



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
25 April 2023**

Day 6
Wednesday, 3 May 2023
John Ballantyne

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12:00

THE CHAIR: I think we are now in a position to----

MR MACGREGOR: Yes, my Lord, the next witness is Mr John Ballantyne.

THE CHAIR: -- hear from Mr Ballantyne.

THE WITNESS: Good afternoon.

MR MACGREGOR: Good afternoon, Mr Ballantyne.

THE WITNESS: And to you. Sorry. There we go, your Lordship.

THE CHAIR: Now, as you appreciate, you are about to be asked questions by Mr MacGregor, who is sitting opposite you and is counsel to the Inquiry. Before then, will you take the oath?

THE WITNESS: I will indeed, yes.

Mr BALLANTYNE

Sworn

THE CHAIR: Thank you, Mr Ballantyne. Mr MacGregor.

Questioned by Mr MacGregor

Q You are Mr John Ballantyne. Is that correct?

A I am indeed.

Q You have provided a

witness statement to the Inquiry?

A Yes.

Q A copy should be provided or available to you. Equally, any documents I want to take you to should come up on the screen in front of you. So, if you do want at any point to refer to your statement, please just do let me know.

A Thank you very much.

Q For anyone following in the electronic bundles, Mr Ballantyne's statement is in bundle 13, pages 222 to 235. The content of the statement is going to constitute part of your evidence to the Inquiry, and I am also going to ask you some questions today. If I could begin by asking you some questions about your career, which you set out from paragraph 2 onwards of your statement. You tell the Inquiry that you joined John Laing Construction in 1979. Is that correct?

A That's correct, yes.

Q You trained at that point as a quantity surveyor?

A Yes.

Q You worked for approximately 42 years in the construction industry?

A Yes, and continue to work related to the industry, unfortunately, yes.

Q During your career, you

worked for Brookfield Multiplex from 2011 until June 2021?

A That's correct.

Q We will come on to talk about that in a bit more detail in a moment, but you tell us that you are currently a consultant. What consultancy work are you currently doing?

A I work for a number of different construction companies providing advice in terms of operational aspects, some of the challenges that are facing construction companies these days, just in an advisory capacity more than anything else.

Q Okay. So, whenever you worked for Multiplex, what was your role with them?

A I started on the Glasgow hospital. That was the first time that I met Mr Serkis and Ross Ballingall and the Multiplex team. I was employed as commercial director for that particular development. I then progressed on to be bid leader for the Royal Hospital for Sick Children opportunity, and thereafter moved down to London, where I took on the role as a main board director eventually, on the Board of Multiplex Europe, responsible for a number of projects, mainly based in London.

Q So, whenever you come to start working with Multiplex, you are a commercial director?

A That's correct.

Q What does that role involve?

A In terms of legal and financial aspects related to the delivery of the hospital for Greater Glasgow and Clyde through in Glasgow.

Q Again, so I am understanding things, more on the commercial side as opposed to dealing with----

A More in the commercial side, Mr MacGregor----

Q -- technical aspects of construction.

A -- than operational, yes, if you were to draw a distinction between those two elements.

Q Okay. Thank you, and that is the work that you were doing on the Queen Elizabeth University Hospital in Glasgow?

A That's correct.

Q You then mentioned that you became a bid leader. What is a bid leader, and how does that differ from the role you undertook as a commercial director?

A I worked very closely with Paul Serkis in splitting the responsibility of taking the IHSL project

team through competitive dialogue and, subsequent to that, preferred bidder, financial close, and thereafter I took on the role as project director for the delivery for a short period of-- Royal Hospital for Sick Children and Department of Clinical Neurosciences. So, as the bid leader, I would be at the competitive dialogue sessions effectively leading the team, orchestrating who would make presentations on whatever the given subject of the day was, and then back of scene, off books, making sure that all of the issues that had to be presented at the dialogue sessions were actually being actioned by our IHSL team members.

Q So, whenever you tell us that you led the bid, did that involve formulating the tender that was going to go in? Was that part of your role?

A Effectively making sure that the "I"s were dotted and "T"s were crossed, and all of the actionable points were exactly that: actioned on behalf of IHSL, but I represented, primarily, the Multiplex team within that consortium.

Q We will come on and talk about the consortium, but just so I am understanding practically what you do--

A Yeah.

Q -- you have got responsibility for the tender that goes in, but presumably because you are on the commercial side you are having other technical people that feed in to assist you?

A Indeed. Yes.

Q If that is at the bid stage, competitive dialogue, what would you be doing at that stage?

A Again, competitive dialogue, there were a number of presentations as to our offering that had to be pulled together and tabled to the Board and their advisory team. So, as part of that, I was to make sure that we got to the point where we were making the best effort as the competitive dialogue participant. So I liaised with all of the team members, Bouygues, as well as Macquarie, and also the Multiplex team and their advisors, including the designers.

Q Okay, but, again, competitive dialogue, management role, but making sure that everything on the technical side that needs to be done is being done and is pushed down to the appropriate people?

A That's it.

Q So, what then is your role from the point of preferred bidder to financial close?

A Not that dissimilar,

except you're not in competition any longer. So, there were a number of milestones that had to be achieved in order to get to financial close and, as part of that, a list of deliverables that had to be achieved. So, again, my primary role was to the best of my ability make sure that IHSL, as a consortium, ticked all of the deliverable boxes, but orchestrating more than actually producing.

Q Thank you. If I could just ask you about exactly who is doing what, really from the point that IHSL comes together as a consortium in the period up to preferred bidder, okay, and if we take things in stages, the Inquiry has heard evidence that Integrated Health Solutions Limited, so the limited company IHSL, actually comes into being at financial close. Is that correct?

A That would be my understanding, yes. There's no purpose to it other than to deliver post-financial close when it's all sealed if you like.

Q So when we are talking about IHSL before financial close we are talking about a consortium coming together, but the company itself has not actually been formed. Is that correct?

A That's correct. Yes.

Q So, can you just talk me through who is in the consortium that is going to put the bid in?

A So, Multiplex as the design and build contractor, Macquarie's effectively pulling together the financial package that supported the NPD offering, and Bouygues in the hard FM management side of the operational part of the facility when it came online.

Q One of the areas that the Inquiry is interested in is the Environmental Matrix that was used for the project, and by the project I mean the project for the Royal Hospital for Children and Young People and the Department for Clinical Neurosciences. The concept of an Environmental Matrix, was that something you were familiar with coming into your involvement in the project?

A It was a document that emerged as part of the suite of Board or NHSL's expectations of outcome.

Q Yes.

A So I recognised its' need and for what it was for.

Q You mention within your statement that an Environmental Matrix had also been used on the Queen Elizabeth Hospital in Glasgow. Is that correct?

A Yes.

Q Can I just check, in terms of the Queen Elizabeth Hospital in Glasgow, who had produced the Environmental Matrix, and by that I mean was it the procuring authority or was it tenderers that had to complete that document?

A Not dissimilar to Royal Hospital for Sick Children in Edinburgh, the Greater Glasgow and Clyde Board had done a lot of work in advance of engaging with a potential supply chain. So that document was produced by their advisory team in consultation with their clinical staff and formed part of the brief of expectations.

Q So, when you got the tender documentation, Invitation to Participate in Dialogue and then, subsequently, the Invitation to Submit Final Tenders, were you surprised to see an Environmental Matrix there?

A No.

Q It is not a matter of dispute that there were not room data sheets produced by NHS Lothian and included as part of the procurement documents, the Invitation to Participate in Dialogue. Were you surprised that there was not a full suite of room data sheets produced?

A No, because as the

design matures, so the ability to produce a more definitive room data sheet would become available. If the design is not mature, then the room data sheet can't be completed to the extent that all parties would want them to be, would be my understanding as to why it wasn't produced in the fullest extent at that time.

Q Again, I am interested in your view, really----

A Yes, I----

Q -- from the commercial side as opposed to what an engineer would say, but the Inquiry has heard other witnesses that work in the construction industry have said that their understanding is that room data sheets would be the standard briefing tool that a procuring authority would provide when they went out to conduct a tender exercise. Is that your position, having worked in the industry for 42 years?

