



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
25 April 2023**

Day 8
Friday, 5 May 2023
Peter Reekie

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10:30

THE CHAIR: Good morning, Mr Reekie. As you appreciate, you are about to be asked questions by Mr McClelland but, first, you are prepared to affirm?

THE WITNESS: Yes.

Mr Peter Reekie

Affirmed

THE CHAIR: Thank you very much. Mr McClelland.

Questioned by Mr McClelland

Q Could you please confirm your name?

A Peter Reekie.

Q You are the chief executive officer of the Scottish Futures Trust. Is that correct?

A It is.

Q Since when have you held that post?

A About 2018.

Q You have explained this to the Inquiry on a previous occasion, but just to put your evidence in context today, could you please just explain the role of the SFT?

A Yeah, Scottish Futures Trust is a centre of infrastructure expertise for the Scottish public sector,

wholly owned by Scottish Ministers, and our job is to work with public bodies and with industry to get the best possible value for money for infrastructure investment in use across Scotland.

Q You have provided a witness statement for this phase of the Inquiry's work. Do you have a copy of that in front of you?

A I've got it on my screen, yeah.

Q You have got it on your screen?

A Yeah.

Q Okay, good. For those following on the electronic devices, the reference is bundle 13 at page 312, and could I just ask you, Mr Reekie, does that statement set out fully and truthfully your evidence on the matters that it addresses?

A Well, mine does, but the one in front of me on the main screen is for Paul Cooper, so it's a different one, sorry.

Q Okay. That is my fault.

A That's fine. Quite all right.

Q I have given the wrong reference. The correct one is page 350----

A 350, I think, yeah.

Q Yes. There we are. Is

there anything in your statement that you think needs to be changed or corrected?

A No.

Q Well, the Inquiry will accept that as your evidence, but you will appreciate that I have got some more questions for you in addition to that.

A Of course.

Q Just for completeness, I should explain that, in addition to that statement, you also prepared a detailed witness statement for the Inquiry's hearings in May of last year, and you also came here last year to give evidence in person. So, I have no wish, and I am sure you do not either, to cover any of that ground again. We will take all of that previous evidence as read.

The consequence of that, Mr Reekie, is that there is not a great deal that I have to ask you about today. As I say, there are a few questions. If I could begin, first of all, by asking you about the procurement process for the Sick Kids project. Tenders for that project were scored on the basis of a 60/40 split. So, 60 per cent of the score relating to price and 40 per cent relating to quality, and in your statement you describe that 60/40 split as only a recommendation by the SFT,

albeit one that you would have taken some convincing to depart from.

Now, it may be a matter of semantics, but just to clarify it, the SFT guidance on tender evaluation from the time refers to the 60/40 split as a requirement unless there are project-specific factors to justify an alternative approach. The evidence from the NHSL witnesses is, to the general effect, that they wanted to give higher weight to quality, that discussions took place with the SFT about that, but that ultimately the 60/40 split was not disturbed. Does that reflect your recollection of events?

A Yes.

Q What was the reason for giving the weighting of a 60 per cent cost and for sticking to that requirement?

A As I think I said in my witness statement, the reason for the 60 per cent weighting on cost was, if you like, to deliver on the Scottish Government stated objective to minimise costs for each project that was set out in the funding condition letter to all health boards said that:

“In order to secure revenue support, the procuring body must satisfy both the... Government and SFT that it sought to minimise capital and operating

costs within the agreed project scope and has undertaken a whole of life cost analysis.”

So the context in which the programme was operating was one in which cost was, if you like, of the essence.

So having a slightly higher waiting for cost was deemed to be a way that that cost of the essence parameter, if you like, would be delivered in practice, and there were also a range of other features across the programme and on this project as well at the time, such as use of reference design, which brought in a number of, if you like, the quality factors that the procuring authority could get a lot of the design characteristics for the asset that it wanted by referring to those as mandatory in the reference design. So there was perhaps a lower range of things that quality had to be scored against. So there was no intention in our work to diminish the importance of quality, getting the right asset to do the job is clearly critical, but to bring in the overall principles of the programme and Scottish Ministers’ intent at that time, that 60/40 split was what had been agreed across the programme.

Q Okay. You referred there to the reference design and the impact

that that had on quality issues. That is an issue that we will return to in a moment. I think at the start of your answer you referred to the letter issued by the Scottish Government to health boards setting out the funding conditions for the NPD programme.

