



SCOTTISH HOSPITALS INQUIRY

**Hearings Commencing
16 September 2025**

Day 1
16 September 2025
Michael Baxter
Kenneth Winter

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10:03

THE CHAIR: Good morning to those present in the hearing room in Edinburgh and to those who are following proceedings on the YouTube feed. Today we begin a hearing which is planned to go over the next four weeks and has the purpose of concluding the oral hearing of evidence in the Inquiry. Mr Mackintosh is leading our first witness, who I think is Mr Michael Baxter.

MR MACKINTOSH: Yes, Mr Michael Baxter, who gave evidence previously in the Edinburgh hearings. He appears remotely, my Lord.

THE CHAIR: Good morning, Mr Baxter. Can you hear us clearly?

MR BAXTER: I can hear you clearly, Lord Brodie. Thank you.

THE CHAIR: Right. As Mr Mackintosh has just said, this is your second appearance before the Inquiry. Thank you for your attendance. I understand you're prepared to take the oath.

MR BAXTER: I am indeed.

Mr Michael Baxter

Sworn

THE CHAIR: Thank you, Mr Baxter. Now, as you will be familiar from your previous attendance, our plan is usually

to take a break during the course of the morning. Your evidence is scheduled for the morning, but if you want to take a break at any time, just give an indication and we will have a break. Please feel that you're in----

THE WITNESS: Thank you.

THE CHAIR: Please feel that you're in control of the timetable in that sense. Now, Mr Mackintosh.

Questioned by Mr Mackintosh

Q Thank you, my Lord. Mr Baxter, thank you again for returning to give evidence. Can I ask your full name?

A It's Michael Alan Baxter.

Q What I wanted to ask is that-- You provided a statement to the Inquiry team. Are you willing to adopt that as part of your evidence?

A Yes, I am.

Q I think it's probably worth acknowledging at this stage that the Inquiry team and I are conscious that I'm asking you questions about events in 2009 and 2010, which is rather a long time ago, and if at any point you feel that affects your recollection, you should say so, and we might try and explore things in other ways.

What I wanted to do first was firstly to-- We'll do three things today: one is to look at the difference in timing of the two

projects in Edinburgh and Glasgow to the extent that's relevant to your work; then discuss the work of the Capital Investment Group as it was applied in broad terms at the time of the Glasgow outline business case and full business case; and then look at your work on a number of groups that were set up in the Health Board during 2009 and 2010.

A Okay.

Q I'm hoping we can do the first bit relatively quickly. To what extent were the outline business cases of the Glasgow and Edinburgh hospitals approved at approximately the same time?

A So, the original outline business case for the Sick Kids in Edinburgh was approved, I think, 2008, and 2000-- roughly about the same time for the outline business case for Glasgow. The issue, I think, around the progression of the projects varied in the sense that the timing of progress, the implications of the financial crash in 2007/2008 and the impact of the UK Government's spending review on availability of public capital then influenced the direction of travel on both projects.

Q Yes, and, in simple terms, the Edinburgh project took longer to get the full business case.

A Yes, correct.

Q So, we understand that the Glasgow Gateway Review 2 was January 2009 and the Gateway Review 2 for what became the Edinburgh project is September 2011, and that the full business case for Edinburgh was in August '15 but full business case for Glasgow was in November '10. Is that broadly as you recollect it?

A I can't comment on the Edinburgh one. I left the Health Service at the end of 2014, but if that's what your records show, then I assume that to be correct.

Q Because what I wanted to sort of start off by is attempting to understand if there are any significant differences between the system that was being operated in for capital investment approval between when you left -- obviously the latest time you can speak about -- and the time that the full business case for Glasgow was approved. I wonder if we can go to your statement, and we go to paragraph 10 and 11, which is on page 6, we'll start, of the statement bundle.

A Yes.

Q Now, we obviously can read your statements, and you've set out in some considerable detail the structure of the Capital Investment Group on this page and over the page, and it's at 11 that we talk about the Scottish Capital

Investment Manual.

Now, if we look at bundle 48, document 3, page 136, which is the reference we've inserted, this is a draft, and I wonder if you can help us understand what was going on at the time, because we haven't been able to find the principal version of the 2009 Capital Investment Manual. If we look at another document, the CEL 19 of 6 May 2009, which is bundle 48, document 1, page 4, we see a letter, I think, from you, if we just check the next page to see who wrote it. Do you recollect this letter?

A I recollect the updated SCIM communications.

Q Yes. So, if we go back to the previous page, we've not been able to recover from either Scottish Government – no, page 4 please – or from anywhere more esoteric like the National Library a copy of the version of the manual you issued with this letter. The document I showed you briefly before was the draft from 2005. What I wanted to understand is, from your recollection, was there any substantive difference between the version of the SCIM that was in place in 2009 and the version in place when you left in '14?

A I can't remember a specific variation, but in essence the Scottish Capital Investment Manual follows the sort of treasury green book approach to

business case development and a five case model, with an initial agreement, an outline business case and a full business case process, and that's supported by some technical guidance.

From memory, I think the difference between 2005 and 2009, there was some further work done in England following Treasury guidance on things like optimism bias, which was the tendency to overestimate benefits and underestimate costs, and how that was then factored into economic and financial analyses. But the overall process-- I think that the format of the business cases would have been refined somewhat, but fundamentally the process would have remained the same.

Q We'll come back to the area of the policy of design quality for NHS Scotland and the extent to which that's incorporated in a moment, but what I want to do is to just ask you a question about that development. If you're a Health Board official who generates an outline business case in 2008-- I'm sure they should all read the manual and keep it by their beds every night but, from their point of view, will it have evolved much between '08 and '10 when they put the full business case up?

A What I would have expected to have seen, hopefully to answer your question, is that a business case would

have been prepared on the basis of the extant guidance at that point.

Q Yes.

A So, if an outline business case is prepared on the basis of the 2005 and the full business case was then post-2009, then the full business case I would have expected to follow the revised guidance, subject to, you know, the proximity of timing to that being issued.

Q Yes, because there are rules in the manual about which version applies depending on when the deadline is.

A Correct, yeah.

Q If we just look at the outline business case, which you've addressed in your statement on paragraph 16, which is on page 8-- Now, this is why I need to check. Before preparing for this Inquiry, do you remember the last time you would have read the outline business case for this hospital?

A Probably around that time.

Q Yes, and have you had an opportunity to look at parts of it for the purposes of answering our questionnaire?

A I've reviewed parts of it to answer the questionnaire, yes.

Q Right, but you've not reviewed the whole thing?

A No.

Q No. I appreciate that. Now, if

we go to paragraph 16, you've set out in that paragraph in the middle of it, the fourth line:

"As with the discussions around the ASR, the OBC did not go into extensive detail about the proposed design of the building, or exact procurement model that would be used. Instead, the OBC set out a shortlist of service options alongside the cost, risk and benefit of each, in order to assist in the identification and validation of the preferred service option and how that would be delivered."

Now, in this context, I'm not interested in the procurement method because I know that changes. I'm not proposing to press you about that, but in terms of the outline business case not going into extensive detail about the proposed design of the building, is that what you would expect at the time?

A At that stage, because effectively the outline business case would be prepared pre-procurement. So, effectively, the level of design would be adjacencies in terms of healthcare planning, in terms of the sizing of the building based on the number of beds and various specialisms, and the costings would be based on those estimates. Only when you're in procurement were

you then into the absolute detailed design process with the contractor.

Q Now, what I want to do is go to an aspect of the response by NHS Greater Glasgow and Clyde to our position paper on governance, and this is bundle 50, page 4, at page 2.4. I'm not necessarily sure you've seen this, so we'll take it slowly.

A Okay.

Q Page 24. Sorry, page 2, sorry. So it's on page 4, please. So, do you see there's a section at (iii), heading, "Subsection 'Approval of the OBC', paragraph 138":

"NHSGGC wishes to clarify that a draft version of the OBC was provided to Mike Baxter on 11th January 2008. The Scottish Government CIG issued a table of questions to NHS GGC on 28 February 2008 which were responded to by NHS GGC on or around March 2008."

Now, they can't locate the correspondence, but they could find the table, which is then provided. I doubt you remember much of these events at this distance in time.

A No, but what I would say is that what would-- and not unique to the project in Glasgow, or indeed Edinburgh, is that as business cases were being

developed, there would be engagement between the health board concerned and the Scottish Government around any particular guidance or the development of the business case. I'm not specifically talking here about technical guidance, you know-- which is not the purview of my role or my expertise, but if there were questions around compliance with the SCIM, then there would often be dialogue between the Health Board and me or my team around the development of the business case in order to provide guidance. What we tried to avoid was being presented with the final version of a business case coming forward that then, you know, there were issues with that then needed resolution. So it was really trying to work collaboratively with the Health Board, but it is the Health Board's business case.

Q I'm not going to take you through it, but if it's the case-- There's two issues that I'm interested in, if I can flag them now. So, one is the question of compliance, if that's the right word, or concordance with Scottish Government technical guidance, and we'll come back to that. The other is the importance of having a technical advice team throughout the procurement of the project. Now, I mention those because they're things that interest the Inquiry team.

A Okay.

Q But if it was the case that neither of those things come up in your questions in the response document that GGC have found, why might that be the case? Why might you not have got into a discussion with them about those two issues in the outline business case?

A So, if I've picked you up correctly here, and please feel free to correct me, we reviewed what we were presented with, and if there was no disclosure of a particular issue, then we had no basis of questioning that issue. In terms of the kind of technical guidance, obviously the Health Board themselves had their own staff and their technical advisers that were there to provide them with evidence. If I'm straying off topic here, then please stop me, but if we had been presented with an issue in that list that represented a technical issue in terms of compliance, then neither I nor my team had the technical expertise to comment or address that, and what we would have done would have been to have sought advice through Health Facilities Scotland and, where appropriate, the chief medical officer's office if an issue had been flagged----

Q I understand that, Mr Baxter. I suppose it's more not so much what you would have done if an issue had been raised or you could see obviously there

was an issue there even from a non-expert point of view. It's more, would you expect a outline business case to discuss in any way compliance or concordance with technical guidance from the Scottish Government or the fact they were or were not going to have a technical team through the procurement? Would you expect that to be in an outline business case?

A I would expect the management case and outline business case to detail the expertise that was being brought to bear in taking forward the project, whether that was internal or external, but, in terms of disclosure, my assumption would be that if there was any deviation from standard, then there should have been a disclosure, and not necessarily in the business case itself or at the point that the business case was presented, but that would have been disclosed at an earlier stage in order to allow an analysis of that to have taken place. That wasn't the case in what we're discussing here.

Q Now, one of the things that you have drawn our attention to is the policy on design quality for NHS Scotland, and it occurred to me that we should start by looking at the 2006 version, which was the version that was in play at this point.

But, before I do that, we've noted that there's no reference in the outline

business case or appendices to ventilation or SHTM or temperature, but it does say, if we go to bundle 17-- in fact, I don't think we need to go to it, but it will be built to the highest quality and safety standards and the best practice in terms of infection control principles. Is that in any way unusual, not mentioning those details but making statements of broad aspiration like that? Is that unusual for a business case?

A I wouldn't say it's unusual at an outline business case stage because that's about setting out, as you've described, the aspiration for it before the detailed design has been undertaken.

Q Let's go to the Design Quality Policy. So, that is an Edinburgh bundle, which confuses us all in this Inquiry because we have different numbering sequences for the two, which is probably a lesson for the future, but it's a bundle from the 9 May '22 hearing, bundle 3, volume 1, document 4, and the document itself starts on page 114. This is 23 October 2006, and the signature of the letter is Mr Smith, if you go two pages on to 116. To what extent is Mr Smith a predecessor of yours?

A No, Alex Smith was the-- as it says on the document, was the interim director of finance, so he was-- at the time in 2006, he would have been my boss's boss, if you like. So, at that point,

I would have reported to David Hastie as the----

Q And David Hastie would have reported to Mr Smith?

A Correct.

Q Right. Now, what I wanted to do is go to the same place that you referred us to in a different version of the design quality, and that's on page 133 of this bundle. If we actually go to 132, it makes more sense. So, do you see at the bottom of the page there's a heading called "Activity DataBase (ADB)"?

A Yeah.

Q We now know what an activity database is -- we've heard evidence about it -- and if we go over the page, there's discussion on the second paragraph of how ADB is produced by the Department of Health, and the third paragraph:

"In 2005, the Scottish Executive Health Department... initiative..."

It's the last paragraph that you seem to think is important. Can you explain why?

A Because what the policy set out in the 2006 and the subsequent version of it were a number of mandatory requirements, and, from my statement and from memory, Mandatory Requirement 7 set out that the use of the Activity DataBase was a mandatory requirement. Now, the linkage to the

discussion here is that, because the Activity DataBase is predicated on English guidance and adaptable for Scottish technical guidance, then if the Activity DataBase is used in the speccing of facilities, then those facilities would be deemed to be compliant.

Q Well, we can go back to page 125, and we see the list of the mandatory requirements. Are you looking at Mandatory Requirement 5, that you must use the ADB process tool?

A Sorry, it's Mandatory 5. Apologies, that was my mistake.

Q No, no, no. I mean, it's a long time ago. So, it says:

"All NHSScotland Bodies engaged in the procurement of both new-build and refurbishment of healthcare buildings must use and properly utilise the English Department of Health's... (ADB) as an appropriate tool for briefing, design and commissioning. If deemed inappropriate for a particular project and an alternative tool or approach is used, the responsibility is placed upon the NHSScotland Body to demonstrate that the alternative is of equal quality and value in its application."

If we go back to 133, this last paragraph seems to say something.

What do you think it's telling the reader?

A I'll need a minute to read it, if you don't mind.

Q Of course. We can zoom in, I think, and make the last paragraph----

A If you could, that-- yeah, making the text a bit bigger on the screen would be extremely helpful, thank you. Thank you. (After a pause) Yeah. So, my----

Q Now-- Carry on?

A My interpretation of that is that, where there is variation to the Scottish standards, then any adaptation of it should ensure compliance with the planning notes or Technical Memorandum.

Q What does that mean in practical terms for a health board? I mean, if we put ourselves in the Health Board's shoes for a moment, as opposed to your position. So, you're designing, planning on procuring a hospital, your outline business case in 2008-- What do you actually have to do? What do you actually have to do when faced with a Scottish Health Technical Memorandum that's been published at the time, in terms of this paragraph? What's it making you do?

A Well, in terms of-- This is-- This is in connection with the planning of new facilities. Clearly it doesn't cover historic, but in the planning of any new

facilities, my reading of that is that a relevant health board would have to ensure that the use of ADB Data is amended to make sure it complies with the Scottish guidance.

Q How would you respond to the suggestion that this doesn't actually say, "You have to follow SHTMs"? What it actually says is, "When designing your hospital, use ADB as a system and check that its English design isn't inconsistent with various Scottish standards, one of which is SHTM." Would you accept that it's slightly at second order? It's not a direct instruction, is it?

A I wouldn't-- I wouldn't necessarily agree with that statement, and the reason being, if-- looking at that paragraph that's been referenced, the specific reference to the adaptation of the English guidance or the data in the English guidance to reflect the Scottish technical guidance-- Now, if the inference wasn't that the planning or the design should be compliant with our standards, why would that reference be in the guidance?

