SCOTTISH HOSPITALS INQUIRY

Hearings Commencing
25 April 2023

Day 9
Tuesday, 9 May 2023
Richard Cantlay

CONTENTS

12.05

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Lord Brodie, the next and final witness for this section of the Inquiry hearings would be Mr Richard Cantlay.

THE CHAIR: Thank you. Good afternoon, Mr Cantlay. As you understand, you are about to be asked some questions by Mr MacGregor, who is sitting opposite, but first of all I understand you are prepared to take the oath.

THE WITNESS: Yeah.

Mr Richard Cantlay

Sworn

THE CHAIR: Thank you very much, Mr Cantlay. Mr MacGregor.

Questioned by Mr MacGregor

Q Thank you, my Lord. You are Richard Cantlay. Is that correct?

A Correct, yeah.

Q Mr Cantlay, you have provided a witness statement to the Inquiry covering the period from the commencement of the procurement exercise to financial close in relation to the project for the Royal Hospital for Children and Young People in the Department of Clinical Neuroscience. Is that correct?

A Correct, yeah.

Q For anyone following in the electronic bundles, Mr Cantlay's statement is in bundle 13 from pages 379 to 408. Mr Cantlay, your statement is going to form part of your evidence to the Inquiry, but you are also going to be asked some questions by me today. If at any point you want to refer to your statement, please just do let me know. If there are any documents that I want to refer you to, they should come up in the screens in front of you. We have had some technical issues today; if for any reason you cannot see any of the documents, please do just let me know.

A Okay. Thank you.

Q This is not the first statement that you gave to the Inquiry, and it is not the first time you have given evidence. You also gave evidence on 20 May 2022, at which point we covered quite a lot of the background to the project, your career qualifications and your involvement up to the period where the procurement exercise began. At that point, you covered off that you were a chartered civil engineer, that you had worked for Mott MacDonald since 1998, and you

outlined the experience that you had had since the early 2000s on revenue funded projects. You outlined your role in the project as Lead NPD Procurement Advisor. Is there any of those issues in terms of your career history that you want to update the Inquiry on at this stage?

A No. No, that's fine.

Q Thank you. Given that introduction, then, I really want to just begin by asking you questions about the procurement exercise itself and to begin with the split in terms of the assessment criteria in terms of price and quality. So, you tell us within your statement that there was a 60/40 split in terms of price to quality. Was that something that NHS Lothian were comfortable with, or was that something that they really would have preferred to be a different split?

A So, yeah, as I've set out in my statement, the 60/40 requirement really came as guidance from Scottish Futures Trust, and NHS Lothian did feel that putting 60 per cent on cost and 40 on quality was probably too much focus on cost and not enough on quality. So, there was a whole series of discussions exploring to what extent that could be changed and whether there could be more 50/50 or indeed more emphasis put on

quality than there was on price. So they were concerned about that. There was a number of discussions with SFT, with the Board, with advisors, etc. At the end, the end position was that the project evaluation criteria would work within that balance of cost and quality.

Q So, NHS Lothian, in an ideal world, would not have had a 60/40 split, but it came to be a 60/40 split on the project?

A Yeah.

Q Certain witnesses have given evidence to the Inquiry saying that, to try to manage that risk, there were some pass-fail questions that were introduced to the scoring assessment. Can you just explain your understanding and involvement in the introduction of those pass-fail questions?

A Yes. So, working within the 40 per cent available for quality, we then-- or the project then developed a whole series of technical evaluation criteria. Those were things that were important and needed to be evaluated as part of looking at three bids. There's quite a lot of those technical criteria because they cut across strategic and management approach, design and construction approach and facilities management.

Therefore, the number of criteria, if you applied a weighting to all of them, it would have diluted down to numbers that were really quite low. So the rationale was that the weighting would be focused towards those criteria that were most important to NHS Lothian with other criteria judged as, "Is it acceptable or is it not acceptable?" and, therefore, didn't require any weighting.

Q So, again, just so I am understanding matters, you have the scored 40 per cent for quality, but before you get on to that there is a series of pass-fail questions, correct?

A Correct.

Q So that once you are into the 40 per cent, there is already a baseline of quality for the tenderer to get through to that assessment stage because of the pass-fail questions?

A Correct, yeah.

Q Thank you. So, if we could just look, for example, to the invitation to participate in dialogue, you will find that in Bundle 2 at page 1005. So, Bundle 2, page 1005. You will see a series of criteria and then the relevant weightings on the right-hand side. So, if we look, for example, to C8 in the middle of the page, "Clarity, robustness and quality of M&E engineering design proposals." Do you see that?

A Yeah.

Q And that has got a scored weighting of 1.06. Then, we see C7 above that: "Clarity, robustness and quality of interior design proposals." That has got a weighting of 2.64. If you looked at that in isolation, not looking at pass-fail questions, it might look like NHS Lothian were more interested in how things looked as opposed to how they functioned, but would that be an oversimplification because of the pass-fail element that you have described in your evidence?

A It would be an oversimplification on that basis. It would also be an oversimplification on the basis that M&E, for example, isn't just necessarily scored under C8 because there's parts of the other questions that are also looking at M&E: C2, for example, design quality; C4, innovation. So, yeah, looking at it in that way would be an oversimplification, yeah.

Q Okay. So, again, if we are thinking about mechanical and electrical engineering, we would not just be looking to C8 and the 1.06 per cent. You have given some other examples, for example, C4, the innovation. It would also be scored

with within that aspect of the weighted criteria.

A Correct, yeah.

Q Thank you. We will come back to look at the ITPD in a bit more detail in a moment, but we can put that to one side at this stage. If I could just ask you some questions about the revenue funded model itself. You mentioned within your statement that the key principle is that design risk sits with the private sector. Can you just explain what you mean by that in terms of why the key principle is the design risk sitting with the private sector?

A So, in PFI, PPP, NPD, whatever model is getting used, the key principles are that public sector are engaging a private sector partner to design, build, carry out an element of operational services and the financing. One of the key criteria is that the design risk and design responsibility is sitting with the private sector. That is one of the key obligations under the contract, and that is what the NHS, in this case, are paying for: the transfer of that design responsibility. If you look at early PPP or PFI projects, the Output Specification was very simple, very brief, and the point is that the procuring body are setting out their

Output Specification, and you're employing the private sector to take on and carry out the design and very much take that design responsibility.

Q So, again, just so I am understanding things, the procuring authority would effectively set out their brief or what they wanted to achieve, but the design risk for achieving that brief would be pushed to the private sector in a standard revenue funded model?

A That's correct. In terms of a healthcare project, the one clarification to that is in relation to operational functionality. That was the one bit of design responsibility that the NHS were taking back then.

Q So general design risk sits with the private sector, apart from what you have described as operational functionality?

A All design risk except operational functionality.

Q Thank you. I want to come on and look in a bit more detail at some of the procurement documentation and some of the relevant provisions that ultimately come into the contract. At various points within your statement, you helpfully set out your understanding of why terms are included within the invitation to participate in dialogue,

why certain terms are included within the contract. Should we understand that though you are providing your observations to be helpful to the Inquiry, you would presumably recognise that some of those views might be controversial in terms of the views of others?

A Yeah.

Q And that, equally, you are not trying to give any form of expert opinion. You are simply giving your subjective view as someone who works in this space and worked on this particular project?

A Correct.

Q Again, presumably you would accept that, in terms of-- You have explained the generality of where risk should sit in a revenue funded project, but the specific risks for any specific project would be governed by the individual terms of an individual project agreement.

A Exactly. The project agreement sets that out.

Q Thank you. So, if I could begin by turning to the invitation to participate in dialogue, you tell us that there are, I think, perhaps two key volumes that go out with the invitation to participate in dialogue. There is volume 1, which you describe as the guidance, and then there is volume 3, which you tell us would be drafted with a view to inclusion within the final contract. So, if we take each in turn, volume 1 guidance in a revenue funded project: what are you trying to do with that part of the invitation to participate in dialogue?

A So, effectively, volume 1 is a procurement document, so that is-- its purpose is served during the procurement process. It doesn't have any ongoing purpose once the contract is entered into. So, what that document is doing is explaining to bidders the-- it's introducing the suite of documents that are included in the tender documents. It's setting out the procedures that need to be followed through the procurement process. It's setting out what information bidders are required to submit at what particular stages in that procurement process. It's setting out timescale. It's introducing some of the key contractual terms in a very high-level way. It is setting out the criteria and evaluation methodology in terms of what the criteria are, how they will be evaluated and the weighting assigned to that. So it's effectively setting out the rules for the competition and how the procurement process will be run over that period.

Q Contrast that with volume

3. What is volume 3's purpose?

A Volume 3, at the start of the procurement process, is effectively what is envisaged to form the Board's Construction Requirements in the final contract, subject to being amended to reflect the development of the process and the final negotiation of the contract terms with the preferred bidder. So it's drafted in a way which shows how it will fit in at financial close, but recognising that there may be some changes to it.

Q Thank you. Now, in relation to the invitation to participate in dialogue for the project for the Royal Hospital for Children and Young People, is that a document that Mott MacDonald had involvement in producing?

A Sorry, which document did you refer to?

Q The invitation to participate in dialogue for the project for the Royal Hospital for Children and Young People. Was that a document Mott Macdonald had involvement in producing?

A Yeah.

Q Can you just explain Mott Macdonald's involvement and any specific involvement you had in the production of that document?

A So, if we look at those

two separate volumes-- So, volume 3, Board's Construction Requirements: Mott MacDonald would have developed a number of drafts of that as it came to developing it for inclusion. Those drafts would have been reviewed with the relevant members of the NHS Lothian team-- technical, sort of, representatives from the NHS Lothian team. In terms of volume 1-- So, that is in effect-- So, the Board's Construction Requirements is a technical document, so that would have been Mott MacDonald and NHS Lothian technical people developing that. Volume 1 is a more general document. It includes technical components. It includes financial components. It includes legal components, and it includes general components and, from memory, we led the drafting of it and incorporated input from other advisors.

So the bit that we drafted, in terms of that volume 1, were the technical components, and then the lawyers would do the legal components and the financials the financial components. Again, the process of doing-- of developing that is to develop it, and then it gets reviewed by NHS Lothian. They feed in, and it ends up being a finalised document. I think your question was also my

particular involvement.

Q Yes, but I think you have helpfully explained a sort of general view in terms of Mott MacDonald are involved but there is a team of people. I think I would be interested in in your view, just given that there is a team of people that are involved. What is your role in relation to the invitation to participate in dialogue?

