

**Scottish Hospitals Inquiry**  
**Witness Statement of**  
**Iain Graham**  
**27 February 2023**

**Introduction**

1. My name is Iain Fraser Graham.
2. I work for Lothian Health Board (“NHS Lothian”) as the Director of Capital Planning and Projects.
3. I previously provided a written statement to the Scottish Hospitals Inquiry (“the Inquiry”) for the purposes of the May 2022 Hearing relating to the Royal Hospital for Children and Young People (“RHCYP”) and Department of Clinical Neurosciences (“DCN”) in Edinburgh (the “Project”). That statement outlines my roles with NHS Lothian, qualifications, and work history.
4. The Inquiry has asked me to provide another written statement, this time relating to the procurement stages which took place in the period 2012 to 2015 of the Project. This statement seeks to provide that information to the best of my recollection. It has been provided in response to specific questions I was asked at an interview by the Scottish Hospitals Inquiry on 16 November 2022.

**Background**

5. Given the scale and parameters of the Project, the procurement process chosen for the NPD Project was competitive dialogue. This involved the following stages:
  - a. Issue of Notice in the Official Journal of the European Union;
  - b. Invitation to Participate in Dialogue (“ITPD”);
  - c. Competitive Dialogue cycles over multiple weeks (including submissions, meetings and feedback);
  - d. Close of Dialogue;
  - e. Draft final tenders and feedback;

- f. Final tender submissions and evaluation;
  - g. Preferred Bidder Appointment;
  - h. Design completion and commercial completion of the Project Agreement including funding arrangements; and
  - i. Financial Close.
6. In parallel to the above there were the relevant, NHS Lothian's internal governance process, Scottish Futures Trust Key Stage Reviews and Business Case approval at Scottish Government level.

### **Tender Evaluation**

7. As part of the Non-Profit Distributing ("NPD") programme, it was a requirement of Scottish Futures Trust ("SFT") to evaluate the most economically advantageous tender on a 60/40 (price/quality) split. For capital projects, NHS Lothian allocated scoring was the opposite of this i.e. 60 on quality and 40 on price in line with Scottish Government's health department guidance. As 60/40 price/quality was a condition of the NPD funding, NHS Lothian were required to work within the percentage allocated to the quality score.
8. SFT provided an outline of the approach to evaluation for the NPD programme. There was also the experience of previous dialogue processes informed by Mott McDonald, Ernst Young and Macroberts (NHS Lothian's external advisers). This all fed into an evaluation template which was broken down into three sections: strategic management, design and construction, and facilities management.
9. There was a requirement within the SFT guidance to make sure we had covered all the technical and other areas all fully detailed in Appendix A (ii) of the ITPD (**A34225364- Invitation to Participate in Dialogue Vol 3 - August 2013**)<sup>1</sup>. The SFT guidance was being developed alongside the Project. NHS Lothian were, on the whole, one step ahead of the guidance coming through from SFT because the programme had just started and SFT were in the

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<sup>1</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 22, p773

process of developing and issuing guidance.

10. In order to make the best of those quality scores, namely to differentiate between bidders and ensure that we got a suitable emphasis across the whole gamut of responses, we put forward minimum pass/fail thresholds on a number of areas. Those pass/fails were effectively on compliance and delivery of the basic Board Construction Requirements (“BCRs”). The scoring element was intended to be identifiable as the extra quality and design elements that each bidder would be bringing above technical compliances.
11. It was for NHS Lothian to determine the elements that would make up the overall quality score including the associated weightings that were given to the scored elements of the tendering process. Workshops were held to discuss the allocation of the scores within the scored elements Quality Evaluation Criteria (the ‘Workshops’).
12. I was involved in the Workshops. They were internal with a core team and such other management and service leads as required including NHS Lothian’s legal, technical and finance advisers. NHS Lothian has previously provided the Inquiry with further information on the Workshops in the Evaluation Criteria timeline (including background documentation) submitted to Inquiry on 21 October 2022. Essentially, the Workshops were held to finalise the quality evaluation matrix and each of elements were split up into the relevant workstreams composing of Design and Construction, Facilities Management and Strategic Management. Each workstream populated the relevant section of the quality evaluation matrix including identifying which criteria would be assessed on a pass/fail basis. There were further Workshops to agree the details of the allocated scoring for each scored question to ensure that it made up to the 40 per cent quality score.
13. The Evaluation Criteria Timeline (**A34696936- Draft ITPD Evaluation Criteria - 5 April 2012**)<sup>2</sup> details the process of finalising the quality evaluation criteria including further Workshops, discussion at the Project Steering Board and meetings with SFT in relation to the Pre-ITPD Key Stage Review (“KSR”) (**A33336325- Pre-Invitation to Participate in Dialogue Key Stage Review -**

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<sup>2</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 9, p578

**7 March 2013**)<sup>3</sup>. The finalised evaluation criteria were approved by SFT as part of the Pre-ITPD KSR on 7 March 2013.

