SCOTTISH HOSPITALS INQUIRY

Hearings Commencing
9 May 2022

Day 5
Monday 16 May 2022
Michael Baxter

CONTENTS

10:00

THE CHAIR: Good morning. Now, Mr McClelland is leading evidence this morning, and I think we have Mr Baxter as our first witness. Good morning, Mr Baxter.

THE WITNESS: Good morning.

THE CHAIR: As you are aware, Mr Baxter, you are shortly going to be asked some questions by Mr McClelland, who is sitting across from you. First of all, will you take the oath?

THE WITNESS: Yes.

BAXTER, Mr MICHAEL

(Sworn)

THE CHAIR: Thank you very much, Mr Baxter. As you can see, you have a microphone in front of you. It seems to be fairly directional, so you might want to bear that in mind and maybe just try speaking just a little louder than you would in normal conversation. I have to say that I am hard of hearing and therefore very much appreciate that. We will plan to take a break at about half past eleven for coffee. But if, for whatever reason or no reason at all, if you would wish to take a break during your evidence at some other time, give me an indication and we will break.

A Thank you.

THE CHAIR: All right. Mr McClelland?

MR MCCLELLAND: Thank you, my Lord.

Examined by MR MCCLELLAND

Q Could you please confirm your name?

A Michael Baxter.

Q Mr Baxter, you have, I think, provided a statement to the Inquiry. Is that correct?

A I have.

Q For everybody else's benefit, that is in the witness statement bundle at pages 83 to 129. Mr Baxter, the contents of that statement will form part of your evidence to this Inquiry. I am going to ask you questions around the same subject area, but if you want to refer to your statement in the course of that, then please do say so.

A Okay.

Q What is your profession?

A I'm a qualified accountant.

Q What professional qualifications do you have?

A I'm an accountant qualified through the Chartered Institute of Public Finance and Accountancy.

Q When did you gain that qualification?

A 1992.

Q You say in your statement that between 2002 and 2014 you worked in the Health and Social Care Directorates of the Scottish Government, is that correct?

A That's correct.

Q We will come to that role in a moment. In 2014, you left, I think, to become the Director of Finance at Transport Scotland, is that correct?

A Yes. December 2014, yes.

Q What is your current job?

A I'm currently Director of Finance and Corporate Services at Scottish Qualifications Authority.

Q Is it the case, then, that your involvement with healthcare administration and policy ended in 2014?

A That's correct.

Q Is it also correct that your career has throughout being concerned with matters of finance broadly?

A Yes.

Q I do not mean this facetiously: you are not an engineer or an architect?

A No, I'm not.

Q Can I just be clear at the outset that when I ask you about the operation of the Scottish Government Healthcare Directorates, I am asking

about the way they operated when you were in post, so up to 2014? They may, of course, have changed since then. If we return then to your role in the Health and Social Care Directorates, can I just check, first of all, is it “Directorates” plural?

A Yes, there were-- I think the number has changed subsequently, but there are a number of directorates that make up what used to be the government department, effectively.

Q I think you say in your statement that there are 13 directorates.

A Yes, that's correct.

Q Do we take it then that those 13 directorates together are responsible within the Scottish Government for the NHS in Scotland?

A That's correct.

Q Your role was in which one of those 13 directorates?

A So I was based in Health Finance and Information. At the time, there were a number of name changes whilst I was in the Health department, if you like, but Health Finance and Information was probably the kind of key one whilst I was there.

Q Just going by the title of that directorate, presumably it was responsible for matters of financial

administration of the NHS in Scotland.

A That's correct, both revenue and capital.

Q Just very briefly, just to help us orientate ourselves, what sort of issues are handled by some of the other 12 directorates?

A So Primary Care, NHS Workforce – I'm just trying to think – clinical specialisms, so the Chief Medical Officer's Office, Chief Nursing Officer, so matters of clinical oversight, and Health Finance also had a role in terms of performance management as well and the financial performance of the health service.

Q Thank you. In the 12 years that you had in the Health Finance Directorate, I think you say in your statement you had two roles.

A That's correct.

Q First of all, 2002 to 2009, you were the head of its Private Finance and Capital Unit.

A That's correct.

Q Is that a unit within the Health Finance Directorate?

A Yes, it is.

Q What, in broad terms, were your responsibilities in that role?

A Two primarily, so oversight-- planning and oversight of the capital budget for the NHS in Scotland and in relation to private finance policy as it impacted on the health service in Scotland.

Q So, if it came to the development and construction of new hospitals, would that fall within the scope of your remit?

A In part. In that former role, I was a member of the Capital Investment Group, but in terms of the financial planning of investment decisions in the NHS in Scotland, capital investment decisions, I would have a direct role in terms of the planning of that within the context of our overall budget and financial control of that budget as programmes and projects progressed.

Q Okay, so we will come to the Capital Investment Group again in a moment. The second role that you describe, between 2009 and 2014 you were the Deputy Director for Capital Planning and Asset Management.

A That's correct.

Q Again, was that department within the Health Finance Directorate?

A Yeah. Just to explain, the Private Finance and Capital Unit was part of the function that I then took over as Deputy Director, so it was all located within the same area.

Q Okay. So this role from 2009, was that a promotion over your

previous role?

A Yes, it was.

Q Was the scope of the role similar or was it different in any way?

A It was broader in the sense that asset management more generally was part of the role. My previous role has been really focused on finance and on private finance. This role was broader in terms of asset management and property-related matters within the health service.

Q In that second role, were you still responsible for the Scottish Government's part in the financing of new hospitals?

A Yes.

Q I think I am right in saying that over both of those posts, so from 2002 to 2014, you sat on a body called the Capital Investment Group.

A That's correct.

Q From 2009 to 2014, you were its chair.

A That's also correct.

Q What was the Capital Investment Group?

A So the Capital Investment Group was a representative group from within the Scottish Government Health and Social Care Directorates that assessed

proposals coming through from NHS boards for investment decisions, whether that be new hospitals, health centres, above the delegated limits that the NHS boards have. I explain in my statement that boards had a certain level of delegated authority and responsibility based on the size, financial size of projects, and anything over and above that delegated limit required approval from the Scottish Government. The CIG, or Capital Investment Group, was the vehicle through which that assessment was done.

Q Okay, thank you. We will go over some of that again. The Capital Investment Group, that was a body within the Scottish Government----

A That's correct.

Q -- and, more particularly, within the Health and Social Care Directorates.

A That's correct, yes.

Q Was it made up of representatives from those different healthcare directorates?

A Yes, it was.

Q Approximately how many people made up the CIG?

A It would have been probably about 10, 10 to 12. The attendees of the Capital Investment

Group-- So the representatives-- Sorry, the representation on the CIG covered the whole of the Health and Social Care Directorates at the time. Those that attended the CIG would depend on the subject matter of the business cases that were being considered. So if there were specialisms involved, then some would have more of an input at particular times than others.

Q Just going by the numbers, if there were 10 to 12 on the CIG but there were 13 directorates, was it not quite as simple as there being somebody from each of the Health and Social Care Directorates?

A I think-- Sorry, all directorates would have been represented. Whether they all attended or not is a different matter. Apologies.

Q I see. Thank you. Now, in your statement, you set out in some detail your responsibilities in that role at paragraphs 3 and 4 of your statement.

A Yes.

Q The page references are 83 and 84. If we could start on page 83, paragraph 3 – do you have that, Mr Baxter?

A I do, indeed.

Q You say here:

> "During the period of my tenure as Deputy Director, I chaired the Scottish Government Capital Investment Group ('CIG') and in that role I had responsibility for the Scottish Government's infrastructure investment policy for the area of health and social care. That role included …"

Then you set out a number of bullet points. Some of these are more relevant for our purposes today than others, so I will just focus on those. First of all, the first bullet, you say there:

> "Allocating and managing the capital resources made available to NHS Scotland to invest in modern, fit for purpose assets."

Then, over the page:

> "Oversight of business case and approval processes and monitoring the delivery of major investment projects developed by NHS Scotland Boards (time and cost)."

Then, a few down:

> "Supporting the efficient delivery of capital investment through the development and implementation of effective and

efficient procurement approaches."

Then two more down:

"Supporting the development and delivery of major capital projects including those being developed through private finance, such as Non-Profit Distributing Model ('NPD'), a Scottish derivative of Public Private Partnership ('PPP')."

Are those all elements of the role that you had on the Capital Investment Group?

A Yes. Those would have been functions that I would have been representing, if you like, on the Capital Investment Group. I would have been supported in that also by some of my staff within the division, particularly on Finance, and a colleague who I refer to in my statement, Norman Kinnear – who was the Major Capital Projects Advisor, PPP Facilitator – at the time would've also provided input and advice. So it wasn't solely myself, but there was additional representation.

Q Okay, thank you. So one understands that you had a senior role within the department and a team of people who would support you in the performance of those responsibilities?

A Absolutely.

Q Those bullet points that we have just looked at, do those give us a fair overview of your role in relation to new hospital provision in the Scottish NHS?

A I would say so, yes.

Q So, in addition to your financial background and expertise, what sort of expertise did other members of the Capital Investment Group bring to it?

A So, a range of things. So, in terms of programme project delivery, again, I refer to my colleague, Norman, Norman Kinnear, who was originally brought in from the NHS and had experience in terms of the delivery of projects. We had clinical input, we had analytical input in terms of the option appraisals that were done as part of the business cases, we had representation from Finance because the implications of these projects weren't simply about capital but about revenue, cost, and we would have had representation from performance management, so-- who had an overview of the performance of NHS boards and their operation. There were a number of officers in government that had that responsibility and their responsibilities were split on geographic basis, East and West. We also would have had representation from the Chief Medical Officer's Office

and Chief Nursing Officer, depending on the nature of the proposals coming forward. So there was a very wide-ranging degree of input, and the idea was to have a holistic view on business cases rather than simply concentrating on the finance. It was about what the services that were to be-- to-- sorry, the services that were to be provided from these facilities.

Q Okay, thank you. To what extent was there engineering or architectural expertise on the Capital Investment Group?

A There wasn't any.

Q If a health board in Scotland decided that it wanted to build a new hospital, is the approval of the Scottish Government required?

A If it's in excess of their delegated limit, which at the time would've been between five and ten million, then yes.

Q So, if we are talking about a major hospital on the scale of the new Sick Kids Hospital, Scottish Government approval would be required?

A Absolutely, yes.

Q For a project of that scale, specifically whose approval was needed?

A So, my statement highlights that there were graduated

levels of delegated authority and, for a hospital of that size, then the Director General approval would have been required.

Q On what basis would the Director General decide whether or not to grant approval?

A So, it would be based on advice through the Capital Investment Group. I think it's important to say that before the Capital Investment Group would consider a business case, it needed to be approved by the relevant NHS board. So there would have been governance applied at a local level before Capital Investment Group would have considered the case. That assurance was an important part of our overall consideration of the business cases within government.

Q Yes. So, just to go back over that, the business case would not arrive with you on the CIG until it had been approved, first of all, by the board of the relevant health board?

A That's correct.

Q What is the role of the CIG in a case where the Director General's approval is required?

A It's about providing advice to the Director General that the conditions of the Capital Investment Manual have effectively been complied with. The assessment that would have

been undertaken on the business case, there would have been input from clinical colleagues, performance colleagues, around the alignment of the business case with the clinical strategy for the relevant board, or – if it was a regional or national service – boards. So all of that would have been taken into account in the consideration by the Capital Investment Group at the time.

Q In a case like that, where the Director General's approval is needed, was the outcome of the Capital Investment Group's consideration a recommendation to him or her, whether or not to grant approval?

A Yes.

Q Can a health board proceed to build a hospital without the approval of the CIG?

A Not if it's outside its delegated limit.

Q Is Scottish Government approval needed, whether the hospital is to be funded by public capital or by private finance?

A Yes.

Q So, did NHS Lothian require and obtain the approval of the Scottish Government and the CIG to build the RHCYP DCN?

A So, in terms of my tenure, at the point that I left Scottish Government Health and Social Care Directorates, there were still a number of outstanding matters that required conclusion before the full business case was signed off. I honestly can't comment on what happened after that in terms of the closed side of those issues, but I would have expected that any outstanding issues would have been closed off before approval was given.

Q Okay, thank you. Of course, one perfectly understands that the events after you left you would not know. Can I just say, instead of using that long acronym of "RHCYP DCN", I think I am going to say something like "Sick Kids" instead. Just so we can all be clear that that is what I mean when I say----

A That's understood. Thank you.

Q You referred in your statement, and I think a moment ago, to the Scottish Public Finance Manual and the Scottish Capital Investment Manual. Briefly, what is the Scottish Public Finance Manual?

A The Scottish Public Finance Manual is the guidance which is applied across the public sector in Scotland. It sets out the governing rules, if you like, in terms of how

finance is to be operated within the public sector.

Q Who issues it?

A It's the Scottish Government that issues it.

Q Who are the intended addressees?

A So, it would be Scottish Government departments, directorates and public bodies – so, non-departmental public bodies, NHS boards. It would apply to central government functions, essentially.

Q So, for our purposes, we can regard the Scottish Public Finance Manual as having been issued by the Scottish Ministers to be followed by NHS Lothian in relation to its spending of public funds?

A Yes, and I should add that within each sector of-- so, health, for example, there may be supplementary guidance that provides more specific direction to the bodies. The SCIM would be an example of that.

Q Thank you. That leads us neatly on. You referred to "the SCIM" – is that is that a short acronym for the Scottish Capital Investment Manual?

A It is.

Q What is the SCIM?

A So, the SCIM provides a framework for the development of investment proposals. It covers the development of the business cases; it covers procurement; it covers management and construction projects; and it also covers things like post-project evaluation. So it's meant to be an end-to-end set of guidance in terms of how you go about developing and delivering capital programmes or projects.

Q Is the SCIM specific to NHS projects?

A It is.

Q You referred there to one of the things covered by the SCIM as being the development of business cases.

A Yes.

Q Could you perhaps just give us an outline of the stages for development of a business case?

A At the time that I was involved in this, there are three stages, effectively. The first one was what was called an "initial agreement" and that set out the strategic case: "What was the problem, or problems, that were aimed to be resolved by a proposal?" At that point, it didn't necessarily follow that it was a new building. It could have been a clinical issue that, you know, there might have been a workforce solution to it rather

than a physical one, but the initial agreement basically set out what the problem statement was, what the long list of options that could be considered were and to then identify a shortlist of options to be explored further at the next stage.

Q Who was responsible for producing the initial agreement?

A The NHS board, or boards, concerned.

Q Is the initial agreement something that would have to be approved by the CIG?

A Yes, it would.

Q Assuming one was beyond the delegated limits of the health authority----

A Yes, it would.

Q What is the stage after the initial agreement stage?

A So, the next stage is what's referred to as the "Outline Business Case" – or OBC – and what that does is it further develops the work and reaffirms the work that was done in the initial agreement. It identifies the shortlist of options that have been identified to resolve whatever the issue is and the option appraisal – so that's the consideration of cost, risk, benefit – is undertaken at that stage to identify the preferred option.

Q In a case where the business case requires the approval of the CIG, does one get to the outline business case stage without the approval of the CIG?

A So, an initial agreement would need to be agreed before the outline business case was prepared.

Q What is the stage after the outline business case?

A So, following the outline business case – and this applies regardless of the funding mechanism – the preferred option would then be procured and following that procurement, or at the final stages of that procurement, a full business case would be prepared, which basically set out what the deal on the table was in terms of cost, in terms of delivery, but also a reaffirmation that the objectives that were set out in the outline business case are going to be delivered. So, that's "the deal on the table", as I would describe it.

Q Again, is the approval of the CIG required to move from the outline business case into the procurement phase and then to the completion of the full business case?

A So, the movement from the outline business case to procurement, yes. An outline business case would require to be approved

before procurement started. In terms of private finance, there was a supplementary key stage review undertaken by the Scottish Futures Trust prior to a procurement exercise being conducted and that was about the readiness of the NHS board to commence that procurement.

Q Okay. We will leave the key stage review processes for now.

A Sorry, I should add that in the case of private finance, there is a fourth stage and that's what's called a "Full Business Case addendum". At the point at which a full business case is approved, a health board would be in the latter stages of that, that are submitted; it would be in the final stages of that procurement exercise. There are certain provisions within a private finance arrangement that can't be resolved until the day that the deal is done, so the actual cost of debt, etc., so we had added a full business case addendum which reflected the deal that was signed, taking into account those conditions.

Q So, can we just go back over that? Is that, essentially, splitting what was a one-stage process of approving the final full business case into a two-stage process, to accommodate the particular commercial features of a private finance project?

A That's correct. The addendum would only deal, really, with the movement from the assumptions in the full business case.

Q Okay. The point of splitting that into two elements, is that so that the Capital Investment Group and the Scottish Government would have the ability to give its approval to each of those stages?

A So, the full business case would set out parameters on which the deal was going to be done. So there was a degree of flexibility in terms of movement in the cost of debt, for example, that would be assumed. The purpose of the full business case addendum, which is, effectively, retrospective, was really about concluding an audit trail around what the final cost of the deal would be.

Q Just to pick up one point that you made there, if one takes that business case approval process, from initial agreement through to full business case, the procurement of the contracts comes after approval of the outline business case and feeds into the full business case?

A Correct.

Q Now, after that slight diversion, I would just like to return to the matter of the Scottish Public

Finance Manual and the Scottish Capital Investment Manual. Do those two documents have relevance to the business case approval process we have just been discussing?

A Yes.

Q What is their relevance to that process?

A So, the Scottish Public Finance Manual sets out, in relation to major investment projects, what the obligations on government departments and public bodies are, in very, very general terms. The SCIM, it then sets out the processes-- including those within the Capital Investment Group, it sets out what the requirements are for NHS boards, or bodies, that are taking forward proposals.

Q So, do we understand from that, that the detailed guidance about business cases for the approval of hospital projects would be found, by a health board, in the SCIM?

A That's correct.

Q I think somewhere in the statement you describe the SPFM and the SCIM as "guidance". If a request for funding approval by a health board did not comply with those documents, how would that affect its prospects of obtaining the Scottish Government's approval?

A So, I think there are a couple of things to say on that. One, if it was at the initial agreement stage and there was an issue with the original proposal, then – if that was rejected – then the potential is that it wouldn't proceed into the next stage. If the issues had arisen at a later stage, so at outline business case for example, there would have been interaction with the relevant NHS board in terms of trying to resolve whatever issues there were around the business case process, or around the business case itself, given that there'd already been a commitment to, you know, the need to resolve a particular issue at the initial agreement stage.

Q So I think it was implicit in your answer that health boards would be expected to comply with the terms of these documents----

A Absolutely.