A No, no. I would say every project is unique to itself and varying levels of expectation documentation, if you could join those words together. No, it can be dissimilar, from a very broad brief of expectation by a client body to a very definitive and prescriptive brief, effectively the full spectrum.

Q In terms of your

involvement in the project, I appreciate that it is over 10 years ago before you started the procurement exercise, but were you involved from start to finish? Did you go to the bidders day, for example?

A Yes. So, a bit of history: Peterborough Hospital was the first project in the UK that Multiplex had delivered. They'd delivered healthcare projects internationally, and it was a sector of construction delivery that Multiplex would want to continue to participate in and in the UK in particular would want to continue to participate in, and therefore monitoring what hospitals are likely to be constructed where in the UK was something that was on the agenda of Multiplex, and that's why when this opportunity came up, particularly since we were in the throes of constructing the one for Greater Glasgow and Clyde, it was very much at the front of our desire to win and convert agenda.

Q So, you are really involved right from the start----

A Right from the start.

Q -- bidders day right through to the end of the project. Again, it is a long time ago, but can you tell us your recollection of what were tenderers being told about the status of the reference design and the

status of the Environmental Matrix, in particular?

A My understanding was the expectations of the Board were very specific, as much as they ever could be, and that, having taken the time to develop those expectations, they were not to be compromised.

Q When you say you did not think they were to be compromised, what was your understanding of the status of the Environmental Matrix?

A I would have said the state of the art hospital expectation or aspiration of the Board gave our team more architectural licence than it did engineering licence, and similarly, on the engineering licence, departmental clinical adjacencies were not to be interfered with; the number of rooms of a particular type and the size of those rooms, similarly, not to be messed around with.

Q Do you recall any specific discussions about the Environmental Matrix as opposed to, as you have said, adjacencies and other issues?

A No, I don't. I can't. I was surprised, during this process, to understand the elevated importance of the Environmental Matrix because it was not a document that jumped off

the page as being one of great debate and gnashing of teeth and wailing.

Just, "This is what we want and that's the definition of it," was what that document was there to provide.

Q If I could ask you to have in front of you, please, bundle 2, page 750. This is some notes from the bidders day that took place on 13 December 2012. So you probably will not have seen these before, but they were the notes that had been provided by one of the speakers at that event, and it is really just to ask for your observations on a few comments. If we could look to page 759, please. Do you see there is a reference at the top to "Slide 39 – Reference design"?

A I do, yes.

Q It says:

"To clarify what we really mean by a Reference Design. What were the attractions given the departure from previous PPP/PFI projects where an 'exemplar' design was the norm?; [Then there is a series of bullet points]

- assists with the OBC and accuracy of pre-procurement costing.
- provides greater certainty over the final design solution.

- assists significantly in defining a quality threshold."

Do you see that?

A I do.

Q Is that the type of information that was being conveyed to the respective tenderers at the bidders day?

A Yes.

Q If we look down, you will see approximately two-thirds of the way down the page, there is a heading, "Mandatory Requirements." Do you see that?

A I do.

Q It is:

"Comprises the information that defines Operational Functionality* and is indicated in:

- Interdepartmental Layouts (1:500)
- Departmental Layouts (1:200)
- Room Layouts (1:50)..."

Do you see that?

A I do, yes.

Q Again, I appreciate it is a long time ago, but was that all that you were being told was really the mandatory requirements? And the reason I say that is we do not see the Environmental Matrix being included there.

A No, because I think, as I mentioned earlier, that's more the architectural expectations of the Board that those mandatory requirements are talking to – spatial, both size and interdependency and relationships of departments. So not necessarily the heating and cooling of those particular departments.

Q If we could then look on to page 760, towards the bottom of the page there is a heading, "Room Data Sheets." Do you see that?

A I see that, yes.

Q Room data sheets, and the notes say:

"Standard format Room Data Sheets have not been prepared by the Board for the Project instead specific room requirements are detailed in a combination of the following documents:"

Do you see that?

A Mm-hmm.

Q It says:

- General Requirements
 - Clinical Output Spec
 - Environmental Matrix
 - Schedule of Operational/Design Notes
 - Equipment Schedule
 - Schedule of

Accommodation

- Operational Functionality elements of the Reference Design"

Do you see that?

A I do.

Q So, again, just so I am understanding things, am I correct in thinking that what bidders are being told is that whenever they need to find information for the production of the room data sheets, they should look at the items that are set out in the bullet points and that would include the Environmental Matrix?

A Yes, effectively the Board's expectations that would then be developed by the three bidding entities, yes.

Q It might be an obvious question, but in terms of the tender that was going to be submitted, where was IHSL going to get the values for the room data sheets, if we are talking about the ventilation requirements?

A I would have suggested the Environmental Matrix would have been your reference document, your source of that expectation data.

Q If I could ask you to look on page 762 please. Do you see a section at the top, "Note...?"

A Yes.

Q 762:

“Note: The Board’s Construction Requirements will always take precedence over the Reference Design for matters which do not define Operational Functionality.”

Do you see that?

A I do.

Q Do you remember any discussions about that at the bidders day?

A Not specifically about that point, no.

Q If we just look at the note there then, what would you understand that statement to mean?

“The Board’s Construction Requirements will always take precedence over the Reference Design for matters which do not define Operational Functionality.”

A I would suggest that the reference design is a layout of expectation. The BCRs go into far more detail as to what that layout will then contain and perform as. So the Board’s construction requirements are in far more developed detail by the Board to, again, set their expectations but, overall, operational functionality is something that the successful bidder and delivery entity would have to satisfy.

Q Thank you.

A It’s a recognised medical term in D&B operations. It has to function as a hospital and do various things in order to tick that criteria box.

Q Thank you. If we could look on to page 763, please. Just approximately in the middle of the page there is a paragraph beginning, “Following the close of Competitive Dialogue...” Do you see that?

A Yes.

Q

“Following the close of Competitive Dialogue, and the appointment of the Preferred Bidder, the Reference Design will be replaced with the Preferred Bidder’s affordable and commercially acceptable design solution.”

Do you see that?

A I do.

Q Was that what bidders were being told from the very outset? Is that your recollection?

A Yes, because that’s a term that you would see in a procurement process, especially one that’s subject to potential challenge by the unsuccessful bidders. So that terminology is quite often used as part of a procurement briefing document.

Q Again, so I am understanding things, tenderers are

told there is the reference design stage, but at some point that reference design is going to be replaced with the preferred bidders' solution?

A The preferred bidder's solution incorporating a number of other documents, which may indeed be extracts of the reference design. They may live on in that proposal from the preferred bidder. I think you have to look at it holistically as opposed to trying to dissect it word for word, but that's my view.

Q In terms of the Environmental Matrix itself, was your understanding that it was a completely fixed specification or was that something that tenderers and particularly the preferred bidder would have to develop?

A My view was, if we were going to move away from it in any way whatsoever, we would have to get absolute express approval to do it. It was the line in the sand and definition of what that line was and where it was.

Q If I could ask you to have in front of you, please, bundle 10, volume 2. Bundle 10, volume 2, page 1300. Do you see there is a second email there. It is from a Ken Hall to Maureen Brown and Graeme Greer.

A Yeah, recognise Ken, he led our team M&E engineer for

Multiplex, yes.

Q Right, so was he someone that you worked on whenever you were leading the bid?

A Yes.

Q What was Mr Hall's role?

A So, he worked with our designer, TÜV SÜD, as well as our selected subcontractor, Mercury Engineering, in putting together the MEP element of our bid, mechanical electrical.

Q What did you mean by MEP?

A Mechanical, electrical and plumbing, sorry.

Q Thank you. If we look at that email from Mr Hall, it says:

“Good morning Mo/Graeme Stewart has asked if he could have the environmental matrix in excel rather than pdf version to allow to populate the schedule with any changes.

Is this something you could help us with?”