A So, at that stage of the process I was quite heavily involved. This was pre-OJEU, so I would have been involved in a couple of particular areas: setting out or agreeing with other advisors in NHS Lothian some of the mechanics of the procurement process. For example, what are we going to do in terms of using a reference design as part of their procurement process, and then reflecting that in the tender documents. I had somebody in the Mott MacDonald team who was holding the pen, so to speak. So, they were drafting it, but I was quite heavily involved in developing the concepts of how the procurement would be run from a technical perspective with lawyers, with financials and, of course, with Lothian.

So quite heavy involvement in terms of volume 1. Volume 3, from memory, either Andrew Scott or Andy

Duncan from Mott MacDonald were taking more of a lead on that because that's a very technical document. So, my role wasn't necessarily of a specific technical discipline input, i.e. I wasn't providing architectural input or M&E input or civil structural input. I was more leading the commission and so they were involved in drafting that with NHS Lothian.

Q Okay. So, did you have effectively overall responsibility as the Lead Technical Advisor, but there were people below that level providing the technical input, for example, on architectural input or on mechanical and electrical engineering?

A Yeah. There's a whole team of technical disciplines, yeah.

Q Okay. Thank you. Well, I want to look at some of the provisions within the invitation to participate in dialogue, but if we get to a point whereby you say, "I did not really have any involvement in that provision. I do not know. You will have to ask someone else," please do just say at that point.

A Okay.

Q So, if we could begin within bundle 2, if we look to page 773, so this should be the ITPD. So, we are beginning with volume 3, and if we could look on to page 781, please? If

we look to page 781, you will see that we have got the definition, the defined term of Environmental Matrix which says:

> "Means the Environmental Matrix, which details the room environmental conditions requirements of the Board required within each department / unit / space / area. The title is Reference Design Envisaged Solution – RHSC / DCN Environmental Matrix version third issue as set out in Appendix C of this Section 3 (*Board's Construction Requirements*) of Schedule Part 6 (*Construction Matters*) (as varied, amended or supplemented from time to time in accordance with the Project Agreement);"

Do you see that?

A Yes.

Q The first issue that I would ask is-- Environmental Matrix is a defined term, but it is referring to a specific document, albeit as varied, amended or supplemented. Why is it referring to a specific document-- a specific Environmental Matrix as opposed a document that was to be produced by respective bidders?

A Because that is

effectively referring to the draft version that existed at that time with a view to showing bidders where it would end up, the final Environmental Matrix would end up in the contract.

Q Okay. So, when this document was being drafted, was the intention ever that this specific document would form part of the contract in an unamended form?

A Sorry, this specific document?

Q So, sorry, I mean the Environmental Matrix. So, the Environmental Matrix is referring to a specific document in a schedule to this document. Was it ever intended that that specific Environmental Matrix, unamended, was going to end up in the final contract?

A Not this one, no. It was envisaged that the Environmental Matrix to reflect the design done by the preferred bidder would.

Q Thank you.

THE CHAIR: Mr Cantlay, it is entirely my fault. I am somewhat deaf. Can I encourage you to speak a little-- the microphone should help. As I say, it is me, not you, but if you could help, I would appreciate.

A Okay.

THE CHAIR: Could, maybe, we have that answer to the question? I think the question was put as: was the Environmental Matrix intended to be part of the contract?

Q Again, it is my fault. It was not a well-worded question, but I was asking whether the specific Environmental Matrix included as a schedule to that part of the Invitation to Participate in Dialogue, whether it was ever intended that that would be included in an unamended form in the final contract, and my understanding of Mr Cantlay's response was he said, "It was not. It was always to be developed," but that is to provide the context before Mr Cantlay provides his response.

A Yeah, so my response to that was that it was envisaged there would be an Environmental Matrix included in the contract, but that would be the Environmental Matrix developed by the preferred bidder to reflect their bidder specific design, so the draft Environmental Matrix wouldn't have ended up in the final contract.

Q Thank you. If we could then look on to page 791, please, and it is section 2, "Project Wide Requirements." So, it begins, "The Board's vision is to provide high-quality, patient-centred services from modern Facilities." Do you see that?

A Yeah.

Q Then if we look to the next full paragraph, it says: "Project Co shall ensure the design complies with the general ethos detailed here, whilst also addressing the detailed requirements listed in the following clauses. It shall be noted that the requirements detailed are not exhaustive, and it is recognised that specific clinical needs will determine the nature and design of Facilities in some areas."

Then if we skip the next two paragraphs, you will see a paragraph beginning, "Project Co shall ensure…" Do you see that?

A Yeah.

Q

"Project Co shall ensure that the design of the Facilities draws upon and endeavours to further develop, improve and exceed current best practice (and Good Industry Practice) standards achieved in other similar schemes, and meets the requirements of the prospective patient groups, staff and the public."

So, just before we go on and look at the detail, is this effectively a summary of what NHS Lothian wanted to procure, which was high-quality modern facilities that would at least meet current industry practice and, ideally, exceed current best practice?

A Correct.

Q If we look on to bundle 2, page 792, please, towards the bottom of the page there is a bold general heading, "**2.2 General Requirements of the Board**." Do you see that?

A Yes.

Q Then there is subheading (b), which makes reference to, "Adherence to the requirements set out in CEL 19 (2010) 'A Policy for Design Quality for NHSScotland, 2010 Revision published by Scottish Government." Do you see that?

A Yes.

Q Do you recall why, as a general requirement, there was this reference to CEL 19 (2010) and A Policy for Design Quality for NHSScotland?

A Sorry, can you repeat that question?

Q So, I was just saying we see here that there is an entry, "**General Requirements of the Board**," and there is a requirement for adherence to the requirements set out in CEL 19 (2010). I was just asking if you recall why there was a requirement for adherence to CEL 19 (2010). Do you recall why this provision was included in the ITPD?

A Well, because it was a CEL that was in existence at the time that had an influence on those doing the design of healthcare facilities and, therefore, it was relevant to include it as something that should be complied with.

Q When we say, "should be complied with," who has got to comply with CEL 19 (2010)?

A Well, Project Co have to comply with everything that is set out in the Board's Construction Requirements.

Q Thank you. So, when we see that they are saying, "Adherence to CEL 19 (2010)…" that is telling Project Co that they need to adhere with CEL 19 (2010). That was the intention behind that provision?

A Correct, yeah, and the opening paragraph to it refers to, "Project Co shall ensure..."

Q Thank you.

A If we look on to page 794, please, you will see a bold heading at the top, "**2.3 NHS**

Requirements." Do you see that?

A Yes.

Q It states:

"In addition to the standards listed in paragraph 2.4 of this Sub-Section C, unless the Board has expressed elsewhere in the Board's Construction Requirements, a specific and different requirement, the Facilities shall comply with but not be limited to the provisions of the NHS Requirements as the same may be amended from time to time."

Do you see that?

A Yes.

Q Then there is a list, and if we pick up at (h) you will see, "HTM and SHTM." Do you see that?

A Yeah.

Q Then below that there is (p), "Health Department Letters (or Management Executive Letters) as appropriate published by SEHD and SGHSCD." Do you see that?

A Yes.

Q It was really just to try to pick up on the wording there. There is a range of standards and NHS requirements, but what we see at the top, it says that these should be complied with unless the Board has expressed elsewhere in the Board's

Construction Requirements. Can you understand why was that wording included?

A The wording which says, "… unless the Board has expressed…"?

Q Yes.

A I guess that this is setting out a general set of obligations, and I guess it's just flagging that if there is a conflict then, you know, that should be given the all-encompassing nature of that list. If there's something specific that has been set out which is different to that in the BCRs, then it's just flagging that issue.

Q Again, if we just think back to the provision we looked at a moment ago which talked about meeting or exceeding current best practice, as far as you are aware, was there ever an intention on the part of NHS Lothian that there would be a lower standard sought than the provisions set out there? So, for example, a lower standard than HTM or SHTM?

A No.

Q If I could ask you to look on, please, to page 799, you will see at 2.5 there is a bold heading, "**Hierarchy of Standards**." That is bundle 2, page 799. Do you see

that?

A Yes.

Q We will come on and look at the detail, but can you just explain your understanding of why, within an ITPD or within a revenue funded project agreement, would you see a hierarchy of standards? What is the purpose of such a provision?

A Well, this paragraph here is primarily associated with the complexity that surrounded the project in terms of this was putting a new revenue funded project onto a site which already had a revenue funded hospital on it, and this was really recognising that, in relation to the project, there was specific requirements that had to be adhered to which aligned with the agreement that NHS Lothian had with the provider of the other PFI project. Therefore, quite uniquely, this was specific interface requirements which had to be complied with, and so this is really recognising that site-specific issue. It's all to do with construction access, you know, access strategy, drainage, etc. where it is interfacing with the existing operations.

Q This provision, "**2.5 Hierarchy of Standards**," is that specific to this project or is that a general provision that you would find in a revenue funded project agreement?

A Well, because of the suite of guidance that exists on healthcare projects, this whole section is really trying to clarify what happens in the event of any contradiction between different sets of guidance. So, I would expect to see this on every project, but paragraph 1 there is very specific to do with the interface arrangements with the existing revenue funded project.

Q So, if we look to paragraph 2 beginning, "Where contradictory standards…" Do you see that?

A Yeah.

Q So, it says:

> "Where contradictory standards / advice are apparent within the terms of this Section 3 of Schedule Part 6 (Construction Matters) and the Appendices then subject to the foregoing paragraph then (1) the most onerous standard / advice shall take precedence and (2) the most recent standard / advice shall take precedence. When the more onerous requirement is to

be used the Board will have the right to decide what constitutes the more onerous requirement."

Do you see that?

A Yes.

Q So, if there was-- and you have said complicated project, lots of different provisions. If there is two provisions, one has got a higher standard, one has got a lower, what was the intention behind this clause? Which takes precedence?

A The higher standard.

Q If I can ask you to look on, please, to page 814. Towards the bottom you will see a section, "**3.6.3 Room Data Sheets**." Do you see that?

A Yes.

Q It says:

"Project Co shall provide Facilities that, as a minimum, meet all the requirements specified in the Room Data Sheets included in this Schedule Part 6 Section 6. Room data sheets not included in Schedule Part 6 Section 6 shall be provided through RDD.