Q -- and would be unlikely to get approval if they did not?

A Correct.

Q I think you also described there a process of dialogue, really, between the Capital Investment Group and the health board, to ensure that the requirements of those manuals were met?

A Yes.

Q Could we have up a

document from bundle 3, volume 2, at page 120? Since it is the first document we have gone to, can I just check that everybody who needs it has it? Do you have it in front of you, Mr Baxter?

A Just the title page on-screen.

Q Okay. Lord Brodie?

THE CHAIR: I have it in hard copy.

MR MCCLELLAND: Good. We see here, on the front page, it has got the crest of the Scottish Government and the title is "Scottish Capital Investment Manual, Business Case Guide", and the Inquiry understands that this is the 2011 version. Are you – or at least, were you – familiar with this guide?

A Yes, I wrote most of it.

Q Well, what is its purpose?

A So the purpose is to, one, give an overview of the process; there are flowcharts that set out the end-to-end process, but it's also about, for each stage, setting out what the requirements are and hopefully providing helpful advice to NHS boards as to what they require to do and to demonstrate.

Q Okay. So this is guidance to health boards on the business case process?

A Absolutely, yes.

Q If you could go to page 123, please. Just the opening paragraph there; I will read that out. This is part of the foreword:

> "NHS Scotland invests over £0.5bn each year on new or replacement assets such as land, buildings, equipment and facilities. With the increasing demand for infrastructure investment, and recognising the lasting impact that such investment decisions have, it is essential that we make the right investment choices and that we clearly demonstrate and deliver value for money for the taxpayer."

Now, I appreciate this is just one paragraph in a very long document, but does that give us a flavour of the purpose of the guide?

A In terms of the overall SCIM, yes, it does, yes.

Q Further down that page, just in the bottom paragraph, just picking up from the last word on that page and reading from there, it says:

> "Additionally, an assessment of design quality at IA, OBC and FBC stages is now part of the SGHD Business Case process, the purpose of which is

to ensure that the outcomes of development projects meet the Government's objectives and expectations for public investment. The aim of mapping design into the Business Case process is to support the implementation of the Policy on Design Quality for NHS Scotland by improving the level of design quality achieved across NHS Scotland and, ultimately, the outcomes achieved by doing so."

We see there a reference to Government's objectives and expectations for public investment. Was it part of the purpose of the business case process to help achieve the Government's hospital design policy objectives?

A Following the issue of that addition of the SCIM, then yes, it was, and part of the consideration and the drafting of that was to make sure that the policy on design quality, which was updated in 2010, that there was an alignment between the business case process and the design quality policy.

Q If we just read on down that page, the second last paragraph:

"A good business case brings together the evidence to support an NHS Board in their decision making and provides assurance to other stakeholders, including the public and Scottish Ministers, around the basis for such decisions and the robustness of the evidence and processes that underpin such key decisions."

So, do we see there the expectation that the business case is gathering together evidence which will inform a decision about whether or not the government's policy objectives are being met?

A Yes. I should add that I think, in terms of the first sentence in that paragraph that you've quoted, that this was a basis for the NHS board also to get equivalent assurance, and therefore, when it came to Scottish Government considering these, that had been through a governance and assurance process at board level to get that, and there was a reliance based on some of that, that assurance that had been received.

Q Yes. So, this-- We could perhaps put it this way, this guide is communicating to health boards the expectations that the Scottish Government has of business cases submitted to it.

A Yes.

Q Yeah. If we could move

forward, please, to page 129 of the bundle. I'm going to read from the bottom two paragraphs where it says that:

> "All projects submitted to the SGHD Capital Investment Group for approval are now subject to an assessment of design quality and functionality, including technical and sustainability standards. This Design Assessment will take place at the Initial Agreement, Outline Business Case and Full Business Case stages of approval."

We see there a reference to technical standards. What would you understand that to refer to?

A So the design-- the NDAP or NHS design assessment process that was introduced sought to deal with a range of matters. So, when we-- talking about sustainability, there were clear objectives set out in the design quality policy around sustainability. There were design principles or, you know, the importance of design in healthcare in terms of health outcomes, it was a major consideration, and also in terms of technical input as well so that that process that was introduced involved-- as I said at the outset, you know, I'm not an engineer and I'm not an architect, so it sought to involve those from Health Facilities Scotland, Architecture and Design Scotland, and in the case of NPD projects from SFT who did have knowledge in those areas.

Q You're aware, I think, of the Scottish Health Technical Memoranda issued by Health Facilities Scotland.

A I'm aware of them, yes.

Q Is the reference in this paragraph to technical standards-- would that include SHTMs?

A My interpretation-- that would be, yes.

Q Also what we see in that paragraph is that the assessment of the design is to take place at those three separate stages of the business case approval process.

A That's correct. I think it's important to say, though, that the design quality policy and SCIM were introduced at a-- and the revised SCIM were introduced at a point in time, so there were a number of projects that were already well under development, including the original proposals around Sick Kids at the time. So there wasn't a suggestion of retrofitting or people having to go back to the start, given the stage of development that a

number of schemes were at.

Q Yes, that's a fair point and it's one that we'll return to. So just to get our chronology right, this document that we're looking at here is from 2011.

A That's correct.

Q Yeah. If we could move forward, please, to page 141 of that document. We see there the heading: "Responsibility for Producing the Business Case". This perhaps touches on a point that you made a moment ago, Mr Baxter. Just reading the first paragraph:

> "The 'ownership' and responsibility for the infrastructure investment planning process rests with the NHS Scotland body developing or leading the development of the programme/ project in question."

So, in short, if a health board wants a new hospital, responsibility for the investment planning process rests with them.

A That's absolutely correct.

Q So that's the responsibility of the health board. What's the responsibility of the Scottish Government and the CIG through this process?

A I would say that the responsibility of government was twofold: one was ensuring that the proposals coming forward were in line with national policy in terms of the service provision within the NHS; also that, from a financial perspective, regardless of whether projects are capital funded or resource funded-- that the funding for NHS boards comes from the Scottish Government and therefore the planning of the funding requirements for NHS bodies was a responsibility for Scottish Government.

THE CHAIR: Sorry, it's entirely my fault. I'm not quite sure if I have picked up on the second aspect of the responsibility of Scottish Government. Ensuring proposals are in line with national policy, I follow that.

A Yep.

Q Then you began, "From a financial perspective…" Could you just repeat that----

A Certainly. So, the funding that's provided to NHS boards for the provision of services comes from the Scottish Government, including the funding for major capital investment proposals. So NHS boards receive two funding envelopes, a capital resource limit which deals with the capital budget and a revenue resource limit. The capital budget and the capital resource limit varies depending on the proposals that are

coming through at any point in time, therefore the proposals that come through business cases help inform the scale and the timing of that funding requirement.

Q Right. I think I now understand the answer because, when I first heard the answer, I thought it was Scottish Government-- you were simply saying that Scottish Government had a responsibility to provide finance by whichever method, but the point I should take away is that Scottish Government has a responsibility not only to provide the money but to plan for timing and indicate any upper limits which might be appropriate.

A Yes. For capital investment more generally, we're talking about long lead-in times and long planning horizons for the delivery of programmes and projects. At the time that that the Sick Kids was being developed-- obviously, I made reference in my statement to the financial crisis that appeared in 2008/2009, and the impact that that had but, regardless of that, you need to be planning on a five/ten-year cycle in terms of the development of projects and their delivery. Within an overall funding envelope, you're having to consider what's already legally

committed or committed and what flexibility you then have to deal with new projects or programmes coming forward. So the timing of this and these projects becomes really, really important in that regard.

THE CHAIR: Thank you very much. Sorry, Mr McClelland.

MR MCCLELLAND: My Lord. So, with Lord Brodie there, you were developing the financial aspect. I think you began by saying that one aspect of the CIG and Scottish Government's responsibility was ensuring that proposals were in line with national policy.

A Yeah.

Q How did the CIG do that?

A So the proposals, as set out in the business cases, dealt with the kind of case for change, if you like, and what the requirement was or what the programme or project sought to deliver. Part of the CIG assessment would be their compliance or-- compliance isn't the right word, but their fit with national policy and the direction of travel. So, the National Strategy for the NHS in Scotland at the time: were the proposals compatible with those aims? In terms of the board's own service plans and strategic plans, was there a fit with those?

Q Are you describing there a process in which the CIG's decision is based on the evidence presented by the health board in the business case?

A That's correct.

Q To what extent is that compliance by health boards with policy and so on audited by the CIG?

A At a global level-- it's not an audit. I wouldn't describe it as an audit.

Q If I could put it this way, does the CIG look behind what the health board tells them?

A Yes, and bearing in mind that members of the Capital Investment Group engage with relevant NHS boards on a range of issues other than simply the business case proposals, so there is, or certainly was, a detailed knowledge of what was going on within NHS boards and what the service challenges were; you know, there were-- the data that was being analysed on an ongoing basis in terms of service provision or population changes, growth, demand. All of these things, whilst they're represented in the business cases as part of the case for change, there would be ongoing discussion between the Government and the relevant NHS board about these matters as a matter of course.

Q Okay. So, would it be wrong then to see this process as one in which health board presents information in a business case to the CIG and that's the end of it, that the CIG has wider knowledge from its work in----

A There's additional context that certainly comes into the assessment of the business cases, absolutely.

Q Yeah. Now, you refer at several places in your statement to-- and I think you maybe mentioned it a moment ago – to the Scottish Government policy on design quality----

A Yeah.

Q -- in the NHS. Could you please have bundle 4 page 99?

THE CHAIR: Thank you.

MR MCCLELLAND: Do you have that in front of you, Mr Baxter?

A Yes, I can see the title page of CEL 19.

Q Okay, thank you. So we see there again the crest of the Scottish Government. At the top left, we see that the letter has been issued by the Health Finance Directorate.

A That's correct.

Q The date of the letter is 2 June 2010.

A Yes.

Q If we move forward to page 101, do we see there your signature on the letter?

A Yes.

Q So this was a letter you issued?

A In my role as the Deputy Director, yes.

Q If we see the addressees down the right-hand column, they include “Chief Executives of NHS Boards” and the “Director of Health Facilities Scotland”. Do you see that?

A It’s on page 100, yeah?

Q Sorry, page 99.

A Oh, sorry. Yes.

Q Yeah.

A I see that.

Q Is this letter issuing the design policy that you were talking about a moment ago?

A Yes, it is.

Q It’s headed up: “A POLICY ON DESIGN QUALITY FOR NHS SCOTLAND: 2010 REVISION.”

A Yep.

Q I think you explain in your statement that it’s a revised version of a policy first issued in 2006.

A That’s correct.

Q Why was the policy revised?

A Policies are subject to periodic review. There have been a number of developments in respect of design-related matters in healthcare, and the time-- it was time to revise the guidance and the policy for NHS Scotland.

Q Was there any particular driver for the revision of this policy?

A There were a number of things that pertained at the time: the importance of the healthcare environment, there had been considerable work done. I refer to a number of issues around single rooms, etc. in my statement-- in my witness statement, but environmental matters and the place of healthcare design within the wider sort of design realm, if you like. There had been considerable engagement with Health Facilities Scotland from a technical perspective, but also in terms of Architecture and Design Scotland as well, in terms of the broader ambitions for design and the use-- and the importance of design of public buildings and the place that they had in the wider sort of social realm, if you like. So there were a number of factors that fed into this.

Q Okay. We’ll perhaps pick up on some of those details as we go through the letter. So, just from page 99, Mr Baxter, I’m just going to read out parts of this. Paragraph 1:

“This letter provides

colleagues of a revised statement of the Scottish Government's Policy on Design Quality for NHS Scotland (Annex A)."

So we see there that the policy statement itself is Annex A to the letter.

A Yes.

Q Then paragraph 3, "This CEL…" – stands for Chief Executive Letter, I think.

A Yes.

Q "… CEL and the attached policy statement supersedes NHS…" and then there's a reference:

"This CEL also provides information on Design Assessment within the SGHD CIG Business Case process."

That was something that you touched upon a moment ago, I think.

A Yes.

Q Then paragraph 5, we see:

"The revised Policy on Design Quality for NHS Scotland and associated Mandatory Requirements take immediate effect."

Just to be clear, the date of that letter is the 2 June 2010. You see that?

A Yes.

Q Then reading on, in paragraph 6, just over the page on page 100, we see:

"Support for the implementation of the design agenda will be provided by means of a coordinated, tripartite working arrangement between Scottish Government Health Directorates (SGHD), Health Facilities Scotland (HFS) and Architecture and Design Scotland (A+DS) to facilitate the procurement of well-designed, sustainable, healing environments which support the policies and objectives of NHS Boards and the Scottish Government Health Directorates."

Now, if we just pause there, it's about design quality but this is being issued by the Finance Directorate. What interest did the Finance Directorate have in design?

A So, the directorate-- So, the division for which I was responsible as the Deputy Director was originally called Property and Capital Planning, and, within the remit that I had, there were aspects around property within the NHS that that were part of that responsibility. That previous policy, the 2006 policy, was issued from exactly the same part of government, so there wasn't a separate design

directorate, if you like, within government, but my division at the time had responsibility for overall investment policy, including the design aspect of it. As is indicated in paragraph 6, on page 100, we took advice on these matters from relevant parties, including HFS and Architecture and Design Scotland.

Q So, I mean, put it in perhaps slightly colloquial terms, wasBRthe interest of the Finance Department is simply in seeing what it expects to get for expenditure that it approves?

A I would say it's slightly wider than that in the sense of the-- from a policy perspective, there was a recognition of the importance of high quality design in healthcare, and I, at the end of my tenure, chaired what was called the European Health Property Network which brought together representatives from around 13 European nations to discuss issues around healthcare design. Investment was one aspect of that, but equally there was input from architects and engineers. Health Facilities Scotland were part of that network as well. So it was more of a holistic overview rather than a detailed expertise, if you like.

Q Okay, and you refer in that paragraph of your letter to the

tripartite relationship amongst the Scottish Government, Health Facilities Scotland and Architecture and Design Scotland.

A Yeah.

Q Who was to coordinate the tripartite relationship?

A So essentially through the Scottish Government health directorates because the proposals, effectively, from-- the business cases from NHS boards or proposals from NHS boards were channelled through the Scottish Government, effectively. So we would have a forward schedule, if you like, of anticipated proposals, coming back to the point I made to Lord Brodie, that you had to plan in advance for what you expected to see coming forward. So we would work out with Architecture and Design Scotland and Health Facilities Scotland what, you know, the programme of new proposals would be over the next 12/18 months in order that their input could be planned.

Q So the coordination of the tripartite relationship rested with the Scottish Government?

A It was at our behest that it happened, yes.

Q Then in paragraph 10 on page 100, lower half of the page, the letter says that:

"In order to meet the above objectives, A+DS will deliver three main activities on behalf of SGHD."

Then Activity 2 is:

"Providing, in partnership with HFS, [Health Facilities Scotland] a co-ordinated assessment of the potential quality of proposed projects to support those responsible for decision making within the business case process."

If we just pause there, when it refers to "those responsible for decision making", who does that refer to?

A So my understanding of that is it refers to both the NHS board and to the Scottish Government. So there would be ongoing engagement with-- between Architecture and Design Scotland and Health Facilities Scotland with the relevant NHS board in developing proposals in order to form their view, which would then be provided to the Scottish Government.

Q Specifically within the Scottish Government, would it be the CIG?

A Yes.

Q Then, reading on:

"This will involve contributing particular expertise on the aspects of design relating to Government policy on design and place making to a process administered and led by HFS who will, in addition to the administrative elements, provide particular expertise on the aspects of design relating to functionality, particularly technical and sustainability standards developed by HFS and the Department of Health in England."

The reference there to "technical standards", would you have understood that to include technical guidance such as Scottish Health Technical Memoranda?

A Yes, I would.

Q Dealing with things such as ventilation in hospitals?

A I can't comment specifically on ventilation but, as a general point, I would expect that to be the basis on which the assessment would be done.

Q Okay. There is a description there of the role of HFS. Is that role for HFS a new development compared to the 2006 Policy?

A Yes, it is. In terms----

Q And----

A Sorry. Just to be clear in terms of-- The design assessment

process was new and therefore HFS's role had changed. In terms of the provision of advice on technical standards, that was unchanged.

Q Okay. So HFS always had, or at least since 2006, had an advisory role in relation to standards?

A Correct. It wasn't a decision-making role. Yeah, absolutely.

Q But are you saying that one of the purposes of the 2010 revision was to give HFS a decision-making role in relation to guidance?

A It wasn't a decision-making role. It was to make sure that we had a coordinated assessment of design which took into account a wider range of facets, if you like, to inform the decisions that were being were being taken at the board level and then assessed by the Capital Investment Group.

Q Why was that new role for HFS introduced in 2010?

A The requirements of the updated policy were certainly more fulsome, I think, and because of the various interests involved in this, it was important to bring together those parties that had expertise and insight in a more coordinated way than had been the case historically.

Q The phrase you used

there was "more fulsome". Would it be fair to say that the design standard expectations of the Scottish Government had become more demanding?

A I think, in terms of the mandatory requirements that are set out in the 2006 Policy and the 2010 Policy, those are broadly consistent. So I don't think it's about expectation. It's about making sure that that those were delivered, if you like, and that we got assurance on those matters.

Q Okay. So the phrase that you used of "more fulsome", was it beefing up the processes for making sure that the policy objectives were met?

A Yes, yes.

Q If we look at paragraph 11 of your letter at page 101, under the heading of "Design Assessment and the Business Case process", it says that:

> "An assessment of design quality is now part of the SGHD Business Case process. All projects submitted to the SGHD Capital Investment Group for approval are now subject to an assessment of design quality and functionality, including technical and sustainability standards. This Design Assessment will take

place at the Initial Agreement, Outline Business Case and Full Business Case stages of approval."

Is that describing what has been referred to in the statements as an "NDAP"?

A Yes. That's my interpretation of it, yes.

Q Just to be clear, what do you understand "NDAP" to stand for?

A It's NHS Scotland Design Assessment Process.

Q So do we understand from paragraph 11 that this was a new process introduced with this policy revision in 2010?

A Yes.

Q We see that the NDAP is intended to take place at those three stages in the business case approval process.

A That's correct, and the point that I made earlier in my evidence is that this was obviously introduced at a point in time and the idea was not about retrofitting to projects that had already passed progressive stages.

Q You're quite right to raise that point. Do not worry, we will return to it. I will ask you some questions about that.

A Okay.

Q If we just move through that to the bundle at page 102, I think we see there the cover page of the policy document itself.

A Yes.

Q If we go to page 112, which is within that policy document, do we see there the list of mandatory requirements being imposed by this policy?

