



## SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing  
25 April 2023**

Day 9  
Tuesday, 9 May 2023  
Susan Goldsmith

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**9.25**

**THE CHAIR:** Good morning, ladies and gentlemen, both to those who are here with us in the hearing room in Edinburgh and to those who are following proceedings on the live feed. Now, I think we are able to begin very shortly with Ms Goldsmith, Mr MacGregor, but do I understand there may be an additional document?

**MR MACGREGOR:** There is one additional document, my Lord. So, it is a document that is mentioned within the bundle. It is a letter from Mott MacDonald dated 4 March 2014, so it would have been an appendix to the final business case. I noticed that that is not actually there, so just for clarity to make sure that the document is there, but it should not be a new document for anyone.

**THE CHAIR:** So it is not a new document. It is just a document that has not found its way into the bundle.

**MR MACGREGOR:** It has not found its way into the bundle. That is correct.

**THE CHAIR:** All right. Nothing arises in relation to this. Right, Ms Goldsmith.

**THE WITNESS:** (After a pause) Good morning.

**THE CHAIR:** Good morning, Ms Goldsmith. Now, you have given

evidence before and, as you will understand, you are about to be asked some further questions by Mr MacGregor, Counsel to the Inquiry. Before we begin, I understand you will take the oath.

**THE WITNESS:** Yeah.

**Ms Susan Goldsmith****Sworn**

**THE CHAIR:** Thank you, Ms Goldsmith. Now, I do not know how long your evidence will take. If it has not finished by sort of mid-morning, we will take a break then, but if you want to break for any reason or no reason at all, just feel you can indicate that. You must feel that you are in charge.

**THE WITNESS:** Okay. Thank you.

**THE CHAIR:** So, if you want to take a break, we will take a break. Mr MacGregor.

**Q** Thank you, my Lord. You are Susan Goldsmith. Is that correct?

**A** That's correct.

**Q** You have provided a witness statement to the Inquiry covering the period from the commencement of the procurement exercise until financial close in relation to the project for the Royal Hospital for

Children and Young People and the Department of Clinical Neurosciences.

Is that correct?

**A** Yes.

**Q** Thank you. Now, that witness statement will be found, for anyone following in the electronic bundles, in bundle 13 from pages 430 to 450. The content of that statement is going to form part of your evidence to the Inquiry, and I am also going to ask you some questions today. There is a hard copy of your statement that should be available to you. If you want to refer to it any point, please do just let me know. If there are any specific documents I want to take you to, those should come up on the screens in front of you. If for any reason you do not see any of those documents, please just do let me know, because today is not a memory test, and so anything that I do want to take you to, I will endeavour to try to take you back to documents to try to refresh your memory.

You obviously provided a statement previously and gave evidence at the hearing in May 2022. Your evidence was on 17 May, and at that point, both in your statement and in your evidence, you covered off a lot of your background details, your career, and you confirmed that you

used to work for NHS Lothian, retiring in May 2022. Is that correct?

**A** Yes.

**Q** And that you previously were a director of finance for NHS Lothian, and you were the senior responsible officer on the project from 2012 until 2015. Is that correct?

**A** Yes.

**Q** Thank you. I will just take all of that as read unless there is anything that you want to update the Inquiry on in relation to your background and qualifications.

**A** No, no.

**Q** Thank you. I want to begin by asking you some questions about your involvement as senior responsible officer and the decision-making process. Now, part of the Inquiry will obviously involve considering decisions that were made both by you as senior responsible officer, and also by the Board of NHS Lothian. Now, I am aware that we are looking at events a number of years on and looking back with the benefit of hindsight, but really just at the outset, I do not want to go and look at the detail. I think it would be helpful to try to understand the context that you were operating in between 2012 and 2015 and some of the pressures that existed on both you as senior

responsible officer and also the Board of NHS Lothian. So, could you just try to explain to the Inquiry what pressure, if any, was NHS Lothian under to replace the Sick Children's Hospital at Sciennes, really from 2012 onwards?

**A** So, there was significant pressure on the Board, not necessarily from the public, although the public, you know, there was occasional media interest in what was happening with the Sick Kids and with DCN, but as a board we have responsibility for the provision of safe, high-quality patient care. As a board, we had made a decision in 2008 that both the children's hospital and-- oh, I think maybe it was 2009 when the decision was made that the Department of Clinical Neurosciences required to be replaced as well. So, at that point, the Board was already acknowledging that the facilities were no longer fit for purpose, both in terms of the quality of the fabric, but also the design and the way in which clinical services had to be provided from those old facilities.

So, the Board had made a decision some years previously, and at that point I think that the expected date of the reprovision was something like 2012 or 2013. I suspect that was a bit unrealistic at the time, but nonetheless there was that expectation and public

expectation that those facilities would be replaced but, of course, by the time we got to 2012 we were nowhere near re-providing both of those facilities because we didn't have a signed contract to have those facilities built. So there was pressure. Obviously, there's always endless pressure on the NHS, but that was one that was strategically important to the Board and so, as a consequence, there was a concern that-- of where we were at that stage.

**Q** Just so I am understanding this: 2008, NHS Lothian recognises that the building, the provision for Sick Kids in the Lothians, not fit for purpose, with an intended target of having a new hospital operational by 2012. Is that correct?

**A** Yeah, 2012, 2013, that--  
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**Q** We know that the procurement exercise essentially begins in 2012 through 2013, so by the point that you are undertaking the procurement exercise, you are already beyond what was the original target date to have the hospital operational. Is that correct?

**A** That's right.

**Q** But again, if we maybe just think in a bit more detail, and we will come on to look at each of the

stages, but 2014, preferred bidders appointed. Some of the minutes suggest that there are tensions with the proposed preferred bidder prior to financial close. So, by that point you are in 2014, still no contract signed for a hospital, far less an operational hospital. Can you just try to explain some of the pressures that you felt under as SRO, and the pressures that the Board of NHS Lothian felt under in that period, in 2014?

**A** I think one of the key issues for the Board was that there was clearly recognition that this was a complex contract. The Board understood that delivering a PPP project is never straightforward, and particularly for a hospital that has a high technical specification. I think that the biggest challenge and the pressure I felt most profoundly was the fact that I wasn't able to provide any certainty, so it was the lack of a programme. So, there had been multiple programmes and multiple sort of dates about when this hospital was anticipated to be ready, and so by 2014 the lack of a programme or delivery was the thing that was causing, certainly me personally, most anxiety, and clearly the Board. Because once you have a programme, even if it's not being delivered as

quickly as you would have liked, at least you have some degree of certainty.

In 2014, we didn't have certainty and so there wasn't really a narrative at that point that we could reassure the public, and patients, and staff. It was still aspirational at that point. So I suppose that's where I felt the most pressure, was not being able to provide any kind of confidence around a programme.

**Q** Thank you. If I could ask you just to have it in front of you, a section from the final business case, so that is bundle 10, volume 1, and if we just look at page 142, please. So, you should see towards the bottom of the page there is this entry, "Section 2.11.1 Service Risks." Do you see that?

**A** Yes.

**Q** What is stated there is:  
"Failure to deliver this project would see NHS Lothian continuing to provide RHSC and DCMN in facilities without sufficient capacity for the demand placed upon them. Limits on the available theatre and bed capacity means that meeting waiting times is unsustainable in the long-term. The inclusion of patients 13-16 in RHSC

emergency department activity would risk their ability to meet the 4-hour unscheduled care target.”

Do you see that?

**A** Yes, I do.

**Q** So whenever you are talking about the lack of certainty, are you meaning a lack of certainty in terms of when NHS Lothian could address these issues?

**A** Yeah. Well, yes, absolutely, and so when the new facilities would actually be open, because actually in parallel we had obviously also prioritised capital for what had been called backlog maintenance for facilities that we knew we were going to keep, as opposed to facilities that we were about to dispose of. So there was also that challenge that we hadn't invested. We never had enough money for any of the backlog maintenance, but what money we did, we would then prioritise it against facilities that we were going to keep, and so that was the other pressure as well. As well as capacity, there was also just-- there was a continuing deterioration in the facilities.

**Q** Again, if we just think about this period prior to financial close, and we'll come on and look at the minutes that suggest there were tensions, pressures, difficulties, but it

might be suggested, well, why did you not just pause? Why did you not iron out every last detail before you signed the contract? Why did you not think about going back to the second-place bidder? From your perspective as SRO sitting on the Board of NHS Lothian, were any of those options realistic options, given the difficulties that you have explained to us?

**A** No. I don't think we ever-- we may have speculated at some point, but I don't recall there ever being a serious conversation about walking away from the negotiations with the preferred bidder. Certainly, personally I felt a huge responsibility to keep the momentum going. I saw that as my prime responsibility, was to make sure that we worked our way through all the problems and that we kept the momentum going. We moved it on. It might have felt like it was glacial at times, but we moved it on because delivery was really-- certainty around the programme was the thing that I felt most pressure on at that point.

**Q** You say you felt a pressure to move things on. Is that because of all of the issues that we have discussed in terms of the inappropriate facilities, the delay, and what you saw as the need for certainty to address those issues?

**A** Yes. Yes, yes, and just going back to the previous time I appeared here, we had also spent a significant amount of time and energy and effort, and then resource, in resolving all the issues with Consort, and that had taken a long time, and we were seeing progress on all those with a-- because we had the supplemental agreement signed, and that was the trigger to allow us to go out to procurement. The works that Consort were contractually obliged to deliver were then underway. So that was-- yes, obviously we could have then gone back and found another provider, but it just wasn't a consideration. It was just keeping going on what was a difficult and complex project.

**Q** Thank you. I just wanted to ask you a few questions about your role as SRO. You have explained in your statement that effectively the SRO was a link between the project team that was doing the granular level of detail and the actual board of NHS Lothian. Brian Currie is the project director. What is your level of interaction with Mr Currie? How often would you be meeting with him and discussing matters?