Project Co shall provide fully developed Room Data Sheets submitted to the Board as Reviewable Design Data for review by the Board in accordance with Schedule Part 8 (Review Procedure) and clause 12.6 of the Project Agreement."

Then over the page:

"As part of the commissioning process, Project Co shall be responsible for demonstrating compliance with the requirements included within the Room Data Sheets.

For the avoidance of doubt, Project Co shall provide mechanical ventilation, comfort cooling and air conditioning to suit the functional requirements of each of the rooms in the Facilities. Irrespective of the ventilation requirements in Room Data Sheets, where rooms are clearly intended to be occupied and / or become internal spaces during design development and natural ventilation is not possible, mechanical ventilation and / or extract ventilation shall be provided as appropriate to suit the function of the space."

Do you see that?

A Yes.

Q Now, at this stage, we will come on to look at it, the Inquiry understands that room data sheets had not been provided by NHS

Lothian to prospective tenderers, so what was the intention behind what we see in 3.6.3 about room data sheets?

A Can we just go back to 814, please? Yes, so what this clause is effectively saying is that at a point in time there will be a set of room data sheets. If they haven't yet been developed at the time of execution of this contract, then they need to be developed and, as with any design developed under the contract, it should be put through the reviewable design data process. So, that's those two paragraphs, and then if we could go back to-- thank you. Well, it's then effectively saying Project Co shall comply or demonstrate compliance with the room data sheets, and then this last paragraph is adding a point of clarity, or a technical point, around about mechanical ventilation. Not sure if I'm answering your question, am I?

Q No, that is helpful. It was really just to pick up on that last point, the point about if you are having mechanical ventilation, then it is to be appropriate to the function of the space. Why was that specific wording included?

A Just for extra clarification, I guess, in relation to mechanical ventilation – to be absolutely clear – but, you know, not being an M&E engineer, I can't comment on the technical reasoning behind it other than it appears to be some extra clarification around about mechanical ventilation.

Q If I could ask you to look on within bundle 2 to page 873, please. Do you see the bold heading towards the bottom, "**8. Mechanical & Electrical Engineering Requirements**." Do you see that?

A Yes.

Q The first section states, "Project Co shall provide the Works to comply with the Environmental Matrix." Do you see that?

A Yes.

Q Now, as I understand it, your position in your witness statement is that the Environmental Matrix was simply provided to bidders as a document that they may or may not find helpful, but it certainly was not a binding client brief that they had to comply with. It was not a mandatory requirement. Can you explain why do we see at 8, if the Environmental Matrix is not a client brief or a mandatory requirement, wording saying,

"Project Co shall provide the Works to comply with the Environmental Matrix"?

A Because it was anticipated there would be an Environmental Matrix, and that would be the Environmental Matrix developed by the preferred bidder to reflect their specific design. So, again, it's as per the point that we referred to five or ten minutes ago: this would be the Environmental Matrix reflecting the actual design, not the reference design.

Q It is back to that point we spoke about that although "Environmental Matrix" is a defined term referring to a specific document, you are telling the Inquiry that your understanding is it would be that document as developed by the prospective tenderer.

A Correct, yeah.

Q Thank you. Just for completeness, if we read on within bundle 2, page 873, after the text I had taken you to at the bottom, it continues:

> "Project Co shall in carrying out the Works comply with the following non-exhaustive list of mechanical & electrical requirements.
>
> Project Co shall provide mechanical and electrical systems to help create a "state-of-the-art" building with innovative design."

Then over the page onto page 874, just above the bold heading, "**8.1 Minimum Engineering Standards**," do you see wording beginning, "For the avoidance of doubt…"?

A Yes.

Q Which states: "For the avoidance of doubt the hierarchy of standards and advice detailed in paragraph 2.5 shall apply to this paragraph 8." Do you see that?

A Yes.

Q So, is that referring back to the hierarchy of standards provision that we had already looked at?

A Yes.

Q Saying that even if you are within mechanical and electrical engineering requirements, that is still going to be subject to the hierarchy of standards set out in paragraph 2.5?

A Correct, yeah.

Q Thank you. If I could move on within bundle 2, please, to page 942, which should be the Invitation to Participate in Dialogue,

but this time volume 1. Do you see that?

A Yes.

Q If we look on to page 951, do you see towards the bottom, four entries up from the bottom, there is the defined term "Environmental Matrix" again?

A Yes.

Q It says, "Environmental Matrix means the matrix contained in ITPD Volume 3, Schedule Part 6, Section 3, Appendix C." Do you see that?

A Yes.

Q We have now moved into the general section of the guidance. Why do we see the Environmental Matrix being defined as the specific document within Schedule 3, as opposed to an Environmental Matrix to be developed by a prospective bidder?

A Because the draft Environmental Matrix was housed in that volume for the purposes of issuing the tender with the anticipation that would be replaced, so this is just talking to the same Environmental Matrix.

Q Okay. The intention was it is still referring to the specific document, but in the context that, when you looked to volume 3, that would be the Environmental Matrix to be developed by the prospective tenderer?

A Correct.

Q Thank you. If we look on, still within bundle 2, to page 953 towards the very bottom, I will not read it out but there is a section on operational functionality. Do you see that?

A Yes.

Q Again, is that what you explained both within your witness statement and at the start of your evidence about operational functionality being an important term in relation to revenue funded project agreements for all the reasons you outlined in your evidence?

A Correct, yeah.

Q If we look on to paragraph 2.5, on page 963, you should see a bold heading, "2**.5 Reference Design and Mandatory Reference Design Requirements**." Do you see that?

A Yes.

Q Before we look at the text, can you just explain what was the intention? What were to be mandatory reference design requirements?

A Well, to stay in line with the risk allocation associated with a

revenue funded project, whereby all design risk is effectively passed to the private sector provider with the exception of the operational functionality, which is the part of design risk which the NHS take back. This was effectively trying to be clear that those mandatory elements are aligned with what is considered to be that operational functionality design responsibility so, in effect, it is the spatial arrangement, it is the relationship of departments, it is the relationship of rooms, etc. – all as, you know, set out in those design deliverables in the three bullet points.

Q Again, if we just look at the text, the third full paragraph beginning, "The mandatory elements of the Reference Design…" Do you see that?

A Yes.

Q "The mandatory elements of the Reference Design (the "**Mandatory Reference Design Requirements**") are those elements of the Reference Design relating to Operational Functionality. The definition used in the NPD Project Agreement is being applied to define the agreed Operational Functionality included in the Reference Design and is generally set out in the following constituents of the Reference Design." Do you see that?

A Yes.

Q Now, within those bullet points there is departmental adjacencies, departmental layouts, generic and key room layouts. There is no reference to the Environmental Matrix. Was that deliberate or was that an oversight?

A Deliberate.

Q Again, the answer might be obvious from what you have said, but why do we not see Environmental Matrix being included as a mandatory reference design requirement?

A Well, for two key reasons-- well, primarily because that is all about the design responsibility and design risk, and it does not relate to operational functionality.

Q If we look on, please, to page 965, you will see a bold heading, "**2.5.3 Room Data Sheets**." Do you see that?

A Yes.

Q So, it says:

"Standard format Room Data Sheets have not been prepared by the Board for the Project. The specific room

requirements (the "**Room Information**") are detailed in a combination of the following documents:

The Board's Construction Requirements;

The Environmental Matrix…"

And it continues on. Then below the bullet points it says:

"During Dialogue Bidders will be required to develop Room Data Sheets, incorporating the Room Information, for those rooms for which 1:50 layout drawings have been prepared. For the avoidance of doubt this shall include all Key Rooms and Generic Rooms in addition to those rooms identified in the table at paragraph 2.5.2 above. The Room Data Sheets will form part of the Bidders proposals. The Preferred Bidder will be required to complete Room Data Sheets for all remaining rooms prior to Financial Close."

Do you see that?

A Yes.

Q Now, if the Environmental Matrix was simply a document produced to try to be helpful but it could not be relied upon by prospective tenderers, why do we see room information from which room data sheets are to be produced including the Environmental Matrix? Why was that included?

A So, if you read this section in conjunction with-- I think it's C8.3 where it's made clear that the Environmental Matrix is in draft format, what this is effectively doing is being clear that the room data sheets need to be developed by Project Co, or the preferred bidder, or the bidder in sort of the run up to financial close, as the party who have the design responsibility and design risk under the contract. This is then being clear or clarifying that there are elements that have been developed as a result of the reference design and, as I say, in the case of the Environmental Matrix, it is in draft format as clarified with specific instructions under C8.3 in the appendix around about the fact it's a draft and what bidders need to do in terms of revising it to show their proposed changes to it. Then this is then saying, you know, as part of developing the room data sheets, they should look at the requirements as set out in these documents.

Q If we then look just below

that, there is, "**2.6 Indicative Elements of the Reference Design**." Do you see that?

A Yeah.

Q It says:

"During the preparation of the Mandatory Reference Design Requirements, other information has been generated both as a by-product of preparing the Reference Design itself and as a general Project requirement as follows…"

Various documents set out, including (iii), "Building services engineering solutions," and then below the Roman numerals, main paragraph:

"Such information is issued to the Bidders for 'information only' so that they may understand the intent of the Reference Design."

It would be interesting if you-- "Building services engineering solutions" – what type of documents and information was that aimed at?

A Well, anything relating to the building services of the building, so ventilation, electricity, lighting, water, etc. So, effectively, everything relating to the building services that are the mechanical and electrical services within a hospital.

Q Again, just so I am understanding you correctly, if we are talking about this clause, indicative elements that were provided for "information only," that would include the building services, which would include mechanical engineering information. Would that include the information provided within the Environmental Matrix?

A Yes.

Q If we look on, still within the ITPD, to page 1054, please. Do you see towards the bottom of page 1054, C8.3? Do you see that?

A Yeah.

Q Is this the provision that you talked about earlier when you said you have also got to consider C8.3?

A Yes.

Q So, if we look at C8.3. So, it is page 1054, then over the page onto 1055, it states:

"Whilst Bidders are required to undertake their own design, the Board has provided a draft Environmental Matrix as part of the ITPD documentation. Bidders must confirm acceptance of the Board's Environmental Matrix, highlighting any proposed changes on an exception basis." Do you see that?

A Yes.

Q Now, what was the intention behind that provision being included in the ITPD?