Do you see that?

A I do, yes.

Q I think the question I would ask you is, if the Environmental Matrix is a line in the sand, it is a fixed client brief, why would Mr McKechnie need an Excel spreadsheet to make changes to it?

A I really can't answer that in term of any changes, except to say that if there were any agreed changes, and by "agreed" I mean with NHSL, as the Board, then that document would be more flexible and manipulatable in terms of incorporating those changes and getting it out to the supply chain that Mercury Engineering would be expecting to deliver to elements of the Environmental Matrix – your handling unit performance being an example.

Q Thank you. If I could ask you to have in front of you, please, bundle 4, page 218. Bundle 4, page 218, a document headed, "Environmental Matrix Comments – 13 October 2014." Do you see that?

A Yes.

Q Have you seen this document before?

A Can't say yes or no. I possibly have. I can't confirm that. I'd need to go back and----

Q So, in terms of 13 October 2014, you had been the preferred bidder at this point----

A Yeah.

Q -- and it is a document that one column says:

"The Board has the following initial technical comments on the draft 1 of the Environmental Matrix."

A Mm-hmm.

Q Then you see in the right-hand column, "IHSL Update [22] October 2014."

A I do, yeah.

Q So it seems to be a document whereby the Board is commenting on proposals and then IHSL is responding. Is that a document that it would be likely that Mr Hall would be dealing with?

Q Yes, he would be an owner and participant to making sure that said the right things, particularly in the right-hand column. Yeah.

A I think, again, it is just really looking for your observations. You have described the Environmental Matrix as a line in the sand. I think one thing the Inquiry would be interested to know your views on is if it is a line in the sand and it is effectively a fixed client brief, why would NHS Lothian be providing comments on the Environmental Matrix?

A It's a timing issue, I would suggest. As the design matures, spatially as well as in detail, the Board may see fit to allow changes to that line in the sand and for that line to move. But at all times they would participate and sign off to any such changes, which is what this document is looking to control, would be my

observation.

Q Are you aware of whether or not the Environmental Matrix came to be included as reviewable design data within the final contract?

A I couldn't confirm that sitting here, Mr MacGregor, no.

Q Okay, it is not a memory test, so if I could ask you----

A I know----

Q -- to have in front of you bundle 5, please, and if we begin at page 869. So, bundle 5 is the contract, and then on page 869 you should see a bold heading, "**Part 4: Non-Approved Project Co's Proposals Design Data comments.**" Do you see that?

A See that, yes, sir.

Q So, again, just from your perspective as someone on the commercial side, were you aware at the point the contract is signed that there are certain items that are reviewable design data?

A Yes.

Q Again, just if you could explain your understanding of what was reviewable design data? Why would there be a concept of reviewable design data in the contract?

A The Board was to

understand that our design offering met with their expectations. What's the conduit that allows that to happen? Reviewable design data. We present a design and they effectively, with their clinical as well as technical team, review that design offering.

Q If we could look on to page 880, please. This is still within the schedule of reviewable design data. You will see an entry there that is called, "Environmental Matrix."

A Yeah.

Q So at least part of the Environmental Matrix is being included as a reviewable design data, and I think that the question that I would pose is, if the Environmental Matrix is client brief and it is a line in the sand, why do we see aspects of it cropping up within a schedule of reviewable design data?

A Because, effectively, the reviewable design data needs to be incorporated into the contract in its finished form. An Environmental Matrix, from an M&E point of view, needs to be incorporated in its finished form. Effectively, the design could have some fundamental requested changes incorporated within it that impact on the Environmental Matrix, and they have to update them. If the Board wanted another operating

theatre, then the Environmental Matrix would have more operating theatres after that change was instructed than it had before. So, yes, it can mature alongside the rest of the design through the RDD process.

Q Again, just so I am understanding you, would that only be if there were perhaps new rooms put in or there was something new that was being added----

A Yes, I would say exactly what you just have. A required change that then necessitates the Environmental Matrix being updated to incorporate that change.

Q If I could ask you to have in front of you, please, bundle 13, page 224, which is your statement, and if we could look to paragraph 9, please.

A Okay.

Q At paragraph 9, you say:
 “One of the main aims of the Board for the RHSC project (by “Board” I mean NHSL), in my understanding, was to have absolute clarity on what they were going to receive as part of the procurement and delivery process.”

Do you see that?

A I do.

Q Why do you say that?

A There had been projects

in the past where, as I understood it and was advised, the Board had expected and did not get their expectations met through a lack of clarity from the delivery vehicle. So, to avoid that same situation developing again, there was a high level of diligence on the expectations being delivered as they had been briefed by the Board.

Q You continue at paragraph 9, if we pick matters up on line 3:

“Brian Currie and I had many a lengthy conversation during the preferred bidder phase when the phrase environmental matrix kept reappearing. There were examples in the past where the NHS Lothian Board felt they did not get what they thought they were going to get and then could do nothing about it. That was something they desperately wanted to avoid in the RHSC Project. This meant they went into the granular detail and absolute clarity was what they were driving to, not to get caught short by way of any misunderstanding of expectations and output result.”

Is that correct?

A That’s correct, yes.

Q So, again, if we can just take the stages of the project, we have looked at the preferred bidder day. What were you being told during competitive dialogue in relation to the Environmental Matrix?

A It was just another document of the Board's definition by way of, "This is the reference design; here are the rooms; here are the spatial orientation of those rooms and their content; and here is the M&E output specification, the expectation" – read "Environmental Matrix." So, all to be read in conjunction with one another.

Q If we look on within your statement to page 225 of the bundle and paragraph 13, you see a paragraph beginning----

A Yeah.

Q -- "We were told..." So, you state:

"We were told at the competitive dialogue meetings that the Environmental Matrix was mandatory and that there was to be no deviation. It was absolute." Just to be clear, who was telling you that?

A NHSL. I don't want to name any individuals necessarily, but the discussions that I was having with my team and the Board's team, it was,

"Deliver on the expectations we are placing in front of you," but there was a level of architectural licence. There was an aim of the Board to de-institutionalise the facility, and that's where our architectural team was allowed far more license than M&E, I would suggest.

Q I appreciate it is a long time ago and you are telling us your recollection is that is what you were being told at competitive----

A Yes.

Q -- dialogue. Can you remember which individual from NHS Lothian was telling you that at the competitive dialogue meetings?

A I would have to say I couldn't single out a particular individual, no.

Q The reason I raise that issue is it seems to be controversial whether that was or was not said. So, for example, Mr Greer of Mott MacDonald, who is still due to give evidence, he does not recollect that type of discussion taking place. In fact, his position, as I understand it, is that IHSL was regularly reminded that they had responsibility for ensuring that the Environmental Matrix complied with published guidance such as Scottish Health Technical Memorandum 03-01. Am I correct in

thinking that is not your recollection of what was happening at competitive dialogue?

A No.

Q Did you have any discussions with anyone on the technical side? I appreciate you are on the commercial side. Did anyone on the technical side come back to you and say, "Well, actually, what we are being told is this is a document whereby we take responsibility for it, and we need to check that it complies with published guidance"? Do you recollect any conversations taking place with your team?

A I don't, no. It was not the subject of that type of debate where if it had been, it would definitely have been-- yes, I would have had a recollection of it if that level of discussion had taken place, yeah. I would have to say there would be commercial implications of not having two documents of that level of importance – an SHTM and an Environmental Matrix – aligned into the world of derogations at that point.

Q In terms of your statement, there is various points whereby you outline your understanding of what the procurement documents required and your understanding of what the

contractual position was. Should the Inquiry understand that you are setting out your own views to try and be helpful but----

A Yes, these are my words and may be erroneous because they're my thoughts and my words. You're correct, yes.

Q I think the formulation I have put to a number of witnesses is there is perhaps a recognition that those might be controversial, and that you are not offering any expert view on what those terms definitively mean? Is that your position as well?

A It is.