**A** Frequently. So, I would have routine one-to-ones that would cover just normal business, you know,

issues with the team and just normal business, and then it's difficult to remember, but we used to have weekly meetings on the project, a sort of catch-up meeting. So it was frequent, and then I would see him, obviously, on the Project Steering Board. You know, he would support me when we had the Finance Resources Committee coming up, so very, very regularly.

**Q** And presumably with Mr Currie you discussed the issues and challenges relative to a complex infrastructure project like this one?

**A** Yes. I mean, Brian was very good at, I think, as an exec director, recognising what issues needed to be escalated or that were of concern for Finance and Resources Committee, and there were other issues that the team were dealing with, so I got a sense of the challenges and some of the tensions. Well, more than a sense. I was very aware of the tensions in trying to progress this but, yes, Brian regularly briefed me.

**Q** In terms of an issue, if an issue had to be escalated, so Mr Currie raises an issue with you and says, "I think this is significant," how serious an issue would it have to be to be raised through the Project Steering Board, Finance and Resources



Committee, and ultimately to get to the Board of NHS Lothian?

**A** I mean, it's obviously a matter of judgment, but generally something that would go to the Board would be some issues that were likely to compromise the delivery of the Board strategy, so the programme – that was something that the Board were frequently updated on, was the uncertainty around the programme. They would also-- any issues of resource utilisation, and then anything that was project-specific went to the Project Steering Board.

So, I'm not articulating it very well. I guess things that related to the programme and the delivery of the project and resources would have to be escalated to the Board. Any sort of concerns about that, anything that affected reputational risk for the Board, anything that would affect changes to the strategy, that we weren't able to deliver it in the way that the Board had articulated, then that would go through the committees and then the Board. But most matters the Board would expect the management, the executive and the management to deal with and resolve through the management structures, which for the project would be the Project Steering Board.

**Q** Thank you. I now want

to move on and just ask you some questions about the Environmental Matrix. So, on the project there was an Environmental Matrix that was used, as opposed to room data sheets produced using the Activity Database. You tell us in your statement at paragraph 6 that that was not something that the Board of NHS Lothian would be cited on. Do you have a recollection of who or what entity made the decision to have an Environmental Matrix rather than room data sheets?

**A** No, I don't know. The project team would make the decision, because there was multiple documents, and the project team would-- and when I say the project team I mean that in the widest sense. So it would be employees of NHS Lothian who were on the project team, plus advisors, so that decision would have been reached as part of those individuals coming together and agreeing what the suite of documents were that were to be provided to the bidders.

**Q** But in terms of that granular level of detail in terms of exactly what goes in an invitation to participate in dialogue, that is something that project team and advisors are dealing with.

**A** Yes.

**Q** That is not something that you are dealing with as SRO or something that is being escalated to the Board of NHS Lothian.

**A** No. No, absolutely not. I mean, if you just-- this is one, I mean, significant piece of business for the Board, but one bit of business amongst hundreds. You know, this is a capital project. There are multiple things that the Board needs to consider and so the Board would never have the capacity, and nor is it set up that way, as it's a board of governance, not of management, to actually be involved in the detail of documentation. The Board's consideration was obviously around the reference design, which was a move away from standard practice for PPPs, but the inclusion of the Environmental Matrix was a matter for the project team.

**Q** I appreciate that you weren't involved in that decision, but obviously the Environmental Matrix, I imagine, is a term you're never going to forget. It is something that you have come on to know a lot about. Throughout your time with NHS Lothian, did you come to understand why a decision was taken to have an Environmental Matrix at all, and the

reason that I say why was it included at all is certainly my understanding is NHS Lothian's position is ultimately it was for bidders to put forward a technical solution to meet their requirements, and this Environmental Matrix was not a document that could be relied upon at all. So, do you have an understanding of, if it is a document that cannot be relied upon by prospective tenderers, why include it at all?

**A** Yeah. So, I do have an understanding of why it was included. So, the main driver for the subsequent inclusion of the Environmental Matrix was the provision of the reference design, and the Board did make an active decision to use the reference design. The purpose or the reason for that decision was that there had been extensive clinical engagement in the development of the reference design, both for the Children's Hospital and then for the Department of Clinical and Neurosciences, and then again further clinical engagement to bring those two together into a new reference design for a combined facility. So there had already been extensive work on the design, and so the Board did not want that work and that input, which was time-heavy, of our clinical teams, and also resource-heavy, to be lost.

So there was extensive discussion with all the parties – the Board, SFT, Scottish Government – and our respective teams on the inclusion of the reference design because it was a departure from a normal PPP project. In providing the reference design, the Board recognised that the NPD provider would then develop that design. So this was not the full, worked-out design and they would just start on sight. So the Board recognised that the design required to be developed and taken to the next stage. So the Environmental Matrix, which is a technical articulation of what's in the design, work had been done, so the view was, as I now understand it, and I accept that it was reasonable, was that this is the work that we've done to date. If we're providing the reference design, then it makes sense to provide the supporting documentation that has been developed to date, but recognising that once we signed a contract, once we got to financial close, then the responsibility – the professional responsibility and the contractual responsibility – for the further development of that design and the technical specification in support of it became the responsibility of, as it so happened, IHSL. So I do understand

why the Environmental Matrix was provided, and I think that was a reasonable position for the team to take. I wish it hadn't, but----

**Q** Again, so I am

understanding, I think you state within your statement that there had been a significant sum of money that had been spent on developing the capital project, approximately £2 million spent by that point. Is that correct?

**A** Yes. That's correct.

**Q** And there is an

understandable desire on the part of NHS Lothian, and by that I really mean the Board, that significant public money that has been spent simply is not squandered or wasted, whatever word you want to use. Now, that is completely understandable. I think one thing I would be interested in is when that thought process is being gone through of, "We have spent a lot of money, we do not want to waste this," do you recall there being any technical advice that was sought in terms of whether that would be an appropriate thing to use for a revenue funded project.? So to take work done on a capital funded project, whether that would be something to slot in as appropriate on a revenue funded project?

**A** We did take technical

advice and, if I recall correctly, we asked our technical advisors, Mott MacDonald, to actually give us a view on the benefits and possible disadvantages of including a reference design. If I recall correctly, it was that paper. It might not have been that actual paper. We used that paper to ask the Finance and Resources Committee to support management's view that we should use the reference design. Clearly, we wouldn't reference the Environmental Matrix because that was a supporting document, but we took technical advice and we certainly had extensive discussions with SFT because they clearly had PPP expertise and commercial expertise. So, my recollection is that that was very much a joint decision from all the parties, the authorities, so to speak, but we did actually-- as a Board, we took technical advice as well.

**Q** So, again, just so I am understanding this, the Board – I think understandably – thinks, “We've spent £2 million developing a capital project. If there is any way that we can use this and not waste that money, that is what we want to do.” Is that correct?

**A** Yes.

**Q** They then speak to Scottish Futures Trust, who has got experience of revenue funded projects,

to see if this would be an appropriate thing to do. Is that correct?

**A** It sounds as if it was a one-off discussion. It was a thread from the moment that the decision was made to move to an NPD project. You know, there were multiple, multiple issues to resolve, not least the Consort stuff that we discussed the last time, but as part of those discussions, the use of the reference design was one that was a thread through probably-- it probably took a year. I can't really remember, but it took us a long time from a decision being made to ultimately being able to go out to tender. That consideration of the use of the reference design was part of that basket of issues that we sat around the table and discussed multiple times. I'm sure we got legal advice as well. I can't recall, but it was certainly one of the long list of things that we needed to conclude on before we went out to tender.

**Q** Okay. So, in discussions with Scottish Futures Trust here, they are not saying, “Don't use a reference design?”

**A** No, I mean, they came to the table with us, and it was a question for them as well, so, “Does the Board use the reference design, or does it not?” So, they didn't come with a fixed

position. They recognised that, as well as the resource utilisation, there had also been a significant amount of clinical time, and clinical time is incredibly valuable. So there was a recognition that asking clinicians to come back to reengage once again, some of them for the third time, was probably not the best use of their time. So, my recollection, and it is a long time ago, is that we all came to the table with that as a question mark and then, jointly, we worked through the pros and cons and, ultimately, the Board, as a statutory authority, had to make the decision, but by the time we got to making the decision all parties had got comfortable with the recommendation to Finance and Resources Committee.

**Q** Again, just to cover matters off, decision being taken, “We don't want to waste the work that we've done,” engagement with Mott MacDonald in terms of using the reference design and, as I understand your evidence, Mott MacDonald are not saying, “Don't use a reference design and, if you are using a reference design, don't use an Environmental Matrix.” Is that correct?

**A** That's right. That's correct.

**Q** One other issue that I

think you have addressed within your statement is the Chief Executive Letter 19 of 2010. Do you remember that?

**A** Yes.

**Q** Again, I think you say that, as senior responsible officer, really something like the technical detail within the chief executive's letter - that is not something you would be dealing with as senior responsible officer. Is that correct?

**A** No. You know, these letters come in – I mean, there's multiple chief exec letters that come in – and they go to the lead director, and then the lead director disseminates them to their team, and for me, Iain Graham as director of capital, Brian Currie as project director would then take the professional responsibility for ensuring that we meet the requirements of those chief exec letters.

**Q** In terms of the NHS Lothian side, in terms of who would be aware of or dealing with a chief executive letter like CEL 19 (2010), that would probably be Iain Graham?

**A** Yes, that would be Iain.

**Q** The reason that I raised the whole issue of CEL 19 (2010) is it is mentioned within the procurement documents, such as the invitation to participate in dialogue, but what it

suggests is that an NHS body undertaking the design and build of a new hospital should be using room data sheets produced using the Activity Database System as both a design and a briefing tool. I am pretty sure you were not aware of that at the time, but have you subsequently become aware of that requirement within the chief executive letter?

**A** Yes. I have, yes. I would have a general sense of it, you know, because I've been involved in capital projects for a long-- you know, not just this project but projects before it, so I would understand the concepts and, broadly, what it meant in practice.