Q So you wouldn't accept that this is, at the best, an implication as opposed to an overt instruction?

A I would have-- My own view, and I can only speak from my own view, is that that guidance means, in my view, that the briefing should be compliant with

the SHTMs.

Q The briefing of the design team, effectively?

A Well, the-- the data, effectively, that's used to design the facility, yes.

Q Right. I mean, I appreciate this is not a material-- issue you were dealing with. We've had some evidence that when faced with the ADB code process for certain rooms, there were not codes in the English set for a particular sort of room that needed specialist ventilation in the eyes of some. Are you effectively saying that this process would have required the designer to check against the Scottish memoranda?

A If there was an absence of data, then I would expect the data to be used to be compliant with the Scottish memoranda, yes.

Q Now----

A And the-- Sorry.

Q Sorry, carry on.

A The source of expertise around that in the Scottish health system would have been Health Facilities Scotland. So, if there was any dubiety, I would have expected a health board to engage with Health Facilities Scotland, who had technical experts available to provide advice to NHS Scotland at the time that this was being done.

Q Okay. Well, I want to think about the outline business case, and you

may not be able to answer this question, given the passage of time, so I'll put it and see how you-- When you and your team reviewed the outline business case, would anyone in the CIG have been thinking about the issue of SHTM compliance, or would it have just been an assumption that it had been done or was being done?

A So, if we're talking about the outline business case here----

Q We are.

A -- then I think the general-- the general position would be that the assumption-- or, sorry, the assumption would be that this would be taken into account in the development of the design going forward. As I've said previously this morning, at the point at which the outline business case was developed, the detailed design of the facility hadn't been undertaken. So, from that point of view, it wouldn't have been an overt position at the point of the outline business case.

Q So at this point, it's not at the top of the agenda because it's to come in the design process?

A I would suggest yes.

Q All right. Now, you provided us -- to move on slightly -- the briefing paper that was sent to Cabinet, and that's in bundle 48, document 7, page 308. I just want to understand a little bit about what it's covering. Again, it's for an outline

business case. So, if we look at the cover paper, which is at page 309, would this have been effectively by a Civil Service team?

A Yes.

Q Then the actual paper, which is at page 313-- Again, this is a Civil Service document, albeit the minister has put his name to it.

A Yes.

Q Yes. Now, would it be fair to say that, looking at this document as a whole, the principal topic in both the briefing paper and the actual Cabinet paper is value for money and affordability? There's very little else in here.

A Yes, I would-- I would suggest that to be the case, and at the time this was-- this was essentially the request to Cabinet to approve the-- you know, the funding for the project.

Q Because, at this point in 2008, there's still an assumption that there is capital available. This is before the finances go a bit strange for the UK Government?

A Yeah, yeah. Early 2009, I think that-- the UK Government Budget-- or in 2009, the UK Budget-- Sorry, late 2009, I think, the UK Budget-- there was a, you know, 30-plus per cent reduction in available capital funding.

Q So this is a pre-crash, as it

were----

A Yes.

Q -- briefing document, and its primary focus is affordability and value for money.

A Yes.

Q At this stage, to what extent would it have been in the contemplation of the civil servants writing these documents – including you – that GGC might eventually build a hospital that didn't comply with Scottish Government Technical Memorandum, or would that not even have been a contemplation?

A It wouldn't have been a contemplation, but what I can say is the expectation is that a project, or any building that was being developed, would have been compliant.

Q And that's going back to the design manual we just looked at?

A Correct.

Q Just to be sure, there's no other – as far as you can see it – piece of written policy that is, in your eyes, requiring compliance with technical manuals other than the public design manual linked back to the SCIM?

A Not that I'm aware of, no.

Q Thank you. What I want to do – take that off the screen, please – is the procurement model, and you deal with this in paragraph 27 of your statement, and you discuss the role of your

colleague, Mr Kinnear.

A Yeah.

Q Obviously, he's not a witness, but we were quite interested in the decision to go to an NEC3 contract model, which is in paragraph 27. If we zoom into the bottom half of the page, page 11. Now, you've explained at paragraph 28 your understanding----

THE CHAIR: Sorry, my fault entirely, Mr Mackintosh. Can you give me the reference to the document we're--

MR MACKINTOSH: So, this is the statement by Mr Baxter, page 11 of the statement bundle----

THE CHAIR: Oh, right. I beg your pardon.

MR MACKINTOSH: -- paragraph 26, and we're on paragraph 28.

THE CHAIR: Yes, no, I have that.

MR MACKINTOSH: So you discuss, Mr Baxter, your understanding of the reason for choosing NEC3, and, to be fair to you, you explain that Mr Kinnear was the lead on the project. Now, Mr Kinnear, he worked for you?

A He did indeed, yes.

Q Yes. So I think I can therefore probably ask you this question: did you and your team, and therefore the Scottish Government, have any independent legal advice from construction law experts with experience of NEC3 at this stage when

the choice was being made of what model to use?

A Not specifically within government, but what I-- what I would say is that the NEC3 form of contract had been used in the development of a National Construction Framework for NHS Scotland called Framework Scotland, which had been developed through Health Facilities Scotland. That procurement model and the use of NEC3 was based on previous experience in England and a national procurement model used in the NHS in England called Procure 21.

So there was empirical evidence available on the use of the NEC3 model in a healthcare setting, and, from our engagement with-- both myself and-- and with Health Facilities Scotland, engagement with NHS England or NHS Estates in England, the experience of the use of NEC3, and really that was about trying to get to a position where there was more proactive engagement with contractors at an earlier stage, clarity around risk and risk share within a procurement model, and bringing in projects. You know, the evidence had been that there was there was better delivery in terms of time and budget in the use of that framework.

Q From your point of view in the Capital Investment team, were you aware

of any risks of moving to an NEC3 model that required to be mitigated in terms of the way project teams from within the Health Service would engage with these projects?

A It was a different way of working, but there was a national team effectively set up through Health Facilities Scotland that was available to provide advice to NHS boards. So, whilst this project sat outside the National Construction Framework, the fundamentals of the NEC3 form of contract, there was some external advice available to NHS boards in progressing such matters.

Q Because one of the features of the evidence we've heard from members of the Project team and their consultants is -- and I hope this isn't putting it too high -- a certain lack of experience of NEC3 contracts from the people themselves, and we had evidence on that from Mr Hall and Mr Seabourne, amongst others. So is your position they could have got help from HFS?

A There would have been help available from HFS because there was a national infrastructure put around the Framework Scotland position and the standard contract-- or the standard form of contract that had been established.

Q I mean, I suppose, by the time this is happening, how many years has

PFI been going in its various flavours at this point?

A By 2009, we're probably talking about 10-plus years, but in Scotland I think 1998 was----

Q Yes.

A -- was I think around (inaudible 10:38:03).

Q So it's 11 years. To what extent might there be an issue arising from a change of model? In that, people who had been used to in recent years procuring through PFI and a particular way you do things in that process, and now they're moving to a new model and they would need to understand what's similar and what's different before they operate a new model.

A So, in answer to your question, I would make a distinction between the use of PFI and the use of the-- I'm trying to remember the name of it, but I can't, unfortunately, the standard form of contract for public capital that was used in Scotland in the Health Service. So, NHS Greater Glasgow will have had use of both, clearly: the project that preceded the Queen Elizabeth and the two ACADs or Ambulatory Care services that were done through-- through PFI or a private finance deal, but there'd also been, you know, other projects done through public capital. So there was a range of experience. I would accept that NEC was

a new form of contract, but----

Q Because one of the questions you might form from the evidence of people including Mr Seabourne is that NEC3 was seen as going back, to some extent, to the old days, and therefore you wouldn't have-- some of the features of PFI and PPP around the importance of knowing what you wanted early weren't perhaps seen to be as relevant in the new way of doing things in NEC3. One wonders whether that's actually the right approach, that actually NEC3 requires you to know what you want rather early. Have you thought about the idea that moving to NEC3 might put a burden on a procurement team that doesn't really understand this new way of working?

A Not specifically, no, but what I would say is that -- and Mr Seabourne will have his views for his own reasons, and that's understandable -- the traditional form of contracting that was in use in the Health Service in Scotland, the experience of delivery of projects to time and budget had not been good. With a project of this scale, an importance in the context of the Scottish Capital Programme, not just in health, but in terms of what was happening in Scotland at the time, trying to get that certainty around cost.

So I would suggest that actually the NEC3 doesn't preclude people knowing

what-- knowing what they want and what they need out of a project at an earlier stage. It's the question of how early they're able to engage with a contractor because, for example, on a PFI scheme, in bidding, a contractor will put forward a design which actually won't be the design that ends up being built, because it's a comparator. It's an exemplar design that's put forward. So, you know, in terms of trying to save costs and time, NEC3, given its general position, I think was seen as a-- as a positive and progressive move.

Q Am I understanding correctly that your position is that NEC3 actually requires you to be more precise earlier than even a PFI in what you want?

A I'm not saying it's more, but PFI was not an option in this case from-- from an affordability point of view----

Q But does NEC3 require the procurer to know clearly what they want early and to understand that and not change their mind later?

A I don't think it's about not changing your mind. I think it's about having enough certainty that you can engage with the contractor in a meaningful dialogue, rather than abortive work on designs that are then effectively ripped up and not used.

Q Right. Now, what I want to do now is to move to your involvement in

various GGC groups and committees. If we go to paragraph 30 in your statement, you explain on page 12, bottom half of the page, that you were:

“... part of the New South Glasgow Hospitals and Laboratory Project Executive Board... in an observer capacity only.”

Now, what I want to do is – I've read your statement and we can read your statement – I want to effectively cover the same ground as you've covered here by reference to the documents in something like chronological order, just to check I've understood your position.

A Okay.

Q So what I wanted to do was start with what I think is the earliest record I can find of you being present at a meeting, which is bundle 42, volume 2, page 23, which is a Project Executive Group meeting of 24 October 2007. It has you in attendance, if we see at the third block of the sederunt. If we could zoom into the middle. Now, from your recollection, do you think 2007 might have been the first time that you were attending meetings in----

A Sorry, that-- in the third block, that's not me.

Q Oh, yes----

A That's Allan Baxter, the director of planning.

Q Well, that makes it much easier, so we can move that away. Let's go to the next one, 2008, which is bundle 42, volume 2, page 30. This is 1 October 2008. Hopefully, this is you.

A Okay.

Q Now, the first----

A No.

Q Well, there's a reference to you.

A Norman Kinnear attended in my place.

Q Exactly, so you're not there, but Mr Kinnear is there in your place. If we think about 2008, October, just in terms of the start of this story, is the autumn of 2008 roughly when you and Mr Kinnear would start attending any of these groups or would it have been earlier than that?

A I can't say for certain if it would have been earlier than that. Looking at the proximity of the timing to the consideration of the outline business case, that would make sense that there was more involvement kicking in around that time, but I can't-- I honestly can't be certain if there was anything earlier than that.

Q Right. Since we're going to get into the question of what your status was in the Executive Board in a moment--

--

A Yeah.

Q -- it's probably a good idea to think at this stage, when Mr Kinnear's going in October and the outline business case is happening now, would you have engaged in an exchange of correspondence with Mr Calderwood or anyone about what your role would be, or would that just be taken as you're an observer?

A Again, it's reflected in my statement. When I'd seen-- I didn't attend the Project Review Group that the terms of reference was tabled and agreed, but the first meeting that I did attend was the one in December, and at that point I had highlighted to----

Q No, I appreciate that, but if we just think back to-- At some point, and I appreciate we don't really know when that is, but at some point around about the run-up to the outline business case, it seems to be the case that you and Mr Kinnear, alternatively perhaps, think it's a good idea to go to these meetings as an observer, and you'd agree that----

A Yeah.

Q That seems obvious from what we can see in the documents.

A Yes, and that would be typical of any such project in terms of having a watching brief on it.

Q So you go on a watching brief. Would you feel the need to formally set out your role and its limits in an email to

somebody, or would it just be, "This is a big project. We're going to spend hundreds of millions of pounds. We need Mr Baxter there to keep us occasionally right"? Is that effectively what it boils down to?

A I would say for-- from my recollection, if I look at equivalent projects, whether that be Dumfries & Galloway Royal Infirmary, NHS Fife, there would have been a record of attending in an observer status, bearing in mind that, 2008, I was not the deputy director at that point, so I was reporting to David Hastie, so I wasn't the chair of CIG at that point.

Q Right.

A Certainly, at the point at which I was the chair of CIG, then absolutely there would have been a requirement to attend in an observer role, given my approvals role.

Q Now, we then have your attendance at two joint meetings of the Procurement and Finance Group and the New South Glasgow Executive Board. One is on 8 April, which is bundle 42, volume 2, page 44, and this meeting is a rather large meeting----

A Sorry, I lost you. I lost your video and audio there for----

Q Oh, right. So this is 8 April 2009, so this is the first meeting of the meeting. You don't attend this meeting---

-

A Yeah.

Q -- but Mr Kinnear does. At this point, are you now in post as the chair of the CIG, April 2009?

A I'm actually trying to remember at what-- I know it's in my statement, but I just need to----

Q I'll just double-check for you while you look at the sederunt.

A Thank you.

Q February 2009, you say? So, you're now in post----

A Yeah. Yeah, that's----

Q -- and we have a large attendance, and whoever wrote the minutes -- and I appreciate they're not you or Mr Kinnear -- has put Mr Kinnear in "present" and the only "in attendance" is Ms Frew, who is taking the minutes.

A Yeah.

Q Now, this meeting considers the pre-qualification process and starts the approval of the employer's requirements, but you weren't present.

A No.

Q The next meeting is on 24 April. So that's bundle 43, volume 7, document 6, page 15. So, that's 43, 7, 6, page 15. So, this is the same joint meeting and, again, you're not present but Mr Kinnear is.

A Yeah.

Q Now, you then explain in your

statement that there's a Performance Review Group meeting, at which you're not present, which approves the terms of reference. So that's bundle 34, page 133, and it's probably relevant to point out here that this is actually a meeting containing members of the board, which the previous ones weren't.

A Yeah, yeah.

Q Did you ever attend any Performance Review Group meetings, actual board subcommittees?

A Performance Review Group, I think there's a minute from December that I'm present.

Q Yes.

A But, just to go back to the previous two minutes that you've referred to, Norman Kinnear's role as major project advisor/PFI facilitator, Norman typically would've attended project boards for major projects that were going on at that time, so that wouldn't have been abnormal----

Q No, and he would be there, as you put it, in attendance as an observer.

A Yeah, yeah.

Q But, for whatever reason, which I don't think we've managed to find out, the new remit, which we find at page 153, is approved. If we go back a page to page 151, actually, we get the start of it-- 152. So, this is the terms of reference for the new combined group.

A Yeah.

Q Now, actually, although you have quite properly drawn attention to the fact that on the next page, 153, you are recorded as having a vote, along with Mr Stewart from Partnerships UK, and you raise that later and we'll come to that----

A Yeah.

