

Scottish Hospitals Inquiry  
Witness Statement of Donna Stevenson  
Written Response to S 21 Notice dated 13 December 2022

**A. Reference Design**

1. (a) Why did you seek guidance from John Cole in relation to the use of a Reference Design? Did you have concerns around its use?

- i **My recollection is that John Cole was identified as someone who had previous experience of a Reference Design and he was contacted to enable relevant people within the project to benefit from his experience. My recollection is that his involvement was not around whether we had concerns, it was simply to assist in understanding how a reference design was used based on his previous experience.**

(b) Can the witness provide details on John Cole, her association with him? Does she know if NHSL sought his experience on the use of Reference Design on other healthcare projects?

- i **I do not recall having had any association with John Cole previously. I do not know if NHSL sought his experience on the use of Reference Design on other healthcare projects.**

2. Was the addition of DCN adequately integrated into the design? How much of the reference design team's time did this take?

- i **My remit did not include technical issues. It is therefore not for me to comment on whether DCN was adequately integrated into the design. I am not aware of how much of the design team's time this took.**

3. In relation to recognised roles and responsibilities did the Project delivery structure work well? Can you outline any areas where it did not work well?

- i **I do not understand the question being asked here. Is the Inquiry asking for comment on the general structure of the project or certain individuals carrying out their role?**

b. The witness is asked if the Project delivery structure worked well in relation to roles and responsibilities. Can she provide comment on the structures in place for decision making and governance? Whether these were standard for the Project and in her own view did they work

well.

- i. NHSL formed a Project Team and advisors were appointed to carry through the Project. There was also a Working Group that I attended, and I recall that this provided updates on the project and an opportunity to discuss current issues.
  - ii. In governance terms there was a Project Steering Board and then the formal governance within NHSL of the Board of NHSL and the Committee of the Board that dealt with the project. My understanding is that the structure was fairly standard within NHSL for the delivery of the project, and I had no issues with this structure.
4. SFT were directly concerned with the potential of Bidders to innovate and allow for improved value for money. Should this have involved closer scrutiny of what design elements were mandatory and why?
- i I refer the Inquiry to the KSRs. Section 2, Question 7 of the Pre-OJEU KSR [A33337395 - Pre-OJEU Notice Key Stage Review dated December 2012]<sup>1</sup> the question that was asked was *"Please explain the approach that the Procuring Authority is taking in presenting its design and specification requirements to bidders (e.g. use of exemplar or reference designs) and the opportunities available for bidders to propose alternative or innovative solutions. Please demonstrate that this approach is consistent with (i) allowing opportunity for improved value for money through bidder innovation, (ii) allowing scope for value engineering required to deliver the project within the affordability limits (iii) the procurement timetable and (iv) bidder access to project stakeholders during the procurement."*

The answer provided stated as follows: *"the Funding Conditions provide that "the extent of negotiable and non-negotiable elements is developed by the Board on the basis that bidders should be provided with flexibility to propose*

<sup>1</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 3, p.13  
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*their own design and engineering solution, within defined parameters, and avoiding the need to open up the clinical adjacencies which has been settled with the Board's clinicians to date and reflecting the constraints in the site as reflected in SA6. The final position is to be reviewed by SFT as part of the Pre ITPD KSR."*

In the Pre-ITPD KSR [A33336334 - Pre-Invitation to Participate in Dialogue Key Stage Review dated 07 March 2013]<sup>2</sup> at Section 2 Question 4 the same question was asked as noted above and the answer provided was as follows: *"The ITPD, Volume 1 section 2.5 and Appendix E sets out the elements of the Reference Design which is being provided to bidders are mandatory. These relate to the Operational Functionality as defined in the Project Agreement and there are elements of flexibility in relation to non-mandatory elements of the Reference Design."*

This reflects the issues that SFT raised around flexibility in the context of Operational Functionality. It was not SFT's role to review the technical specifications or to conduct a technical review. The technical specifications were a matter for NHSL.

- a) The witness states that it was not the role of SFT to review technical specifications or conduct technical reviews. This was a matter for NHSL.

How could SFT fulfil its obligations without having some oversight or understanding of technical requirements? And did SFT not have concerns that NHSL could undertake these reviews given that the Reference Design Team (including Hulley and Kirkwood) had been dispensed with?

- i SFT's role was not to carry out a technical review. It was my role as First Reviewer of the KSRs to ask NHSL the position on the technical elements to allow them to reflect and respond on the issues that were raised. Both myself and the second reviewer would then consider the adequacy of the response in the context of the KSR.
- ii Question 29 of Section 5 of the pre-OJEU KSR [1] I asked NHSL

<sup>2</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 4, p.67  
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to confirm the advisory appointments and NHSL confirmed that *"Mott MacDonald was appointed as the lead consultant and Technical Advisors...They will deliver the following services: NPD procurement advice, facilities management advice and design and construction advice."* NHSL therefore had the benefit of advice from technical advisers in relation to the project including the responses to the KSRs. I note that paragraph 4.14 of the Environmental Matrix Provisional Paper dated 9 December 2022<sup>3</sup> states:

*"Concern around the ability of NHSL to technically evaluate bids when the Reference Design Team departed was raised by Associate Director of SFT Donna Stevenson in the meeting of 26 April 2012 between SFT and NHSL, where the Approach to Reference Design paper was discussed in detail. NHSL's response to the specifics of this point are not available."* I do not recall this meeting, but I note that this took place in April whereas the Pre OJEU KSR [1] was dated December 2012, therefore by the time of the Pre OJEU KSR SFT was satisfied as to the position in relation to technical advisers in the context of the KSR, per Question 29 as referenced above.

5. Were SFT solely concerned with value-for-money aspects of the project? Was the inclusion of mandatory elements within the Reference Design beyond their remit? Should have SFT have picked up on inconsistencies within the mandatory elements of the reference design?
  - i. **It is not correct to say SFT were solely concerned with value for money of the project. SFT had two distinct roles: project assurance and guidance and advice. I would refer the Inquiry to SFT's Role Note [A33918817 - SFT's Role Note, submitted in response to the Inquiry's Request for Information dated 10 February 2021]<sup>4</sup>.**

**In relation to mandatory elements of the Reference Design**

<sup>3</sup> See Position Paper bundle

<sup>4</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 5, p.113

please see my response to question 4 above, including that it was not SFT's role to review the technical specifications or to conduct a technical review.

a) The witness states that SFT had two distinct roles, project assurance and guidance and advice. Did the witness provide this guidance/advice? If so, in relation to what issues? If not the witness then who did provide this guidance/advice?

i I did provide support and advice, and as noted above, I attended the Working Group. For example, in an email from myself to Brian Currie dated 18 April 2012 [A40310841 - Email from Donna Stevenson to Brian Currie dated 18 April 2012 ]<sup>5</sup> I was providing Brian Currie with support on how to approach the development of the standard form Project Agreement for the ITPD that would be carried out by NHSL's legal advisers. The other advice and guidance route was through Peter Reekie in his role as leader of the NPD programme within SFT and as a member of the PSB and also through Andrew Bruce on financial issues.

6. Given the departure of the reference design team, were SFT satisfied that NHS Lothian had sufficient technical support to evaluate the bids and sufficient information to enable the process to be carried through effectively?

i As part of the KSR process I sought assurances from NHSL that it was satisfied with the measures and support that was in place.

For example, in the Pre-ITPD [2], Section 5, Question 25 asked whether there was *"an evaluation strategy (including resourcing) in place and has this been approved by the Procuring Authority."* NHSL confirmed that *"Volume 1 sets out the evaluation criteria: see questions 23 and 24 re plan and resourcing. The Project Steering Board has approved the evaluation strategy."*

a) The witness states that during KSR process she sought assurance from NHSL that it was satisfied with the measures and support in place. Can she expand on how assurance was provided? Were NHSL required to evidence measures?

The witness states that within Pre-ITPD (2), question 25 asked whether there was

<sup>5</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 10, p.707

an evaluation strategy in place and has it been approved by Procuring Authority. NHSL confirmed that the Project Steering Board had approved the evaluation strategy. Did SFT undertake any assessment of this or were such statements just taken at face value?

- i. **I relied on assurances that were provided by NHSL in the KSR, in the context of the knowledge that I would have had about the project and if there were inconsistencies then I believe I would have raised further questions of NHSL. I do not recall if SFT undertook any assessment of the evaluation strategy. I note that NHSL confirmed that it had been approved by the Project Steering Board.**
7. In SFTs view was the assessment of bids a robust and thorough process?
- i. **I was not involved in the assessment of bids process, so I am not in a position to comment.**
8. Did SFT have any concerns around the extent of the Reference Design's mandatory elements?
- i. **I refer to my answer to Question 4 above in relation to the Pre-ITPD KSR [2].**

**We did have concerns which were raised and recorded in the Pre- OJEU KSR [1] (this is set out in my response to Question 4 above). We advised that the Procuring Authority required to consider the issue and resolve it before the Pre-ITPD KSR and added a note into the Pre-OJEU KSR that SFT would follow up on how matters had progressed during the Pre-ITPD KSR. When the Pre-ITPD KSR was completed, the concern had been resolved and that is noted in the KSR.**

**As noted above, SFT did not provide technical advice nor was it involved in technical decision making, we provided guidance from a value for money point of view.**

Paragraph 2.5.3 of Volume 1 of the Invitation to Participate in Dialogue (ITPD) volume 1 (**A40236054 – ITPD Volume 1 pp. 17-18 of 250**)<sup>6</sup> states that standard form room data sheets had not been prepared at that early stage. During the competitive dialogue phase, room data sheets were to be prepared by bidders for certain rooms. However, "*all remaining rooms*" required to have room data sheets

<sup>6</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 14, p.734  
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completed before FC.