Q Thank you. If I could move on now and ask about IHSL's tender itself. I want to take you through some of the provisions within the tender. Now, I appreciate that you have told us that you had overall responsibility and it might be other people that had fed into that. So, as we go through matters, if it is something that you do not remember or you think it is completely outwith the sphere that you were dealing with, please say that. I do not want you to speculate.

A You're right, yes.

Q If we get to things that you remember why they were included, I would be interested to know

the thinking behind why those provisions were included within the tender, okay?

A Surely.

Q So, if we proceed on that basis, if we can begin within bundle 6, please, and if we can start at page 3. Am I right in thinking that this is the tender bid for the “Re-Provision of the RHSC & DCN at Little France”? Is this the-- We will just wait for that to come up. So, it should be bundle 6, page 3. I think we might be just having some technical difficulties. Certainly, my bundle 6, page 3, is a coloured page, which is the first page of the tender submission. Do you see in the----

A I recognise the cover page, yeah.

Q If we see in the bottom left-hand corner, it is a document dated 13 January 2014.

A I do, yes.

Q So, you say you recognise this. Just, again, we will look at the detail, but what is this we are looking at?

A So, again, this was-- all of our documents looked not dissimilar to this one in terms of the cover page. So, yes, many of our documents started off life with this as the cover sheet, if you like, but obviously in the box would be different texts to

describe subsequent pages.

Q Thank you, and if we look onto page 8, you will see a subheading, “**5.0 APPLICABLE STANDARDS.**” So bundle 6, page 8. Can you see the bold heading, “**APPLICABLE STANDARDS**”?

A I do.

Q The tender states:

“All elements of the works shall be in accordance with the requirements of current legislation, regulations and industry standards unless otherwise stated.

The Ventilation System shall accord with all appropriate Hospital Technical Memoranda, Codes of Practice and relevant British and European Standards and Appendix A.”

Do you see that?

A I do.

Q Do you remember the basis for including that statement within the tender?

A No.

Q The reason I raise this – and, again, you might not be able to help – is on one view that reads as saying, “Our bid, our solution is going to comply with all published guidance – Hospital Technical Memoranda.” There is an issue as to whether the

Environmental Matrix, which ultimately formed part of the contract, did fully comply with that. Are you able to offer any assistance as to why IHSL included that statement in the tender?

A I think the important phrase there, and I don't want to speculate, is in the first sentence, where it says, "... unless otherwise stated." So, if a document did not accord with the second paragraph, then it otherwise stated.

Q Thank you----

A So we will, except where we tell you we haven't, or a document says we haven't.

Q "Unless we have stated elsewhere"----

A Yeah.

Q -- "it will comply with the published guidance?"

A Mm-hmm.

Q If we then look on to page 13, there should be a bold heading, "**U10 VENTILATION SYSTEMS,**" "**ALL AIR SYSTEMS.**" If we could look down four paragraphs up from the bottom, there is a paragraph beginning, "Air volumes have been established..."

A I see that, yes.

Q It says:

"Air volumes have been established by consideration of

heat gains or losses and also the air change rate necessary for comfort and safety as appropriate for the activity carried out in each area. Relative air pressures between rooms shall be maintained to suit the activity concerned, by design of the supply and extract air volumes, and use of pressure relief equipment where necessary to prevent cross infection or transfer of unpleasant odours between areas, as required by the ADB sheets.

Heat recovery shall be provided between the supply and extract systems. The hospital ventilation systems shall be in accordance with SHTM 03-01..."
Do you see that?

A I do.

Q Again, just thinking back to that potential discrepancy between whether the Environmental Matrix submitted by IHSL, included in the contract, does or does not comply with SHTM 03-01. Do you know the basis for IHSL to include that statement that, "The hospital ventilation systems shall be in accordance with SHTM 03-01?"

A I can't answer that specifically.

Q Who would have

responsibility for knowing that? Would it be Mr Hall, or would it be someone else within the IHSL team?

A I think within our team, it would be the combination of TÜV SÜD, Mercury Engineering, and Multiplex's Mr Hall sitting atop that triangle.

Q Again, if we could look on to page 35. See, "310 AIR HANDLING UNITS"? It states:

"The supply and extract air handling plant shall in all respects comply and align with the requirements and recommendation detailed within the Health Technical Memoranda, in particular SHTM03-01 and 08-01, except where specifically noted within this specification."

Do you see that?

A I do.

Q Again, in terms of why those statements are being made about compliance and exceptions, would that have been other people that were feeding this information into you to complete the tender?

A Yes. Again, from an engineering point of view, there may be some air handling variation from the SHTM, which again, as a guidance document, it isn't necessarily 100 per cent specific in output expectations

and therefore we would need to describe what we were offering, where potentially at variance with SHTM.

Q If I could ask you to look on to page 303, please. Beneath the various tables you will see a heading, "C8.2 (x)..." So it is bundle 6, page 303. Do you see the heading, "C8.2 (x) Environmental Conditions Room Matrix?"

A I see it, yes, indeed.

Q It states:

"The mechanical and electrical services shall be provided in accordance with the reference design environmental matrix and we shall provide an addendum matrix for any rooms on an exception basis highlighting any changes at preferred [bidder] stage."

Do you see that?

A I do.

Q Again, this might be an issue for Mr Hall, but if the Environmental Matrix is the line in the sand, why would it need to be updated?

A Because, again, necessary change may require the updating of it, and so that there's not any ambiguity on the final form of the Environmental Matrix, this is how it would be dealt with. Potentially, back

to the request to have it provided in an Excel format so that it could be updated to incorporate any change.

Q If we then look on to page 304, please. It is just above the tables, so it would be bundle 6, page 304. See just above the table on the left-hand side, there is text beginning, "The room temperature set points..."

A I see it, yes, indeed.

Q I think it might be helpful if we could try and zoom in. It is quite small text. So, it says:

"The room temperature set points, air change rate and ands shall be in accordance [with] SHTM-03 and lighting information as CIBSE guide LG2."

Do you see that?

A I do.

Q Again, would that be something that was being fed back to you from technical people such as Mr Hall?

A Yes.

Q Obviously, you described the Environmental Matrix as a line in the sand. Do you know if there was any exercise carried out by Mr Hall or any subcontractors to check whether the Environmental Matrix was fully complying with published guidance including SHTM 03-01?

A No, because I

understood that, where it wasn't, the decision to make it not in accordance with had been taken before we became involved.

Q If we then just look on to page 305. You see there is a bold heading, "**C8.3 Environmental Matrix.**" So, bundle 6, page 305. Again, if we could maybe zoom in on the on the box below C8.3 beginning, "As indicated above..." At the very bottom there, do see the text?

A Mm-hmm.

Q "As indicated above no changes proposed at this time nor envisaged in the future but we will continue to review and advise back. The solutions are referenced on the Heating, Ventilation and Cooling strategy drawings, sequence 521, 524 and 525 recorded in AP1.1 Section 5.1 Mechanical Drawing Schedule."

I guess, again, what I would be interested to know, is that wording that "we will continue to review and advise back," if the Environmental Matrix is a line in the sand to be complied with, why would that process be required?

A I think it's more with reference to changes. If there were any changes proposed, not that IHSL

would be making those proposals, but if the Board required them to be changed, then it would need to be reviewed and the advice given as to what those changes would mean to the Environmental Matrix in its form current at the time of the suggested change. So I wouldn't be reading that to say there's an ongoing exercise behind the scenes continuing on the Environmental Matrix.

Q Thank you. Then if we could look on to page 350, please. Do you see the bold heading, "**5.9.7 Mechanical Ventilation System**"?

A I do, yes, indeed.

Q It states:

"The ventilation systems to the Hospital are designed in accordance with Scottish Health Technical Memorandum SHTM 03-01. Ventilation shall be provided to suit both the operational and statutory requirements of the development. Although the development has been designed to maximise the use of natural ventilation, it is intended that rooms will not be reliant on natural ventilation alone, unless they comply with maximum temperature limits listed in the RDS Environmental Matrices.