Q -- I'm actually quite interested in what the role of the group was, and I want to discuss that with you. But, just whilst we're here on this page, do you have any recollection of what Mr Stewart was doing in the Executive Board and the role of Partnerships UK?

A So, James Stewart was brought in as a sort of independent member. So, Partnerships UK had a responsibility or a role from within the UK Government and did work with the Scottish Government as well on infrastructure investment, and James was their chief executive at the time, so it was seen as important to have some independent membership on the board with a knowledge of the construction industry and the market, etc., as the project progressed.

Q I mean, one of the concepts that I've been learning about is assurance within a procurement project. What do you understand assurance in a procurement project to be in modern terms, or at least terms you were familiar

with when you when you left in '14?

A So, I don't think that the principles have changed in any way in the sense that there's a model that's described as three lines of defence, which is your internal project arrangements and the degree of assurance that you get through that, so subgroups reporting up, escalation of issues, risk management. The second level is what I would describe as the programme exec board and the role of the NHS Greater Glasgow Board, which is effectively one step removed from the detailed delivery of it where there are checks and balances in the delivery of the project, and the third level is really about independent assurance, which is sort of Gateway Review, internal or external audit review of things. So, that assurance framework, I think, is something that's quite standard.

Q So, if you have an assurance structure of the Project team, it'd be in the first layer, the Executive Board would be in the second layer----

A Yeah.

Q -- and things like the Gateway Review would be in the third layer. How do you ensure that the information flows up that structure, in that, if you make a decision in the first layer to vary the project in some way, that the second layer and the third layer learn about it?

What would be the process that a procurement project would have to ensure that the various layers of assurance actually find out about something happening?

A Well, the two mechanisms that I'd be used to and expect to see, one would be financial and the second would be risk based. So, in terms of the level of delegation or escalation of issues, things around-- you know, whether it was a variation around a financial matter, whether that was required to be escalated up because it was of a particular value, or if there was a risk issue that was of a particular score or was trending in a particular way that needed, you know, review or consideration at a higher level, but that's not----

Q Well, what about-- Sorry, carry on, please. I interrupted you.

A No, it's-- I'm saying that that process is not atypical in any project that I've ever been involved in.

Q Given that this stage in 2009 is about the competitive tender -- the competitive dialogue stage, there's three tenderers in the middle of this year, it becomes one and then there's a contract -- how should this three-layer of assurance deal with a proposal from somebody, either the tenderer or the Project team, to vary an employer's

requirement? How should that be reported in the structure?

A So, again, I would suggest it would depend on the nature of it, and I think if-- we're coming back to if it's-- a digression from a technical standard, for example, I would expect that to have been escalated and reported, either through a risk register-- because if there's non-compliance with any of the standards or the employer's requirement, then that is likely to generate a risk or an increased risk, and therefore that would be-- that should be reported through. So I would expect anything like that to have been escalated.

Q Is it---

A I can't remember the detail of the-- you know, the detailed governance within the project but, you know, there were multiple groups that were reporting in at various levels, but anything of that nature I would----

Q If we go back to page 152 of the bundle we're looking at, which is the actual remit. So, this is the only document we can find, and of course there may be others that we can't find, but this is the one we can find that sets out the terms of reference of the Executive Board, that middle structure.

A Yeah.

Q I'm assuming you read it when you realised you had a vote. So, at some

point, you did read this.

A Yeah.

Q Does this provide an adequate level of detail about how the role of the middle layer, the second stage of the three-layer assurance, is going to work in this project?

A I would expect that this would be supported by the scheme of delegation. Any public body has a scheme of delegation in terms of financial authorisation limits for various levels at board and executive level, so I would expect that to-- that arrangement, particularly the bit where it's talking about change control procedures are authorised by the board before it can be implemented, I would expect that to be in line from a financial point of view with the scheme of delegation and whatever the risk arrangements were within the project to-- you know, to reflect those risk management arrangements which were referred to at the bottom.

Q Because one of the problems that we have found is that, third from the bottom, the reference to:

"The NSGHLPEB will oversee the management of change control procedures in that any change which impacts upon the project must be authorised by this Board before it can be implemented."

A Yeah.

Q Now, two issues arise that you need to know about: one is that Mr Seabourne was quite clear in his mind – although I don’t think he can point to anything written down, but he’s very clear – that this would be a change that affected scope, cost or timing, if I remember correctly, but certainly he saw it as quite a high-level threshold, although it wasn’t written down; and, secondly, when we look at the minutes of the Executive Board from when it’s set up up till contract close, we see no mention of any references to, “There’s been a change. Would you like to approve it?”

A Yeah.

Q So, at the time, were you aware of whether the Executive Board was approving changes?

A Well, I would have seen that that role in remit, and the fact that there were-- there was no changes coming through, or that certainly in my statement there are no changes that I can recall, specifically in relation to technical memoranda, but I can’t recall any discussion around changes in budget.

I do remember, however, in my role in government that one of the things that happened during the procurement of the project was the development of the learning and teaching facility where there was an additional building that was, you know, put on site and there was a joint

development with the University of Glasgow, and that required an amendment to the business case. So, in terms of change and change in cost, there was a different mechanism for that, but I can’t recall that being through the Project Executive Board.

Q Because one of the questions we asked you – and, to be fair to you, you said you didn’t know about this – was the removal of the maximum temperature variant.

A No, I didn’t.

Q And so what troubles me to ask you about it is that, if it’s the case that the maximum temperature variant was removed during the competitive dialogue process and the bidders were told – because they were, there’s a document – and the effect is to reduce the maximum temperature that’s allowed in the building from 28 to 26 degrees, which at least two of the bidders, possibly three, point out affects the ventilation solutions that can work, should that be the sort of thing that would be approved by the Executive Board from your point of view as an independent observer?

A Yes.

Q Why do you say that?

A Because that’s material, absolutely material, and if I go back to my earlier testimony, what I would also suggest is that, if that was a proposal,

then that would be a derogation from standard and would have been and should have been notified at the point at which that was being discussed, not in the full business case, which would then have allowed for an analysis of that proposal and the implications to have been undertaken and a view to be taken. So the fact that it wasn't raised, either through the Project Executive Board or directly with Scottish Government, there was no opportunity to challenge that.

Q Now, I appreciate that your answer to this question might be, "I don't have the technical experience to look at something," but we've obviously got the bid documentation that was lodged by Brookfield Europe, which has in it a page in which they explain their response to the maximum temperature change and how that affects the ventilation. It's a very long, beautifully colourful document produced by the design team and the procurement team in Brookfield Europe. Would you have seen those sort of big documents as part of this process, or would that be something you wouldn't have seen as part of the papers for this?

A I wouldn't have seen the detail of that.

Q But they wouldn't be attached to papers at the Executive Board and delivered with a big sort of wodge of paper beforehand?

A Not that I-- Not that I can recall.

Q I mean, it strikes me you probably would have recalled it because it's quite large and colourful, but you can't recall?

A I don't recall seeing them. No, I don't recall seeing them.

Q So, how do you respond to the suggestion that, as the Scottish Government observer, as you put it, in the role, the fact that no one's reporting any changes should have made you alert to the fact that they might not actually have a system to report changes, as opposed to, "There are no changes," or is that being unnecessarily cruel to you on the level of rigour that's to be applied?

A I wouldn't use the word "cruel", but I think that the onus is on disclosure and, given the remit of the Project Executive Board, then I would have expected any variations to be put through. Where there was a variation that required a change in budget, that's something that would have required a matter of discussion with myself and with Scottish Government colleagues anyway because the envelope for the project was effectively fixed.

So, if there were any variations that impacted on the overall project envelope, or indeed the timing of the project, and I think there's some reference in-- you

know, to engagement with Treasury around equipment, that's all about managing the cashflows around the project as it proceeded through, and the 842/843 million was a significant proportion of the Scottish Government's capital budget, which obviously it was drawn down from Westminster at the time. So, you know, these were matters that were the subject of ongoing discussion in respect of finance, but I can't comment in respect of the project governance and how these things were reported.

Q Now, it's interesting that you point out that if the financial envelope was to be increased, then one would expect it to be on the agenda because they need to ask you for the money, effectively.

A Yeah.

Q There is a view, which I think is only an inference one can draw from the evidence at the moment, that what we've called the "ventilation derogation", the decision to go with 3 air changes or thereabouts, 40 litres a second, rather than 6, for most of the hospital would have a financial implication because if they'd gone for the full 6 air changes, it would have cost more and maybe would then have breached the financial targets.

A Yeah.

Q Is there not a risk that, in a

sense, having you there with your colleagues with a close focus on finance means that the Project team will put finance over everything? "We have to build it on time and on budget, and if we have to cut some corners in terms of what we build, so be it, but we will build it on time and budget." Do you see there's a risk in that?

A No, I would disagree with the premise of that. At the end of the day, the way I would view it, and the way I certainly would have advised ministers, if there was a cost implication from, you know, the adherence to standard, if you like, and that I became aware there was a variation required to the budget, then that's a discussion that would need to have been had. There'd be absolutely no suggestion of simply to live within a budget envelope of cutting corners or derogation from standards simply to cut costs. Absolutely not. I would refute that absolutely.

Q That view, which obviously you've expressed now, is that a view that you would have held at the time?

A Absolutely, I would.

Q And how do you respond to the suggestion that that benefits from, in a sense, the element of hindsight, particularly in the fact that you now know what the then-minister, Ms Freeman, did in Edinburgh, in that she decided that the

hospital in Edinburgh wouldn't open with non-concordant ventilation, and that maybe it would have been different back in 2009/10? How do you respond to that?

A To be honest, I don't think hindsight's got anything to do with it. I think this is about having a facility that is fit for purpose and compliant, and if the government are going to invest 842 million in a facility that essentially is not compliant and the cost differential to make it compliant, that is a discussion that would have been had.

Q Well, what I want to do is keep going through the minutes, just to sort of work through what happened. So, if we look at the 1 June meeting, which Mr Kinnear is there but not you, that's bundle 42, volume 2, page 54. So, that's the 1 June meeting. We see Mr Kinnear recorded as, I think, ninth person on the present list. You're not present. Then there's a meeting on 3 August, which is bundle 42, volume 2, page 57, and you're present, third from the bottom in the present list.

A Yeah.

Q You would have been sent papers in advance for this?

A Yes, I would expect so, yes.

Q Would you have had access to the previous minutes of all the earlier meetings?

A Not of all of the previous minutes, I don't think, because from memory Norman would have attended those meetings not just on my behalf but on behalf of the team. So the minutes would have been held somewhere, but I wouldn't have routinely reviewed those. If there was any feedback from Norman on any particular issues, I'm sure he would have done that, but yeah.

Q I appreciate Mr Kinnear is not a witness, but should he have noticed the change of status that's being imposed on you by this remit?

THE CHAIR: Sorry, I didn't hear the question.

MR MACKINTOSH: Should Mr Kinnear have noticed the change of status imposed on you by giving you the vote you didn't want that was in the remit? Should he have noticed that and reported it to you?

A I can't-- I can't recollect. I certainly don't remember it being discussed at that time.

Q But would it have helped if you'd known earlier this change of the remit of this group in finding out whether there was a change control process and providing an understanding of whether there were changes? Would it have helped to have the remit earlier than you eventually did?

A Yes, I would expect it would,

yes.

Q Because when did you first see the remit with your vote that you didn't feel you should have?

A So, it would have been-- There was, I think later that year-- and it's recorded in my statement towards the end of the year where I had attended and asked for the amendment to be made.

Q Right. So, at this stage----

A The terms of reference must have been recirculated, yeah.

Q So, in a sense, and I don't mean to put it loadedly, you hadn't noticed at this stage in August?

A No.

Q No. Right. While we're just looking at this particular-- Well, I must just get it on my own screen because I don't want to jump around too much. So, this is August, and if we go on to the next page, we see a "Project Cost Update" paper which provides the details of the cost, as it then was. On Item 5, the evaluation structure is discussed and what the process would look like.

A Okay.

Q And then that continues on the next page, on page 59. Now, if you go halfway down that page, there's a paragraph that begins, "H Byrne enquired if R Calderwood would like to advise..."

A Yes.

Q There were presentations from

the Evaluation team, weren't there, to this Executive Board?

A I can't recall the detail of it. If that's what the minutes suggest, then I would have to accept that (inaudible 11:10:16).

Q And I'm just wondering whether this is something you can help me with. Well, let's look at your intervention on the next page first. That's at page 60. So, the evaluation structure continues. You're reported to have said:

"[You] advised that [you] felt the programme was very comprehensive... key issue would be the availability of the resource to deliver this programme... need to be preparation in respect to the outliers and also to the sensitivities around bidders who are close."

And then someone informs everyone that the bidders are going to get the evaluation document.

A Yeah.

Q And then there's some suggestion for reporting about coding from Mr Stewart. Now, one of the things that we've noticed in these minutes over the next few meetings is that there's a subsequent discussion about what to report to the Board, and some of the people having that discussion have been involved in the evaluation process and

some of them haven't.

I'm just wondering, given what you've said about an assurance process, should there have been an overt report that this bid is compliant with all employer's requirements or is not to this Board, to the Performance Review Group, within GGC? Should that have actually been clearly stated somewhere, not in a presentation but actually in a report?

A In terms of the evaluation process, I would have expected that to have been the case, yeah, and if there were any non-compliant issues, then that would have to be taken into account.

Q Because if we go to the meeting that you attended, the one in-- Well, you didn't attend 26 October, which is bundle 34, page 78. We'll just look at that on the way past, just to keep the chronological order going.

A Okay.

Q 34, 78. Now, that makes me worried that I've done something wrong. (After a pause) No, that's the wrong bundle, sorry. What I'll do is I'll go back to your statement and-- Yes, if we go to, sorry, bundle 42, volume 2, page 78. So, this is the meeting at which there is the discussion about what's to be reported to the Board from the evaluation process, and you're not present.

A Yeah.

Q The next meeting is at page 86, and you are present. This is the meeting where, as you properly point out, you raise the issue about your voting rights, and we'll just go there first. So that's page 88, item 6, and you see the second paragraph there:

"MB noted that up until now he had represented the Scottish Government as a voting member... but now requested..."

A Yes.

Q I realise you didn't write the minutes, but it does rather read as if you'd like the vote taken away, not that you should never have it. Do you appreciate why I might say that?

A Yeah, I think the-- Well, I can understand why you would say that. I think the wording would infer that, but I would typically expect that any attendance at a programme board, I would be there as an observer, not a voting member, and particularly when there was a business case that was in live development, given what I was now assumed as a role----

Q Yes, if we go back to the previous page, Item 5 at the bottom of the previous page. We'll take this slowly. So, zoom in to the bottom half of the page. The heading is, "Key Actions Underway to Conclude Contract with

Brookfield". Now, in light of the remit that you know about, we read:

"AS [Mr Seabourne] reported that the project team were now in the process of carrying out due diligence with Brookfield reviewing the Boards Employers Requirements against Brookfield's tender offer to conclude the formal contract..."

A Yes.