9. Was this part of an overall intention for the Reference Design to have fulfilled its purpose by FC and for it to be replaced by the preferred bidder's design solution?

i **It is not for me to comment on the intention for the Reference Design as this is beyond my remit.**

10. Was a decision taken to deviate from what was stated in the ITPD?

i **I am not clear on the question being asked, can the Inquiry please clarify what they are referring to.**

a) **The ITPD stated a requirement that the successful bidder provide 100% of Room Data Sheets (RDS) in advance of financial close. Is the witness aware of the decision to dispense with that requirement?**

**Would such an issue have been a matter of concern to the witness during the KSR reviews?**

i **In relation to the decision to dispense with the requirement I note that paragraph 18.9.1 of the Provisional Position Paper on Procurement Volume 2<sup>7</sup> dated 21 December 2022 states:**

***"The production of room data sheets was discussed at the meeting [Paragraph 18.9 states this was a Special Steering Board Meeting held on 22 August 2014]. The minutes record that:***

***"...NHSL and the PB [preferred bidder] had reached agreement on the content of the 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."***

**I note that the response to Question 3 of Section 3 in the Pre FC KSR [4] provides:**

***"The Board has confirmed that the technical documentation is at a level of development consistent with the current stage***

<sup>7</sup> See Position Paper bundle  
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***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."***

11. If so, who took this decision? Why and when was the decision taken?

**i. I refer to my answer in response to Question 10A above.**

12. With regard to assurance in respect of design development, would you agree that the oversight of Design Development would come from (i) the Pre-preferred Bidder KSR,

(ii) the Pre-FC KSR, and (iii) the information included in the FBC?

**i. I have commented above in relation to technical matters such as design development, of which SFT had no role in carrying out technical reviews.**

**The KSRs included questions and challenges which were intended to prompt the Authority into considering whether or not it was satisfied that the design had developed to a standard which they were content to move onto the next stage. For example,**

**The response to Question 3, Section 3 of the Pre-FC KSR [A33336933 - Pre-Financial Close Key Stage Review - 11 February 2015]<sup>8</sup> states that *"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."***

<sup>8</sup> Bundle 9 – Key Stage Reviews, item 1, p.3



a) The witness states that The KSRs included questions and challenges which were intended to prompt the Authority into considering whether or not it was satisfied that the design had developed to a standard which they were content to move onto the next stage. How were SFT able to robustly assess NHSL responses if SFT had little to no understanding of the technical requirements? Were NHSL statements/responses simply taken at face value with no interrogation of the background?

ii. **If issues had been raised at a commercial level then that could have caused us to ask further questions. It was for NHSL, alongside their technical advisors, to be satisfied as to the technical elements.**

13. Did the programme allow sufficient time to conduct a full evaluation of proposals during Competitive Dialogue?

i. **It is not for me to answer whether the programme allowed sufficient time to conduct a full evaluation, I can only comment insofar as it was dealt with in the KSRs.**

**I note that the pre-ITPD KSR [2] Section 5, Question 23 we asked the following question:**

***"Please demonstrate that a robust and comprehensive project plan is in place and that the project has a clear understanding of all tasks / work streams (including evaluation, clarifications, and approvals) to manage the project through the competitive dialogue, final tender and preferred stages of the procurement."***

**The procuring authority provided the following answer:**

***"The Board has provided a table showing the breakdown of responsibilities of each of the project team to lead on the various aspects of dialogue and confirms that this approach is to assist in ensuring that the Board will speak with a "single voice". The Board advises that there is detailed guidance (including task allocated) for the competitive dialogue and evaluation process being developed which will***

***be completed within 3 weeks: the Board is satisfied that this will be sufficiently early to maintain the competitive dialogue programme."***

14. Do you know whether a full evaluation of design proposals was conducted at each stage?

**i. I was not involved in the evaluation process.**

15. Why was the allocated timescale (particularly for competitive dialogue, assessment of tenders, and the period from preferred bidder to FC) deemed adequate and appropriate? Did SFT have the final say on the timescale for the procurement exercise and, in particular, when competitive dialogue should be closed and when the contract should be signed/ FC should be achieved?

**i. My understanding is that the allocated timescales were set by NHSL as Procuring Authority following any discussions that it may have had. NHSL would advise us that it was ready to close dialogue, for example, and we would then review that as part of the KSR as to whether or not it was appropriate for the project to move onto the stage.**

**b. The witness states that it was her understanding that the allocated timescales were set by NHSL following any discussions that it may have had. This does not accord with evidence obtained from other witnesses to the inquiry. We have heard that SFT sought to shorten the period allocated for competitive dialogue. Can the witness comment on this and why SFT were looking to shorten this period?**

**i. The reference to discussions in my response above includes discussions that NHSL might have had with SFT or at the Project Steering Board. In an email from me to Brian Currie on 24 October 2012 [A40787599 - Email from Donna Stevenson to Brian Currie dated 24 October 2012]<sup>9</sup> which is also referenced in the Procurement Position Paper Volume 1 dated 21 December 2022<sup>10</sup> paragraph 6.5.6, I set out a number of issues including as to timescales within the procurement which we considered required to be discussed at an upcoming meeting between NHSL and SFT.**

<sup>9</sup> Bundle 10 – Miscellaneous Volume 2(of2), item 11, p.717

<sup>10</sup> See Position Paper bundle

**i** I can see from the minutes of the PSB held on 9 November 2012 [A32676792 - Project Steering Board Meeting Minutes dated 9 November 2012]<sup>11</sup> that there was a discussion among NHSL, SG and SFT on whether to shorten the period for competitive dialogue. I note that the minutes state that the proposal to shorten the period from 209 days to 155 days was proposed by Brian Currie. The minutes go on to say "*after much debate, all present unanimously agreed to adopt the compressed programme.*"

16. With respect to the document, "Capital Investment Group - Draft Business Case Checklist - IA OBC [Outline Business Case] FBC [Full Business Case] - For Discussion - December 2011" (A36382816 - Capital Investment Group Draft Business Case Checklist, IA OBC FBC For Discussion - December 2011)<sup>12</sup>. This document suggests that one of the questions for the Capital Investment Group ("CIG") is whether "*the NDAP's [NHS Scotland Design Assessment Process] response about the design assessment process been taken into consideration?*" (A36382816 - Capital Investment Group Draft Business Case Checklist, IA OBC FBC For Discussion - December 2011)<sup>13</sup>.

17. We note that an NDAP was not required for the RHSC/DCN project due to transitional arrangements in place. Can you confirm the CIG did not take into consideration any alternative or equivalent design assessment?

**i** I cannot answer this question.

## **B. Procurement**

1. Following a number of design options being proffered by NHS Lothian advisers, Davis Langdon and Mott McDonald, the decision was taken to Mandate Clinical Functionality. With this option the design would be developed to a stage necessary to fix clinical functionality which would then be released to bidders. The clinical functionality elements would then be mandated in the ITPD and bidders would not be permitted to depart from them. Is this approach a departure from what normally

<sup>11</sup> Bundle 10 – Miscellaneous Volume 2(of2), item 12, p.721

<sup>12</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 14, p.111

<sup>13</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 14, p.111

happens in a PPP type project? Did SFT agree with this approach?

- i My understanding is that SFT produced the standard form agreement, and the concept of Operational Functionality was contained within that standard form but the definition itself was blank. The concept of Operational Functionality was therefore agreed by SFT however the specific content of Operational Functionality itself was a matter for the Procuring Authority. I refer to my response to question 8 of Section A above regarding Operational Functionality.**

2. The NPD Project Agreement included project specific amendments, which had been pre-agreed by the Board and SFT. Bidders were encouraged to accept positions within the NPD Project Agreement, which reflected SFT's standard form project agreement. Any proposed bidder amendment to the NPD Project Agreement would be a derogation, which required the approval of SFT. To your knowledge were there many derogations?

- i I was not the individual who dealt with derogations within SFT for this project and I am therefore not in a position to say how many derogations there were on this project.**

a) The witness states that she was not the individual who dealt with derogations within SFT for this project. Can she advise who was?

