SCOTTISH HOSPITALS INQUIRY

Hearings Commencing
9 May 2022

Day 6
Tuesday 17 May 2022
Susan Goldsmith

CONTENTS

11:30

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Yes, my Lord. The next witness is Mrs Susan Goldsmith.

THE CHAIR: Good morning, Mrs Goldsmith. Now, as you know, you are about to be asked some questions by Mr MacGregor. But, first of all, can I ask you to take the oath?

THE WITNESS: Yes.

GOLDSMITH, Mrs SUSAN

(Sworn)

THE CHAIR: Thank you very much, Mrs Goldsmith. The microphone should give you a little help. Well, I hope more than a little help, gives you some help, but maybe just speak a little louder than you would in normal conversation. Now, I do not know how long your evidence will take, but we will break for lunch at one. However, if at any time during your evidence you want to take a break, for any reason whatsoever, just give me an indication and we will take a break.

THE WITNESS: Thank you.

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Thank you, my Lord.

Questioned by MR MACGREGOR

Q Are you Mrs Susan Goldsmith?

A I am.

Q And you have provided a witness statement to the Inquiry dated 20 April 2022?

A Yes.

Q That witness statement will form part of your evidence to the Inquiry. You are also going to be asked some questions today. If at any point you want to refer back to your witness statement, please do just let me know. If I could begin by just asking you some questions about your background and experience, you joined the NHS in 1982 as a graduate finance trainee, is that correct?

A I did.

Q Then you worked in a variety of roles, including going out on secondment to external organisations, and in 2005 you were appointed as Director of Finance at NHS Lanarkshire.

A Yes.

Q Then you joined NHS Lothian in November 2008 as Director of Finance.

A That's right.

Q But am I correct in thinking that you are due to retire at some point in May 2022?

A At the end of May, yes.

Q Yes. Can you just explain, in your role as Director of Finance with NHS Lothian, what did that role involve?

A So, I have overall responsibility for the financial position of NHS Lothian, and that includes both the revenue spend, circa 1.7 billion, 1.8 billion now, and the capital programme, and that includes responsibility for the financial planning, the financial management, the running of the operational functions, including payroll accounts, payable annual accounts. I also have responsibility for the internal audit function for the-- responsibility-- exec lead for the charitable interests of the board, the endowment funds, and lead exec director for the Finance and Resources Committee and for the Audit and Risk Committee.

Q So a whole range of financial responsibility----

A Yes.

Q -- but including for capital planning and capital projects but from the financial aspect, is that right?

A That's right, yes, and I'm also an executive member of the board.

Q Okay, so you sit on the board of NHS Lothian as well?

A Yes, as an executive director. So you're actually appointed by the Cabinet Secretary onto-- formally onto the board as an executive director.

Q Again, just so I am understanding you, I think we have heard already from witnesses that there is the board, the actual board of NHS Lothian, and then there are the executive directors.

A Yes.

Q So am I correct in thinking the executive directors, they sit on the board itself?

A Yes, they do. So they're part of the governance, the board-- the governance assurance because they're full members of the board.

Q So, again, just so I am understanding you: effectively, your day-to-day job is Director of Finance, which is an operational role, but you also sit on the board and have a governance role?

A I do, yes.

Q Again, you tell us in your statement that you were involved in the re-provision of the Royal Hospital for Children and Young People and the Department of Clinical Neuroscience, is that right?

A Yes.

Q You were involved in the

project, really, from 2008 onwards and between 2012 and 2015, you had the position of senior responsible officer.

A That's right.

Q We will come on and discuss that, but if we could just focus initially on the period from 2008 until 2012, what was the nature of your involvement with the project?

A So I would have responsibility for ensuring that the project had sufficient resources, I would have responsibility for ensuring that there was appropriate skills in the team, I would have responsibility for any sort of commercial aspects of the project, responsibility for ensuring that the value-for-money aspects of the project were assessed, and I would have input to the business case – business case was obviously much wider than finance, but I would have input to that – and I would have a responsibility in ensuring that the risks-- any risks associated with the project, they were understood by the Finance and Resources Committee, whose terms of reference included scrutiny of capital projects and that any of those risks that were required to be escalated to the board were escalated.

Q But, again, just so I can understand things correctly, you were having input, for example, into the outline business case from the financial aspect. Would you have any input into levels of granular detail about the design itself, for example, for the new hospitals or would that be for other aspects within NHS Lothian?

A No, I wouldn't have any responsibility. Other than as an executive director and as a director of finance, then I would have-- you know, I would need to be-- I would understand what-- that there was work going on on the design and I would understand who required to be engaged in that process of design, and I would also need to-- you know, I would be part of the decision making on the level of resources, so technical advisors, for example, so-- but not the granular detail, no.

Q Yes. So that's your role up until the point that you become senior responsible officer. Why did you take on the role of senior responsible officer?

A So it is quite unusual to-- Well, it's different between different boards, whether they agree that the Director of Finance should be an SRO for a capital project. So it's not unusual for the Director of Finance to be an SRO, but the particular circumstances for this project were that there had been a change in

leadership of the board, there was a change in chief exec, and there was also a change in the structure that sat beneath the chief exec. So there was no longer a chief operating officer for acute services who would normally have fulfilled the function of SRO, and that role had been divided into two. There were also-- covering sort of scheduled care and unscheduled care, and there were some specific performance challenges for the board at that time, which was why the role had been separated into two.

So, because we were moving into an NPD-procured model, which clearly was revenue financed, then-- and I had been involved in the project in some detail, particularly around the commercial considerations, the chief exec asked if I would take on the SRO role over the period of the procurement. Then when we got to financial close, I handed it back to the Chief Operating Officer because now there was now a Chief Operating Officer for acute services in place.

Q So when you come in as senior responsible officer, it is a revenue-funded project at that point, is that correct?

A That's right, yes.

Q Again, are you telling the Inquiry that it made sense in a revenue-funded project to have someone that had a financial background as senior responsible officer?

A Yes.

Q Okay. What does being senior responsible officer involve on a day-to-day basis?

A So the key responsibility is to provide leadership to the project, so you need somebody who is of sufficient seniority to provide that leadership, to ensure that there are sufficient resources in place, to deliver the project, sufficient skills to chair the project board, and particularly to provide the link between the delivery of the project and the board. So the senior responsible officer has an accountability to the board via the chief exec, who's the accountable officer, but they provide that link between the delivery of the project and the board.