Q Now, I think we're asking everybody who was at this meeting who we've got as a witness, which isn't everyone who attended, but it's quite a few people: that tends to suggest that the actual people deciding whether to sign the contract are the Project team, not this Executive Board. How would you respond to the suggestion that the Executive Board either delegated authority to the Project team to resolve everything or just let them get on with it without making a decision, looking at this minute?

A Just give me a second to read this.

Q You might want to go over the page.

A Well, can I just read the bit at the bottom of this page first, please?

(After a pause) Okay.

Q Because what there isn't in the

rest of this document, if we just go onto the next page, there's something about post-contract signing; there's a section on revision of governance arrangements when you raise your issue; there's a communications update section; there's an update on laboratories planning; various things about car parks coming in on page 89.

But what there isn't-- The next meeting is to be 16 February 2010, and the contract, we now know, is being signed on 18 December. At no point in this minute is the Executive Board recorded as saying, "We've been briefed on what's being offered. We are comfortable that it is compliant with employer's requirements. We authorise the Project team to tie up all the loose ends and Mr Calderwood to go and sign it." There isn't an entry of that level in here. It's entirely silent.

A Yeah.

Q The best you get is the paragraph I showed you on page 87, bottom of the page.

A Yeah.

Q So, I think I put this to Ms Byrne and we put it to Mr Seabourne: surely one would expect the Project Board to make an overt statement of a decision like that a week and a half before contract signing. Why isn't it there?

A I can't answer that, but I would expect the same.

Q But you were there, I realise as an observer, but you're an experienced-- not quite procurer of capital projects. You're an experienced purchaser of capital projects, if I can put it that way. Shouldn't you have put your hand up and said, "Excuse me, when are we actually going to approve this contract, because we haven't done it yet?"

A Whilst I've seen the minute, I can't recall the context of the discussion at the meeting and what was described in the meeting and how accurate the minute is.

Q I appreciate that, but, looking back at it, do you think there's something missing, either because it's missing from the minute or missing because it wasn't discussed?

A Well, there's no formal recommendation there.

Q No.

A So there's key actions underway to conclude the contract, but it's not a final conclusion.

Q Because there isn't a follow-up meeting before the 18th, we'll ask Mr Calderwood what he was told when he goes to the Health Board's lawyers' offices to sign the contract. Presumably someone has to tell him, "It's good to go. Sign."

A Yeah.

Q Ms Byrne's made various observations about whether there should have been events here, but that's recently. But you don't have any recollection of the discussion beyond what's in the minutes?

A No, I don't.

Q How do you respond to the suggestion that, although principal responsibility must lie within the Project team and the Executive Board and the Health Board's employees, somehow you and Mr Kinnear, as the Scottish Government's eyes and ears in these meetings, should have been alert to the absence of formal reporting on change and compliance with employer's requirements?

A I can't speak for Norman. I think that, at the time that I was involved in this, I was reviewing the same information that was being presented to those that were engaged in the detail of the project, so I was privy to the same information. So I was basing a judgment on the same information that was being presented to others within the project. If there was other information that was presented in terms of non-compliance or non-compliance with the employer's requirements, then I wasn't party to that.

Q But how do you respond to the suggestion that, although the fact there

wasn't a process being reported in these minutes is not your responsibility because you're not a member of the Project team and not a full member of the committee-- How do you respond to the suggestion that, having you there, you're part of a series of external eyes and ears in this process – as is Mr Stewart as well, to be fair, and we'll talk to him on Thursday – and that therefore this is something that you or your successors should be looking out for when they're in an executive board or something like that as an observer? If they don't see overt, clear approval of, "This is what we're buying. We're good to go," they should be saying so. How do you respond to that criticism?

A Sorry, that's disappeared there. I think the assurance that I will have taken at the time will have been around the process that would have been followed from the Project Board through the chief exec and the Board of NHS Greater Glasgow before the contract was signed. And with hindsight, looking at the minute of the meeting, clearly there should have been something more overt in the minute.

Q So you're assuming there would have been something else going at the side?

A Yes. Before the contract was signed, absolutely, because what's

described in the minute is not the basis of signing a contract.

Q What I want to do now is to move on to the full business case but, before I do that, I do wonder whether, my Lord, although it's about five minutes early, this might be a good point to have our morning coffee break. I don't think I'll be more than about 40 minutes with Mr Baxter afterwards.

THE CHAIR: Very well, Mr Mackintosh. We'll take our coffee break now, and could I ask you to be back for 20 to 12, Mr Baxter? Thank you.

THE WITNESS: Of course. Thanks, Lord Brodie.

(Short break)

THE CHAIR: Mr Mackintosh?

MR MACKINTOSH: Thank you. Mr Baxter's disappeared. Mr Baxter, are you still there? Mr Baxter, can you hear me?

A I can hear you fine, thank you.

Q Thank you. I was just reflecting on the questions I was asking you about the November meeting, and it occurred to me I should double-check what, in a sense, your interests at the meeting were, because----

A Yeah.

Q The reason I was reflecting is that, during the previous meeting in October, which you weren't at, the

principal discussion had been which of the three bidders should be made the preferred bidder and how that should be reported up to the Performance Review Group who made that decision. To what extent do you have an interest as the CIG Chair in which of the three bidders is picked?

A I don't. The issue is whether the procurement process has been conducted in accordance with appropriate regulations, that the evaluation process that has been conducted has been done in accordance with the project documentation, and that is not open to challenge. That's essentially-- I've no preferences to which bidder it is. It's based on the evaluation that's undertaken by the team, both in terms of the costs, quality, etc., criteria that are set out in the bid documentation.

Q So, in fact, if you think about the presentations to the Executive Board about which bid is better, which meets which requirements, how many scores to give them, that's not quite none of your business, but it's literally not what you're interested in.

A No, I'm not involved in that evaluation process. Again, that's part of the-- part of the separation, if you like, between the role of the CIG-- We're-- You know, we're not letting contracts directly, but we don't have an interest in

particular bidders or-- in terms of the market. So that independence is quite important.

Q Because one of the things that I've noticed is that a presentation that you didn't see to the Executive Board and a subsequent presentation to the Performance Review Group by Mr Seabourne describe compliance or non-compliance with employer's requirements. You wouldn't see that because it's part of the----

A No.

Q -- choice process.

A Correct.

Q So, without returning to the topic of whether the minute of 7 November is accurate or whether enough was discussed, you wouldn't have seen -- or, if you had been given, wouldn't have taken an interest in -- the assessment of the three bidders, including the one that was chosen?

A No, not-- At a kind of superficial level, I think, obviously interested in the project, but in terms of the-- which bidder was preferred, no. The evaluation process was set out and it's really the importance that that evaluation process was followed.

Q So, if the answer to the question, "How did the Board approve a bid that wasn't compliant?" is that they did it by accepting that bid as part of the

evaluation process, that that's what they noticed, then you wouldn't be aware of that.

A No, I wouldn't.

Q All right.

A I think the other thing is, if I could-- Because I've had-- equally had the opportunity to reflect over the break in terms of the questioning. So, from that Programme Executive Meeting in December, what I'm not cited on is what the process was involving the Board of NHS Greater Glasgow, if any, and the sign-off of that contract. So I'm not aware if there was a subsequent meeting and discussion with the-- either the full Greater Glasgow Board or a subset of it that was considered, you know----

Q Yes, because you will know if there was a meeting of the Executive Board, because you're a-- well, not a member, but you'll get minutes for it----

A Yeah.

Q -- but you won't know if there's a meeting of the Performance Review Group, which sits above it----

A Correct.

Q -- that subcommittee board.

A Correct, and that's what I reflected on in the break.

Q Yes, and so, although the remit that you saw delegated the authority to negotiate the contract in certain circumstances to the Executive

Board, the Performance Review Group might have just made the decision itself, and you wouldn't see that.

A I wouldn't have seen it. What I would have been is notified by NHS Greater Glasgow and Clyde that the contract had been signed.

Q Yes. So I wonder if it can be summarised something like this: you are -- and I'm going to use some adjectives here, and feel free to replace them by better ones -- alert to issues around exceedance of budgets, timetabling problems, delay, and non-compliance with process.

A Yeah.

Q What you're alert to.

A Yes, that's essentially what my locus was.

Q Therefore, the consequence of that is that, whilst you might notice other things to do with, "Are they getting what they bought?", or, "Which is the better bidder?", those aren't your interests and therefore any notice will be inadvertent, in a sense. That's not quite the right word -- will be opportunistic----

A I'm sure if "inadvertent" is the right word, but----

Q "Opportunistic" perhaps is the right word.

A -- the inference is correct. Yes.

Q Would you accept that the idea

that, once we move away from cost, timetable, and process, it's now stepping away from your core interests?

A I would suggest so. I think that-- The process, I think, is twofold. I think the SCIM, the Scottish Capital Investment Manual and compliance with that is the kind of prime consideration as far as-- as far as process is concerned, but equally the CELs that we've discussed in the evidence sessions, both today and when I gave evidence in 2022, around, you know, use of capital resource, design quality, etc., are equally-- equally part of that.

Q I'm just going to try and remember to type in-- turn this computer back on because I want to just check something, which is that, during the process, at the point when the Board chose its preferred bidder, were you involved in, as it were, sending a briefing message to the minister that that had happened, even though you weren't involved in making the decision?

A Yeah-- I can't remember-- I will have been notified of the decision and it would have been-- I can't remember the specifics, but it would have been absolutely normal for any kind of notable event on the development of a project to send a briefing to director general-- my immediate boss, who was the director of finance and information at the time,

director general, and ministers.

Q So, if we have an email of you effectively receiving a message that, "We've chosen the preferred bidder," and passing that up the stream, that would be perfectly normal, but that wouldn't mean you taking interest in what happened, you're just reporting it?

A No, that would be normal.

Q Because you're the reporting mechanism?

A Correct.

Q Yes, okay. Well, let's move on to the full business case. Now, I think you're familiar with the primary concern that the full business case does not report either that the hospital wouldn't comply completely with ventilation standards SHTM 03-01 2009 and that the technical advisers supporting Currie & Brown were stood down in March 2010. Now, I'm not sure there's any value in going through the full business case in detail, but from your perspective, do you recollect whether either of those things were mentioned in the full business case?

A I don't recall them being recollect-- mentioned at all.

Q We can check.

A Yeah.

Q Let's go to your statement and to paragraph 46. You deal with design and compliance with SHTMs in the context of full business case.

A Yeah.

Q Now, you say in the second sentence:

“There were no derogations from standards referred to within the [outline] or [full business case].”

A Yeah.

Q And you don’t recall any derogations being sought. Now, whilst we’ve discussed how-- and you mention it again at the bottom of this page. Whilst we’ve discussed how the CEL 2010 19 and the design manual import a reference to SHTM 03-01----

A Yeah.

Q -- is it fair to say that there is no document that explains how you do a derogation at this stage in the CIG-- in the SCIM?

A At the point-- and again, from memory, I don’t think there would be something explicit, but that’s not to say the process hadn’t happened previously.

Q So you would know that as a member of the CIG?

A Yeah, yeah.

Q I’m just concerned that the design manual reference-- Whilst you are clear in your own mind what it means, I suspect there are people out there who think it’s not as clear as that, and I just worry that the absence of a policy on derogations written down is another

reason why someone might think, “I don’t need to report this. It’s just guidance.” Do you appreciate why they might say that?

A I do, and with the passage of time and-- and I don’t know the exact detail of Assure and what’s happened since with design assessment, etc., I think things have certainly been tightened, but what I do know is that, as a community involved in capital investment within the government, we used to run a couple of workshops each year involving all of those involved in major capital projects, and there would be an opportunity to brief those participants on current issues, etc.

One of the things that was risen around the time of this was around the single rooms policy, and I refer to this in the evidence that I gave in respect to the Sick Kids in Edinburgh in the sense of, if there was a deviation from a standard that was set out in a CEL – and again I would point back, the CEL does refer to mandatory, you know, use of-- of ADB, the Activity DataBase – then, you know, there was knowledge that a derogation had to be sought, and not at the point that the full business case would have been provided but at the point at which any kind of decision was needed to inform a design.

So, for example, the single rooms

issue at Sick Kids, there was a written request for a derogation that was considered by the chief medical officer and agreed, and that happened before the provision of the full business case, but allowed the design to then continue in development in the knowledge that that derogation had been approved.

Q I think we have a similar document around Critical Care in the Queen Elizabeth around bays.

A Yeah, yeah, which I don't remember, but apologies if that-- that was a derogation, but I don't recall.

Q So your position is that anyone who was attending your workshops in the community of procurers of health projects would have known or should have known that there was a derogation process out there to be used?

A Yeah.

Q How do you respond to the position, I think expressly-- simply put that because it's guidance, Scottish Health Technical Memorandum, guidance is something you needn't take account of, you don't have to follow it, and therefore there is in fact little wrong in deciding to put guidance to one side and not tell anyone? How do you respond to that sort of line of approach?

A I can understand the approach that's being described, but again I would come back to the fact that whilst the

SHTMs are guidance, the Design Quality Policy refers to mandatory application of that in terms of the requirement in 5. So, whilst it's guidance, the inference that I take from the Design Quality Policy is that, whilst it's guidance, it's expected it's applied.

Q Now, over the page, on page 18, you explain, five lines from the bottom of paragraph 47, that the Greater Glasgow and Clyde:

"... did not bring the derogation to the attention of the Scottish Government (either directly [at the Executive Board] or [to the] CIG) and... the Scottish Government did not have the opportunity to consider it."

You then mention:

"Agreement from the Scottish Government to any derogation sought would be subject to taking and receiving appropriate technical advice."

Who would that advice be from?

A Typically on a technical matter like that would have been Health Facilities Scotland. Equally, there would have been engagement probably with the chief medical officer's office where there were issues associated with infection control.

Q If we go to the next paragraph,

we asked you, it's the fourth line:

"I am asked what the consequences would be if an NHS Board failed to comply with a CEL, SHTM or any other legislation, regulation or guidance in a project that required approval from the CIG."

Now, what's your answer to that?

A Well, it wouldn't have been-- If it had been notified and not approved, then the business case couldn't have been approved.

Q So, when you say not approved, the derogation not be approved?

A Yeah-- Oh, sorry. If the derogation wasn't approved, then the expectation would be that the-- the derogation sought-- an alternative would have had to have been taken forward.

Q We've discussed whether there's any hindsight involved, so I won't return to that.

A Okay.

Q The next paragraph deals with the 2006 edition of the Policy on Design Quality for NHS Scotland, which we've already looked at. The 2010 version, you say, applies to the full business case. We should probably look at that. I mean, I think it's the same, but we should probably look at it just for clarity. So it's

bundle 4 of the Edinburgh 9 May 2022 bundles, document 9. If we step onto the next page, over the next page, this is signed by you.

A Yeah.

Q I've suddenly realised that I have failed to write down the page reference in here, so we're going to have to work it out mathematically. So I think it would be on page 140, I hope. If we go back five pages, please. Slow down. (After a pause) Go forward one page, please. Yes.

A Can I ask for the text to be made bigger, please?

Q Yes. In the bottom half of the page, is there any material difference between the Activity DataBase section in the 2010 version and the 2006 version, as far as you're aware?