14. I have been asked if mechanical and electrical (“M&E”) engineering was given a lower weighting than other elements. The answer is no, as all criteria in the BCRs required to be passed or the bid would be deemed non compliant in the procurement context. The scoring element was the differentiating factor between the bidders. Where the design approach by the bidders was more subjective, perhaps with less technical standards such as SHTMs behind the subject, it was less appropriate to solely having pass/fail criteria. Having a scoring element, however, did also establish a pass /fail threshold within scoring (i.e. too low a score would mean a fail). For example, a well-designed and maintained landscape as part of a healthcare facility is widely acknowledged to have a therapeutic value – especially for children and families. To enable bidders that did not just propose hard landscaping to reduce cost and maintenance, a score was applied to that element. M&E installations, however, have an extensive underpinning of technical standards and compliance with those was a clear pass/fail threshold which resulted in a lower percentage score than, say, landscaping.

### **Reference Design/ Environmental Matrix**

15. The Project Steering Board made the decision to adopt a reference design approach which was reported to the Finance and Resources Committee. This included an environmental matrix being issued to bidders as part of the ITPD and Invitation to Submit Final Tender (“ISFT”) (**A34916593- Invitation to Submit Final Tender (Volume 1, revision A) - 16 December 2013**)<sup>4</sup>. The amount of detail within the reference design was driven through the Project’s technical group which Brian Currie (Project Director) and Mott MacDonald led. The environmental matrix (**A34691184- Reference Design Envisaged Solution – RHSC/DCN RDS Environmental Matrix – 19 September 2012**)<sup>5</sup> was included in the ITPD (**A34225364- Invitation to Participate in Dialogue Vol 3 - August 2013**)<sup>6</sup> but it was only included as disclosable data. It was not a warranted document.

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<sup>3</sup> Bundle 9 - Key Stage Reviews, Item 3, p100

<sup>4</sup> Bundle 3 - Invitation to Submit Final Tender ("ISFT") Documents, Item 1, p3

<sup>5</sup> Bundle 4 - Environmental Matrix, Item 7, p131

<sup>6</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, item 22, p773

16. There was a working group for each workstream which reported to the Programme Steering Board. The Programme Steering Board provided the governance and overview of the Project and approved the ITPD documents **(A34225364- Invitation to Participate in Dialogue Vol 3 - August 2013)**<sup>7</sup> **(A34697102- Invitation to Participate in Dialogue Vol 1, Revision B)**<sup>8</sup> based on the recommendation from the project working groups. The ITPD was drafted by Mott MacDonald.
17. I have been asked to comment on whether the reference design would be replaced by the bidder's design and full set of room data sheets. It was the intention that the reference design would have fulfilled its purpose by Financial Close and preferred bidder's design would form part of the Project Agreement. The key point is that everything relating to the Operational Functionality requirement and site constraints issues covered in the Reference Design, would be expected to be reflected by the bidders in their proposals. This was communicated to prospective bidders through the competitive dialogue process following the issue of the Pre-Qualification Questionnaire ("PQQ") statement and the ITPD. It was also discussed at the bidder's day presentation which was held after the PQQ was issued. It was highlighted from the very outset within the ITPD documentation **(A34225364- Invitation to Participate in Dialogue Vol 3 - August 2013)**<sup>9</sup> **(A34697102- Invitation to Participate in Dialogue Vol 1, Revision B)**<sup>10</sup> and throughout competitive dialogue meetings.
18. NHS Lothian explained to bidders repeatedly during competitive dialogue meetings to ensure that all the bidders understood the connection between the NPD project agreement and their technical proposals and how it all worked together as one document. SFT had decided that all documents within the Project Agreement (including the Board Construction Requirements and Contractors Proposals, i.e. the technical documents) were of equal weight and with no hierarchy of documentation.
19. In terms of the environmental matrix, it was the intention that it would be

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<sup>7</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 22, p773

<sup>8</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 23, p942

<sup>9</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 22, p773

<sup>10</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 23, p942

redundant at Financial Close as the bidder's proposals would contain all necessary information. This was extensively communicated to all Bidders within the ITPD (**A34225364- Invitation to Participate in Dialogue Vol 3 - August 2013**)<sup>11</sup> (**A34697102- Invitation to Participate in Dialogue Vol 1, Revision B**)<sup>12</sup> and at competitive dialogue meetings. It was one of the technical documents that formed part of the pack that went out with the ITPD.

