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**From:** Damian Sharp  
**Sent:** 26 May 2010 15:37  
**To:** Mark Hamill  
**Cc:** Michael Paterson; Frank McFadden; Colin Neil; Robert Bell  
**Subject:** RE: Design Deliverables - Strictly private and confidential and prepared in contemplation of Litigation. FOISA Exempt

**Strictly private and confidential and prepared in contemplation of Litigation. FOISA Exempt**

Mark

See below – same colour coding as other email

Damian

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**From:** Mark Hamill  
**Sent:** 26 May 2010 09:36  
**To:** Damian Sharp  
**Cc:** Michael Paterson; Frank McFadden  
**Subject:** FW: Design Deliverables - Strictly private and confidential and prepared in contemplation of Litigation. FOISA Exempt

**Strictly private and confidential and prepared in contemplation of Litigation. FOISA Exempt**

Damian,

Please see email below from DLA Piper requesting various pieces of information and evidence.

Give me a call if you have any questions,

Thanks

Mark

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**From:** Glover, Joanne [mailto:Joanne.Glover@dlapiper.com]  
**Sent:** 26 May 2010 08:35  
**To:** Susan Clark; Mark Hamill  
**Subject:** Design Deliverables

Susan/Mark,

Please could you arrange the narrative on this. (I don't have any papers in the folder). Section on Management of SDS (Clause 11) will follow.

Thanks,  
Jo

**Clause 10 - Design Deliverables**

**The Infraco has failed to comply with the requirements of Clause 10 and Schedule Part 14.**

**The Infraco has not developed and finalised the Deliverables in accordance with the Programme and the Infraco Contract.**

[Examples from the matrix:

- audit output
- provision of extranet
- programme of deliverables
- assurance statements, safety verification]

The Infraco has failed to comply with Clause 10.1 and Schedule Part 14 in not submitting all of the Deliverables to **tie's** Representative for review in accordance with Schedule Part 14. In particular, the Infraco has not submitted any part of the SDS Provider's Design Deliverables to **tie** for review before their issue for construction: this is clearly not in line with Schedule Part 14.

The Infraco has failed to comply with Clause 10.2 in not submitting any Permitted Variation which has involved change to the SDS Provider's original design to **tie's** Representative for review pursuant to Schedule Part 14.

The Infraco has failed to comply with Clause 10.4 by not establishing an extranet accessible by computer to **tie**, any **tie** parties and any other party reasonably required by **tie**.

The Infraco has failed to comply with Clause 10.5 by not setting out in the Programme the order in which the SDS Provider's Design Deliverables are to be submitted for review in accordance with the Review Procedure.

The Infraco has failed to comply with Clause 10.13 by not notifying **tie** of conflicts, ambiguities, discrepancies, errors or omissions within or between Deliverables together with its proposals for resolving such conflicts, ambiguities, discrepancies, errors or omissions. In particular, the Infraco has failed timeously to notify **tie** of conflicts and discrepancies between drawings issued by the SDS Provider. Conflicts have had to be pointed out by **tie** staff to the Infraco.

{It would take time to source details of specific examples of **tie** having to identify conflicts but they include recent discussions on the Haymarket Viaduct ducts and I am confident that there will be examples from Princes Street and Section 7}

{Do we consider that the change to the number of IFCs in the SDS Programme and their packaging is a breach of Clause 10.17? The changes to the structure of the SDS Programme have never been agreed by **tie** and in fact have never been offered to **tie** for agreement.}

### **Example: trackslab and roads drawings and Design Assurance Statements**

As yet, some two years into the Contract, and despite numerous review meetings and exchanges in correspondence, the Infraco is still not in a position to issue an approved integrated set of construction drawings for the trackslab and roads. Nor can the Infraco provide the necessary Design Assurance Statements, or even give any assurance that the design has been completed to enable the Infraco to authorise construction at little or no risk.

{Do we really mean that the Infraco would authorise construction rather than tie?}

To accommodate the manner in which the Infraco has sought to manage this issue, such Design Assurance Statements would include input from all relevant designers, including SDS or Siemens, such assurance should include warranty from any sub-contracted design (for example BAM for track design) and a licence

from the Intellectual Property Owner for "Rheda City"(if part of the design solution) in favour of tie (in accordance with Clause 102.2.2 of the Infraco Contract). All should be confirmed by Infraco in an integrated consolidated solution, including a register of residual risks and how they are expected to be controlled. Clause 2.8.2 of Part C of Schedule Part 14 provides a detailed list of the information which is subject to review. This information has not been forthcoming.

Joanne Glover  
Solicitor

DLA Piper Scotland LLP

T +44 (0)131 345 5140  
F +44 (0)131 242 5562  
E joanne.glover@dlapiper.com

[www.dlapiper.com](http://www.dlapiper.com)

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