- i The derogations process for this project from the Standard Form was carried out by Julia Kennedy, who left SFT some years ago. I have referred above to the support that I provided in relation to the development by NHSL's legal advisers of the standard form to be project specific to ITPD, which can be seen in my email to Brian Currie dated 18 April 2012 [11]. (see Question A5 above).**

3. What was your role on the Project during the procurement stage? Please outline your reporting line within SFT?

The witness states she provided guidance to the Project team (within SFT remit) throughout the procurement and in particular between the decision to procure the project using the NPD model and issue of the OJEU. Can the witness advise what guidance she provided? The witness advises that she had other additional responsibilities within SFT. Can she clarify? Were these out with the RHCYP/DCN project?

I spent time at the beginning of the project focusing on the land separation and interface issues with the RIE PFI project, this was all dealt with in SA6 with Consort. I did not have a formal role in the negotiations and the decisions were all made by NHSL, but I was involved in providing commercial support to NHSL in the discussions with Consort. I also provided guidance to the Project Team (within SFT's remit) throughout the procurement and in particular between the decision to procure the project using the NPD model and issue of the OJEU.

I provided commercial support in relation to the procurement phase, including for example providing the form of Pre- Qualification Questionnaire, but I did not produce the procurement documents, that was NHSL. A good example of the support and guidance I was providing can be seen in my email to Brian Currie dated 18 April 2012 [11].

As the project progressed forward, I was the primary reviewer in relation to the KSRs.

My reporting line was to Peter Reekie in relation to the RHCYP/DCN project during the procurement phase. My line manager varied over time as I had other additional responsibilities within SFT.

My principal role at SFT for many years, in addition to the role that I played in the NPD Programme, relates to commercial support provided to public bodies in relation to operational PPP contracts.

4. Were you a member of the Project Team? If not, how closely did you work with the Project team?
  - i. I was not a member of the Project Team. I recall attending the Working Group meetings. I also had a number of meetings with members of the Project Team, consistent with my role as noted in my response to question 3 above.

5. As a reviewer of the Key Stage Reviews (“KSRs”) should your role be separate to those working on the Project?

i. **The "Validation of Revenue Funded Projects: The Key Stage Review Process Information Note to Projects dated December 2011" [A40787624 - Validation of Revenue Funded Projects: The Key Stage Review Process Information Note to Projects dated December 2011]<sup>14</sup> states that *“The reviews will be carried out at no cost to the Procuring Authority by the member of the Scottish Futures Trust team who normally provides support to the project (Reviewer).”* My role on the project was therefore consistent with what was set out and envisaged by this guidance.**

b) The witness states that her role on the Project was consistent with what was set out and envisaged by the guidance contained in The "Validation of Revenue Funded Projects: The Key Stage Review Process Information Note to Projects dated December 2011". However in an email between the witness and Andrew Bruce, SFT on 07/09/2011, she states “In general it remains our intention to employ separate staff to carry out Key Stage Reviews than those involved directly in supporting the project”. Can the witness explain why this is contrary to the KSR guidance dated December 2011?

6. I note that my email is dated September 2011 and predates the December 2011 guidance. A subsequent document, titled ‘Project Assurance’ dated May 2013 [A37653377 - SFT Project Assurance Guidance dated May 2012]<sup>15</sup> provides that *“SFT resources KSRs by assembling a small team internally to undertake each review. These review teams normally consist of individuals not directly involved with the specific project.”* The guidance then goes on to say *“.... in line with SFT’s evolving approach to supporting the revenue funded investment programme the approach to carrying out validation was remodelled during 2011 to remove the burden on project teams in providing additional background information together with completed KSR checklists to reviewers unfamiliar with the specific circumstances of each project. These KSR checklists are now completed by the relevant*

<sup>14</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 6, p.121

<sup>15</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 13, p.726

***SFT staff member as part of his or her ongoing project support role.”***

7. Scottish Ministers questioned whether there was a potential conflict between SFT's advisory role on the Project Board and its role in project assurance/review. Were you aware of this challenge at the time? In your opinion did this constitute a conflict of interest?
  - i **I do not recall whether I was aware of the Scottish Ministers questioning whether there was conflict arising from SFT's role in the project. I am aware there were discussions regarding the roles predating the guidance being issued. As noted at question 5 above, the Validation of Revenue Funded Projects guidance [5] provided that the reviewer be the person who normally supported the project. I did not consider that to give rise to a conflict of interest.**
8. How would you describe relations between SFT and NHS Lothian in the procurement stage of the Project?
  - i **So far as I am concerned, I do not recall any particular issues between myself and NHSL.**
9. Why did NHS Lothian and SFT choose to issue an ISFT to three bidders, including IHSL, particularly considering the time pressure, and relative quality of the three bidders?
  - i **I do not recall being involved in that decision and cannot comment.**
10. Your colleague Gordon Shirreff raised the possibility of “down selecting” to one bidder. Can you explain why this option was proposed? Did NHS Lothian have the final say?
  - i **I do not recall being aware that Gordon Shirreff raised the possibility of 'down selecting' to one bidder, I am therefore unable to comment further.**
11. What is the purpose of the Tender evaluation? What involvement did you personally/SFT have in this process?
  - i **I am aware that SFT produced guidance on tender evaluation but I did not have any involvement in that process. If the Inquiry would like a comment on SFT's overall involvement in that respect then Peter Reekie is best placed to answer that on behalf of SFT.**
12. How was the approach to ‘needs not wants’ reflected in the tender evaluation

criteria? For example, what elements of the submissions were determined to be a 'need' and a 'want' and how was this decided?

**i I was not involved in this process so I cannot comment.**

13. Did you engage with NHS Lothian's financial advisors, Ernst and Young, on the evaluation framework for the final evaluation of bids? If not, did you have an understanding of the approach agreed? Were SFT satisfied that this criteria accorded with NPD requirements?

**i I think there was various correspondence with Ernst and Young that I was copied into, but the financial side was largely dealt with by Peter Reekie and Andrew Bruce. I had an understanding of the headline approach that was being taken. In relation to the last question, I am not the correct person to provide an answer to this. Peter Reekie is better placed to answer.**

14. What is the purpose of Competitive Dialogue?

**i I am not the correct person to provide an answer to this. Peter Reekie is better placed to answer.**

15. What role did you play in the Competitive Dialogue phase?

**i I do not have any recollection of attending any competitive dialogue meetings. My recollection is that during this process I would have continued to have a support role. I was the first reviewer for all of the KSRs.**

16. What role, if any, did you have in assessing bids?

**i I had no role in assessing bids.**

17. SFT were keen to reduce timescales. You suggested areas where NHS Lothian could look to shorten the programme, which included shortening the period for Competitive Dialogue, evaluation period of PQQ, a reduction in timescale for return of tenders and evaluation and in the dialogue and draft final tenders process. Why was this necessary? Was any potential adverse impact on the Project considered?

**i Peter Reekie is best placed to answer this.**

18. Did the use of a Reference Design allow for a thorough assessment of bids in terms of quality?

**i This is outside of my scope and I cannot comment**

19. Did SFT consider Reference Design technical specifications to fall within their remit, in relation to value for money considerations?



- i. **The review of technical specifications did not fall within SFT's remit. I would refer the Inquiry to question 10 in Section E below in relation to the remit of the Atkins review.**

20. Why was M&E awarded such a low element of the assessment score? Did SFT highlight any concerns in relation to M&E scoring?

- i. **This was outside of my scope and is therefore not appropriate for me to comment on. This would have been a matter for NHSL.**

18. Were SFT only concerned with value-for-money aspects of the project? Did SFT have sufficient technical expertise to pick up on inconsistencies within the Reference Design?

- i. **I have dealt with this answer above. SFT was not solely concerned with value for money of the project. SFT had two distinct roles: project assurance and guidance and advice. I would refer the Inquiry to SFT's Role Note [3].**

**SFT did not carry out a technical review of the Reference Design.**

### **C. SFT's Role in Assurance**

1. Do SFT have authority to stop a Project from progressing? If so, please outline the circumstances in which this could potentially happen?

- i. **The funding letter [A33046853 - Funding Letter, dated 22 March 2011]<sup>16</sup> says:**

***"SFT will review and provide support to CIG in its' consideration of both the Outline Business Case and Full Business Cases for the project. Such comments will include whether, from our perspective, there are any issues that should be rectified prior to the approval of the business case."***

**In relation to KSRs, the Validation of Revenue Funded Projects: The Key Stage Review Process Information Note to Projects dated December 2011 [5] states that *"The Project Sponsor and/or SG will, as part of its overall sign-off, determine whether and on what basis the project should***

<sup>16</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 7, p.126

*proceed to the next stage taking into consideration any recommendations made in the KSR Report." It goes on to say that "The relevant Project Sponsor and/or SG will receive a completed KSR report at agreed stages aligned with their normal sign off processes. The Project Sponsor / SG will need to consider the report and decide what, if any, action is required before the project can proceed to the next stage. Procuring Authorities are required to seek formal approval from the relevant Project Sponsor and/or SG following each KSR before proceeding to the next stage."*

In considering relevant issues at each KSR one would consider whether it was an issue that is of such materiality as to impact on the project being able to proceed or materially affect the procurement or project outcomes.