### **Evaluation of final tenders**

20. I was not part of the team evaluating the Mechanical & Engineering section and was not aware that Bidder C provided a marked up Environmental Matrix (**A41323397- 11 - Bidder C (Mosaic) final tender C8 Appendix - Environmental matrix**)<sup>13</sup>. I was involved in the strategic management evaluation and ultimately the review of commercial and cost proposals.

### **Design Development Assurance**

21. It was my understanding that in relation to assurance in respect of the design development, Scottish Government oversight would come from the pre-preferred bidder KSR (**A33337163- Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014**)<sup>14</sup> the pre-Financial Close KSR (**A33336933- Pre-Financial Close Key Stage Review - 11 February 2015**)<sup>15</sup> and any information included in the Final Business Case. I explain what a KSR is later in this statement. Such assurance would be based on NHS Lothian receiving the relevant assurance from our technical advisers. Additionally, Scottish Government also attended a number of Programme Steering Board meetings (and received all minutes and papers for all the Programme Steering Board meetings) or were copied in on other project meetings and could raise questions on the back of them.

22. At this time, Mike Baxter attended the Project Steering Board meetings in his capacity as Deputy Director, Capital and Facilities of the Scottish Government's Health and Social Care Directorate then it was Alan Morrison

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<sup>11</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 22, p773

<sup>12</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 23, p942

<sup>13</sup> Bundle 7 – Key Parts of Mosaic's tender and marked up Environmental Matrix, Item 2, p.52

<sup>14</sup> Bundle 7 - Key Parts of Mosaic's tender and marked up Environmental Matrix, Item 1, p3

<sup>15</sup> Bundle 9 - Key Stage Reviews, Item 1, p3

when he took over in early 2015.

### **National Design Assessment Process (“NDAP”)**

23. NDAP stands for National Design Assessment Process.
24. NDAP was not required for this Project because of transitional arrangements from capital to revenue funding via the NPD Programme. There was no equivalent design process used as, by this stage, we were in terms of timescale and delivery vehicle past the NDAP stage and what we applied was the Achieving Excellence Design Evaluation Toolkit (“AEDET”) assessment. This was confirmed by SG in the progression of the Business Cases.
25. The focus of the AEDET assessment is architectural. Although it did cover all the technical areas, it was principally an architectural review.
26. It is a good practice for the use of Room Data Sheets or equivalent to be fully utilised during the preparation of the brief and throughout the design commissioning process. We wanted the preferred bidder to supply one hundred per cent of the room data sheets to be able to satisfy that general requirement. It informs part of the NDAP checklist.
27. I cannot recall whether the design evaluation was done in advance of the Full Business Case.

### **Key Stage Reviews**

28. As part of the NPD programme, NHS Lothian were required to carry out an assurance process for SFT through a process involving reviews at key stages in the procurement exercise. As mentioned previously in this statement, these were called the KSRs. SFT were developing the KSR process for the acute hospital NPD programme in parallel with the Project’s timeline so often KSR checklists were provided only shortly in advance of the actual completion of the KSR.
29. In relation to KSRs, NHS Lothian provided information to SFT, mainly Donna Stevenson. From recollection, we had weekly meetings or certainly very frequent meetings with Donna with all the Project and workstream leads:

technical, financial, legal and commercial which also involved NHS Lothian's external advisors from time to time. Donna would go through a list of questions or any issues, some of which were related to the specific KSR, some of which were other points of interest from an SFT perspective. We would provide Donna with any information she requested. After any meeting we would receive an email from Donna laying out exactly what information she thought we should provide to SFT. NHS Lothian would respond with the requested information or obtained assurances from our advisers. When it came to the time to complete the KSR, we (SFT and NHS Lothian) would go through the information together. I cannot recall if we went through the documentation line by line but we certainly went through the documents and we were then presented with the final version of the relevant stage KSR and NHS Lothian identified actions before the KSR was signed off by SFT.