A Yes.

Q I am just going to read through some of those. First of all, the second one, it says that:

"Each NHS Scotland Board must appoint a member of the NHS Board to act as Design Champion at a strategic level to assist in articulating and promoting the Board's design vision and, where not impractical, also a Senior Officer to act as supporting Design Champion at a technical level with knowledge and experience in capital investment procedures and expertise in technical matters."

Insofar as this relates to design champions and technical matters, what was your understanding of the reasons for this mandatory requirement?

A So, in terms of the board-- So, taking the first element, it was around the promotion-- at a strategic

level, around the importance of design so that there was representation and focus at a board level. The reference, I think, in terms of the senior officer, at a technical level was to make sure that that board member was supported by an appropriate officer who had relevant experience in such matters.

Q In referring to "technical level", would that encapsulate things such as the SHTMs?

A I would expect that to be the case, yes.

Q If we go to Mandatory Requirement 6, it reads:

> "All NHS Scotland Bodies engaged in the procurement of both the new-build and refurbishment of health care buildings must carry out independent environmental accreditation for projects. The Scottish Capital Investment Manual requires that all new builds above £2m obtain a BREEAM Healthcare (or equivalent) 'Excellent' rating and all refurbishments above £2 million obtain a 'Very Good' rating. If the capital costs …"

And so on. What was the purpose of a BREEAM rating?

A BREEAM was the kind of industry standard for the environmental impact of a facility and really would set an objective that sought to make sure that those facilities that we were developing were designed to a high standard, that sustainability was absolutely considered in that, as well as the broader environmental impact in the environment in which the healthcare facility was located. So it was a model that was applied in other parts of the UK as well, but it provided a consistent basis of assessment.

Q So far as you know within your area of expertise, would it be relevant to BREEAM rating to consider the energy consumption of mechanical systems such as a ventilation system?

A Yes, it would.

Q Was the requirement of a BREEAM rating, a new requirement, introduced within this policy?

A My understanding is it was.

Q Well, the Inquiry can check for itself against the 2006, but thank you. If we move on to Mandatory Requirement 7, just reading from that:

> "All NHS Scotland Bodies engaged in the procurement of both new-build and refurbishment of healthcare buildings must use

and properly utilise the English Department of Health's Activity DataBase (ADB) as an appropriate tool for briefing, design and commissioning.

[If deemed inappropriate for a particular project and an alternative tool or approach is used, responsibility is placed on the NHS Scotland Body to demonstrate that the alternative is of equal quality and value in its application."

What do you understand by the "Activity DataBase"?

A So the Activity DataBase was a means of essentially preparing room data sheets based on extant standards, and it had been developed in England. With regard to technical guidance standards, there was a number of fora that existed for Scotland to engage with the rest of the UK in terms of the development of guidance, but at the time that this was issued, the Department of Health had developed this this guidance and, whilst there were some differences in terms of Scottish guidance, the CEL highlights they should apply, the Scottish guidance, that care should be taken to apply the Scottish guidance where that was appropriate. So it was a consistent means of briefing against

standard.

Q Okay. Well, perhaps it would be helpful to look at a little bit of the guidance that lies behind the policy. But, before we do that, just to be clear, this policy statement in 2010 made it a mandatory requirement for health boards to use the Activity DataBase in briefing for new hospitals.

A That's-- I don't think it was a new requirement. Again, my recollection is that the 2006 Policy also had it as a mandatory requirement.

Q Okay, thank you. If we could move forward, please, to page 136 of that document, do we see there a section headed up "Activity DataBase"? Do you have that, Mr Baxter?

A It's on the screen now, yes.

Q Just reading from that:

"Activity DataBase (ADB) is the briefing, design & commissioning tool for both new-build and refurbishment of health care buildings."

Then, just reading on:

"It is … the complete tool for briefing and design of the healthcare environment.

ADB is produced by the Department of Health in England and is mandated for use in

Scotland by the Scottish Government Health Directorate as the preferred briefing and design system for NHS Scotland (see Mandatory Requirement 7 of this Policy). It has been developed to assist in the construction, briefing development, design and alteration of healthcare facilities.

Spaces designed using ADB data automatically comply with English planning guidance (such as Health Building Notes (HBNs) and Health Technical memoranda (HTMs) as ADB forms an integral part of the English guidance publication process. Whilst Scottish users can create their own project-specific briefs and designs using ADB's extensive library of integrated graphics and text which includes room data sheets, room layouts and departmental room schedules, extreme care should be taken to ensure that such data … such as Scottish Health Planning Notes, Scottish Health Facilities Notes (SHFNs) and Scottish Health Technical Memoranda (SHTMs) as published by Health Facilities Scotland."

So, just reading there, was one reason, or perhaps the reason, for the use of ADB that it meant automatic compliance with technical guidance, including HTMs?

A Yes, I think-- Well, that was certainly the intent. The section in the paragraph that you've just read where it is recognised that there may be differences between the English guidance and the Scottish guidance and that care should be taken to ensure that Scottish guidance was applied, but that was certainly the intent of the ADB and, again, having a consistent approach across NHS Scotland to that.

Q Prefacing this with an understanding that you are not a technical person or an engineer, is it the case that SHTMs often set very similar or identical standards to HTMs?

A I can't answer for the detail of that. There'll be some standards that are generic and some where there'll be statutory differences in Scotland. I mean, there has to be some deviation, so-- but I can't comment on the detail of that, I'm afraid.

Q Okay. Was the expectation of the Scottish Government in setting this policy that the use of ADB would help ensure

compliance with the Scottish standards?

A That was certainly the aim, yes.

Q You referred there to the exhortation in the guidance, "Take extreme care to comply". Who was the guidance exhorting to take extreme care?

A It would be the relevant NHS board or those that were preparing the relevant schedules.

Q In that context, was the expectation of the policy still that the health board would use the ADB as the starting point for their briefing process?

A Yes. As a mandatory requirement, it would be.

Q If we go back to page 113, please, just that passage we were looking at before at paragraph 7, the part in square brackets, it says that:

> "If … an alternative tool or approach is used, responsibility is placed on the NHS Scotland Body to demonstrate that the alternative is of equal quality and value in its application."

Would that include ensuring that the alternative was at least as good as the ADB in ensuring compliance with the relevant technical guidance?

A I would expect so, and

for an NHS board to deviate from that, I would have also expected the relevant NHS body to have had appropriate arrangements for its own assurance in place.

Q Reading on to Mandatory Requirement 8, there is a reference there to the Achieving Excellence in Design Evaluation Toolkit, or the AEDET. Are you able to explain what that is?

A Not in detail, I'm afraid, with the passage of time, but it was a standard toolkit available to NHS boards to look at wider aspects of design quality.

Q So far as-- Go on. Sorry, I did not mean to speak over you.

A No, so it had a broader application than simply around any kind of technical standards.

Q Do you know to what extent, if at all, it was concerned with compliance with technical guidance?

A I honestly can't comment on the detail of that, I'm afraid.

Q If you move to Mandatory Requirement 9, under the heading of "Monitoring":

> "SGHD will monitor the integration of design quality into healthcare building procurement through the Business Case

approvals process which will be facilitated through a coordinated assessment of the potential quality of proposed projects to support those responsible for decision making within the Business Case process.

This assessment will involve the contribution of particular expertise on the aspects of design relating to government policy on design and place-making from Architecture and Design Scotland and, of particular expertise on the aspects of design relating to functionality, particularly technical and sustainability standards, from Health Facilities Scotland."

So we see there the mandatory requirement that design become a part of the business case approvals process----

A Yes.

Q -- and is subject to monitoring by the Scottish government through the business case approvals process.

A Yes. So it would be part of the checklist, if you like, that would be assessed for any proposals coming forward.

Q Could we move forward, please, to page 131?

A Sorry, could I just add a comment?

Q Of course.

A So, obviously, the policy was updated in 2010. The revised version of the SCIM didn't come out until 2011. So there was a time gap between the two, just to highlight.

THE CHAIR: Sorry, could I just make sure I have got that? The policy, as expressed in the letter, is 2010 and the SCIM document is 2011?

A Yes.

Q Right, thank you.

MR MCCLELLAND: Thanks, Mr Baxter. You have very helpfully answered a question which was coming up, so I am grateful to you.

A Sorry, apologies.

Q Do you have page 131 in front of you?

A Yes.

Q If not, could we please go to page 131?

A I've got it in front of me.

Q We see there, a section headed up "Design Assessment":

"An assessment of design quality is now part of the SGHD Business Case process. All projects submitted to the SGHD Capital Investment Group for approval are now subject to an assessment of design quality and

functionality, including technical and sustainability standards."

And so on. That reflects the process we have been discussing this morning, I think.

A Yes.

Q Then paragraph 2 there says, "There are two complimentary areas of consideration in design of health care buildings." Then, just reading on:

"These can broadly be described as healthcare specific design aspects – the areas generally covered by guidance issued by Health Facilities Scotland…"

And then it goes on to discuss general good practice in design, and so on.

A Yep.

Q There is a reference there to the tripartite working relationship that we discussed. That paragraph also refers to something called the "NHS Scotland Design Assessment Group". It says that it reports to the CIG. What was the Design Assessment Group?

A I have to say, with the passage of time, the term itself, I don't recognise particularly, but there was engagement, including Scottish Government, Architecture and Design Scotland, and Health Facilities Scotland in advancing consideration of business cases. So, I'm not sure if that's the reference to it, but it involved those three parties.

Q Okay. As far as you recall, was the Design Assessment Group a formally established group or anything like that?

A Well, the process itself was part of the SCIM and it was part of the design quality policy. So, in terms of formalisation of it, it was a formal process.

Q If you could just move forward to page 133, please. Down at the bottom of that page, do you see a section headed up "Role of the Client"?

A Yeah, I can see it now.

Q The first sentence there, "The key role of the client is to develop a clear, well-defined brief." Do you agree with that?

A Absolutely.

Q Then on to page 134, we have the second paragraph, "As part of their responsibilities, the client must…" and then there is a long list of bullet points. Reading the fourth bullet point, it says the client must:

"allocate sufficient time and resources to establish the client's design quality aspirations and set

out clear benchmarks which the client must reinforce through all stages of the process".

Then, reading on down to the 11th bullet, where the client must,

"…establish clear and effective routes for communication between the Client Team and the bidding Design Teams during the bidding process so that the Board's needs and aspirations can be more fully discussed and incorporated into the designs that are brought forward."

Are those things that the CIG would want to be satisfied about during the business case approval process?

A I'm not sure there would be explicit questions that would be asked, but compliance with the policy more generally, I think, would be an assurance that would be sought. The engagement, particularly between the client team and bidders, would be something that would be evident from the procurement process, and the reporting of the procurement process, rather than a specific inquiry on that particular point.

THE CHAIR: Sorry, just to understand that answer, you say it is not sure the Capital Investment Group would ask----

A The specific question----

THE CHAIR: -- well, "ask" is my word. I am not sure if it was your word. "Specific" – now, I take it that was reference to the various bullets?

A Correct.

THE CHAIR: Thank you. Sorry, Mr McClelland.

MR MCCLELLAND: Okay. Then the final bullet on that page, the client must:

"not allow design time to be squeezed in order to recover time lost in the programme for other reasons – good design takes time."

A Yeah.

Q Would you agree with that?

A I would agree with that.

Q Now, we have been discussing Architecture and Design Scotland and Health Facilities Scotland in the context of this design policy. The policy also refers to the Scottish Futures Trust and that is at page 122.

A Yes, I've got that on the screen.

Q Now, we can read what the guidance says for ourselves, but can you say what role, if any, the Scottish Futures Trust had under this policy, in relation to design standards?

A Not specifically in relation to design standards as such. The Scottish Futures Trust had a role – as they did with other parts of the public sector – as part of the NPD programme in satisfying themselves around the potential costs and scope of proposals coming forward. So the design review that was undertaken by SFT in relation to Sick Kids, really had that aim in mind. It wasn't their function to test technical standards in the way that the NDAP process would have done.

Q Okay. Just to be clear about that, I think I am right in understanding you as contrasting two things. First of all, the checking of technical standards, which you say was not the SFT's role----

A Correct.

Q -- and the second, I think was, satisfying themselves about scope and the cost of the proposal. Is that correct?

A That's correct. So the proposals that have been developed – and if we take Sick Kids as an example – but it would apply to any NPD project, really to verify that, in terms of the capacity that had been planned around a facility, that the scale of the facility and the capital cost of it was reasonable. Some of the

parameters that would have been used around the basis of capital costs and hard and soft facilities management costs, in terms of the financial modelling, were things that they would have been particularly interested in.

Q So, is it fair to put it this way, that the SFT's interest in design would be insofar as the design pertained to things like cost and value for money and so on?

A That's my understanding and in terms of the guidance that was set out in March 2011, the funding conditions, the rule of SFT's set out in that material.

Q Okay, that is another document that we will come to. Now, a moment ago, Mr Baxter, you referred to the SCIM guidance on NDAP, I think, being introduced in 2011. Could we go, please, to bundle 8, page 63? Hopefully on the screen you have got that document. Is that the document you were talking about?

A Yes, it is.

Q Can you just explain what it is?

A So this is the relevant part of the Capital Investment Manual, which develops the principles set out in the design quality policy. So, essentially, the guidance that NHS boards are due to follow.

Q Okay. We see the heading there, “Supporting Guidance: Design Assessment in the Business Case Process.” Is this, essentially, a guide on NDAP process?

A Yes.

Q What was the reason for the passage of time between the 2010 policy and this document, which I think we can see from the front page, is dated 5 July 2011?

A I can't recall the specifics of the reason for the time lag. There will have been a number of issues that would have been worked through in detail, around the application of the process and respective roles within it.

Q Yes, so it is perhaps as simple as you need time to put the flesh on the bones of a new policy.

A That's what I would expect, but as I say, I can't recall any specifics as to the reason for the delay.

Q Okay. Now, Lord Brodie, I am about to embark on some questioning of this document. I note the time. It may be a convenient time to stop now, before we----

THE CHAIR: Yes. We will take our mid-morning break. It is just after 11.25 a.m. If we could be back by 11.45 a.m.

(Short break)

Q Now, Mr Baxter. Just before we broke, we had brought up on the screen the Scottish Capital Investment Manual Guidance on design assessment. Is that still on the screen in front of you?

A It is, indeed.

Q If we could go, please, to – I think it is page 64. I am afraid my page numbering is different, but it should be headed up, “Design Assessment in the Business Case Process” and then, “Introduction”. Do you have that?

A Yes.

Q Just to put this document into context, I will read what it says:

> “From the 1st July 2010 an assessment of design quality will become part of the business case approval process. This guidance should be viewed as part of the Scottish Capital Investment Manual (SCIM) notified through NHS CEL 19 (2009).”

Now, the reference there to 1 July 2010, is that the date of the letter of the design policy that we----?

A Yes, it was.

Q Then, it continues:

> “This guidance describes: how design standards should be established for projects; the

Board's role in assessing progress in achieving design standards; the design assessment process; submission requirements at each business case stage."

Just to be clear, is the reference there to "the Board" in the second bullet, a reference to the health board?

A Yes, it is.

Q Then, if we could please move on to page 65. You see a heading there, "Design Assessment in the Business Case Process" and then a subheading, "Compliance with Healthcare Design Guidance". Just reading from the bottom paragraph, it says:

"Accordingly projects submitted to the Capital Investment Group (CIG) for business case approval will be assessed for compliance with current published guidance. To facilitate this, Boards will be requested to submit a comprehensive list of the guidance that they consider to be applicable to the development under consideration (see inset on next page), together with a schedule of derogations that are required for reasons specific to the project's particular circumstances."

Then, over the page, you see the table headed up, "Projects submitted for the business case process will be assessed for compliance with the following", and then section A, "Healthcare guidance". Amongst the guidance listed there, we see the Scottish Health Technical Memoranda issued by Health Facilities Scotland and, below it, Health Technical Memoranda issued by the Department of Health Estates in England. It explains that:

"Where there is a current SHPN or SHTM relating to a subject then it takes precedence over the equivalent HBN or HTM. Where there is no Scottish version of a document the English document can be used."

Then, at paragraph C in the table, we have a list of other mandatory requirements, which include the BREEAM guidance and also the Activity Data Base. So, do we understand the process described here is one in which the health board is to list the guidance which it thinks applies and identify any parts of that guidance from which it intends to derogate?

A That's my reading of the guidance, yes.

Q What do you understand to be meant by “derogations” in this context?

A My interpretation would be a deviation from the extant guidance.

Q Would that be a deviation, or a departure, intended by the health board?

A Yes.

Q This guidance says that the list of applicable guidance is to be accompanied by a schedule of derogations. What information would you expect to be included in a schedule of derogations?

A The nature of the derogation, an explanation as to why the derogation would be sought, and, as I said in my written statement, I would have expected an NHS board to have undertaken a risk assessment as to any implications from any derogation.

Q Would you expect the schedule of derogations to include a report on that risk assessment?

A I would expect it to be covered. Whether it's a report, I would certainly expect it to be covered.

Q Can I just try and ask you to be a little bit clearer about what you would expect when you say that you would expect it to be covered?

A So, I would expect an explanation as to why the derogation would be sought, what assessment had been undertaken to support such a derogation and the outcome of that assessment.

Q Thank you. Then, picking up the text from the bottom of the table on page 66:

> “The NHS Scotland Design Assessment Process will then make an assessment of the design information available each business case stage for compliance with the guidance.”

What did the CIG expect that assessment to entail?

A So, the way the Design Assessment Process was set up, as we've covered, there were two elements to it: one was the health-specific guidance and then there were some more general design aspects. So, in terms of Health Facilities Scotland's involvement in that, I would have expected their expertise to have been applied in respect to the technical guidance and for Architecture and Design Scotland's input to be more general in terms of their responsibilities.

Q If we focus for the moment on HFS and the technical guidance, what design information did

you expect them to be considering?

A I can't answer the detail of that. I would expect that to be contingent on what was contained within the schedule and what information they would need to assess in order to satisfy themselves if there was a derogation, or indeed the list of standards that were recovered in the submission.

Q I appreciate, of course, that you weren't in HFS, you weren't responsible for the technical guidance, but this process was one of reporting to the CIG and, in that capacity, did you have an expectation of the depth or nature of the consideration being given to information by HFS?

A I would expect it to be appropriate to the circumstances and the text that you read out in the box that's contained above the passage that you've just read. So, whatever information was needed in order to satisfy themselves that those conditions had been met.

Q Would you regard that as a judgment to be made by HFS about what was appropriate, rather than one that you, on the CIG, could take?

A Yeah. I'm not qualified to make such a judgment.

