various opportunities that were available for us to work together again, and Edinburgh was one of them that came up previously. I think it was under the Scottish framework so it wasn't one that was on our radar, and then later on it became an NPD model, in which case that was an attraction for both Macquarie and ourselves to get involved, because at the time Multiplex weren't on the Scottish framework.

Q In terms of the tender

that is put together on behalf of IHSL, can you just explain a bit about who is leading on that and who is having involvement? Is it Macquarie, IHSL, is it Multiplex, or is it a combination of everyone? What is happening?

A So, as a lead, Macquarie would manage the whole of IHSL Lothian. So, they would lead on behalf of the whole consortium, and they would pull everything together. We would feed in our design and build elements as Multiplex, and Bouygues would feed in their facilities management elements, and then Macquarie's would pull all of that together and make the submission.

Q You tell us within your statement you were working with a Mr John Ballantyne. Who is he and what was his role in the project?

A So, John I knew for a few years off the back of the Glasgow hospital that we did. We employed John, and the intention was that John, being based in Scotland, would effectively run the project as the project director for Edinburgh, and so I was working with him to, effectively, bring all my experience and my knowledge and bring the teams together with the view that at financial close I would then finish up and head back down to London to go and pursue

other projects and that would then allow John to take on and deliver the project itself.

Q Again, just so I am understanding things, you are working with Mr Ballantyne; you both work for Multiplex. Would it be fair to say that he is working at a slightly more granular level of detail in the project, and you are perhaps dealing with a slightly higher level on the project?

A To be honest, we both rolled our sleeves up and got stuck in. When I say stuck in, you know, we were working as a team. I was supporting John with the full knowledge that I would then head back after financial close. So, you know, we would try and share the load but, ultimately, it was going to be John's responsibility to deliver the project. So he was taking a keen interest in everything that we were doing as a team and everything that Bouygues and Macquarie's were doing as the SPV-- SPC.

Q Again, just so I am understanding your role, you were really looking at the commercial side of the tender that is being put together. Is that correct?

A Pretty much, yeah, and bringing the interface between the design and build and the FM side of it

as well.

Q Because, you know, at various points in your statement you touch upon issues such as the Board construction requirements, the tender documents and, as I understand, you very fairly say you have a fairly high-level superficial understanding, but it was not really your role to have the detailed understanding of that technical information. Is that fair?

A It's fair, yeah. You know, I take an interest in all sort of procurement models. I like to understand the documents, what the makeup is, how they all go together, but if someone wants to ask me detail-by-detail, we have a team and that's how jobs are built: with a team.

Q Again, this is really a statement in fairness to you, at some points in your statement you have helpfully tried to set out your understanding of various documents, your understanding of the contract, but presumably you recognise that those views may be controversial and you are not seeking to give a definitive view. You are simply saying that is your subjective understanding of various matters to try and put your views in context. Is that right?

A Correct, yes.

Q Thanks. In relation to the

tender itself that goes in from IHSL, did you have any responsibility for drafting any particular aspect of that, or did that really sit with IHSL and other specialist technical people?

A So, it would sit, ultimately, with IHSL as the driver but, obviously, Multiplex would be feeding in from a design and build point of view and Bouygues from an FM point of view. So we'd be collectively feeding documents into the overall submission, whether it was the pre-qualification or during the preferred bidder stage to get to financial close.

Q Thank you. Now, within your statement you talk about the relationships on the project. As I understand it, that is the relationships between individuals at IHSL and Multiplex with those acting for NHS Lothian including Mott McDonald. Now, you tell us at paragraph 21 of your statement that you considered the working relationships were challenging, and you considered that fatigue had set in on the part of, I think, NHS Lothian in particular. Can you just explain what you mean by that, and when you thought the relationship was began to be challenging, and when you thought that fatigue had set in?

A Yeah. If I go back to

when I, sort of, first understood about the project. So, as I understood it, the project sat originally on the Scottish framework and had been in circulation for some time, and I think it was around about 2010-- Well, the records will show when exactly it was, but it then transitioned across to an NPD model, and that's when we got involved. My point there is that there would have been a number of people involved with that project before it had even got to financial close, and my view was-- I'm used to building teams together, driving teams together, and bringing those relationships together, and I just felt very early on that there was-- The reason I use "fatigue" is because this project had been in circulation for a few years and it hadn't reached financial close, and my own personal view was that I believed fatigue had set in on the basis that a number of people were just wanting to get this across the line, get it to financial close and just move on and get it built. Hence why the, sort of, "fatigue" statement is-- My own view was that some people were just tired of it and just wanted to get onto financial close and move on, because it had been around for a while.

Q If we think about the competitive dialogue stage, so IHSL

gets through the pre-qualification----

A Yeah.

Q -- invited to competitive dialogue. What input and engagement was there from clinicians with IHSL, Multiplex and Multiplex's subcontractors?

A During the period of competitive dialogue, I don't recall there being-- well, certainly I didn't attend any meetings with any clinicians, and I don't recall there being any intense meetings to look at the design with them.

Q Did that surprise you, given similar projects you had worked on before?

A It did, and I think I put it in my statement about, you know, we're used to getting involved from a design and build point of view to help shape and bring all the different experiences that we have to the delivery of facilities. Now, there's no right or wrong answer as to how you design a hospital, but there are standards and there are documents out there that-- well, depending on what the Board or the NHS trust would like, you then develop that with the clinicians, with other user groups and stakeholders so that, ultimately, you get to a position where the hospital that's being built is something that they

want and is future-proof going forward.

Q That is the competitive dialogue. What about from the point IHSL gets appointed as preferred bidder? Was there more clinical input with Multiplex and Multiplex's subcontractor in the period from preferred bidder to financial close?

A No, not that I was aware of. Again, I did find it strange that there wasn't more interaction, and you'll probably come onto it in my statement, but I just got the impression that, "Just go and build what we've designed and move on."

Q Because, again, the Inquiry will hear evidence from individuals from Wallace Whittle TÜV SÜD, who were subcontractors in these.

A Yeah.

Q They said that they thought there was very little clinical engagement and that was not something that they had really anticipated in a project of that nature. Were you having any discussions with Wallace Whittle or TÜV SÜD about the lack of clinical engagement?

A I don't recall any specific conversations other than I did, sort of, turn around to John on several occasions saying, "This is going to be hard, because they just don't want to

change anything or consider any changes or"-- not so much changes but any views that we may bring with the expertise that we've got, as having delivered a number of hospitals and bringing the team together that we have, and that probably feeds into my, sort of, "fatigue" statement that just "We've done the design. It's a mandatory design. This is what we want. Please just deliver it."