30. I have been asked if SFT had access to the online project portal and/or copied into every email. I presume SFT did not have access to the project portal and it would not be routinely part of the process to include a member of SFT such as Donna in communications given the very large volume of communications a project like this generates on a daily basis. It was the case that SFT would receive any emails, advice or documents requested in their role as a critical friend as well as NPD programme managers.
31. SFT (Peter Reekie and Donna Stevenson) also attended the Programme Steering Board and had sight of papers and project updates. Peter and Donna would generally pick up any variance between KSR requirements and Programme Steering Board discussions but those would be communicated generally by emails. There also would be occasions where references were made by Donna to other colleagues within SFT. I cannot be specific on the timings but if there were issues which Peter or Donna identified of a technical nature, someone else from SFT would review them and provide feedback to the project team.
32. I am asked to refer to the Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014 (**A33337163- Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014**)<sup>16</sup>, section 2, question 3. The procuring authority, NHS Lothian, and its advisors were

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<sup>16</sup> Bundle 7 - Key Parts of Mosaic's tender and marked up Environmental Matrix, Item 1, p3

satisfied that any further development of technical information required from the preferred bidder appointment to Financial Close was achievable. The Pre-Preferred Bidder Appointment KSR dated 28 February 2014 details:

- a. *“NHSL then confirm that the board has confirmed that all bidders have provided detailed programmes to cover the activities for the period until financial close 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 preferred bidder appointment to financial close is achievable within the current timetable.”*

33. The above statement is Donna Stevenson’s words interpreting NHS Lothian’s comments in response to that particular question within the KSR. The left-hand column within the KSR document sets out the standard question posed by SFT and then the response in the right-hand column (i.e. the wording in the paragraph above) is Donna reporting to SFT’s second approver what the Health Board’s position was. I am not saying it is not accurate, but it is important to give context. NHS Lothian were satisfied at that point in time, based on the bidder’s information provided.

34. Regarding the statement above drafted by SFT, I consider that this was a fair assessment given the terms of the preferred bidder letter and the conditions that are outlined. The preferred bidder letter was issued by NHS Lothian and then negotiated with the special purpose vehicle, Integrated Health Solutions Limited (“IHSL”) and the pre-preferred bidder KSR was negotiated with SFT a month prior.

35. I am asked to refer to the Preferred Bidder appointment letter (the “PB appointment letter”) (**A36382455- Preferred bidder letter from NHSL to IHSL - 5 March 2014**)<sup>17</sup>, dated 5 March 2014, which was intended to capture and ensure that it recorded contractually any outstanding items. It was a fairly intense period of negotiations given all the workstreams that were ongoing, such as legal and commercial including the funding, design development and producing the documentation needed for Financial Close.

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<sup>17</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), Item 13, p87

36. The stage we were at with the issue of the PB appointment letter **(A36382455- Preferred bidder letter from NHSL to IHSL - 5 March 2014)**<sup>18</sup> was, as recorded in the pre-Preferred Bidder KSR **(A33337163- Pre-Preferred Bidder Appointment Key Stage Review dated 28 February 2014)**<sup>19</sup>, that NHS Lothian and its advisers were satisfied that any further development of technical information from PB appointment to Financial Close was achievable within the current project timetable. What we were doing within the preferred bidder letter **(A36382455- Preferred bidder letter from NHSL to IHSL - 5 March 2014)**<sup>20</sup> was capturing that; in order to ensure that IHSL and their contractor clearly understood the requirement. We then entered active negotiations to close down all the items captured in the PB appointment letter **(A36382455- Preferred bidder letter from NHSL to IHSL - 5 March 2014)**<sup>21</sup> and outstanding issues, or where they could not be resolved completely, record in the PA documentation, how such matters would be addressed. This was the pragmatic approach to deliver Financial Close and move the Project from procurement into construction, recognising that there were multiple compromises and risk mitigations in place for Financial Close as a result of myriad of commercial, technical and governance pressures to make progress. The reduction in the number of Room Data Sheets available for inclusion in the Project Agreement (as further detailed below) was one of the many compromises and the mitigation was the provision of key and generic rooms. The completion of the pre-Financial Close KSR **(A33336933- Pre- Financial Close Key Stage Review - 11 February 2015)**<sup>22</sup>, with SFT and SG agreement, reflected the position and knowledge at the time.

### **Risk Registers**

37. I am asked to refer to a risk register dated 28 January 2015 **(A36308801- Design Risks to the Board to Financial Close)**<sup>23</sup>. The first entry is mechanical and electrical engineering (“M&E”) ventilation which is scored as a high-risk impact. I do not know the context of this document and it may be

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<sup>18</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), Item 13, p87

<sup>19</sup> Bundle 7 - Key Parts of Mosaic's tender and marked up Environmental Matrix, Item 1, p3

<sup>20</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), Item 13, p87

<sup>21</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), Item 13, p87

<sup>22</sup> Bundle 9 - Key Stage Reviews, Item 1, p3

<sup>23</sup> Bundle 8 – Bundle 8 – Scoring & Correspondence Regarding issues, item 21, p.84

a Mott MacDonald document. I cannot recall the document but I can recall similar documents at Programme Steering Boards. However, I do not know the individual context of this one.