Q So a link between those that are doing the day-to-day work on the project and then those that are effectively making the decisions, the ultimate decisions, and providing the governance for the project?

A Yes, yes.

Q Thank you. Now you mentioned the term “project board”. So, we have got the board of NHS Lothian, but there is also the concept

of a project board. Could you explain to us what the project board was?

A So a project board for any major project is really to provide support to the SRO in delivering their responsibilities for leadership and delivering the project, and so the project board will routinely be made up of individuals who have got a responsibility or an interest or a professional responsibility, and they will provide advice to the SRO on certain aspects of the project. So, for example, you'd have somebody with an infection control interest sitting around the board, there would be somebody from Finance – if it wasn't me, there would be somebody from Finance – and they're providing advice and supporting the SRO in the key decisions that are required in delivering the project, and support in terms of looking at the risk register, what mitigation needs to take place or be put in place to support the delivery of the project.

Q Who chairs the project board?

A The SRO does.

Q If I can ask you to look within the outline business case from 2012, please. That is within bundle 3, volume 2. It begins at page 672. If we bring that up, just so you can see that this is the outline business case for the project from 25 January 2012. Do you see that?

A Yes.

Q If I could ask you to look on, please, to page 740. So page 740, paragraph 6.28, do we see "Project Management" being set out?

A Yes.

Q So it says:

"This section will outline:

- The project's structure
- Project reporting arrangements …
- Key roles …"

Then we see:

"*NHS Lothian Board*

NHS Lothian Board retains overall responsibility in decision making for the project. It is therefore responsible for:

- Appointment of advisers
- Approval of the Outline Business Case
- Approval of the OJEU notice …"

Do you see that?

A Yes.

Q Was that your understanding of what the board itself was doing on the project?

A Absolutely. The board was a statutory authority.

Q So ultimate decision maker but, as you have said, there is a level of activity and decision making below the board itself?

A Absolutely, but the board is the one statutory authority that essentially holds the-- you know, is going to enter into the contract, which is why it's described as "NHS Lothian Board retaining overall responsibility".

Q Okay. Then we see below that at paragraph 6.30 the project board that you just described. It says:

> "The Project Board is held monthly and includes the key stakeholders of the project. It is chaired by the Project Sponsor who reports directly to the Board Chief Executive for the delivery of the business benefits of the project."

Now, the term "Project Sponsor", is that used interchangeably with senior responsible officer?

A It is, yes. Yes, it really should-- I think we started calling it Project Sponsor, but it really is the SRO.

Q Then we see below that on page 741 at paragraph 6.31:

> "The Project Board reports to NHS Lothian Board via the Executive Management Team and the Finance & Performance Review committee."

It's page 741, paragraph 6.31. Can you explain firstly what is meant there by the "Executive Management Team"?

A So the board has an executive management team made up of the executive board directors, plus other executive directors who report directly to the chief executive, and they have responsibility for the oversight and running of the board's operational business and development of strategy in support of the board. So the executive management team is chaired by the chief executive.

Q Then there is a reference to the Finance and Performance Review Committee. What is that?

A So the Finance and Performance Review Committee, now the Finance and Resources Committee, is a subcommittee of the board, and its terms of reference-- So it does a lot of the scrutiny on behalf of the board in relation to financial performance and to the oversight of the capital programme and capital projects.

Q Then we see below that at paragraph 6.33, it says, "*Project Team*". Then it says:

> "The project team is

responsible for the day to day delivery of the project …"

We see a whole range of positions outlined from "Project Director" down. But could you just explain in your own words what your understanding of the project team was?

A The project team would be led by the project director, and they would be-- At different stages in the capital projects, they would have different responsibilities, but this is from OBC through to the NPD. So you would have different work streams. There would be a technical work stream, a clinical work stream, there would be a financial work stream, a legal and commercial work stream, and each of those work streams would be supported by individuals with the appropriate skills. Some of those individuals would be from our advisors, so not just NHS Lothian employees, and they would all be supporting the project director in delivery of the project.

Q Okay. So we have got the various work streams which would then feed into an individual or a group within the project team----

A Yes

Q -- who would then feed into the project board, who would feed back through the various committees we have looked at, ultimately, to the board of NHS Lothian.

A Yes. Yeah, so the project director would be providing leadership so-- and have oversight of all the work streams and be the one that was making sure that anything that emerged from one work stream that had an impact on another was managed. But, yes, you're right.

Q If you could just explain, in your role as senior responsible officer, how would you link in with the project director?

A The project director actually reported directly to me, so I would-- while I was SRO, then I would have a formal role on the project board and be chairing the project board, and the project director would be preparing routine reports on where we were on programme, on the work streams, on the risk register. But, because this project was so complicated and complex, then we had a number of working groups that supported different aspects of the project. So I also had a role, pre-when I took on the SRO, where I was very involved in all the commercial negotiations and I would be-- I would work with the project director and the director of capital planning to secure the output of

those work streams. So I worked with the project director in multiple settings.

Q Thank you. If I could ask you, still within page 741, to look to paragraph 6.35, which states:

> "In addition to the above work streams, a fixed-term Reference Design Team has been appointed to develop designs to the stage required for this OBC and in preparation for the procurement of the NPD. External advisers have been appointed on a fixed-term basis to deliver the Reference Design."

What was your understanding of the reference design team? What was the reference design team?

A So the reference design team were developing the-- I suppose, the outline design for the project, integrating the work that had been done on the standalone Children's Hospital with the work that had been done on DCN and bringing those together into a design that provided our assessment of what operational functionality we required for the hospital. I think there were some more specifics in relation to some rooms, generic design for specific rooms, I believe, but essentially integrating two pieces of work into a design that focused on operational functionality that we could then provide to the-- into the procurement exercise setting out our requirements.

Q The reference design team, is that NHS Lothian employees or external advisors or a mixture of the two?

A A mixture of the two.

Q Again, within the work streams and the project team, who would be the link between the reference design team and the project board to make sure that the project board is aware of the work that is being done by the reference design team?

A That would, I think, largely be the project director, but there was also a clinical-- lead clinical advisor who would also provide reporting back to the project board, and the director of capital planning would also have an interest, so he would also be reporting back through the project board if he had any concerns or there were any issues.