A So, the intention behind that is, firstly, there is a draft Environmental Matrix which has been developed as part of the reference design, that bidders should provide-- Can we just go up a page, please, just to see the first-- Yeah, okay, down again. Thank you. Yeah, so bidders are responsible for the building services. They are responsible for developing an Environmental Matrix to reflect their actual design, and the reason we effectively asked for highlighting proposed changes is this Environmental Matrix is a very detailed document with many rows, many entries, huge amount of data. So, rather than bidders providing a from-scratch Environmental Matrix, which then the Board would find it would be a really hard job to work out what was in there, the idea was that if we used the draft Environmental Matrix, it then gave a good indication of where bidders proposals varied from that baseline.

Q So, again, just so I am understanding you, in terms of if the question was posed, "Well,

Environmental Matrix, it is for information only; it cannot be relied upon. What is the point in providing it?", am I correct in thinking your response from the answer you have just given is, "Well, it is a huge document with lots of technical information, so it is easier just to see how it is being marked up as opposed to getting some proposal provided in a different format from scratch"?

A Yeah. So, it existed, so then it was used as a procurement tool to help with the evaluation.

Q We will come on and look at this in a bit more detail but just at that general level, then, if a prospective tenderer marks up the Environmental Matrix, makes changes to it, is that going to be something in and of itself that is a red flag for someone reviewing tenders when they come in?

A Not a red flag, no. It would be viewed as being able to understand what their proposals are and being able to be clear about how that varies from a baseline that was provided in the tender document.

Q Certain core participants before the Inquiry, their position is that their understanding of the

intention of the Environmental Matrix was that it was effectively a fixed brief that they were provided with that they could not change it and, if they did change it, that would negatively impact on their scoring. Am I correct in thinking your position would be that that was not the intention behind the drafting of the document?

A No. I mean, the mandatory requirements, as we just looked at, were clear about, you know, which bits of the reference design were mandatory, so yeah. No, that would not be my interpretation.

Q In terms of the Environmental Matrix itself, as we covered off the last time you gave evidence, developed by Hulley & Kirkwood as opposed to being developed by Mott MacDonald directly, but was that a document, the Environmental Matrix, that-- is it just produced by Hulley & Kirkwood in isolation, or has it been developed in conjunction with NHS Lothian and their clinical teams and user groups?

Q So, the original development of the Environmental Matrix took place under the BAM contract, I believe, which was prior

to my involvement, so this would have been, I think, in 2010. Then once the project transferred from a capital funded project into a revenue funded project, then there was a ring-fence design team, reference design team, working that through. So, my understanding was that originally, or I would anticipate that originally, having not been involved that, yes, it absolutely would have been reviewed in conjunction with the parties you just said, and then in the reference design team, which was ring-fence, so I didn't have any exposure to that because we were deliberately trying to separate that design team from the people involved in designing and developing the procurement documentation, but, again, my anticipation was that there was users from NHS Lothian involved in that design work.

Q Thank you. The final document I want to look at in----

THE CHAIR: Sorry, just that I have understood the answer, so your understanding, although the work was done prior to your involvement, was that there was NHSL clinical input into the Hulley & Kirkwood draft of the Environmental Matrix?

A Yeah. So, sorry, just to be clear then, having not been involved, I would anticipate that there would have been. Whether there was or not I can't say, as I wasn't involved, but I anticipate there would have been, yeah.

THE CHAIR: Thank you. Sorry, Mr MacGregor.

Q Thank you, my Lord. The next document I wanted to look at was in bundle 4 at page 131 first, please. Bundle 4, page 131. This is the Environmental Matrix itself that got issued with the Invitation to Participate in Dialogue, but just to look over onto the guidance notes section on page 132 and to Guidance Note 1. If we could zoom in because it is quite small text. So, you will see Guidance Note 1. It says:

> "This workbook is prepared for the Reference Design Stage as an easier reference tool to replace ADB RDS M&E Sheets for the Environmental Criteria elements as described on these sheets."

Do you see that?

A Yes.

Q What was the intention behind providing that guidance note to prospective tenderers?

A Again, because I wasn't involved in the Reference Design because it was a ring-fence team, I can't answer categorically, but my reading of that design note is that Guidance Note 1 isn't necessarily drafted with the NPD bidders in mind. I think it's written in the context of the reference design. I don't think it's necessarily written in a way which is an instruction to the bidders, would be my interpretation, but, you know, that's just reading it here and now.

Q It is just particularly the section that says, "… as an easier reference tool to replace ADB RDS M&E Sheets." Do you see that?

A Yes.

Q Is another way of looking at that that it could be that it is replacing all the detailed technical information that you would see if a procuring authority had provided a full suite of room data sheets?

A Yes, I think this is saying that they've captured the data, which you could put on the room data sheets and the environmental sheet or you could put them in another format. In this case, the format is the Environmental Matrix, and I think they're just explaining that, as doing a reference design,

they have populated this information into an Environmental Matrix rather than populating it onto room data sheets. I think that is what that guidance note is saying and, as I say, I think it's a guidance note in the context of the reference design, not necessarily thinking about how the reference design is then going to be used in a procurement or otherwise. That would be my reading of it.

Q My understanding, again, of your evidence is that the intention was not that this would be a briefing tool. If that is what happened or how it was interpreted, that was not the intention behind including that wording in the Invitation to Participate in Dialogue?

A No, I don't believe so, no.

Q Thank you. Lord Brodie, I am conscious that is just after one o'clock. I think we will definitely finish this afternoon, but I do have some way to go. Now may be a convenient time to take a break.

THE CHAIR: We usually take a break at one o'clock, Mr Cantlay, so if you could be back for two?

A Okay.

THE CHAIR: Thank you.

(Short break)

THE CHAIR: Good afternoon, Mr Cantlay. Mr MacGregor.

MR MACGREGOR: Thank you, my Lord. Mr Cantlay, just before lunch we were discussing the Environmental Matrix. Just a few more questions I have in relation to that. Ms Goldsmith from NHS Lothian, who was the senior responsible officer, she told the Inquiry that there was a desire on the part of NHS Lothian not to effectively waste the money that had been spent on the capital stage of the project whenever it turned to being a revenue funded project. So that included work that had been done on the reference design and the Environmental Matrix in particular. Do you recall Mott MacDonald giving specific advice in terms of whether the work that had been done for the capital project, including the Environmental Matrix, would be appropriate for a revenue funded project?

A So, what I recall happened, effectively, is the-- you know, and I became involved in the project when it turned from capital to revenue. This is back in the early sort of months of 2011, so I do recall a number of conversations with NHS Lothian and with SFT and, in effect, there was two moving parts, I guess,

that we were trying to juggle with. One moving part was this new NPD model, and while contractually it had particular changes from a PFI type model, there was kind of ambition from SFT to maybe look at how the procurement associated with NPD was different and should we use reference designs, etc. So, one moving part was trying to-- and this was obviously a bit of a pathfinder for healthcare in terms of NPD, so one moving part was trying to understand what the procurement process with an NPD would do, how you'd use reference designs, etc., and then a separate moving part was Lothian had been going through a process of developing the design on the understanding that it was going to be capital funded and so had gone through the process in that way and so, therefore, now had a partially developed design, and so how you use that, given that the operational functionality-- there'd been a lot of clinical user groups, etc. So, it's how you best use that and avoid it being complete abortive costs.

So what we're trying to do was work out a way of (a) running the procurement that (b) used the reference design where it was appropriate to do so. So, in terms of your question, did we provide advice to

NHS Lothian on that? Yeah, we did a number of advisory papers which there's a number of iterations, and I think the number of iterations reflected just the amount of thought and reconsideration of particular points that needed to be done to come up with that balance of NPD procurement and use of reference designs and the fact that a partially developed design existed.

Q Thank you, and in terms of your own involvement in the project, you are obviously-- tell us you are involved from 2011 to 2012 and it becomes revenue funded. Do you stay involved throughout the project until financial close or is there a point where, although you are still involved, you take a step back and other individuals such as Graeme Greer come in and take on a more lead role?

A Yes, I think there was probably three stages in that. So from 2011 up to OJEU, I had quite a hands-on role. Once we got into the competitive dialogue or procurement process, my role was more, you know, overseeing. So, I attended a lot of the dialogue sessions, but I wasn't getting involved in reviewing the submissions or anything like that. I was supporting from a senior level with a whole team of Mott MacDonald people involved in

the details. I was providing guidance and support to my team and NHS Lothian, and Brian was keen for me to provide support also at the dialogue meetings. So that was a lighter touch than my initial two years, and then once we got into the evaluation process, appointment of preferred bidder, that's really when I stepped away in terms of an active ongoing role on the project and it was more attending key meetings, providing advice to the likes of Graeme Greer. So I would probably describe my role as almost three levels of input, starting off the most heaviest and ending up being, you know, a fairly light toucher.

Q Thank you. Given that role that you have described, you might not be able to assist with my next question, but I will raise it with you nonetheless. There seems to be a difference in recollections between various witnesses that have given evidence to the Inquiry in terms of what prospective tenderers were told about the status of the Environmental Matrix in the period of financial close and in particular at competitive dialogue stages. So, from the start of the procurement exercise to competitive dialogue. One group of witnesses say they were told that the reference design is fixed, that the

Environmental Matrix is a client brief. It cannot be changed. Other witnesses have said, no, that is not what prospective tenderers were told. They were told that the design risk sat with them, that this could not be relied upon and they had to produce their own designs. Do you have a recollection of any such conversations taking place during your involvement in the project?

A So, I can't be 100 per cent accurate here, but my memory and recollection was that anything round about which bits are mandatory and which bits aren't would very much have stayed around what was set out in volume 1 of the ITPD, which is the mandatory elements are those elements of design relating to operational functionality. I certainly have no recollection of anybody ever suggesting the likes of the Environmental Matrix was mandatory.

Q And, again, presumably that is consistent with your position which is the intention between the documents we have been through is that those documents were a draft to be developed as opposed to being a fixed client brief?

A Yeah, and it would also be in line with my understanding of the risk profile in a revenue funded project

and what can and can't, you know, be mandatory in terms of transferring design responsibility and risk.

Q I would like to move on now and ask you some questions about the role of Mott MacDonald. One witness that gave evidence to the Inquiry described the role of Mott MacDonald during the procurement exercise in the period to financial close as being akin to a shadow design team. Would you have any observations on that characterisation of Mott MacDonald's role?