A Yeah.

Q It seemed to me that you were perhaps reading from it. Do you have that to hand, and are you able to give us a page reference for that?

A B10, v.2, p.143.

Q Sorry?

A Bundle 10. Volume 2.

Q Yes.

A Page 143.

Q 143. Okay, if we could just bring that up on screen, please.

A I think if you look at condition B at the top of that page.

Q Yes, if you read from condition B, this is under the heading, “Scottish Government support for elements of the unitary charge.”

A

“In order to secure revenue support, the procuring body must satisfy both the Scottish Government and SFT that it has sought to minimise capital and operating costs in the agreed project scope and has undertaken a whole life cost

analysis.”

Q Okay. So, there is a Scottish Government mandated condition of NPD funding that costs, including capital costs, have to be minimised.

A Right.

MR CHAIR: Mr McClelland, both you and Mr Reekie mentioned the name of that document. Could you just give it to me again for my note?

MR MCCLELLAND: Yes, certainly, my Lord. It may be helpful, actually, to everybody just to go to the front page of it, which is bundle 10, volume 2, page 134, and it is a letter from the Scottish Government Health & Social Care Directorate to the chief executives of NHS boards. It is dated 22 March 2011, and it is headed up, “SCOTTISH GOVERNMENT FUNDING CONDITIONS FOR DELIVERING PROJECTS THROUGH THE NON PROFIT DISTRIBUTING MODEL.”

THE CHAIR: Thank you.

MR MCCLELLAND: If we could just return to page 140, please.

A 43.

Q Sorry, 143, yes. Now, we see there the general principle of keeping costs within certain limits, but what we do not see there is the split of 60 per cent and 40 per cent.

A No, absolutely not. That was in the SFT guidance. I was trying to set the context within which that guidance was set for the programme.

Q So was the 60/40 split something decided upon by the SFT to reflect its understanding of the government’s requirements?

A Yeah, we, as the managers of the programme, set that condition, but we would have done so with the full knowledge of the government as well.

Q Okay. So the 60/40 split is something that had been decided upon by the SFT but discussed by the Scottish Government as a way of meeting their objectives?

A Yes. I think that’s fair to say, yeah.

Q Yes. Now, you said that the 60/40 split would apply in the absence of project-specific factors----

A Yeah.

Q -- to justify something different. What sort of factors would justify a different approach?

A I can’t immediately think of a specific project factor that would have led me at the time to agree to a change in that direction. We were dealing with projects at the time across a range of sectors, and I recall in the transport sector that the procuring

authority there, Transport Scotland, had a preference for a higher percentage on price, and that was something that was agreed to for those projects, and I think that one of the health projects took a two-stage approach during the tender and used a different weighting for the first stage and returned to 60/40 for the second stage. So, a range of different approaches were taken across the programme, although the majority did accept the sort of programme guidance of 60 per cent price and 40 per cent quality, and I wouldn't be able to tell you-- I couldn't sort of back-think myself into a situation that would have caused me to move from that.

Q Yes, but did----

A It was a pretty firm requirement. I'm not at all surprised that folks from NHS Lothian felt that it was a requirement that SFT had given them that they couldn't move away from.

Q You referred there to transport projects having a higher proportion of the scoring given to price?

A Yeah.

Q I think in your statement you refer to 70/30 splits and 85/15 splits with----

A Correct.

Q -- with the larger number being for price.

A Yeah.

Q Was there any particular reason why the price element was higher for transport projects than for healthcare projects, or was that just the way it worked out?

A I think it was because the owners of the transport projects, as I say, Transport Scotland, felt that they were clearly able to define pass/fail criteria or minimum conditions, and they were able to set out their required quality thresholds very clearly to tenderers, and that once the tenders had reached that threshold, they didn't value any increase in quality above a threshold very highly. They just wanted the threshold to be met----

Q Yes.

A -- and therefore, once the threshold had been met, to implement the programme level desires that we've just talked about, they went for a higher scoring on price.

Q So, this is a matter of generality, if a procuring authority is able to define its quality requirements, the high degree of precision, does that essentially free it up to leave more of the scoring to cost elements?

A I think if it's able to set its quality criteria as a minimum criteria

with a high degree of precision and it does not value to any great extent quality in excess of its minimum criteria, then that would free it up to----

Q Yes.