Q Again, just in terms of a summary, if we look on to page 743, please, you should see a summary of the various roles that we have just considered. So there is, "Project Sponsor, ultimate responsibility for the project." So that is also the senior responsible officer, is that correct?

A Yes.

Q Then we have got, "Project Director, responsible for the successful delivery of the project and is accountable to the Project Sponsor." So, as you said, project director working very closely and feeding back in to senior responsible officer. We have then got, "Project Manager, the primary interface and first point of contact for the Project Director." So is that someone who sits below and reports in to the project director?

A That's right, yes.

Q Then we have the various "Clinical Project Directors", "Service Planning Project Managers", and then we have reference to the "Capital Planning Project Managers". Do you see that approximately halfway down the page?

A Yes.

Q Again, I think this summarises perhaps that question I had asked you about who links in for the reference design team. It states here:

> "Capital Planning Project Mangers, Act as the liaison between NHSL and the reference design work stream and the design and construct work stream, responsible for informing the board's construction requirements and ensuring these are agreed by the appropriate NHSL user groups. These include the developments of the schedule of accommodation. One of these Project Managers leads the equipment work stream the main output of which is equipment schedules."

Do you see that?

A Yes.

Q Now, on this project, who was responsible for capital planning in terms of project managers?

A So the director of capital planning identified individuals from his team and allocated them to specific pieces of work, although they-- Actually, on equipment, would also be-- there would also be an individual from capital planning on equipment.

Q One of the issues that the Inquiry is going to be interested in as it moves forward is the development of the design for the hospital and also the ventilation design requirements in particular. Am I right in thinking that we would then look to the reference design team and the capital planning project managers in terms of the granular detail, and that would then be fed back up the chain of command that we have just discussed?

A I'm not sure that I'm best placed to respond to that, but-- So the reference design was very much about setting out our requirements in relation to operational functionality and where things-- how the building needed to operate to support patient pathways. The detail of getting into the design in relation to, for example, ventilation, I don't think happens until you're post-OBC. So, in the run-up to OBC, you would be setting out what the standards were required-- what standards were required for different rooms, but the actual detailed delivery of those would not happen or the design of those would not happen until you were post-OBC, and at that point, because we were in a NPD procurement, the responsibility for the detailed design then passed to the NPD partner.

Q Okay. If we just take things in stages, within the structure we have discussed, who makes the decision that there is going to be a reference design for the project?

A So-- I mean, ultimately the board makes the-- made the decision as a statutory authority, but my recollection of the discussions about the reference design, because there were multiple discussions about whether we should have a reference design or not, given that it was an NPD procurement, so there was a lot of engagement and discussion internally, with the team, with our advisors. I think Motts, our technical advisors, prepared some kind of report for us. There was discussion with SFT about whether-- what our reference design would look like and whether it was appropriate that we would have a reference design. I think there was discussion with Scottish Government. So there was a lot of discussion about the reference design, but ultimately the decision was the board, and we did-- I think we took a paper to Finance and Resources to say that that was our decision, that we should have a-- you know, we should build on the work that had been undertaken and include the work on the reference design before we went out to procurement.

Q Okay. You mentioned that Motts were involved. Just to be clear, who are Motts and what was their role?

A So Motts were our technical advisors.

Q Again, just so I am understanding, your understanding, sitting on the board, was that it would not be at this stage, the outline business case, that a detailed design in terms of detailed ventilation design

would have been made.

A No. No, that's right. It wouldn't have been, yeah.

Q What is the basis for you saying that? Has someone told you that that is what happens with a project of this nature?

A I think it's-- No, I'd say probably experience of overseeing capital projects over a couple of decades. I've obviously learned much more about this project and the process of developing design than perhaps other projects.

Q We have talked about the change in the funding model. Was NHS Lothian advised that there was going to be a change in the funding model before the announcement was made?

A No.

Q Were you surprised about that?

A I mean, I think we were all surprised, but I wasn't surprised in the sense that I knew that there had been a significant impact on the availability of capital for the health-- the Scottish Government Health Portfolio. So I was aware that there'd been a significant reduction so, from a professional perspective, I wasn't surprised. But, from NHS Lothian, given how far advanced we were on

the Sick Kids, I think for all of us it was a bit of, you know, intake of breath and, "What next?" It was an important project for the board.

Q So you had got to a detailed stage in terms of the capital project?

A We were so close to moving ahead with the investment into the capital-funded project, and there'd also been a lot of work done up to that point in ensuring that we had access to the land, etc., etc. So I think it was more, "What does this mean for the project?" "Surprise" suggests you're pleased about something, but it was more, "What happens next?"

Q You explain in your statement that obviously the funding model for the Children's Hospital goes from capital to revenue funding----

A Yes.

Q There was also going to be the Department for Clinical Neuroscience included in the project. So it was going to be one revenue-funded project for the two separate aspects of the hospital?

A That's right, and that was welcome news because we had been trying to explore options to deliver DCN without access to Scottish Government capital funding. So we were very pleased about that.

Q Okay. Now, you outline in your statement some of the challenges, as you perceived them, of the move to the revenue funded model. Can you just explain to the Inquiry what you perceived those challenges to be?

A So, there were many challenges. The first, just practical challenge, was the fact that we had a well-developed business case design, () business case for the Sick Kids. We were well advanced with our principal supply chain partner. So, the first issue was just actually how did we bring together the two business cases? It meant that we really had a new project and that entailed a significant amount of work.

The second thing was just whether there was enough space on the land because actually it's essentially landlocked. So, was there going to be enough physical space? What did it then mean for the relationship between the new hospital and the Royal Infirmary, which was also a PPP revenue funded hospital? Then what did it actually mean in terms of delivering an NPD revenue funded project on a PFI revenue funded project? What were the commercial considerations that that would bring? So there were different

strands to the complexity.

Q If we take each in turn. If we think of the site itself, you mention that it was landlocked, but what were some of the specific issues with the site?

A Well, now I am relying on what I've been told, as a non-technical person. So, apparently it's on a bit of a slope. It's also on a flood defence plain. So, in terms of the infrastructure that is required for flood defences, that would be more onerous. The roads infrastructure would need to be changed because we needed more land, we needed to have access, we needed to develop some of the services within the Royal Infirmary, both for clinical reasons, but also because it made more sense, for workforce reasons, to have some of the services in the Royal Infirmary. We needed to be able to join the buildings in a way that worked clinically for patients and staff. So, I think there was just about everything that you could think of in relation to delivering a capital project that had to be considered.