To obviate problems with overheating due to 100mm opening restrictions on opening windows, we have included for mechanical supply ventilation for Ward Areas and to provide mechanical cooling to all tempered air supply air handling units to provide the ability to supply air temperature at a condition to ensure the internal temperatures in patient areas shall be maintained within comfort levels as illustrated within the separate Ward Bedroom Comfort Analysis Report."

Do you see that?

A I do.

Q So, again, it is really just, I think, to cover the same issue I had covered before is-- the statement in the first paragraph, first sentence:

"The ventilation systems to the Hospital are designed in accordance with the Scottish Health Technical Memorandum SHTM 03-01."

If what you were doing was simply taking the Environmental Matrix, had IHSL actually done a check to make sure that what it was proposing did always comply with the requirements of SHTM 03-01?

A No. In reading that

sentence, you could understand or interpret that to mean definitively it complies with all aspects of. If the word “generally” had been inserted in front of “designed” it might have read better from an IHSL point of view.

Q Again, just so I am understanding you, I think you told us earlier that, really, we looked at the section that said, “unless stated otherwise.”

A Yes.

Q So, again, we do not see the “unless stated otherwise,” but we have seen that in earlier aspects of the tender documentation. Just to make sure I am understanding you, although we see old unqualified statements at certain points, there is qualified statements at other aspects. Is that really what you had wanted to draw my attention to earlier?

A Yes, that elsewhere in this document there may be a specific pointer that says, “but in this instance SHTM has not been complied with.”

Q Again, just so I am understanding things, we have looked at the tender. In addition to the tender document, am I right in thinking that there were some room data sheets that were produced as part of tender bids for key and generic rooms?

A There were, yes. At

financial close we unfortunately didn't get to the production of 100 per cent RDS.

Q Again, we will come on and talk about that, but at this stage, when the tender goes in, there is certain room datasheets produced by IHSL – key and generic rooms. The idea was that there was meant to be 100 per cent by financial close but that is not achieved?

A That was the desire, and it was not achieved. I have to say by mutual agreement and understanding and it was done on a risk analysis basis. Fundamentally, we had got far enough down the line of mutual understanding that there wouldn't be fundamentals to carry over. But, again, I think we need to look at it factually and not with our opinion on it. The list of RDD still to take place after FC was definitively set out in the contract.

Q Perhaps if we could just look at the contract on this idea of the kind of key and generic rooms. So, if we look at bundle 5, which is the contract that ultimately gets agreed at financial close, and look to page 885, you see there is a list of key rooms there with codes being given. So, for example, “B1609-01” “4 beds Low Acuity.” Do you see that?

A Yes.

Q Then if we skip the next entry, the third entry is “B1401-01” “Single-bed cubicle: Isolation.” Do you see that?

A Yeah.

Q If we skip the next entry and then the next entry after that is “B1609...” “4 beds High Acuity.” Do you see that?

A Yes.

Q So these are some of the key and generic rooms that room data sheets are produced by IHSL and actually included within the contract that gets signed with NHS Lothian. Is that correct?

A I understand, yes.

Q If we perhaps just look at some of those room data sheets. So, within bundle 5, if we look at page 1010, we actually have in the top left-hand corner “ADB,” “Room Environmental Data,” and the room is “B1609-01.” It is bundle 5, page 1010. Bundle 5, page 1010. Bundle 5, page 1010. I think we are just having some technical difficulties in terms of bringing the documents up.

A That’s all right.

MR MACGREGOR: Lord Brodie, I know that that is five to one. Perhaps we could rise now and just start five or ten minutes earlier before two o'clock

to try and resolve the technical issues?

THE CHAIR: Well, we will do just that. Mr Ballantyne, we usually take a lunch break at one. So we will take an hour, and if you were back for five to two, that would be excellent. If everyone else was back for five to two, that would be excellent as well. Perhaps Mr Ballantyne can be taken out?

THE WITNESS: Thank you very much.

USHER: Please stand.

(Short break)

MR MACGREGOR: Lord Brodie, perhaps just before the-- just one housekeeping matter. We had discussed the possibility of a half past nine start on both Thursday and Friday. The Inquiry team have confirmed with the witnesses that they can accommodate a half past nine, so your Lordship may want to take a view on that core participants know—

THE CHAIR: Right, so, tomorrow and Friday of this week?

MR MACGREGOR: Indeed.

THE CHAIR: Right. Well, you’ve heard what Mr MacGregor had to say. We’ll work on the basis that tomorrow and Friday will be half past nine starts, and probably full days.

MR MACGREGOR: Indeed and, again, investigations are ongoing for Tuesday to see if we can have a half past nine start.

THE CHAIR: So the same pattern on Tuesday?

MR MACGREGOR: Indeed.

THE CHAIR: That's the 9th, I think.

MR MACGREGOR: Yes.

THE CHAIR: Right. Well, if we work on that basis. Mr Ballantyne? (After a pause) Good afternoon, Mr Ballantyne. Mr MacGregor will resume.

MR MACGREGOR: Thank you. Mr Ballantyne, just before lunch we had been looking in the contract in bundle 5 and we had looked at some of the key and generic rooms. I just wanted to take you to one of the room data sheets, so if we could look to bundle 5, please, page 1010. So, this is a room data sheet. Top left-hand corner, "ADB, Room Environmental Data," and then top right-hand corner, it is for "B1609-01." Do you see that?

A I do, yes.

Q And if we see in the second box, the room for this is a "4 beds Low Acuity," and within the air range we see winter temperature, summer temperature and then the "Mechanical Ventilation (Supply

ac/hour)," and, "Mechanical Ventilation (Extract ac/hour)," and we see the requirements of "4.0" and "positive". Do you see that?

A I do.

Q These were the room data sheets submitted as part of the tender and that ultimately form part of the schedule to the contract. Is that right?

A I can't confirm it because I haven't seen that. I don't recall that specific bit of paper but, yes, I would understand that that could well have been, yes.

Q Really, I think one of the issues that I wanted to pick up with you is, from your perspective working on the IHSL Multiplex side, having submitted these room data sheets, was anyone from the NHS Lothian side, either NHS Lothian or Mott MacDonald Ltd, coming back to you and saying that the information in these room data sheets was just fundamentally wrong and not what they wanted?

A I'm not aware of any challenge in terms of the accuracy or content of those sheets other than to say the review of Project Co's Proposals in response to the BCRs was the subject of much communication, and it may well have

been, and I can't confirm it one way or the other, Mr MacGregor, whether that communication included objective review of the content of these sheets. I can't, I'm sorry.

Q The reason I raised the issue is, again, it is perhaps controversial whether figures within these room data sheets were what was intended or whether it is a fundamental error. The issue I would ask for your comment on: is one way of viewing it that if this was problematic and not what NHS Lothian wanted, the error and issue was simply hiding in plain sight if someone had reviewed these room data sheets?

A That could well be the case, yes. I have to say, though, there are a number of eyes from different stakeholders looking at what would sit behind these numbers. If we were to consider the hardware that would be able to provide a mechanical ventilation solution at that rate of air change, there would be a number calculated back to the number of air handling units, so there would be a commercial implication if that number of air handling units was not one but two, for example. There would be a spatial impact on of having to accommodate two air handling units rather than one, and then, from our

side, Bouygues would also be interested in the life cycle implications of more plant required rather than less. So there'd be a degree of diligence from the design and build side on satisfying themselves as to the hardware to produce that output and, similarly, I would look to NHSL and their advisory team to do the same level of diligence because the energy model, again, that supports the energy consumption related to all of these bits of kit would be front and centre for the NHSL.

Q That is one way of looking at things. Is another way of looking at things perhaps that TÜV SÜD are engaged by IHSL, Multiplex, as the ventilation experts as a subcontractor. Is that correct?

A They are. That's correct.

Q So, on one view, the mechanical and ventilation rates that we see for the air changes per hour is four when perhaps published guidance suggests ten.

A More than, yes.

Q Was there any instruction given by IHSL, Multiplex, to TÜV SÜD to review the air change rates and the pressure rates that were set out within the Environmental Matrix?