A -- give a higher percentage to price in this instance, yeah.

Q I see, and you also referred to a healthcare project where at an interim submission stage, if a 10/90 split was used, so 10 per cent on price and 90 per cent on quality----

A Yeah.

Q -- you explained that was subject to an affordability cap, but then at the final tender evaluation there was a reversion back to the 60/40 split.

A Yeah.

Q Can you just explain to me the thinking behind that approach?

A Yeah. Again, I don't have the detail of that all to hand. My recollection of that would be that the authority was keen to be clear about its absolute affordability cap, which was a condition of funding, as we've previously seen and we know that the capital cost caps were set as conditions of funding, and then within that capital cost cap they had a down select stage, from memory, during the procurement, and they ran that down select stage with a higher quality

weighting to be left with two bidders, I think, for the last stage of their procurement, both of whom were judged based on high quality, and then they went to the programme level 60/40 split for the final selection between those two bidders.

Now, what I can't recall was whether there was indeed that down selection because there were three bidders, or whether that was the strategy that they set, but then it didn't have to be implemented in practice because of the number of bidders that went through to the competitive dialogue stage. I think, when I was recalling this in my witness statement, I recalled it from the strategy that was set by that authority, which was to have a down select during the competitive dialogue period.

Q Okay. We have finished with that document on screen, thank you. If we could move instead to bundle 10, volume 2, at page 2900. It is a little bit faded, unfortunately, but I hope you can read it, Mr Reekie. We see here this is headed up as notes of a project meeting with SFT about procurement and competitive dialogue issues----

A Yeah.

Q -- dated 26 October 2012. There are various attendees

from NHS Lothian, Mike Baxter from the Scottish Government, external advisers and you and some colleagues from the SFT. Item 2 is headed up, “Cost v Quality evaluation.” The first paragraph refers to a paper by Ernst & Young. Then the second passage there reads as follows:

“PR [which I think are your initials] emphasised that there was no intention to undervalue quality in the standard form proposed by SFT and that the reference design allows NHSL to specify a high degree of quality in mandatory criteria. SG [I think is Susan Goldsmith] accepted that the building will be of good quality, following the work of the reference design to specify the Board’s requirements, and highlighted NHSL’s need to find a partner for a 25 year relationship.”

And so on. So, I think this is the point you alluded to earlier on this morning, that the existence of a reference design was a method of allowing or ensuring that certain quality standards would be achieved?

A Yeah.

Q Am I correct? Would that only apply to the mandatory elements of the reference design, or was it also

considered that quality benefits might be achieved with the non-mandatory elements?

A I expect that would refer to the mandatory criteria, as it says there.

Q Yes. I think that is what the minute says, but there was also work done to produce non-mandatory elements of the reference design, and the view was taken that that should be made available to the bidders.

A Right.

Q Was there any thought at the time about whether providing those non-mandatory elements might be relevant in the achievement of certain desired quality standards?

A I don’t recall any discussion of that at the time. I don’t recall this discussion.

THE CHAIR: My fault entirely, Mr McClelland. I missed the reference to the minute that we are just looking at?

MR MCCLELLAND: The bundle reference, my Lord?

THE CHAIR: Bundle and page.

MR MCCLELLAND: Yes. It is bundle 10, volume 2 at page 2900.

THE CHAIR: 2000 and---?

MR MCCLELLAND: 2900.

THE CHAIR: 900. Thank you.

MR MCCLELLAND: Now, Mr

Reekie, in the later part of 2014, so we are moving on a few years from the minute we have just looked at.

A Okay, yeah.

Q Just in the run up to financial close, which ultimately happened in February 2015.

A 2015. Yeah.

Q So, we are looking, at the moment, in the second half, really, of 2014.

A Uh-huh.

Q There were concerns about an ongoing delay in achieving financial close. Do you recall that?

A Yes.

Q In your statement, and for anybody who wants a reference it is paragraphs 19 to 28, starting from page 359 of bundle 13, in that part of your statement, you discuss a series of meetings, from August through to November 2014, which you attended and at which these concerns were discussed, and I think, just out of fairness to you, it may be helpful if we just have a look at the minutes of those meetings, and the first I would wish to take you to is bundle 8, page 11, and we see this is a meeting of the Special Project Steering Board, 22 August 2014, and there is a list of attendees, various people from NHSL, a couple from IHSL, and you are also

there.