Q You have mentioned the fact that it was quite a tight site that was already quite heavily developed and various enabling works that had to be done. One of the terms of

reference for the Inquiry – Term of Reference 10 – is to examine whether the choice of site for the hospital was appropriate. Notwithstanding those site constraints, did you think that the site was appropriate?

A Oh, absolutely. It was the only way for the board to deliver a major trauma centre, was to bring Children's Services on to the major acute site, along with Clinical Neurosciences onto a major site. So, it was definitely the best option for the board.

Q Should the Inquiry understand that it was, perhaps, a difficult site and slightly difficult to build, but it was certainly, in your view, the appropriate site for the new hospital?

A Absolutely.

Q You mentioned that the existing hospital at Little France was a public private partnership and obviously there is then going to be the new hospital that is also revenue funded. Were you aware of any previous project whereby you had a revenue funded project and then you put another revenue funded project within it?

A No, we did try and find out if there was anywhere else and I don't think that there was anywhere

else. I think there was one facility where they were looking at it, but we didn't find anywhere that we could go and meet with colleagues and work through where they had dealt with PFI on a PFI site.

Q You address this in detail within your statement, but could you just explain to the Inquiry, what were the challenges of trying to put a new revenue funded hospital onto a site that already had a revenue funded hospital?

A I think one of the key issues is that you are dealing with multiple stakeholders, so a PFI is essentially-- set up a special purpose vehicle, which is really a shell company, I guess, that is the vehicle for entering the contracts with the construction partner, with the facilities management or hard FM supply chain, but also is the vehicle that actually the lenders provide the debt to. For the Royal Infirmary, you had 11 banks who had lent money to build the Royal Infirmary, plus you had two equity investors. So, you've got multiple stakeholders who make an assessment of the risk when they enter into the contract to not only build the hospital but to then do the hard FM and lifecycle maintenance over a 25-year period.

So they make that risk assessment. They obviously price on the basis of that risk assessment, and so anything that introduces a change in the risk profile has an impact on how they're going to respond to what's been asked of them. So you're not really dealing with a single entity-- you are dealing with a single entity, but there are multiple stakeholders who have an interest in change, any change that's going to come about.

So, understanding the risk, their attitude to risk and risk profile was a significant piece of work and at the time we obviously didn't have an NPD partner. So, NHS Lothian were having to agree to any change in the risk profile for the special purpose vehicle that was running and managing the Royal Infirmary, in advance of having procured a second special purpose vehicle. So it was just more complicated than us doing it ourselves.

Q So, complex negotiations and, with that, was it extremely time consuming?

A It was, yes.

Q In terms of your statement, you address both “Supplemental Agreement 6” and “Supplemental Agreement 7”.

A Yes.

Q Could you explain what

Supplemental Agreement 6 was?

A So, Supplemental Agreement 6 was the variation to the project agreement, which is the contract with Consort, the special purpose vehicle that built and ran and managed the Royal Infirmary. So Supplemental Agreement was the change to that project agreement and what that did, in essence, was that it took the land that we were going to build the Children's Hospital and DCN on out of the project agreement and gave rights back to us, because it had, essentially, a long lease on that piece of land.

It also set out all the requirements for interface and all the land and access and property issues that we required Consort to give us or deliver for us. So, it took it took a long time to agree Supplemental Agreement 6.

Q So you explain, in paragraph 18 of your statement, the new hospital was to be sited on what was carpark B of the existing site, is that correct?

A Yes.

Q At that point, that was within the control of the existing revenue funded hospital on the site. So, again, as you go on to say at paragraph 21:

"Without securing the land, and associated rights, and without delivery of the enabling works, we would have had no project."

A That's right.

Q So really, should the Inquiry understand that Supplemental Agreement 6 is really critical to NHS Lothian actually having the land to build the new children's hospital and the new Department of Clinical Neurosciences?

A That's right. We couldn't get past "go" without having secured Supplemental Agreement 6.

Q Yes. Then in terms of Supplemental Agreement 7, you address that from paragraph 15 onwards of your statement, but can you just summarise what you mean by "Supplemental Agreement 7"?

A So, Supplemental Agreement 7 were the enabling work, so I talked about the hospital being on a floodplain. So, there was flood defence work that required to be undertaken; there was roads infrastructure that required to be changed and amended; there was VE works – I can't remember exactly what that was, but all of those had to be undertaken by Consort because they had rights to all of that infrastructure.

So we needed them to deliver the changes and then to ensure that we had a level playing field before we went to procurement. It was important that we had secured that work from Consort, so Supplemental Agreement 7 did that.

Q So, is Supplemental Agreement 6, effectively, about securing the land and then Supplemental Agreement 7, the enabling works to allow you to move forward with the new hospitals?

A Yes. So, 6 was land and access, right of access.

Q Okay. At paragraph 24 onwards of your statement, you address Scottish Futures Trust and how they became involved in the project. Can you just explain, why did Scottish Futures Trust become involved?

A The Scottish Futures Trust essentially were the guardians of the NPD model. They, as I understand it, had developed it. It was different from the old PFI model in a number of ways, but they were essentially the guardians of the NPD and I suppose in essence had a right of veto. So they would set the conditions that allowed us to go from one stage of the programme to the next. We worked very closely with them and they

worked very closely with us because this was the first-- there was actually Dumfries and Galloway, which was an acute NPD, but this was obviously significantly more complex, in that it was a PFI attaching to another PFI.

Q Again, there has been a lot of terms used in the Inquiry: PFI, PPP, NPD. You say that the NPD model was different to traditional revenue funded models. Can you just explain, in as simple terms as possible, how was it different? What was significantly different about the NPD model?

A So, the NPD model essentially capped the returns that the private sector could make. So, in the PFIs, the old PFIs, you would have the banks, or the lenders, the pension funds, who would effectively provide a mortgage to the SPV. Then you would also have equity investors who put in capital and who secured returns on that capital investment through a variety of means. What the NPD did, is it didn't allow investment, so the equity funders essentially provided debt and they got a fixed return as opposed to an unlimited return, depending on the risk profile, and any surpluses over and above the return that were generated through the SPV had to go back to go back into the financial model and could only be distributed for the project and not given to the equity investors.