**A** Again, what that chief executive letter says is "Use room data sheets produced using the Activity Database as a design and briefing tool, or if you are not doing that, you, as the NHS body, have to be satisfied that what you are doing is an equivalent." If the Environmental Matrix goes in and you do not have the room data sheets produced using the Activity Database, do you know how NHS Lothian satisfied itself that that approach was going to be an equivalent design and briefing tool to room data sheets produced using the Activity Database?

**A** I think I would struggle to

answer that question, I'm afraid. Do you want to just try it again and then I'll see?

**Q** I think the question that I am asking is: chief executive letter says an NHS body should use room data sheets produced using the Activity Database as a design and briefing tool if they are going to have a new hospital. If you are not doing that, you, the NHS body, has to be satisfied that what you are doing is an equivalent of room data sheets produced using the Activity Database. Now, you say, fairly, you are not aware of the content of the chief executive letter, so who within NHS Lothian would be satisfying themselves that the approach – i.e. not using room data sheets as a design and briefing tool – was being used was an equivalent of that system?

**A** In my world, that would be Iain Graham and Brian Currie.

**Q** Do you know if they took any external advice on these issues, or is that something that would be outwith your knowledge and remit?

**A** I mean, there certainly would be discussion about it, but I would be speculating. I mean, I know it was another issue that there would be a lot of discussion on, but I wasn't part of the discussion.

**Q** Thank you. If we can now move on and just ask you some questions about Mott MacDonald, who were the lead technical advisors. So, in the period from the start of the procurement exercise up to financial close, what was your understanding of what Mott MacDonald's role was?

**A** So, Mott MacDonald were providing the technical expertise that we didn't have in our team, the engineering expertise, the mechanical engineering expertise, and they were supporting us on the procurement exercise. So, they would be supporting us in terms of the documentation to be issued and then the evaluation of the tenders that came back, and then the competitive dialogue. So, they would specifically be there because they were able to scrutinise technical documents and technical information for us. So, yes.

**Q** Again, understandably gaps in the detailed technical knowledge for things like mechanical and electrical engineering on the part of NHS Lothian, and needed to bring in specialist advice, and those specialist advisors for the procurement exercise to deal with the technical issues are Mott MacDonald?

**A** That's right. It's not that we don't have technical people, of

course we do in our facilities on capital, but the magnitude of this project and the very specific and specialised technical advice that was required meant that, you know, we wouldn't have ever had the capacity and we would have had significant gaps in our team, so that's why you bring in technical advisors.

**Q** Thank you. If I could ask you to have in front of you, please, bundle 2, page 28, which is the contract between Lothian Health Board and Mott MacDonald Ltd. Bundle 2, page 28. I think we might be having some technical issues because there should not be a blank screen that you are seeing in front of you. I am not sure if you want to have a break to see if we can resolve the technical issues, or if you want to continue simply with the documents being showing on a laptop, but I do not think that will mean that anyone that is following on the live link will be able to see the documents.

**A** This one here?

**THE CHAIR:** Right, Ms Goldsmith, do you now have a document----

**A** I do, yes.

**Q** -- on not the screen that you were working from----

**A** No, but-- yes, it's on this on.

**Q** -- but the screen on your left. Will that do for present purposes?

**MR MACGREGOR:** Certainly, from my perspective. The only issue, obviously, is that anyone that is following on the live feed would not be seeing the documents being displayed and they would not be displayed on the screens. It is not an issue from my perspective, but it is just if anyone is following matters in that way, they will not see the documents.

**THE CHAIR:** Well, this is a document that is available in the bundle for anyone who is interested. Well, what I would propose, subject to anything that is said elsewhere, is that you simply continue, Mr MacGregor, bearing in mind that part of your audience does not have the document, which would obviously involve making sure that the page references are given and maybe taking points a little bit slower, and we will see if we can address the technical problem in the break.

**Q** Thank you. If we could look to bundle 2, page 28, that should be a contract between Lothian Health Board and Mott MacDonald Ltd. Do you see that?

**A** Yes.

**Q** If I can ask you to look on to page 86, please? I think it would

probably be helpful if we could zoom in to look at some of these entries because they are quite small, but you will see at the top left-hand corner it says, "Royal Hospital for Sick Children & Department of Clinical Neurosciences. Technical Advisor Scope... Section A." Then it says: "CORE TECHNICAL ADVISOR ROLE UP TO FINANCIAL CLOSE." Do you see that?

**A** Which bit is that?

**Q** It is at bundle 2, page 86. Top left-hand corner should say, "Royal Hospital for Sick Children & Department of Clinical Neurosciences. Technical Advisor Scope." Do you see that?

**A** Oh, yes. Yes, I see that.

**Q** Then it says, "Section A. CORE TECHNICAL ADVISOR ROLE UP TO FINANCIAL CLOSE." You will see a reference section, which has got a series of numbers going down, a description of the work, and then there is various parties including Davis Langdon, Mott MacDonald, Thompson Gray, and Turner and Townsend. Do you see that?

**A** Yes, I do.

**Q** So, for example, if we look at what Mott MacDonald were engaged to do in the period to financial close. If we look at box 1, which is



“Management and Coordination,” they were to, “Act as Lead Technical Advisor and point of contact for NHSL client.” Do you see that?

**A** Yes.

**Q** With a fee of £121,914 being paid for those services. If we then look down to entry 10, do you see an entry?

**A** Yes.

**Q** “Prepare invitation to Partake in Dialogue (ITPD) including Output Specification, Payment Mechanism etc, for Procurement process. All prepared in association with client legal and financial advisors.”

Do you see that?

**A** Yes.

**Q** With a sum of £111,494 being paid for the preparation of the ITPD. Entry 11, “Ownership of Output Specification coordinating inputs from the team.”

**A** Yeah.

**Q** Then if we look to 13: “Prepare Reference Design documentation, as appropriate, for inclusion in ITPD.”

With a payment of £5,210 for that. Then if we look to 16:

“Check Reference Design

for compliance with all appropriate NHSL and legislative guidelines and requirements (list as pre-agreed with NHSL) and identify any derogations.”

With a payment of £2,605. Do you see that?

**A** Yes.

**Q** So, if we just look at the items of tasks that Mott MacDonald has been engaged to do, at the point that the procurement documentation is going out, tenders are being assessed. At that point in time, given the tasks that are set out in this contract, did you have any concerns that invitation to participate in dialogue, Reference Design, Environmental Matrix are going to have any errors or any non-compliance with any published guidance?

**A** No, the opposite. To be honest, I had confidence that we had a good team in place, and certainly in discussion with-- you know, over the course of the project we got positive feedback from-- there's also tensions with Multiplex, but positive feedback about the quality of all our advisors, so I would say the opposite.

**Q** Thank you. I want to move on and ask you some questions about risk allocation. So, within your statement you tell us that your

understanding is that, on a revenue funded project, design risk would sit with the Project Co. Is that correct?

**A** That's right.

**Q** Can you explain, why do you have that view? How did you come to form that view?

**A** Because you're essentially transferring the risk to the private sector for translating your functional operational requirements into a technical design for the building of the hospital on the basis that the provider has more-- maybe not necessarily more expertise but, you know, will take risks, will be innovative in their design, and you'll get a better output for that. So, I suppose it's the basis of the revenue funded projects is that you pay through revenue stream for the private sector investing a significant amount of capital in a project for you and bringing their expertise on design, innovation and taking a risk-based approach to it.

**Q** Perhaps if we could just look to the Final Business Case, so bundle 10, volume 1, and if we could look to page 151. You should see about a third of the way down the page within the Final Business Case there is a subheading, "4.1.3 Agreed NPD risk allocation." Do you see that? So, it is bundle 10, volume 1, page 151. About

a third of the way down the page there should be an entry, "4.1.3 Agreed NPD risk allocation." The final business case states:

"This section provides details of how the NPD associated risks have been apportioned between NHS Lothian and Project Co in line with the SFT standard form NPD Project Agreement.

"The general principle is to ensure that the responsibility for risks should rest with 'the party best able to manage them', subject to value for money.

"A key feature of the NPD model is the transfer of inherent construction and operational risk to the private sector that traditionally would be carried out by the public sector. Figure 4 outlines ownership of known key risks as per the model for NPD contracts."

Do you see that?

**A** I do.

**Q** Then we see the risk description. It is number 1, the design risk, and the allocation is that that would sit with Project Co. Do you see that?

**A** Yes.

**Q** The construction and

development risk, again, it is ticked that that would sit with Project Co. Do you see that?

**A** Yes.

**Q** So, again, we will come on to look at some of the documents in more detail, but is your understanding, working on the project, effectively what is set out in the final business case as to where the risks would sit?

**A** No, absolutely. I would say, though, in practice it doesn't always quite work like that, but yes.

**Q** That was really a point I was going to go onto, because within your statement at various points, obviously to be helpful, you have set out your own subjective understanding of what is meant by various provisions in the invitation to participate in dialogue and your understanding of certain provisions in the contract. Presumably, you would recognise that some of those views may be controversial?

**A** Yes, I would.

**Q** And that you are not offering any form of expert view, you are just offering your subjective understanding from working on the project?

**A** Subjective and lived experience, so it's more than subjective. It's, you know, what I've

experienced in trying to deliver those projects.

**Q** Yes. I think all I was really driving at is what we see in the final business case, that is your understanding of what should have happened.

**A** Absolutely.

**Q** If that has not happened in the contract, from your perspective, something would have gone wrong. Would that be correct?

**A** I'm not sure something's gone wrong. I think that's probably too black and white. I think these projects are really difficult, really complicated. Sorry for repeating that, but the reality is that they are, and things do go wrong, and it's not always crystal clear what the cause is of the problem, and so that allocation-- it cannot always be translated into a black-and-white interpretation of what's gone wrong.

**Q** Indeed. Again, I think it follows from what you have said previously, but presumably you would accept the specific risk allocation for a specific project would depend on the specific terms of an individual contract.