A So, you know, my-- Well, firstly, I don't really recognise the terminology "shadow design team" in the context of a revenue funded project. I think "shadow design team" is probably a terminology that's used in design and build projects which are capitally funded when talking about the public sector. So, you know, I was-- I have done revenue funded projects for a number of years and I just don't necessarily recognise that as something that is terminology because it's always been technical advisor, and that kind of aligns with what I think the role of technical advisor is which, again, is directly related to where the design and design responsibility and design risk sits.

Q Thank you. If I could ask you to have in front of you, please, from bundle 2, page 28 which is the contract between Lothian Health Board and Mott MacDonald Limited. Bundle 2, page 28, and if I could ask you to look on, please, to page 86. It would be helpful if we zoom in, but just so we are looking at the same document, it should have in the top left-hand corner, "Royal Hospital for Sick Children & Department of Clinical Neurosciences, Technical advisor Scope." Do you see that?

A Yeah.

Q And then we see a description of items set out, and then there is various parties that would be providing those roles. So there is Davis Langdon, Mott MacDonald, Thompson Gray and Turner & Townsend. Do you see that

A Yes.

Q So the first entry, "**Management and Coordination**," says, "Act as Lead Technical Advisor and point of contact for NHSL Client." That is Mott MacDonald with a fee of £121,914. So, what were Mott MacDonald doing in terms of acting as the lead technical advisor, just in general terms?

A So, as we talked about earlier, the technical advisor team is a whole combination of different

disciplines. So, this is about joining that all together and being the point of contact. So, it's providing a managed technical advisory service and engaging with NHS Lothian. So that's very much for the leadership of the team and making sure we deliver services in an integrated way.

Q And then if we look down to entry 10, you see it says, "Prepare invitation to Partake in Dialogue (ITPD) including Output Specification, Payment Mechanism etc, for Procurement process. All prepared in association with client legal and financial advisors," with a sum of £111,494. Is that effectively a separate fee for the physical preparation of the ITPD that we have looked at?

A Yeah, so, reading it, that is the development of the technical components of the ITPD, whether that is the technical components of volume 1 or the Output Specification and Board's Construction Requirements, effectively, yeah.

Q And then if we look at item 13, it is, "Prepare Reference Design documentation, as appropriate, for inclusion in ITPD." How does that entry differ from what we see at entry 10?

A So, that is about taking

the reference design developed in a ring-fence team and presenting it to the bidders, in a way, with all the sort of narrative around about, "Here's the reference design. These bits are mandatory. These bits aren't." In terms of why it's a different line item, I think it's just separated out for particular note because, you know, we were moving into an NPD. There's going to be a reference design. So it could have been included in 10, but I think it was just flagged as a separate task just to make sure everybody was clear that something a bit different to what had been done before was getting done here.

Q And then if we look at entry 16 just slightly further down. It says, "Check Reference Design for compliance with all appropriate NHSL and legislative guidelines and requirements (list as pre-agreed with NHSL) and identify any derogations." Do you see that?

A Yeah.

Q So, what did Mott MacDonald have to do in terms of entry 16?

A Basically seek-- Well, yeah, as we can see, there is five days allowed for that task. So, in effect, it was getting confirmation or otherwise that the reference design had been

developed in accordance with those requirements. So either confirmation wholesale or an understanding from the reference design team as to any non-compliances/derogations.

Q One of the issues that is before the Inquiry is whether certain values included within the Environmental Matrix, which forms part of the reference design, which forms part of the ITPD, complied with published guidelines, including SHTM 03-01. Should the Inquiry understand that entry 16 required Mott MacDonald to check that the reference design complied with all relevant published guidance?

A No. So, this wasn't an independent check of the reference design. NHS Lothian were already paying for the development of a reference design through that contract, and this was effectively a requirement on behalf of that team to be clear that it is or isn't complying with the guidance. So it's definitely not a check of the reference design that it complies, you know, simply because why would you do that because there's already a team, a competent team, appointed to do it? Secondly, it is a reference design and therefore it's going to be used in a certain way and, thirdly, five days to do a full check just

wouldn't be anywhere near to what would be needed.

Q So the entry that says, "Check Reference Design for compliance with all appropriate NHSL and legislative guidelines," your position as Mott MacDonald were not, as part of their responsibilities, required to check the reference design for actual compliance, they just asked the people that had prepared the Environmental Matrix if it complied with the relevant guidance?

A Correct, yeah.

Q And for simply asking someone else if they had complied with their obligations, Mott MacDonald were to be paid £2,605?

A Yeah, to go through the process of getting to that point, yeah.

Q In your previous statement and when you gave evidence before in May 2022, we covered off the fact that Mott MacDonald checked with Hulley & Kirkwood as to whether the Environmental Matrix that had been drafted did comply with the published guidance, and just to refresh your memory, if I could ask you to have in front of you, please, bundle 4, page 322. That should be an email from Andrew Duncan to Thomas Brady dated 28 February 2012. Do you see

that?

A Yes.

Q It says:

"Tom

There is an action on the Reference Design Team to confirm that the Reference Design complies with NHS Guidance and key legislation. I attach the requirement schedule for each of the Reference Designers to respond to. We require a statement from each designer to confirm that the Reference Design complies with the Requirements Schedule. Should it not fully comply then each designer shall confirm that the Reference Design complies with the Requirements Schedule with a schedule of derogations."

You see that?

A Yes.

Q So, is that the request to Hulley & Kirkwood to say, "Is your Environmental Matrix going to comply?"

A Yes.

Q Then, if we look on to page 324, you see the document with Nightingales, BMJ Architects, Hulley & Kirkwood, etc. "RHSC + DCN - Little France, Edinburgh, Reference Design Proposals" and it is dated the 16 March 2012.

A Yes.

Q Then if we look on to page 325 to the bold boxes, if we just perhaps pick the one up that says, "**Health Technical Memoranda** and **Scottish Health Technical Memoranda**." It says, "We have followed SHTMs and also HTMs when there is no Scottish equivalent." Do you see that?

Q Yes.

Q So, that is the confirmation provided by Hulley & Kirkwood in relation to the compliance of the Environmental Matrix with the published guidance. So, that is given in March of 2012.

If we could go within bundle 4 to page 131, this is the version of the Environmental Matrix that was issued with the ITPD. Now, it is dated 19 September 2012. Do you recall whether in the period from March to September, or really in the September, if Hulley & Kirkwood were asked to refresh that confirmation that they had provided that the final iteration of the Environmental Matrix complied with published guidance, including SHTMs and HTMs?

A I can't-- You know, I'm not aware of whether that was asked or not. I'm also not clear on to what

extent there was any changes between 13 March and 19 September which may or may not have required that confirmation, but I would assume that there wasn't anything, any change of significance that needed a change to their derogation paper because, if there was to be further derogations, then I would have assumed that they would be reflected in a revised paper. So, I don't know because I wasn't involved in the reference design team and therefore don't know whether they were asked to do that or not.

Q So, although we saw in the contract that there is an obligation to check, as you said, with the reference design team, that would be someone else within Mott MacDonald that would be actually seeking that final confirmation?

A Yes, so the-- so I can't quite recall-- Andy Duncan, I can't quite recall what his role was in terms of the reference design, but I specifically wasn't involved in the reference design because I was so heavily involved in the procurement-- design and procurement process.

Q I just raise it as a matter of fairness because Mr O'Donnell from Hulley & Kirkwood, his position in evidence before the Inquiry was that he gave the confirmation in the March,

work continues to the September, but he did not recollect anyone from Mott MacDonald actually asking for a final confirmation but, again, should we understand that anyone within Mott MacDonald that was seeking that confirmation, that would not be your role to do for the reasons you have given?

A Yeah, correct, yeah.

Q Again, this may be a technical issue that you cannot assist with, but do you know if Hulley & Kirkwood were given a bespoke database of-- Activity Database by NHS Lothian or by Mott MacDonald when they were developing the Environmental Matrix?

A So, I don't-- I was going to ask whether you mean under the BAM contract or under the NPD contract, but either way I don't know.

Q I think under either. My question would be the same.

A Yeah, I don't know. I can't answer that.

Q Thank you. If we move on just to the competitive dialogue process. My understanding from what you have said in your evidence was you were involved in the project in the competitive dialogue stages, but not in the sense of being involved in any of the technical sessions that were being

undertaken. Would it be other individuals from Mott MacDonald that were providing input at the various competitive dialogue sessions?

A Yeah, so we had a whole team, you know, that covered various disciplines – whether it's architectural, mechanical, electrical, facilities management – and, from memory, the way the dialogue was set up, there was dialogue with each bidder over three days in a week. So there was a preparation meeting on the Monday. There was then a day with each bidder, Tuesday, Wednesday, Thursday, and there was a wrap-up meeting on the Friday, and on any particular day – Tuesday, Wednesday, Thursday – there tended, from memory, to be a general meeting for the first part of the day and then I think it split into disciplines. There was maybe a design and construction meeting, a facilities management meeting, a legal meeting, whatever other meeting, strategic and management meeting.

So, I would have attended the preparation day on the Monday. I would have attended the plenary session at the start of each day, and then I can't recall which bits I attended but, from memory, I wouldn't have been key to any of the particular

disciplines. I would have been at that initial opening session with each bidder and then probably went to a number of the sub-groups but not necessarily in a consistent manner. I think that's my recollection.

Q In terms of there came a point in time where NHS Lothian takes the decision to close competitive dialogue and invite final tenders, were you involved in giving advice to NHS Lothian on that decision or would that be colleagues within Mott MacDonald?

A So, I can't recall to what extent-- so, again, I wouldn't have been involved in the detail. What I might have been involved in – and I can't recall because it's so long ago – is those discussions which are effectively receiving views from the different parts of the evaluation team, and I think I probably was involved with conversations with Brian in the likes of, "Right, are we now ready to close dialogue?" So, I can't recall, but I suspect I would have been, yeah.

Q But in terms of if you were asked directly by Mr Currie, "Should we be closing dialogue?", would you be relying on what you were told by colleagues as opposed to first-hand information you would have had because, as you said, you were not involved in the technical assessment?

A Yeah, well, that goes for everything. Yeah, I was leading the team, so I wasn't in the detail of any of it. I was making sure all the different bits were moving along in a coordinated way.

Q Would the same apply in relation to the assessment of tenders? So, dialogue closes, final tenders come in, the tenders are assessed. Am I correct, from what you said in evidence, you were not involved in the actual assessment processes itself, that would be other individuals within Mott MacDonald?