Q Again, your position is, effectively, as you understood it, there was a fixed brief of something that had to be built out by IHSL and Multiplex? Is that correct?

A Correct, yeah.

Q If I can just ask you to have your statement in front of you, please, bundle 13, page 325, and we will come on to look at paragraph 27 in a minute, but I do not think it is a matter of dispute that the procuring authority, NHS Lothian, had not produced room data sheets to provide to bidders as part of the procurement exercise. Given your experience on projects of this nature, were you surprised not to see a full suite of room data sheets being provided to tenderers?

A No. No, not at all. Again, there's no right or wrong way to do it. It's just where people are in the

process. On some projects there will be room data sheets that are quite advanced, and other projects there are very little. You might have some typical room data sheets for some of the rooms and then beyond financial close you will then very quickly develop those-- finish those off with the with the client's team.

Q There is an Environmental Matrix that is provided to prospective tenderers. Is that the document that, in your view, that was effectively a brief that had been provided to tenderers?

A Yeah. I mean, the Environmental Matrix set the parameters of what that brief was and, effectively, that's what the Board were looking for to be delivered.

Q In terms of that being what the Boards are looking for, could that design brief be frozen at the tender stage, or would it have to have been developed on a project of this nature?

A You could freeze it. Again, there's no right or wrong way to do this. It's what, you know, with the documents in front of you, with how much design has been done, with how much interaction with the clinicians has been done, it's about an understanding of: the Environmental Matrix will set

the parameters, you then delve down into each room. I think I go on to give an example where if you have a floor plate in here where you've already got the rooms laid out and designed, and then there's a change to say, "Well, actually we want to increase one of those rooms in there," you've still got the same floor plate, which means you might have to change some of the room data sheets to suit those rooms.

Q If we look at paragraph 27, the final couple of sentences.

A Yeah.

Q You say:

"It's very difficult to finalise those room datasheets until you absolutely have cast iron 100 per cent design freeze for that room. There is no rule for when this will happen, but typically it's after financial close."

What was your understanding of what was happening on the project? When was there going to be design freeze?

A So, for Edinburgh, I can't exactly remember when, but I know that, in my view, it should have been post-financial close, but going back and reading some of the documents, there was a will to have everything done and complete before financial close. With the best will in the world, if

you had a high-performing team, that might have been achieved, and by that I mean everyone working collectively together. When you've got a mix of people, going back to that word "fatigue," going back to the relationship with everyone, looking back now, there's probably reasons why it wasn't achieved.

Q If we can just think then about a bit more about the tender exercise. Wallace Whittle TÜV SÜD, and Mr McKechnie in particular, engaged effectively as specialists, a ventilation subcontractor. Is that correct?

A Correct.

Q So what did Multiplex ask Wallace Whittle TÜV SÜD to do at the tender stage? So up to the point that IHSL submits their tender, what were they being asked to do?

A So they would have been asked to review the documentation that's been put in front of us, that's been issued to all of the tenderers. Then once you move into, obviously, the period between preferred bidder and financial close, is to work with the client's team and their advisors to close out whatever the deliverables are to meet financial close.

Q In terms of if we think about specifically the Environmental

Matrix, if Multiplex consider that was a fixed client brief, at the tender stage, would Mr McKechnie and Wallace Whittle TÜV SÜD have been asked to review that document to see if there was compliance with the values in it with various items of published guidance?

A Yes, they would have done, yeah.

Q Okay. It is just Mr McKechnie, he says in his witness statement, and he is going to give evidence tomorrow, that at that stage – the period up to preferred bidder – that they had not conducted any form of review of the Environmental Matrix.

A Right, okay.

Q Is that a surprise to you?

A Well, if he's saying he hasn't, then it is a bit of a surprise, but notwithstanding that, at a point in time, they would have looked at it. So whether it was before the commercial dialogue period or between preferred bidder and financial close, those documents would have been reviewed by them at some point. Now, whether they did it before the pre-qual or after the pre-qual submission, but before financial close.

Q The reason I raise that with you, and I appreciate you did not put the tender together and you are

not *au fait* with all of the technical details, but there is various points within IHSL's tender whereby their statement is saying, "We will comply with published guidance such as the Scottish Health Technical Memorandum 03-01." I would just be interested to know what was the basis for those statements, and if you do not know, please do just say, but there are various statements we could go to that says, "Our tender will comply with the published guidance." Do you know what the genesis of those statements in the tender bid was?

A I don't, to be honest.

Q Perhaps if we could just think a little bit more about the status of the Environmental Matrix, and you tell us within your statement-- It might be worth just looking on to paragraph 28, I think it is, so bundle 13, page 325. There is a sentence about halfway down beginning, "They had a reference design." Do you see that? So I think it is just the very final line that is on the big screen at the minute, it says, "They had a reference..."

A Yeah.

Q Maybe if we could just scroll up slightly.

A Yeah.

Q Or sorry scroll down----

A Scroll down, yeah.

Q -- so we can see more of the----

A Yeah, that's fine.

Q You tell us:

"They had a reference design and we were being told, 'Don't change any of it. Just get on with it and deliver it. We don't want anything else.' This is my firm recollection of what we were being told by the Board and their advisors Mott MacDonald. They just said 'This is what we want. We've spent enough time modelling this. We've met with the user groups. We've met with the clinicians. Please don't change it, just deliver what we want.'"

Do you see that?

A Yes.

Q Then the final sentence, you say:

"By this, I meant we would need to meet the requirements set out in the briefing document such as the EM..."

Do you see that?

A Yeah.

Q Again, I appreciate this is nearly 10 years ago, but can you just try to explain why you are telling us-- Who is telling you this? What are they telling you, and when are they telling

you?

A Yeah, okay. I mean, I can't remember exactly who said it, but the feeling I got from pretty much all the meetings that I attended was-- and this goes back to and I'm sorry I keep going back to it, but the project was originally put together back in 2010. A lot of work had been done to get that project to the market. You then had the DCN that was added to the project. I can't remember the exact time but that was added to the project as well, and that's when it switched to the NPD model. My point in all of this was I just generally got the feeling from everything that was being said to us is, "We've done all this. Please don't change it, just get on and deliver what we want," and that was it.