**A** That's right, yes.

**Q** Thank you. One issue that the Inquiry has heard quite a lot of evidence about from varying parties is whether or not the Environmental

Matrix was a mandatory document that a respective tenderer had to comply with or it was simply included for information and it was then for them to develop, and I understand, from the evidence you have given today and your statement, again, your understanding is that it was a document that was provided to try to be helpful to prospective tenderers, but it was not a binding client brief. It was for them to take it on and develop it. Is that correct?

**A** That's correct.

**Q** If we perhaps just look within the invitation to participate in dialogue. If we could look to bundle 2, please, and look to page 799. So, we are within the invitation to participate in dialogue. Do you see towards the top of the page that there is a bold heading, "2.5 Hierarchy of Standards"?

**A** Yes.

**Q** If we skip the first paragraph but look to the second paragraph beginning, "Where Contradictory..." it states:

"Where contradictory standards / advice are apparent within the terms of this Section 3 of Schedule Part 6 (Construction matters) and the Appendices then subject to the foregoing paragraph then (1) the most

onerous standard / advice shall take precedence and (2) the most recent standard / advice shall take precedence. When the more onerous requirement is to be used the Board will have the right to decide what constitutes the more onerous requirement."

Do you see that?

**A** Yes, I do.

**Q** In terms of thinking about things like the Environmental Matrix, section 2.5 is something that you rely upon in your statement.

**A** Yes.

**Q** Can you explain why you are relying on this section 2.5?

**A** Well, it's clear that the Board had the right-- at the end of the day, the Board is the client, and the Board is ultimately paying for the facility, and so this sets out that, at the end of the day, it was the Board that had the right to decide what requirement or standard was expected. There may then be a commercial discussion about that, although there ought not to be because it's set out quite clearly. So, if there's conflicting or a lack of clarity between different standards, then the Board would have the right to say, "Actually, you know, this is the standard that applies for these rooms

or this department.” So, that would be my understanding of this.

**Q** Again, just as a matter of ordinary language, if there was perhaps two contradictory standards that were set out, do we see in 2.5 it is saying it is going to be the most onerous standard that a prospective tenderer should be held to?

**A** That's right.

**Q** Thank you. If we could then look on still within the invitation to participate in dialogue. If we could look to page 873, please, and if we could look to the bottom of page 873, you will see there is a bold heading, “8 Mechanical & Electrical Engineering Requirements.”

**A** Yes.

**Q** Do you see there the first sentence states:

“Project Co shall provide the Works to comply with the Environmental Matrix.

Project Co shall in carrying out the Works comply with the following non-exhaustive list of mechanical & electrical requirements.

Project Co shall provide mechanical and electrical systems that create a “state-of-the-art building” building with innovative design.”

Do you see that?

**A** Yes.

**Q** Again, perhaps this is more for the project team rather than you as SRO, but it is really just for your observations. If the Environmental Matrix was simply a guide, something that could not be relied upon, why did the ITPD have a provision in it saying that Project Co shall provide the works to comply with the Environmental Matrix?

**A** I would only be speculating.

**Q** Thank you. Would that be the same, effectively, for the contents of the invitation to participate in dialogue? Am I right in thinking that is something for the project team-- and we have also seen, from the contract with Mott MacDonald, a document that Mott MacDonald were to ultimately produce for NHS Lothian. Is the content of that document something that you would have a general awareness of, but not something that you, as SRO or sitting on the Board of NHS Lothian, would be involved in the content of the document?

**A** No, absolutely not. I wouldn't have had the capacity, and nor should I have been involved in the detail.

**Q** I would now like to move

on and ask you some questions about closure of competitive dialogue, and if I could ask you to have in front of you bundle 8, please, page 5. Bundle 8, page 5, which should be a set of minutes of the Project Steering Board from the 29 November. That is the 29 November 2013, and you will see, in terms of attendees, you are mentioned there, "Susan Goldsmith." Do you see that?

**A** It's not come up yet.

There, that's it now, yes.

**Q** So, it is bundle 8, page 5, and it is minutes of the Project Steering Board from the 29 November, which is 29 November 2013. We will come on and look at what is recorded in the minutes but, just to refresh your memory, this is the point that decision is made to close competitive dialogue. So, if we look onto page 8, please. Do you see at the top there is a heading, "Risk 8: Programme delay in reaching Financial Close." Do you see that?

**A** Yes.

**Q** So, the minute records:

"BC raised again the project team's concerns about achieving Financial Close with the Preferred Bidder in six months. PR asked how the planning activities for the preferred bidder period were progressing. BC

confirmed that a draft processing agreement was in place with CEC, and that a 6-8 week period of pre-application discussions with determination in August-September was planned. CEC, NHSL and the Bidders confirmed that these time scales were extremely challenging through dialogue. The resultant three months judicial review period will run beyond the programmed financial close date and may adversely influence funders ability to close."

Do you see that?

**A** Yes.

**Q** So, again, just at this stage, even in 2013, these concerns about the programme and getting to financial close, that is something that is of concern at this level within the Project Steering Board.

**A** Yes. I mean, that was consistent. Brian, as project director, was clear in his advice to me that it was highly unlikely that we would be able to achieve financial close within six months, so I was well aware of that and I would have made Finance Resources Committee aware of it as well – maybe not captured in the minutes, but certainly in discussion.

**Q** Thank you, and then if we look to box 6, "Procurement progress: Recommendation to Close Dialogue." It says:

"In addition to the progress update circulated, BC spoke to the tabled paper recommending Close of Dialogue."

There is then a recording of what is discussed. If we look over the page onto page 9, third paragraph, there, beginning, "SG asked the Steering Board...."

**A** Yes.

**Q**

"SG asked the Steering Board to confirm their support for closing dialogue as planned on 6 December. PR noted that while the points discussed were outstanding, he saw no reason for them not to be completed in the next week to achieve Close of Dialogue. BC summarised the position that the team had reached, with three affordable bids for designs that met the Board's requirements. The team were to be congratulated on this achievement, and SG asked BC to pass on her thanks to the wider project team.

The meeting agreed to the close of dialogue and issue of the

Invitation to Submit Final Tender on conclusion of the Key Stage Review."

Do you see that?

**A** Yes.

**Q**

Hopefully that has refreshed your memory of the decision to close competitive dialogue, but certainly the minutes do not seem to suggest that there were any particular issues or problems or difficulties that were being highlighted by Brian Currie to you or to the Project Steering Board. Is that your recollection?

**A** Yes. My recollection is it had been hugely challenging to have dialogue with three different parties but that it had gone as well as could be expected, and at this point there were still some issues that needed to be resolved, but at this point we felt confident we could resolve those issues and close dialogue. So, yes, certainly I felt that the dialogue phase had gone well.

**Q** Thank you.

**A**

I will move on in a moment just to ask you some questions about the assessment of tenders and the point of preferred bidders but, just before we move on, it is just one point in relation to the evaluation criteria themselves. You tell us within your statement that you

had concerns about a 60/40 split between price and quality. Can you just explain to the Inquiry, what concerns did you have about having a 60/40 split in terms of price and quality?

**A** Well, from a Board perspective, quality has always been-- you know, the quality of patient care, the facilities in which that patient care is provided from has always had a very, you know-- it is obviously clear they are our prime responsibility, and although we also have financial responsibilities, we've always tried to give those equal weighting. So this skewing towards cost at the expense of quality was something that didn't sit well with the Board's criteria for evaluating any sort of proposal that came forward. So that's why we were concerned that we thought it should be 50/50 or more skewed to quality than resource, but certainly more balanced.

**Q** And why could you not change it to a more balanced approach – 50/50, or 60/40 but the other way around?

**A** At the time, my recollection is that this was the criteria that we, you know-- this was a condition of accessing the NPD funding. So it was determined by SFT, presumably with Scottish

Government's support, that this was the criteria to secure the NPD funding. So we did then use a pass/fail route for some things that we felt were of significant concern to the Board in terms of the quality of the facilities to try and mitigate that, as we saw, imbalance between cost and quality.

**Q** So, pass/fail to make sure that there is a base layer of quality----

**A** That's right.

**Q** -- before you then get into the assessment of the 40 per cent weighting for scoring of quality itself.

**A** Yeah.

**Q** Thank you. I now want to move on and just ask you some questions about the assessment of tenders themselves. Was that a process that you were involved in as SRO or was that something that was left to the project team and Mott MacDonald?

**A** That was very much left to the project team. As a board member, I had to also make sure that I wasn't involved in the scoring because I would then receive-- I always had two hats on, you know. As an executive, obviously I was overseeing the process but, ultimately, I also had to be part of the decision-making of the Board. So I was certainly not part of



the scoring.

**Q** Now, I think you tell us within your statement that you are not involved in the scoring and that effectively you get told the scores----

**A** Yes.

**Q** -- in terms of the three bidders and what they have been awarded, but that is really what you are told. You are not really told about the assessment process itself. Is that correct?

**A** No, I mean, I would-- just trying to remember. I mean, there was clearly a process that was agreed around the assessment and the scoring, and so I would be aware that that had been discussed and agreed with the project team with-- and, again, that project team includes the advisors and SFT would have been involved in that as well, and they would have, through the Key Stage Review, satisfied themselves that that approach was appropriate. So I would take assurance from that, but I certainly wouldn't be involved at all in the detail of it.

**Q** So you know about the process that should be followed, but not how that was actually applied----

**A** That's right.

**Q** -- by the team on the thing?

**A** Yes.

**Q** So, for example, if we take one issue, there was one bidder, Bidder C, who changed values within the Environmental Matrix. So IHSL who is successful does not change any values within the Environmental Matrix when it submits its tender. One tenderer, Bidder C, does submit a marked-up Environmental Matrix. Is that something that you were aware of before financial close?

**A** No, I wasn't.

**Q** If I could ask you to have in front of you, please, bundle 10, volume 1, page 5, which should be in the top left-hand corner, "NHS Lothian Finance & Resources Committee," and it is the minutes of a meeting from 5 March 2014. Do you see that?