A I'm not aware of such an instruction. It would take us back to

the discussion on the Environmental Matrix. If the Board want four, then give them four.

Q Certainly, again, so I am understanding things, if there was any such instruction given to TÜV SÜD, that was not an instruction that you were aware of being given?

A Correct.

Q If I could move on to another matter? If we could have bundle 2 in front of us, please, and look to page 792. So, bundle 2, page 792. This is the invitation to participate in dialogue. Do you see the bold heading towards the bottom, “2.2 General Requirements of the Board”?

A I do.

Q It says:

“Architectural and General Design.

Project Co shall ensure the Facilities comply with the following general requirements of the Board.”

Then if we skip a) and look to b), it says:

“Adherence to the requirements set out in CEL 19 (2010) ‘A Policy for Design Quality for NHS Scotland, 2010 revision’ published by the Scottish Government.”

Do you see that?

A I do indeed, yes.

Q Now, Mr Hall, who

worked for Multiplex on the mechanical engineering side, he said that, in the work he was doing on the project, this document – CEL 19 (2010) A Policy for Design Quality for NHS Scotland – that is not something that was on his radar. Was it on your radar as someone who was heading up the bid?

A No, I would have to say, not specifically on mine either.

Q Within the IHSL Multiplex team, who would-- We see it is a general requirement, there, of the board. Who would be seeking to ensure that the tender adhere to the requirements of CEL 19 (2010) A Policy for Design Quality for NHS Scotland?

A I would have said our lead designer responsible for architectural as well as structural and MEP engineering would be responsible for ensuring we complied with that document, so that would be HLM in my world.

Q HLM. If we could look on to page 839, please. So, this is still within the invitation to participate in dialogue. You see the bold heading at the bottom, “5.2: Infection Prevention and Control”? Do you see that?

A I see it now, yes.

Q If we look to the second full paragraph, it says,

“Project Co shall ensure all aspects of the Facilities allow for the control and management of any outbreak and/or spread of infectious diseases in accordance with the following”.

Do you see that?

A Yes.

Q If you look over the page, page 840, letter F, you see “Ventilation in Healthcare Premises (SHTM 03-01)”.

A Yes.

Q Can you see that?

A I do.

Q I think the issue that I would raise in this aspect is that it seems that one of the requirements from Infection Prevention and Control is that the successful party is going to have to demonstrate how they are going to deal with an outbreak or spread of an infectious disease in accordance with SHTM 03-01. If there has not been an analysis of the air change rates, the pressure rates, within the Environmental Matrix, how was IHSL going to demonstrate compliance with that issue?

A By compliance with the Environmental Matrix which someone

else had drafted, namely NHSL, having satisfied themselves that the content of the Environmental Matrix already delivered on these similar promises.

Q Again, just so I am understanding things----

A Back to the line in the sand.

Q This is really back to the line in the sand. When we see the requirement here saying, “You, Project Co, have to demonstrate to us how you will manage an outbreak or spread of an infectious disease in compliance with SHTM 01,” it is assumed that there is a qualification within that that, as long as you are providing the parameters set out in the environmental matrix, that that would be compliant.

A The unwritten word and the implied compliance, yes. I agree with you.

Q But, again, just for completeness, as you have said before, there was not any specific instruction given to TÜV SÜD to check that any of the parameters within the Environmental Matrix complied with the SHTM----

A Aligned with or were at variance with, correct. That's my understanding.

Q Again, it is not a criticism. I am just trying to work out why. That is an assumption that is made on behalf of IHSL when it submits its tender.

A Yes.

Q If I could ask you to have in front of you, please, bundle 2, page 965, and this is to return to an issue I think we discussed before about the 100 per cent room data sheets by financial close. So, again, we're still within the invitation to participate in dialogue, paragraph 2.5.3, "Room Data Sheets." Below-- or just above the bold heading 2.6, you will see that the final sentence, "The Preferred Bidder will be required to complete Room Data Sheets for all remaining rooms prior to Financial Close." Do you see that?

A I do.

Q Now, that did not happen by financial close. Can you just explain? Why didn't that happen?

A We were collectively running out of time as financial close and the targeted date approached. It became obvious to both and all parties we were not going to get that entirety of exercise completed.

Q Some witnesses have indicated to the Inquiry that there came a point where it was communicated

from the IHSL Multiplex side that simply there wasn't going to be any more money spent on the development of room data sheets until there was a contract in place. Do you remember any discussions or communications along those lines?

A No, I think it was more the frustration that the length of time it had taken wasn't delivering the total level of output that the Board expected due to the level of diligence they were applying to the output that had actually been generated.

Q Were you surprised, though, that that requirement was waived? Because what all tenderers were told was that, by financial close, room data sheets had to be completed for all rooms in the hospital. Were you surprised that, at the point the contract is being signed, NHS Lothian just agreed to waive that requirement?

A No, because I think I said earlier the fundamentals of the design and the output had already been established through the room data sheets and the rest of the documentation by way of design that had been produced and reviewed by the board and their advisors, so it was a balance of risk remaining post-FC that was on the right side of the decision-making line. There wasn't a

fundamental risk open at FC and at contract, would be my view, and that's why they were able, with a level of confidence, to take that decision.

Q And is that why there was not a delay for that process to be carried out before a contract was signed?

A Yes. The room data sheets would complement the design already in place, not vary it.

Q I would like to move on and ask you some questions about the period from the appointment of IHSL as preferred bidder to financial close, and it is to try to understand just exactly the role that Mott MacDonald are providing because the Inquiry has heard varying views in terms of what they are doing. So, there are certain witness statements from Mott MacDonald which suggest what they were doing was a sampling approach to things like the Environmental Matrix. There are other witnesses, including Mr Hall, who describes Mott MacDonald's role as being akin to a shadow design team. What was your understanding of the role Mott MacDonald had?

A So, there were various Mott MacDonald representatives, and I saw them as effectively checking our proposal to ensure compliance with

the Board's construction requirements and applying an exceptionally high level of diligence to that task.

Q And when you say "an exceptionally high level of diligence"----

A Yes, poring over it with a fine-tooth comb, those kind of phrases, I would say. Graham Greer and his colleagues, line by line, were reviewing what IHSL were offering the Board.

Q By the point of financial close-- We have seen from the contract that at least parts of the Environmental Matrix get included as reviewable design data. From a commercial perspective, did you have concerns about that happening with the Environmental Matrix not being fully locked down by financial close?

A No, because, as I said earlier, the fundamentals of the design were already established. The ability, as a design and build contractor, to go to a specialist subcontractor and get a price for a scope of works would similarly underline the design as far enough advanced to go no on a number.

Q The reason I say that is Mr McKechnie of TÜV SÜD-- he has provided a witness statement to the Inquiry and is due to give evidence at some later point. His position, as I understand it, is that he had never

seen an Environmental Matrix being included as reviewable design data before, and he considered that that was something that was dangerous from a commercial perspective because you would not know exactly what type of ventilation system you had to put in and how you would price that. Do you disagree with that view?

A At the time of execution of a contract, a firm price would be available for the elements that would inform that price and, therefore, the number of air handling units, the size of the air handling units, the distribution duct work. All of that would be quantifiable and, therefore, have a level of certainty attached to it from price informed by a design.

Q Thank you.

A So, in direct answer to your question, I would disagree with Mr McKechnie, I would say. Yes.

Q Thank you. I now want to ask you some questions, still within the preferred bidder to financial close period, but really from the summer of 2014 until the point that financial close is reached in in February 2015. What are relationships like between IHSL, Multiplex and NHS Lothian, Mott McDonald at that point in time?

A I would say that there was a high degree of tension because

the clock was ticking, time was running out, the design production in terms of the level of expected design production wasn't hitting its targets and, therefore, it was a stressful environment. Relationships were still good in terms of the application of a process of review having had the production side of it. There were still very engaging sessions. Meetings with both parties continued all day, every day on a variety of subjects. So we were very much in favour of the co-location at Canaan Lane, which we saw as helping the process, and personally I think it did help. It didn't get us collectively to where we wanted to be, but got us far enough to the target to be able with certainty to sign a contract and start construction.