Q Is your recollection that you were being told, "This is what we want," as in, "All that is set out in the tender documents is what we want," or do you remember specific discussions around the Environmental Matrix -- "That is what we want"?

A No, there was no-- I don't recall any specific conversations certainly that I attended in relation to the Environmental Matrix. I suppose what I would go on to say is no one ever raised it as being a major issue. If it was a major issue, I'm sure John

and I would have would have dealt with it. Again, you know, you see what I've put down my witness statement. My feeling was that-- and from experience of all the other PFI projects and even indeed other projects not PFI, it was, "We've done all this. This is what we want, please go and deliver it."

Q The reason I raise this is because I think views differ on what was being said at the time. So, for example----

A Okay.

Q -- Mr Greer, who the Inquiry is going to hear from on Friday, according to his witness statement, he really disputes that he was having any conversations like that. His recollection is that what IHSL were being told was that the requirement was for them to ensure that documents like the Environmental Matrix complied with published guidance. Do you recall any conversations like that with Mr Greer or anyone else from Mott MacDonald or NHS Lothian?

A No. As I say, if someone had raised this is a major issue, I'm pretty certain that John and I would have dealt with it.

Q Did you attend the bidders day for the project?

A Crikey, I can't remember

whether I attended the actual bidders day. I certainly attended all of the sort of meetings and help put the pre-qual together. I'll need to double-check on that.

Q I take it-- There is some documentation relating to the bidders day but it would be fair from what you are saying that it is a long time ago and any specifics of what you----

A Yeah, I've been to a lot of bidders days which is why, apologies. I can check that and come back to you.

Q No, no, it is fine because there is certain documentation from the bidders day, but if you do not have a recollection of the day, there is no point in me asking you any questions about it. If you do not recollect, please do just say.

A Yeah, okay. I don't recollect being there.

Q Okay, thank you. Just a few more questions about the status of the Environmental Matrix. Were you aware of the fact that Wallace Whittle TÜV SÜD, Mr McKechnie had asked for an Excel spreadsheet version of the Environmental Matrix? Did that ever come up in any discussions you had with them?

A Obviously reading the documents now, I'm aware. Going

back at the time, I can't recall, again, having any detailed conversations about the Environmental Matrix with them.

Q Okay, I will just turn up the reference in fairness to you. So if we could look at bundle 10, please, volume 2 and page 1300. So bundle 10, volume 2, page 1300. Do you see that the second email there? So, it is an email from a from a Ken Hall to Maureen Brown and Graeme Greer?

A Yeah.

Q Do you know Ken Hall?

A Yes, yeah, he worked for Multiplex. He was one of our M&E managers.

Q What he says is:

"Good morning Mo /
Graeme

Stewart has asked me if he could have the environmental matrix in excel rather than pdf version to allow to populate the schedule with any changes."

Do you see that?

A Yeah, I can see that.

Q The reason I asked you about that, whether you were having any discussions with Mr McKechnie or Wallace Whittle TÜV SÜD, it might be said if the Environmental Matrix is a fixed brief that cannot be changed, why do your ventilation subcontractors

want an Excel spreadsheet to make changes to that? Do you have any observations on that?

A I suppose my only observation is if Stewart-- At the end of the day, from a design and build point of view, we need to comply with those documents unless there are any changes that are either agreed-- You know, we don't just change things for the sake of it. So if there were going to be any changes, then I'm looking at that saying, well, Stewart's obviously asked for Environmental Matrix and he's asked for it-- Sorry, Ken's ask for it in an Excel form so that they can review that, and if there are any changes agreed with the client, it's populated in that document and then returned back. But I wouldn't say any changes are made without agreement with anyone. That's not in anyone's interest to do that.

Q Okay, and from the point that IHSL gets appointed as preferred bidder, are there comments that are coming back on the proposals that had been put forward by NHS Lothian and in particular their lead technical advisors, Mott MacDonald Limited?

A I honestly can't remember being involved in any detailed discussions on those and don't recall anyone bringing this to my

attention that there was a toing and froing between the parties on that.

Q Okay. So, again, if there was the toing and froing, you do not recall being involved in that?

A No.

Q Perhaps not surprising if you have got a commercial role and a technical role.

A Yeah.

Q But, again, I would just be interested in your observations. If those backwards and forwards are going on, that NHS Lothian and Mott MacDonald are making comments on the proposals, do you have any observation on whether that would be relevant to whether the Environmental Matrix was a fixed client brief?

A I suppose my observation, you know, 10 years on or whatever, is that there was dialogue going on between the parties to make sure that the Environmental Matrix was agreed, so that each party knew what was going to be delivered post-financial close.

Q If we think about what ultimately happens to the Environmental Matrix, I do not think it is a matter of dispute that it became included in the contract as reviewable design data. Is that your understanding?

A Correct, yeah.

Q Right, again, I would just be interested in your views. If the Environmental Matrix was a fixed client brief that was not to be changed, what was your understanding of why that was included as reviewable design data?

A Again, my view is you can fix things, and there is a suite of documents that will fix what contractors are obliged to deliver as part of the contract. Post-financial close, there is dialogue that continues and there are variations and there are mechanisms in the contracts to affect any change that a client or a contractor might suggest. So, while something will be fixed at the point of contract execution, the suite of documents allows for further variations and changes, but they will need to be agreed between the parties. They don't just get changed without any other any other party knowing. So, it's fixed insofar as there are provisions in contracts to allow changes to occur post-financial close.

Q Thank you. I would now like to move on and ask you about a different issue, and that was the requirement in the tender documents for the successful tenderer to produce 100 per cent room data sheets for

every space in the hospital by financial close.

A Yeah.

Q So, if I could ask you to have in front of you bundle 2, page 965, which is part of the Invitation to Participate in Dialogue. So it is bundle 2, page 965, you should see a bold heading, "**2.5.3 Room Data Sheets.**"

A Yeah.

Q If I could ask you just to look to the very final sentence, just above "**2.6 Indictive Elements...**"

A Yeah, I can see that.

Q Can you see it says:

"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 Yeah.

Q Did that happen? Did IHSL produce 100 per cent room data sheets by financial close?

A I don't believe 100 per cent was completed at financial close, no.

Q Why not?

A I can't answer why they weren't all complete. My opinion at the time, and it's easy to look back now, there were so many constituent parts

that go together when you're putting these contracts together, and when you are working with a large group of stakeholders, and with the timing, with everything else that was trying to be put together, I guess that was one element that was agreed between the parties that at some point, and I can't remember when, that they wouldn't be complete by financial close.