**A** Yes.

**Q** These are the minutes effectively whenever the appointment of the preferred bidder is approved, and if we could just look at some of those issues. If we look to paragraph 61.1, it states:

"The Committee received a previously circulated report confirming completion of the evaluation of Final Fenders for the Royal Hospital for Sick Children and the Department of

Clinical Neurosciences at Little France.”

See that?

**A** Yes.

**Q** Then if we look on to

61.4, it is recorded:

“The Committee noted that the Scottish Futures trust required that 60% of the evaluation of Final Tenders had to relate to commercial/cost and that 40% of the evaluation of Tenders had to relate to quality.”

Do you see that?

**A** Yes.

**Q** Is that effectively what you have told us, 60/40 split but that is subject to the pass/fail questions that you have told us about?

**A** Yes.

**Q** Thank you. If we then look on to page 6 towards the bottom of the page, 61.10 beginning, “Mr Cantlay...” See that?

**A** Yes.

**Q** It is:

“Mr Cantlay, representing Mott MacDonald, advised the Committee that as technical advisors for the reprovision of the Royal Hospital for Sick Children and Department of Clinical Neurosciences at Little France NDP project he believed from a

technical perspective that the technical evaluation had been carried out in a manner consistent with the evaluation methodology. From their involvement in this process, the considered scores awarded for the technical evaluation criteria seemed to be correct and it appeared appropriate for the Board to conclude the evaluation process and appoint the bidder identified as having the most economically advantageous tender as the preferred bidder.”

Do you see that?

**A** Yes.

**Q** So, again, Mr Cantlay from Mott MacDonald is attending the meeting and effectively saying, from a technical perspective, he considered that the scores awarded were entirely appropriate.

**A** That’s right.

**Q** Thank you. Then if we look over the page onto page 7, paragraph 61.16.

**A** Yep.

**Q** “Mr Currie confirmed that all three bids had been of an acceptable quality...” See that?

**A** Yes.

**Q** And then if we pick matters up in 61.16 in the final

sentence, three lines up, beginning, “Everything possible...”

**A** Yes.

**Q** It states, “Everything possible had been done to mitigate the risk of poor quality facilities and/or poor services being provided to NHS Lothian.” Do you see that?

**A** Yeah.

**Q** So, effectively, is that what was being told by Mr Currie again that, from his perspective, acceptable quality and everything possible done so that you are getting a high-quality facility at the end of the day?

**A** That’s right.

**Q** Thank you. Then if we look to paragraph 61.18:

“Mr Currie also confirmed that all details had been clarified in the contract documentation and the Chair reminded the Committee that the Scottish Futures Trust had been members of the Project Board and signed off on all the processes (Key Stage Reviews).”

**A** Yes.

**Q** So, again, is that recording that there has been all these key stage reviews with Scottish Futures Trust being involved in the process right up to this point of appointment of a preferred bidder?

**A** Yes, that’s right.

**Q** Then if we look on to

61.20:

“Mr Cantlay confirmed that the scores were all appropriate and he was happy with the evaluation and satisfied that the preferred bidder was in full accordance with the requirements.”

Do you see that?

**A** Yes.

**Q** Mr Cantlay obviously turns up, provides an overview of Mott MacDonald’s views on the technical assessments. If you could just try to cast your mind back, how much weight are NHS Lothian putting on the assurances that Mr Cantlay and Mott MacDonald are providing in relation to the technical assessment of the bids?

**A** Those assurances, not just from Mr Cantlay and Motts but also from the legal advisors and the financial advisors, were incredibly important to the Board because those, you know, were given by the professional, so to speak. It’s not to say that we didn’t have professional expertise, but that the Board was relying on that professional advice from each of those advisors to provide assurance on appointing the preferred bidder.

**Q** Are any of those advisors highlighting any risks or problems that had been encountered in relation to the bids and the bid of the preferred bidder in particular?

**A** No, not that I recall at that point, and I'm sure that if they had, it would have been captured in the minute.

**Q** Thank you. If we look over the page onto page 8, paragraph 61.23:

"The committee agreed to note the outcome of the scored evaluation and the assurance statements provided by Legal, Technical and Financial Advisors along with the completion of the Key Stage Review (Appointment of Preferred Bidder) by the Scottish Futures Trust."

And then 61.24 we see the formal approval:

"The Committee agreed unanimously, with no dissent from any members present, to approve the recommendation of the Project Team, as endorsed by the Project Steering Board, to appoint Integrated Health Solutions Lothian as the preferred bidder for the development of the Royal Hospital for Sick Children and

Department of Clinical Neurosciences on the site at Little France and to authorise the Project Director to issue the formal Preferred Bidder Letter and the two associated unsuccessful bidder letters in order to formally commence the contract "standstill period" required under the relevant procurement regulations." Do you see that?

**A** Yes.

**Q** So is that effectively the point that there is the formal appointment of IHSL Lothian as the preferred bidder?

**A** Yes. I can't recall whether we required the Board to then formally sign that off, but the Board would receive-- if that was the case -- and I'm sorry, I just can't remember -- the Committee would recommend to the Board, but ultimately that was the key decision.

**Q** Thank you. Just before we leave this minute, there is just one further document that I would ask to have in have in front of you. It is not in the electronic bundles but there should be a copy available to you. It is a letter on Mott MacDonald headed note paper dated 4 March 2014 by Mr Richard Cantlay addressed for the

attention of Mr Brian Currie. Do you see that?

**A** Yes.

**Q** Now, it is headed in bold, **“Reprovision of RHSC and DCN at Little France Evaluation.”** We perhaps skip the first paragraph with the bullet points. You will see a paragraph beginning “We believe...” See that?

**A** Yes.

**Q**

“We believe from a technical perspective the technical evaluation has been carried out consistent with the evaluation methodology. From our involvement in this process, we consider the scores awarded for the technical evaluation criteria, design and construction and facilities management proposals to be appropriate. And it continues in the next paragraph:

“Therefore, from a technical perspective, it appears appropriate for the Board to conclude the evaluation process and appoint the bidder identified as having the most economically advantageous tender.”

Do you see that?

**A** Yes.

**Q** And is that the letters that were referred-- or one of the letters that were referred to in the minute? This is the one from Mott MacDonald in the technical role(?).

**A** That’s right, yes, and we’d have a similar one from the legal and the financial advisors.

**Q** Thank you. If we can put those documents to one side. So, at this point in time we are in approximately March 2014, preferred bidder appointed and then hopefully moving forward to financial close.

**A** Yes.

**Q** Do you recall, by the time we get to summer-- and we will come on to look at some of the minutes, but by the time we get to the summer of 2014 are there any issues emerging in terms of the relationship between NHS Lothian and the preferred bidder at IHSL?

**A** Certainly by the summer I was aware that, you know, there were tensions and that I could certainly sense the pressure from the team that things were becoming more difficult to progress, largely between the Board and, I guess, Multiplex. You know, there was some frustration that IHSL were a contractual party, but we were dealing directly with Multiplex. So I was certainly aware of those tensions

and was reporting them to the Finance and Resources Committee.

**Q** And at that point in time-- we will come on to look at the period after the summer, but how concerned are you about those tensions and the relationships? Is this just the ordinary tensions you would have on a big infrastructure project, or at this point in time were there alarm bells ringing in your head as SRO?

**A** No, I don't-- Probably round about the summertime, my recollection is that, you know, I wasn't hugely alarmed as SRO because I thought it probably was the normal tensions because there was an awful lot of work to do before financial close, and I was also aware that the timetable was really tight for financial close. So my assessment at that time, certainly in the summer, was that actually this was just the normal tensions that you'd expect on a project of this nature.

**Q** Because if we take one example, one thing that IHSL had to do by financial close was produce room data sheets for every room in the hospital.

**A** Yes.

**Q** And I think, as we will come on to see, it became clear that that was not going to be achieved.

**A** Yes.

**Q** Was that something that was a matter of concern for you as SRO?

**A** Not hugely, to be honest, because there had been good progress made on the room data sheets and, although there were tensions, the teams were working together. It wasn't as if everyone, you know, had walked away. So, again, going back to what I said at the start was, you know, my focus was on keeping the momentum going and making sure that at all stages we were making progress, and we were making progress. It's just that it was slow, and it was clear that we were not going to be able to, you know-- there was a delay in getting all of the work for the room data sheets to be concluded by-- So I was concerned but, no, I don't recall being hugely concerned.

**Q** Thank you. So, if I can ask you to have in front of you, please, bundle 8, page 11. Bundle 8, page 11, which should be a set of minutes for the Special Project Steering Board on 22 August 2014. Do you see that?

**A** Yes.

**Q** You attend that meeting there. Then if we look to box 2, on the "Programme."

**A** Yes.

**Q** It says:

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

Do you see that?

**A** Yes.

**Q** Again, if we see a set of minutes and abstract saying that there is a significant concern, is that, though, to be put in the context of what you had said that, yes, you were concerned but you thought this was a concern that was of a standard nature for a major infrastructure project?

**A** Yes. I guess what this is prompting is it goes back to the point that I made earlier, was my concern was the fact that we didn't have certainty on the programme, and I think what we saw over summer through to late autumn was we never had a programme that we had, you know, complete confidence in. So I recognised that there was a lot of work ongoing and it was difficult and it took time, but the thing that created the most concern for me was the lack of

confidence in the programme because at the end of the day I have to report back to the Committee of the Board and the Board and try to give them confidence or assure them about the programme, and I wasn't able to do that. So that was really the thing that, I guess, exercised me the most.

**Q** Thank you. If we look on still within the minutes to page 12, you will see a subheading underlined, “Production of room data sheets.”

**A** Yes.

**Q** See that? So, page 12, it states:

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

Do you see that?

**A** Yes.

**Q** Now, if it was stated within the procurement documentation, the ITPD, that the successful party had to complete 100 per cent room data

sheets by financial close, why had NHSL got to a point that they were comfortable waiving that requirement?

**A** Largely because-- primarily because we could then actually transfer the contractual responsibility for the production of those room data sheets into the contract that we had with IHSL post-financial close. So we weren't giving up on the requirement for room data sheets, but we were shifting the timeline for them.