Then there was also an additional role on the SPV board called the Public Interest Director who was appointed by SFT. They had a more independent role and it was only, I think only the Public Interest Director who could call our refinancing, for example. So that was really the key difference.

Q So, capped returns and greater involvement on the board from the Public Interest Director?

A Yes.

Q Thank you. Just returning to Scottish Futures Trust, you mention that they were the gatekeeper of the NPD model. Practically, what were they doing in the project? Were they in an advisory role or were they part of the project itself?

A So, at the beginning, we really were all in the room together, working through what the implications were for the project and bringing the projects together. So, certainly in the very early days, it did feel as if SFT were part of the wider team. We were all working through practical implications and what that meant for, for example, BAM, for the reference design. What did it mean in terms of

securing the land and the access? Particularly in SA6 and SA7, I think they were instrumental in supporting us, in assessing what we needed to be delivered through SA6 and SA7 because they were testing the market in terms of how the market would respond to procurement of an NPD.

Through that intelligence, they were able to advise that we needed to make sure that there was no-- the project was as clean as possible when it went to the market. So, initially, my recollection is that we sat in the room together and we tried to work through what needed to be done. Clearly, they then had-- as time went on, it's difficult to recall dates, but it was clear we couldn't rely on their advice. We needed professional advice. So, although they were advising us and working with us, in terms of any key decisions that the board needed to make, so, for example, the use of the reference design, we, the board, needed to rely on professional advice and have our own advisers.

So, we had procured technical, legal and financial advice, and so, although we would develop and work through difficult, complex issues, when it came to things that needed a decision, we were working with our advisors and taking their professional

advice.

Q You mention this was one of the first times this particular revenue funding model had been utilised. Do you think that the precise role of Scottish Future Futures Trust was clear at the outset when they became involved in the project?

A I think it was clear to them. It probably was less clear to us at the start. We did get a letter eventually where they set out what their role was, but certainly in the early days it was less clear to us about what their role actually was. As the project developed, and particularly when we had clarified that they couldn't give us formal, professional advice, then it became clearer.

Q So there was a point in the project where there was clarity in relation to just exactly what Scottish Futures Trust would and wouldn't be able to do on the project?

A Yes, but in essence, we're all public servants. So SFT are public servants, Scottish Government are public servants. We are public servants, so you're working together. You've obviously got defined roles and responsibilities, but my view has always been that we're public servants and we need to work together. The critical point was when the board

needed to make decisions. That was the defining line for me, that we needed then to have professional advice. Up until that point, we all worked together.

Q Again, just so I am understanding, Scottish Futures Trust were working hard on the project, but there was an acceptance within NHS Lothian that ultimately it was the board that was the independent decision maker?

A Yes.

Q Okay. If I could ask you, please, to look within bundle 3, volume 2, to page 314. This should be headed up in the top left-hand corner, "Lothian NHS Board, Finance & Performance Review Committee, 12 January 2011". Do you see that?

A Yes.

Q Have you seen this document before?

A Yes.

Q Could you just summarise what the document is and why it was produced?

A So, this document would be taken to the Finance and Performance Review Committee to provide them with assessment of the implications of moving to an NPD model. We just need to scroll through to remind me what----

Q If we just take it in stages, Mrs Goldsmith. So, if we look at section 1, "Purpose of the Report" 1.1:

> "The purpose of this report is to provide the Finance & Performance Review Committee with an overview of the progress made over recent weeks to review the Royal Hospital for Sick Children (RHSC) and Department of Clinical Neurosciences (DCN) reprovision projects, following the Scottish Government announcement on 17 November 2010 that these projects would be funded under the Non Profit Distributing (NPD) model."

Do you see that?

A Yes.

Q So, effectively an update, I think, of what you said. There is the change that comes in, significant work that takes place, with an update going to the board. Then in terms of recommendations, 2.1. If we look at the second bullet point, there is a recommendation to:

> "Approve progressing with a detailed reference design for a combined project as a key component of the NPD procurement route..."

Do you see that?

A Yes.

Q So, again, there is a recommendation that going forward it should be a reference design that is being utilised. Now, if we look to the third bullet point:

> "Note that a recommendation based on legal advice for procuring the Reference Design will be available for Committee members at the meeting."

Is that part of the independent advice that you talked about the board having obtained?

A That's right.

Q Then the fourth bullet point:

> "Approve the commencement of a tender process to appoint advisors (technical, legal and financial) in addition to the advisory assistance provided by SFT."

Do you see that?

A Yes.

Q Why do we see that reference there?

A Sorry, can you----?

Q Why do we see that reference there, to approving a tender process for external advisors in addition to the advisory assistance provided by SFT?

A In retrospect, we probably didn't actually need to ask finance and performance review to approve the appointment of the advisors. We, as exec directors, could have made that decision, so it would have just been to give finance and resources assurance that the board required independent legal and technical advice, but to advise them that-- they would have been aware, through dialogue, that we were in discussion with SFT, so it would just be to give them that assurance that we needed independent advice.

Q Was this a recognition that Scottish Futures Trust couldn't provide the legal and technical guidance that would be provided for the project?

A That's right.

Q Then, if we look on to page 315, please, paragraph 3.3. I think we see a summary of some of the challenges that you have outlined in your evidence. So:

> "This has brought a number of significant challenges, as well as complex legal, technical and procurement issues, given the existing relationships with our key commercial partners…"

Is that some of the issues that you have discussed in your evidence

today?

A That's right.

Q Then at section 4, we see details of just exactly what the non-profit distributing model is being summarised. Do you see that, at paragraphs 4.1 onwards?

A Yes.

Q We see at paragraph 4.2:

"To date, there is only one NPD project underway in NHS Scotland – a mental health development in NHS Tayside. Dialogue is already underway with colleagues in NHS Tayside, in particular to highlight any 'lessons learned'."

Were you involved in those discussions with NHS Tayside?

A I don't think I was. I'm struggling to remember. I think it might be worth asking Iain Graham, the Director of Capital, because I suspect it was him and he would have spoken to me about it, but I'm struggling to recall.

Q I appreciate it's a long time ago, but do you remember if there were any lessons learned that were fed back to you?

A I think it was quite a different project. It was a much smaller project and I seem to think that it was on a greenfield site, an easier site to develop. So, I'm not sure.

Q If we could look on, to page 318, please. Section 6, "Procurement Options". Do you see paragraph 6.1, beginning, "We have an objective..."?