A The only change, I think, is the technical-- the reference at the bottom where it says that, you know, there was a project that was being developed, a space for health, which is about an online resource, but beyond that I think the substance of it is the same. Yeah, and the confusion that I had, I think, when I answered your earlier question on mandatory requirements -- there's seven in this, so there were two additional mandatory requirements introduced in the----

Q Yes, so if we go back four

pages----

A -- at the end of the-- Yeah.

Q One more. A bit further. Keep going. A bit further. Another one. Two more. One more. Just keep stepping back and we'll eventually find the mandatory requirements.

THE CHAIR: Page 113.

MR MACKINTOSH: Yes. Thank you, my Lord. That was going to take ages.

A Yeah, that's it.

Q Yes, so it was five and now it's seven.

A Now it's seven, yeah.

Q Okay. Now, if we take that off the screen, I was thinking about how to deal with the full business case with you. One option would be to laboriously go through it, but that would take an awful long time. It did occur to me to look at the full business case and enquire whether you should have worked out from X, Y or Z in the paper that they weren't following the guidance, but, although they don't say they are following the guidance, they don't say they're not.

A Correct.

Q When the CIG is reviewing a---
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THE CHAIR: Well, might it even go a step beyond that? My recollection of the full business case includes as a reason for the project being approved, I

think, infection control benefits.

MR MACKINTOSH: Yes, so there are lots of statements about quality, but what there isn't is an overt statement that, "We are not following the guidance." I just wanted to think about the membership of the CIG and what experience and expertise they have.

A Yes.

Q To what extent was there anybody in the CIG who might be thought to have a knowledge of infection prevention and control?

A So, we would have had representation from the chief medical officer's office and chief nursing officer's office.

Q Would you have anybody with experience in----

THE CHAIR: Sorry, I just missed-- Representatives or representation? I just missed what you said.

A So, there'll be a representative from each of the offices.

THE CHAIR: Right, thank you.

A And that could vary depending on the nature of a project, if it was maternity or if it was acute services, but there would be a representative.

MR MACKINTOSH: In fact, if we go to the section his Lordship was referring to – so that's bundle 18, volume 1, document 10, page 665 – we have at the top of a section-- if we jump back one

page, we get the context, another page. We have another section on “Maximising resources”, 2E.4.1.4----

A Yeah.

Q -- and then, over two pages, we have at (c), the last sentence:

“In addition, the new hospital has been designed in accordance with best practice for infection control to minimise hospital acquired infections and the associated risks.”

Now, at the time you would have read this, would you and your colleagues have picked up on that sentence as giving some form of assurance?

A I would assess that would be the case. So, when-- with the membership of the CIG, the Capital Investment Group, colleagues will have reviewed in general terms the business case, but those with a specialist interest will have, you know, focused on particular aspects of the full business case. So I would have expected that that statement would have given a degree of assurance, yes.

Q If we go to page 685, we should have a reference about emergency care, and the last paragraph before 2F.5.7, “Diagnostics”, it says:

“It is essential for patients with a high risk of being a source of infection to others to be managed

‘separately’ to avoid the risk of infecting other patients.”

Then, it lists infections and isolation facilities. Then it says:

“The Infection Control Team have been fully involved in the planning of hospital to address and reduce the risk of spread infection through the design of the facilities.”

Now, I want to use this as an example because it occurs to me that there’s a risk that we make assumptions. We know, as an inquiry, that the employer’s requirements would appear to specify positive pressure ventilated lobby rooms. Now, I’m not necessarily expecting you to know what they are, but they’re one of three types of isolation rooms you can get and, according to the employer’s requirements, all the rooms are to meet that standard. There is some debate-- I think it’s more than debate – there are points made in the guidance that these rooms are not suitable for certain classes of patients, one of whom are infectious diseases patients-- infectious patients, rather, sorry.

A Okay.

Q Now, I suppose one possible way to look at this paragraph is it’s a statement of assurance that the Infection Control team is fully involved in the decisions around isolation rooms, that

your team in the CIG would have noticed that but have taken assurance and relied upon it. That's one possibility. It occurs to me the other possibility is, because there's no flag, "We're not following guidance," the CIG's engagement with this sort of content is much more high level----

A Yes, yes.

Q -- and is actually not looking out for these detailed problems, and picking one sentence here one sentence there is not something it's doing. It's just seeing there's no overt issues and moving on. Which of those two positions, or indeed something else, is what was actually happening?

A I think, depending on the nature of the issue, somewhere probably in between, but the additional point that I would make is that the full business case doesn't simply come to the CIG first for approval. There are internal approval processes within any health board involving those that are involved with the delivery of care, planning of care, to provide that health board and the board of management for that health board with assurance around what the full business case is. So, the assurance mechanism as I described earlier, if you like, there is a degree of assurance taken from what has happened internally to approve a business case before it actually comes

into Scottish Government.

Q I suppose one of those processes in this context would be the HAI-SCRIBE process. Have you heard of that?

A I've heard of it. I can't explain the detail, but I'm aware it's to do with infection control.

Q So, I use it as an example in order to set up a question. We're aware that there is a Stage 2 HAI-SCRIBE which is to be done before the design stage. Stage 3 is during the design stage and Stage 4 is at the end. We've seen a Stage 2 HAI-SCRIBE, which I think has been subject to some criticism.

A Right.

Q We have evidence from, in 2010, more senior Infection Control people other than the seconded nurse who maintain they had little or no involvement in the project at this point, including the lead Infection Control doctor and the lead Infection Control nurse. It's therefore possible that one inference is that whatever HAI-SCRIBE is supposed to do as a safeguard and a process didn't actually work in this scenario, and it therefore makes me think: to what extent are you, in a sense, relying, as a CIG, on the Health Board's processes all working and assuming an assumption of regularity in their processes when you review these documents?

A I think there are two elements to it, if I may. One, yes, there is a reliance on internal processes, but I think the other bit is the reliance of the robustness of those internal processes so that a health board, any health board when they're signing off a business case, has-- you know, it's had sufficient rigour internally from those that are directly involved that that assurance can then be provided to the health board and, effectively, that that assurance then can be provided into government. So, if the process is right, that's one thing. If the degree of rigour around that process and challenge around that process is appropriate, then, yes, there's solid assurance that can be taken from it.

Q But if it's the case – and, of course, it's too early to say at this stage whether that is the case, not least of which because we haven't heard from Mr Calderwood – that the Board's internal processes in 2009 and 2010 were not as robust as might have been hoped in terms of reporting derogations or telling people there was no longer a technical team, or indeed the HAI-SCRIBE process, would the CIG notice or would you just assume that it's all running fine?

A Unless there was anything within the documentation that we were provided with to signal that there was a question to be asked-- and there was

challenge around aspects of the business case, but if there was nothing to signal that there was a-- you know, there is a problem. And, again, some of the paragraphs that you've referred to would infer, you know, compliance and high standards, if you like. So a board is signing that off before it comes anywhere near Scottish Government.

Q Also, there's been a Gateway 2 Review.

A Correct. Well, to be fair, I think the Gateway Review is more around the project and the project delivery than it is around necessarily the technical nature of the hospital, so it'll look at programme and project management, if you like, rather than necessarily the detail of SHTMs, for example. That would be my experience of the Gateway Review.

Q Right, but if it's the case, or if it can be inferred that it's the case, that the board systems in '09 and '10, or multiple parts of them, were not considering issues around ventilation and the technical team were not actually properly considering them, is the Scottish Capital Investment Manual/CIG process set up to spot that?

A What the CIG-- Sorry, what the Capital Investment Manual sets out within the manuals for business cases, it sets out what the requirements are around demonstrating what the project is,

how it's being delivered, you know, the finances, all the rest of it. So it sets out the requirements of what is expected in terms of the delivery of a major capital project, and the assessment that the Capital Investment Group would have done is whether the full business case demonstrates compliance with that as a process.

To come back to your question, I think one of the things that a Gateway Review, as an independent process, would do would be to look at the hierarchy within a project management structure in terms of reporting maybe some of the issues that we touched on earlier in terms of escalation, in terms of risk management, for example, and how those are being dealt with. Those are factors that I would certainly expect a typical Gateway Review on a project to test at various stages as the project goes through its lifecycle.

Q Doesn't that rather rely on people being told about the ventilation derogation? If you don't tell the Gateway Review team, you don't tell the Project Board-- the Programme Board and you don't tell the Board, how do you carry out all these checks?

A Sorry, with respect, when I was referring to Gateway Review, I wasn't specifically talking about a derogation from ventilation standards.

Q Right, sorry.

A I was talking about the project management arrangements, the hierarchy of those arrangements, the management of risk, escalation of risk, delegated authority. Those are typically things that would be looked at in a Gateway Review, and the Gateway Reviews that were provided on the Queen Elizabeth project were extremely positive, from memory.

Q Well, indeed, and that's one thing that struck me as a little bit odd is that we've discussed -- and I appreciate you weren't involved in all the meetings -- how a remit was produced for the Executive Board, which you attended part of and your colleague attended, which seems to have suggested there should have been a change control process and it doesn't seem there was one. And so a Gateway Review might notice there was a remit, but isn't it reliant on Project team members telling it, "Oh, by the way, there wasn't a change control process"? Otherwise, they'll just sort of assume it's all working properly.

A A Gateway Review is structured in such a way that there is generally a positive enquiry, if I can describe it like that----

Q Right.

A -- by gateway reviewers that will go in and ask a set series of

questions around the project governance, etc. I've been subject to Gateway Review and I've been a gateway reviewer myself in a different guise, so that would be typical that you would go in with a set of questions to test what's going on, because you're coming into a project relatively cold initially and there are certain factors that you would look to test, if you like, through the-- that review over a two to three-day period.

Q Well----

A Again, the Gateway Review reports are provided to the senior responsible officer, which in this case would have been the chief exec of NHS Greater Glasgow and Clyde, but copied to the director general in health and social care in the government for information.

So, any of those issues-- the interface between Gateway Review and the CIG process would be if there were any recommendations that were made in the Gateway Review, there was a clear expectation that those recommendations would need to be followed up and addressed before the next stage of a business case came forward. So, in between outline and full business case, if there were a number of recommendations, CIG would have looked for evidence within the full business case that those

recommendations had been acted upon.

Q I suppose the final thing to say on this topic is that if this Gateway Review, the one that preceded the full business case, for one reason or the other, was unaware that it had been decided to procure the hospital not in compliance with parts of the ventilation guidance, that's another reason, in a sense, you wouldn't notice because you would have had access-- if not directly, the system would have had access to that Gateway conclusion. So you're reliant on these other checks to work too.

A Yes, that's correct.

Q Let's just look at the process because I think it's probably important just to sort of check some dates. So, if we go to bundle 48, document 9 at page 330, we have an email sent in sending in the business case on 22 October 2010.

A Yeah.

Q That is, what, 18 days prior to the CIG meeting, which is the next item.

A Yeah.

Q We have a minute which is on page 332.

A Yeah.

Q Now, was it in a bit late for that CIG meeting?

A That's not untypical of business cases coming in, but I think, again, as I've indicated in my statement, the formal submission of a business case

would typically happen after approval by the NHS board concerned, okay? So, the condition of approval effectively is that the board approves before it comes to CIG. What often happened, and happened in this case, is that we will have had sight of drafts in advance of the formal submission of the business case.

So, colleagues on CIG will have had the opportunity to review some material within the business case before it's formally submitted, and the purpose of that is really to identify and address any issues that are arising from the text that's provided, whether there are issues of policy or delivery from around the CIG sort of table, whether it's medical, whether it's financial, whether it's operational. So, the timetable is not unusual and I think, again, as I've said in my statement, there were opportunities for presentations to be given by representatives of NHS Greater Glasgow and Clyde to inform CIG of progress on the project and the development of the full business case.

Q If we look at an email that we have, was it actually decided on the 9 November CIG?

A No, because there were still outstanding issues on finance that had to be resolved. I think that's recorded in the minute.

Q Then, in fact, there's an email

thread on page 337 where on 15 November you're still waiting for comments. In fact, only one person had responded: Dr Armstrong, who then was in Fife. No one else has responded at this point.

A Yeah, yes.

Q Is this unusual to have sort of an incomplete decision and a slight delay around responses?

A It can, but equally I can't remember the circumstances of CIG members' absence or-- you know, whether it was through illness or whatever. So, at the end of the day, the decision needed the consensus of CIG before a recommendation would be put forward and approved.

Q And this consensus didn't take place in the meeting. It was presumably done by email, because there's not another meeting.

A It would have been done, and I think in my statement there's reference to-- and in the question there was reference to expedited procedures. So, "expedited procedures" simply refers to a process whereby a business case is considered at the CIG, there are outstanding issues that are then dealt with in correspondence, rather than waiting for the next formal CIG meeting, which I think at that time-- I can't remember whether they were every three

or six weeks.

Q Well, indeed, the December meeting was cancelled. The next thing is on page 341, which is 10 December, which is a letter from Mr Feeley to Mr Calderwood confirming approval.

A So, there would have been-- those issues would have been resolved in advance of the director general signing off, or the interim director general signing off.

Q So, just to recap, between 22 October and 10 December, maybe a relatively short period, but before then you'd have seen drafts and reviewed those drafts and made comments.

A Yes.

Q And you're assuming-- well, you're not assuming. You know that the Board has approved the full business case.

A That will have been confirmed when the business case was submitted in to CIG. There's generally a covering letter that comes in with any business that confirms it.

Q But then you are assuming, and you don't know, that the Board has carried out proper board governance processes, HAI-SCRIBEs and all these things, before it approves it, but you're not actually looking at that level of detail?

A No.

Q No. So, in general terms, and

I know you've addressed this in the Edinburgh scenario, it might be said – if you take this off the screen – that the scenario in Edinburgh involved some mistakes that weren't noticed – I mean, I realise that's a great shortening of a very complicated topic – and your position is that the CIG couldn't have spotted that in the short term-- short hand.

A Agreed.

Q But in this context, I don't think anyone's suggesting there are mistakes that weren't spotted. If there is anything going on, it's somewhat more significant that things aren't reported. Was the CIG capable of spotting something like the decision not to follow all the ventilation guidance if it's not actually told that it's not being followed?

A No, it's not.

Q How-- I mean, this may be something you-- But you've left the Civil Service now? You now work for an independent agent.

A Yes.

Q Yes. It occurs, certainly to me, that in a conventional private finance procurement, the funder would be heavily involved in any negotiations. Is that your experience?

A Yes.

Q Yes, and they might well, as one of our witnesses put it in their statement, have acres of lawyers all over

the process from the funder. You're nodding. There's an unfortunate person writing a transcript. Please say, "Yes," if you want to say yes.

A I recognise what you're describing.

Q Yes, and so what I'm wondering here is: is it a fair criticism that, as it stood in 2009/10, the level of scrutiny being provided by the Scottish Capital Investment Manual and the CIG was – for reasons of custom and practice; it wasn't novel – materially less involved with the project than would have been what you had observed in PFI projects from the point of view of the funder?

A (After a pause) I would have---
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Q It's a difficult question.