A Yes, so there was-- again, when it comes to evaluation of the tenders, my recollection and what would normally happen is there is sub-groups reviewing specific bits, and for every bid submission requirement there'll be a number of people allocated with reviewing that particular question. They all do their own evaluation. They come together to form a consensus score. I don't remember being involved in any of the detailed evaluation. What I was probably involved in was-- I think there was something called the core evaluation panel where those sub-groups reported into. So, that was them saying, "For bidder X, question 3, we have awarded a score of Y."

Q Thank you. So, again, if we are thinking about, for example, different solutions put in by different tenderers, one bidder, Bidder C marks up the Environmental Matrix; IHSL does not. You would not be involved in that granular level of assessment of tenders?

A No.

Q In relation to the approach that was adopted to assessing tenders, did you have an awareness of the general approach that was going to be adopted as opposed to how technical individuals went about the task?

A Yes, because that general approach manifests itself in the evaluation criteria that gets set out in volume 1 of the ITPD and therefore what questions need to be asked of bidders, what information needs to be provided as part of the bids. So, that all gets thought about in the whole at the start, and then the information is put in volume 1 so that bidders can understand what they have to do, and then NHS Lothian, with the help of its advisors, would develop an evaluation handbook or manual which is effectively explaining how the evaluation is going to proceed. From memory, it was very similar to how we'd done evaluations on other

healthcare PPP projects that I'd been involved in, and so I am generally familiar with that process, and so would have been generally familiar with what was going to be happening here.

Q So, Mr Greer's evidence to the Inquiry in relation to the pass/fail questions, his evidence, as I understood it, was that effectively statements of compliance made by tenderers and their tenders, they were really taken at face value. They were not interrogated in a greater level of detail. Was that your understanding as to what should have taken place?

A Yeah, so it's important to be clear about what the tender is actually presenting. So, bidders are bidding to design and construct the hospital. Bidders are not presenting in their bid a fully developed design. Bidders are presenting in their bid their approach to how they will do the design, and those approaches are supplemented with various design deliverables appropriate to how much design a bidder could do in a competitive environment at their own risk in that procurement process. So, going back to the question, you know, something like the C21 compliance with Board's Construction Requirements, that question is: is your

design, once complete, going to be in compliance with the Board's Construction Requirements? You can't do a detailed assessment of the final design at tender stage because it doesn't exist. So, therefore, you're asking for confirmation that they will, in carrying out the design and construction, comply with the BCRs, and therefore you're taking a statement which is, "Yes, we will," at face value.

Q So, if we look, for example, to IHSL's assessment proforma, that is bundle 8, page 92. This is the assessment of C8, "Clarity, robustness and quality of M&E engineering design proposals." So, we are through the pass/fail and we are now into looking at the detailed quality assessment against the 1.06 weighted criteria. You will see that the "Reviewers Comments" at the top there are, "Lacking detail on design philosophy and BCR compliance." Do you see that?

A Yes.

Q Can you just help to put in context, how would a reviewer put, "Lacking detail on design philosophy and BCR compliance," if, as you have said, you just have to take things at face value because you are not going to have the detailed design at the

tender stage?

A Sorry, I'm just trying to work out what this shows. Okay, sorry, I was trying to align the rows and what they were. So that, yeah, you're referring to "Lacking detail on design philosophy and BCR compliance," which is the note in response to the bid "Submission Requirement" above, which is annotated "i. An engineering design, control and operational philosophy statement." Okay, sorry, I was just getting that clear in my head.

So, again, I wasn't involved in the detail so I'm passing comment on what I think the situation here is. So, an engineering design, control and operational statement has been included within the bid. It's been reviewed, and it seems to me that whoever's reviewed it thinks that, you know, it could have more detail in relation to some particular issues. So there's obviously something there, and there's perhaps not as much detail as there could have been. So, that doesn't mean to say it's no good. It doesn't mean to say it's not satisfactory. I think what it's flagging is that there isn't as much detail as there could be.

Q And then if we look over the page onto page 93, you see the final entry at the bottom under C8.3, it says, "While bidders are required…" Zoom in if we can. Page 93, C8.3, "Whilst bidders…" Page 93, towards the bottom, C8.3:

> "Whilst bidders are required to undertake their own design, the Board has provided a draft Environmental Matrix as part of the ITPD documentation. Bidders must confirm acceptance of the Board's Environmental Matrix, highlighting any proposed changes on an exception basis."

And you see the reviewer's comment there is, "Good response." Again, just thinking back to the comment you made earlier that, really, statements just have to be taken at face value because you are not at this stage having a detailed design, why would someone be putting "Good response" in then?

A So, again, having not been involved and I don't know whose response this actually is, I can't confirm what is written led to somebody deciding it was a, "Good response." So, I don't think I can shed light on that because, you know, it wasn't me doing the evaluation.

Q Thank you, Mr Cantlay. So, we come to a point whereby bids go in, the bids are assessed and then

NHS Lothian have to make a decision in terms of who is going to be appointed as preferred bidder. Do you provide advice to NHS Lothian at that point in the procurement exercise?

A In terms of-- Sorry, could you just repeat the question?

Q Yes, so we get to a point whereby bids are submitted, bids are assessed and NHS Lothian has to make a decision on appointing a preferred bidder. Did you give any advice to NHS Lothian at that point?

A So, again, I'm sure I was involved in the core evaluation team. So, it's quite a mechanical process. You know, the evaluation methodology sets out the specific steps. So, from the compliance completeness check, through to the pass/fail criteria, through to the scoring, how then quality is combined with price to come up with the ultimate. That all follows a very prescribed evaluation methodology, and then out of that comes a series of scoring for each bidder, which then selects the bidder.

So I guess, if I was part of, which I think I was, the core evaluation team, I would have been supporting Lothian and having a conversation about, "Right, here's the outcome of the evaluation. Are we happy that all the different parts of the team have

followed the evaluation methodology and perhaps even had a conversation to challenge a couple of things?" I don't know. I can't recall. So, I can't remember what specific advice I would have been giving, but I anticipate I would have been involved in conversations to say that, "Yes, evaluation has been carried out in accordance with the methodology that we said it would be."

Q I appreciate we are talking about events nearly 10 years ago, Mr Cantlay, so it is maybe easier if I just take you to a couple of documents. If I could ask you to have in front of you a Mott MacDonald letter of 4 March 2014. So, I think a hard copy should be available to you. Do you see that? So, it is a letter, Mott MacDonald, signed by Richard Cantlay for the attention of Mr Brian Currie. Do you see that?

A Yeah.

Q That is the bold heading, "Re-Provision of RHSC and DCN at Little France Evaluation." If we skip the section with the bullet points, you will see a paragraph beginning, "We believe…"?

A Yeah.

Q So it states:

"We believe from a technical perspective, the

technical evaluation has been carried out consistent with the evaluation methodology. From our involvement in this process, we consider the scores awarded for the technical evaluation criteria (design & construction and facilities management proposals) to be appropriate.

Therefore, from a technical perspective, it appears appropriate for the Board to conclude the evaluation process and appoint the Bidder identified as having the most economically advantageous Tender..."

Do you see that?

A Yeah.

Q Now having seen that letter, do you remember issuing that letter to NHS Lothian?

A I vaguely remember issuing it, yeah, because I remember thinking about what it was that we were confirming and, reading it now, it makes sense. It's confirming that the bits of the evaluation that we had been involved in, as far as we were concerned, had been done in, you know, alignment with the methodology.

Q Thank you, and then if I can ask you to have in front of you, please, bundle 10, volume 1, page 5. So, this is a set of minutes for the NHS Lothian's Finance and Resources Committee from 5 March 2014. So, bundle 10, volume 1, page 5. Finance and Resources Committee from 5 March 2014. You were listed as in attendance, and if we could look on, please, to paragraph 61.10, which is on page 6, the bottom paragraph beginning, "Mr Cantlay..." Do you see that?

A Yeah.

Q

"Mr Cantlay, representing Mott MacDonald, advised the Committee that as technical advisors for the reprovision of the Royal Hospital for Sick Children and Department of Clinical Neurosciences at Little France NPD project he believed from a technical perspective that the technical evaluation had been carried out in a manner consistent with the evaluation methodology. From their involvement in this process, the considered scores awarded for the technical evaluation criteria seemed to be correct and it appeared appropriate for the Board to conclude the evaluation process and appoint the bidder identified as having the most economically advantageous

tender as the preferred bidder."

Do you see that?

A Yeah.

Q Having seen that minute, do you remember anything about this meeting? Do you remember making those statements?

A I vaguely remember attending that meeting, yeah, and that minute and the letter are very much saying the same thing, yeah.

Q Again, just for completeness, if we look over the page to page 7, paragraph 61.20, towards the bottom, it says:

> "Mr Cantlay confirmed that the scores were all appropriate and he was happy with the evaluation and satisfied that the preferred bidder was in full accordance with the requirements."

Do you see that?

A Yeah.

Q Again, from what you have told us, would it be fair to say that you are leading the project but, in a sense, for some of this you are relying on what you have been told by colleagues within Mott McDonald who were involved at the more granular level of detail in the assessment?

A Correct.

Q So, from this point,

whereby the preferred bidder is appointed, I think you mentioned earlier that your role in the project was perhaps slightly diminished from that point on. Are you still involved in, effectively, your role as the lead technical adviser, but is this the point whereby some of your colleagues are taking on more of the day-to-day responsibilities?

A Yeah, so I think at this point-- this is when Graeme, who'd obviously been involved in the project from, I think, around about competitive dialogue round three and then through evaluation, this is really when he would take over. So that phasing happened over dialogue. So, I was very much leading pre-procurement; he was very much leading preferred bidder on, and I guess it was a transfer over that period. So, to answer your question, yeah. So I wasn't, from memory, involved in the day-to-day at this point at all and, basically, was there to give Graeme some support, advice, benefit of my experience having done this and a number of other projects.

Q In terms of your interactions with Mr Greer, do you remember him raising any significant concerns about the project in the period from preferred bidder until financial close?

A Yeah, so-- and, again, I can't remember specifics, but the general theme of conversations we would have been having would have been him raising things he wanted to seek guidance or a view on, and I guess the general flavour of those conversations was about the challenge of getting what he considered to be the right level of detail in the design for inclusion in the contract, so what becomes Project Co proposals. So, that was the general flavour, and then associated with that there was a whole load of sub points which were going into technical detail. So, I guess-- Well, sorry, that's the answer to the question. I was going to say what happened next.