A Mm-hmm.

Q Just reading through that, in the section headed up "Programme," we have got a passage that reads:

"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."

A reference in the following sentence to NHSL needing to have confidence in IHSL to deliver to the programme. In the following paragraph, there is a reference to a programme which had slipped eight weeks, and then over the page on page 12, under the heading of "Production of room data sheets," there is a reference there to the decision that there would no longer be 100 per cent of the room data sheets produced. Then down at the bottom, under the heading of "Technical adviser due diligence," it reads that:

"Technical information is to be captured in Project Co's Proposals (PCPs) schedule of the Project Agreement. This is IHSL's response to the Board's Construction Requirements and

extensive design development with the preferred bidder. BC [Brian Currie] noted that these documents are not yet completed, with some way to go in certain areas.”

A I’m not sure I’m seeing that, sorry.

Q Sorry, that is just-- it is the bottom paragraph on that page.

A Yes.

Q I will give you a moment to read that. Perhaps you could let me know once you have done it.

A Could you remind me which paragraph I’m looking at?

Q Just the very final paragraph.

A “Technical information is to be captured,” sorry, yes.

Q Yes, and it is really the point that the Project Co’s Proposals schedules are not yet completed and there was some way to go in certain areas.

A Yes.

Q Then over the page on page 13, we have:

“RB [who is, I think, Ross Ballingall of Multiplex] 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.”

Then, a little bit further down:

“SG [Susan Goldsmith] asked whether IHSL were committed to delivering the revised financial close date and RB and RO confirmed that this was the case. SG asked for confirmation that they would deliver what was asked for in the tendering process, and RB responded that NHSL needed to be pragmatic or this programme would fail as well.”

So, that is that particular meeting.

If we can just move forward-- There will come some questions once we just look through these minutes.

A Okay.

Q If we could move forward to page 15 in bundle 8, please.

A So we’re now a couple of months forward in October. We were August before, weren’t we?

Q That is right. So, August before, now in October, this is a meeting of the Commercial Sub-Group of the Steering Board, and you were there, various representatives of NHSL

and IHSL at that meeting. Then, under paragraph 3, we have got:

“JMC [who is a Macquarie person] apologised for not providing a programme at this stage, it was still to be developed and agreed internally within IHSL.

JMC reported that, as previously discussed ... financial close (FC) on 27/11/14 would not be possible.”

Then, reading on a couple of paragraphs:

“The Board do not wish to see delay in project completion ...”

Then over the page, page 16: “GW [George Walker, who was the chair of NHSL] stressed the importance of understanding if”----

A I’m not sure he was the chair. I think he might have been a board member, but----

Q I think he is designated in the list of attendees.

A Chair of this meeting.

Q Chair of that meeting, I think-- Sorry, chair of that meeting, yes.

“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.”

Then there is reference a little bit further down to reputational risk being discussed.

Then, moving forward to a following meeting in bundle 10, volume 2 at page 4080, this is another month further on, 21 November 2014, again, a meeting of the Commercial Sub-Group of the Steering Board – again, you are at that meeting. At item 3 we see that a proposed programme with a target of financial close in January was issued to the Board, and there is a reference to that being the fourth target date for financial close.

So, the purpose of going through all of those minutes was just to draw attention to those particular commercial and programme issues, and a number of things appear to be going on around that time. At the level of the project’s technical elements, IHSL seemed to be either unable or unwilling to produce the level of technical detail that NHSL wanted to see. Is that a fair summary of-- Do you recall that being an issue at the time?

A Well, the minutes have referred to production of technical information. Yes, I can see in this one here that it says, “The largest outstanding risk ... not yet achieved, is

the Board and IHSL's agreement of Schedule Part 31," so there were clearly lots of moving parts at that stage.

Q Yes. My purpose in taking you to them was just to help jog your memory perhaps. Do you remember those discussions or are you now confined to just going off what is in the minutes?

A Confined to the minutes.

Q Confined to the minutes, okay.

A I was looking after about 10 projects of a similar nature at that time.

Q Yes, okay. What I wanted to ask you – and it may be, in light of that answer, that you are not able to help – how were relations between the parties at that time?