Q Were you aware of a view on the NHS Lothian side that by November 2014 they had a concern as to whether the design for the ventilation system was fit for purpose?

A No.

Q If I could ask you to have in front of you, please, bundle 10, page 283, so bundle 10, volume 1, page 283. So, you see in the top left-hand corner, "Healthcare-Associated Infection System for Controlling Risk in the Built Environment (HAI-SCRIBE)", so an HAI-SCRIBE report from 19

November 2014? Do you see that?

A I see that, yes, sir.

Q Now, before preparing for the Inquiry, had you seen this HAI-SCRIBE report before?

A I hadn't seen that report, but I know what HAI-SCRIBE is there to do.

Q And had you had any discussions, late 2014, with any of your colleagues such as Liane Edwards about the output from this HAI-SCRIBE report?

A No.

Q The reason I say that is if we look on, we will see on page 285 the consultees for the report, second entries for Liane Scott Edwards, who I think at that time was working as a manager for Multiplex.

A As a design manager for Multiplex for IHSL, yes.

Q And if we then look on to page 286, you'll see entry 2.2.

A I do.

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

Do you see that?

A I do.

Q And it is ticked as "no." Did Miss Edwards or anyone else

escalate that issue to you saying, "It's being fed back to us that our design, we're being told, is just not fit for purpose from an infection prevention and control perspective"?

A It was never raised in the terms you set out there, no.

Q If that had been escalated to you prior to financial close, would that have been a matter of concern?

A Indeed, yes. I think more needs to be paid to the comments underneath the "no" checkbox that "some concern has been raised in relation to a potential issue." So, what level of concern and what is the potential issue? Then continuing, "Awaiting drawings and further information to fully understand if indeed there is a risk/issue." So, I would say in the absence – and we spoke about it earlier – all of the ADB documentation and the full design, which had yet to be concluded, someone could write that statement as a protective mechanism because, until I can see all of it, I can't say with a level of certainty that it fully complies and is a system designed and fit for its purpose.

Q Again, just maybe to pick up on one point you mentioned there, you talked about the final design still

having to be done.

A Yeah.

Q Again, for those of us that do not work in that space, you have the tender that goes in; you have the contract that gets concluded. At what point are you going to have what you refer to as the final design?

A Prior to construction so that we can manufacture the ductwork to the lengths and layouts that the final design will illustrate. At this stage you may only have schematic layouts indicative of the eventual final design, and until you've run the design calcs through the total design you cannot satisfy yourself that the flow rates will be achieved. The computer says they can be, but until you actually size your ductwork, you can't be certain with absolute confidence.

Q I would now like to come on and take you through minutes of various meetings that are happening from summer 2014 up to financial close. So, if we could begin by looking at bundle 8, page 11, please. That is a Special Project Steering Board meeting that takes place on 22 August 2014. Do you see that?

A I do.

Q You are not present there, but Ross Ballingall of Brookfield Multiplex is present. Although you are

not present at the meeting itself, did you have an appreciation of why this meeting was taking place?

A Yes.

Q Why, on 22 August 2014, is Mr Ballingall coming up and meeting with representatives from NHS Lothian?

A This is that we're running out of time and financial close is fast approaching. The programmes are not being met, so it was elevated within our organisation, namely to Ross as the managing director, to attend a Steering Group meeting and talk to that with the representatives of NHSL as you can see there, Susan in particular.

Q And, again, paraphrasing from your statement, is this taking place because there is, I think, what is described as a mismatch in expectations between the parties?

A A mismatch on expectations manifesting itself on not enough being done in the time allocated to it, yes.

Q If we look on page 11, box two, "Programme":

"SG [Susan Goldsmith] noted that NHSL had significant concern about the project programme and that this meeting was an opportunity for IHSL to

discuss progress with the Steering Board. Being a major project the milestones were in the public domain and NHSL need to have confidence in IHSL to deliver this.”

Do you see that?

A I do.

Q Is that, effectively, this concern about, “Financial close is coming up and how are we going to get to financial close”?

A Correct.

Q If we then look on to page 12, you will see that there is a subheading “Production of room data sheets”.

A Yeah.

Q You see that?

A Mm-hmm.

Q Which states:

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

Do you see that?

A I see that, yes.

Q That records that there is actually an agreement that is reached the day before. Were you involved in that discussion the day before whereby this agreement was reached?

A I was not, no.

Q Do you know who was involved in the IHSL Multiplex side?

A I can't recall that at all. I'm sorry, no.

Q Mr Ballingall obviously states that at the meeting. Is that something that would have been on his agenda, or would that have been someone else within IHSL Multiplex?

A That would definitely have been something that would have involved Brian Currie, I would suggest, with the advice of his team including Graeme Greer. I would look for correspondence that would support that statement. Ross will only have been talking to an exchange of-- in writing of some form.

Q Thank you.

A Now, that might – and I apologize that I can't answer it – be some exchanges between myself and Brian, and those would not have gone without being put in writing by email or otherwise. I think we need to look back at that.

Q Thank you. If we look on to page 13 please and the second sentence there beginning, “BC noted that in dialogue...” Do you see that?

A I do yes

Q

“BC noted that in dialogue and the invitation to submit final tenders NHSL had been clear on the requirements and deliverables for the programme and that IHSL had been slow to get started. SG was concerned that this updated programme would also prove impossible to deliver.

“RB stated that there was a genuine mismatch in NHSL's and IHSL's expectations, where IHSL were being asked to deliver much more than on other projects, and considerably more than was required for comfort of operational functionality. He felt that this demonstrated a ‘paranoia and lack of trust’ in IHSL.”

Do you see that? Was that your views as well that there was a paranoia and lack of trust in IHSL at this point?

A Yes, back to the level of frustration that was becoming obvious within both teams as to the length of

time we had been spending and the inability to deliver to the list of deliverables together.

Q And did that change? Obviously, we are in summer 2014, move forward to the contract being signed in February 2015. Did that paranoia and lack of trust-- did that dissipate over time?

A No, I think there was still-- Paranoia is a very strong word, I would say. It was a level of frustration as to the length of time it took to achieve agreement as to compliance with the Board's construction requirements, particularly if we go back to my belief that the line of this in the sand had already been stipulated by NHSL and potentially all the IHSL were doing were replaying back to them a compliance with those expectations. “You've told us what you want, let us now deliver it for you. Why do you need to keep checking that we're giving you what you've asked for?”

Q I think just one thing, obviously, we are just-- I am simply looking at a minute, 10 years old. It is just trying to understand, in the summer of 2014 it seems that parties are at complete cross purposes, a minute stating there is a genuine mismatch in what one thinks is to be

provided as opposed to what the other is prepared to provide. There is a paranoia and a lack of trust. It is somewhat difficult to understand what happens and how that is resolved for the parties to get to a point of signing a contract. Are you able to shed any light on that?

A I could only say that at signing of the contract there were multiple stakeholders who all had to be satisfied as to their contractual commitments at financial close and at contract execution thereafter. So a level of diligence would have had to be applied by a variety of businesses including the funders and NHSL and Multiplex and Bouygues all to come together to say we can now move forward collectively under this contract.

Q If we look still within the minutes, if we skip the next two paragraphs, there's a statement beginning "MB". Do you see that?

A I do.

Q So that is:

"MB [Mike Baxter from the Scottish Government] asked if there was a common understanding of the requirements to sign off operational functionality and BC [Brian Currie] responded that he didn't think that was the case.

GW expressed his concern that the programme table was not achievable if IHSL were still looking to negotiate terms."

Do you see that?

A I do.

Q We have now got someone from Scottish government asking NHSL if they think that there is a common understanding, and NHSL saying, "No, I do not think there is a common understanding." If I am picking up your evidence, I think you are accepting that, on the Multiplex IHSL side, you thought you had to provide something different to what other parties were saying. Again, what discussions were you having with Mr Ballingall about these issues-- about this lack of common understanding at the time?