On the other hand, there could be other issues that could either be resolvable before the KSR was to be finalised or alternatively by way of a recommendation in the KSR itself.

- a) The witness states that In considering relevant issues at each KSR one would consider whether it was an issue that is of such materiality as to impact on the project being able to proceed or materially affect the procurement or project outcomes. If SFT failed to endorse responses provided by procuring authority what would be the repercussions?
- ii. **KSRs were the product of discussions I had with NHSL and I would share the KSR with NHSL before it was finalised to ensure the responses were accurate. If SFT failed to endorse responses provided by the procuring authority then I would expect there to be further discussion to clarify any areas that required clarification so that the KSR could be completed.**
2. Generally speaking, what should happen were SFT have genuine concerns about the readiness of to proceed to the next stage?
- i. **The way we tested readiness to move to the next phase was through the KSRs. In the first place any concerns would be discussed and monitored through the KSR process, and we would have sought input from the Procuring Authority to**

resolve the matters such that it could move on (if appropriate), and draft recommendations that would be included in the KSR to monitor progress.

As noted above, the Validation of Revenue Funded Projects: The Key Stage Review Process Information Note to Projects dated December 2011 [5] states that "*Procuring Authorities are required to seek formal approval from the relevant Project Sponsor and/or SG following each KSR before proceeding to the next stage.*" In other words, SFT did not have the final sign off.

- a) How serious would a concern need to be for SFT to flag it/ have concerns about the project moving to the next stage?

On discussing the progress of the KSR to the next stage the witness states that SFT did not have the final sign off and they would have sought input from Procuring Authority to resolve matters such that that it could move on. Does the witness recall a time where they personally have considered it appropriate for a project not to move forward at any particular point in the KSR process?

In addition, whilst we note that ultimately Scottish Government / the Project Sponsor have the final say on whether a project should proceed can SFT make that recommendation?

- i I do not recall an instance where I personally considered it appropriate for a project not to move forward to the next stage at the point where the KSR was being signed off.
- ii It should though be noted that the KSRs were not completed at predetermined dates but rather when it was considered that it was appropriate for the KSR to be carried out.
- iii By way of example, there is a ground lease which covered the Royal Infirmary Edinburgh (RIE) Project and the car park where the current RHCYP/DCN building now sits. The ground lease had to be amended so as to excise the site of the RHCYP/DCN building and arrangements had to be made to connect the two buildings. We considered that the property and contractual arrangements had to be in place so that NHSL would control the site of the new facility.

- iv. **Question 16 of the Pre OJEU KSR [1] provides: "*The interface with Consort is a key issue to ensure both deliverability and to create a level playing field to maximise competition and hence maintain affordability. The risks have been mitigated by (a) the agreement of SA6 which has been entered into and (b) the agreement of enabling works with Consort and the consent (subject to a condition which has been acknowledged as acceptable at this stage) to the external enabling works from Consort's funders having been confirmed prior to the issue of OJEU.*"** This was an example where an important issue was resolved before the KSR was completed.
  - v. **The KSRs provide that SFT is to review the Project and recommend whether the project is in a position to proceed (and if so whether subject to recommendations). This would of course be subject to consents required of Scottish Government and the Project Sponsor.**
3. When would a matter be escalated to the Scottish Government? Would this be done by SFT or another body and how would that be done in practice?
- i. **I think this would largely depend on the circumstances of the matter. I recall that there was ongoing dialogue with the Scottish Government, particularly in the early part of the process.**

**I understand that Scottish Government had a representative on the Project Steering Board so had access to the papers that were shared with the Project Steering Board and would have been aware of any issues that were discussed at those meetings and would have had the opportunity to comment on any issue raised.**

**The KSR process is explained in Section C Question 1 above.**

- a) **Out with the KSR process is it open to / appropriate for SFT to escalate concerns to Scottish Government? Is the witness aware of this ever happening in the past?**

- ii. **The Scottish Government had a representative on the PSB**

**and was therefore involved in discussions as the project progressed. I do not recall a time when it was escalated further to the Scottish Government.**

4. In an NPD project have the results of a KSR ever caused CIG to recommend that a project does not receive approval or progress to the next stage?

**i. I am not the right person to comment.**

a) Is the witness personally aware of a time when CIG have refused to recommend that a project proceed on the basis of a completed KSR?

**ii. No, I do not recall such a time.**

5. Generally speaking what would the impact be on a project that fails to proceed to the next stage in line with the programme?

**i. If the result was that the procurement took longer than originally programmed it would depend on the circumstance for example, whether (a) the construction price would be held; (b) the programme to completion of the works would be held; or (c) the financing package would still be available on the same terms.**

a) Is the witness implying that a failure to proceed to the next stage would only ever result in a delay to a project? If so, does this call into question the need for a KSR process?

**ii. The response above was on the basis of a project that fails to proceed to the next stage in line with the programme rather than the project being stopped. It would of course be possible for the outcome of the KSR to be that the project should not proceed and for there to be an issue such that it would not be able to proceed at all (or not in that form or on that basis).**

6. How integral to the project overall was SFTs input, expertise and influence?In

reality did SFT partner NHS Lothian in terms of decision making and direction?

- i. **I am not the right person to comment.**
- a) **The witness was asked how integral to the project overall was SFT's input, expertise and influence? And in reality did SFT partner NHS Lothian in terms of decision making and direction? The witness states that she was not the right person to comment, however the witness had regular engagement with the Project Director and did provide guidance during project so should be able to offer an opinion.**
  - ii. **SFT was responsible for the standard form of the Project Agreement that set out the basis contractual position (subject to the derogation process and project specific issues including the technical schedules that were for NHSL). This could be described as an important aspect of the procurement.**

SFT also carried out the KSRs as an assurance role. SFT provided guidance for NHSL on aspects of the procurement and was also involved in the funding competition. SFT was also a member of the Project Steering Board and therefore involved in discussions in that forum.
  - iii. **It was NHSL's procurement and it was NHSL that, for example, developed the procurement and technical documentation, conducted the procurement, including the competitive dialogue process, evaluation and preferred bidder discussions and finalised the contractual documentation.**

#### **D. Special Project Steering Board**

A Special Steering Board meeting was held on 22 August 2014 (**A33044733 - Board Commentary on the Technical Information Requested by the Board and Technical Information issued by IHSL - 19 November 2014**)<sup>17</sup>, which you did not attend. The purpose of the meeting was to raise NHS Lothian's 'significant

<sup>17</sup> Bundle 8 – Scoring & Correspondence regarding Issues, item 5, p. A42067813

concern' about the project programme and give IHSL an opportunity to discuss progress. The NHS Lothian project team presented a revised programme with slippage of 8 weeks, and IHSL tabled their own programme. None of these concerns appear to be raised in the KSRs and/ or be escalated to the Scottish Government.

1. Were you aware of this meeting taking place and the outcome?
  - i. **I was not at the meeting, and I cannot recall whether or not I knew the meeting was taking place or the outcome of the meeting. It would not be uncommon for Peter Reekie to feedback to me following the meetings.**
2. How serious did you consider these issues to be, what actions were put in place to address these concerns and how successful they were in addressing the concerns?
  - i. **I cannot answer this question.**
3. Were any issues escalated to Scottish Government outwith the KSR procedure? If not, why not? To whom should the responsibility to escalate fall to?
  - i. **I am not the right person to answer that question. Having looked at the meeting minutes in the bundle I can see that Scottish Government was represented at the meeting.**
4. There is no indication of any such risk in the KSRs, is there a reason why this was not raised in the next KSR?
  - i. **The meeting was held on August 2014 so the next KSR would have been the Pre-FC KSR that was dated February 2015. Each KSR dealt with the position as that time.**  
  
**As I understand the risk you are referring to is slippage in reaching FC and by the time of the pre-FC KSR that risk would no longer be relevant as the project was at the stage of being able to go to FC. Therefore, I would not expect it to be recorded in the KSR.**
5. Were you party to any discussions as to why 100% room data sheets would not be produced by FC, which was a stated requirement in both the ITPD and the ISFT? Were you aware of any SFT colleagues being involved in such discussions? If so,

- a. When was a decision taken to change this requirement?
    - i. **I cannot answer that.**
  - b. Why was the decision taken?
    - i. **I cannot answer that.**
  - c. **Does the witness recall any discussions between SFT and NHSL concerning 100% of Room Data Sheets (RDS) not being met by Financial Close? If not, does that mean that she was not involved in such discussions?**
    - i. **I do not recall specifically being involved in discussions concerning 100% RDS. I note that it was raised at the Special Steering Board meeting on 22 August 2014 [12] (see Question 10A above).**
6. Would this result in more reviewable design data? Did that cause any concerns on the part of SFT?
- i. **The issue that we raised in the KSR in relation to RDD was whether NHSL had the resourcing to deal with the RDD and we were given assurances that "Resourcing for the governance arrangements indicated in Annex B have been agreed by the Board." This assurance referred to various matters and included the resourcing for RDD. Please see Pre-FC KSR [4] Section 7, Question 25.**

On 25 August 2014, an item was rated as 'high risk' on the register of 'Technical Risks to Financial Close' (A36308781 - Technical Risks for Financial Close - 25 August 2014)<sup>18</sup>.