A There were definitely tensions. I recall that from the overall environment, but I wouldn't say that was out of the ordinary for this stage of a procurement process where there's often a lot of outstanding material, and it stands to reason that the points that are outstanding towards the sharp end of a preferred bidder period are the more difficult points, so-- and there are often commercial tensions around those.

Q Okay, so----

A But there definitely were tensions between the parties.

Q If I could put it this way: is it just part of the rough and tumble of a difficult project, nothing particularly unusual about it?

A I wouldn't say it's always the case, but it's not unique that there are tensions at this stage. I would say that this particular set of Steering Board and sub-group meetings indicated that there were sort of more tensions and more delays at this stage than were the case in other projects in the programme, so the extension of the preferred bidder period to, I think, 11 months was unusual. So, there was more activity and more delay than in other projects that were going on at the same time at this stage of the project, yes.

Q The minutes refer to a mismatch in the expectations where the Board were looking for more technical details than IHSL thought it was necessary to provide.

A Yes, indeed.

Q Why do you think a mismatch of expectations had arisen?

A It's probably better off asking the parties between whom there was a mismatch that question.

Q Well, I am sure that that question will be put to them or will

have been, but you were at the meeting. Did you discern how this had arisen?

A No----

Q Sometimes the observer picks out more than the people involved in the misunderstanding.

A Yes. As I said, I'm afraid I'm just going by the minutes.

Q Okay, yes. In the passage of your statement which deals with these meetings, and the particular paragraph reference is paragraph 26, which is bundle 13, page 362, you say:

“I was concerned that the commercial and technical matters comprising the contract were properly agreed in a timely manner. It's normal to have a list of outstanding issues at that stage to be agreed between the parties, and I was keen to see progress made by the teams in resolving them. I advised the Board and IHSL to resolve these issues or ensure that they were captured as RDD [reviewable design data] post financial close.”

Could you just expand on that and, really, the point about the alternative of having issues captured as RDD?

A I suppose the point is that what's important as you reach

financial close is that things are not missed. They have to be captured somewhere, and if things are not resolved to the satisfaction of everyone that there is sort of certainty of them by the time you reach financial close, i.e., they're all sort of what you might call buttoned up in the contract, if you like, then it's important that they're just not left to float, so they need to be then captured in the list of things that need to be addressed after financial close, which, in respect of these sorts of issues, it seemed to me that reviewable design data would be the place to put that. So, I guess the commercial point is that-- don't forget things. Either deal with them before financial close or make sure you're absolutely clear that they are on the list of things to be dealt with after financial close.

Q So, there are broadly two options that you describe there: one, I suppose, delay financial close and buy time to resolve the issues before signing up to the contract or, alternatively, leave them unresolved for the time being, but put them into a contractual mechanism to be resolved afterwards. Now, why is it that the latter option was taken?

A I guess in the round, given the desire of all of the parties to

move the project forward, it was considered that that list of items were ones that were capable of being dealt with after financial close and that, therefore, the right thing to do was be clear that they weren't forgotten about, to have them on the list, but to deal with them later and allow all of the other activities that can only start with financial close, like the beginning of mobilisation for construction, etc. to get moving.

Q What did you understand to be the function of the RDD process in the contract?

A That's an awful big question, if you like, because-- The RDD process is set out in the contract and it's followed by the parties to allow the authority to make comments on the design as it goes ahead, to review the design and, in respect of certain matters – operational functionality – to add its endorsement that the design as it progresses meets those criteria and, in respect of other matters, to make observations as it goes along, which then, through the process of RDD, allows elements of the project to move into construction.

Q Okay. The short point is that that was seen as a suitable mechanism for addressing these unresolved issues.

A It's certainly a suitable mechanism for dealing with the fact, which is generally the case, that the design is not 100 per cent completed for construction at the point of financial close, but those sorts of matters have to be dealt with somehow and the RDD process is how that's done, yes.

Q Okay. To what extent did you know about what matters were to be put into the RDD process?

A I don't expect to have been close to the technical detail of all of them, but I would have to go by whatever the minute says about whether any specific matters were discussed in the meeting or whether they were not.

Q Your recommendation that these are issues which could be put through the RDD process, was that really dealt at a sort of strategic level, knowing that there were issues of design, or was it based on a more detailed knowledge of what those issues were?

A I think it was based on a strategic and perhaps, up to a point, commercial point that if a matter was not captured and tied down before contract, it should be not forgotten about and should be clearly on the list to be dealt with afterwards, whatever that issue may be.