Q Because the Inquiry has heard some evidence to suggest that there came a point in time where either IHSL or Multiplex effectively said, "You are just asking for too much detail in the time available. We are not spending any more money on this and we are not doing any more development. We will not be providing 100 per cent room data sheets by financial close." If those types of conversations were taking place, were you involved in them, or would that be other individuals?

A I was aware of the pressures on all of the team. I can't remember individual subjects being discussed about, "We're doing this. We're not doing this," but the general feeling around the whole of the team there was-- I suppose it was frustration on all parties. There was pressure to get to financial close because if you start to extend the period of financial

close, then it stands to bear that all parties are expending more money. So when you set a plan in place-- So there would have been a programme that we would have agreed at the time to take the position from preferred bidder through to financial close, and you would have a list of all the deliverables and all the actions and all the meetings.

Now, again, it's easy to look back 10 years and go, "Well, every single element of those, that was delivered, that wasn't delivered." I guess somewhere along the way there was an agreement between all parties that some of these things wouldn't be complete by financial close. But, again, I would add that, whilst it says it here that "They will be complete by financial close," a lot of projects that I've been involved in, they're not all done by financial close.

Q Again, I would just be interested in your views. That is stated in the procurement documents that go out to all bidders as an absolute requirement that has to be done.

A Yeah.

Q Were you surprised that NHS Lothian were prepared to waive that requirement in the period between preferred bidder and financial close?

A I wouldn't say I'm

surprised. As I say, when you get to financial close, there will always be certain things that still need to be done post-financial close. The fact that some room data sheets won't be complete-- If I go back to my earlier statement about you're still honing and finalising some of the design on the floor plates, or that's what you should be doing because there might be changes in terms of medical revision, there might be changes in the way that floor plate is laid out. So, whilst you might have a set of room data sheets and the requirement, I can see this here, it says they'll be done by financial close, in this instance, they weren't all complete by financial close. But, again, there would have been agreement along the way to accept that all those room data sheets wouldn't be done by financial close and some would tip over beyond financial close.

Q If I could move on and ask you some questions about your understanding of the role of Mott MacDonald Limited. So, from the point that IHSL gets appointed as preferred bidder, were you involved in any of the engagements between IHSL and Multiplex and Mott MacDonald Limited?

A Yeah, I attended-- So

there was a number of different meetings. I think I referenced in my statement about, during the preferred bidder stage, we'd all meet at the beginning of the day and then talk about sort of key issues, what was going to be happening over the course of the day. Then there would be subcommittee meetings going on during the course of the day, and everyone would go off to their respective meetings, and John and I would split ourselves up along with the rest of the team and go and attend some of those meetings, and basically just to keep an overall eye making sure that everyone's doing what they should be doing or bringing any key issues up to us for us to deal with.

Q In terms of the intensity of the input from Mott MacDonald, the Inquiry has heard a range of views expressed. Some witnesses from Mott MacDonald have suggested for things like the technical solution being put forward they were just doing a sampling approach on that. Mr Hall from Multiplex described Mott MacDonald as performing a role that was more akin to a shadow design team, very detailed input that was being provided. What was your impression of the intensity of the input from Mott MacDonald?

A I would say it was probably more intense than I'd been used to on other projects, and that's not a criticism. That's just an observation. But what I did find is that if you go to the Project Contractor's Proposals – the PCPs – which are a response to the Board Construction Requirements, when we were drafting those, it did feel, and I sensed the frustration from the team, that they were taking a much more active role in the drafting of those documents and the detail going into those documents than I've experienced on many other projects. That's not a criticism. That's just an observation.

Q If I could ask you to have your statement in front of you again, please. So, it is bundle 13, page 331, paragraph 46. Page 331, paragraph 46, and it is the last couple of sentences beginning, "However, from what my recollection was. Page 331, paragraph 46 and it is the last couple of sentences beginning, "However, what my recollection was..." Can we maybe just zoom in at the bottom of the paragraph, 46.

A Yeah. Yeah, I've got it.

Q You state:

"However, from what my recollection was, the Board and their advisors were going through

every item, changing it, not only changing words and grammar but also changing the fundamentals of what we said in some instances. This was altering the basis of the bid which they had accepted.”

Do you see that?

A Yeah.

Q Could you just explain what you mean? What fundamentals were they trying to change?

A I think, in terms of detail, when you put a set of contractor’s proposals together you are responding to the Board Construction Requirements. If you imagine the Board Construction Requirements were written, let’s say for argument’s sake, 2010, so they were written as an aspirational document. Things moved, the design changes, the design develops, and by the time you get to 2013/2014, there’s been a lot of change along the way. So, I suppose my point there is that they were then trying to take what had moved from the BCRs – the Building (sic) Construction Requirements – and any changes that have happened since that document was drafted, and feed that into the Project Co’s Proposals.

So, for me, it was like-- I think I actually say it somewhere – it was like

a teacher marking your homework. I actually did one of the sections because I was trying to help out the team, and I got sort of my version back and it was marked like a teacher – red line, red pen, changes made. I can’t remember the exact details but, for me, I wanted to do that to understand why my team was getting frustrated, and that was a signal for me that’s why. The PCP took a long time to get resolved.

Q Okay, so you make the point, fairly, that it was being marked up, lots of comments, but you say that NHS Lothian were proposing fundamental changes. The reason I would like to just drill into that a bit more is it might seem surprising that if you have been through an open procurement exercise whereby you stated your requirements, that at this point, the preferred bidder stage, that there would be attempts to make fundamental changes. Can you just try and elaborate on-- just give some examples of what was the fundamental things that they were trying to change about the project?

A I’m trying to think of a fundamental change, but off the top of my head I can’t think of an example, and I’m not trying to avoid the question. I’m just trying to think of at

the time what was going on. I suppose all I would say is in the ideal world you would take the BCRs and you would put them up on a screen, and you'd rewrite them so that the BCRs reflect what we're both currently signing up to rather than drafted in 2010, a lot of changes had happened, and so if you-- Again, I'm not avoiding the question. What I'm trying to get across is that was drafted with a lot of aspirational material in there. The PCPs were being changed to actually put in things that weren't written in the BCRs, and I can't think of an example now. Sorry, yeah.

THE CHAIR: Sorry to interrupt, Mr Serkis. It is a small mechanical point. I suspect that Mr Serkis has the wrong paragraph 46 in front of him. I think the page which is on the screen is 331, whereas I think you indicated 231?