A No, it's a different-- it's a different structure in terms of the funder's responsibilities on an ongoing basis within a PFI contract. I think that the point that I would make is that the due diligence, if you like, that's required in a PFI contract I think is more overt from both the client and contractor side.

At the same time, the size and nature of the contract that was being entered into here, and I don't say this from the point of abrogating any responsibility at all, but the contract is entered into by NHS Greater Glasgow and Clyde. It's not Scottish Ministers'

contract. So the due diligence that's required, whether it be technical, financial or compliance, the reliance that's placed by-- or was placed then by Scottish Government on the processes within any health board, not just NHS Greater Glasgow and Clyde, I think was much more dependent on scrutiny by the NHS board. I think that's fair to say.

Q How do you respond to the suggestion that, whilst that's all true, that hundreds of millions of pounds wasn't raised by Greater Glasgow and Clyde by some means. It was borrowed or received or raised by the Scottish Government or the UK Government and it's public money, and it's public money that the Scottish Government chooses to spend, and therefore the system should provide a higher level of scrutiny than was perhaps provided?

A I think clearly, with hindsight, the fact that there was an issue that was known but not disclosed, then that raises that question, but the fact that it wasn't disclosed within the Health Board before it came to-- or at that level within the Health Board before it came in to Scottish Government I think is still a question in my mind.

Q And just to wrap up this section----

THE CHAIR: Sorry, could I just ask you to repeat that last sentence, Mr

Baxter?

A Sorry, I'm actually struggling to recall exactly what I said.

THE CHAIR: Right. My note is that, with hindsight, the issue not disclosed raises a question, and then something about disclosure within the Health Board.

A So it's about-- it raises a question about the requirement for disclosure, positive disclosure, within the Health Board.

THE CHAIR: Thank you.

MR MACKINTOSH: But, I suppose, does it also raise the question of: to what extent should the central government rely on regularity and proper processes by the Health Board or take an interest itself in making sure that the standards are being followed?

A I think there's more that can be done in terms of prescription and I think has been done since. You know, overt checklists, for example, are some things that can be done which kind of reinforce what I think I've-- which reinforce what I think I've described. I don't think, from my perspective, there's a gap in terms of the policy and process, but in terms of positive identification, then there are things that could be done to strengthen that, and I think have been in the intervening period.

Q Just to be clear, had you

known in October/November 2010 that this hospital was not being built in accordance with the guidance, what would have been your recommendation to ministers?

A So, I would have-- So, the sort of process I would have followed would have been to understand what the non-compliance was, to have sought appropriate technical advice on that, and then provided advice to ministers on the implications of that. And clearly, if there was an issue with infection control, then I would have involved the chief medical officer's office in providing and framing any advice to ministers on a recommendation.

Q And does this go back to the evidence you previously gave that you wouldn't accept derogations in order to meet the financial envelope?

A Absolutely.

Q We've had some evidence from----

A Sorry, can I just be clear? If there was a derogation-- and we're not talking about ventilation, but if there was a derogation from standard that didn't impact on, you know, health and safety or infection control and technically was justifiable, then the answer to that might be different. But the one that we're describing here, I just want to make clear that that situation, I think, is the basis of

my answer.

Q We had some evidence from Mr Hall of Currie & Brown that, if I recollect correctly, amounted to this: whilst it was the case that it was decided to proceed to sign the contract with a ventilation system that only delivered 40 litres a second, 3 air changes rather than 6, to the general wards, that might be something that was open to later review or change, obviously with a possibility of a compensation event for the contractor.

Thinking back to 2010, if during 2010 the Health Board had come back to you and the CIG and said, "You know how we signed a contract which we thought was going to cost X? We've decided to improve the ventilation. We now want X plus Y," given the situation you were dealing with at the time of finances, what sort of responses would that have involved from the Scottish Government? I mean, I appreciate you can't make a policy decision, but just knowing what constraints were at the time, how would that have been responded to?

A I think, depending on the nature of the issue-- So, I would say the nature of the issue followed by the scale of it would have informed the approach to ministers, I think. I think fundamentally, though, the concerns over non-compliance would have overridden

anything else, quite frankly.

What would that have meant? So, we were in a position at the point of 2010 where there had been significant reductions in capital. A number of projects had had to be deferred. Obviously, there was a situation with Sick Kids in Edinburgh, you know, going down a private finance route. So, either additional funding would have had to have been directed to health from elsewhere in the Scottish Government capital budget, or there would have had to be a reallocation of funding from within the health allocation in the capital budget. So that would have been the approach, really, is to look at the nature of the problem, the cost of it, the timing of it, and how that then fitted with the overall programme across Scotland and the implications of that.

Q Thank you, Mr Baxter. My Lord, I think I've asked all the questions I need to ask. It might be an appropriate time to have a 10-minute break so I can check with the people in the room and those watching remotely for the legal teams.

THE CHAIR: Again, Mr Baxter, you'll recollect that our procedure allows for counsel to check if there's additional questions. We should be back with you in about 10 minutes or so.

A Okay, I'll be ready. Thank you,

Lord Brodie.

(Short break)

THE CHAIR: Mr Mackintosh?

MR MACKINTOSH: My Lord, I have no Rule 9 questions or additional questions from my colleagues, and therefore nothing more but to thank Mr Baxter for attending.

THE CHAIR: All right. I have no questions. Mr Baxter, that means that's the end of your evidence and you're free to disconnect the online link, but before you do that, can I repeat the thanks that I expressed on the previous occasion that you gave evidence? I appreciate providing the evidence this morning, but I also very much appreciate, as does the Inquiry team, the work that goes into that evidence. So, many thanks, but you're now free to leave us.

THE WITNESS: Thanks, Lord Brodie. Can I also thank the Inquiry for the ability to deal with this remotely this morning? I'm now located up in Inverness, so that's been a big help. Thank you very much indeed, and bye.

(The witness withdrew)

THE CHAIR: Thank you. We'll take our break now and reconvene at two o'clock with Mr Connal leading the

evidence of Mr Winter.

MR MACKINTOSH: Yes, my Lord, and Mr Winter is remote as well.

THE CHAIR: Again? Right. Well, we'll see each other again at two o'clock.

(Adjourned for a short time)

THE CHAIR: Good afternoon, Mr Connal. We have Mr Winter waiting.

MR CONNAL: We have. Apologies for the slight delay, which is due to some technical issues.

THE CHAIR: Good afternoon, Mr Winter. Can you see and hear me?

MR WINTER: Yes, fine. Good afternoon. Yes, I can see you fine.

THE CHAIR: All right. We, or at least I, can't hear you.

MR WINTER: (After a pause) Is that okay?

THE CHAIR: That certainly sounds better.

MR WINTER: It still seems ropey this end, but I don't know why.

THE CHAIR: Right. I think we can hear you clearly.

MR WINTER: Okay.

THE CHAIR: Now, as you understand, you're about to be asked questions by Mr Connal but, before then, I understand you're prepared to take the affirmation.

MR WINTER: Yes.

Mr Kenneth Winteer

Affirmed

THE CHAIR: Thank you, Mr Winter. Now, I don't know how long your evidence will take, but if at any stage you want to take a break, just give me an indication and we'll take a break.

THE WITNESS: Right, thank you very much.

THE CHAIR: I'll now hand you over to Mr Connal.

Questioned by Mr Connal

Q Good afternoon, Mr Winter.

A Good afternoon.

Q Thank you for making yourself available to assist, which is appreciated by the Inquiry. There is no issue if anything happens to the technology-- If your technological assistant who is lurking in the background wishes to help out, it's been made clear that that's happening and no one is taking any issue with that, so please feel free to avail yourself of that assistance in the event that it's required.

A Thank you.

Q Now, for the purposes of the Inquiry, you have produced a witness statement. Have you got access to that?

A Yes, it's here in front of me.

Q Okay, thank you very much. I might use it just as a guide as we work through the issues. I'm not going to ask you about everything that's in there, but it may help us just understand where we are at any time. I need to ask you then the formal question that I ask all the witnesses, which is: are you content to adopt the witness statement as part of your evidence in this Inquiry?

A Yes.

Q Thank you. Now, as I think may be clear to you by now, Mr Winter, the purpose of asking you to give evidence is because there were a number of steps taken of different kinds to, shall we say, introduce a resource to this project which wasn't internal, originally, to the Health Board. There were some other advisors we've been asking about and we've been keen to look at all of these to see how they were intended to work and how they did work, and you're in that box.

I see from the first page of your witness statement, I'm just looking at paragraph 1 – I think you should have page numbers at the top of each page as well, which are the ones that we use here electronically, so it's on electronic page 71 or page 1 of your witness statement – that you were with Balfour Beatty. Is that right?

A That's correct, yes.

Q Is that the same company that was bidding to build the hospital?

A Yes, I believe it was, but I'd left Balfour Beatty, obviously, quite a time before that.

Q All right. Was it 2005, I think, you'd left? Is that right? I think that's what it says in your statement.

A Okay, yeah.

WITNESS ASSISTANT: 20 years ago.

A Yeah, 20 years I've been retired now.

Q Okay, thank you. The first point I just wanted to ask you was this: that on that first page you say that, during your time there, in the middle of the page, you say:

"In the latter stages of this employment the Balfour Beatty Group became involved in the delivery of hospitals via the PFI procurement route..."

Then you list a number of hospitals that the company was involved with during your time. Is that right?

A That's correct, yeah.

Q Now, did you, in the course of your role, become familiar at all with the special requirements that were imposed, the rules and regulations around what was required for building a hospital as opposed to building an office block or a

shed?

A Yeah, we always viewed hospitals as one of the more difficult kind of projects to take on.

Q Right.

A It was-- It always was difficult to hand them over to get them complete and (inaudible 14:14:22) complete because the testing and inspection regimes, they were multiple, and it took a long time to get across. So you were always delighted when you manage to hand it over because that was a big achievement.

Q There is a suite of guidance documents sometimes called "SHTM", with various numbers following, which were used for hospitals. Were you familiar with these at all?

A "Familiar" might be taking it too far. I knew of the existence of-- I think it's HTMs?

Q Yes.

A That's what we called them back then. It was a very detailed specification that applied to hospitals, yeah.

Q Yes, and I think, as this Inquiry knows, HTMs are the English ones and SHTMs are the Scottish ones.

A Most of our hospitals were down south.

Q Right. So you were familiar with the idea but not perhaps with the

detail. Is that right?

A That's correct, yeah.

Q When you first became involved in the Glasgow hospital, the new Glasgow hospital, did you have any understanding about whether the requirement was to build that hospital in accordance with the SHTM guidance?

A No, that was never discussed, that I can recall, by anyone with me.

Q On the first page of your statement, you say you were interviewed by the chairman, Mr Robertson, and two others whose names don't matter for present purposes, so we needn't worry about that, and then you say:

"It was explained that the Board was about to embark on major construction expenditure but the persons on the Board did not have any experience in construction."

A That's right, yeah.

Q That's what you've narrated there, correct?

A Yeah, that's what I recall of the meeting, yeah.

Q If the Board didn't have any experience in construction, were you given to understand where that construction experience would be found that would be available to help the Board build the hospital?

A Well, as far as I can recall, the chairman and the other two gentlemen

put it to me that there's been a history of major projects being reported on programme, on budget, and then, three months before the end, it's suddenly announced they're now a year behind and millions over budget, and they didn't want that to happen in this case. They wanted to ensure that what was being reported by their project manager reflected what was happening on the site, that the team was reporting on programme. I agreed with that so that there were no shocks to come to the Board. So it was the Board's project manager who reported to the Board.

Q I'm going to ask you about the Board's project managers in a little while. If I could just stick to page 1 of your statement at the moment, you say:

"The Chair explained he wanted someone in place who could give an independent view of progress and costs, challenge the construction team if necessary..."

Now, can you just help his Lordship in the chair understand what you mean by "challenge"? What's involved in that?

A Question their view on progress, their view on costs. I visited the site about once a month, spent some time with the consultant – from memory, I think it was Currie & Brown, maybe it wasn't – spent some time with them reviewing the programmes, discussing

progress and costs. I then sat with Alan for some time discussing his view, had a walk around the site, went back into the office and then again discussed with Alan how he felt the job was and what he would be reporting to the Board, and I satisfied myself that what he was reporting was a genuine reflection of what was happening on site.

Q Well, that was a question I was going to ask you, because “challenge” suggests not accepting what you’re told just at face value but doing some more digging around. Is that fair?

A Yeah. It wasn’t a case of the project manager saying to me, “We’re on programme. That’s it, end of story.” As I say, I sat for maybe an hour or two hours with two gentlemen, and I can’t remember their names – as I say, I think the company was Currie & Brown – looking at marked-up programmes – they gave me programmes to take away – so I could then get their view on progress and walk around the site and see if it married up with what they were saying, check with Alan if he was in agreement with what they were saying and what he was about to report----

Q Is that Alan Seabourne you’re mentioning there?

A Yes, it was Alan Seabourne I worked with, yeah.

Q Yes. To enable you to carry

out this job of not accepting what you were being told at face value, can you remember whether you did any preparation, any looking at contract documents or any other materials?

A No, I was never-- Part of my brief, as I understood it, in practice was not to examine any documentation but it was to overview progress on site, costs on site, and satisfy myself that what was being reported was accurate, but it wasn’t a forensic analysis to go into any particular aspect of the job. It was a high-level overview.

Q The particular contract type here was a design and build contract under a contract form called NEC3.

A Yeah.

Q Now, at the time, can you remember, were you familiar with operating under an NEC3 contract?

A No. NEC on-- I think on-- the majority of contracts we did in my working life were not under NEC3. That came towards the very end of my working experience, although design and build became much more prevalent in later years.

Q Again, just so we’re clear as to what you were or were not doing, because that will be helpful to us in understanding your evidence, right at the foot of that page of your witness statement, you say you met “the Board’s

site team along with their appointed project managers” and you were “carrying out a site inspection”.

A Yeah.

Q Now, if you’re carrying out a site inspection, what are you using as your yardstick? What are you checking against if you don’t have the contract materials?

A Okay. Well, I think after 40 years’ experience in managing and running projects from small to very big, you gain a certain expertise or knowledge, which you must do as a high-level management consultant, to walk around a project and assess broadly how things are going, how is progress. If I had been told that the cladding is 50 per cent complete, when I walk around, does it look like it’s 50 per cent complete? Not that every nut and bolt is in the right place, but just generally does it look like what’s being reported?

That can be concrete, it can be installation of partitions, electrical work, but I think it’s just-- I don’t know anyone who would have the knowledge to walk around a job and assess everything from concrete work to electrical work and ventilation work. They-- It’s just-- it’s a total overview of the project, which is how we manage jobs. You have a manager at the top, who takes a complete overview, and managers underneath dealing with

all the specialist bits and pieces of the project.

Q If we go on to the next page of your witness statement – so that’s 72 in the electronic numbering at the top, page 2 of your hard copy statement – where you say this kind of thing that you were doing was not dissimilar to what you did during your working life. I just wanted to ask you this: if you were doing this kind of thing during your working life as a senior executive of the Balfour Beatty group, what were you looking for? Were you looking for things that might damage your balance sheet or scare the financial press, or-- What kind of things were you trying to put your finger on?