Q Okay. Would you consider it appropriate for any of the Board's requirements to be put through the RDD process?

A I'm not sure I can answer that question, I'm afraid.

Q Okay. If I could put it this way: some witnesses have expressed the view that the Environmental Matrix was essentially a statement of the Board's requirements for ventilation parameters, and the Environmental Matrix was one of the items that was put into the reviewable design data process. Again, it may be that you cannot answer the question because it is a technical issue, but the question is this: if it is correct that the Environmental Matrix set out the Board's requirements for ventilation, is that something which you would regard as a suitable candidate for the RDD process?

A I think I'd have to understand the full context of all of the different elements of the documents and the technical standards, etc. that went into that and indeed everything that was contained in the Environmental Matrix, whether it was just, very strictly, standards or whether it had elements of sort of methodology associated with it. So, I'm not in a position to say sort of in a binary sense

whether that would be suitable or not, I'm afraid.

Q Okay. If I could move onto the subject of the Key Stage Reviews, you have explained that the SFT ran a Key Stage Review process which health boards were required go through as a condition of the NPD funding.

A Yes.

Q You have explained that process and its objectives in your previous evidence, so I do not propose to ask you to repeat that, but other witnesses in relation to this hearing have made comments about that process and I would just like to put them to you and ask you for your comments about them. So, the first is in the witness statement of Mike Baxter, which is bundle 13 at page 309, and it is paragraph 46 I would like to look at. Mr Baxter is asked here about one of the meetings that we looked at. It is the one from 22 August 2014. He says:

"I am asked if I would have expected the issues discussed at the meeting of 22 August 2014 to be included in a Key Stage Review."

What he says is:

"I would expect all relevant procurement/commercial matters

relating to the progression of a project from one procurement stage to the next to be reflected in the KSR. The function of the KSR was to provide assurance re readiness (or not) to proceed to the next procurement stage. If such assurance could not be provided then the KSR should detail the reason(s) why not.”

What is your view about what Mr Baxter says there?

A I'm in agreement with it in that I suppose he's been asked a question about issues in relation to 22 August 2014 and he's answered that the KSR is about moving from one stage to the next, and 22 August 2014, from my recollection, is not a point at which the process moved from one stage to the next.

Q Yes, and it is fair just to remind everyone that the next Key Stage Review happened just before financial close in----

A February '15, from memory.

Q -- February 2015, so we are a few months ahead of it there.

A Indeed.

Q We discussed a moment ago the tensions that had arisen in the run-up to financial close and the decision to put matters into the RDD

schedule. Are those the sort of issues which, in your view, it is the purpose of the Key Stage Review process to assess?

A The Key Stage Review process would have assessed whether the budget team and NHS Lothian were content that the technical matters and the definition of their requirements was at the required stage by the point that the KSR was done, and-- I mean, you may have covered this with Donna earlier on, but it would have assessed where those technical matters were at in the view of the authority in February 2015. So, I wouldn't expect the Key Stage Review to have narrated all of the ins and outs of what went on to get to that stage. I would have just expected it to say what the status was at that point in time.

Q I think I am right in saying that you referred there in the Key Stage Review to the SFT asking the questions, but the Board effectively reflecting on those questions – and these are my words rather than yours – and assessing for themselves whether they think they are ready. Is that a fair way of looking at the process?

A I think it was quite iterative between Donna, who was the first reviewer, and NHS Lothian, who

were the reviewee, if you like, the party. So, I would expect that the form, if you like, the document, would have been filled in by Donna based on asking questions of the NHS Lothian project team. So, I would have expected the reflection of comfort or not on that in respect to those questions to come from the NHS Lothian project team whether or not they were written down by Donna, yes.

Q Yes. If we just go onto paragraph 49 of Mr Baxter's statement, please, on page 310, he says there:

"The Inquiry is correct in understanding that SFT 'holds the pen' on KSRs. NHSL would be expected to provide information to SFT. however, the report is owned and signed off by SFT. I would have expected engagement with the NHSL Board would have taken place to check for factual accuracy, but cannot confirm whether that occurred in this instance."

It just really raises the question of the extent to which the SFT is attempting to verify or check what the Board is telling them, or the extent to which the SFT simply accepts the Board as having truly and honestly answered the questions.