38. I am asked to refer to 'Environmental Matrix Comments' dated 13 October 2014 (**A39975805- Environmental Matrix Comments - 13 October 2014 (attachment to Email from Maureen Brown to Colin Macrae and others - 28 October 2014)**)<sup>24</sup>. I assume this document relates to the technical workstream which I would not have been directly involved with so cannot comment further.

39. I have been asked if I would consider it a risk if IHSL were to have a different interpretation of SHTM 03-01 compliance. Yes, I would consider this to be a risk and I would also expect such a risk to be included in the risk registers if it had been flagged in a derogations schedule. I would expect the leader of the project workstream to have flagged any potential non-compliance or indeed interpretations issue because it is not unusual to have different interpretations of designs by contractors and designers who have worked with different health boards or trusts in the rest of the UK. As previously stated, it is not unusual to have different interpretations but any non-compliance matters must be flagged by the Bidder to the Health Board, in line with the obligations set out in the ITPD (**A34225364- Invitation to Participate in Dialogue Vol 3 - August 2013**)<sup>25</sup> **A34697102- Invitation to Participate in Dialogue Vol 1, Revision B**)<sup>26</sup> / ISFT (**A34916593- Invitation to Submit Final Tender (Volume 1, revision A) - 16 December 2013**)<sup>27</sup>

40. In terms of inclusion of items on risk registers, the onus depends on the purpose of the risk register. NHS Lothian had different levels of risk registers and included risk registers in the Business Case or Board papers to identify project risks. I do not doubt that the technical advisers and other advisers had their own internal risk registers flagging areas which might be at risk or needing more work. I am sure IHSL had risk registers for all the parties that were involved in the Project. For me, the purpose of the risk register is to identify areas of attention to make sure that the health board are identifying

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<sup>24</sup> Bundle 4 - Environmental Matrix, Item 15, p275

<sup>25</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 22, p773

<sup>26</sup> Bundle 2 - Reference Design and Invitation to Participate in Dialogue (ITPD) Documents, Item 23, p942

<sup>27</sup> Bundle 3 - Invitation to Submit Final Tender ("ISFT") Documents, Item 1, p3

either solutions or mitigation measures; or costs and the allocation of such.

41. I am asked to refer to a document titled 'Design Risks to the Board to Financial Close', (**A36308801- Design Risks to the Board to Financial Close**)<sup>28</sup> which is a Mott MacDonald risk register. It looks like a working document. In terms of timing, Financial Close was the middle of the following month. I do not recognise this document. That is not to say that I would not have seen it but I do not recall it.
42. I am asked to refer to the document 'Technical Risks to the Board at Financial Close' (**A36308810- Technical Risks to the Board at Financial Close - 31 January 2015**)<sup>29</sup> where it says IHSL pushed very hard to achieve maximum information during preferred bidder stage. The mitigation should read 'IHSL being pushed very hard to achieve maximum information during preferred bidder stage'. It was IHSL that were being pushed very hard by NHS Lothian.

### **Ventilation**

43. I am asked about an issue in relation to opening windows which was emerging in early 2015 and referred to an email trail dated 14 January 2015. (**A35614504- Email from David Stille to Janette Richards - 13 to 14 January 2015**)<sup>30</sup> I was not copied into that email. Janice MacKenzie may be better placed to explain the detail of this further.
44. I am asked to refer to an email dated 13 November 2014. (**A35614364- Email - G. Greer to Brian Currie - Single Room Ventilation (with attachment) 13 November 2014**)<sup>31</sup> I was not copied into that email. Brian Currie is better placed to explain the detail of this further.

### **Room Data Sheets**

45. I am asked to refer to the Programme Steering Board meeting of 22 August 2014 (**A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014**)<sup>32</sup>, in particular the paragraph titled "Production of

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<sup>28</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), Item 11, p79

<sup>29</sup> Bundle 10 – Miscellaneous Volume 1 (of 2), Item 12, p84

<sup>30</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 13, p58

<sup>31</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 17i, p69

<sup>32</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 2, p11

Room Data Sheets". I am able to offer some comment on why a decision was taken to deviate from what was stated in the ITPD and ISFT in order to allow the preferred bidder to refrain from producing a full set of room data sheets. I cannot recall the specific detail of it other than by that point in the process we were looking to make progress and achieve Financial Close with the preferred bidder, IHSL. Their building contractor, Multiplex, was strongly resisting completing what we had required, namely 100% room data sheets, because it required too much time and cost to them before reaching Financial Close.