MR MACGREGOR: No, it was 331, my Lord. It was paragraph 46, 331.

THE CHAIR: It was just in case that gives the witness any assistance.

MR MACGREGOR: I think----

A Sorry, no, I'm looking at the-- Sorry.

MR MACGREGOR: I think, certainly on my view, we were looking at 331 and paragraph 46.

THE CHAIR: On 331 or 231?

MR MACGREGOR: 331.

THE CHAIR: 231.

MR MACGREGOR: 331.

THE CHAIR: 331. Okay, just ignore it. Just ignore what I said.

A No, no, that's fine.

That's fine.

MR MACGREGOR: Just to make sure your Lordship has the right reference, we were looking at page 331 and it was the final two sentences in paragraph 46, beginning, "However, from what my recollection was..."

THE CHAIR: Thank you.

MR MACGREGOR: Perhaps if we could just pick up that point about-- I think you had said that you were really being told that the BCRs were fixed. If we could look onto page 332, paragraph 48. Do you see the first two sentences?

A Yeah.

Q You say:

"PCPs were our response to the BCRs, essentially setting out how we would deliver what they had asked for. If I'd had my way, we would have rewritten the BCRs, but they just were not entertaining that at all."

Do you see that?

A Yeah.

Q One thing – and it is no

doubt a failing on my part – I am trying to understand is, on the one hand, you are telling us that the Board were coming back saying, “Board Construction Requirements are fixed. We are not changing those,” but equally you are telling us that NHS Lothian wanted to make fundamental changes to your tender. I am just struggling in my own head to knit those two sections together.

A Okay, let me explain that, and I'll try and do it quite concisely. You've got a set of BCRs, and then you've got a set of PCPs, and always, if you have two documents, there is much more of a chance that there will be a discrepancy between documents, and my point there is if I'd had my way, I'd rewrite the BCRs. What I've done in the past on other projects that's worked well with clients is they know, when they've written the construction requirements, that they were written a number of years before. Before financial close, we would sit together in a room and have them up on a screen and we would go through line by line and change some of the wording in those construction requirements on the client's behalf in agreement with ourselves to reflect exactly what it is we are going to provide as a D&B contractor. An example I might give,

and this isn't necessarily the contract, but it might be that all the walls will be painted either grey or black in the BCRs. You then get to financial close, and they've agreed they want all the walls grey, so you would change that document to say, “All the walls will be grey.” Not a very challenging change, but the point is: the more documents they have, the more chance there are of having discrepancies and the more chance there is of people not knowing what it is they're supposed to be delivering, and then you get into the discussion of hierarchy of documents and what it says in the BCRs and what it says in the PCPs.

Q One issue I would be interested in your views on is you say, effectively, the Board Construction Requirements are fixed. Project Company Proposals are there, and they are being tinkered with. Do you think there was a common understanding between the parties as to what was to be delivered, or at points were people talking at cross purposes?

A Again, casting my mind back, I think because the relationships weren't as good as I'd seen in the past on other projects, I think there was that nervousness on either side to make sure that, on the one hand, the BCRs

weren't changed at all and that was the document they wanted but, equally, the PCPs that we were drafting as a D&B contractor, they were trying to, I suppose, make them reflect identically what was in the BCRs. I know this is slightly contradictory, but my point is that it was-- and I can't think of examples, but they were changing what we were putting into the PCPs, the reason being, when you draft the PCPs, you respond to the BCR and you say, "This is what you've asked for. This is what we're going to give you." Very simple, but from reading some of the changes that were being made to the PCPs and the expansion of the PCPs and the marking up and the changing of those, that was where I think the frustration was being borne out of the teams that were drafting them.

Q I would now like to move on and ask you some more questions about the period to financial close. So, IHSL appointed preferred bidder, work continues. Were you aware of any significant issues being raised with the technical solution for the ventilation system in the period to financial close?

A No, and, again, no one raised a red flag to myself or John that there was a major issue here and, had they done, I'm pretty sure that that one

of us would have dealt with it.

Q Okay. Again, just one document I would be interested in your views on. If we could look to bundle 10, volume 1, and to page 283, please. This is a document called "Healthcare Associated Infection System for Controlling Risk in the Built Environment (HAI-SCRIBE)." It is a report from 19 November 2014. Do you see that?

A Yes.

Q Now, before your involvement with the Inquiry, had you seen this document before?

A I know of it. I can't say I've read the whole thing. I know, obviously, what it stands for, and I'm aware of its existence.

Q Okay, but if we think back to the period preferred bidder to financial close, is this a document that your team were raising with you in terms of any issues?

A To be honest, I can't recall any major conversations about it, other than it was just another set of documents that were being discussed and progressed.

Q If we look on, perhaps to page 285, you will see a list of consultees that attended this. The second individual mentioned is Lianne Scott-Edwards (sic), who I think you

know from Multiplex.

A Yes, she was one of our design managers.

Q So, her evidence to the Inquiry was, yes, she attended this meeting and participated in the HAI-SCRIBE process. The reason I draw it to your attention is really just over the page, onto page 286. You will see that there is a box 2.2 at the top of the page. Do you see that?

A Yes.

Q So, this document, the HAI-SCRIBE report, states, "Is the ventilation system design fit for purpose, given the potential for infection spread via ventilation systems?" and you will see that that is ticked as "No."

A Yes.

Q I guess the reason I raise that is, at this point in time, we are in mid-November 2014,

A Yes.

Q It seems that NHS Lothian are saying that the design proposal for the ventilation is not fit for purpose. Am I correct in thinking that is not something that is being escalated up to you on the commercial side of Multiplex?

A I don't recall anyone raising it as a red flag at the time to me, no.

Q Looking back now, the 19 November NHS Lothian document saying the design being proposed for the ventilation system is not fit for purpose-- We're talking a couple of months later, in February 2015, we get to financial close. Do you find it surprising that in November the system is not fit for purpose, and a couple of months later the contract is signed. Is there any significance to that in that to you?

A I mean, just reading the comment:

"Some concern has been raised in relation to a potential issue with ventilation... Awaiting drawings and further information to fully understand if there is a risk/issue."

So, I suppose the issue has been raised as something to review and look at, according to this document. Now, as and when that gets done, whether that gets done before financial close or after financial close-- If it's a significant issue, then it would have been brought to mine or John's attention, but just reading that comment there-- and it's easy to look back in hindsight and pick out certain things, but the comment there is not unusual. "Awaiting drawings and further information to understand if

there is a risk/issue.” That's just part and parcel of another item that would be dealt with as part of the design and build function and design development.