Q If we read forward on to page 67, please. Down at the bottom

of that page we have a heading "Referral to the NHS Scotland Design Assessment Process" and it reads that:

> "Health Facilities Scotland (HFS) and Architecture and Design Scotland (A+DS) will provide support to Boards in considering design matters in the business case process. Staff from HFS and A+DS, supported as necessary by a broader panel, will have the following roles in relation to all projects that are to be assessed:
>
> - to advise the project team if the standard of benchmarks and self assessment process being established for the project are in line with policy objectives.
> - to provide an assessment of the design aspects of the project to support the Board in their consideration of the business case
> - to provide a verification, to the Capital Investment Process (CIG), of the opinion previously given to the Board to support the

CIG's consideration of the business case."

"The purpose of this resource is to provide support on matters relating to design policy …The assessment considers the general areas of design being addressed by the project team as a high level verification for the board and the CIG, as such it should not be seen as a replacement for the project team's in-depth consideration of technical and other standards."

The contrast there is between a high-level verification to be given by HFS and an in-depth consideration of technical and other standards to be done by the project team. Do you agree with that?

A That's what the guidance says, yes.

Q Yes, and if the HFS verification doesn't achieve the same depth as the project team's consideration, what is it intended to achieve?

A Well, bearing in mind that the section of the guidance that's been referred to is about the identification of any deviation or derogation from standard, so the extent to which that exists or doesn't exist will impact on

the level of depth that's required and the nature of that derogation – I would expect so. I don't think it's possible to give a kind of blanket answer on that.

Q Okay. So, the question of whether or not there's a derogation or a departure from guidance, is that something which the process expects to be identified by the health board itself?

A Yes.

Q I think what I understood you to say is that the depth of investigation by HFS would depend on the nature of the derogation and the circumstances surrounding it. Is that fair?

A Yes, and the nature of the scheme. Yes.

Q Yeah. What was it that the CIG expected to be verified by HFS?

A I would have expected it to be that the submission by the board that any issues that have been identified had been addressed or, if there were any outstanding issues or issues of concern, that those would have been identified.

Q Would it include a verification about whether any proposed derogation was acceptable?

A I don't think I can be definitive on that point. HFS are there

to provide advice, they're not a decision-making body, but their advice as to whether there were issues would have been part of their report to the CIG and indeed to the project, I would have expected.

Q Are you aware of what resources there were within HFS to carry out the NDAP?

A Not specifically but, as part of the tripartite arrangement that was entered into, there was discussion with both HFS and with Architecture and Design Scotland around additional resources that would be required to support the process. I can't recall the specifics of that, but I remember there were discussions in terms of the funding that was made available to both organisations.

Q If it was to be suggested that, around that time, there was only a single architect at HFS dealing with the NDAP process, would you be able to agree with that or could you not say?

A I couldn't confirm.

THE CHAIR: It's a matter of extreme detail, Mr McClelland, but I think what we heard was that there was a single engineer as opposed to single architect.

MR MCCLELLAND: Okay, but---

THE CHAIR: As I say, it's

extreme detail.

MR MCCLELLAND: I'm much obliged, my Lord. (To the witness) Replacing architect with engineer, would your answer have been the same?

A Yes, it would, and I can't comment on the extent to which HFS would have called on resources from within their overall establishment, depending on the nature of the expertise that was sought. So I can't-- I'm afraid I can't comment further.

Q Okay. If we could go, please, to page 69, we have a section in here, and you've alluded to this already, Mr Baxter. Section 1.4, headed up "Transitional Arrangements", and what it says is as follows:

> This guidance shall apply to all projects submitted for approval of the Initial Agreement (IA) after 1st July 2010. Projects that have not received approval of their Outline Business Case (OBC) by 1st July 2010 shall be considered for the assessment process on a case by case basis, as part of the initial pilot phase…"

And so on. How did those transitional arrangements apply to the Sick Kid's project?

A The original outline

business case for Sick Kid's dated from 2008. There was an additional complication in terms of the change in funding mechanism for the project, and from a review-- and, again, given the passage of time, I can't recall the detail of it, but from a review of the outline business case that was submitted by NHS Lothian, there were a number of design review processes undertaken. Whether they would be classified as NDAP or an equivalent, I can't confirm, I'm afraid.

Q Okay. So, if we were to ask whether the Sick Kid's project, and by that I'm including within it the Department of Clinical Neurosciences-- if we were to ask whether that project was subject to a mandatory NDAP or fell into the category for consideration on a case-by-case basis, can you remember which side of the line?

A No, I can't. What I can recall is exchanges from material that I've been able to review where I'd sought to bring together HFS, Architecture and Design Scotland and Scottish Futures Trust around design review of the process-- of the project, but the nature of that, I'm afraid I can't provide any further detail on from the information I've had access to.

Q Okay. We'll have a look at some of the documents relating to

that later on. Can I ask this, though: whose decision was it on whether or not an NDAP was to take place?

A In terms of the CIG process, that would have been largely down to myself and in consultation with others.

Q Is the-- The NDAP process is part of the business case review process----

A Correct.

Q -- being conducted by the CIG, and you, at the time, were the chair of the CIG?

A That's correct.

Q Now, of course, Mr Baxter, you left the Scottish Government in-- or you left the Health Directorates in 2014.

A Correct.

Q I understand that this particular guidance was updated in 2017 which is some time after you left. Are you aware of any change in relation to this guidance that happened in 2017?

A No, and-- No, I'm not party to that.

Q Okay. During the time that you were in the Scottish Government, was there any proposal under consideration or discussion to make NDAP a compulsory process for all projects and to remove the

transitional provision?

A Well, the transitional provision at the time related to the stage of approval at the point of the introduction of the design quality policy on 1 July 2010, so by the nature of developments, new projects coming forward, I would have expected to be subject to the NDAP as an extant part of the scheme and the design quality policy. So there would be a natural transition out for older projects.

Q Yes. So, eventually, you would reach a point where all of the pre-2010 projects had gone through the system----

A Correct.

Q -- and any new project would thereby be subject to the NDAP.

A Correct.

Q A moment ago, I think I'm right in saying that you described HFS as having an advisory role in the NDAP. Am I correct in recalling that?

A Well, they were providing expert advice, so.

Q Could you look, please, at page 70 of the bundle? We've got a flow chart there and the passage of text above it says:

> "The NHS Scotland Design Assessment Process, for all projects over the delegated value, sits in an advisory role to decision makers in both the commissioning Board and in the Capital Investment Group within the Scottish Government Health Directorates."

Although the process is described there as advisory, is it correct that it would be open to the CIG to recommend refusal of approval if dissatisfied with the findings of an NDAP?

A Yes.

Q Could you go, please, to page 72? We have a heading halfway down the page: "Response by NHS Scotland Design Assessment Process to the Board". Again, just to be clear, does "Board" there refer to the health board?

A Yes.

Q Reading from that: "The outcome of the assessment will be encapsulated in a brief report to cover the following areas…" and then we have "Joint Statement of Support" and then a list of options. The list of options is divided into two: first of all, "Supported", and then over the page we see "Unsupported". Is this a reference to a report by HFS and Architecture and Design Scotland to the health board?

A Yes, it would be.

B Do we see there that the

conclusions of the report are either to be that the project is supported or it is unsupported?

A Yes.

Q In relation to the supported option, we see that it says that it:

> "… may include recommendations as follows:
>
> Essential recommendations: those areas requiring amendment or alteration in order to meet either national guidance…"

Or something else. Then if we move from there, over the page, to what it says about something being unsupported, so on page 73:

> "… this will include a statement of the areas of concern that leads the panel to consider that the project is likely to fall seriously short of either the benchmarks set by the Board, the standards established for healthcare buildings, or the expectations established in national policy…"

So, just in short, would it be your understanding or your expectation of the report emerging from the NDAP process to the health board that, insofar as it identified a departure from that national guidance, the two options would be either that the project be unsupported or that it be supported with an essential recommendation to comply with the guidance?

A That would be my expectation, yes.

Q If we move further down page 73, there's a section headed: "Interaction with Capital Investment Process Considerations", and reading from that:

> "HFS will notify the CIG when the process is completed and verify, to the CIG, the recommendation given to the Board. The submission sent, by the Board, to the Capital Investment Process (CIG) should include the information sent previously to the NHS Scotland Design Assessment Process (NDAP) and the response received. In considering the business case the CIG will take the NDAP's response into consideration as follows…"

Then there's a list of bullets. If it's supported with no qualifications, the CIG can approve; if it's supported with essential or advisory recommendations, evidence of how they identified issues being addressed will be required prior to CIG approval; then: "Unsupported: CIG will not approve." So do we see there that,

according to this guidance, the CIG would not approve a project insofar as the NDAP had identified departures from national guidance?

A That's correct – where they'd been identified in the NDAP process, yes. There's-- Sorry, if I could make another comment which I hope will be helpful. So the NDAP reports provided to the project, and-- in those cases were supported with recommendations, there would be an opportunity for the project-- or unsupported, there would be an opportunity for the project to address those issues. So the sequencing of that, relative to a business case being submitted to the CIG, may vary. So, if the design assessment process was undertaken at an early enough stage, then there was the opportunity for the NHS board to address the issues and for the NDAP essentially to be updated to reflect that.

Q Yes, and one can imagine a process in which departures are identified and the health board given an opportunity to remedy that----

A Correct.

Q -- so that they are then in a position to submit a compliant business case.

A Correct.

Q Yep. I think we-- I think you agreed earlier that the NDAP process happens at each of the three main stages of business case approval.

A For those projects commenced after-- or for initial agreements after 1 July 2010, that should have been the case.

Q Yes. If we just go forward, please, to page 75. We see this is headed up: "APPENDIX A: NDAP SUBMISSION REQUIREMENTS", and it states that, "Below are the anticipated submission requirements at key reporting points." We see then some grey headings denoting the three business case approval stages----

A Yes.

Q -- the second of which is "OUTLINE BUSINESS CASE". We see there it says:

> "STAGE: Early in the OBC process an informal consultation on site selection and strategic briefing considering…"

And then the bullets below it include one which says: "list of relevant design guidance to be followed…" including SHTMs and Activity Data Base, and also:

> "Evidence that Activity Database… will be fully utilised during the preparation of the brief

and throughout the design and commissioning process."

So do we see there the expectation that, in the end NDAP process, for those projects to which it applies, the health board is to produce that list of guidance and evidence that the Activity Data Base is going to be used during the preparation of the brief?

A Yes.

Q Then below that we've got: "STAGE : Late in the development of the OBC, when the design is becoming formed but is still open to influence…" Then, reading over the page, at page 76, we see the list of submission requirements, and the bottom two, "Evidence that Activity Data Base… is being fully utilised during the preparation of the brief…" and so on, and: "An updated list of relevant design guidance to be followed… and schedule of any derogations in relation to these." Was that your understanding of what was expected of a health board at these stages of the NDAP process?

A It seems entirely logical on the basis of how projects are developed and the level of detail that exists at each stage of the business case process.

Q If we go, please, to page 77, we see the same sort of list of details for the full business case stage. Again, the list of bullets includes an updated list of relevant design guidance to be followed and any schedule of derogations, and evidence of the Activity Data Base being fully utilized. So the health board is required by this policy to provide that information at the full business case, stage two.

A Yes.

Q Yeah. Then, finally, if we just go over to page 78, we have a list of information to be provided for NPD schemes. Do we see there that the information to be submitted to-- for the NDAP process includes the design proposals from the preferred bidder?

A Yes.

Q As I think, out of fairness to you, what you've been keen to emphasise is that these are the requirements for those projects which are subject to the 2010 version of the NDAP.

A That's correct.

Q I think we have probably covered this, but if we could just put it in terms of a concrete example: if a health board which was subject to this process decided not to use the Activity Database data when briefing or designing a new hospital, what would

you expect it to do?

A As the 2010 Policy states in the Mandatory Requirements, if there's an alternative, it should have equivalent use and value. I think the question for me is about the board receiving the necessary assurances through whatever process it decides to apply and, essentially, justification as to why it's deviating from accepted practice.

Q Specifically in the NDAP process, is that information that you would expect them to give to HFS for consideration by HFS?

A Well, the source information that HFS would need would still be the same. If not provided through the Activity Database, then it would-- equivalent information would have been required through another source.

Q Again, in concrete terms, if the health board had decided not to use the Activity Database but did not raise that through the NDAP process – in other words, didn't include it in its list of derogations – is that non-use of the Activity Database something that you would expect the NDAP process to detect?

A Yes, because the source information that's required in order to conduct the NDAP would be

dependent on equivalent information from the ADB or an equivalent.

Q Were the 2010 Design Policy and these NDAP procedures intended to apply to both capital-funded and NPD-funded projects?

A Yes, and the extract that you've just referred to highlights the differentiation for NPD projects, given the nature of the procurement of design.

Q Of course it does. If I had remembered that, I might not have had to ask that question.

A Sorry.

Q Sorry. I would like, if I may, now to turn to issues more specifically related to the Sick Kids project at Little France. Again, just for clarity, I include the Department of Clinical Neurosciences. Prior to 2010, the plan, or at least the expectation, was that both of these would be funded by public capital, is that right?

A So, the funding for Sick Kids was included within the capital programme. As I covered in my witness statement, the funding for DCN, or Department of Clinical Neurosciences, was less clear, given existing funding commitments within the NHS Scotland capital programme.

Q As far as you know, was the Health Board's hope or expectation

that it would be a capital-funded project?

A Yes.

Q As it transpired, neither was funded in that way. Why was that?

A At the end of 2009, or late 2009, the UK Spending Review concluded and there was a significant reduction in capital funding available to the Scottish Government. From memory, I think it was about a 36.5 per cent reduction in real terms in capital. At that time, there were significant legal commitments, so contracts that had already been entered into, which placed quite a call on available capital resources. At the time, the Scottish Government wanted to maintain capital investment or investment in public facilities as a means of stimulating the economy, as well as replacement of ageing public sector facilities, including hospitals, schools, etc. So the budget that was announced in late 2010, the announcement was made that the Sick Kids would be delivered through NPD.

Q So, just to put this in a wider timeline, were these budgetary decisions being taken in the context or the aftermath of the financial crisis of 2008?

A Yes, they were.

Q It was decided around this time that the Queen Elizabeth University Hospital in Glasgow, and I think, also what became the Queensferry Crossing, would continue to be capital funded. Is that correct?

A That's correct.

Q Whose decision was that?

A That was a decision taken by Scottish Ministers on the basis of advice that they received.

Q Why were those particular projects capital funded and not the Sick Kids?

A So the nature of the two projects-- So for Queensferry Crossing, which I was involved in in a later role, that had already proceeded to procurement at the point, so there were contractual commitments that related to that. In terms of the Queen Elizabeth, the accounting rules that pertained at the time and how the expenditure scored against the health board's budget, there would have been significant affordability challenges with delivering that through non-profit distributing or PPP at the time. In addition, there were interfaces with existing hospital estate, ageing hospital estate, which changes the risk profile. So there were a range of factors that were taken into account at

the time.

Q NPD is a variant of PFI, is that correct?

A It's a variant, yes.

Q Why did NPD come about in Scotland?

A So one of the criticisms of early PFI schemes, and not just in Scotland but across the UK, was around uncapped returns to the private sector. Because of the nature of how those projects were funded, there was a combination of senior debt from banks, mezzanine debt, which was provided by funders, which attracted a higher rate of interest, and then share capital, and effectively the share capital provided an opportunity for uncapped returns. So the NPD model was developed with the aim of capping returns to the private sector and delivering better value for money.

Q So, with that explanation, to what extent is an NPD model different from a PFI model and to what extent is it the same?

A It is largely the same in the sense that it's a project finance arrangement, but the debt structure is quite different. So there's debt from funders through senior debt and mezzanine debt, but there is no share capital. By doing that, they-- effectively you cap the interest that's payable through the NPD model.

Q Could we have a look, please, at bundle 7, page 51? Do we see there, Mr Baxter, this is document, again with the Scottish Government crest, headed, "Scotland's Spending Plans and Draft Budget 2011-2012"?

A Yes, I've got that onscreen.

Q Is this a document you are familiar with?

A In general terms, given the passage of time, but yes. Yes, absolutely.

Q Was this the document which announced the switch to NPD funding for the Sick Kids Hospital?

A My understanding is that it would have been, yes.

Q If we could go, please, to page 101 of that. There is obviously a lot of discussion within this document about which projects are to be done by NPD and so on. Just at the top of page 101, it says that:

> "This new pipeline of NPD projects----"

Which, to be clear, includes the Sick Kids.

> "-- is being targeted to provide the maximum support for the wider capital programme and for Scotland's key public services. The Scottish

Government will seek to deliver each project as early as possible in order to accelerate its benefits to citizens and to the wider economy."

It is those words "as early as possible" that I am interested in. Do you recall a desire to bring these projects on as early as possible?

A Yes.

Q What was the reason for that?

A There was-- The need for the projects had already been identified, so it was about trying to minimise any delay in the delivery of those projects, which would have been at different stages of development. Some would have been at the very early planning stages, others would have been in procurement, as was the case for Sick Kids.

Q Were there risks for those projects if the pace was too fast?

A I don't think the risk being too fast was a consideration. It was really about making sure that the projects were planned appropriately and resourced appropriately to deliver what they needed to deliver. As I say, a range of projects across the public sector would have been in different stages of development at that point that the decision was taken.

Q Did the switch of funding model from capital to NPD delay progress of the Sick Kids Hospital?

A Compared to a Framework Scotland procured project funded by public capital, yes, there would have been a delay. I think what it is difficult to determine is that in the normal course of delivering a major capital project such as Sick Kids is to what the exact impact of NPD as opposed to other factors would have been in the overall delivery timetable.

Q Okay. The budget announcement also said that the Scottish Futures Trust would take forward the NPD programme of investment. We do not need to go to it, but the page reference is page 56. Prior to that point, had the SFT had a role in relation to the development of new hospitals in Scotland?

A Yes. In respect of PPP projects, they had involvement in a range of projects including Dumfries and Galloway Royal Infirmary. So, yes, they had involvement and had oversight in relation to the standard contract that was applied for PPP and then NPD thereafter.

Q You referred there to their involvement in PPP. Had the SFT had any involvement prior to the budget announcement in relation to

the Sick Kids Hospital?

A Not that I'm aware of, no.

Q To what extent did the budget announcement and the SFT's role in relation to this programme of NPD investment herald a change in the scale or nature of the SFT's role?

A Well, the fact that it became an NPD project, SFT had a clear and defined role, and it's simply because of that rather than a general interest in terms of capital investment, and they did have a general interest in terms of capital investment across Scotland and procurement methodologies and issues like that.