A And I suppose I haven't(? 02:24:49) thought about that, and-- The Key Stage Review process was sort of designed to give an independent assurance to SROs, to the procurement authority, the project team and to the relevant government department as a funder on the readiness, but all of those parties would have the same interests overall. So, it wasn't in any way a process that was designed to, if you like, catch out instances where a project team wasn't telling the truth, not that I'm in any way saying that's the case in this case. It just wasn't designed to do that sort of thing, and it wasn't designed to go back forensically to the base documents to support every statement made. I think it was a process that was undertaken during a live procurement process. I think we've seen here how long it takes and the amount of time and energy that it takes to go back to the base documents for everything, so that's simply not possible at these stages. So, it was based on asking questions of those involved and, as Donna probably would have said, from her knowledge of the documents that were around at the time, it was not, and it was never intended to be, a sort of forensic analysis of base documents for

everything at any point in time.

Q Okay. If we could go then to Susan Goldsmith's statement at bundle 13, page 449, and it is paragraph 68. This is the way she puts it. She says:

"We were all funded by taxpayers – SFT, Scottish Government, the Board – and of course we've all got different roles and responsibilities but, from my perspective, we were all part of the same [I think it's supposed to be team]. It is difficult because the KSR could be read as though the Board was entirely separate from SFT and the Scottish Government but, in practice, we worked together with them to deliver this Project."

Do you accept that as a fair assessment of the way these entities worked through the KSR process?

A Yes, I suppose that paragraph taken at its whole, we've all got different roles and responsibilities, absolutely, but the point I just made in my earlier sentence, I suppose, was that the interests were aligned of all of these parties. So, it wasn't like we were trying to check if anyone was-- It was a point of reflection that allowed parties who had the same interests to just check up that we were all

comfortable to move onto the next stage. Yes, so we were absolutely aligned in our interests to deliver the project, and we all had different roles and responsibilities in doing that.

Q Yes, thank you. Now, as I am sure you are aware, one of the issues which arises in this Inquiry concerns the Environmental Matrix and the extent to which compliance with it was a mandatory requirement of the Board or the extent to which IHSL had a duty to develop it in accordance with applicable guidance, and various parties have different views about that. So, it is at least possible to contend that there was an ambiguity or crossed wires on that issue through the procurement process and into the contract, and that particular issue was not detected by various processes, which include the SFT's Key Stage Reviews. Is that particular issue one which you consider the SFT's Key Stage Review process could or should have detected before allowing the project to proceed to financial close?

A No.

Q In hindsight, can you think of any way in which the SFT's Key Stage Review process might have helped to detect that issue?

A The Key Stage Review process was focused on the

commercial and procurement aspects, as we've discussed at some length, so the only way that the Key Stage Review process could have helped to highlight such a point would have been if it had been raised and escalated by any member of the technical teams to a level that it would have been picked up in a Key Stage Review, for example, in the project risk registers which were, I think, reviewed as part of those Key Stage Reviews and brought to the Project Steering Boards.

Q So, you say there it could have come onto your radar screen if the technical people on the Board had raised it there. Are there any questions that you think might be added to the list which could draw out that sort of issue or do you think the right sort of questions are already being asked?

A I think the questions on the definition of the technical requirements were at the right sort of level for this review. It so happens that we've become interested in one very, very particular point in a technical set of documentation that at the time was very wide as well as being, as we've seen, quite deep, so I'm loathe to suggest that a particular additional question or focus would have led us down that really quite narrow route in a

process that was designed, as we've seen, on the technical level just to allow a board to reflect and consider for itself whether it had the right level of information to hand.

Q Okay. A question has come up about a clause in the Project Agreement, and if we could just look at that, please, it is bundle five, page 11. Sorry, just to put this in context, you have explained in your statements that the SFT was responsible for the standard form NPD contract----

A Indeed.

Q -- and if anybody wanted to make a change to the standard form, there was a derogation process that involved the SFT, and the SFT would have to approve the change.

A Yes, and in general, if there was a derogation requested for a project-specific matter, that would be allowed and passed through our derogation process, and if it was a derogation request for a more general clause or there was no project-specific justification given, then we wouldn't allow that to go through.

Q If we could look, please, at clause 5.2.4, it is in a section headed up "General standards." Sorry, if we could just zoom out a little bit so we can see the opening wording. Thank you.