46. We wanted complete room data sheets to ensure that we could review everything before Financial Close and work started on site. The reason IHSL did not want to complete all the room data sheets was that it was too much cost and time to be taken before they had received any payment. From recollection and the note from the Programme Steering Board, NHS Lothian got comfortable that the prioritisation element would cover the key and generic rooms. Therefore, rather than every individual room, room datasheets would be produced for selected rooms to represent all the spread of rooms in a department or section of the building except for the support spaces.

### **Period up to Financial Close**

47. At a strategic level what we were encountering was a push to get to Financial Close as all parties wanted to move the Project forward. There was a particular push coming from SFT in terms of NPD programming and IHSL in terms of the financial position and the Health Board seeking to ensure that all the design development that was supposed to happen had been completed. However, as things drifted on, because at that point we were heading to Financial Close, we were having to push things into the Project Agreement. Elements that were outstanding from competitive dialogue moved into preferred bidder development stage, and then into Financial Close documentation. As detailed earlier in this statement, there was the delay in receiving Room Data Sheets from IHSL which was then moved to be included in the Project Agreement as reviewable design data.

48. I have referenced the timeframes and pressures that came from SFT and from IHSL. We had pressure from the Health Board too. We wanted to move this forward as a construction project because we needed a new hospital but the preferred bidder stage had taken longer than expected. Furthermore, the

shortened timeframe for procurement presented a risk that there was not enough time to conduct a full review of project documentation at that time and remained a constant challenge all the way through the Project.

49. In the period from preferred bidder to Financial Close, the list of reviewable design data became more extensive than had been expected and was acknowledged as a risk to the Project. This relates to my point that where we had an expectation of design development and information supporting that coming at the earlier stages in the procurement process e.g. completed either in the competitive dialogue stage or the preferred bidder stage. The final option was to capture the design information in the reviewable design data and follow the review process set out in the Project Agreement.

### **Payment Mechanism**

50. I am asked to refer to Project Steering Board Action Notes 20 June 2014 (**A33328548- RHSC and DCN Project Steering Board Action Notes - 20 June 2014**)<sup>33</sup>, in particular the “Executive Summary” at the bottom of page 148 and the reference to payment mechanisms with Macquarie. The NPD standard form project agreement had a payment mechanism in it which was different to the previous standard form Private Finance Initiative or Public Private Partnership contracts. NHS Lothian had further enhanced it to reflect experiences that the Health Board had with another early PFI project. Macquarie who were equity of ProjectCo, Bouygues who were facilities management (“FM”) and the lender’s technical advisers who were Currie & Brown were concerned that in the event of poor performance by the FM, the FM contract could be terminated quite rapidly with the ratcheting up of deductions and performance points. They classed it as a hair trigger which meant that it did not take much for them to go wrong.

51. We had a position which had been agreed at the tendering stage in terms of the Project Agreement including the payment mechanism. We had anticipated that the bidder, bearing in mind that this is now the post-preferred bidder appointment stage, would try to water that down by saying that the funders will not like it because the funders do not want to be in a position of carrying the risk for the FM failing or the special purpose vehicle failing and then the

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<sup>33</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 7, p31

lenders have to step in. However, we demonstrated that in the interests of the public sector or more particularly, healthcare providers, we needed the FM contractor to perform in those key areas such as maintenance of the ventilation system. We spent a lot of time with IHSL's Project team including Macquarie and Bouygues, going through it and we then had to take it to SFT (as ultimate owners of the standard form NPD Project Agreement) to get them to stand by the position. IHSL would not go out to funders, which was a post-tender requirement on IHSL, until Macquarie, as part of IHSL, were content that it was acceptable. We also spent a lot of time thereafter educating the European Investment Bank and M&G Investments, the two funders, on the same issue.

52. At this point, we were having to create programme time to discuss the payment mechanism which should not have been an area that was part of the discussion with the preferred bidder because it had already been tendered and agreed. Given attendance at the Programme Steering Board included Peter Reekie, the now Chief Executive of SFT, he was very much aware of the situation and supporting the Programme Steering Board's position.
53. The outcome of this was that NHS Lothian, more or less, achieved a payment mechanism that we were satisfied with. The payment mechanism does not apply during construction, only during the operational phase after Practical Completion.