7. These risks do not appear to be flagged in the KSRs either. Was SFT aware of these risks? If so, why did they not feature in the KSRs?
- i. **I do not recall seeing this document at the time.**

**I note that the document is entitled "Technical Risks to Financial Close" (A36308781 - Technical Risks for Financial Close - 25 August 2014)<sup>19</sup> and is dated 25 August 2014. The next KSR would have been the Pre-FC KSR in February 2015.**

<sup>18</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 10, p.75

<sup>19</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 10, p.75



**That KSR addresses the risks in the Project Register at that time.**

8. Were any such issues escalated to Scottish Government? If not, why was that not appropriate?

**i. I cannot answer that question.**

By 18 November 2014, the “Risk Register” (**A33337268 – Risk Register dated 18 November 2014**)<sup>20</sup> recorded that the delayed delivery of detailed design ‘sufficient to proceed to financial close’ was “red”. It was recorded as “*Not satisfactory at present...Close management of progress ongoing, including engagement at most senior level in IHSL by Steering Board Commercial sub-group...*”. (**A33337268 – Risk Register dated 18 November 2014**)<sup>21</sup>

9. Do you recall SFT having sight of this risk register?

**i. I do not have a recollection of seeing this risk register but I recall seeing a number of project risk registers throughout the project so I might have done so.**

10. These concerns do not seem to be flagged in the KSR, are not highlighted to the CIG, are not addressed in the final business case and do not otherwise seem to be escalated to Scottish Government. Can you explain why?

**i. The Pre-FC KSR [4] dealt with risks on the Project Risk Register at that time. The risk register you are referring to is dated November 2014 and financial close occurred in February 2015. The risks identified here are presented as risks to financial close not risks at financial risk – this is a key difference.**

**b. The witness states that the risks identified in the Project Risks Register are risks to Financial Close, not risks at Financial Risk. Can she expand on what she means when she states that this is a key difference?**

**i. The risk register dated 18 November 2014 refers to risks to financial close that I take to mean the risk of FC being delayed or not taking place rather than risks that were still extant at financial close (and would need) to be managed thereafter. The Pre-FC KSR [4] dealt with risks on the Project Risk Register at that time.**

<sup>20</sup> Bundle 8 – Scoring & Correspondence Regarding Issues, item 10, p.42

<sup>21</sup> Bundle 8 – Scoring & Correspondence Regarding Issues, item 10, p.42 at page 43

## E. Financial Close

1. The Project was due to complete in Summer 2014. This was not achieved. Can you explain why FC was not achieved until February 2015?
  - i. **I cannot answer why FC was not achieved until February 2015.**
2. We have heard from another witness that SFT were concerned that FC should be achieved before the results of the 2014 Scottish Independence referendum to ensure that Project financing was not adversely impacted by the potential financial turmoil of a "Yes" vote. Is that correct?
  - i. **This is not a question for me and would say that Peter Reekie would be better placed to answer that on behalf of SFT. I was not involved in the funding competition.**
  - b. Was the witness personally aware of an SFT concern that FC should be achieved prior to the Scottish Independence referendum to avoid turmoil in financial markets in the event of a "Yes" vote?
    - i. **I do not recall being involved in any specific discussion about the timing of financial close for the project in relation to the 2014 independence referendum.**
3. Was there a need to achieve FC specifically by February 2015?
  - i. **I cannot answer that.**
4. What would the impact have been on the RHSC/DCN project if it had failed to proceed to FC in February 2015?
  - i. **I cannot answer that question.**
  - b. The witness is asked what would the impact have been on the RHSC/DCN project if it had failed to proceed to FC in February 2015? Although the witness states that they cannot answer this can they provide an answer on the basis of their own knowledge and experience?
    - i. **I refer to my answer at Section C Question 5 above. If an NPD project were to be delayed it would depend on the circumstances but the main concerns would be whether (a) the construction price would be held; (b) the programme to completion of the works would be held; or (c) the financing**

**package would still be available on the same terms.**

5. We have heard from another witness that SFT were tracking financial markets to ensure that FC was timed to take maximum advantage of financial markets. Is that an accurate description of the situation?
  - i. **This is not a question for me and would say that Peter Reekie would be better placed to answer that on behalf of SFT. I was not involved in the funding competition.**
6. We have heard from another witness that SFT made the final decision as to when FC should take place. Is that correct?
  - i. **This is not a question that I can answer, Peter Reekie would be better placed to answer that on behalf of SFT.**
  - b. **The witness does not answer this question and states that her colleague is best placed to answer it. Is this because she does not know if SFT made that final decision as to when FC should take place or Peter Reekie is better placed to answer?**
    - i. **As I have said above, Peter Reekie is the best person to answer this, particularly given the role of SFT in relation to financing arrangements at FC.**
7. Were there any implications for IHSL or any other party by a delay to FC being achieved?
  - i. **This is not a question that I can answer.**

By Financial Close, the risk registers recorded that there was a significant amount of Reviewable Design Data, raising a number of risks to the Board. RDD related items were contained in the document titled "Technical Risks to the Board to Financial Close" which was produced on 30 January 2015. **(A36308810 - Technical Risks to the Board at Financial Close - 31 January 2015)**<sup>22</sup>. Was SFT aware of these issues at FC? Did SFT have any concerns in relation to the volume of RDD?

- ii. **Our concern on RDD was whether NHSL had sufficient resourcing to be able to review the RDD and this was a**

<sup>22</sup> Bundle 10 – Miscellaneous Volume 1 (of 2)  
A42067813

**question that was asked in the Pre-Financial Close KSR [4],  
Section 7 Question 25 (resourcing strategy).**

8. Was a large amount of RDD seen as a negative or a positive?

**i. This is outwith of my remit as it relates to technical issues.**

**The resourcing issue is dealt with at Question 8 above.**

**b. The witness is asked if the large amount of Reviewable Design data (RDD) was seen as a negative or positive and states that it was out with her remit as it related to technical issues. The question relates to pushing a number of important issues into the future that were originally intended to be completed by financial close. A detailed understanding of the underlying technical issues is not required - simply an awareness of resourcing/planning. Therefore, can the witness provide comment?**

**i My understanding is that it is normal for design development to continue after FC, hence the provision in the review procedure in Part 8 of the Schedule to the Project Agreement. I cannot comment on the level of RDD that would be normal as I was not involved in technical review.**

**As I have detailed in my response to question 8 above, we dealt with the question of resourcing and covered this in the KSR.**

9. The remit of the Atkins review suggests that SFT's assessment of the Project was concerned with more than just spatial information, more focus on life costs, maintenance costs, and efficiency of the design. Do you believe there should have been a focus on M&E Specifications, to make sure these were sustainable, cost- effective and long-lasting?

1. **The remit of the Atkin's report [A40787632 - Atkins Independent Design Review Report dated 12 December 2011]<sup>23</sup> is set out at page 13 of the report:**

***"1.1. Remit***

***1.1.1. From SFT Invitation Letter - Independent Design Review, 1 August 2011***

***"To review the Design Objectives for the Programme:***

<sup>23</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 8, p.137

***To provide a focus for the independent review, it is important that it is targeted towards programme wide objectives. These are set out below:***

- ***A design proposal that meets the strategic needs for efficient and effective long-term service delivery identified as part of the Initial Agreement and any other associated documentation.***
- ***A design that eliminates unnecessary space maximises potential sharing of space between user departments and fully integrates with an efficient service strategy.***
- ***A design specification that minimises the whole life costs of the building, including both the upfront capital cost per square metre and the ongoing maintenance and lifecycle costs. The design specification should also achieve the appropriate sustainability targets.”***

***1.1.2 From Appendix 1 to SFT Invitation Letter, 1 August 2011 “The Assessment of Value for Money: Step 3: Facility Efficiency This aspect of the VfM assessment examines whether the actual proposal for the building design:***

- ***Optimises the delivery of the clinical services;***
- ***Results in an efficient building design in terms of the capital costs to construct. For example, plan efficiency and layout, siting, adopts appropriate sharing of space between departments, has an efficient approach to the specification of the facilities;***
- ***Considers future proofing of the facility;***
- ***Results in an efficient building design in terms of operational costs to manage and maintain;***
- ***Deals efficiently with the interface with any existing facilities on the site and is consistent with potential future developments on the site.”***

**As is clear from the above the remit related to programme**

**objectives with an emphasis on value for money considerations. Accordingly, I do not believe there should have been a focus on M&E Specifications.**

#### **F. Environmental Matrix (“EM”)**

1. To what extent did SFT review M&E elements of the design, such as the EM?

**i. I did not review the M&E elements of the design as this was beyond my remit.**

2. The EM was procured by NHS Lothian and incorporated into the Invitation to Participate in Dialogue (“ITPD”) first issued to bidders in March 2013. During KSR2 did SFT note that the EM was mandated in the ITPD?