**Q** Thank you. If we look over the page onto page 13, please. If we could look to the second paragraph beginning there, "RB stated..." Do you see that?

**A** Yes.

**Q** So:

"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 this demonstrated a 'paranoia and lack of trust' in IHSL."

Again, if I could begin with just asking about this idea. Did you think that there was a genuine mismatch in what NHSL wanted as opposed to

what IHSL was prepared to provide in the period up to financial close?

**A** I thought that there was a mismatch between what NHSL required and what Multiplex thought should be provided. IHSL perhaps sat on the fence a bit more, but there was definitely a mismatch between NHSL and Multiplex.

**Q** If Multiplex were going to be the design and build contractor for IHSL, were you not concerned at this point in the summer that there did seem to be this mismatch between NHSL who is going to use the hospital, and the party that is being proposed to build the hospital?

**A** Yes, but our sense of it and my sense of it was that Multiplex had come off a capital build project where the contractual responsibilities are different, and I thought that Multiplex hadn't fully understood the contractual responsibilities that an NPD brought. They had come to the project with the mindset that they were delivering a capital project and they hadn't fully understood – this is my view, personal view – what was required to satisfy the requirements of an NPD project and that commercially gave them challenges because they had, I assume, assigned a level of resource, a level of budget on which



they were taking a risk in advance of financial close and that they had reached that level of resource and were, you know, not prepared to expend anymore in advance of having a formal contract. So that's what I was concerned about.

**Q** And did that mismatch in expectation, those concerns, did they get addressed and resolved before a contract signed?

**A** They did because the contractual responsibility was shifted into the project agreement. So, I guess that was the compromise that we all reached. Again, this is something-- you can see from the attendance at that meeting that this was something we were all-- all the parties were trying to resolve and that was, you know-- from a Board perspective, we were satisfied that our requirements were going to be met, albeit not before financial close.

**Q** Again, just in terms of what is stated in the minute, there is that statement towards the end recording that Mr Ballingall from IHSL was suggesting that there is "paranoia and lack of trust' in IHSL." Did that reflect your views of the relations between the parties at the time?

**A** No, it didn't because I understood that there was tensions,

you know, with the team and those that that were on the ground, so to speak, doing the detail of this work were experiencing those tensions but, at a senior level, I mean, that was a difficult meeting, undoubtedly, but generally, at a senior level, all the individuals were working together. So, yes, that was a difficult meeting, but we all came together to try and resolve the issue and so, you know, the tensions were normal – commercial tensions, timeline tensions more than anything else at that point.

**Q** Thank you. If we then look approximately in the middle of the page, there is a paragraph beginning, "MB asked..." Do you see that?

**A** Yes.

**Q** This is Mike Baxter from Scottish Government:

"MB asked if there was a common understanding of the requirements to sign off operational functionality and BC responded that he didn't think this was the case. GW expressed his concern that the programme tabled was not achievable if IHSL were still looking to negotiate terms."

Do you see that?

**A** Yes.

**Q** So, firstly, am I correct in

understanding that Mike Baxter from Scottish Government is at this meeting? Why was he at the meeting?

**A** Because I suppose he's representing the sponsor government department, which was Health, and we had clearly escalated our concerns. This was obviously not only a major strategic project for Lothian, it was a major strategic project for the government, and so Mike was our link person in Scottish Government who also had significant expertise of PPP projects. So we asked him to join the meeting to facilitate the discussion or to be part of the discussion. I guess also to recognise the-- you know, to let IHSL-- make them aware of how important this project was. I don't think there was any doubt, but it just emphasised it.

**Q** Again, so Mr Currie is telling Mr Baxter from the Scottish Government that he doesn't think that there is a "common understanding" on operational functionality. Was that a concern, firstly, for Mr Currie and NHS Lothian?

**A** Yeah. Yes, it was. I think it's this bit about, you know, what-- the division between the operational functionality and the detail of the design, the technical design that seemed to be problematic at times.

**Q** And that lack of "common understanding," was that a concern for Mr Baxter at this time?

**A** I-- Difficult to speak for him. I think what I can say is that we were all concerned, but not unduly concerned. At this point, we were, again, trying to deliver the project and bring all the parties together to find a way through to get to financial close. So, concerned, but not to the extent we thought the project was going to fail.

**Q** Thank you. The next document I would ask you to have in front of you, please, is bundle 8 and page 89. So this is an email from Brian Currie to you dated 23 September 2014. Did you see that?

**A** Just not quite there yet.

**Q** So it should be bundle 8, page 89.

**A** Yes, I've got it.

**Q** It is an email from Brian Currie to you dated 23 September 2014, and this is effectively an update that he provides to you in advance of a Project Steering Board meeting. Do you see that?

**A** Yes.

**Q** And if we could look to the bold heading about two-thirds of the way down the page, that there is a bold heading, "**Derogations**." Do you

see that?

**A** Yes.

**Q** Where Mr Currie states:  
“We have a draft schedule from IHSL which is considerably longer than that submitted at final tender and we hope to have out technical advisor’s view today on how many are significant.

There is a potential risk that under strict procurement rules this extended list could be considered to be so different from IHSL’s final tender that another bidder may challenge fairness.”

Do you see that?

**A** Yes.

**Q** Firstly, do you recall what is recorded there, that the derogations, that the changes that are being made are quite significant?

**A** Yes.

**Q** Was that your understanding?

**A** Yes, but at that point-- so I do understand that, but at that point Brian’s only alerting me to a potential risk. It hadn’t yet materialised because we needed a view from the technical advisors, so I took it in that spirit.

**Q** And in terms of the level of derogations, this is a snapshot in time. What was your understanding of the level of derogations by financial

close? Were they standard, what you would have expected in a project of this nature, or were they more significant than you would have expected?

**A** Difficult for me to comment on that. I would be relying on, again, the view of the team, the technical advisors, SFT, you know, everyone who was giving me advice about whether we were at a stage where we could reach financial close. So, given that the advice was we could deliver financial close, then I’m assuming that-- I can’t recall, to be honest, but I’m assuming that we were satisfied that the level of derogations was not going to compromise procurement rules.

**Q** Thank you. So, again, should we understand that this is a snapshot in time, a potential risk being highlighted, but something that would have to be revisited at financial closure?

**A** Yes.

**Q** Thank you. The next document that I ask you to have in front of you, please, within bundle 8 at page 15, please, and that is a minute from a Steering Board Commercial Sub-group on 31 October 2014.

**A** Yes.

**Q** Now, you are recorded in

the apologies, so I am not taking you to this to ask you about what was agreed, but it is simply to try to jog your memory about what stage the project had reached by the period from October to Christmas effectively in 2014. So, do you recall, generally, before we look at the minute----

**THE CHAIR:** Sorry, Mr MacGregor. My fault entirely. Page 15 and are we still in bundle 8?

**MR MACGREGOR:** Bundle 8, page 15----

**THE CHAIR:** Thank you.

**MR MACGREGOR:** -- which should be the Steering Board Commercial Sub-group minutes from 31 October 2014. Does your Lordship have that document?

**THE CHAIR:** Yes.

**MR MACGREGOR:** Thank you. Before we go on and look at the minute, we had obviously looked at the period in the summer whereby you had said, yes, there were stresses, strains and tensions, but those were a level that you would have expected on a major infrastructure project. What were relations like in October leading into the period to Christmas?

**A** I think, if I recall correctly, again, you know, all the parties were coming together to try and resolve issues, so that was positive. The thing

that probably created the most anxiety from an NHS Lothian perspective was this issue, once again, of programme and not having a programme that there was confidence around in terms of the project actually being completed. So, at this point, there was a significant amount of tension and probably borne out frustration from the Board's perspective, really. That was the key thing is that we had been working with IHSL for some time and Multiplex and, this close to financial close, we still didn't have certainty around the programme for delivery.

**Q** And the mismatch in expectations that was there in the summer, had that been resolved this stage, or is that still a live issue?

**A** I don't think-- I can't recall exactly. I think the key issue was the programme-- the confidence around the programme.

**Q** Thank you. If we could look within the minutes just to see if any of it jogs your memory, if we could look to page 16 please. You see the first full paragraph, it states:

“GW stressed the importance of understanding if 12/12/14 was really feasible, as failure to meet this third attempt at FC would make all parties look foolish.”

Was that a concern that was held by those within NHS Lothian that really you just had to get to financial close or people are going to look foolish?

**A** It was more an issue of that, again, at this point is that we weren't able to say with any confidence and so, yes, I mean, I could understand George Walker's point is that we had been advising that we were going to deliver financial close before Christmas. Having said that, around the committee we had been very clear that we thought the time scale was challenging, but this meeting was really to bring some pressure on IHSL and Multiplex to resolve the issues. I'm not sure if-- I think Multiplex were there, but to resolve the issues and really to get to a position where we had confidence about financial close. I suspect at this meeting-- and, again, I can't recall, I wasn't there, but I suspect we all understood that it was unlikely we'd meet financial close before Christmas, but we needed some kind of certainty about what was achievable.

**Q** And if we look to the next full paragraph it says:

“All agreed that slippage into 2015 would cause significant problems for both the Board and

IHSL. Reputational risk was discussed.”

What was your understanding? What would the problems be of slippage into 2015?

**A** It was largely the inflation. I can't exactly recall the detail, but there was a financial risk to the board that we would have to pick up the costs of the inflation beyond-- So, the project was priced based on price indices and then the project-- if financial close wasn't delivered within a time frame, then inflation applied. So I think that that's what was the concern of the Board – not just the Board obviously, but SFT and Scottish Government – is that the cost of the project would rise.

**Q** Thank you.

**A** Again, it was yet another delay to the project.

**Q** You tell us within your statement that there, effectively, came a point on the IHSL Multiplex side that your understanding was they had said, “Look we are really not doing any more work. We are not spending any more money on this until a formal contracts put in place.” Again, just thinking through the fact that there is the published procurement document, there is the preferred bidder completely open in terms of what

people have to do and then you have a party that is saying, "I am just not doing any more." How did matters get to that stage?