A Well, I think the principal thing if you’re managing a company who at any one time you might have 50 or 100 different contracts on the go, you’ve got to-- At some level, a senior manager like myself would visit individual jobs. You’ve got a good understanding of the capabilities of the management on that site. The primary aim is to ensure you complete a job on time and to the required budget. These are always the primary areas.

There are lots of other subsidiary issues, the publicity and customer relations, all of these things, but the main thing is to complete on time and on budget and to the required quality, if you

focus on these things. I think on a major job, there'd be a big team there, and a large part of it is understanding the team, recognising their strengths and weaknesses. Some managers need encouragement and others need criticism. It's a management exercise.

Q Well, let me just ask you about the team, because one of the issues that's cropped up in the evidence of other witnesses is the project managers who were appointed to run this project. Now, you've mentioned Alan Seabourne, and we know he had assistants, Mairi Macleod and Heather Griffin. They either had recent experience of administration or were really healthcare administrators. I just wondered whether you were able to form any view as to the capabilities of the Project team that you were being asked to deal with?

A No, it was primarily Alan who was my contact and interface, and occasionally his assistant, who was Peter-- Peter----

Q Moir?

A It was Peter Moir. That was him, yes, his assistant, if Alan was on holiday. These are the two, and very occasionally I met other people, but I couldn't remember their names.

Q And the other people you met you thought were from Currie & Brown?

A I might be wrong, but I think

that was the company that they were employed by, the two I met.

Q Currie & Brown were certainly employed by the Board. There was a Mr Hall. I don't know whether that name rings any bells to you.

A No. Sorry, no.

Q That's fine.

A But my memory isn't what it was a few years ago.

Q Did you form any view about Mr Seabourne and Mr Moir's strengths and weaknesses in the way that you just illustrated to us a few minutes ago?

A I got the impression that Alan was a very focused kind of individual, and I thought-- I could see that he had loads of people to deal with, but I thought he was good at his job. I mean, my life, my career has always been on the other side of the fence, so coming out of the client side of the fence, so I still perceived him as being good at his job.

Q You mentioned a minute or two ago that you've become increasingly familiar with design and build as a concept towards the end of your working life because it had become more popular. Is that right?

A That's right, yes.

Q In the context of design and build, something called employer's requirements, or another word that means something similar, are they an

important part of that process?

A Yeah, very important, yes.

Q You may have answered this already, and if I ask you a question you've already answered then I apologise, it's my fault, but were you given any understanding of what the employer's requirements were for this project?

A No, no. I mean, I would imagine any previous hospital requirements I've seen were vast, many, many pages, huge documents, so I was never asked to go and check or inspect the employer's requirements.

Q One of the issues that's cropped up – and tell me if you can help or not help on this – is that once you've got employer's requirements and the contractor gets these as part of the project and is told, "Well, go design. Design is your responsibility," have you had any experience of the kind of expertise that's needed to check that that job is being done properly? So, in other words, to check that what is produced meets the employer's requirements?

A We would within our side, within our side-- directly employ in Balfour Beatty people called services managers who would be experts in mechanical and electrical services, and they would check, and we would also have on board a team of mechanical and electrical designers,

engineering designers and architects, and each of them would check and make sure that things were as they should be.

Q I could understand that's what you would have as the design and build contractor in the example you've just given. What about on the client side, because you've switched camps for this particular job? You're being asked to look at the process that's taking place from a client perspective. Did you get any understanding of what expertise was available to the client in this case?

A No, I don't-- I don't think I did. I just assumed that the consultants that the Health Board had employed were doing their job.

Q So that's not something you looked into at all?

A No, I was liaising with Alan Seabourne, and if he confirmed to me that-- or the Currie & Brown duo confirmed to me that things had been signed off as okay, approved, checked off, then I would accept their word that things had been signed off as correct and somebody in the team was confirming that.

Q Right. So somebody told you things had been signed off, but you weren't sure who by?

A No, not specifically, because if Alan or the people from Currie & Brown were telling me something was done, I

accepted their word that it was done. I think if I questioned every single aspect of the job and said, "Well, I doubt that. I want to go and check it," it was much more than one person could ever do.

Q Just so there's no doubt in your mind, the reason I'm asking these questions is that some of the areas that had to be signed off in a hospital can be quite technical. Ventilation is one that comes to mind.

A Absolutely, yes.

Q So, if something was being signed off on ventilation, who would you expect that to be done by from the client's perspective?

A Normally, the client would have-- As we saw it as contractors, we would normally see clients employ a mechanical and electrical consulting company, and they would check it off, but the majority of health boards had their own in-house experts for each specific trade or discipline, and they would also sign it off. So it would require double signing. So this is why it always proved very difficult to get these signed off, because there were so many people that had to tick a box to confirm it was done.

And if I was told by Currie & Brown that it had-- and I can remember looking at programmes where I would ask, "How's sign-off-- or how's handover proceeding?" -- because handover

doesn't happen in one day; it happens over dozens, hundreds of days -- "How's it proceeding?", they would say, "Well, we've signed off 30 or 100 rooms or 200 rooms," and when they said it's signed off, I assumed it was all checked and okay.

Q Thank you. Just moving on to another section, in the next section of your witness statement you were asked about the board and governance structure, and you say you weren't really aware of reporting lines other than you understood the project director -- and that for most of your time was Alan Seabourne -- reported to the chief executive. That was your understanding.

A I understood that, yeah.

Q Yes. You were then asked, "Well, what do you think of the sort of control, the governance structure that was in place on this project?", and you say you didn't really know what the controls were. Is that right?

A Yeah, I think that's fair. I've been in construction contracting all my life, and making the jump to the client side of the fence was quite different -- the structure of the governance within the Health Board. I have to say that, as a personal opinion, the boards are far too big, far too many people. Twenty to thirty people around a table does not make for good management or running a business.

You would never have any more than seven or eight around the top table, if you like, to discuss things, and people would understand that's the way it was.

Q Thank you. In the next section of your witness statement, you were asked whether you were involved in various issues, and a number of the issues you just said, "No, I wasn't involved in this at all." I just wanted to ask you about the answer that you've given on page 73 where, in relation to construction and design, you say you gave an overview of construction to the Board's project manager on a regular basis. How was that overview given? Was it just orally or was it written down somewhere or recorded?

A It was a discussion, verbally discussed. I was never asked-- This was a role I'd never been in before, so I had no knowledge of how the role was supposed to be carried out. I was an outsider coming into the Health Board, so it was very much a verbal discussion with Alan and other people in the project management office. There was no minuting. I discussed with him, discussed occasionally with Andrew Robertson how things were, but no formal-- no formal reporting by me. I was an outsider within the Board.

Q Well, I can understand how you've certainly come in from outside. I

think we were just wondering if there was anywhere that we've missed where we might find minutes or records of your reports, but the answer is they were all done orally. Is that right?

A Yeah, I think I wrote maybe-- I remember writing two or three times about something to Robert Calderwood, chief executive, but it was all verbal, apart from what was reported at the Board meetings. That was obviously reported and written down.

Q Okay. When you say, "what was reported at the Board meetings", was that you reporting?

A No, no. Alan Seabourne reported, and I just-- The chairman would generally ask if I agreed with what Alan was saying, if I had any comments to make. Generally I didn't have any comments, or very minor ones, because I had already discussed with him what he was going to report.

Q The process that led to this hospital getting up and running had-- Part of the exercise was a thing called the full business case, which basically had to go to the Scottish Government for them to say, "Okay," because that's where the money was coming from, broadly speaking. Were you involved in the preparation or presentation of the full business case?

A Not at all.

Q One of the issues that we have, Mr Winter, is that most of the comments you have recorded are of a positive nature, "Things are on track," you know, words to that effect.

A Yeah.

Q But we now know with the benefit of hindsight that there were some issues, so I need to ask you about these just to check what you do or do not know about any of them. If we go to page 74, if we go to Question 11, you're basically asked there, "Do you know anything about any issues at all with either the water system or the ventilation system of the new hospital? Anyone raise these issues with you at all or did you spot them yourself?" Am I right in understanding the answer to that is no? You didn't know anything about it?

A No. Nobody ever raised anything of that level of detail about water systems or ventilation systems, and when you're walking around the site as a manager looking at progress, you would look at ventilation and see the ventilation ducting going up, and if it had been reported that it was 90 per cent complete, you would kind of expect to see 90 per cent of it up. But whether or not it was the correct diameter or size or number of air changes, these are the details you would expect managers on the contractor side and on the Health Board side to be

making sure were in order, that things were correctly done.

Q Yes. Now, the other question you were asked on that page, near the foot of the page, is basically about testing, in particular testing of the water system, and you're asked, "Do you know anything about that?", and you say you had:

"No involvement apart from asking... if all testing was progressing in accordance with the programme."

I take it that you were giving an answer to that question. Was it----

A Yeah.

Q What was that answer?

A Again, it was positive, as I said. I think I'm correct in saying that of the many programmes I was shown by the consultants, Health Board consultants, there were programmes for a number of sign-offs-- number of rooms, if you like, checked off to ensure that if you've got several thousand rooms, how many have been signed off is correct and how many are still to go, so that way you measure progress. And, generally, they were given a tick, "Yes, the number done seems to be in line, on progress." Since it's signed off by the whole team, you've got to assume that it's been signed off as correct.

Q So when you asked, you know, “Where are you with testing?” and you’re told, “Oh, we’re up to this point,” did you report on that to anyone or did you just check that that seemed to match what you saw?

A No, I didn’t report that specifically to anyone. It was just part of what I had been asked to do was overview progress and make sure that the progress being reported was actually reflected on site, that that was what was happening and that’s what Alan was about to report to the Board.

Q So am I right in understanding from the answers to these questions that, by the time you finished your job with handover, you hadn’t been told of any problems with either water or ventilation?

A No-- I can’t remember some of these, but I can clearly remember everybody was delighted at the end of the handover that the job was complete on time and on budget, and everyone seemed happy with what had been done.

Q And when you say, “everyone”, is that the Project team you’re talking about?

A Yeah, the Project team were happy, but I think the Board and everyone in the boardroom was equally happy that the whole thing had been achieved.

Q Can I just then move on and

check what you do or do not know about some other things? We know here that a unit called the Beatson Bone Marrow Transplant Unit was decided at a reasonably late stage, 2013, it was going to move into the new hospital. It hadn’t been originally planned to be there, but the intention was to move it in and to do whatever was necessary to accommodate it. Did you know anything about that?

A No. I can vaguely recall changes to the project as we went through. One of them was some rooms were being changed to something else, but I’m afraid I can’t remember the detail of what that was.

Q So you can’t help us with whether you ever looked at what the technical requirements were for that move, for instance?

A No, I don’t think-- I don’t think that’s something I would expect to be involved in. I expect that that’s why you employ a team of managers under you – designers, architects, and your own staff – to do that kind of thing.

Q So you don’t know what, as it were, the specification of this unit was or how it was conveyed to the contractors? That’s not something you were involved in?

A No.

Q Part of the reason I’m asking

you about that ward in particular – I know when you were there, half the time it would just be a shell of a building, but it turned into what is called Ward 4B – is that in Ward 4B, the patients appeared in June 2015 when the migration took place, and then not long after that they upped and went again because those in charge were not happy with what was there.

Now, that type of situation, where a cohort of patients arrives for a ward and says, “This is not up to scratch, we’re off,” to be a little colloquial about it, I think a number of witnesses have said that was highly unusual for that to happen. First of all, had you ever encountered that kind of situation in your previous experience of hospitals, where basically the customer turned up for a particular ward and said, “This is not good enough. We’re not taking it”?

A No, because, as I’ve said once or twice already, getting a hospital handed over-- It takes quite an effort from a contractor to get all the sign-offs done by all the appropriate people. I mean, there are major sign-offs and there are very specialist sign-offs. For things like medical gases, for example, there were specialists brought in to sign off. To achieve that is very difficult. To go and to find out afterwards it wasn’t “correct” would be quite a shock.

Q While we’re talking about sign-

offs, the Inquiry has had a lot of evidence about something called validation, which is something supposed to be done by the client before they take the wards, particularly over ventilation systems. Were you involved in discussing that at all?

A No, not at all.

Q Are you familiar with the general idea that, under the HTMs and the SHTM, the contractor commissions everything and then the client does a validation to make sure it meets what they thought it was going to do?

A Yes, that’s right. That’s quite-- quite common, I think. Once it’s completed, it’s completed again, if you like, by running the systems and transferring the operation of the systems to the client’s own managers to validate that everything is working correctly and properly.

Q But you’re not aware of anything being done about this on this project? You didn’t encounter that issue, did you?

A No, I don’t recollect any issues regarding that.

Q The reason I asked, so again there’s no dubiety, is that the evidence the Inquiry has is that validation wasn’t done of the critical ventilation systems at handover, and I just wondered, given your overview role, whether you were

aware of it at all.

A Well, that's a surprise to me that it was handed over if something hadn't been done. I just-- That's very unusual.

Q Okay. Well, let's move on. Let's go to page 78 of your witness statement. Now, there's a heading on that page, "Project Management Group", and you're asked about something called the Project Management Group, and then you say in answer that the only group you were really involved with was one with you, the project manager, and representatives from – let's just say for the sake of argument – Currie & Brown, and you met approximately once a month.

A Yeah.

Q This gathering, this group, are we talking just 3 of you, or 4 of you, or 12 of you?

A No, no, it would be two or three from Currie & Brown, there would be Alan and Peter, sometimes together or sometimes one. That would be about five-- five or six at the most.

Q You say it didn't report to anybody, this gathering. Why was that?

A I think the reason I was there is because the Board advertised for someone to fulfil this role. I was appointed to go and overview progress, which I did, and costs, which I did. That

was the remit I was given, not to do anything else, and no one ever complained all the way through that I wasn't doing something they wanted done.

Q I'm not necessarily criticising you. We're just trying to understand the way this thing worked, because we can hear from your evidence that there might have been, you know, half a dozen people there or thereabouts – sometimes more – discussing issues on site, but there doesn't seem to be any output, as it were, from that meeting. Nobody produces anything. Is that right?

A Yeah, I can see that that, looking back in hindsight now, maybe seems strange, but I think another factor I would ask to be taken into account was this was a new role, and having someone from a contractor stepping into a Board at the highest level was, I think, quite a shock to some people in the Health Board, some other managers, that I was seen as a bit of an outsider, perhaps. So I had to take some time to develop relationships and tread a bit warily to begin with.

Q Can I ask whether in your time there you were ever made aware that a decision had been made to depart from the SHTM guidance on air changes?

A I can't remember any discussion about that at all, but maybe I'd

add in something that may be of interest or use. As a contractor, when you're overseeing projects or tendering for projects, we would occasionally find differences between the HTMs and the client's specification, and it was always hammered on to us, "Just do what the specification asks." There was a conflict there, and if you went back to the client and pointed it out, they'd generally say, "Just do what's in the specs." So there-- there were conflicts, or occasionally there were conflicts with jobs.

Q Just so his Lordship understands what your point is, where did the conflicts arise?