**i. I refer the Inquiry to the Pre-ITPD KSR [2] , Section 2 Question 4 response which notes that:**

***“The ITPD, Volume 1 section 2.5 and Appendix E sets out the elements of the Reference Design which is being provided to bidders are mandatory. These relate to the Operational Functionality as defined in the Project Agreement and there are elements of flexibility in relation to non-mandatory elements of the Reference Design.”***

**I did not conduct a technical review of any technical data or document as that was beyond my remit.**

**I note that the witness bundle provided to me includes pages 17 and 18 of the ITPD which includes paragraphs 2.5.3 to 2.7.1. Pages 17 and 18 do not include the whole of paragraph 2.5 and it does not include Appendix E. Can the Inquiry please provide me with a full copy of the ITPD to which it refers.**

3. The EM was not approved by NHSL at FC. It was known not to comply with the Board Construction Requirements (BCRs), which included a requirement to comply with SHTM 03-01. As a result, the EM became subject to the Reviewable Design Data (RDD) process. On 19 November 2014 a Healthcare Associated Infection (HAI) – System for Controlling Risk in the Built Environment (SCRIBE) (“HAI-Scribe”) meeting was held at which the following was recorded:

2.2 Is the ventilation system design fit for purpose, given the potential for infection spread via ventilation systems?	Yes		No	x	N/A	
	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/issue.					

4. Were SFT aware of this issue at the time? If so, why was this issue not included within the KSR at Pre Financial Close?

- i. **I have no recollection of having seen this issue raised at the time and have not seen any documents to suggest that I had. It is a matter for NHSL to deal with its own technical requirements. As indicated above, technical issues were outwith my remit. I refer specifically to the Pre-FC KSR [4] Section 3, Questions 2 and 3 where the Procuring Authority confirmed:**

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

***3 – "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."***

- b) In response to the Pre-FC KSR the Board confirmed that technical documentation was at a level of development consistent with the current stage of the Preferred Bidder to Financial Close programme. The Board advised that they were content with the documentation subject to further development**

through RDD following Financial Close. Would the witness have expected to see such documentation? What would have been the witness's position at the time if she had seen this documentation?

- i. **No, I would not have expected to review the technical documentation. I would have been aware of the existence of the technical documentation but would not have been in a position to nor would I have expected to review it.**

## **G. Key Stage Reviews**

1. Please provide an overview of the KSR process. Is it simply a "tick box" exercise?

- i. **I would not say that the KSR process is a tick box exercise.**

**The purpose of the KSR process was to provide an independent assurance review of the Project. We carried out an assessment of whether or not the project was ready to move onto the next phase. Each review focused on whether the project was suitably developed in terms of "Project Requirements"; "Affordability"; "Value for Money"; "Commercial" and "Readiness". The KSRs were designed to support the successful delivery of the Project.**

**The KSRs had a list of questions which required to be answered at each stage and this was carried through in relation to each of the reviews. In order to review the status of the project I would collate information and seek clarifications and assurances. If there was an outstanding matter or recommendation in a particular KSR that would be followed up at the next review. The recommendations were tracked throughout the project.**

- a) **The witness states that the purpose of the KSR process was to provide an independent assurance review of the Project. Does the witness believe that SFT were truly independent during this Project?**

- i. **I refer to the SFT guidance document titled 'Project Assurance' dated May 2013 [16] which provides "*In order to preserve the***



***integrity of independent assurance each KSR report is separately reviewed and signed off by a member of the SFT senior management team unconnected with the project.”***

2. For whom are KSRs prepared, what function do they fulfil and what information should be contained?

**i. The KSRs were a condition of the Scottish Government funding: see the Funding Letter dated 22 March 2011 [6], Section 2 which states:**

***“Key Stage Review provides a structured, independent 'due diligence' review of projects, supporting Project Managers and Sponsors at commercially critical procurement stages. Key Stage Reviews help to ensure that procuring authorities are sufficiently advanced in their project development and have put in place the necessary delivery arrangements and documentation in order to secure high quality, sustainable bids. They also ensure that authorities are adequately resourced to effectively and efficiently carry out the procurement, construction and operational stages of the projects. Key Stage Reviews are a formal requirement for all projects delivered through the NPD model and will be conducted by SFT.”***

**The "Validation of Revenue Funded Projects: The Key Stage Review Process Information Note to Projects dated December 2011**

**[5] provides more detail on the KSR process and states that:**

***“Once completed by the Reviewer, the list and draft report will be scrutinised by a member of SFT’s senior management team before being issued to the relevant Project Sponsor / SG and copied to the Procuring Authority. The relevant Project Sponsor and/or SG will, as part of its overall sign-off, determine whether and on what basis the project should proceed to the next stage taking into consideration any recommendations made in the KSR report.”***

3. What was your role as regards KSRs?

- i. I was the primary reviewer. As part of that role, I was required to be familiar with the checklist and questions which formed the requirements of the KSR.

In the run up to each review I would consider the status of the project against the relevant questions. I would also consider the information I had collated based on my own dealings with the Project as well as liaising with the project team and posing additional questions to allow me to complete the list and prepare a draft report with various comments and recommendations. If I required additional clarifications or challenges of the Procuring Authority, I would seek or make them in order to review the status of the project. I would make recommendations if there were matters which required to be resolved or monitored and these recommendations would follow through to the next KSR.

Once I had collated the necessary information to allow me to complete the KSR, I would submit it for second level reviewer approval.

- a) The witness states that her role during the KSR was primary reviewer. The term "reviewer" suggests that you review a draft prepared by someone else. However, what you describe in your answer indicates that in fact you drafted the KSR with benefit of information /responses provided by NHSL. Can the witness confirm if this is correct?

To whom would you submit the KSR for second level approval - Would that be an SFT employee involved in the project? Please provide the name of the individual.

- i. It is correct to say that I was the First Reviewer and would draft the KSR based on the information and responses provided by NHSL and my own involvement in the Project. My understanding is that the term 'reviewer' is used to describe reviewer of the project and not reviewer of the KSR. Once I had prepared the KSR and it had been reviewed by NHSL I would then submit it for review by the Second Reviewer. Tony Rose was the Second Level Reviewer for (i) Pre-OJEU KSR, (ii) Pre-ITPD, (iii) Pre-Close of Dialogue and (iv) Pre-Preferred Bidder KSR. Colin Proctor was the Second Level Reviewer for the Pre-Financial Close KSR. They were SFT employees.

4. It is our understanding that KSRs are SFT documents, to the extent that they are prepared by SFT but with input from the procuring authority. Is that understanding correct?

- i. **The KSRs are SFT documents that were prepared by SFT. As the Validation Guidance [5] states, they are then to be *“issued to the relevant Project Sponsor / SG and copied to the Procuring Authority. The relevant Project Sponsor and/or SG will, as part of its overall sign-off, determine whether and on what basis the project should proceed to the next stage taking into consideration any recommendations made in the KSR report.”***

**NHSL was involved in the KSRs and had the opportunity to comment and review. It provided the information and updates relative the project status at that particular time and updates to any outstanding recommendations. The KSRs**

also required to be signed off by NHSL's Susan Goldsmith (SRO) and she would confirm that:

***“I am not aware of any information that would materially change the assessment and review of the project;”***

5. How much editorial input would NHS Lothian have in relation to the content, wording and tone of KSRs?
  - i. **As noted above, the KSRs were reviews conducted by SFT and were therefore SFT's documents. I drafted the KSRs and provided a draft or drafts to NHSL.**

**NHSL was given the opportunity to comment, and it would provide the relevant and necessary information to allow the KSRs to be completed.**
  
6. Following the switch to the NPD model, SFT had a significant role in project assurance by virtue of holding the pen on KSRs. Is that understanding correct?
  - i. **As noted above, it was a condition of SG funding that SFT carry out KSRs and they were SFT documents.**
  - a) **The question asks following the switch to the NPD model SFT had a significant role in project assurance by virtue of holding the pen on KSRs. Is that understanding correct ?**
    - ii. **I agree that in relation to the NPD Programme in which SFT was involved, SFT had a significant role in project assurance in relation to the KSRs, subject to the comments that I have made as regards SFT's role and remit.**
  
7. Each review was an assessment of whether the project was suitably developed in terms of "Project Readiness"; "Affordability"; "Value for Money"; and "Commercial robustness". The KSR process superseded the Gateway Review procedure. How is a KSR different from a Gateway Review? Why is there no focus on technical details or compliance with SHTMs?
  - i. **I do not know enough about the gateway review procedure**

**to be able to comment on the differences between the two processes**

**As noted elsewhere in my responses technical review was not part of SFT's remit though confirmation from NHSL as the Procuring authority on certain technical matters was sought as part of the reviews and examples are given elsewhere in my responses.**

8. In this context, how significant do SFT concerns have to be to raise doubts in a KSR about the readiness for a project to proceed?