Q In terms of the point of financial close, the Environmental Matrix is included as reviewable design data amongst other reviewable design data. Did you have any particular view on the volume of material that was included at financial close as reviewable design data?

A I wouldn't say it was unusual. Again, there is no right or wrong in terms of what information is put together at financial close. I've seen projects where some of them are quite lean and then other projects where they're quite, sort of, detailed. Going back to what I said earlier on, you reach financial close and inevitably there will always be a certain amount of design development and a certain amount of work that will be done post-financial close because, with the best will in the world, if you wait until every single document/every single item was closed out and completed, then procurement of a project of this size and scale would take much, much longer.

Q Other witnesses have suggested that the volume of

reviewable design data was much greater than they had seen in projects of this nature, but am I right in thinking you are saying that that is not your view?

A I'm not saying that it's not my view. What I'm saying is that there is a lot of documentation. There was a lot of documentation in this project. Again, if you take a CapEx project-- Sorry, a capital expenditure project where you don't have an SPV and an FM involvement, the documentation will be less for obvious reasons. For a PFI or for an NPD project, there will be lots more documentation. There was a lot of documentation on this project and, obviously, reading the documents that you will have seen, there was a number of deliverables that some didn't get completed by financial close, and that's not because people weren't trying. I think there was just a general agreement between everyone that the suite of documents needs to be as complete as we can, given the time constraints, and then in order to reach financial close, that we can then go on and build it.

Q Just so I am understanding what you are saying, in relation to the volume of reviewable design data for the project, was it more or less than would be normal for a

project of this nature?

A Again, I'm not trying to avoid the question. I suppose what I'm saying is a project of this scale there is a lot of reviewable design data. It didn't jump out at me at the time, but I'm sure, if you ask people that have to deal with this day in day out, that there is a lot to do post-financial close.

That's probably why they're saying that because, at the end of the day, they'll be the ones that are having to deal with that post-financial close.

Q Just in terms of the items that were included as reviewable design data, the whole Environmental Matrix gets included. Did you have any concerns from a commercial perspective that the Environmental Matrix and the engineering requirements for the ventilation system hadn't been locked down before financial close?

A I didn't have any concerns. You know, again, if I looked back now and there were some issues, then clearly we would have dealt with them. If there was a financial implication, we would have raised that and brought that to the client's attention.

Q The reason I say that is, again, the Inquiry is going to hear from Mr McKechnie of TÜV SÜD, and in his

witness statement he says he'd never seen an Environmental Matrix being included as reviewable design data, and he describes it as being potentially commercially dangerous to do that because you wouldn't know exactly what ventilation system you had to install. Do you have any observations on that?

A I suppose his comment is a valid one, in terms of that there might be financial implications depending on what the ventilation requirements are. If I think back to the submission that we would have put in, there would have been an amount of money for a ventilation system that would have been relevant at the time to the submission that we put in. Now, as with contracting, we take the design and build risk and, unless a client makes a change, that's one of the risks that we would take as a contractor. So Stewart's raising that as-- probably some of the experiences that he's had. Again, I go back to if someone had raised a red flag to me, saying, "There is a problem here. This is gonna come back unless we nail this"-- Sorry, "unless we sort this out and get an agreement on what it is," then, again, it's easy to look back ten years on and go, "Yeah, we probably should have dealt with that," but that's contracting

and that's-- You look at what's in front of you at the time.

Q Thank you. The next thing I want to go on and ask you about is really some more questions about the relationships in the period, really, from the summer of 2014 until financial close. You tell us a bit about this in your statement, about some of the meetings that are taking place between IHSL and Multiplex in that period, and you mentioned a colleague of yours, Ross Ballingall.

A Ross Ballingall, yes.

Q Who was he, and what was his role in the project?

A So, he was our managing director, and I'd worked with Ross for a number of years. We did Peterborough together. We actually lived up in Glasgow together for a couple of years when we were delivering that, but he had taken on the managing director role and I carried on with all the healthcare projects, and it was a time when it was probably getting-- There was a few frustrations on all parties' sides that things weren't happening quick enough, and there was a potential that financial close might slip. So we had a system in place where some of the senior directors within each of the parties could get called and have a steering

group meeting. So, while I was on holiday Ross attended a meeting. I think it was August. Actually, I might have put it somewhere in there.

Q We will come on and look at the minutes in a moment.

A Yes, sorry. So, he effectively attended the meeting as a senior director of the business with Macquarie's as well.

Q We will come on and look at that minute because today is not a memory test, but you are on holiday so you do not attend that meeting.

A Correct.

Q And Mr Ballingall is attending. Just-- Again, we will look at the detail in a minute, but why is that meeting taking place, and what was to be discussed?

A The meeting was taking place because there was frustration on all parties – Macquarie's, ourselves, Bouygues, the client and their advisors – that there was a potential that we weren't going to achieve financial close in the timescales that everyone was trying to drive towards, and so it was a sort of meeting of minds to try and clear some of the blockers, some of the frustration, some of the white noise, as Ross called it, to bring everyone together to say, "Look you're

all sort of in the weeds in all of this. We need to just take a breather, get everyone together and put a marker down so that everyone is crystal clear where we need to get to.”

Q If I could ask you just to have in front of you, please, bundle 8, page 11, which should be a minute of a Special Project Steering Board meeting from 22 August 2014. Is this the meeting that takes place? You are on holiday, and your colleague, Mr Ballinghall, attends at that?

A That's the one.

Q And if we look to section 2, you will see “Programme” says:

“SG [Susan Goldsmith] noted that NHSL had significant concern with the project program and that this meeting was an opportunity for IHSL to discuss progress with the Steering Board. Being a major project the milestones were in the public domain and NHSL need to have confidence in IHSL to deliver that.”

Do you see that?

A Yes.

Q And, again, is that what you are talking about in terms of concerns about getting financial close?

A Correct. Yes.

Q If we look over the page,

or a couple of pages on, page 13, see the second full paragraph beginning, “RB stated that”?

“RB stated that there was a genuine mismatch in NHSL's and IHSL's expectations, where IHSL 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.”

You see that?

A Yes.

Q And, again, did that reflect your views and understanding at the time?

A Yes. I mean, that's exactly it.