A Yes.

Q So, it states:

"We have an objective to minimise both the delay to the programme (also the Cabinet Secretary's aspiration) and the abortive and on-going costs."

Can you just explain, why was there the desire to minimise delay and abortive costs?

A So I think it was understood, really, from the time that the announcement was made that we'd be moving to a revenue funded model and that we would be integrating DCN and that would have some impact on the programme, but by this time we're now over two years since the board had approved the business case for the Children's Hospital, and certainly over a year since the board had approved the business case for DCN. The reason the board had approved both those business cases were because of the reasons you've heard from other witnesses, that the facilities were no longer fit for purpose by some margin,

and that the board had a growing population, demand on its services, need to deliver new models of care that it couldn't in existing facilities.

So, the longer-- and we had some performance issues, just in terms of the capacity that we required to deliver all the care that we need to deliver. So we wanted to try and ensure that we could deliver both those projects as soon as possible.

Q Was there a desire to keep the procurement process to as short a timeframe as possible?

A Yes, there was.

Q We see, then, at paragraph 6.2 within this note, it states:

> "To achieve this, we have explored the procurement options with both SFT and SGHD, for a NPD model to deliver RHSC and DCN with our ideal being to have utilised the existing design team to complete the design process, build on the market testing of packages already undertaken and construct the new building…"

Do you see that?

A Yes.

Q Again, can you just explain how the decision was taken within NHS Lothian to try to retain as much of the design work that had been done and to take that forward?

A So, the first thing was to ensure that we could use the design that had been developed to date. So there was discussion with our lawyers, with BAM, just to make sure that we had rights to the design. There were also discussions about, once we'd secured that, who was best placed to develop the design further. Clearly, it was in the board's interests, and it was in the programme's interest, to get BAM to continue with the work that they had done, rather than going back out to the market to start again.

So really, there were multiple ways in which we were trying to minimise the impact on the programme. We obviously didn't manage it because it took a long time to deliver, but that was one of the first things that we explored, was could we use the reference design and develop it to a stage that integrated the two pieces, the two hospitals? Yes.

Q Again, with option 3, I don't think we have got to go through all the bullet points, but there seems to be an acceptance in there that if it wasn't a reference design, that there is going to have to be a longer period-- for example, a concept that was put out to the market. There was going to have to be more demands internally,

on clinicians, for example. So, was that, effectively, what was being weighed up by the board at this stage?

A Absolutely. The development of any design with clinical input is hugely challenging because our clinicians are incredibly busy and so having access to their time is not easy. So that was a major consideration.

Q Was this a decision that was made in isolation by the board, or was it a decision that was really made in conjunction with Scottish Government, Scottish Future Trusts and external stakeholders?

A There was a lot of discussion about this and a lot of engagement. It's certainly – and this is my recollection – it certainly felt as if all the parties involved –the SFT, the Scottish Government, the board – concluded that being able to use the reference design and develop it further was the right outcome for delivery of the project in terms of minimising delay. Ultimately, it had to be the board's decision and I would accept that.

Q I think that is very fairly acknowledged because if we look to page 320, paragraph 6, approximately five lines up from the bottom of that paragraph, do you see a sentence beginning, "Although this decision…"?

A Yes.

Q It states:

> "Although this decision requires to be made by NHS Lothian as the Statutory Authority it will be important that this is endorsed by SFT and SGHD. It is proposed that if this is to be via the BAM Framework Contract, the additional work (estimated £2m) is offered to BAM on the condition that any right to the design are conceded."

Do you see that?

A Yes, I do.

Q So, again, I think that's just a summary of what you've said in your evidence today.

A The funding was secured from Scottish Government for the design work, the estimated 2 million, so that's another indication of that collaboration and ultimate support.

Q Then if we look on to page 322, please, just in section 10, "Governance Arrangements", on page 322, it states:

> "SGHD and SFT have confirmed their willingness to work with the Board's team on developing the business case requirements to minimise the programme but retain the

appropriate governance. This will necessitate significantly more ongoing engagement than might normally be the case."

Do you see that?

A Yes.

Q So is that really one of the tensions in the project, trying to minimise the programme but try to ensure appropriate governance?

A Yes, absolutely. You know, all the commercial considerations, the work that needed to be done, you need to be thorough, and you need to ensure that you're always protecting the public interest and public purse but, at the same time, trying to recognise that we needed to get out of old facilities as quickly as possible.

Q Now, I think you'd mentioned that there was there was clarity that came in relation to just exactly what Scottish Futures Trust would and wouldn't be doing. Within your statement, you say at paragraph 27 that the SFT were not in a position to provide formal, legal, technical or financial advice to the board. If I could ask you to look within the bundles, please, to bundle 3, volume 2, page 377, which is a letter of 22 March 2011 to the NHS board chief executives. So it's bundle 3, volume 2, at page 337.

So, from Scottish Government to the NHS board chief executives, do we see, approximately the fourth paragraph down, just above the numbers, it says: "This letter sets out the key conditions and guidance for procuring bodies in the development and delivery of their projects…"?

A Yes.

Q It goes on to say:

"… in relation to…

1. the anticipated scope, construction and building operation costs for the project…
2. the capacity and governance…
3. requirements in terms of business cases and value for money assessment…
4. funding of preparatory and development course; and
5. Scottish Government support for elements of the unitary charge."

A Yes.

Q Do you see that? Then if we look on to page 379, we see the conditions for Scottish Government support being set out, including "condition b)" – do you see that,

"condition b)"?

A Yes.

Q Page 379, "condition b)":

"Derogations which relate to the underlying principles of the standard form NPD / hub DBFM contract, as noted below, will require sign off from Scottish Ministers who will take advice from [Scottish Futures Trust]."

Do you see that?

A Yes.

Q So, am I right in understanding that there would be a standard form contract, any derogations agreed by the Scottish Ministers but that's on the advice of Scottish Futures Trust?

A That's right.

Q We then see, on page 380, "Capacity and governance required to deliver the project effectively". Do you see that?

A Yes.

Q I won't read all of them out, but is this effectively what the government required to be put in place in terms of governance, so suitable team, gateway reviews, etc. before the model could be approved for use on the project?

A That's right.