Q We can come on and discuss that in a second. I think one thing I would be interested in your views on: you are having these discussions with Mr Greer. He is raising issues cropping up in the project, including the level of technical detail. From your perspective, the types of discussions you are having, are these issues that are part and parcel of a big infrastructure project, or were there specific issues that were really ringing alarm bells on this specific project?

A I think almost every

revenue funded project I've been involved in-- there is always this tension between how much design data you can get up to the point of financial close, both through the bid period when bidders are in a competitive environment and so all at their own cost and only one of them is going to be successful, so you need to be reasonable in terms of how much you can ask bidders to do and what level of design you can expect them to do at risk. When that goes into the preferred bidder to financial close stage, that risk diminishes somewhat for the private sector bidder in that they are identified as a preferred bidder, but I guess there is still a risk that they never get to contract, bearing in mind the way the payment works under a revenue funded project. So there's always, therefore, this tension, which is the procuring authority trying to get enough to allow them to be confident, but then the preferred bidder – and I'm not speaking about this particular product, I'm just talking about generally at the moment – wanting to develop it, effectively, still at their own cost. So that is a natural tension that exists on every revenue funded project. So there was probably some of that, which I've experienced in all projects, and then there was

probably some project specific areas as well. So the answer to your question is probably a bit of both.

Q Again, the Inquiry has heard evidence from a variety of witnesses whereby there came a point, really, from the summer of 2014 to Christmas 2014 whereby it seemed that there was a mismatch in expectations – that is how it was described – between NHS Lothian on one side and IHSL and Multiplex on the other. A mismatch in expectations in terms of what one wanted to be provided and what the other party was prepared to provide. In the discussions you are having with Mr Greer though, did you view that as simply part and parcel of a big infrastructure project, or were there specific issues-- specific concerns with this project that made it stand out from the rest?

A Well, I dare say mismatch of expectations is probably not the first time I've-- whether it was using that exact terminology in other projects, I've heard that before. So, as I said in my last answer, that to some extent is something that does happen generally on other projects. In terms of here, I guess there was-- and while that often happens on every project, there's always specific parties involved

on any particular project. I'll probably just reiterate my last answer. I think it was a combination of what we always see and then some project specific issues as well, but I can't-- you know, I'm not sure if I'm answering your question, but I just think it was a combination of those two things.

Q Mr Greer explained to the Inquiry that his understanding of the way of resolving that issue was by putting a number of issues into reviewable design data. Do you remember having any discussions with Mr Greer about the volume of reviewable design data for this project and whether it was more or less than would be anticipated in a project of this nature?

A Again, I can't recall specifics, but I certainly-- I do recall conversations around-- One way of dealing with a lack of detail is to require it to be dealt with post financial close. The bidder has put forward a bid for, effectively, a fixed price, and whether they sort it out pre or post financial close-- effectively, they're taking the same risk around about that. So one way of dealing with areas, which perhaps haven't been developed as much as ideally you would have liked, was to reserve the position and ask it to be put through

the RDD and make sure that the Board is not being exposed to any more risk than they would have had they agreed it pre-financial close, and then the more you do of that, the more RDD there is. I don't specifically remember a conversation which was around, "You're going to have too much RDD to be able to do anything with." I don't remember that. You know, to me, what I probably recall is a conversation around about, "Make sure that, you know, we're protecting the Board through the RDD process contractually."

Q Do you remember any issues being raised with you in the period from the preferred bidder appointment to financial close about the fitness for purpose of the ventilation system in particular?

A Sorry, can you repeat?

Q So, again, we are in the period from preferred bidder to financial close. Do you remember, in that period, any specific issues being raised with you in relation to the fitness for purpose, the ventilation design?

A I probably do have vague memory of that being one of a number of things that were getting dealt with in that period from PB to financial close. Not being my area of technical expertise, I wouldn't have necessarily

been able to get involved and help and solve it technically but, to answer your question, yes, he would have made me aware that one of the issues that we're dealing with in the run-up to financial close would have related to ventilation.

Q So, again, I am going to ask you to look at a couple of documents, Mr Cantlay. If you have not seen them before, you do not remember them, please do just to say, but it is really in fairness to you to try and orientate where I want to go with this current discussion. If I could I ask you to have in front of you, please, bundle 8, page 71. This is a document that was created in November of 2014 by Mr Macrae, who was a mechanical engineer with Mott MacDonald. It is really just the final entry under the table. You will see a section that says:

> "Mott MacDonald concern is that the room will be at slight positive pressure relative to the corridor which would allow infections such as MRSA or Norovirus to spread."

Do you see that?

A Yeah.

Q The way Mr Macrae explained it was he had done a sampling exercise on the third bidder's solution and had identified an issue in

terms of a possible risk of spread of MRSA or norovirus. Do you remember any such issue cropping up in terms of your involvement in the project? Was that something that was escalated to you?

A I don't recall this document or a specific conversation around about that, no.

Q The only reason I raise it is if we think back to the confirmation that Hulley & Kirkwood had given, which was effectively to say, "Our design, our Environmental Matrix complies with all published guidance, including HTMs, SHTMs." IHSL as preferred bidder, does not make any changes to the Environmental Matrix, get to the point in the preferred bidder stage whereby one of the engineers within Mott MacDonald spots an issue with the design solution for the ventilation system that might give rise to risk of spread of MRSA or norovirus. Are you slightly surprised that within Mott MacDonald that is not a red flag that there might have been problems with the information and the Environmental Matrix produced by Hulley & Kirkwood?

A I mean, just thinking about it, I guess this is a level of detail conversation, isn't it? So, we were pre-procurement. We're then in

procurement. We're then into a stage of that design being developed to another level of detail. So, is it a surprise that this issue was raised at this point in time? No, not really, because I suspect the conversations at this point of time were getting into that next level of detail. As the preferred bidder developed their design, it's going into more detail and, therefore, any review by the Board and their team is going in too, and there would just naturally be more detailed conversations taking place, I think.

Q The next document I would ask you to have in front of you is bundle 10 volume 1 at page 283. This is a "Healthcare Associated Infection System for Controlling Risk in the Built Environment (HAI-SCRIBE)" report from 19 November 2014. Do you see that?

A Yeah.

Q I am now talking about the period up to financial close. Do you remember seeing this document in that period?

A I don't recall, no.

Q Have you seen the document subsequent to that period?

A I'm not sure I did. I don't know at what stages the HAI-SCRIBE reviews were carried out, but if there was one carried out on the reference

design then, again, it would have been in that ring-fence team. I definitely can't recall seeing this document or necessarily ones before it if they exist.

Q The reason I take you to the document is if we look a couple of pages on to page 286, you will see entry 2.2, and it says, "Is the ventilation system design fit for purpose, given the potential for infection spread via the ventilation systems?" and that is ticked as "No." Again, is this a document that would be dealt with more at the project level? This is not something you would be expecting to be escalated to your level within the project?

A Sorry, I'm just reading the-- Yeah, well, what was the date of this? Sorry, in relation to----

Q 19 November 2014.

A 19th, right. Okay, so, yeah, and going by the note, it sounds like there is a question over "Is there a potential?" and then it sounds like there is proposals sought from the preferred bidder to give more detail to answer those questions. So, I think my reading of it – again, I haven't seen this before – is that there's a question to be asked which, in terms of answering that question, there is additional design data being sought. So, I guess, it would have been

perhaps escalated to myself if the answering of that question still left an issue, and I don't know whether it did or not.

Q If I could ask you to have in front of you, please, bundle 8, page 84. This is a document headed, "Design Risks to the Board to Financial Close." Do you see that?

A Yeah.

Q Do you remember seeing this document and this type of document, so risk registers in the period to financial close, or was this the type of document that would be dealt with by others within Mott MacDonald given the relatively high level that you were adopting in relation to the project?

A So, this would be the-- you know, this document's not an unusual document to be in existence at this time, identifying risks. I can't recall whether I saw this version on this project at this point in time but, thinking back to conversations, I do recall the concept or Graeme talking about how there was-- or recording these sorts of risks in a register to support NHS Lothian in terms of understanding them and considering what to do with them. So while I can't remember the specific document on this project, this document isn't an

unusual one for me.

Q If we just look at the first entry, so the category is “M&E”, the item is “Ventilation” and the risk impact is described as “High” and it says:

> “The single room with en-suite ventilation design shall comply with the parameters set out in SHTM 03-01.”

So, potential issue of non-compliance with SHTM 03-01. Would it surprise you that, at this stage in the project just before financial close, there is a potential issue around non-compliance with SHTM 03-01, given the confirmation that Hulley & Kirkwood had given way back in 2013?

A Again, I’d probably go back to my answer of three or four questions ago, which is the design is developing as we go through the procurement process and, therefore, the conversations and the design goes into more detail and, therefore, the conversations go into more detail. Ultimately, the risk allocation associated with this sort of form of contract is that that design risk sits with the private sector and, therefore, something like this to me-- it’s clear that where the responsibility lies for sorting out any issue like this, but is it a surprise that this is on this risk register? No, I don’t necessarily think it is. It’s just it’s an issue that has been flagged given a more detailed conversation about ventilation than has happened in the project so far.

Q So, just in the period before financial close, various key stage reviews take place and then there is the final business case that needs to get approved, effectively, for the money to be provided for the project. Were you aware that your letter 4 March 2014 that we looked at had been included as an appendix to the final business case?

A No, I don’t recall if I was aware or not.

Q Just given some of the risks that we have looked at on that risk register, would you be surprised if the letter, in an unqualified form, went in without some of those risks also being identified, or was that not part of your role to make that assessment?

A Yeah, but the-- so the letter you refer to is March 2014 and this document we’re referring to is January 2015 and, during that time, there is more detailed design being developed. Again, referring back, naturally then the project and the people involved in the project are going into more levels of detail. If you go back to the letter that is of 4 March, this is me confirming on the behalf of

my team that I believe the evaluation has been carried out in accordance with the evaluation methodology. We covered C21, which is, "How do you look at compliance? Do you take it at face value?" So that's all underpinning this letter. To me, this comes back to the project now going to the next level of detail and flagging an issue that now is seen as an issue which was deemed to be or wasn't known at a previous point because the conversations at a previous point weren't involved in that level of detail.

Q Yes, so, absolutely, the letter 4 March 2014, that is a snapshot in time. Do you remember either you, yourself, or anyone at Mott MacDonald being asked to give an updated assurance just immediately prior to financial close in relation to the technical issues on the project?

A I can't recall. I certainly don't remember doing that. I do remember this letter. I do remember the meeting. I can't recall anything pre-financial.