Q Then if we look on two paragraphs, you see the final two lines up. There is a wording, “RB responded.” We are on page 13, two paragraphs on from the one we looked at. “RB responded the NHSL needed to be pragmatic or this programme would fail as well.” It's in the----

A Yes, got it.

Q It continues:

“MB [who is Mike Baxter from the Scottish government] asked if there was a common

understanding of the requirements to sign off operational functionality and BC [Brian Currie] responded that he didn't think this was the case. GW expressed his concern that the program tabled was not achievable if IHSL were still looking to negotiate terms. PR noted that changes in design development would always happen."

It seems from the minute of this meeting that perhaps people are talking at cross purposes and seeking to do fundamentally different things. Is that your understanding of the position between the parties as at summer 2014?

A Yes. Obviously, I wasn't at the meeting, so I can't read the body language of what was going on there, but certainly the sentiments that's coming through from both sides-- and if I go back to my one of my earlier paragraphs where I talk about the relationship and team building, this unfortunately was sadly lacking in terms of having everyone working a proper true public-private relationship. Now, again, it's easy for me to sit here and say that but, having worked with a lot of teams, you know when teams are working well. You know when

high-performing teams are working well because you just sense that everyone has got a common goal. Everyone has got a, sort of, one project hat on. With here, the sentiment that's coming out in this meeting probably just draws out a lot of the frustrations that were probably going on amongst all of the parties, and I'm not saying everyone was-- you know, we were lily white or-- There was probably a-- I think Ross made the statement about "a lack of trust." You need to build trust, and that's how you do that, through working with teams together, and it's coming out loud and clear in these meeting minutes that we needed to, sort of, take a pause, take a breather and just try and reconnect everyone to take this across to financial close.

Q You talk about getting it to financial close, but those fundamental mismatches and expectations, did they ever actually get resolved before financial close or was the resolution simply to take all the difficult issues and make them reviewable design data?

A I can't recall all of the issues getting resolved. I'm sure some would have been resolved. I know there was a lot of work done to try and, sort of, repair that relationship. Going

in post-financial close, you then just get on with the job, and you have to work together, and it's a different-- I'm trying to explain it. There's a different feeling between-- You get to financial close, and then you've got to go on and deliver, and it's almost like a change of mindset. It shouldn't be, but there is, in my view, whereas if you've got a team that's worked together really closely during the preferred bidder stage, that should be seamless going into the construction delivery and the ongoing operational side of it but, again, going back to that "fatigue" word, I think everyone just-- We needed to get it closed to allow the job to happen.

Q I guess one issue I would be interested in your views on, though, is if there are problems at this point in the summer, there is then a large volume of unresolved issues that simply become reviewable design data. If the relationships were not working and that is put in as reviewable design data, on one view, is that not just storing up problems for further down the line once there is a contract in place?

A It could be, but it also could be an opportunity for everyone to just draw a line in the sand, reach financial close, and then the delivery of

that project will get resolved one way or another because that's how teams work together. You reach financial close, draw a line on the sand. You've then got to get to completion, and you work together to deliver that with the set of cards that you're dealt with.

Q Thank you. The next document that I would ask you to look at is in bundle 8, please, at page 15. So, bundle 8, page 15, and this is a Steering Board Commercial Subgroup meeting that takes place on 31 October 2014. You're not noted as an attendee, but if you look at the third-last entry for the attendees, John Ballantyne does attend. Although you're not at the meeting, do you remember discussing what happened at this meeting with Mr Ballantyne?

A I don't specifically recall what was discussed at that meeting, no.

Q We will look through the minute and, again, if you simply did not have a discussion with him, do not remember, please do just say. Do not feel like you have got to speculate, but the reason that I raise it with you is-- if we could look on to page 16 of the minute, please, the third full paragraph beginning "GW stated..." Do you see that?

A Yes.

Q

“GW stated that he was disappointed by the lack of progress since the previous meeting and 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 Again, I would just be interested in your observations that-- we have looked at the meeting from the summer, “lack of trust,” “paranoia.” It does not seem by October that relations had improved. Was that your understanding, that the relations had not improved by this point?

A You know, my understanding is that that you've still got to work together, so irrespective of what people's views are, people say statements, people make statements in meetings, “losing confidence,” “lack of trust.” When you take yourself back into what, collectively, we're trying to do, I guess my view is that, at the end of the day, we're all sort of here to do a job and people can have their comments, make their statements, and it's very easy to make those statements but, fundamentally, it's about how you then, you know-- We

celebrate all the good things together, but it's how you deal with difficult issues and then move forward and deal with those issues going on. Again, this is one person's view. They're saying they're losing confidence. If I asked all of our team, they probably might say the same thing, or they've patched up some relationships with some of the individuals that they're working with because they know they've then got to work with them beyond financial close. So it's probably easy for people to make those statements. The fact that we go from August where we had the Steering Group meeting and Ross is called into a meeting along with other senior directors from Macquarie's-- I think what that does say to everyone here is that, at the time, it was difficult, but nothing is easy and collectively you try and work your way through.

So relationships weren't-- I won't say relationships were terrible. You know, I've seen a lot worse, but the meeting of minds and the getting to financial close, the pressures that I'm sure everyone had, not just to get to financial close but outside of that, were probably immense on all the stakeholders and, again, it's easy to make those sort of comments and put those into meeting minutes. It's how

you deal with those coming out and, you know, if we fast forward to now, we're literally looking back retrospectively, but the hospital's built, there are people being treated in the hospital, and hopefully people are pleased with the facility.

Q I guess what I would be interested in is, October 2014 (sic), it seems relations are still extremely tense, very strained. February 2014, contract signed, financial close. What, if anything, changes between the October and the February to get to the point the parties sign the contract?

A There comes a point where everyone has to realise that we've got to agree at a point in time to move on, otherwise we'll never get the job built. So, you know, when we get to financial close, it was probably a relief on all parts in the February time, but also, again, it's an opportunity to draw a line in the sand and say, "Okay, we've been through that. We now need to go on and deliver, both from a design and build point of view and then from an operational point of view. IHSL and Bouygues need to manage it-- operate it after."

Q Again, what I would be interested in is it seems that in the October there is a fundamental disagreement on what is required.

Does any of that get resolved by financial close or are those difficult issues simply put in as reviewable design data?