**A** How did they get to that stage? That's a difficult one to answer. Again, this is a personal view. I come back to the point I made that I think Multiplex underestimated what was-- or hadn't properly understood what was required with an NPD project and how much work that would be required of them and the resource implications of that before financial close. I really don't think they had fully appreciated that, but all the senior players had to come together and find a way through this to deliver the project. When you say, "How did it get to this stage?" that would be my assessment of why it got to that stage, because Multiplex had come off a capital project thinking that they were going into the same type of project and without that full appreciation of their contractual responsibilities in advance of financial close.

**Q** In terms of the timeline, really from the period from the summer onwards, you have talked about strained relationships but people working together constructively to try to resolve matters. It seems, though, there comes a point whereby NHS

Lothian are saying, "This is what you need to do," and on the IHSL Multiplex side, they are saying, "We are not doing any more until we have got a contract in place." Roughly when do you recall that position being reached?

**A** Oh my goodness, probably September/October time, I would have thought. I'm struggling to remember. It was a sort of continuum of ongoing negotiation and discussion over the summer through into Christmas time, so it's difficult to pinpoint exactly when we agreed a particular position. So my sense of it is that all the parties were working to deliver financial close, and a series of compromises were reached and, from the Board's perspective, our focus was making sure that any risk associated with that compromise was mitigated by ensuring that the contractual responsibilities were covered off in the project agreement.

**Q** So, in terms of breaking the deadlock, you talk about compromises.

**A** Yes.

**Q** And you tell us that, from your perspective, you were comfortable with the compromises because of the ultimate contractual documentation. Can you just talk us through your understanding? What

were the key compromises and what did you understand was happening in terms of the contract with them?

**A** The key compromise was the level of design work that had to be delivered. That was the key compromise. I'm struggling to recall whether, you know, the program changed much in this period because it changed at different points but that really was the key compromise is the level of design work that was done in advance of financial close, which then was covered off in the project agreement for the Board.

**Q** In terms of these compromises that ultimately find their way into the contract, are those decisions that are being taken by NHS Lothian in isolation or are other parties such as Scottish Futures Trust and Scottish Government involved in that decision making process?

**A** It was very much a joint working together with Scottish Futures Trust, the Board, with Scottish government being in the loop as well, and parties being comfortable that the risks for the public sector had been mitigated and that, in order to deliver the project, we had to agree on a slightly different profile of design work and move away, I guess, from what would be standard practice for an

NPD. So, it wasn't just Lothian, and Lothian took assurance and I, as SRO, took assurance from the fact that we had support and advice from Scottish Futures Trust translated into their Key Stage Review that Scottish Government were very sighted on the decisions we were required to make to achieve financial close, and I was able to give those assurances to the financial resources committee and then to the Board ultimately.

**Q** Thank you. In the period to financial close, obviously, the project team and the technical advisors will be working on the granular level of detail. They would be producing a range of documents the Inquiry's seen, including risk registers. Were those risk registers documents that you would see in your position as SRO?

**A** At the Project Steering Board, yes.

**Q** Yes, so, if I could perhaps just ask you to have before you within bundle 8, if we could look to page 84, please. So, this is a Mott MacDonald document, "Design Risks to the Board to Financial Close." Do you see that?

**A** Yes.

**Q** It is the risks as at 28 January, 2015. So, we see that the

first entry, it says, "M&E", the item is "Ventilation."

**A** Yes.

**Q** Risk impact is described as "high" with the current mitigation measure being:

"The single room with en-suite ventilation design shall comply with the parameters set out in SHTM 03-01.

The design solution should not rely in any way with the opening windows as these will be opened or closed by patient choice.

The critical factor from SHTM 03-01 for infection control will be the resultant pressure within the room being balanced with or negative to the corridor.

Isolation room ventilation shall comply with SHPN 04 Supplement 1."

With the final position being "TBC," to be confirmed. Do you see that?

**A** Yes.

**Q** Do you have any recollection at this point shortly before financial close of being made aware that the ventilation system-- the risk impact was high?

**A** I don't recall that at all, I'm afraid.

**Q** But if you were provided with the risk registers, is this an item that you would simply think was part and parcel of the project, or is this something that you would think, as SRO, you should be concerned about?

**A** At this point, again, if I recall correctly, then I would have seen this as just one of one of the issues that needed to be resolved. There were several issues that needed to be resolved. I guess I got assurance from the fact that the risks had been identified, so they had been captured and were included in the risk register and so all of the-- you know, we were sighted on an issue that had to be resolved.

**Q** If I could ask you to have in front of you please bundle 9, page 3, which should be the Key Stage Review that was completed in the pre-financial close stage, "The Pre-Financial Close Key Stage Review." So bundle 9, page 3. Do you see that document?

**A** It's coming up now, yeah.

**Q** Did you have an involvement in relation to the Key Stage Reviews? Did you provide information to Scottish Futures Trust, or did you sign off on Key Stage Reviews?

**A** I would sign off on Key Stage Reviews. So, the key players



would be Brian Currie and Iain Graham.

**Q** Other witnesses have said that the way that Key Stage Review worked-- would it, effectively, be information provided to Scottish Futures Trust, Scottish Futures Trust provided the Key Stage Review, but that was also provided to you in your capacity as SRO to review and, effectively, sign off on it before it went further. Is that correct?

**A** That's right. So, by the time it came to me all the parties were comfortable. There might have been dialogue with me in advance of getting to that stage if there was any particular issue that Iain or Brian needed a steer on or a view on but, generally, by the time it came to me all parties were comfortable with what was included in the Key Stage Review.

**Q** Thank you. So, if we look on to page 5 please? This is in the "Background" section. It picks matters up about four lines down in paragraph 1.1 beginning "The KSR process..." Do you see that?

**A** Yes.

**Q** So:

"The KSR process is designed to support the successful delivery of revenue funded projects whether

delivered through the non-profit distributing (NPD) model or the hub initiative as Design Build Finance and Maintain (DBFM) projects by providing an assessment of the readiness of a project before it moves on to the next stage in the procurement process."

**A** Yes.

**Q** Do you see that? Thank you. Then if we look on to page 11, please? Section 3, "Project Requirements," box 2, "Is the Procuring Authority satisfied..." Do you see that?

**A** Yes.

**Q**

"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** That is recorded as

"yes." It says:

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

**A** Yes.

**Q** And then item 2:

“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?”

And the comment 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.”

Do you see that?

**A** Yes.

**Q** Now, we do not see within the responses and the comments, here, any of the risks, for example, that we saw in the risk registers such as for the ventilation system. Why not?

**A** I don't know why not. My view is that it was because we were satisfied that, because those risks had been identified, we had made sure that they had been put into the RDD process and, therefore, there was a contractual process to deal with them that we were then satisfied-- I would also assume that there was nothing in that bundle of risks that was so significant or that we didn't think could be resolved through further work in the RDD process, otherwise it would have been escalated. So, I assume that there was a confidence that those issues would be resolved.

**Q** Thank you, and then if we look on just for completeness to page 19, box 6, do you see:

“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?”

Do you see that?

**A** Yes.

**Q** And the comment is that: “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 through the Project Board and the Board's governance arrangements in place.”

Do you see that?

**A** Yes.

**Q** So, again, am I correct in understanding that really what we see here is that the key risk that being highlighted is merely if there is going to be a change in the specification after the contract is concluded?

**A** Yes.

**Q** Thank you. In the period before the contract has been signed, in your position as SRO, were you aware of any potential risks in relation to the ventilation system design concerning a possible spread of MRSA or norovirus?

**A** No, I wasn't.

**Q** That type of risk-- is that something that would sit with the project team that they would deal with, or would that type of risk be something that you, as SRO, would want to know about to potentially escalate?

**A** No, that would sit with the project team provided they were

confident that a solution could be found. It would only be escalated if it was something that the project team didn't consider could be resolved through further work. So the project team were happy to accept the risk because they had a mechanism for dealing with it and finding a solution.

**Q** Again, just in fairness to you, can I ask you to have in front of you bundle 8, page 71, which is a Mott MacDonald document. This was an issue that was identified by Mr Colin Macrae of Mott MacDonald in November 2014, and you will see that the final entry there that says:

“Mott MacDonald concern is that the room will be at a slight positive pressure relative to the corridor which would allow infections such as MRSA or Norovirus to spread.”

Do you see that?

**A** Yes.

**Q** Now, that issue-- it is not in relation to Critical Care areas, but it is in relation to another aspect of the ventilation system. The Inquiry has heard evidence that that did not get resolved for financial close; it was simply put in as reviewable design data.

**A** Yes.

**Q** I appreciate you were not

aware of that issue, but is that something that you think, as SRO, you should have been aware of, or is that simply something for the project team to manage and deal with?

**A** At this stage I think there was multiple issues that still required to be resolved. So I would expect that those would sit with the project team at this stage. They were ultimately escalated but after financial close----

**Q** But after financial close.

**A** -- when the solution was problematic.

**Q** Yes, in relation to this issue, the final document I would want to look at in relation to this matter is within bundle 10, volume 1, at page 283, please. You have seen the top right hand corner NHS Lothian.

**A** Sorry, I'm not quite there yet.

**Q** Sorry, it is bundle 10, volume 1, page 283, should have in the top right-hand corner the NHS Lothian logo. Top left-hand corner, "Healthcare Associated Infection System for Controlling Risk in the Built Environment." So it is HAI-SCRIBE, and it is from 19 November 2014. Do you see that?

**A** Yes.

**Q** Do you recall seeing this document or having discussions with

anyone about an HAI-SCRIBE report from November 2014?

**A** No, I don't.

**Q** Again, the reason I raise it is if we look on to page 286, see entry 2.2 at the top of the page, "Is the ventilation system design fit for purpose..." Do you see that?