“Project Co shall at its own cost be solely responsible for procuring that the Project Operations are at all times performed...”

Then, reading down to 5.2.4:

“... except to the extent expressly stated to the contrary in the Board’s Construction Requirements or the Service Level Specification, in compliance with all applicable NHS Requirements...”

So, we see there that the Board’s Construction Requirements are given priority to the extent that they differ from the requirements of the NHS Requirements. Do you see that there?

A I’m not sure I’d quite put it that way.

Q Sorry, yes, I may have put an unhappy gloss on it. The point there is that it says that “to the extent expressly stated to the contrary in the Board’s Construction Requirements.”

A Exactly.

Q Yes, so if there is something expressly stated in the Board’s Construction Requirements which is in contradiction to the NHS requirements, it is the Board Construction Requirements that apply. I just want-- is this clause one that is from the SFT’s standard form?

A I’ve done a document comparison and I believe it is the same clause that appears in the standard form for completeness. I should probably say that the standard form has “Authority” in place of “Board” but that’s just a change in nomenclature for the project, and that in the standard form this clause is in square brackets because-- and the user guide at that time suggests that this is just to be used for health projects and, of course, this is a health project, so it was used.

Q Yes, okay. The question is simply this: what is the rationale behind allowing particular requirements in the BCRs to take precedence over NHS requirements?

A Well, the clause says, “except to the extent expressly stated to the contrary in the Board’s Construction Requirements or the Service Level Specification, in compliance with all applicable NHS Requirements,” so I guess one reading of that is to say that if the Board’s Construction Requirements expressly says that an NHS requirement shouldn’t be followed, then they should. So, it’s an enabling clause that allows NHS bodies to make those express statements in their construction requirements. It’s been in standard forms of health PPP

contracts for a number of years, and it was up to then individual authorities to decide whether they wanted to make such an express statement or not. So, it was included from our perspective as an enabling clause that had gone before, and we thought it reasonable to leave it in in this contract so that boards could use that if they wished.

Q Is the point simply this, really: that the particular needs of a particular project may require a different approach to the one set out in the NHS requirements?

A It may be that a board wished to do that, yes, and make such an express statement.

Q A final question is: were you aware of a desire to control, so far as possible, energy consumption in the hospital building?

A Well, I was aware that there are requirements around energy usage, so in the standard form user guide, for example, we say that energy efficient design is a requirement for NHS projects. The funding criteria include compliance with the Scottish Capital Investment Manual, which has a requirement around BREEAM ratings – Building Research Establishment and Environmental Assessment Methodology – and part of BREEAM is around energy usage.

The BREEAM rating was covered in the Atkins Design Review, which we commissioned and we've considered previously, and I think the outline business case approval includes a reference to BREEAM. So, because BREEAM and achievement of a certain BREEAM rating was part of a condition for funding and general requirement and that includes elements around energy, then, yes, I would have been aware that controlling the energy use was important.

Q Okay. Thank you, Mr Reekie. That is all I intend to ask you today. It may be that others have questions for me to ask, but we shall see.

THE CHAIR: I do not have any further questions at this point, Mr Reekie. What we have been doing is taking a break after witnesses' evidence to allow other legal representatives to consider whether there should be any further questions. We also usually take a coffee break at about half past eleven, so what I think I would propose is that we allow 20 minutes during which people, including you, I hope, Mr Reekie, have the opportunity to have a cup of coffee. It will also give people the opportunity to consider whether any questions are

necessary and, therefore, I suggest we sit again at about five to twelve, at which stage we would be able to proceed with – subject to any further questioning of Mr Reekie – Mr Greer, I think is the next witness.

MR MCCLELLAND: Yes.

THE CHAIR: Well, if that seems at least one way of managing things, that is what we will do, but first of all I will ask that you are taken to the witness room.

A Thank you.

(Short break)

THE CHAIR: Mr McClelland?

MR MCCLELLAND: Thank you, my Lord. There are no additional questions for Mr Reekie.

THE CHAIR: Can you ask Mr Reekie to join us? (After a pause) Mr Reekie, there is no further questioning for you and therefore you are free to go. Before you do that, can I thank you for your attendance today but also for the preparation that went into your witness statement? It involved significant work, so thank you for that. You are now free to go.

THE WITNESS: Thank you.

(Session ends)

11.52