Q If you look on to page 383, again to condition b). Page 383, condition b):

"Before the project can enter procurement, the Outline Business Case must be approved by the procuring body and ultimately Scottish Ministers. SFT will have an oversight role and provide comment Scottish Ministers prior to their formal approval."

Do you see that?

A Yes.

Q So, again, just so that I'm understanding things correctly, the outline business case is approved by the board and by the Scottish Ministers, but there's going to be input provided by Scottish Futures Trust----

A That's right.

Q -- but not actually standalone approval from Scottish Futures Trust.

A No, if they had any concerns then they would feed that back both to us and to Scottish Government, but ultimately it's board and then Scottish Government.

Q Then if we look on to page 384, just to the final section. So you'll see it's headed up: "Guidance on developing business cases". Do you see that?

A Yes.

Q Then the final bullet

point:

"Specific guidance for delivering capital projects within NHS Scotland is contained within the Scottish Capital Investment Manual."

You see that?

A Yes.

Q So is your understanding that the outline business case would have to be prepared in line with the guidance set out within the Scottish Capital Investment Manual?

A Yes.

Q If I could ask you to look on to page 386, please. It states there, at section "a)":

"In order to be eligible for Scottish Government revenue support the project must be assessed by the procuring body under relevant Eurostat (ESA95) guidance as falling outside the public sector for national accounts purposes. This assessment will be reviewed by the Scottish Government."

Could you explain in as simple terms as possible what the requirement was for Eurostat ESA95? Why is that mentioned?

A I mean, it's essentially whether it has to-- whether the risk transfer and other factors are sufficient to determine that the asset should not be on the balance sheet of the authority. This project was always going to be on our balance sheet but, in relation to ESA95, the key issue was whether it was going to be on the Scottish Government's balance sheet and would require capital budget to cover it.

Q So should the Inquiry understand that there had to be an assessment? There was a technical accounting treatment and that test had to be met or you----

A Yes.

Q -- simply couldn't qualify for this type of revenue funding project?

A This is really a matter for Scottish Government rather than for the health board because it was in relation to-- the ESA95 issue that did emerge was in relation to Scottish Government rather than the board. This project was always going to be on the balance sheet of the board. So I-- yeah, I'm not sure about the issues in relation to Scottish Government, so probably best to pick up with them.

Q But that was your understanding, that it had to meet the requirements of that----

A Yes.

Q -- for it to qualify for----

A Yes.

Q -- for revenue based funding. Thank you. If I could ask you to look still within bundle 3, volume 2, but put to page 399, please, which is a letter from Scottish Futures Trust to Jackie Sansbury dated 1 June 2011. So bundle 3, volume 2, page 399. Do you see that?

A I can see-- I just-- I can see it, yes. Just----

BQ So it begins:

"Further to the letter NHS Lothian received on 22nd March 2011 from the Scottish Government with regard to the funding conditions for delivering projects through the non-profit distributing model, we are following up on certain specific matters as they relate to the funding of the combined NPD project…"

Do you see that?

A Yes.

Q If we look on to page 400, first full paragraph, it states:

"As part of an updated Key Stage Review process, that will be applied uniformly on NPD projects in the health sector, we propose to engage in the ongoing design process of the Project to provide an independent review and challenge to the overall size of the facility and its specification on behalf of the ultimate funder of the project. To do this we are likely to employ an external adviser. This should provide independent validation of some of the key high level metrics of the proposed design and a valuable external benchmark on value for money."

Do you see that?

A Yes.

Q Was that your understanding of what Scottish Futures Trust were doing? They were effectively going to be providing an independent check on the project.

A Yes, because they had a limited budget for the NPD pipeline, so they had to make an assessment about how they utilised that budget.

Q Okay. Do you think, having been involved in the project from the outset – as you said, it sounded like a very collaborative way of working – that Scottish Futures Trust could also fulfil that independent external governance role?

A That's a difficult question. I think-- I think they have to-- They're professionals, and so I think, for all of us, where you've got a professional responsibility, they would make that

assessment based on their professional responsibility. I think that would be the guiding principle for SFT, but as I said earlier, we had to work together, and that's a challenge in all these roles is-- working together but then separating yourself and putting your professional hat on and making a professional judgment, so it would be the same for them.

MR MACGREGOR: Thank you. Lord Brodie, I'm conscious that that's just after one o'clock. I don't have much longer to go, but I don't think I'll just be five to ten minutes, so I'm in your Lordship's hands in terms of whether we continue or break.

THE CHAIR: I'm quite happy to hand over responsibility to you in that respect If you feel that we can finish in a reasonable time. Mrs Goldsmith might very well like to get away beforehand----

THE WITNESS: Yes.

THE CHAIR: -- rather than later, but----

MR MACGREGOR: Obliged, my Lord.

THE CHAIR: -- as I say, it really depends on how long you're going to take. So I'm quite content that we sit on, I'm in your hands.

MR MACGREGOR: Obliged, my lord. (To the witness) If I can ask you

to look on still within bundle 3, volume 2, but to page 405, please. At the bottom there's a section headed "Capacity and Governance". Do you see that? Page 405 at the bottom----

A Yes.

Q It states:

"As is set out in the SGHD letter, we believe that the skills and experience of the Project Director and the wider project team are of vital importance in delivering the Project successfully. A key part of this is experience in delivering revenue funded projects, as this brings significant additional demands on the project team over and above those required on capitally funded construction projects. These include developing a services specification and payment mechanism, attracting and retaining the engagement of equity investors in a project during the bid period and managing the demands of senior debt funders. Given the size of the Project, it is critical that this experience comes from the client team, as the project team have to be able to manage the advisory input to the project, both in terms of cost and strategic input – both

of which become very difficult if the advisers themselves are the sole source of experience on key parts of the project."

Do you see that?

A Yes.

Q Did NHS Lothian have that experience internally?

A So we had-- we did have some revenue funded experience in the team. Our director of capital projects and planning had experience of delivering Midlothian Community Hospital, which was a revenue funded project, and we sourced additional PPP experience from our advisors. So, in the round, the board did look at the skills and experience of the team and concluded that we, after a piece of work-- you know, that we did actually have the right level. We did in fact carve out time from both the director of capital, who had a day job, and also my deputy director of finance to provide additional capacity into the project, recognising the challenges of the project. So, yes, I do believe that we did have the right skills and experience.