**A** Yes.

**Q**

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

It is ticked as "No," and it says:

"Some concern has been raised in relation to a potential issue with ventilation with regard to negative/balance pressure in single bed rooms. Awaiting drawings and further information to fully understand if there is a risk or issue."

Do you see that?

**A** Yes.

**Q** Again, is that the type of issue that gets dealt with by the project team? You would not be expecting that to be escalated to you in your position as SRO before you sign the contract?

**A** No, I wouldn't. If there was a very significant concern, then I would have expected it probably to go

up through the clinical line and then to come to me-- almost that route, but it looks as if they're still trying to resolve the issue, and so I would expect the project team to attempt to resolve the issue first.

**Q** Thank you. The final document that I would ask you to have in front of you is, again, the full business case. So, if we could go to bundle 10, volume 1, it begins at page 119, but if we could look onto page 156 please, and you see the sub-heading "4.1.10 Final tender evaluation and appointment of preferred bidder".

**A** Yes

**Q** And then if we skip the first paragraph there, there is a second paragraph beginning:

"The technical submissions were evaluated by NHS Lothian expert users and Mott Macdonald technical advisers. Technical proposals were evaluated against quality-based criteria without sight of the financial submissions or knowledge of the outcome of price evaluation. A copy of Mott Macdonald's letter on conclusion of the technical evaluation is attached at appendix 6."

Do you see that?

**A** Yes.

**Q** Now, within the full business case, we obviously see reference, there, to the evaluation that had been made by Mott MacDonald, but we do not see any of the issues in terms of the tensions with IHSL, the mismatch in expectations, any of the risks identified and the risk register, the HAI-SCRIBE report that we have looked at. Why is none of that information being included in a fuller or a final business case?

**A** I guess it's because it's part of the process of delivering those projects, and there is a management mechanism and that deals with the challenges that any project faces. So Finance And Resources would be checking that there was a management system for looking at and evaluating risk and would understand that there was. So, there might have been something that attached to the business case-- I can't recall that there was a risk register but, certainly, in the business case, there would be an expectation that-- In fact, I'm sure in the business case it will actually say what the delivery mechanism is, and so it would be captured in that part of the business case. I'm struggling to recall, to be honest.

**Q** Thank you. I think the final issue that I really do want to ask

you at this stage is really just a, sort of, general issue or a general topic for your observations. NHS Lothian's position, as I understand it, is that there is an acceptance that there was an error in a spreadsheet, the Environmental Matrix. It is not spotted, and that creates a problem whereby the hospital does not open on time, significant remedial works and additional expenditure. We are focusing, at this stage of the Inquiry, on the period from the procurement exercise to the conclusion of the contract, and really the issue that I would ask for your observations on are: in a project of this nature, do you think there were issues that arose in the procurement exercise or in the contract that contributed to that issue of, effectively, the spreadsheet error not being spotted up to financial close?

**A** I mean, it's with the benefit of hindsight. Clearly, a risk that was identified early on and became an issue all the way through the project and materialised, your assessment would be there should have been some way of identifying key technical issues that potentially presented risk to the board at an earlier stage in the project, I mean, again, with the benefit of hindsight. I mean, ultimately, the Board's system of control was to

identify the risk that materialised when it came to do its own testing of ventilation before the hospital opened. So, our systems of control worked, unfortunately, at the very late stage when-- with terrible consequences. So there's clearly something about our systems of control that should have picked up the significance of that risk earlier.

**Q** And I think that the final issue that I would ask you is really drawing on your experience having the role of senior responsible officer. I am now not talking about the project you were working on; I am talking about these types of projects and in general. Do you think there are additional things that could be done on a project of this nature in the procurement and contracting stage to try to avoid those types of issues that arose in relation to the Royal Hospital for Children and Young People?

**A** I think there have been changes made now within the health system, which is the establishment of NHS Assure, and so it is a different, sort of, environment now to what it looked like in 2010/2012/2014. I think that the significance of compliance with technical standards probably, at that point, had less emphasis than affordability. That's probably

understandable because there was a limited pot for doing a significant amount of capital works that are still required in the NHS in Scotland. So I think the weighting to affordability and the prioritisation of resources without anyone unintentionally have the consequence of-- having the sense that the technical issues were being dealt with technical people over here, and that's changed, as I understand it, because just before I left NHS Assure had been established. So there is much more emphasis on the due diligence of delivering technical standards. Inevitably, that will bring a price to it.

**Q** Thank you. Ms Goldsmith, I do not have any further questions at the moment, but Lord Brodie may have questions or there may be applications from core participants. Lord Brodie, I know that it is just before 11.30, your Lordship might want to use this as an opportunity to have the coffee break. Any discussions that core participants want to have with me could take place at that point if that is suitable to your Lordship?

**THE CHAIR:** We will do just that. As Mr MacGregor has foreshadowed, we want to give an opportunity for any legal representatives to raise any

further questions if that is what they wish to do. We would normally break at half past 11 anyway. We will take a break and aim to sit again about five to 12, and I will then ask you to come back in again either to be told that there is a question or to be told that there is no questions.

Directing myself to those following in the live stream, can I just apologise for the technical problem that we have this morning. I hope that we will be able to solve that, and can I just repeat that all the documents that have been referred to but have not been displayed on the screen are together with all documents in relation to this hearing to be found in the Inquiry's document section of the Inquiry's website. That is with exception of the Mott MacDonald letter of 4 March 2014, which Mr MacGregor drew attention to at the beginning of the hearing. So, my apologies for the technical problem. I trust it has not caused too much inconvenience. I am just being reminded, and I am grateful for the reminder that that letter is available in addition. So, we will sit again at about five to 12, and perhaps if Ms Goldsmith could be shown out.

(Short break)

**THE CHAIR:** Mr MacGregor.

**MR MACGREGOR:** Lord Brodie, there are three points of detail that I have been asked to raise, which I am content to do. I would anticipate it would take me no more than five minutes, but I am not anticipating any applications being made by core participants.

**THE CHAIR:** Thank you. If Ms Goldsmith could be returned. (After a pause) Thank you for waiting. I understand that Mr MacGregor perhaps has three points he wishes to clarify with you.

**THE WITNESS:** Yeah, of course.

**THE CHAIR:** Mr MacGregor.

**Q** Ms Goldsmith, you will be relieved to know there are just three small points of detail that I would want to cover with you. I think the first was we were discussing the final or full business case and the issue of how risk was dealt with within that, and if I could ask you to have in front of you, please, bundle 10, volume 1, and firstly, page 171. It was really just to explore that issue of how the issue of risk is dealt with, so bundle 10, volume 1, page 171. You should see a table on the left-hand side. There is the green box: "**Project Delivery Group: NHS Lothian Project Management Executive plus Project Co leads.**" Do

you see that?

**A** Yes.

**Q** Then the third bullet point there, which states, "Manage and report on risk." do you see that?

**A** Yes.

**Q** So, again, I had you noted as saying that you thought that there would be somewhere that risk would be dealt with, within the fuller final business case, and do we see that being recorded there?

**A** Yes. Yeah.

**Q** And then, if we look on to page 177, you see just at 6.6, there is a bold heading, "**Risk management.**"

**A** Yes.

**Q** Was that what you were talking about? You said, "I think somewhere within the full or final business case, there'll be a section on risk management."

**A** Yes.

**Q** Is this the section that you were thinking of?

**A** This is it, yes. Sorry, I had a mental block.

**Q** No. No, not at all.

Thank you. We can put that document to one side, please. The next document that I would ask you to have in front of you, please, is within bundle 2, page 177. This is a document we have not looked at before. It was



produced by Davis Langdon, and it was a value for money assessment, and it is really looking at this point in time in relation to the reference design. I think you had said within your statement that you thought there had been approximately £2 million that had been spent and you did not want that money to be wasted. I guess the only point of clarification I am asking for here is we see Davis Langdon identifying that for the reference design it is approximately £1.7 million. Are we talking about £2 million encapsulating that £1.7 million for the reference design, or are we talking about that sum being added to the £2 million in your statement?

**A** No. The £2 million would include that, and the balance would be the project team costs, yeah.

**Q** So we are talking about a figure of approximately £2 million. We are not talking about a figure of £3.7 million, for example.

**A** No, no.

**Q** Thank you. Then the final point is really just to ask you for some clarification on your understanding of the role of Scottish Futures Trust. The Inquiry has heard evidence from other witnesses that have described Scottish Futures Trust as having a role in the project because

of their expertise in revenue funded projects, but that SFT's role would not extend to a technical evaluation or a technical assessment of solutions that were put forward in relation to the project. Do you have any observations? What was your understanding of Scottish Futures Trust's role on the project?

**A** I mean, essentially, they were, I guess, the guardians of the NPD project. So, they both supported us in terms of the Key Stage Reviews and ensuring that we followed the right processes, we had the right systems in place, our evaluations of different stages was appropriate. They did provide – how I would describe it – as professional advice, but not professional advice in that you got an indemnity sitting behind it. Professional advice because there's lawyers, you know, Peter Reekie is an engineer. So they did bring a mix of professional experience, commercial experience, but they didn't have a responsibility for assessing the technical aspects of the project.

They did help us when we got to later stages of the project on – which is post what the Inquiry is looking at – resolving some of the technical issues, but that was really because of the professional expertise that sat within

SFT, rather than it was because it was their responsibility. Is that clear?

**Q** Thank you. That is very helpful. I do not have any further questions for you but thank you for answering my questions today. Lord Brodie may have some questions or, equally, there may be applications from the core participants, but thank you.

**A** Okay. Thank you.

**THE CHAIR:** Now, first of all, can I take it that Mr MacGregor has dealt with anything that was raised by any other legal representative? No, I do not have any further questions, and therefore you are free to go, Ms Goldsmith, but before you do, can I thank you for your attendance today, but also for the preparation that goes behind a witness statement, which is significant. So, it is not just a question of a few hours of a morning, and I fully understand that. So, thank you very much, but you are now free to go.

**THE WITNESS:** Okay. Thank you.

(Session ends)

**12.05**