**i. As noted above at Question 1 of Section C, there would be an assessment of whether an issue is of such materiality as to impact the project being able to proceed to the next stage, taking account of the impact of the issue on the procurement or the project outcomes.**

**On the other hand, there could be other issues that could either be resolvable before the KSR was to be finalised or alternatively by way of a recommendation in the KSR itself to be resolved at a later stage and followed up in the next KSR.**

a. Are there red flags?

**i. The KSRs are an assessment based on the circumstances at the time. There would be a discussion around the identified issues and whether it was possible to resolve at that moment or over the next period or indeed at the next stage (in which case a recommendation would be added to the KSR) or whether it could be resolved during the next phase or if it could not be resolved.**

b. What is the 'threshold' for a concern to become serious enough to cause delay to signing off a review?

**i. As noted above it would depend on the circumstances, there is not a predetermined threshold, and for example, a consideration would be made of any impact on project**

**outcomes if the project proceeded at that point.**

In Peter Reekie's witness statement para 44 (**A37605865 - Witness statement of Peter Reekie - 28 April 2022**)<sup>24</sup> he notes *"In the run up to each review point, the Reviewer considered the status of the Project against the relevant pro-forma list on the basis of information obtained in his/her day to day dealings with the project and sought, where required, contributions from the project team to allow completion of the list and prepare a written draft report with comments and recommendations"*

9. What information were you privy to in your 'day to day dealings of the project'? For example, did SFT have access to project risk registers, databases or systems? If not, was it the case that SFT only knew as much as they were told, for example by being copied to emails etc.?

- i. I did not have access to the Procuring Authority's database or their system. I recall that I was provided with papers at the Working Group and sometimes provided with steering board papers. If I or NHSL wanted to discuss a particular issue then we would exchange the relevant papers and discuss.**

10. To what extent did SFT communicate on an *ad hoc* as well as formal basis with NHS Lothian's project team?

- i. My recollection is that generally, I had an ongoing dialogue with Brian Currie and Iain Graham, though the frequency of our discussions would vary at different periods of the project with it being more detailed at the beginning of the project and then became less so.**

In Peter Reekie's witness statement para 47 it is noted, *"The Reviewer also prepared a short report and made recommendations as to whether in his or her view the Project was ready to proceed to the next stage of procurement and what actions were required to achieve the appropriate state of readiness either to proceed to the next stage or in advance of the next review"*

11. Who would follow up on whether those actions had been completed and how was this achieved?

<sup>24</sup> Bundle 10 - Miscellaneous  
A42067813

- i. The recommendations were generally addressed to NHSL and some of them had specific dates or milestones for it to be achieved. It was for the Procuring Authority to take them forward at the next stage. My recollection is that these issues would be subject to communications and discussion during the next period. At the next KSR, I ascertained the then current status and this was recorded in the next KSR. There is a section in each of the KSRs which note the recommendations from the previous KSR with the applicable updates. The recommendations were tracked through to completion.

With regard to the Pre-Preferred Bidder KSR, in Section 2, **(A33337163 - Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014)**<sup>25</sup> Question 3, NHSL confirmed that:

*"The Board has confirmed that all bidders have provided detailed programmes to cover the activities for the period until FC and that the development of the technical information is at least as advanced as the Board anticipated at this stage. The Board and its advisers are satisfied that any further development of technical information from PB appointment to FC is achievable within the current project timetable"*

12. Considering the outstanding issues raised in the Preferred Bidder letter **(A33337163 - Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014)**<sup>26</sup>, what was the basis for this statement?
  - i. In preparing the KSR, I would have asked the Board for that confirmation, it would have confirmed that position to me and I would have included in the KSR. We took the assurances given by the Board and relied on what they told us.

- b) The witness states that they took assurances given by the Board and relied on what they told us. So did the witness and SFT accept these assurances at face value with no questions asked?

<sup>25</sup> Bundle 7 – Key parts of Mosaic’s tender and marked up Environmental Matrix, item 1, p.5

<sup>26</sup> Bundle 7 – Key parts of Mosaic’s tender and marked up Environmental Matrix, item 1, p.5

- i **Given the terms of the assurance NHSL provided I did not consider that its answer gave rise to further questions to be asked.**

13. Did NHS Lothian liaise with, or indeed rely on, SFT to ensure that there was agreement to move forward to the preferred bidder stage given SFTs expertise in relation to the requirements of the NPD model?

- i **From my perspective the decision to move on was a decision for NHSL as Procuring Authority. I was the primary reviewer in the KSRs that was designed to determine whether the project was ready to proceed.**

14. The risk register at Annex B of the KSR contains the following: “Programme delay in reaching Financial Close” was noted as a risk. Its status was “Red”. The “Adequacy of Controls” was stated to be “Not satisfactory at present”. How did this impact the Project? The KSR?

- i **The risk that you are referring to is that it was taking longer to reach Financial Close than had been initially projected. It is a risk in relation to timescale in reaching Financial Close, but it is not a risk to the project itself.**

**I would also note that Question 21 of Section 5 of the Pre-Preferred Bidder KSR [A33337163 - Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014]<sup>27</sup> asked what key commercial issues remain outstanding and the Board confirmed that there were no key commercial issues outstanding, subject to the funding competition and a potential variation that was covered by another recommendation. I would also refer to Question 25 and it was a recommendation that the Board develop a detailed project for due diligence.**

15. With regard to the pre-FC KSR, under “Project requirements” (**A33337058 - Pre-Close of Dialogue Key Stage Review - 13 December 2013**)<sup>28</sup> the following

<sup>27</sup> Bundle 7 – Key Parts of Mosaic’s tender and marked up Environmental Matrix, item 1, p.3

<sup>28</sup> Bundle 9 – Key Stage Reviews, item 2, p.50



questions are asked:

Question 2, *“Is the Procuring Authority satisfied that the preferred bidder’s solution satisfies its operational and functional requirements and delivers the project objectives, benefits and outcomes?”* The answer provided was *“Yes. 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.”*

Question 3, *“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?”* The answer should have been answered with either “Yes” or “No”, however the relevant box is left blank. Why? The following comment was included in the KSR:

*“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.”*

- i. **The answers to questions are detailed in the comment box and that is how the answer was completed. The following answer was included in the Pre-FC KSR [4]:**

***“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.”***

11. Was the information provided by NHS Lothian tested/ interrogated by SFT or was it simply recorded/ taken at face value?

- i. In general, I would have relied on NHSL's assurances particularly when they related to matters of a technical nature that were outside of my remit. If a confirmation was given that did not match other evidence that I had gathered, then I would have expected that I would have questioned NHSL on that.**

12. Were NHS Lothian reliant on SFT at this stage to ensure compliance with NPD requirements? What discussions had taken place to come to this conclusion?

- i. NPD Requirements were defined in the Project Agreement [A40787623 - Standard Form NPD Project Agreement dated 02 June 2012]<sup>29</sup> as:**

***“(a) not to make a distribution of profit or surplus, or any transfer of assets to one or more shareholders whether by means of any payment or transfer of assets, directly or indirectly, in cash or in any kind, whether by way of dividend, bonus or release of obligation or in any other way otherwise than:***

***(i) for full consideration; or***

***(ii) to the Board pursuant to Clause 36 (Payment of Surpluses and Compliance with NPD Requirements) or Article 12 or 13 of the Articles of Association); or***

***(iii) Project Co's Share of a Project Co Change; or***

***(iv) Project Co's Share of a Refinancing Gain; and***

***(b) to comply with Clause 4.4 (Changes to Funding Agreements and Refinancing).”***

**I do not recall any issues being raised as to these provisions.**

13. Considering the concerns raised in the documents: “Design Risks to the Board to Financial Close” (A36308801 - Design Risks to the Board to Financial

<sup>29</sup> Bundle 10 – Miscellaneous Volume 2 (of 2), item 9, p.220

**Close)**<sup>30</sup>, “Technical Risks at Financial Close” (**A36308810 - Technical Risks to the Board at Financial Close - 31 January 2015**)<sup>31</sup>, “Board Commentary on the Technical Information Requested by the Board and Technical Information issued by IHSL” (**A33044733 - Board Commentary on the Technical Information Requested by the Board and Technical Information issued by IHSL - 19 November 2014**)<sup>32</sup>, as well as the “Special Steering Board meeting held on 22 August 2014” (**A32676824 - Action notes RHSC and DCN Special Project Steering Board - 22 August 2014**)<sup>33</sup>, do you consider this an accurate and fair assessment?