Q And just in terms of your experience of revenue funded projects, would it be normal for that advice to be refreshed just before the contract is signed or is that not something that happens on a revenue funded project?

A No, I can't necessarily

recall, and I've been on a number of projects which have reached financial close. I can't necessarily recall a need to provide a statement like that at financial close.

Q Thank you, Mr Cantlay. There is just two more issues that I want to cover, and they are slightly out of order from the rest of the matters that I have been asking you about. The first is, if I could ask you to have in front of you, please, bundle 2, page 605. This is a paper headed "RHSC + DCN - Approach to Reference Design." Do you see that? From May 2012?

A Yeah.

Q Could I ask you to look onto page 626, please. After the bullet points, first full paragraph, approximately four lines up from the bottom of that paragraph. It is the text in yellow. Do you see text beginning, "Similarly the Environmental Matrix…"? So it says:

> "Similarly the Environmental Matrix specifies parameters and criteria that need to be met and for which the Bidders will be required to advise the levels that will be achieved in their particular design."

That was obviously the intention at that point in time. That changed.

Can you remember when that intention changed?

A Sorry, which?

Q So, we are looking at the text in yellow that says:

> "Similarly the Environmental Matrix specifies parameters and criteria that need to be met and for which the Bidders will be required to advise the levels that will be achieved in their particular designs."

So that reads as suggesting that at one point in time it was going to be a fixed document. You told us in your evidence that that changed; that was not the intention. I was just trying to understand when the thinking changed.

A Yeah, okay. I mean, my reading of that is that that is still alluding to the fact that bidders will be required to advise the levels that they will achieve in their design, the second half of that yellow highlighted writing, but to answer your question then-- Can I just see actually the date of this or the version of this document?

Q Certainly. So, if we go back to, I think it is page 605.

A Because this is the----

Q It is May 2012.

A I was just keen to see what revision or version, because there was a number.

Q So if we go to page 607, this is revision F. I think it went on to revision J eventually, but what we are looking at here is revision F.

A Yeah.

Q So page 607.

A Yeah, so, maybe it's helpful just to be clear about what this document is. This document goes all the way back to, in fact it's the first question you asked me after lunch about advice on use of reference design etc. So, what this paper was trying to do was absolutely get agreement, NHS Lothian side, as to how we will use the reference design as part of the procurement process, and so this paper-- when I say Lothian side, I mean the Lothian project team, so people from NHS Lothian, ourselves, other advisors, etc. So, what this paper is doing-- I would refer to this as an internal advisory paper. I don't mean internal to Mott MacDonald. I mean internal to the NHS Lothian project team. It's trying to provide an audit trail of how we end up getting to an end position which is that which we set out in the ITPD.

A bidder doesn't really need to understand why we got to the answer that we got to. They need to understand what the answer is we got

to as reflected in the ITPD. This document was helping us get agreement on what that answer was going to be, and by "answer" I'm talking about how we're going to use a reference design in the procurement process. So, this changed a number of times, from day one on the project all the way through to, "Right. We're now finishing the finalising the ITPD. What is the final position?" I remember this document took twists and turns as people fed back, and "What about this, and what about that, and what about this other consideration?" There was also conversations, I think, with SFT about this document.

So, to me, this document is a means to an end, the end being what is set out in the ITPD. Can I recall what happened at each iteration? As you say, I think it went up to revision J. I can't remember each. If I tracked back and read every single one, I would be able to confirm what each change was, but things were moving around and, to me, if we're talking about the Environmental Matrix and whether it is mandatory or not, it's clearly not in there in terms of the ITPD. Therefore, it's a positive decision not to make that mandatory.

Q Okay. Again, just finally within this document, if we look onto page 642, you see this is various deliverables. So, one deliverable there, the second entry, is Room Data Sheets. You see in the notes section, "RDS for all rooms and space types." Was there a point in time where the thinking was that there would be a full suite of room data sheets that were provided?

A Early, yeah. So, yes, at a point in time for discussion while these issues were all still getting debated. How do we use the reference design? How do we avoid cutting across the risk profile that is needed in a PPP or revenue funded project?

Q Again, I think as you have said, the purpose of this document, internal document, developing thinking and showing a snapshot of thinking in time, but that changes by the time we get to the ITPD that we have looked at.

A Yeah. It's a means to an end. The important point is what the end was.

Q Thank you, Mr Cantlay. There is just one final issue that I want to raise at this stage, and it is really a general point, looking for your observations, given your experience working with revenue funded projects, and your knowledge from this project

in particular. So, NHS Lothian's position before the Inquiry is that they accept that there was an error in some spreadsheet values that starts right at the start of the project and it does not get spotted through the procurement stages and into the point of financial close when the contract is concluded. From your perspective, how could such issues be avoided or mitigated in future projects of a similar nature?

A That's a big question. I mean, there's a whole series of the sort of things that the industry could do to move on, whether it is pulling together the healthcare-specific design guidance, because at the moment design guidance is – in Scotland – this kind of combination of, well, you comply with the SHTM, and if there's not one, you comply with the English HTM unless the SHTM's a bit old. There's this kind of-- it's quite a confusing sort of guidance situation. There is obviously ADB. One school of thought through this Inquiry is if you use ADB, then everything's going to be fine, but I think there's also another clear school of thought that, actually, ADB isn't necessarily the answer to all things and doesn't necessarily mean there won't be mistakes.

There are so many different opportunities to think about how you

do it that, in answer to your question, I don't have any specifics here and now as to what we should do to avoid anything happening like this. There is lots of opportunities, and I know people approach these projects with best endeavours. Everybody wants to make it a success. This project was particularly complicated given the-- well, for a number of reasons: its history and getting to where it had got to before it became NPD, the fact it was going onto a very complicated site, both physically and contractually. Health care buildings are complicated in themselves, so how do we avoid things like this in the future? I think there's a whole plethora of opportunities. I'd have to go away and think about them in detail to give you a response that merits the question.

Q Thank you very much, Mr Cantlay. I do not have any further questions at this stage. Lord Brodie may have some questions or, equally, there might be applications from core participants but, at this stage, thank you for answering my questions today.

A Thank you.

THE CHAIR: I do not have any further questions at this point, Mr Cantlay, but what I propose to do is to allow the other legal representatives in the room to consider their positions as

to whether there is anything further they would wish to be raised. So we will take a break and sit again at about half past three, and Mr MacGregor should then be in a position either to say there are no further questions or make the arrangement for such further questioning. So if I could ask you to retire to the witness room, and we will see each other again at half past three.

THE WITNESS: Yeah. Thank you.

USHER: Please stand.

(Short break)

THE CHAIR: Mr MacGregor.

MR MACGREGOR: Lord Brodie, there is one point of detail that I have been asked to clarify, which I am content to do. Beyond that, I wouldn't anticipate there being any applications made.

THE CHAIR: Could I ask Mr Cantlay to join us again? (After a pause) Mr Cantlay, I understand there is just one further matter which Mr MacGregor will ask you about. Mr MacGregor.

Q Thank you, Lord Brodie. Mr Cantlay, there is just one small point of clarification. If we could go back to bundle 2 and to page 86, please, which was the contract between Lothian Health Board and Mott MacDonald Ltd, and zoom in and look at entry 16, which is the:

> "Check Reference Design for compliance with all appropriate NHSL and legislative guidelines and requirements (list as pre-agreed with NHSL) and identify any derogations."

Do you see that?

A Yeah.

Q Now, there is an entry just a few boxes along, which is for the man days allocated to that. It is five days. Do you see that?

A Yep.

Q I think you had mentioned in your evidence that that would include checking with Elaine Kirkwood that there was compliance with all relevant published guidance. Do you know what, if anything, else Mott Macdonald would have done in the five days that were allocated?

A No, as I say, what I understand from that task, given the number of days, is that it is not an independent check by any stretch of the imagination. It is getting to a point where we can be clear that the reference design is in compliance. So, my understanding of the days-- I don't necessarily know what the five days

were envisaged to do at the time this was drafted, but my understanding of how the time was spent was doing what I described earlier, i.e. getting confirmation from the reference design team consultants that they believed that they had complied with the guidance and to list out any derogations.

Q Thank you Mr Cantlay. I do not have any further questions but thank you again for your time today.

A Thank you.

THE CHAIR: Thank you very much, Mr Cantlay. You are now free to go, but before leaving us, can I add my thanks for your attendance today, but also for the preparation that went into your witness statement. I appreciate that it is not just a question of a few hours answering questions. It is a lot of work, so thank you for that.

MR CANTLAY: Okay. Thank you.

THE CHAIR: Now, ladies and gentlemen, I think a few words on the procedure which I would propose we should follow. As I think you are aware, I am not proposing to hold oral hearings in order to hear closing statements, but I do invite closing statements from all core participants who wish to provide them. Now, Mr MacGregor will correct me on the timetable as I understand it. The counsel to the Inquiry will begin the process by drafting a written closing statement, which will be circulated by 2 June.

Core participants are expected to exchange draft closing statements amongst themselves by 16 June, and core participants are required to submit their closing statements to the Inquiry by 30 June. So, 2 June, statement from counsel to the Inquiry; 16 June, expected circulation among the core participants; and, 30 June, core participants to submit their closing statements to the Inquiry. The next hearing, as the Inquiry has already given notice of, will relate to Glasgow and will begin on 12 June. Now, as core participants will appreciate, notwithstanding hearings, investigation continues both in relation to the Glasgow hospital, and the Edinburgh hospital.

As I think Mr MacGregor has previously indicated – or if he has not, I am now indicating it – the next phase in relation to Edinburgh will be particularly focusing on the decision of the Cabinet Secretary to postpone the opening of the Royal Hospital for Children and Young People, that decision being in July of 2019, and the subsequent decision to open the

hospital. Now, I continue to value the cooperation of the core participants. The progress of the Inquiry and the eventual utility of the Inquiry depends in large part on that participation.

The next hearing in relation to Edinburgh we hope to hold in the course of this year, and it is perhaps not possible to go beyond that at today's date, but we will make a formal announcement as soon as possible. Mr MacGregor, is there anything that occurs to you that I should have said?

MR MACGREGOR: No. Nothing else, my Lord.

THE CHAIR: All right, and I take it nothing immediately arises. Well, thank you for your attendance. We shall be seeing each other again but, meantime, have a pleasant afternoon. Thank you.

CLERK: Please stand.

(Session ends)

15.40