A Again, some of that probably would have been put into reviewable design data because it wouldn't have all been closed out within that period of time but, again, I go back to-- There comes a point where everyone needs to cut through and agree a position, otherwise these jobs will never get built. So that was the meeting of minds to say, "There's stuff that we can agree now. There's probably going to be design development that needs to take place post-financial close," and there was probably-- well, not probably. There was an agreement, as the contract would have set out, what was agreed and what wasn't agreed to be reviewed post-FC.

Q And, again, if we just think about financial close, what would some of the implications be, both for NHSL Lothian and also for IHSL and Multiplex, if financial close hadn't been reached in February 2015?

A A number of things, it would have meant that our team that we had-- If I take the Multiplex team, we had a lot of people working on the job, and it's a point where you've built

up the team. We were sharing an office with the client up at Canaan Lane, and you've got people who have been put in a place to actually deliver the project. Equally, you've got designers, you've got engineers, you've got the supply chain, everyone is lined up and ready to deliver the project. Equally, on the client side, you've got time pressures on the fact that they'll be moving from other hospitals into the new facility, and you've also got financial implications where this thing just drifts on with no end occurring. So, for everyone-- it was in everyone's interest to reach a point of financial close, which was February, and again, as I say, to draw that line in the sand to allow the job to then take place.

Q And if we just think of Multiplex, could they have held the contract price for the design and build indefinitely?

A You can't hold anything indefinitely. It depends how long the thing goes on for. We were trying desperately to make sure that we delivered on what we said we were going to deliver. That's very difficult when you've got people stating that they're losing confidence and lacks of trust on either side. What I would say is that we stand by-- When I worked at

the time, we'd always stand by what we're committed to and deliver what we've been asked to do. Irrespective of financial close, you then have that reviewable design data that you work through with the team and, with the best will in the world, hopefully it comes out right on the right side of where we all thought that was going to be.

Q Thank you. There is one final topic that I would raise with you, and it is really an issue that I raise for any assistance that you can provide the Inquiry with. NHSL Lothian's position before the Inquiry is that, effectively, there was an error in a spreadsheet in the Environmental Matrix that never gets spotted before the period that you get the financial close. Now that is controversial; different people will disagree with that, but if you have a project of this nature whereby there is potentially a spreadsheet error that does not get spotted, do you think there are any issues with the procurement process, the type of contract that resulted in that issue, and if there was, is there any ways that matters could be done better in the future to try to avoid that type of issue cropping up in future projects?

A Taking the first limb of that, there are always undoubtedly

going to be discrepancies in documents. The more mature a procurement model comes; the more documents then start to get fed into a procurement model. If you go back to when EFI originally started, it was quite in its infancy and there probably wasn't sufficient documents at the time. As that market got more mature and more people got involved, the suite of documents got larger and larger. If you take this project and if there was an error and it wasn't picked up, then it's unfortunate given how many people get involved in a project of this size and scale and not one of us picked it up. It is disappointing but, at the end of the day, everyone is human. Errors are made. It's how you come out the other side.

So, taking the second limb of your question, what would I do differently? I think, first and foremost, if you start with a suite of documents and have them up as you're getting closer and closer to financial close but have gateways before you even get to financial close and have the key documents up on a screen with everyone in a room so that we're all looking at one document and you're not relying on emails or documents being sent via Aconex or going to different-- You have a core team of

people and the key documents. You sit with them on a screen so that everyone's looking at the same document and, going back to my earlier statement, if you then rewrite a document that says, "This is what we want, has everyone agreed on that? Yes? This is how much you're paying for it? Yes?" Those two then should align because, collectively, you sat in the room and agreed what's up on the screen, and it's grey we want for those rooms. It's not black or grey. It's that collective working relationship that everyone agrees and buys into and that's, again, making sure that the right people are in the room, the right resources are committed and that you have the time and the desire from everyone to achieve that common goal.

Q Thank you. Mr Serkis, I do not have any further questions at this stage, but Lord Brodie may have questions or, equally, there may be questions from core participants. Lord Brodie, I noticed that it is just turned half past eleven. Your Lordship may want to take the coffee break at the moment. Any core participants could raise issues with me and then, possibly after the coffee break when we come back, we could deal with any issues and then move straight into Mr

Ballantyne's evidence.

THE CHAIR: That is what we will do. Mr Serkis, as Mr MacGregor said, these are all his questions to you for the moment. However, I want to give the legal representatives in the room the opportunity to consider whether they propose further questions through Mr MacGregor and, in certain circumstances, they may wish to ask questions directly and I may permit that. Now, coffee is available, and I certainly hope you will get a cup of coffee. What I intend to do is maybe allow 20 minutes rather than anything less. In that 20 minutes, everyone gets coffee, and everyone has the opportunity of speaking to Mr MacGregor. Depending on the outcome of that, maybe I have decisions to make, but in any event we will ask you to come back even if it is not to answer a question. So, I think the key point is coffee.

MR SERKIS: Perfect.

THE CHAIR: Right. We will sit again at about ten or five to twelve.

(Short break)

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Lord Brodie, there is one point of detail that I would propose to pick up with Mr Serkis, and

then I do not think there will be any applications from core participants and then we can move onto Mr Ballantyne.

THE CHAIR: So just so that I have got it, there is one matter you are going to clarify. Do you anticipate any applications?

MR MACGREGOR: I do not, my Lord.

THE CHAIR: Right. If Mr Serkis could be brought back in. (After a pause) I think, Mr Serkis, just one matter, although I will do a final check.

THE WITNESS: Okay.

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Mr Serkis, there is just one point of detail that I would wish to pick up with you, and it is, really, we have talked at various points about IHSL as the special purpose company, special purpose vehicle. Am I right in thinking that IHSL, the special purpose vehicle, gets incorporated at financial close? Is that correct?

A (Inaudible 02:27:33).

Q Okay, so when we are talking about IHSL in the period pre-financial close, as a technical matter, we are really talking about a consortium of Multiplex, Macquarie and Bouygues coming together?

A Correct, yeah.

Q Thank you. I do not have

any further questions, thank you.

THE CHAIR: Right. Has Mr MacGregor correctly anticipated that nothing further arises? Right, I will take that as confirmation. Mr Serkis, that is the end of your evidence, and thank you for that evidence. Now, in saying thank you, I do not mean just turning up this morning. I appreciate there is a lot of preparation that goes into preparing a witness statement. You will have done that work. So, thank you for everything you have done in relation to the Inquiry, but you are now free to go and----

THE WITNESS: Thank you very much.

THE CHAIR: -- be taken out.

MR MACGREGOR: Thank you.
Thank you, everyone.

(Session ends)

12:00