- i. I do not recall seeing the Technical documents to which you refer and I have seen no documents to suggest that I had. I saw the Project level risk registers, some of which was relevant to the KSRs. My remit was not involved in the technical or design elements and I am not the correct person to provide any commentary on whether the statement above (Pre-Preferred Bidder KSR, [A33337163 - Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014]<sup>34</sup> in Section 2, Question 3) was an accurate assessment.**

14. How were the concerns NHS Lothian expressed at the Steering Board Commercial Sub-Group addressed? For example, the perception that the process for providing engineering information had not been successful?

- i. I was not involved in the Steering Board Commercial Sub-Group and so it is not for me to comment on whether NHSL's concerns were addressed.**

With regard to the reference design and ITPD volume 1. We note that the reference design included indicative elements, including Building services engineering solutions.

15. Were you aware of the content of the indicative elements of the reference design? Do you know if Peter Reekie would have had awareness?

- i. That is a technical issue that is outside my remit and so it is**

<sup>30</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 11, p.79

<sup>31</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 12, p.84

<sup>32</sup> Bundle 8 – Scoring & Correspondence Regarding Issues, item 5, p.23

<sup>33</sup> Bundle 8 – Scoring & Correspondence Regarding Issues, item 2, p.11

<sup>34</sup> Bundle 7 – Key Parts of Mosaic’s tender and marked up Environmental Matrix, item 1, p.3

**not for me to comment upon. I do not know whether Peter Reekie would have had an awareness of this.**

16. Are you aware of whether 'building services engineering solutions' refers to documents produced by Hulley & Kirkwood, for example the environmental matrix?

**i. This is a technical issue and therefore outside my remit and I am not in a position to be able to comment.**

17. With reference to Peter Reekie's evidence regarding the reference design on pp. 67-68 of the transcript (**A37605865 - Witness statement of Peter Reekie - 28 April 2022**)<sup>35</sup>, is it usual in an NPD project to have elements outside of 'operational functionality' included in the ITPD, and associated with the Board's Construction Requirements as provided in the Project Agreement?

**i. I am not the correct person to comment on this.**

18. In your experience of NPD projects is it usual for preliminary work to be done on M&E engineering design, given design risk falls to Project Co? If yes, please explain?

**i. Again, this is a technical matter which is outside of my remit. It is not for me to comment.**

19. In the RHSC-DCN project it appears that the pre-FC KSR took place after FBC approval and months after the meeting of the Capital Investment Group. Is that your understanding?

**i. My remit was as the reviewer of the KSRs, I was not a member of CIG. I am therefore not the right person to answer this.**

20. Can you explain the sequencing?

**i. This is not a question for me and would be one for Peter Reekie to comment on.**

## **H. Project Agreement at Financial Close**

1. To what extent were you involved in, or aware of:

a. the contractual specification for the hospital at FC?

**i. I was aware that the contract provided for certain technical documentation to be incorporated into the final Project**

<sup>35</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), item 19, p.375

**Agreement. These documents were technical and project specific and therefore it**

**was not for SFT to review them: that was a matter for NHSL and their advisors.**

- b. the extent to which that specification had been finalised by financial close?
    - i. **This is a matter for NHSL. I can only comment insofar as dealt with by the KSRs. I would refer the Inquiry to Question 3 of Section 3 of the Pre-Financial Close KSR [4] in which the Board 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."***
  - c. the procedures set out in the contract for finalisation of that specification?
    - i. **I am aware that there are provisions in clause 12.6 of the Project Agreement [9] in respect of RDD and the provisions of Part 8 of the Schedule to the Project Agreement.**
2. The Project Agreement includes a procedure for the review of Reviewable Design Data (especially clause 12.6 and schedule part 8). The Reviewable Design Data included Room Data Sheets and the Environmental Matrix.
- a. What do you understand to be the purpose of these arrangements?
    - i. **I understand the purpose was to allow for detailed design development post Financial Close, subject to the provisions of the contract.**
  - b. Are they features of the SFT's standard form NPD project agreement?
    - i. **There is clause 12.6 and schedule Part 8 [9] which were included in the standard form agreement. The standard form was subject to derogations. The standard form agreement also contained various blank sections for RDD and other matters which required to be inputted by the Procuring Authority as they were project specific.**
  - c. **Can the witness provide further detail on SFT's derogation process?**
    - i. **My understanding is that NHSL would put forward proposed changes to the Standard Form Agreement and they would**

**submit a table showing the proposed derogations and reasons for the derogation and whether the derogation was project specific. This would then be considered in the context of the Project to be determined whether it was acceptable. I was not responsible for the derogation process for this project.**

- d. What role, if any, did the SFT have in considering the arrangements to ensure they served their intended commercial purpose?
    - i. **SFT drafted the standard form Project Agreement and dealt with derogations through its derogations process. The project specific data and design included in the contract and the interface with the provisions of the rest of the contract was a matter for NHSL and their advisors.**
  - e. Was the extent of the Reviewable Design Data more, or less, than would typically be seen in an NPD project (or equivalent DBFOM project)?
    - i. **That is beyond my remit and I am not able to answer that.**
3. The Board's Construction Requirements require compliance with both the Room Data Sheets and the Environmental Matrix (paragraphs 3.6.3 and 8 of the BCRs at section 3 of schedule part 6 to the Project Agreement).
- a. To what extent do you understand the Room Data Sheets and Environmental Matrix which were included in the contract at FC (appendices 1 and 2 to section 6 of schedule part 6) to be an approved basis for construction?
    - i. **This is not a question that I can answer, it would be inappropriate for me to provide a legal analysis of the contract.**
  - b. To what extent do you understand them to be subject to review after FC under the procedure which applied to Reviewable Design Data?
    - i. **This is a matter outside of my scope and not one that I can comment on.**
  - c. What did you understand to be the intended purpose of the review procedure in relation to these items?
    - i. **This is a matter outside of my scope and not one that I can comment on.**
  - d. What did you understand to be the intended outcome of the review

procedure to these items?

- i. This is a matter outside of my scope and not one that I can comment on.**
  - e. To what extent were the Room Data Sheets included in the Project Agreement at FC (appendix 1 to section 6 of schedule part 6) a finalised and complete set of such sheets for all rooms in the hospital (see paragraph 3.6.3 of the BCRs (section 3 of schedule part 6))?
    - i. This is a technical question and outside of my scope and remit, it is not for me to comment on.**
  - f. Was it intended that Project Co would, through the review procedure, supply the Board with a RDS for every room in the hospital (ibid)?
    - i. This is not in my remit and not for me to answer.**
4. What do you understand to be the intended role of the Board in the contractual review procedure (clause 12.6 and schedule part 8)?
- i. This is not in my remit and not for me to answer.**
- a. To what extent did you understand the Board to have responsibility for, or rights to object to, material submitted during the review procedure?
    - i. There is Schedule Part 8 which I understand includes rights of objection and consequences of the review when taken together with the rest of the contract.**

The time period allotted to the Board for comment on reviewable design data submitted to it for review was short (paragraph 1.2 of schedule Part 8: 15 business days).

5. To what extent were you aware of consideration being given, either before or after financial close, to the sufficiency of that time period?
- i. I can only answer this insofar as it is dealt with in the KSR, I refer you to the Pre-Financial Close KSR [4], Section 7 Question 25 in which the "Procuring Authority has approved a formal resourcing strategy that clearly identifies the Procuring Authority's roles and obligations during the construction, commissioning and operational phase of the project." The Procuring Authority confirmed that "Resourcing for the governance arrangements indicated in Annex B have been agreed by the Board."***



6. Who was responsible for the final terms in which the following were included in the Project Agreement:

- The Board's Construction Requirements?
- Project Co's Proposals?
- The Reviewable Design Data and the contractual procedure for review?
- The Room Data Sheets?
- The Environmental Matrix?

**i. I am not the right person to answer this question. I note that NHSL and ISHL are the parties to the contract**

b. What input, if any, did SFT have in relation to their terms?

**i. My understanding is that SFT did not have input into the documents referred to in Question 6 above. As indicated SFT drafted the standard form Project Agreement and dealt with derogations from that standard form but SFT did not deal with project specific design or technical elements.**

c. Who was responsible for ensuring that all of these provisions interacted as intended in the final form of the Project Agreement? What input, if any, did SFT have in that regard?

**i. I am not the person to answer that question.**

**d. The witness was asked who was responsible for ensuring that all of these provisions interacted as intended in the final form of the Project Agreement? What input, if any, did SFT have in that regard? The witness advised that she was not the person to answer that question. Would her colleague Peter Reekie be responsible for this?**

**i. My understanding is that SFT provided the Standard Form Agreement and dealt with the derogation process to that standard form and it was then for NHSL and its advisers, and IHSL and its advisers, as parties to the Project Agreement to ensure that all of the provisions interacted with each other as intended. I understand that the advisers to IHSL's financiers might also have had a role.**

IHSL became entitled to Monthly Service Payments on the date of the practical completion certificate, if that was after the Completion Date as defined (clause

34.1).

7. To your knowledge did a desire on IHSL's part to start receiving payment influence their conduct before and after financial close?

**i. I am not the right person to answer that question.**