Q Because if we've seen it in the paragraph just above "Supplementary Agreement 6", it says:

"Overall we do not believe that the current project team has sufficient experience of PPP project delivery and would look to agree with you a change to this resource at the earliest opportunity and certainly well before the commencement of procurement."

Did that change take place?

A I think at the time the letter came-- When did the letter-- Sorry, when did the letter come?

Q So the letter's 1 June 2011.

A Right. So there was a lot of discussion about whether we had the right skills and experience, and the board actually commissioned its own review as to whether we had the right level of skills and experience. Ultimately, the key stage reviews allowed us to move forward so I don't think we ever got something that said, you know, a tick in the box, you-- But we certainly addressed the challenges by enhancing the amount of capacity that was available to the team, and we believe by appointing the advisors who had considerable experience of PPP. So I think we addressed the points that SFT made in their letter.

Q If we could look on then to page 407, please, still within the same letter. Do you see a bold heading "Role of Scottish Future

Trust"? Page 407, bold heading, "Role of Scottish Future Trust"----

A Yeah.

Q -- which states:

"SFT has roles at each of the NPD programme level, the portfolio level and the project level as set out in the document accompanying the letter from government and as described in this letter. In the sections below, we have set out additional comments on some of these roles."

Do you see that?

A Yes.

Q So is this really SFT setting out just exactly what they will and will not be doing on the project?

A That's right, yes.

Q So, again, I won't read it all out, but in terms of the headings, we see that they set out what they'll be doing in terms of assurance and approvals and then in terms of project governance. We see in terms of project governance in particular that they state, over the page onto page 408:

"We have proposed that SFT will support the development of the Project through attendance at both the Project Board and Working Group meetings."

Do you see that?

A Yeah-- Yes.

Q Did that take place? Did----

A That did.

Q -- Scottish Futures Trust did attend the project board, for example?

A They did, yes, and the working group meetings as well.

Q Final document I'd like to take you to, please, Mrs Goldsmith, is in bundle 3, volume 2, at page 434. So bundle three, volume 2, at page 434. You see:

"DRAFT

NHS LOTHIAN

Note of a Meeting to Discuss the Royal Hospital for Sick Children/DCN… Project between NHS Lothian, Scottish Government Health Department… and Scottish Futures Trust… held at 3.00pm on 12 July 2011…"

Do you see that?

A Yes.

Q We see, in terms of the introduction:

"1.1 James Barbour commented the purpose of the meeting was to mutually agree the respective accountabilities and responsibilities for the

RHSC/DCN project…"

Do you see that?

A Yes.

Q So again, obviously discussion to try to agree just exactly what the role of various parties----

A Yes.

Q -- was going to be on the project. If we could look on to page 435, please, paragraph 2.4:

"Barry White stressed accountability for the delivering of the RHSC/DCN project remained with NHS Lothian and its Accountable Officer and that accountability for the wider NPD program rested with the SFT."

Would you agree with that statement?

A Yes.

Q The minute continues:

"Therefore, SFT would generally act in a supporting/advisory capacity to individual projects rather than in a requiring capacity."

Do you see that?

A Yes.

Q Again, was that what happened in the project?

A I think there were periods of potential conflict when we, you know, had to agree a different-- You know, some of the details of the application of the NPD in the project were, because SFT were the guardians of the NPD model then we required their agreement – not permission but agreement – that we could change something. You know, there was issues about the timetable. So there was occasions where there was a bit of tension, but we worked our way through those. In essence, to come back to the point, yes, we would agree that the board was actually accountable for the delivery of the project.

Q Did someone from Scottish Futures Trust come on secondment to NHS Lothian at the start?

for quite a short period of time, as I recall.

Q How successful was that secondment?

A I think it was difficult because we had a project team in place, and I think the individual's role and responsibilities was not crystal clear which always makes it difficult for both the individual and the team. So we worked together for a short period of time, and then agreed that actually it would be better if, you know, we relied on the team rather than having the team enhanced with somebody from SFT.

Q I think we see that fairly recorded on page 436 at paragraph 2.9 of the minute, which states:

> "Barry White stated that the secondment arrangement proposed by SFT had not got off to the best start and advised the offer of support remained on the table, but that SFT can redeploy the seconded resource elsewhere to other projects if not required by NHS Lothian."

Do you see that?

A Yes.

Q Is that a fair assessment of what happened?

A It is, yes.

Q I think the final thing I'd just like to ask you about in a general sense is about relevant technical guidance. So the Inquiry has looked at a lot of technical guidance over the course of the past week, so particularly the Scottish Health Technical Memorandum, so Scottish Health Technical Memorandum 00, Scottish Health Technical Memorandum 03-01 which deals with specific ventilation issues. You mentioned, obviously, that you sat on the board of NHS Lothian – that type of technical guidance, was that discussed at board level or was that really viewed as being at a level below board level?

A So it would be deemed to be at a board-- a level below the board, the board wouldn't discuss the detail of technical guidance, although it would get assurance from the fact that we had technical advisers whose responsibility was to be clear about the applicability of technical standards.

Q Okay. So, again, just so I'm clear in my own mind, sitting on the board, you wouldn't read through technical guidance itself, but you would be expecting that there was someone within the organisation who would have that role and report back to the board?

A Yes, absolutely.

MR MACGREGOR: Thank you, Mrs Goldsmith. I don't have any further questions. Lord Brodie may have some questions, or equally there may be applications from core participants.

A Okay, thank you.

THE CHAIR: Mrs Goldsmith, in an earlier stage when you were being asked about the involvement of Scottish Future Trust, you use the expression – in relation to a matter which they were advising the board-- as "clean to the market". Now, I think I understand what you mean by that----

A Yes.

Q -- but if you just confirm

or refute what I think you mean by that.

A So one of the distinct possibilities was that the-- one of the investors in Consort who run the Royal Infirmary would actually bid for the project. So it was important that any advantage that they may have was mitigated, and that was why SA6 and SA7 needed to secure the works in advance of the project being taken to the market – but that, in essence was subtext. Does that make sense?

THE CHAIR: It does. Now, does anything arise from Mrs Goldsmith's evidence? I'll take that as a "no". Thank you very much, Mrs Goldsmith, for your evidence. It's now at an end, and you're free to go. Thank you very much indeed.

THE WITNESS: Thank you very much.

(The witness withdrew)

THE CHAIR: Well, it's quarter-past one, so we'll sit again at quarter-past two.

13:15

(Luncheon adjournment)