A I would take issue with the "absence of a common understanding." Operational functionality and clinical functionality can get confused but, given a very clear brief, which is what IHSL understood they had been given by the Board, there was no misunderstanding on our side.

Q Thank you. If I could ask you to move on and look at another minute, please. So, we're still within bundle 8 but this time at page 15

please. So, this is a document headed “RHSC + DCN Steering Board Commercial Sub-Group” dated Friday 31 October 2014, and you see in the attendees that you are recorded as attending this session.

A Yes, indeed.

Q Is that a meeting that you recall taking place and, if so, why is it taking place?

A This was the follow-up series of meetings and the monitoring of the programme against the revised program of deliverables. So, how are we progressing? Are we going to get to where we promised we would after we all sat down at the higher meeting two months prior?

Q And what are relations like? We’ve moved on from the summer. We are now in October. What were relations like?

A I think they were good. We were working to a common goal, so they had to be proactive, business-like, and we had to be effective as a team.

Q If we look over the page onto page 16 of the bundle. See the first full paragraph:

“GW stressed the importance of understanding if 12/12/14 was really feasible, as failure to meet this third attempt

at FC would make all parties look foolish.”

Do you see that?

A I do, yes.

Q Was that a concern amongst all parties about not getting to financial close quickly and all parties looking foolish?

A I would have used other terminology because if we didn’t achieve financial close by very early in that year, this project might not have taken place at all. That was the significance of it.

Q And you say it might not have taken place at all. Why not? What was the critical factor for it to take place early in 2015?

A There was a number of issues: an affordability issue on the part of the Board because as time goes on things inevitably cost more money, and if they can’t afford, then the job can’t pass-- just will not get through their threshold.

Q Again, just so I am understanding that from an affordability point, is that almost two sides of the same coin that IHSL Multiplex cannot hold their price indefinitely and, equally, there might not be funding in place indefinitely on the part of NHS Lothian?

A You’re correct, yes.

Q Thank you. If we return to the minute of the meeting from October, we are still on page 16, please. The next full paragraph beginning, “All agreed that slippage...” Do you see that?

A Yes, indeed.

Q “All agreed that slippage into 2015 would cause significant problems for both the Board and IHSL. Reputational risk was discussed.” Do you see that?

A Yes.

Q Whenever we are talking about the risks, is that really what we just covered in the previous question? The problem of the perhaps the project not taking place at all?

A Indeed, yes.

Q We will look to the next paragraph beginning “GW”. Do you see that?

A Yes.

Q “GW stated that he was disappointed by the lack of progress since the previous meeting and reassurances from IHSL, and losing confidence in their ability to propose an honest and realistic programme, and deliver to it.”

Do you see that?

A I do.

Q Again, that suggests that on the NHS Lothian side individuals are losing confidence in IHSL Multiplex. Is that a fair assessment of what the mood of this meeting was?

A Yes, there was a definite nervousness that we weren't hitting the deadlines. So, you can see if you read on to the next paragraph, and I referred earlier to the ongoing series of meetings that happened on a daily basis. There was further information required, and we were producing it in order to achieve FC.

Q So, again, just to be fair and so I am understanding things, we are looking at, obviously, a snapshot in time in terms a meeting with a set of individuals, but you are telling us, again, everyone is in Canaan Lane, there are regular meetings ongoing in addition to these more structured meetings that are taking place with the minutes being recorded?

A You're correct.

Q If we perhaps just skip the paragraph with “JB noted,” and then look at the paragraph “PR asked JB if...” Do you see that?

A I do.

Q So:

“PR asked JB [so I think that is you John Ballantyne] if, in

his opinion the Board had changed what it is asking for since the invitation to tender. JB replied that there was a difference of opinion over the level of detail expected in Project Co's Proposals (PCPs), but the open-ended requirement that 'the Board had to be satisfied' was difficult to achieve. JB acknowledged that the Board had agreed latitude on signing off operational functionality where 100% technical info not yet produced. Also, the Board's Construction Requirements had been updated in dialogue with IHSL, which reduced the extensive list of derogations that would be required of IHSL. These were examples of Board / IHSL negotiation to reach a pragmatic position in technical documentation for FC."

Do you see that?

A I do.

Q Again, I am just trying to understand what is being recorded here, because it still seems that in the summer there is a mismatch in expectations, and possibly by the October there is still a mismatch in expectations between NHS Lothian and IHSL Multiplex. Is that a fair

summary?

A Yes, because by that stage in the document production process we were well into the production of the PCPs: design first, PCPs that embody that design later. In the drafting of the PCPs – back to my statement that Mott MacDonald went through them with a fine-tooth comb to identify any potential discrepancies with the BCRs – it was taking a long time and the extent of information that they expected to be contained within the PCPs was over and above what I thought they required.

Q In terms of resolving these matters and trying to get to financial close, was the solution to take the difficult unresolved issues where parties had a mismatch in expectations and put those issues in as reviewable design data?

A No, because, as I said earlier, the fundamentals of the design that might well have contained those kind of difficult issues had been resolved. So when you go to look at the yet to be confirmed fully-- post-FC and post-contract, we need to look at that less factually to understand the risk profile of the open ended design.

Q Again, we can discuss that in a moment, but I think what I am

trying to understand at the minute is: we are still in the October, so we are a couple of months this point away from the signing of the contract. It seems like people think there is a mismatch in expectations in terms of what is wanted as opposed to what is to be provided. We know, as a matter of fact, the contract signed in the in the February.

A Yes.

Q But how is that that issue, that mismatch, that misunderstanding-- how is that resolved between then and February or indeed is it resolved?

A Yes, by concluding the PCPs to the stage of getting them incorporated in the contract. So, with IHSL and Mott MacDonald and the Board collectively, the PCP has achieved completion.

Q Thank you. There is just one final topic that I would wish to cover with you at the minute, Mr Ballantyne, and it is really, effectively, an open-ended topic for comment. NHSL Lothian's position before the Public Inquiry is that there is an error-- transcription error in a spreadsheet that does not get spotted by anyone. That is an issue and a problem that relates to the hospital not opening on time. That is a controversial issue that

the Inquiry will have to resolve. Do you think there were any issues during the procurement phase up to the conclusion of the contract that perhaps resulted in those types of issues and, if you did accept that, do you have any reflections on how projects of this nature could be done in a better way in the future to try to avoid such issues?

A To error is human. Yes, people and businesses make mistakes. I would challenge the fact that an error on a spreadsheet managed to sneak its way past so many eyes and interrogations without someone identifying with it. That's the answer to the first part of your question. It should not have happened, and if it-- some would say it could not happen without people actually knowing what was written in the box by way of the number four instead of six, eight or ten, and the only other way to resolve it is to take even longer and apply even more diligence to eradicate any and all errors. Will we ever do that in construction? That's a big question.

Q Thank you, Mr Ballantyne. I do not have any further questions at this stage, but Lord Brodie may have questions and, equally, there may be questions from core participants, but thank you for

answering my questions today.

A You're welcome.

THE CHAIR: Mr Ballantyne, I do not have any questions at this time. What I am going to do is allow a period for the legal representatives in the room to consider their respective positions. They will then come back, and I will find out what the position is. It may result in you being asked further questions, it may not, but in any event, I will ask you to return, but for the moment I ask that you retire to the witness room.

MR BALLANTYNE: Thank you.

THE CHAIR: We will take 10 or 15 minutes to ascertain people's respective positions.

(Short break)

THE CHAIR: Mr MacGregor.

MR MACGREGOR: There is no further issues from me, my Lord, and I believe there are no applications from core participants.

THE CHAIR: If you could bring Mr Ballantyne back in? Mr Ballantyne, there will be no further questions and you are, therefore, free to go, but before you go can I say thank you both for your attendance today and the preparation that was essential for giving evidence. I very much

appreciate that, for a witness to give evidence to this Inquiry, it is not just a matter of a few hours of question and answer. It requires a lot of work and preparation. So, thank you for that, but thank you also for attending today. Thank you.

(Session ends)