Q Taking the £2.5 billion NPD programme in and of itself, did that represent a big increase in the workload of the SFT?

A It would have done. There were existing programmes in play, particularly around schools, housing, alternative financing methods such as the TIF. I'm trying to remember the acronym now, but they were involved in a range of things related to promotion of capital investment in Scotland.

Q What consideration was given before the budget announcement to the suitability of the Sick Kids project for NPD funding?

A So there were a range of

factors. Again, I covered some of this in my written statement. If you look at the characteristics that make a project suitable for the use of private finance, typically they would be associated with larger projects, with new-build projects where there had been essentially a track record of delivering within a particular sector. So those were probably the kind of key considerations at the time. Also, public capital is more suited to dealing with existing infrastructure and, at the time, we were aware of a significant backlog in terms of maintenance within the estate of the NHS in Scotland. So the consideration was partly about making maximum use of public capital for those things that it was most suited for and complementing that with the use of other mechanisms such as NPD in order to maximise investment.

THE CHAIR: Sorry, entirely my fault. In answering the question as to whether consideration was given as to the suitability of Sick Kids project, for the NPD model you set a range of factors and you gave the example of NPD being more suitable for larger projects, new-build projects and then you made a reference to "track record". I just did not get the rest.

A So, the point I was making was that private finance had

been used in the health sector, so hospitals had been developed and delivered using private finance.

Q Thank you.

MR MCCLELLAND: If the NPD funding route had not been available, could the Scottish Government have funded the Sick Kids?

A In my opinion, no.

Q Were there any other funding options that you were aware of?

A No.

Q So far as you are aware, was NHS Lothian consulted before the budget announcement about the project being funded by NPD?

A No.

Q Why was that?

A It was part of the budget statement. Therefore, there are issues around parliamentary privilege, so that's my understanding as to why there wasn't involvement.

Q If NHS Lothian had, for any reason, been uncomfortable about funding the project through private finance, what options did they have?

A They wouldn't have been able to progress with the project if they did not wish to do that.

Q Okay. As it happens, they did in fact decide to proceed using the NPD model.

A Yes.

Q Before the budget announcement was made, had NHS Lothian made significant progress towards procuring the Sick Kids as a capital funded design and build project?

A Yes. So, BAM had been appointed through the Framework Scotland national construction framework that was put in place and were developing the design and clinical models around the Sick Kids.

Q Just briefly, can you explain what the Framework Scotland model is?

A So, it's a national framework available to NHS boards to support capital expenditure. It's based on a standard set of contractual terms and conditions – the NEC 3 form of contract. It was developed for Scotland, led by Health Facilities Scotland, but supported by Scottish Government. It was based on an existing mechanism called “Procure 21” that was developed in England. The aim of Framework Scotland was to ensure that there was greater consistency in terms of how capital investment, or capital procurement, was undertaken and ensure that because of the mechanisms within the contract that there was greater

certainty on cost and time delivery.

Q What impact did the change in funding model have on the procurement of the Sick Kids Hospital?

A Effectively, the existing procurement through Framework Scotland would have to be halted and a new procurement undertaken.

Q Could we go, please, to bundle 3, volume 1, page 1120?

A I can see that.

Q Is that a document you recognise?

A Yes, it is.

Q Can you tell us what it is, please?

A It's a briefing on the issues associated with the change in funding for Sick Kids.

Q Okay. I think this was a briefing that you drafted?

A Yes, that's correct.

Q I think you say in your statement that it was a briefing drafted, ultimately, for the First Minister's benefit, is that----?

A That's correct.

Q We see it headed up, "Royal Hospital for Sick Children - Delay and Delivery through Revenue Finance."

A Yep.

Q The document itself is undated, but in your statement you describe it as being dated 16 November 2010. So, that is quite shortly after the budget announcement.

A Yes.

Q If we go to page 1221, please, just at the bottom. Just reading from there, it says:

> "The Capital Investment Group approved the Outline Business Case on 15 August 2008 which allowed NHS Lothian to proceed with its preferred option to develop the new hospital on the Little France site using public capital, supported by university and endowment funding. A preferred bidder, BAM construction was appointed from the NHS Scotland National Framework, Frameworks Scotland on 30 April 2009."

I think that is just confirming what you explained a moment ago.

A Yes.

Q If we move over the page, to 1122, you see there:

> "A full business case is being prepared by the NHS Board and was scheduled to be considered by the Capital Investment Group in January 2011 following completion of design and costing work with the

construction partner. Even with a change in funding route it would be sensible to conclude detailed design work, sign off for which is expected by the end of November 2010."

So, do we see there just how far down the route NHS Lothian had got with the Framework Scotland procurement route?

A Yes.

Q They were just two or three months away from submitting the full business case.

A I think they-- I have said it was scheduled to be considered by the CIG in January 2011, but that would be dependent on NHS Lothian closing out those issues that are highlighted with their partner.

Q Okay, thank you. You talk there about completion of design and costing work with the construction partner. I presume that is BAM?

A Correct.

Q Could you please expand on your understanding of that?

A So the Framework Scotland approach is essentially two stages, where you engage with a principal supply chain partner – in this case, BAM – to develop up proposals to such a stage where you have a target cost, based on a detailed design

and then proceed to submit your outline business case based on that. Then proceed to your detailed design, with the principal supply chain partner, prior to full business case.

Q So, what was your understanding of the stage of advancement reached by the design prepared by BAM?

A In terms of the detail of the design at that point, I honestly can't comment on that, but they had been engaged for some period of time. What I was well aware of was the level of input from across NHS Lothian in terms of the development of the clinical model and the extent to which that had been developed prior to the decision to change the funding mechanism.

Q What you say in this briefing document is that it would be sensible to conclude detailed design work. Was that your view?

A Yes, it was. If we think about the level of design work that had being conducted to that point, the spatial arrangements had been essentially set based around a clinical model and service model, but the technical design work was still required to be done at that point. So, the example that's been referred to a number of times around ventilation and

things like that, wouldn't have been developed at that point in time. That's my understanding.

Q Okay. Why was it your view that it would be sensible to conclude the detailed design work?

A Because if we if we hadn't have done that, or we hadn't agreed to that, they would have had to start again. So, the work that had been done by BAM and engaging with the board around what their service model was, what the building needed to do, essentially would have been wasted. The impact of that in terms of cost, but also the significant energy that had been put into this-- and commitment that had been put into it by the NHS board, would have been lost as well.

Q Just reading down page 1122, to the final paragraph, you say that:

> "In moving to an NPD finance route the current procurement will require to be halted and a new procurement commenced as soon as possible. The Scottish Futures Trust have been requested to prepare a proposal, due within the next two days, on how it could support NHS Lothian to develop an NPD procurement strategy as soon as possible. SFT have been given a clear brief to develop a proposal and strategy that minimises any delay in the delivery of the project. It is expected that, with appropriate input from both SFT and NHS Lothian that a new procurement strategy could be ready within 4-6 weeks."

Can you just explain why a new procurement was needed?

A So, the Framework Scotland contractual arrangements didn't allow for the use of private finance. Those were for public capital projects. So there'd been a significant change in the nature of the project effectively. So, therefore, from a procurement perspective, we would need to, at the time, use competitive dialogue as a basis for securing a contractor.

Q Why was the SFT being asked to support NHSL?

A Because they had-- in Scottish terms, they were the experts, in terms of the application of private finance, both from a commercial perspective, but also in terms of their engagement across a variety of sectors in the planning and delivery of such projects.

Q Was that expertise that NHSL did not have at that time?

A Correct, or it would certainly supplement what experience and expertise they had, bearing in mind that they had an existing PFI contract.

Q Can we go to bundle 3, volume 1, page 1107, please? If you have that on the screen, Mr Baxter----

A Yes.

Q So we see there, an exchange of emails between you and Peter Reekie. Do you see that?

A Yes.

Q Who was Peter Reekie?

A At the time, Peter was the director, as it says, for Finance and Structures within SFT. Peter had significant experience in PFI-related matters, in both this role and previous roles and is now the Chief Executive of Scottish Futures Trust.

Q Okay. Just reading from your email down there – and this is just to put the document we are about to look at into context – you say,

> "Pete
>
> Do you have the proposal we discussed last week.
>
> Following on from my meeting with Barry this afternoon I want to be clear prior to tomorrow's meeting on the basis of your engagement with them and what we expect of Lothian over the next 4-6 weeks."

Then Peter Reekie replies saying, "In confidence for our discussion", and he attaches a paper. So, if we could go, please, to page 1111, you will see the – I hope – the paper.

A Yes, I have that.

Q Is that the paper that Mr Reekie sent you?

A I believe so, yes.

Q Now, if we just read from paragraph 1 of that, it says:

> "Introduction.
>
> Following the announcement that the Sick Kids and DCN are to be delivered as revenue financed projects under the NPD structure, this note sets out for discussion thoughts on the potential way forward. It is based on SFT's current understanding of the project scope and status."

Then:

> "Scope
>
> Project scope as an NPD and affordability need to be considered together."

Can you explain that point being made by Mr Reekie?

A Yes. So, essentially the costs of an NPD project are largely driven by the scale of the capital investment and the asset to be

maintained over the life of the contract. So, the project scope, effectively, determines that. So, not-- you know, the size of it and the nature of it would determine the capital investment figure that is then required to be supported by debt. So, that's the link between affordability and scope.

Q Okay. So, what was the SFT's interest in scope? Why were they interested in the scope of the build?

A At the point of the point of this exchange, the announcement had just been made and the estimate that's included there, at 250 million was, at that point, the current estimate of the costs of Sick Kids and that needed to be tested. Within the government at the time, the overall pipeline of 2.5 billion across all sectors, the affordability of that had been considered as part of that decision. Therefore, you know, if the costs had increased from 250 million, then the financial consequences, obviously, were going to increase. So the scope and affordability was an important consideration just in terms of living within the means that had been set out.

Q If we move on to page 1112, and reading paragraph 4, which is headed "Interface with existing Sick Kids procurement":

> "There will need to be rapid consideration by NHSL and its advisors of the exit from the current NHS framework contract. It may be beneficial to transfer elements of design work undertaken to the new procurement. SFT is not involved in the Framework and cannot really advise in this area."

Then Section 5, headed "Preparing for Procurement":

> "Consideration will be needed at an early stage of how much the design should be progressed in-house and how much in competition through the NPD procurement. There is an opportunity with recent accounting rules changes to undertake more design – especially overall massing, adjacencies and even layouts in-house with the preferred bidder taking on detailed design for construction."

Now, what was the SFT's interest in those aspects of the design?

A So, in terms of the-- paragraph 5.a), those would be extremely helpful in verification of the overall capital cost, the reasonableness of the capital cost of

the scheme.

Q So it goes back to the point we discussed a moment ago?

A Sorry, could you just clarify, so I'm----

Q Well, you were explaining a moment ago the nature of the SFT's interest in the capital costs of the hospital----

A Yeah.

Q -- was in assessing the financial implications of the PFI project overall.

A Yes.

Q Yeah, that's a related point.

A Yes.

Q If we just go to page 1113, paragraph 6.b), see there:

> "NHS Lothian will need appropriate advisory support – financial, technical and legal to bring forward a complex NPD procurement…"

That's recognition by the SFT, I assume, of the point that you were making a moment ago.

A Yes.

Q Is the procurement of an NPD project a more complicated exercise than doing it through the Framework Scotland?

A Yes, it would be.

Q In broad terms, why would that be?

A I suppose three things that I would highlight: one, because of the financing of this or the difference in financing then it requires a different procurement structure, so funders, contractors; the second would be that what you're procuring through an NPD isn't simply the building but you're procuring the hard FM services, so the maintenance service is part of that; and the third is simply because of the nature of the ongoing relationship, if you like. So the nature of the contract is very different than build a building and then it's over to the board in terms of how it manages it.

Q Yeah, I mean just give us a rough indication of what's the duration of an NPD project agreement?

A So typically you'd be looking at 30/30-plus years.

Q If we could go, please, to bundle 3, volume 2, at page 314. This, Mr Baxter, is a paper for the NHS Lothian-- sorry, for the Finance and Performance Review Committee of the NHS Lothian Board dated 12 January 2011. We don't need to look at it but, at page 322, we can see that the paper has been prepared by Susan Goldsmith, Director of Finance at NHSL----

A Yes.

Q -- Jackie Sansbury, the Chief Operating Officer. Is this a paper you've seen before?

A Yes, I have.

Q Was that in the context of preparing for this or----

A Yes.

Q Had you seen it before that?

A Not to my knowledge.

Q Just to put it in context, if we read from paragraph 1.1:

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

Then in Section 2, headed "Recommendations", it provides that the committee is invited to do various things, the second of which is:

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

If we could just go to 4.3, please. What's being set out here for the committee is the key features of the current NPD model, and they are said to include, first of all: "Traditional benefits of PPP with regard to risk transfer." Now, would you agree that that was a key feature of the NPD model?

A Yes.

Q What would you understand to be meant by the "traditional benefits of PPP with regard to risk transfer"?

A Typically construction risk, so cost and time overrun on construction would fall to the private sector in taking on those risks. If the payment mechanism for PPP projects is based on utilisation of facilities, so if the facility was under-utilised, the demand risk, if you like, would sit with the private sector. So those were long-established principles.

Q What about design risk?

A Design risk should rest with the private sector.

Q If we go to 4.4, please. It says that:

> "The Scottish Futures Trust (SFT) is to take a central role in the capital infrastructure

programme across Scotland, and will provide advice and guidance on all NPD projects, of which a pipeline of projects is now anticipated. One of the key matters to be clarified is the explicit roles and responsibilities of SFT and the distinct Board appointed technical, legal and / or financial advisors."

Was that a fair comment at the time?

A Yes, and it was still to be clarified. The subsequent guidance that was issued in March of 2011 kind of crystallised that in terms of what SFT's role would be – and bearing in mind that that's not simply in relation to Sick Kids, but in relation to the overall NPD programme.

Q Yeah. Was there a need, in relation to the Sick Kids project, to distinguish in particular the role of the SFT from the role of technical advisors to be appointed by NHSL?

A Yes, in terms of a council, SFT had a role in terms of supporting Scottish Government with an overview of the NPD programme, but the accountability of technical advisors was to the NHS board, in my view. So the detailed technical advice that was received by the board should

have been through their advisors and not through SFT.

Q What we see here is the board, at this point in time, so January 2011, recognising that that was something that still needed to be sorted out.

A Yes, and as I said in my last comment, obviously we were still working through the detail of this not just in health but in terms of how this would apply across the broader public sector, so the guidance that was issued in March of 2011 brought together the position on all of these matters.

Q If we go to paragraph 6.1, which is at page 318, what's said here in this paper is:

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

So do we see there that NHSL shared the aspiration of the Cabinet Secretary to make progress with the project?

A Absolutely.

Q Was that your recollection at the time?

A Yes.

Q Then if we go on to paragraph 6.2, it reads as follows:

"To achieve this, we have explored the procurement options with both SFT and SGHD, for a NPD model to deliver RHSC and DCN with our ideal being to have utilised the existing design team to complete the design process, build on the market testing of packages already undertaken and construct the new building (option 2, below)."

Then if we go down to option 2: "Utilising the PSPC…" I think that's the role that BAM had. Is that right?

A Yeah.

Q Yeah.

"… and framework and Framework Scotland with NPD (Finance and / or Lifecycle and Operational services) wrapped around / onto the contract:

This option essentially "novates" the BAM contract to a newly procured SPV which would then deliver the construction."

So, in short, was it NHSL's preference to have the design finished and the hospital built by the contractors they'd already engaged?

A I'm sure-- Well, I can't comment on if that was their preference, but it wasn't possible given the nature of the Framework Scotland contract and the nature of an NPD contract. So it's identified in the paper as an option, but I'm not sure from my experience that that's actually deliverable.

Q Okay, and can you just explain why that wouldn't be deliverable?

A Because the contract that was entered into around the development of the facility was for the build only. It didn't cover the hard FM, so there would have been issues around balance sheet treatment, etc. if that was an NPD project.

Q Again, you referred there to the hard FM, but would the NPD model also involve financing arrangements?

A Yeah, sorry. Yes, absolutely.

Q Was that another reason why the Framework Scotland procurement route wasn't suitable for this project?

A Well, the Framework Scotland is based on public capital and the provision of, effectively, cash from government to boards to fund that investment.

Q Then if we go to 6.4, on page 320 it says:

"A review meeting including SFT, SGHD and MacRoberts to consider options 2 and 3 took

place on the 23 December. Following consideration of the issues and advice received to date, it has now been concluded that the recognised route for NPD procure is to take a "reference design" to the market (i.e. option 3)."

Then if we just go up above, page 319, we see that option 3 is set out. Just reading there:

"Continue to work through the Framework Contract to complete a 'Reference Design' for the combined build for an open SPV procurement to pick up and then deliver construction, operation, etc: This has the attraction of market testing the NPD and has emerged as the 'balanced' answer…"

Was that the approach supported by both the SFT and the Scottish Government?

A Yes, I believe so.

Q Why did the SFT and the Scottish Government support a reference design approach?

A Because it recognised the value of the work that had been undertaken around design to that point, and the fact that the reference design would take design to such a stage that wouldn't compromise the

NPD procurement, and the alternative would have been going back to the drawing board. So it was a compromise option that was, one, compliant, but also sought to maximise-- minimise delay and maximise the value of the work that had been done to that point.

Q Thank you. If you go to paragraph 7.3 at page 321, it says:

"We will continue to work with both SFT and SGHD to agree the appropriate procurement approach. However, one of the key pieces of advice from SFT and other parties is to ensure the support of appropriately experienced team and technical advisers at an early stage. This is also essential for the development of the Reference Design."

Do you agree with that?

A Yes, I would.

Q Why was experience needed in particular for development of the reference design?

A I'm just reading the paragraph again, sorry. Yeah, so the interface between an NHS board and bidders during an NPD procurement is different than it would have been through Framework Scotland, so-- and also I think, just given the complexity

of the project, the building and what it was there to do, it was important that, you know, appropriate technical advisers were onboard and could support the board through what they needed to do and what they should have expected and could have expected from bidders at each stage of the process; so the earlier you get them on board, the better.

Q Okay. Is it correct that a reference design approach includes specifying elements which it was mandatory for bidders to comply with?

A Yes.

Q I note the time, my Lord. Maybe that's an appropriate point to break for lunch.

THE CHAIR: Yes. We'll take our lunch break now. About an hour, Mr Baxter, so if you could be back for two o'clock, I'd be very grateful. I would be equally grateful if everyone else was back.

(Luncheon adjournment)

THE CHAIR: Good afternoon, Mr Baxter.

THE WITNESS: Good afternoon, my Lord.