### **Special Programme Steering Board Meetings**

54. I am asked to refer to the minutes of a special Programme Steering Board meeting (**A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014**)<sup>34</sup> convened on 22 August 2014. This meeting along with other special Programme Steering Board/ commercial sub-group meetings were convened to raise NHS Lothian's significant concern about the delay in reaching Financial Close directly with senior members of IHSL's project team. Members of the Programme Steering Board attended along with representatives from IHSL, Multiplex, Macquarie Capital and other senior figures from NHS Lothian, SFT and Scottish Government including George Walker (NHS Lothian Non-Executive Director), Peter Reekie and Mike

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<sup>34</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 2, p11

Baxter.

55. The first meeting of the special Programme Steering Board held on 22 August 2014 (**A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014**)<sup>35</sup> focused on the project programme and gave IHSL an opportunity to present their programme and deliverables to reach Financial Close.
56. At the meeting, the NHS Lothian project team presented a revised programme with slippage of eight weeks to push IHSL to table their own programme.
57. I was at this meeting and considered the issues discussed to be very serious because we were not making progress. The programme at this point is owned by IHSL. However, until this meeting, they had not produced a programme to present to us to confirm what their timescales were to reach Financial Close. It appeared to NHS Lothian there had been a disagreement between Multiplex Brookfield and Macquarie (building contractor and the equity funder) - which we thought was serious because we were not getting production of the programme to completion and the relationship within IHSL seemed tense and inconsistent. That was of concern, not just to NHS Lothian but to SFT (as the NPD programme managers) and Mike Baxter of the Scottish Government in terms of the overall position.
58. I would maybe sum up the actions that were put in place to address these concerns as pressure. We were applying the public sector pressure of having SFT, Scottish Government, and ourselves all saying to IHSL to deal with the issue. I cannot recall whether there were any specific measures in terms of cutting time out on any workstream but I think there would have been a lot of pressure from IHSL, and Multiplex in particular, to cut out design development time or other areas to just get the programme to Financial Close.
59. The notes from the Special Project Steering Board (**A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014**)<sup>36</sup> at page 135 demonstrate the tension in that meeting. Our paranoia and lack of trust, as they saw it, meant that it was difficult for us to maintain a position of needing everything by Financial Close. The position we ended up

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<sup>35</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 2, p11

<sup>36</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 2, p11

with was what I referred to earlier, i.e. more and more was being pushed by IHSL from preferred bidder stage into design development reviewable design data post-Financial Close. That was an element of deviation from what we were looking for originally in the procurement process. It was recorded as a risk and that IHSL were being pushed as hard as possible to provide the outstanding documentation. The mitigation is the reviewable design data process. As I discussed earlier in my statement, there was pressure to get to Financial Close from all directions and the best way forward was to utilise an existing process (RDD) already in the Project Agreement to review design development post Financial Close. IHSL were contractually obliged to provide all the RDS for review before construction could start on site.

60. Applying pressure on IHSL was partially successful in addressing the concern in terms of getting to Financial Close. I think by pushing design development into the RDD process, it added pressure during the construction and development phase. This was pressure from IHSL/Multiplex, which was resisted as far as possible by NHS Lothian, in order to hold them to their bid obligations.
61. I think across the whole project delivery, there were many areas of compromise that felt uncomfortable as both public sector and private sector wanted to get the delivery of the hospital project progressing. Nothing, as far as we could tell at the time, was missed, just elements of the private sector deliverables were pushed into the later stages. Commercially that was more advantageous to the private sector, but the design risks lay with IHSL.
62. Mike Baxter was at the Special Project Steering Board meeting of 22<sup>nd</sup> August 2014 (**A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014**)<sup>37</sup> It was considered that his attendance along with previous dialogue was enough escalation to the Scottish Government and also SFT as they were involved in discussions. My recollection is that Peter Reekie and Mike Baxter brought joint public sector escalation and a focus on pushing IHSL to move things forward in terms of programming. The focus of this discussion was in terms of getting the programme to Financial Close agreed and the deliverables attached to it. So

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<sup>37</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 2, p11

from that point of view, Mike's attendance at that meeting was helpful. It also brought Scottish Government involvement and attention to the issues that were being faced by NHS Lothian.