A Where there was maybe a difference between what the HTMs asked for and maybe the client's own-- especially own requirement-- client requirements slightly differ. "Which one do we price for?" was quite often the question, and 99 per cent of the time the answer was, "Just price what's in the specification." The client's requirements, sorry, "Just price what's in the client requirements."

Q Right.

THE CHAIR: That would seem to be an inevitable conclusion because the contractor was offering to meet what the client wanted.

A Correct.

THE CHAIR: And if that's what the

client contracted for, that is presumably what you were obliged to provide.

A Yes, that's correct. The general response was, "Just do what's in the client requirements, just--" Because if you didn't, you could have one contractor who maybe hadn't spotted the HTM differences, and maybe he would quote and do something in line with the HTMs, and another contractor would do something in accordance with the client's own requirements. So it was usually, "Stick to the client requirements," was the norm.

MR CONNAL: Can I just come back to a point I asked you a little earlier? So, apologies for going in the odd circle, Mr Winter.

A Okay.

Q It's mentioned on page 78. The evidence we've had here is that, during the early stages of design, when the employer's requirements were being put together and so on, the Board had Currie & Brown as their advisers, and then Currie & Brown had a suite of sub-consultants – architects, planners, M&E engineers, and so on. A little like what you explained to us earlier was often the case for the contractor, that you had a suite of specialists in different areas available to you.

Essentially, when the contract was signed at the end of 2009, just shortly

after that, these sub-consultants were largely stood down, so they weren't being employed on a day-to-day basis anymore. So I'm just wondering whether you have any view, based on your contact with the Project team and Currie & Brown-- did you have any visibility of who was providing what you might describe as technical advice behind the people you were meeting?

A No, I had no knowledge of that. I think I had only fairly recently joined the Board at that point in time, so the whole setup within this Board or any board was kind of new to me, but I was never made aware of how the team was to work or get things done or supervised or signed off. In my remit, from (inaudible 14:55:49) was the project on site, visit the site, and see how progress was down there. The reference to documentation re contract was not part of my brief.

Q Okay. Let me ask you something else then. Page 79. I can put the minute up on the screen if we need it. We may not need it. There's a minute in 2012 saying:

"... the NHS Team required an updated inspection look-ahead programme for the forthcoming visit by yourself."

Now, do you know what an "inspection look-ahead programme" is?

A Yeah, I'd say-- Probably something I referred to earlier on, where programmes would be marked up to show perhaps a number of rooms to be inspected and signed off. You've obviously got the past-- how many have been signed off in the past, but you may have a programme looking ahead to see what has to be achieved to meet the handover date. So you're looking ahead to what is required to be done to give you some idea of how it needs resourcing.

Q Now, you were also asked about something called the Performance Review Group. Am I right in understanding from your witness statement that you really don't have any clear recollection of your involvement with that group or sitting in meetings of that group?

A That's right. It was only when I was reminded of it that it came to mind that I did attend that group. It wasn't something I-- that's clear in my memory. I've still not got much recollection of it.

Q So, you've been reminded about it, but you still don't have much recollection of being on that group or what you did there?

A No, I couldn't recall any of the particular meetings or discussions, no.

Q If we go now to page 80 of your witness statement, running onto 81, you were asked a question by the Inquiry

team at the foot of page 80, which is basically, "Would you have expected that the decision to build this very large new hospital with a ventilation system that didn't meet--" Well, it didn't meet SHTM. If SHTM was part of the employer's requirements, it didn't meet the employer's requirements. The question is, "Would you have expected that kind of decision to go up the tree to--" Well, there's a very long name, the NSGHLPEB, and then there's the Performance Review Group, and then there's the Board itself. Your first part of your answer is design was not in your remit. Is that right?

A That's correct, yeah.

Q And then you say, well, if there had been such a decision, you would have expected to go through appropriate approvals. So, with something like that, what kind of level would you expect it to be approved at?

A Yeah, I think clearly there could be any number of reasons, as I've said, why the things would change. It could be from a simple thing like moving a door or changing a door position to changing the ventilation system, and depending how big an issue it was, it would probably depend on how-- the level of seniority of the person that would become involved. I mean, for lots of-- On any given day, there are probably

hundreds of decisions and changes made on a project of this size. Lots will be signed off by-- or not signed off, but approved or agreed by management at a much lower level, but fairly major issues would be elevated up the tree, maybe even as far as the project manager.

Q If we just go back one step then, assuming a decision was taken not to build the vast majority of the rooms in the new hospital, hundreds of them, in accordance with the SHTM air change requirement, from your experience, where would you expect a decision like that to go for sign-off?

A I would expect that would be at the kind of-- at a very high level, but there's a chance that-- chances are that that kind of change, if there was it change, would incur a great deal of cost, so people would be seriously interested in it. So the highest level, to answer your question, I would expect that to go to.

Q Just so I understand your answer properly, that's because you think it might have a connection to cost rather than because it's departing from guidance?

A Well, I think maybe the two run together. You don't-- I said earlier that generally most clients insisted that you built to their requirements, not to any other thing, so you'd want to make absolutely sure you had signatures to-- to

approve any deviation or change to things that were not right.

Q One of the other topics you were asked about was something called the Quality Performance Committee. Again, do I understand that you now have little recollection of your role on the Quality Performance Committee?

A That's correct, yeah.

Q You say on page 81, in the answer to Question 24, you are solely concerned with overall progress and cost. That's essentially what you've been telling us today. Is that right?

A That's correct, yeah.

Q Then you go on, on page 82, to go back to the fact that there were regular meetings between you and the project manager and so on. During those meetings, were you challenging the Board's manager and advisers to go back to the word that was used when you were first appointed?

A Yes, as it was-- it wasn't-- Just part of the discussion was to challenge and question. If they were saying something, I'd say, "Well, are you sure? I don't quite see it that way. I don't quite see-- I think the contractor's struggling a bit on concrete blocks and he's struggling a bit on something else. How's he going to recover that time?" So it was challenging, yes.

Q Well, I don't have much more

to ask you, but I want to take you to the end of your witness statement, page 83. Now, we are sitting here years after the event with the benefit of much hindsight and piles of evidence from lots of witnesses, so we're in a different position to somebody on site at the time, but you say in answer to Question 28:

"... this project was well managed and controlled by the boards project manager, contractor and the team of advisors."

Now, I'm going to come back to the "well managed" point in a minute, but when you refer to "team of advisors", who are you referring to there?

A The people from Currie & Brown that I spoke to on a monthly basis.

Q Now, we know with the benefit of the hindsight that we have that, Ward 4B, basically the customers voted with their feet and went away while things were done, and we also know that subsequently Ward 2A, which was the children's hospital bone marrow transplant area, had its water systems and ventilation completely rejigged. I'm just using that as a neutral term. It's not a construction term, but basically things were stripped out and redone some years after because of dissatisfaction with what been provided.

A Yeah.

Q Did you have any inkling that

these kind of problems were going to arise?

A No, none at all. As you say, given what we know of what's happened since then, that might sound strange, but I think I said earlier that at the end, when it was announced or we became aware that the project had been completed on time and on budget – give or take a few pounds, on time and on budget – and given the track record of some other major projects that were months behind, years behind and millions over budget, I think everyone was pretty well delighted with the outcome. Nobody flagged up to me and in my time at the board I never heard anyone say anything negative about the completion.

Q Given what we know now, I wonder if I could just ask you a couple of things to get the benefit of your experience while you're with us. If we have a-- Fine, we have a project that's basically on time and on budget. These are very positive things to report for the reasons you've explained to us and credit needs to be given for that, but we also have a project which had these issues that I've explained to you, and in fact the Board is on record as saying-- I don't need to get into the technicality, but they were disappointed. They didn't think they'd got the hospital that they had anticipated getting or the qualities and so

on that they anticipated.

So you've got a bit of a contrast there, and I wanted to ask you, given your experience, can you help us at all as to how somebody of your calibre at the time could have been perhaps better used? Are there things that would have been-- With the benefit of hindsight, can you suggest things that could be done better or different? Because obviously the Inquiry is looking at trying to avoid these things happening again.

A Yeah, that's a big question. I think there was a benefit to doing what I did, which was a very broad overview. To go into much more detail on any of the aspects of design or signing off or the inspections, you'd need-- you might need more than one person. You know, it's a huge project with thousands of people working on it, hundreds of subcontractors. On any given day, there are a thousand questions being asked to answer. You know, allowing someone to delve into every one of these is-- would be a mighty task, and I suppose the Board maybe felt that they had everything in place that they needed to run this project.

I'm sorry, I'm not coming up with an answer for you. I could maybe think about that if you wanted but, sorry, I can't give you an answer to that right now.

Q My Lord, I think these are all

the questions that I have for Mr Winter.

Questioned by the Chair

THE CHAIR: I wonder if you can help me on a number of points, Mr Winter. You took up your role, the role that you've described, when you joined the Board, I think, in the latter part of 2009. Is that right?

A Yeah.

THE CHAIR: And you remained in that role until the handover of the hospital at the beginning of 2015?

A Yes, that's correct.

THE CHAIR: Right. Now, during that period, first of all, there was a period of just about a year when the design was being reviewed. Am I right?

A I think that was just after I joined the Board, yeah.

THE CHAIR: Yes, possibly from just after December 2009 until, I think, about November/December 2010. Now, in that period, what was your understanding of the services which Currie & Brown were providing to GGC?

A Well, at this point in time, I was a newcomer to the Board and I was signed up as a contractor coming into an organisation that I'd been on the other side of the fence for all my life. I knew that these discussions with the contractors-- different contractors and

designers had been ongoing for years, several years, bringing this to the point-- almost to the point of appointing a contractor, so I didn't feel it was right that I should come in here right at the last minute and leap in asking questions and enquiring as to what someone's role was or who was doing different things.

Secondly, it wasn't what I was asked to do anyway, so I don't have much I can add to what was happening within the Board at that point.

THE CHAIR: Did you make any assumptions as to what services Currie & Brown were providing?

A No, I knew-- From my contracting experience, I knew the name Currie & Brown as being a very large and well-respected company, and I kind of assumed they'd be performing the normal project manager/project consultant services that you'd find on any contract. Everyone is slightly different, every health board employs different consultants and different roles, but I saw their name there and thought, "Oh, well, they're using Currie & Brown. That's normal. That's nothing unusual. It's to provide the service."

THE CHAIR: Can I approach-- or can I ask, really, a different question? Did your experience with Balfour Beatty include design and build contracts of a comparable size to the New South

Glasgow Hospitals project?

A Yes, I think, in fact, just before I left Balfour Beatty, we were involved in Birmingham New Hospital, which I think is maybe slightly larger than Glasgow. UCLH in London was a £150 million project. Blackburn was 70/80 million. So they were very large projects. Glasgow was certainly a standout in terms of size, one of the biggest-- probably as big, if not bigger, than most of the hospital contracts we did.

THE CHAIR: And were these design and build contracts?

A Yeah, by that stage, we had moved-- by the time hospital building was booming, we were into the PFI era, so these were all PFI, which meant design and build, yeah.

THE CHAIR: Would they have design review periods within that contract arrangement?

A Yes, things-- You would have the tendering process to go through where you would have a fairly well-developed design, but once you're appointed as a preferred contractor, you then have to define that design and define all your-- that's the design of architectural design, engineering design, M&E design, and that all had to be refined and approved, really, before you can get the contract signed.

THE CHAIR: Now, you were

involved in these contracts clearly from the contractor's side but, in particular during the design review process with these large hospital contracts, what M&E support would you expect the client to have available to it?

A I would expect the client to have on board a virtual mirror image of what we-- As contractors, we'd have an architect, a structural engineer and an M&E engineer as a basic, plus various other specialities, and you would expect that to be matched on the client side. You'd expect to find the client would have a match for all the team you had, and they would discuss things and agree and we'd get sign-off.

THE CHAIR: Right, can I take that list at dictation speed from you? I think the first specialist service you would expect would be an architect. Is that right?

A Yeah, architect, yes.

THE CHAIR: I missed the next one on your list.

A Structural engineer.

THE CHAIR: Structural engineer. I think the third one was an M&E engineer.

A M&E engineer.

THE CHAIR: I missed the next one on your list.

A The next one was just a general comment. There were various sub-specialties, various specialist areas

that you'd have someone on. We always had someone-- I'm trying to recall now. A company who would kind of find relationships between rooms. Apart from the architect, they would have a knowledge of what room was required to be situated next to another room. Basically, hospital specialist people----

THE CHAIR: Yes.

A -- who advise on layouts and comment on the architect's interpretation.

THE CHAIR: Right. Is the word that I'm probably searching for a healthcare planner?

A Yes, that's a healthcare planner.

THE CHAIR: Thank you, Mr Winter. That's the last of the questions that I want to ask. Mr Connal, does that give rise to anything?

Further questioned by Mr Connal

MR CONNAL: It doesn't give rise to anything on my part, my Lord. I just wanted to double-check that what you were saying, Mr Winter, was, in effect, that you would expect from your experience of these contracts that the client, as it were, I think you used the word "mirrored" what you had. If you had an electrical engineering specialist, you'd find that they probably had one as well, and so on.

A Yeah, that's correct. Correct.

Q Beyond that, I have nothing further, my Lord, so it's purely a question of checking for other questions.

THE CHAIR: Mr Winter, what Mr Connal would now wish to do is check with the other legal representatives in the room as to whether there's any other questions arising. That shouldn't take more than 10 minutes. I think I probably have to ask you to stay where you are. It may be that our technical people shut off the screen, but I'm anxious not to lose contact with you. Mr Connal, do you have any technical input to----

MR CONNAL: I don't have any technical input, but clearly if we could put the screen off and ask Mr Winter not to engage in conversation that we can otherwise overhear just for the next few minutes but stay where you are, that'll let us do this fairly quick check. That'd be very helpful.

THE WITNESS: Okay, no problem.

THE CHAIR: Right. Thank you very much, Mr Winter. As I say, hope to be back with you in about 10 minutes.

THE WITNESS: Okay, thank you.

(Short break)

THE CHAIR: Mr Connal.

MR CONNAL: Thank you, my Lord.

There were no questions from the room. I just wanted to make one point to finish your evidence, Mr Winter. In the experience of many of the people in this room, getting a project of this scale through on time and on budget is a considerable achievement. Would that be your experience from your time in construction?

A Yes, although I have to say that-- I'm perhaps biased, but I think most of the ones we did were on time and on budget, but that's-- I would say that, but it's not usual for the construction industry or any industry to complete things on time and on budget.

MR CONNAL: I have nothing further to add, my Lord.

THE CHAIR: Right. Mr Winter, thank you very much for your evidence this afternoon and for the preparation that went behind it. I'm grateful for the help you've provided to the Inquiry. Thank you.

THE WITNESS: Thank you very much.

THE CHAIR: You're now free to sign off.

THE WITNESS: Right, okay. Thank you. Bye.

(The witness withdrew)

THE CHAIR: Thank you. Now, Mr

Connal, you are resuming tomorrow----

MR CONNAL: With Mr Hill, followed by Mr Jenkins.

THE CHAIR: Right. Well, if I can wish everyone a good afternoon and, all being well, we'll see each other tomorrow at 10.

(Session ends)

3:30