MR MCCLELLAND: Good afternoon, Mr Baxter.

A Good afternoon.

Q Could we have document-- So it is bundle 3, volume 2 at page 354, please. If you have that in front of you, Mr Baxter, do we see this is a note of an "RHSC/DCN Project discussion – 1 February 2011," with various people listed in attendance – Jackie Sansbury, Susan Goldsmith, Iain Graham, yourself, Norman Kinnear and Donna Stevenson?

A Yes.

THE CHAIR: Sorry, Mr McClelland, entirely my fault, could you give me the page again?

MR MCCLELLAND: It is bundle 3, volume 2, page 354.

THE CHAIR: Page 300 and?

MR MCCLELLAND: 54.

THE CHAIR: 24.

MR MCCLELLAND: 54.

THE CHAIR: Thank you, yes. Sorry, Mr McClelland.

MR MCCLELLAND: There is just one passage in this note of that meeting that I would like to ask you about, Mr Baxter. It is on page 355 and it is in the second paragraph, beginning on that page. Reading from there, it says:

> "The meeting then discussed the design position in terms of work done and required before procurement commences.

The ongoing work from BAM through Framework Scotland remains possible to add in DCN aspects. However there are a range of risks around timescale etc."

It is really this coming sentence:

"Donna Stevenson said that while SFT supported the concept of a reference design she was surprised as to the extent of the design development being proposed."

First of all, was Donna Stevenson from the SFT?

A Yes.

Q Do you recall the SFT expressing surprise at the extent of the design development?

A Not explicitly, bearing in mind that this paragraph refers to the DCN, so I'm not sure what her concern was about, whether it was the extent of design work on Sick Kids or the fact that DCN was now being introduced. So I can't comment further, I'm afraid.

Q Okay. Could we go, please, to page 377 of that bundle? Do we see there that this is a letter dated 22 March 2011 from the Acting Director-General of Health and Social Care, Mr Derek Feeley?

A Yes.

Q Do we see the letter is headed up "Scottish Government Funding Conditions for Delivering Projects through the Non Profit Distributing Model"?

A Yes.

Q Is this a document you are familiar with?

A Yes.

Q Can you explain to us what it is, please?

A Yes. So this goes wider than Health, but essentially what the Scottish Government were seeking to do was to recognise that the impact of non-profit distributing as a means of finance was that there was a differential impact on public authorities in terms of the budget impact, and also that in order to deliver these projects, which were inherently complex projects to start with, but to make sure that they were robust, there were certain conditions set out around the governance of those projects.

Q Okay. Were these the first such conditions that had been issued by the Scottish Government for NPD projects?

A In terms of the funding of NPD projects, yes, it would be.

Q Just picking up at about the third paragraph on the first page, it says:

"This letter sets out the key

conditions and guidance for procuring bodies in the development and delivery of their projects, in relation to:

1. the anticipated scope, construction and building operating costs for the project;

2. the capacity and governance structures which the procuring body must put in place in order to deliver the project effectively;

3. requirements in terms of business cases and value for money assessment …"

And so on. Then in the following paragraph, it provides that:

"As project owner, a procuring body is required to comply in full with the conditions and guidance set out in this letter in order to be eligible to receive revenue support for agreed projects."

So, as it suggests there, these are conditions which a health board, for example, would have to comply with to secure NPD funding from the government.

A Correct.

Q Then over the page at page 378, the first paragraph that begins on that page provides:

"The programme is being supported by the Scottish Futures Trust (SFT). SFT provides a valuable centre of expertise and advice on the development, funding, structuring, procurement and management of these projects. Procuring bodies are therefore asked to work closely with SFT throughout the development of the project. SFT's approval will be required at specific points, as detailed in section 2 and 5 of the attached guidance, in order for the project to proceed to delivery."

Is it fair to say that there are described here two aspects of the role of the SFT: one, an advisory role and, two, an approval role?

A Yes, and the approval role was in relation to recommendations to the Scottish Government, and that was more broadly than health. That applied across the entire programme.

Q Just to be clear about that, do you mean that the requirements for the SFT's approval would apply to each of the individual NPD projects whether they were Health or not?

A Yes, and, in my experience, exercised through their undertaking of key stage reviews at

various points in the procurement process. So those were effectively gateways that needed to be passed through before projects proceeded to the next stage of development or procurement.

Q So when the letter refers to the approval of the SFT, is that a reference to the key stage review process?

A That's my interpretation of it, yes.

Q Was this the first time that Scottish Government funding had been made conditional on SFT approval?

A Yes. I think it's important to say though that for private finance schemes in Health, prior to this programme, the funding requirement fell on the relevant NHS board. There was no additional funding provided directly by Scottish Government by way of support. So the terms that are set out in this letter sought to recognise the differential impact, financial impact of NPD as opposed to public capital and to provide direct funding to compensate for that fact.

Q Thank you.

A To be clear about it, the approvals of the SFT, was that instead of or in addition to the approval by Scottish Government through the

capital investment group process?

A That's in addition to.

Q If we move, please, to page 379, there is a heading, "Anticipated scope, construction and building operating costs for the project," and then a list of conditions. Condition 1(e) reads as follows:

> "In order for the project to enter procurement, the procuring body must satisfy both the Scottish Government and SFT that it has sought to minimise construction costs and operating costs within the agreed project scope and has undertaken a whole of life cost analysis. This will form part of the scrutiny of the Outline Business Case prepared for the project before approval is given for any procurement to commence."

How was that satisfaction of the Scottish Government and SFT to be achieved?

A In the case of Sick Kids, effectively that analysis was undertaken through the design review process that was undertaken by Atkins. I think it's important to say that in terms of-- the term "minimise construction costs and operating costs" is not at the expense of compliance with standard. This was

around the broader scope of the project, that it was specified to deliver the services that had been identified as being required.

Q If you go, please, to page 380, it is headed up, "2. Capacity and governance required to deliver the project effectively," then, again, a list of conditions. Condition (e) is:

> "The project will be required to go through Gateway Review, Key Stage Review and Post Project/Occupancy Evaluation, as directed by the Scottish Government, through the development phase until financial close is reached. The review process should be undertaken in full from the earliest applicable milestone."

Insofar as that refers to key stage review, is that the SFT review that you talked about a moment ago?

A Yes, that's correct.

Q There is reference here also to gateway review. Who was to conduct the gateway review?

A So gateway review was a process originally introduced by the Office of Government Commerce, OGC, on a UK basis and sought to provide external assurance around major projects through independent reviews. In the Scottish Government

context, those were arranged through Scottish Government-- I'm trying to remember whether it was SG Finance. There was a central team in Scottish Government that coordinated gateway review activity across all sectors and would identify reviewers not connected with the project to undertake those reviews at various stages. So that was a long-established process. The differential between the two was that gateway review was really focused around project governance and planning, and the key stage review was focused around those commercial aspects related to the NPD model or private finance model more generally.

Q If I can try and just capture what we have got because we have a series of different reviews. So we have got the business case review process before the CIG, and in addition to that we have got the gateway reviews conducted by a body within the Scottish Government----

A Or commissioned by. Sorry, I should be clear. So, the gateway reviews were commissioned by a body within the Scottish Government, but the gateway review reports were effectively provided to the project owner or the project sponsor. So, in the context of Health, the report would be provided to the Senior

Responsible Officer and the health board concerned, but also provided in copy to the Director General as well.

Q If we just stand back from it, the purpose of the review process before the Capital Investment Group was to ensure the project complied with the Scottish Public Finance Manual and the SCIM.

A I would say it's not-- In terms of gateway review, it's not as specific as that, but----

Q Sorry, I am not asking----

A Sorry.

Q It is my fault, Mr Baxter. I am just trying to set out the different review processes that apply for a project. Two of them are described here in this letter, the Gateway Review and the key stage review but, in addition to that, there is also the process before the Capital Investment Group.

A That's correct, and both of those processes that are referred to here, the gateway review and key stage review process, feed into the CIG consideration.

Q I see.

A So, at various points, they would be undertaking the recommendations from those reviews, would be picked up in business cases, and CIG would certainly be seeking assurance that the recommendations that had been made in those reviews had been picked up and addressed.

Q I see, thank you. All I am trying to do is capture what you have said to make sure I have understood it. So the gateway review, I think you said, was concerned with assessment of project governance.

A Project governance, risk, good governance principles, really, that should underpin major projects.

Q And the key stage review process conducted by the SFT, I think you said, was concerned with the commercial aspect relevant to NPD specifically.

A Yeah, so those review processes would-- typically are served-- from my recollection, initially pre-date the commencement of a procurement. So, “Is the project ready to proceed to procurement?”, and at various stages, interim stages through the procurement process would be undertaken. So, in the situation of a competitive dialogue process, invitation to participate in dialogue, there would be pre-preferred bidder when the chosen bidder was being selected, and pre-financial close. That's my recollection. So those provided interim check points through the procurement process before a full

business case was submitted.

Q We have, in addition to that, the NDAP process that we discussed this morning.

A The NDAP process is effectively part of the CIG process or SCIM process.

Q So was the project for the Sick Kids required to undergo both key stage review and gateway review processes?

A So when the project commenced or prior to the NPD funding, it would have been subject to gateway review at that point. Key stage review was introduced following the decision around funding. I can't recall whether those two processes ran in parallel post- NPD decision on pre-full business case. I can't recall whether the two things ran in parallel or not.

Q Right. If you still have page 380 up on screen there, Mr Baxter, do we see that underneath the conditions there is a section headed, "Guidance," and then, "Project resourcing"?

A Yes.

Q It says:

"The skills and experience of the Project Director and the wider Project Team needed to deliver a successful revenue finance project are outlined as follows:

The project team should:

- have knowledge and experience of revenue financed procurement to be able to provide a challenge function to advisers and bidders …"

Can you just explain why that was needed?

A The nature of a private finance procurement is quite distinct from traditional public capital and there is a heavy reliance on advisors, whether they be legal, financial or technical, because of the nature of financing and procurement. So that requirement was put in in order that the board would have effectively an intelligent client function to be able to question and to challenge the advice that it was receiving

Q Reading on, missing the next two bullets, it says:

"The project team should have the experience and expertise necessary to successfully manage and deliver the key phases in project procurement, specifically …"

Then reading on.

"the Competitive Dialogue

process (as appropriate) and have the confidence and experience to lead detailed, wide-ranging and complex negotiations with bidders in relation to the technical, commercial and financial aspects of the project …"

Again, can you explain why that requirement is in there?

A In order that the client can ensure that it gets what it's specifying and requiring through the procurement process and to challenge the proposals coming forward from bidders, which could be quite different in terms of their nature.

Q Then, just reading over the page to page 381, I think it is:

"In addition to the expertise outlined above, the project team must have sound knowledge of these important aspects of procuring revenue financed projects …"

"Design" and "risk transfer" amongst others. Again, why is that requirement included here?

A Because of the nature of NPD projects where the extent to which the design rests with the client or the bidder, the nature of risk transfer impacts on the balance sheet treatment, which impacts on how these projects score in budgets and therefore unaffordability.

Q Was assessment of these matters on a particular project something that was within the scope of either the gateway review or the key stage review?

A Of the two, the specific aspects of this I would suggest are in the context of key stage review rather than gateway review.

Q Those are things within the purview of the SFT?

A Yes. Although the expertise and experience of a project team is something that a gateway review would typically look at in more general terms, but the specific aspects in relation to NPD, I would say, are more relevant to key stage review.

Q Whichever of these two views it was done through, did I understand you to say that it would come to the attention of the CIG anyway, because they would be aware of the outcome of those reviews when considering the business case?

A That's correct.

Q To what extent, in your view, did NHS Lothian's project team have that sort of expertise?

A I don't have access to the detail in order to form that judgment, I'm afraid.

Q If you could go, please, to page 383. This is headed up "3. Requirements for value for money assessment and business cases." Then we see there, sets of conditions to do with the outline business case stage and the full business case stage.

A Yes.

Q At paragraphs b) and f), you see reference to both the Scottish Ministers and the SFT. The SFT are described as having an oversight role and it said that "…they will provide comment to Scottish Ministers prior to their formal approval". Can you just explain the role of the SFT, in this value for money context?

A Yes. So, again, it's linked to the key stage review, in part, but there was guidance developed by Scottish Futures Trust to assess value for money in NPD schemes and part of their role was to assess how that guidance had been applied. The information that was provided by SFT, as I've indicated, fed into consideration by CIG if there were any issues that were highlighted, through key stage review. At the point that we were considering business cases, SFT had an advisory role in respect of the CIG.

Q Okay, and just to be clear, we are looking at a whole set of conditions in this letter. We have not gone to all of them. Was it still, separately from all of that, a prerequisite for approval that the project met the requirements of the Scottish Capital Investment Manual?

A Yes, and I would argue that there's nothing in the guidance here that is inconsistent with the requirements of the scheme.

Q Can we go, please, to bundle 3, volume 2, page 399? If you have that in front of you, Mr Baxter, you should see that it is a letter from the Scottish Futures Trust, dated 1 June 2011, to Jackie Sansbury of NHS Lothian.

A Yes, I can see that.

Q If we just scroll forward, to page 408, we can see that the letter is from Peter Reekie and it is carbon copied to you. Do you see that?

A Yes.

Q Just go back to page 399, reading from the letter:

> "Further to the letter NHS Lothian received on 22nd March 2011 from the Scottish Government with regard to the funding conditions for delivering projects through the non profit distributing model…"

That's the letter we've just been looking at.

A Yes.

Q "…we are following up on certain specific matters as they relate to the funding of the combined NPD project [at Little France]."

Then reading on, "Funding Conditions, Construction Costs":

"The letter of 22nd March 2011 made it clear that the Scottish Government would fund 100% of construction costs subject to a scope for construction being agreed between the procuring body and Scottish Government (which will be supported by SFT in this assessment). Below is set out how we propose to reach agreement on the scope of the project and therefore how a cap on this element of funding will be set."

Then reading on to the next paragraph:

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

And so on. So there is reference here to a review of the design by an external advisor appointed by the SFT. How, if at all, did that design review relate to the funding conditions we have just been looking at?

A So, the review that was undertaken on behalf of SFT, I believe, by Atkins, sought to test the assumptions around the sizing of the facility and the cost metrics that had been assumed in establishing the estimate. That was important in respect to the funding conditions, because 100 per cent of the capital cost was affected-- the elements of the unitary payments to be paid by the board, 100 per cent of the elements of that relating to the capital, i.e. the cost of the building and the debt to service if it were to be supported by government. So that was an important independent check for government around the assumptions that underpinned the business case.

Q If we go forward, please, to page 407 of that letter. There is a heading there, "Assurance and Approvals".

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

What sort of issues did you expect SFT to identify?

A Any issues in relation to the funding conditions that have been set out. Also, just in terms of the development of the procurement materials to support-- depending on what stage we're talking about here. At outline business case, it would be pre-procurement and therefore, the preparations for that procurement activity. At full business case stage, it would be in relation to closing out the contract and making sure that issues had been resolved satisfactorily. So, the nature of the investigation really depends on the stage at which the SFT were conducting their review and that's why we had key stage reviews at the various stages that are set out in that letter, because the issues would be different at each of those stages.

Q Did you expect the SFT, whether through external advisers or otherwise, to detect non-compliance of the project with technical guidance, such as SHTMs?

A No, I wouldn't have. I didn't see that as their role.

Q Could we go, please, to bundle 3, volume 2, page 484? If that is before you, Mr Baxter, we see it is headed up, "Infrastructure Investment Board, 26 September 2011" in a reference to the Sick Kids project. What is, or was, the Infrastructure Investment Board?

A So, this was a board that was convened under the leadership of the Director General for Finance at the time, in Scottish Government. It was to provide oversight on the delivery of major capital investment projects, typically those over 50 million, from memory. It would consider some general issues, with regard to infrastructure investment, including the use of NPD, but it would maintain an oversight on the delivery of those projects, as they progressed through. This paper refers to such an update, in respect of Sick Kids.

Q I think you said that it

was under the leadership of the Director General of Finance.

A Correct.

Q Just to be clear, is that outside the directorates that we were talking about earlier?

A Yes. This is within the broader Scottish Government.

Q You said it had this oversight role. Was that the nature of its role in relation to the Sick Kids project?

A Yes. That's how I would describe it, yes.

Q Who sat on the Infrastructure Investment Board?

A I couldn't give you a precise list, but it was chaired by the, then, DG Finance, Alison Stafford, and there was represent-- well, it's important to say there was involvement from SFT and from various portfolios within government, although not all portfolios were represented, including health. I don't recall health actually being a member of the Infrastructure Investment Board.

Q Okay, so just to be clear, did you have any role on the Infrastructure Investment Board?

A Only in terms of providing updates and advice in the delivery of the health programme periodically, but I wasn't a member of the board.

Q If you go forward to page 486, paragraph 13, just reading from that. This this paper to the Infrastructure Investment Board tells them:

> "NHS Lothian is developing a 'reference design' for an integrated RHSC/DCN in order to facilitate a speedy delivery and minimise the up-front costs for bidders. This means that most of the design development (except in relation to mechanical and electrical design) will be done before the project enters procurement, rather than bidding contractors preparing detailed designs themselves. Although it potentially limits innovation, this approach should increase the attractiveness of the project to bidders and allow for a more certain overall cost for the project at Outline Business Case stage. As part of a 'needs not wants' challenge SFT is undertaking an independent review of the design."

Do you agree with the benefits stated there, about the reference design approach?

A Yes. Yes, I would.

Q What was meant by the

reference to a "'needs not wants' challenge"?

A It was really just ensuring that the building scope that had been included in the cost estimate matched up with the service requirement. So there was a need for overall cost control across the programme. It was just ensuring that there wasn't additional unnecessary capacity built in to the estimate, because there was an opportunity cost of that for other programmes.

Q Is that a reference to the review that you described as having been carried out by Atkins?

A Yes, that's right.

Q There is a reference, there, to most of the design development being done before the project enters procurement, except in relation to mechanical and electrical design.

A Yes.

Q Does that reflect your understanding of the position?

A Yes, and that's what I would describe as "a reference design".

Q If we could go to bundle 7, page 455, please. Is this a document you recognise, Mr Baxter?

A Not immediately, I have to say.

Q Okay, well, we see it is headed up "Scottish Government Governance Arrangements for Royal Hospital, for Sick Children…" and so on, "Outline Business Case". If we scroll forward to page 457, we see a recommendation. "The Project Board has asked to note the arrangements for all OBC consideration within Scottish Government", and it has got your name there, 7 October 2011.

A Okay.

Q So, well, 11 years ago. So, you can be forgiven, perhaps, for not remembering it. So, do we take it then, that this was a paper to the project board of NHSL?