63. The risks discussed in this Special Project Steering Board do not appear in the pre- Financial Close KSR. **(A33336933- Pre-Financial Close Key Stage Review - 11 February 2015)**<sup>38</sup> As I have mentioned earlier in my statement, my understanding is that the KSR would capture risks at a certain point in time. By the time of the pre- Financial Close KSR **(A33336933- Pre-Financial Close Key Stage Review - 11 February 2015)**<sup>39</sup>, there was resolution to the issues discussed in the special steering group in as much as we had a programme to Financial Close. From that point of view, it would not be reflected as an action outstanding or an issue to be addressed at the KSR.
64. The next meeting of the Project Steering Board sub-group **(A33044797- Steering Board Sub-group 31 October 2014)**<sup>40</sup> was held on 31 October 2014. John Ballantyne from Multiplex attended this meeting along with IHSL and Macquarie.
65. The minutes from the meeting state "PR asked JB if in his opinion that board had changed what it was asking for since invitation to tender. JB replied that there was a difference of opinion over the level of detail expected of project proposals but the open- ended requirement that the board had to be satisfied was difficult to achieve." **(A33044797- Steering Board Sub-group 31 October 2014)**<sup>41</sup> at page 179
66. The minutes **(A33044797- Steering Board Sub-group 31 October 2014)**<sup>42</sup> also indicate that there were tensions between NHS Lothian and IHSL at this point and George Walker, mentioned that he was losing confidence in IHSL.
67. I agree that relations were frosty and there were many frustrations. At this time, there was still a long list of actions to be completed, documents and information to be provided or reviewed to be included within Financial Close documents. There were still some points of principle to be agreed such as

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<sup>38</sup> Bundle 9 - Key Stage Reviews, Item 1, p3

<sup>39</sup> Bundle 9 - Key Stage Reviews, Item 1, p3

<sup>40</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 6, p27

<sup>41</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 6, p27

<sup>42</sup> Bundle 8 - Scoring & Correspondence Regarding Issues, Item 6, p27

ensuring that the funders and lenders were content with everything. The main focus was in terms of getting everything from Multiplex that was necessary to satisfy Operational Functionality. But IHSL felt that NHS Lothian were very difficult to satisfy.

68. I think the issues discussed and the frustrations with IHSL were serious enough to make the Scottish Government aware of them. I would not have said that wa12 October. Subsequent to that, there would have been communications with the Scottish Government and then the final letter came out with the approval nearer the revised Financial Close date of February 2015. That letter needed to go to IHSL and their funders (including technical and legal advisers) to demonstrate that we had that Business Case approval.

69. I understood this was the first time that KSRs was being done so at that point nothing was usual. Therefore, I cannot comment on whether it was usual for the pre-Financial Close KSR (**A33336933- Pre-Financial Close Key Stage Review - 11 February 2015**)<sup>43</sup> to be finalised before the Capital Investment Group's recommendation for approval of the Full Business Case. I think the other aspect of the pre-Financial Close KSR (**A33336933- Pre-Financial Close Key Stage Review - 11 February 2015**)<sup>44</sup>, was for SFT to satisfy themselves and the Scottish Government that the financial exposure by Scottish Government was okay. SFT were the final people to give approval to complete Financial Close. In other words, at Financial Close all the parties involved, including lenders to IHSL, confirm that everyone is in agreement with the terms. SFT were the last people to say yes in the room because they were the public sector Scottish Government representatives in attendance. In order for SFT to have their internal and Scottish Government approval, my understanding was that they needed to have the pre- Financial Close KSR signed off by Scottish Government. At this point that KSR was as much for Scottish Government and SFT as it was for NHS Lothian. NHS Lothian were not party to any Scottish Government and SFT discussions.

70. It was my understanding, based on what SFT told us, that the Capital Investment Group would expect to see the final KSR before providing their approval.

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<sup>43</sup> Bundle 9 - Key Stage Reviews, Item 1, p3

<sup>44</sup> Bundle 9 - Key Stage Reviews, Item 1, p3

71. The pre-Financial Close KSR (**A33336933- Pre-Financial Close Key Stage Review - 11 February 2015**)<sup>45</sup> was completed on 11 February 2015 with contract documents including the Project Agreement and other contract arrangements being signed on 13 and 14 February marking Financial Close. Scottish Government Health Department (on the recommendation of the Capital Investment Group) formally approved the Full Business Case on 10 February 2015. Separately, Scottish Government addressed the KSR relating to the FBC and actions to be taken by NHS Lothian.

### **Consequences of Delay**

72. If the hospital had failed to proceed to Financial Close in February 2015, the ultimate problem would be construction would not have commenced on the new children's hospital and department of clinical neurosciences. I think at a more practical level, in terms of the contract position, we had various parties that had tendered or were being funded on the back of the Project. If it had not gone forward, there was always the danger that the funders walked away or Multiplex decided that they were not going to build it and the whole procurement exercise would have failed.

73. I believe that the facts stated in this witness statement are true. I understand that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website.

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<sup>45</sup> Bundle 9 - Key Stage Reviews, Item 1, p3