A Yes. That would be that would be my reading of the intent of it, yes.

Q Okay and just to put it in context, paragraph 1 says that:

> "This report sets out the arrangements within Scottish Government for the consideration of the OBC currently being prepared…"

And so on. If you go to paragraph 10, which is on page 456, what you say there is as follows:

> "The process within Scottish Government for consideration of the OBC is unchanged from that which NHS Lothian colleagues

would be familiar with. At present a number of other bodies including Architecture and Design Scotland (A&DS) and Health Facilities Scotland (HFS) feed into the overall approval process. It is expected that the SFT consideration of VFM…"

Does that stand for "value for money"?

A Yes.

Q

"…and other issues referred to in the 22 March letter, will form part of the overall CIG assessment process. In that regard, there is no separate Board approval within SFT for approval of the RHSC/DCN project and that this will be part of the Scottish Government's consideration as normal."

Now, you refer here to an existing process which is unchanged, and to Architecture and Design Scotland and Health Facilities Scotland. I wondered if you were referring here, perhaps amongst other things, to the NDAP process?

A That would be the natural engagement of Architecture and Design Scotland and Health Facilities Scotland although I can't be specific as to whether that was my intent or not.

Architecture and Design Scotland had a statutory function in relation to planning. Health Facilities Scotland provided advice to the NHS and they provided advice to the Scottish Government as well, as and when required. So, that advisory role would be consistent with the existing CIG process.

Q You have referred to these three bodies: Architecture and Design Scotland, Health Facilities Scotland, and the SFT. Was the SFT design review intended, in any way, to overlap with the roles of Architecture and Design Scotland and Health Facilities Scotland?

A The design review that was undertaken by SFT was done for a particular function, as indicated in the funding conditions letter. What I'd sought to do – and, unfortunately, I don't have a recollection of how it was followed through – was to make sure that SFT, Architecture and Design Scotland and Health Facilities Scotland got together, in terms of understanding where they were in terms of those processes, so that there was alignment. I can't recall the detail of it, I'm afraid. I'm sorry.

Q Okay. Well, we will have a look at some of the correspondence around that a little bit later. If we can

go, please, to bundle 3, volume 2, page 567? Do we see there, Mr Baxter, that this is a report by Atkins, dated 12 December 2011, and it is headed up "Royal Hospital for Sick Children/ Department of Clinical Neurosciences, Independent Design Review, Scottish Futures Trust"?

A Yes, I can see that.

Q So, is this the report by Atkins, following the review that we have just been discussing?

A That's my understanding of what it is, yes.

Q If we could go, please, to page 571. There is a heading there, "Summary and Recommendations" and just reading from below that:

> "The purpose of this Independent Review was to assess the design brief for the project to replace the Royal Hospital for Sick Children and the Department of Clinical Neurosciences (RHSC/DCN) on the Little France site. The review assessed the capacity of the project to deliver value for money by meeting the strategic aims of the programme; by making best use of space and opportunities for maximising sharing with other assets; and by minimising the whole-life costs.
>
> The recommendations are intended to indicate actions which will help de-risk the specification and the reference design as the project progresses towards OBC and the preparation of tender documentation to improve value for money."

Does that summary accurately summarise what you understood to be Atkins' remit?

A I can't comment on Atkins' remit, but in terms of what SFT's role was, it's consistent with what SFT's role was – my understanding of it.

Q Yeah. Yes, so what we've read there, that would fulfil what the Scottish Government expected of the SFT's design review?

A Yes.

Q The second paragraph there has a phrase about de-risking the specification and the reference design. It says that: "… recommendations are intended to indicate actions which will help to de-risk the specification and the reference design…" What would you understand that to be about?

A I couldn't comment on the specific intent of that other than to say that the aim of this was to provide as much clarity on the reference

design as possible prior to procurement. So, by providing clarity, that's one element of de-risking – but I couldn't comment on the specifics of risk that are referred to.

Q From your perspective on the CIG, were there any particular risks associated with specifications and reference designs that you might expect the SFT to detect?

A Not specifically. I think, in terms of the capacity of the building and the-- you know, the spatial configuration of the building, those would be things I would expect them to pick up from a value for money perspective, but nothing more specific than that.

Q Just to be clear, would you have expected it to detect any potential failure to meet technical standards such as SHTMs?

A No.

Q Now, if you go, please, to page 576, about two thirds of the way down the page, there's a heading "Reference Design", and it reads:

> "At the point of our review the Reference Design was relatively under-developed considering the stage of the project."

Are you able to comment on what stage the design had reached at the time of this review?

A No, I can't.

Q If you go, please, to page 636. This is a chapter, chapter 7, headed up "Reference Design". Again, I'm just going to read from it:

> "The aim of this section of the review is to assess value for money in the creation of the environment for patients and staff.
>
> 7.1 Design Quality Statement
>
> The project was instigated before the incorporation into the procurement process of the guidance from Architecture and Design Scotland (A&DS) on ensuring design quality in healthcare buildings in Scotland. However the objectives of this process still apply to the project and it will be monitored by A&DS. A&DS recommend the preparation of a Design Statement."

Then it carries on: "A&DS describes the function of the Design Statement as follows…" Then picking up about halfway through that quoted paragraph, about five lines from the top, it says:

> "At later stages the

emerging design is then assessed against the requirements and standards in the Design Statement and related healthcare specific guidance primarily as part of the Board's own self-assessment, but also by the NDAP in order to provide advice to decision makers within the board, and the CIG, regarding the extent to which the project is on track to deliver on the standards established."

Would that be a reference to the NDAP that we had been discussing this morning?

A Yes. Yes, it would.

Q Were you aware of what this report had said about the NDAP?

A I can't recall at the time. I've had the opportunity to review the report in advance of this hearing but, at the time, I can't recall having sight of this report or the detail of it or memory of the detail of it.

Q Just reading on, there's a heading below of "AEDET". I acknowledge what you said this morning, that this is not something within your area of expertise, but just to-- if we go to page 637, there's a heading:

"RHSC/DCN AEDET

NHS Lothian undertook an AEDET on the 12th of August 2011. Attendees at the workshop were members of staff…"

And so on. Then there's a table below that, and do you see at line F, entry for engineering, zero out of five scored? See that?

A Yep.

Q Then at paragraph 7.2.3, it says:

"A number of elements are unable to be scored at this stage because the design is insufficiently developed. In particular performance, engineering and construction cannot be scored at this stage."

Does any of that mean anything to you?

A The only thing I would say is that, as a reference design, prior to procurement, the detailed engineering and electrical design isn't complete at that stage; so if that's when the review was undertaken, then that would be right.

A Okay. If you go forward, please, to page 644, paragraph 7.8, there's a heading:

"Building Services and Progress to BREEAM.

The approach to building services design and progress

towards a high BREEAM score was not assessed as it anticipated this will form part of the technical monitoring of the project by both the Scottish Government and HFS."

Do you agree that the building services design and progress towards a high BREEAM score would form part of technical monitoring of the project by the Scottish Government and HFS?

A I'm not sure whether the term "technical monitoring" is right, but BREEAM as a toolkit would be assessed, and the expertise in HFS would be used to undertake that assessment in conjunction with the relevant NHS board.

Q The reference there to assessment or technical monitoring of the project, would you understand that to be a reference to the NDAP process?

A Not specifically because BREEAM is a separate issue, so that's around environmental impact of a facility and a means of-- There are various scores that are attributed in terms of BREEAM "excellent" which means, you know, it's very, very efficient in terms of energy and sustainability.

Q If we read the paragraph as referring to two separate things, being the approach to building services design on the one hand and progress towards a high BREEAM score on the other, insofar as the paragraph then refers to technical monitoring, would you understand that to be a reference to the NDAP?

A That's fair. Yes, or an equivalent process.

Q Sorry, just bear with me, Mr Baxter, for a moment, please. (After a pause) If you could go, please, to bundle 3, volume two, page 650. This is a document headed up with the logos of the Scottish Government and the Scottish Futures Trust, and it's given the title: "Validation of Revenue Funded Projects: The Key Stage Review Process, Information Note to Projects". Are you familiar with this?

A Yes, I would have been at the time as well, yeah.

Q Can you just explain briefly what it is?

A This, bearing in mind the timing of this in December 2011, was to provide supplementary information to projects on what the requirements would be underpinning revenue funded projects, and specifically the application of the key stage review process.

Q If you go forward to page 652, as you've just suggested, the first

paragraph there says it's been:

> "… written to provide an overview of the Key Stage Review… process. Its aim is to explain the process to Project Sponsor/Senior Responsible Officers involved in revenue funded projects."

At paragraph 1.2, just about four lines from the top, there's a reference there to:

> "… SFT's role is to carry out a high level review of the outline business case. In relation to centrally funded health projects SFT may conduct a detailed review of the proposed design and specification and provide comment to the Scottish Ministers or Project Sponsor in order to inform their own approval processes."

Is that a reference to the sort of thing done by Atkins in relation to the Sick Kids?

A Yeah, the Atkins work would have informed that. That, in my view, is entirely consistent with the guidance on funding conditions issued in March of 2011.

Q At page 654, there's a description of what the key stage review person is to do, and just reading from paragraph 1.4, the second sentence says that:

> "The overall role of the Reviewer is to ensure that best practice and relevant guidance are applied and to advise projects in this regard throughout the procurement process."

Now, what do you understand it to be referring to when it mentions "best practice and relevant guidance"?

A So relevant guidance is in respect to the NPD process. So, within the SCIM itself, there was a PPP guide, so that formed a longstanding part of the SCIM; it was also the supplementary material that had been provided as part of the funding conditions material, so I would expect that to be the relevant guidance.

Q Yeah. Now, you were asked, when giving your statement, about whether an NDAP was carried out for the Sick Kids project, and your answer was that you couldn't remember but that you assumed one was. In giving that answer, you referred to a paragraph in the outline business case from 2012. If you just look at that, it's in bundle 3, volume 2, page 685. It's paragraph 1.70 on that page, and just reading from there it says-- This is the outline business case prepared----

A Yeah.

Q -- by NHSL. It says:

"The reference design and development of the final design with the preferred bidder will both be subject to a range of reviews as work progresses. To date these have included the following, and findings from each have influenced the ongoing design development."

Then there's a list of bullets referencing "Architecture & Design Scotland workshops; AEDET; HAIScribe – infection control" and "Health Facilities Scotland NDAP – design assessment". So NHSL at least appear to be saying there that their design had been subject to an NDAP by HFS. Do you agree?

A What I said in my written statement was that I believe-- I couldn't recall whether an NDAP or an equivalent process had been followed, but based on what's contained in paragraph 1.7-- or 1.70, those are the component parts of what I would have expected, but I have no personal recollection of the-- an NDAP report, for example, being prepared.

Q Was the statement in the outline business case that the design had been subject to an NDAP a matter of significance to the CIG in deciding whether or not to approve the outline business case?

A It would have been a component of the assessment undertaken and also, with the advice that's provided by both Architecture and Design Scotland and Health Facilities Scotland, to inform that. If there had been an issue with that, then I would have expected that to have been highlighted in CIG's consideration.

Q So, if you just turn it around, if the outline business case had said that no NDAP had been carried out, what would have happened then?

A Well, there would have been challenge around-- there would have been challenge around that in terms of how-- what assurances had been sought by the board and the basis of those assurances, but-- and-- I can only reflect on the fact that the OBC was considered and approved, that that statement, bearing in mind that that statement had been considered by NHS Lothian and its board, is factually correct.

Q Okay. Do you recall if there was any uncertainty around the time of the outline business case and its preparation about whether or not an NDAP should be carried out?

A I have no personal recollection of it but, because of the nature of the project – and in this case we're talking about sick kids with DCN included – it was quite an iterative process around the development of the business case.

Q If we go, please, to bundle 3, volume 2, at page 655, do we see there, Mr Baxter, that this is an email from Donna Stevenson of the Scottish Futures Trust to you----

A Yeah.

Q -- dated 28 December 2011? What she says is:

> "Mike
>
> In August Colin, Viv and I met with Bettina and Heather of A&DS and Peter Henderson of HFS to discuss the relationship between the SFT design review and the input of A&DS and HFS to the project review. At the meeting we agreed that we would send A&DS and HFS the independent design review report once it was completed and they will consider the gaps which still need to be covered. At the time we sent on the remit of the review to Heather.
>
> In view of the time which has elapsed since then … I do not know whether matters have developed. Perhaps when you are back after the festive season you could let me know whether you wish me to send on the report or whether you wish to do so in the context of any other discussions which may have taken place."

Now, the reference in that email to the SFT design review, is that the Atkins report?

A Yes, I believe so. I'm not aware of any other report apart from the Atkins report.

Q What you say in your statement-- I don't think we need to bring it up. but just for the record, the reference is to page 110 of the witness statement bundle; it's paragraph 106 of your statement. You said that:

> "In December 2011, I had requested the SFT Atkins Design Review Report to be shared with HFS and A&DS to ensure there was an alignment of processes that had existed at the earlier stages of the RHSC project and those subsequently introduced as part of the Design Quality Policy for NHS Scotland introduced … in 2010. I have no recollection of the nature of the follow up to this request."

A Yeah.

Q When you refer there to the process as subsequently introduced as part of the 2010 design policy, is that a reference to the NDAP?

A Yeah, that is. Yes.

Q When you say you wanted the report to be sent on to ensure that there was an alignment of processes, what do you mean by that?

A Well, essentially making sure that what SFT were doing is-- and given their responsibilities as part of the kind of MPD funding conditions, that we were joining the dots across the three organizations to make sure that there was full coverage. Bearing in mind what we've already covered around SFT's role and what it wasn't in relation to-- it wasn't about compliance with technical standard, for example.

Q Can I put it this way, were you hoping to achieve what an NDAP would have achieved?

A I would be speculating if that's-- if I said yes.

Q What did you see as the relationship between the SFT design review by Atkins and the NDAP process as set out in the 2010 Policy?

A I would've seen them as complementary because the information that that was gleaned by

Atkins in terms of the spatial awareness, the cost information, would've supported a more broad and general review of design of the new facility.

Q Were you clear in your own mind about how they related to one another?

A I can't really kind of say what my thought process was back at the end of 2011, to be blunt. I'm not trying to be difficult, but----

Q Are you clear now about how they related to one another?

A On review of the material, I would've seen them as complementary and therefore the sharing of information would've been important to make sure that anything-- everything that needed to be covered was covered.

THE CHAIR: Just so that I am following, you would have seen the Atkins report as complementary to a hypothetical NDAP? Have I got that, or have I got that wrong?

A So the information contained in the Atkins report would have been useful in that wider consideration of design by Architecture and Design Scotland and Health Facilities Scotland. But the NDAP is quite explicit in terms of what the responsibilities of both of those bodies

is in terms of their investigation.

THE CHAIR: Thank you.

MR MCCLELLAND: If we could have bundle 3, volume 2, page 880, please. Now, this is kind of the middle of an email chain, but if we go right down to the bottom of that page, do we see----

THE CHAIR: Sorry, could you give me the page number?

MR MCCLELLAND: It is bundle 3, volume 2, page 880.

THE CHAIR: Thank you.

MR MCCLELLAND: Do we see at the bottom of that page, Mr Baxter, there is an email from Peter Henderson of NSS? In fact, if we read down, we see that he is the principal architect at Health Facilities Scotland.

A Yes.

Q His email is dated 27 January 2012, sent to Donna Stevenson, I think, of the SFT----

A Correct.

Q -- and copied to various people including you. The subject is "Edinburgh RHSC/DCD Design Review". What Mr Henderson says is:

> "Donna
>
> As requested by Mike at last weeks' meeting my comments on Atkins report are attached."

That suggests that you had asked HFS to review the Atkins report.

A Which is what I said in my statement, yes.

Q Yes.

> "These mostly reinforce Atkins' comments rather than adding anything new as I haven't seen the latest detailed drawings or specification information."

Was that a matter of concern to you that HFS had not seen the latest detailed drawings or specification information?

A I don't have a context against which to make that judgment, I'm afraid, in terms of what their-- what activity they were engaged in at that time and whether they should have seen it at that point or not.

Q Okay. He goes on to say:

> "If they have not already prepared one, I think it would be useful for the Board/Design Team to produce a comprehensive schedule of the guidance documents they are following in order for future bidders to be clear on the standards that they are expected to comply with."

What he is suggesting there, the preparation of a by-the-board comprehensive schedule of guidance documents, that is essentially the first stage of the NDAP process, is that

correct?

A Correct.

Q The fact that Mr Henderson is suggesting that tends to indicate that, at least by this point in time, no NDAP had taken place. Do you agree?

A That would be an inference from it, yes. If it hadn't been prepared, that-- the schedule we covered earlier is a first requirement of the process.

Q If we go to page 883, this is the attachment that Mr Henderson is sending on with his email. It is headed up, "HFS Comments on RHSC/DCN Independent Design Review carried out by Atkins for SFT":

> "(The following comments relate to the Atkins Independent Design Review Dated 12th December 2011. The drawings and detailed information on which the Atkins report was based were not available to HFS other than a set of Proposed Reference Design drawings dated June/July 2011 previously submitted to A+DS for their Design Review.)"

So that suggests that the review being done by HFS was on a more limited selection of information than had been available to Atkins. Do you agree that that is what it appears to say?

A That's the inference. I think that the issue here is also about the timing of when this was conducted, so the-- We're talking about a position in December 2011 when the outline business case hadn't been finalised at this point. So the extent to which the reference design had been developed sufficiently to close all of this out, I'm not clear as to what they should have had access to, whether it was simply a question of timing or not.

Q Okay. If we go over to page 884, we see there is reference in the table to "Space Planning" and "Single rooms". Do you see that?

A Yes.

Q The comment is-- well, just really reading the last sentence:

> "Although the original design work on the re-provision of the RHSC commenced prior to the issue of CEL 48 (2008) there is now an opportunity to realise the considerable benefits of designing to the current standards."

So we see there that one of the comments made by HFS is about the extent to which the design complies with existing standards. That is exactly the sort of thing that an NDAP is supposed to pick up.

A Sorry, to be clear, my understanding is that the comment refers to CEL 48 (2008), which is in connection with the number of single rooms.

Q Yes. That is just an example of the sort of compliance with guidance and policy that HFS are there to detect.

A Yes, absolutely. Yeah,

Q If we go back to the email chain at page 879, first of all, at the bottom of that page we see that there is a reply by Heather Chapple, who appears to be with Architecture and Design Scotland.

A That's correct.

Q She is replying to Peter Henderson and, again, she is copying you in. Rather than me reading it out, I will just give you an opportunity to read that email, Mr Baxter. If you just let me know once you have read it.

A Is it just at the bottom of the second bullet point, yes, or is there more?

Q Sorry, no, carry on over the page just to the end of Ms Chapple's email.

A (After a pause) Okay.

Q Then on page 880, halfway through Ms Chapple's email, she says:

> "We understand it is expected that the recommendations in relation to the reference design and the brief will be addressed by the Board prior to the ITPD."

That is the Invitation to Participate in Dialogue----

A Invitation to Participate in Dialogue.

Q -- so part of the procurement process. Then she is saying, "We would be happy to," do various things. At the end of the second and third bullet, or at the end of the second bullet, first of all, she says, "Pete, which, I take it, is a reference to Peter Henderson at HFS.

> "Pete has suggested that HFS can carry out a high level check of the reference design scheme against guidance at this point----"

Which is I think the stage of the pre-ITPD Key Stage Review.

"-- if this is not being done out by others."

Then the final bullet point:

> "…help with evaluating the bidders' responses to the develop design brief: for our part in relation to the design quality standards etc & and HDFS could carry out a high level check against guidance if this is not

being done out by others."

What appears to be being offered here is the opportunity of a review by HFS of the design against guidance at various points during the procurement process. Is that correct?

A That's how I would interpret it, yes.

Q Do you recall if that offer of that sort of assistance by HFS was taken up?

A I have no knowledge as to whether Lothian took up the offer.

Q I think, if we look at the email, I don't think anybody from NHS Lothian is within the recipients of the email. I wondered if the offer was essentially being made to you as the Chair of the CIG.

A Well, looking at the bullet points that are made there, those are functions that would be essentially carried out by the board. CIG wouldn't-- on the third bullet point, CIG would have no locus in evaluating bidders' responses to the design brief. That would be a matter for the board, for the NHS board. In terms of the pre-ITPD key stage review undertaken by SFT, if there was-- there would be an opportunity for that key stage review to be picked up in terms of the business case consideration at which both SFT and HFS would be present

at CIG when that consideration was being undertaken. So I can't say explicitly whether it was taken up or not, but there would be nothing to preclude their involvement through the process.

Q If I can understand it then, insofar as offers were being made of HFS carrying out a high-level check of the design against guidance, you did not consider that as a matter to be taken up or responded to by you as the Chair of the CIG?

A Well, that would have been part of the-- of an equivalent NDAP process which the board is responsible for undertaking.

Q Right. You say the board would be responsible for undertaking the NDAP process. On what basis was the board responsible for undertaking that, having regard to the transitional provisions in the NDAP guidance?

A Well, the board has responsibility for the project and for design assurance, so I would expect them to be complying with the requirements of the scheme.

Q Okay. So you are taking this as a reference to advice and assistance being offered by HFS to the board?

A That's how I would read

it, given the responsibilities that are set out and the bullet points there.

Q Could we go, please, to bundle 5, page 63? These are emails being exchanged between people at Davis Langdon and Mott MacDonald. You are not copied into these emails, Mr Baxter, so there is no reason for you to have seen them before, but I would just like to invite your comment on what is said in them. The bottom email is from Thomas Brady to Richard Cantlay and others dated 6 February 2012. He says:

> "All
>
> The reference design team have been trying to ascertain, for some time now, if we need to complete a NDAP (NHS Design Assessment Procedure) review of the scheme."

Were you aware of uncertainty or debate about whether or not an NDAP was required?

A Not at the time, no. Obviously reading the material here, there clearly was some uncertainty, but I certainly wasn't aware at the time.

Q You were not aware at the time, okay. Just the email at the top, is a reply by David Stillie on 6 February 2012, and he says:

> "I spoke to Peter Henderson (architect) at HFS on 23rd January. No clear way forward came out of the meeting, but he did say that everyone present appreciated the RHSC/DCN project had been reviewed 'to death'.
>
> I was unable to get a definitive answer from him before the last RDT meeting as he wanted to discuss further with SFT.
>
> I think it now falls to NHSL, probably Brian, to move this forward with SFT. I imagine he's reluctant to raise the issue in case it prompts a further round of review meetings."

Were you aware at the time of any view that the project had been reviewed "to death" as it is put there?

A No, and it's not something I would have agreed with.

Q Why do you say you would not have agreed with it?

A Because the review processes that were put in place were to ensure appropriate governance over what are large and complex projects and they're there for a reason.

Q Were you aware of any reluctance, on behalf of anyone, to subject the project to further design review?

A The only recollection I

have is in terms of ANDS's role, given that they are statutory consultees in the planning process and what role they would play, but I don't think it was a reluctance or a disagreement. I think it was just the fact that they had different roles in different stages of the development of the process.

Q If we could go, please, to bundle 3, volume 3, page 175. This is an exchange of emails between you and Brian Currie, the project director at NHSL, on 23 April 2013. In the lower email, Mr Currie says to you,

"Mike

We have arranged a series of meetings between each individual bidder and CEC Planning, as you are aware, as we progress through competitive dialogue.

A+DS, as a statutory consultee, are part of this process however they have informed us that they are to seek clarification from yourself on their role in this project.

Given that this project was off and running before the "Vision of Health" initiative was launched, it has always been our understanding that A+DS will have no role other than as part of the statutory town planning process. This has been the case to date.

We have not envisaged them playing a part through the NHS Scotland Design Assessment Process (NDAP) with HFS for example. Would be grateful for your view?"

And then your reply,

"Brian

I would not expect our position on NDAP to change on this project going forward and therefore I would expect HFS to contribute via the planning process. With regard to the type of review that would have been conducted via HFS as part of the design assessment process I would expect to challenge this as part of the questioning around the FBC. I will also pursue these issues through my role on the Programme Board."

Does that help you recall whether or not an NDAP took place?

A Yes, it does and I think, actually, in the second line of the email, there's an error there. The reference to HFS should actually be Architecture and Design Scotland, given that they have a role via the planning process-- I mean the time planning process.

Q Does this indicate to you that an NDAP did not take place?

A Not as such, but that the equivalent processes-- so, the role that HFS would have led through the NDAP process was being dealt with in a different way. That's how I would read that.

Q Okay. So, yes. So, in other words – I do not want to put words in your mouth but trying to just capture what I understand you to be saying – an NDAP, as such, was not taking place, but the substance of it was being achieved by HFS. Is that a fair summary?

A I think that's my interpretation of that, absolutely.

Q If we go, please, to bundle 5, page 121.

THE CHAIR: Sorry, my fault. "An NDAP had not been carried out as such. The equivalent process…" It is just the tense I missed, so "would be" "had been"?

A Well, Lord Brodie, as I said in my written statement, I couldn't recall whether an NDAP or an equivalent process had taken place and it would appear from this-- my understanding is an equivalent process would have taken place.

THE CHAIR: My apologies if I am being slow on this, but you are

giving your understanding of what you were saying in the email and I just have not followed whether the meaning is that you would expect HFS to carry out equivalent, or you would expect them to have done so?

A I would expect them to carry out an equivalent.

THE CHAIR: Future tense?

A Well, bearing in mind where we are here, so 23 April 2013. So the outline business case would have been submitted, but the procurement was still live and the full business case hadn't yet been concluded and I can't recall what stage the procurement was at that point in April 2013.

THE CHAIR: Thank you.

MR MCCLELLAND: We looked at the guidance for the NDAP review earlier, Mr Baxter, and part of that was reporting at each of the three stages – initial agreement, outline business case, full business case. So, if an NDAP had been carried out, these reports would exist for each of the business case approval processes for the Sick Kids project. Is that right?

A Not for all of them, because of the introduction of the guidance, but I would expect material to exist covering the substance of what's covered.

Q Yes, for each of the outline business case and final business case stages?

A For the 2012 outline business case and the full business case.

Q Yes. What the procedure required was that those reports would be sent to the NHSL and to the Scottish Government, is that right?

A That's my understanding.

Q You would have seen an NDAP report, as the chair of the CIG, if an NDAP had taken place. Is that right?

A I would have expected to, yes.

Q Do you recall seeing any NDAP reports as such?

A No, as I've said in my written statement.

Q So that tends to confirm the view that no NDAP was carried out for the project.

A As an NDAP.

Q As an NDAP, yes. Can we turn, briefly, to the reference design? You say in your statement that you, the CIG and the Scottish Government were not involved in a detailed development of the reference design.

A That's correct.

Q You refer to the outline business case for the description set out there, the approach being taken to the reference design. Can we take it from the fact that the outline business case was approved, that the CIG and the Scottish Government were content with the approach to the reference design that is described there?

A Yes.

Q We have seen, earlier, the Atkins review of the design and some comments by HFS on the Atkins review. Are you aware of any other review of the reference design being carried out by, or on behalf of, the Scottish Government or the CIG?

A Not explicitly, no.

Q Can I ask what you mean by "not explicitly"?

A I can't explicitly remember a separate report being done.

Q Cannot particularly remember?

A No.

Q Right. What, if any, part did the CIG or other emanations of the Scottish Government, including the SFT, have in approving the Environmental Matrix or Room Data Sheets?

A None.

Q Should the Scottish

Government, or SFT, have been given a role in approving any departure from standards contained in the reference design?

A I would have expected any depart-- we covered this earlier, so I would have expected any departure to be explicitly referred to by the board and for the board to have obtained appropriate assurances. That should have been explicit.

Q Were you aware, prior to approval of the outline business case by Scottish Government, of any declaration by the members of the reference design team about the extent to which the design complied with SHTMs or HTMs?

A No.

Q Can we go, please, to bundle 3, volume 2, page 941?

THE CHAIR: Thank you.

Q Just at the bottom of that page, Mr Baxter, there is an email from Donna Stevenson to Brian Currie. So again, you are not copied in. You would not have seen this, I expect.

A Okay.

Q What Donna Stevenson is saying is:

> "Brian, further to the useful meeting on reference design as arranged, I note below the actions we agreed…"

And she has various actions. Then she says:

> "I attach the table of recommendations from the Project Review. As you will appreciate, SFT is not signing off on the design."

Would you agree that the SFT was not signing off on the design?

A Sorry, can I just-- that's what the email says. I'm not sure-- If you could clarify the question for me, that would be----

Q I am sure it is my fault. Would you agree that it was not part of the SFT's function to sign off on the reference design?

A The reference design was the board's design. If there were issues that were picked up on as part of key stage review, then I would have expected those to have been followed through, through engagement between SFT and the board, prior to CIG considering any of the business cases. Then, well, this is pre-Invitation To Participate in Dialogue, so this is in between the outline business case and full business case stage. If any issues had been highlighted, I would have expected them to have been resolved.

Q At paragraph 89 of your statement, page 107 of the bundle – I don't think we need to go to it, but you

can refer to it if you wish, Mr Baxter – you say that the Scottish Government, through the SFT, used the reference design to establish the forecast capital and revenue costs. First of all, is that correct?

A Yes.

Q In that process, was the cost of ventilation assessed?

A Not explicitly, because at that time there would have been cost allowances for mechanical and engineering, allied to the types of space that were being planned. So not explicitly, but I would expect there to be a mark-up based on mechanical and engineering within the cost model.

Q Did you say that there would have been a cost allowance for ventilation?

A It would be included in a broader mechanical and engineering uplift, I would have expected.

Q Okay. So, would that mechanical engineering element have been costed up based on designs submitted by BAM in the previous procurement process?

A At that stage, I would have expected them to be based on benchmark costs from other projects, rather than explicitly for this one.

Q Would that estimated cost have reflected ventilation design

compliant with the SHTMs or with the environmental matrix?

A I can't comment on the specifics, but what I'm saying here is that the cost model itself would have been more general or generic than specifically associated with the environmental assessment, or the environmental matrix.

Q That's understood, thank you. Can I refer you, please, to page 113 of the witness statement bundle? That's paragraph 121 of your statement.

A Yes, I've got that.

Q In this paragraph, you say that:

> "In relation to the question of to what extent compliance with SHTMs is mandatory: SHTMs are guidance, but some aspects will flow from mandatory requirements set out elsewhere, such as in the Policy on Design Quality … which includes 8 mandatory requirements for NHS Scotland Health Bodies to do various things…"

What do you say is the basis for the obligation to comply with SHTMs?

A So SHTMs are guidance, but effectively they're a code of practice. The mandatory requirements that are set out in the Policy on Design

Quality, as we've covered earlier, include the application of the Activity Data Base as a mandatory requirement, and that is underpinned by the guidance either from England or indeed as adapted for Scotland.

Q Can I refer you to paragraphs 123 and 124 of your statement, please, which is page 114 of the witness statement.

A Yes, I've got that, thanks.

Q I'll just give you an opportunity to read those again.

A 123 and 124?

Q Yeah, and 124, please.

A (After a pause) Yes, I've read that.

Q So I understand you there to be saying that it's possible for health boards to derogate from SHTMs. By "derogate" do you mean an approved departure from standards in the SHTMs?

A The approval of a change from standard-- as I've said in my statement, I believe any deviation from existing guidance would require to be justified and risk-assessed by the relevant NHS board, and that there would be an audit trail of any deviation from standard.

Q You indicate in these paragraphs that you expect health boards to liaise with HFS if there's to be a derogation.

A Yes.

Q What's the basis for the health boards to liaise with HFS if an SHTM is to be departed from?

A So HFS are responsible for the preparation of the guidance, and technical expertise sits within HFS. HFS have a purview across NHS Scotland and indeed engagement across the rest of the UK. So, in terms of up-to-date advice and guidance, they would be the organisation that I would certainly expect boards to go to – although they'll be taking their own technical advice from their advisers, but in terms of the application of the standard, HFS and, clearly, as we've explored, HFS had a role as we move forward in terms of design assessment.

Q We referred earlier to the NDAP guidance which had a procedure of sorts for this in that the health board had to produce a list of derogations. Prior to the NDAP process coming in, was there a procedure for derogation and reference to HFS?

A Not explicitly. Although, as I stated earlier, the provisions, the mandatory requirements of the design quality policy and the application of the Activity Data Base existed from 2006.

Q Yeah. Is there a threshold above which permission has to be sought from HFS or does what we've been discussing apply to any proposed departure from an SHTM?

A I don't think there's a threshold, no.

Q There's another point I've been asked to put to you, Mr Baxter. At paragraph 160 of your statement, which is page 124 of the bundle, if you have that, you'll recall----

A Yeah.

Q -- that a number of propositions were put to you, I think by the Inquiry team, and you were asked whether you agreed with them.

A Yes.

Q I think you've confirmed that you do agree with them.

A Yes.

Q This is just a point of clarification, at paragraph 10, subparagraph 10 of that, which is at page 125. I'll just read that out. It says:

> "Health Building Note 23 'Hospital Accommodation for Children and Young People' (23 October 2014) does not refer to CEL 48 or CEL 27, or to the need for Scottish Government approval of anything less than 100% single rooms. It states that 100% single-bed rooms offered maximum flexibility; 50% single rooms were considered best practice..."

And so on. So CEL 48 and 27 were SG policies on single-bed rooms.

A Yes.

Q If we could go, please, to bundle 2, page 533. We see there this is: "Best Practice Guidance, Health Building Note 23". Then if you go on to page 534, there's a note which reads:

> "This document must be read in conjunction with current Scottish Government Policy and NHS Scotland Guidance, which take precedence."

So, just from what you see there, do you agree that when HBN 23 was issued in Scotland, it expressly stated that Scottish Government policy took precedence over it?

A That's what it says, yes.

Q So, to the extent that CEL 48 and CEL 27 were extant Scottish Government policy, do you agree that they would have taken precedence over HBN 23?

A The most recent one would have, yes.

Q Thank you very much, Mr Baxter. I have no more questions for you.

My Lord, I have endeavoured to cover topics which were raised with me by core participants but, out of fairness to them, your Lordship may wish to check that I've done so to their satisfaction.

THE CHAIR: Does anything arise out of the questioning of Mr Baxter? Mr Ellis, would you like to have a word with Mr McClelland, either at the desk, if it can be done quickly, or you might like to go further?

(Off-microphone discussion between Mr McClelland and Mr Ellis QC, representing Multiplex)

THE CHAIR: Mr Ellis?

MR ELLIS: My Lord.

Questioned by Mr ELLIS

Q Mr Baxter, can you hear me? This morning you explained that the business case for the Sick Kids had to go back to the start, or back to the beginning after the change to the NPD procurement.

A Not back to the start, so the outline business case, the initial agreement which was submitted prior to 2008, there was no need to revisit that but the fact that DCN had been incorporated into the project was a significant change, so the outline business case needed to be further developed.

Q Thank you. That clarification probably answers the question but let me be completely clear about your position here. The new policy for the NDAP came into force I think in a CEL issued in July 2010.

A 1 July, yeah.

Q The original-- sorry, the transitional provisions you looked at, at bundle 8, page 69 this morning, talked about the transitional provisions, and it was if the initial agreement had been given prior to July 2010 there was no need to do the NDAP. Is that right?

A That's correct

Q In relation to the Sick Kids, the initial agreement did not have to be revisited after the change to a different route of procurement.

A That's correct.

Q Thank you very much. Thank you, my Lord.

THE CHAIR: Thank you, Mr Ellis. Mr Baxter, that is now the end of your evidence. Possibly a longer day than you anticipated, but from my perspective these were necessary questions and I'm very grateful to you for providing us with your answers, but now your evidence is complete and you are free to go. So thank you very much indeed again.

THE WITNESS: Thank you, my

Lord.

(The witness withdrew)

THE CHAIR: Now, Mr McClelland, we have another witness scheduled. My provisional thought is to allow everyone ten minutes to stretch their legs, also to put the witness on notice. I mean, the witness will probably have been asked to come for two o'clock, so first of all to explain that from his perspective not a great deal has happened this afternoon, and just to check that there is nothing affecting the witness which would make it inappropriate for him to at least commence his evidence. Again, I would be minded not to sit beyond five o' clock, but I would be content, subject to anything that anyone has to say, I would be content to sit until five o'clock.

MR MCCLELLAND: I'm obliged My Lord. As it happens, there is a degree of overlap between the evidence of Mr Baxter and Mr Morrison, and it occurs to me that if I had-- perhaps paradoxically, if I had a slightly longer break----

THE CHAIR: Right.

MR MCCLELLAND: -- than ten minutes I might be able to hone the examination of Mr Morrison such that

we could complete it today.

THE CHAIR: Well, in that case, possibly budgeting at about four o'clock but subject to you having had sufficient time, and again I would propose that all that be explained to Mr Morrison, and that waiting on a little longer might mean shorter evidence. Well, we'll see how things go, but probably five o'clock is as long as we could sit. If need be, Mr Morrison could come back but that would have knock-on consequences for tomorrow. So we'll rise, hoping to sit again about four o' clock subject to Mr McClelland.

(Short break)

16:00