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**From:** Brian Cox [briancox@nildram.co.uk]  
**Sent:** 01 December 2008 17:09  
**To:** Kenneth.Hogg@scotland.gsi.gov.uk; gordon.mackenzie@edinburgh.gov.uk; David Mackay; Colin McLauchlan; Peter.Strachan@networkrail.co.uk  
**Cc:** joan.cradden@brodies.co.uk  
**Subject:** RE: DRAFT WG BRIEF FOR TA

Kenneth

My view exactly accords with yours.

In view of David's e-mail of Friday night and Gordon's suggestion that Willie, David and I should meet urgently, I am now waiting to hear the outcome of the discussion David said he would have today with Colin, to ascertain whether there is likely to be any purpose in meeting Willie prior to seeing Tom.

I will prepare (and circulate) as suggested a draft note of the specific reasons why a compromise agreement may need consideration, on the assumption that it remains a live issue.

Regards.

Brian

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**From:** Kenneth.Hogg@scotland.gsi.gov.uk [mailto:Kenneth.Hogg@scotland.gsi.gov.uk]  
**Sent:** 01 December 2008 16:18  
**To:** gordon.mackenzie@edinburgh.gov.uk; briancox@nildram.co.uk; david\_mackay@[REDACTED]; colin.mclauchlan@tie.ltd.uk; Peter.Strachan@networkrail.co.uk  
**Cc:** joan.cradden@brodies.co.uk  
**Subject:** Re: DRAFT WG BRIEF FOR TA

On David's comment about a compromise agreement, it seems to me that the key point is that a compromise agreement would be appropriate if the contractual obligations were not clear cut. My reading of Brodies advice is that this is not a clear cut case - hence the possibility of a compromise agreement has been recommended by Brodies as an appropriate way forward. If we had had different advice, ie that obligations were clear cut, then I would be firmly of the view that we should stick to only to those contractual obligations. If Brian's discussion with Tom, and discussions subsequently with Willie can get us back into that 'clear cut' territory then that would be preferable. But from the advice we have received I think that looks unlikely.

On the options which Colin has set out, I am much more attracted to reaching a settlement around salary than bonus. It seems to me that the legal debate is around who proposed what to whom in respect of termination dates, so therefore the debate should be around how much salary is due. If the answer to that is 6 months - eg option 3 - then so be it. I understand less the rationale for including bonus in the equation, except for that element of bonus which has already been earned fair and square. We discussed that element at the last Remco meeting. I am particularly uncomfortable with the idea of future bonus being part of the equation since, by definition, Willie will not be there to 'earn' it. And the fact that Willie's bonus arrangements were 'end-loaded' was a deliberate decision to encourage him to stay until the project had been successfully delivered. All parties, including Tom and Willie were clear about that. So the fact that for whatever reason Willie has left before project delivery must mean that he will bear a heavier financial penalty in terms of bonus earned than he would have done under a different bonus arrangement.

I agree on the need for a quick decision, and it is right that Brian should discuss with Tom.

Finally, I think we need to have on the record - and for Brian's use in discussion with Tom - the specific reasons why we consider the situation is complicated enough to require a compromise deal to be considered. I take David's point about Willie's privacy, but I don't think that need be compromised - given the other points which Brodies made.

Kenneth

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Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Gordon Mackenzie <gordon.mackenzie@edinburgh.gov.uk>  
To: Brian Cox <briancox@mildram.co.uk>; david\_mackay@[REDACTED] <david\_mackay@[REDACTED]>;  
Colin.McLauchlan@tie.ltd.uk <Colin.McLauchlan@tie.ltd.uk>; Hogg KJ (Kenneth); Peter.Strachan@networkrail.co.uk  
<Peter.Strachan@networkrail.co.uk>  
CC: Joan M Cradden (Brodiess Solicitors) <joan.cradden@brodiess.co.uk>  
Sent: Mon Dec 01 09:14:02 2008  
Subject: RE: DRAFT WG BRIEF FOR TA

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Brian,

I was interested in Dave's comment, in respect of a compromise agreement, that 'Willie has assured me that this is neither a required or in fact preferred route and I consider that Tom thinks likewise.'

From that comment (and a previous remark from Colin to the effect that Willie was disappointed with the delay) I would suggest that Dave & yourself get in a room with Willie at the earliest possible time and have the discussion with him. That changes the order in which we were proceeding but we (the Rem Com) have sufficient legal advice to know what the parameters are and as long as any proposal which emerges from that discussion is within those parameters then I have no problem in you taking that to Tom.

Regards

Gordon

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From: Brian Cox [mailto:briancox@[REDACTED]]  
Sent: 01 December 2008 08:18  
To: david\_mackay@[REDACTED]; Colin.McLauchlan@tie.ltd.uk; Kenneth.Hogg@scotland.gsi.gov.uk;  
Peter.Strachan@networkrail.co.uk; Gordon Mackenzie  
Cc: 'Joan M Cradden (Brodiess Solicitors)'  
Subject: RE: DRAFT WG BRIEF FOR TA

David

It has already been acknowledged by the Remuneration Committee and advised by me to Tom that any proposal will have to be discussed with and approved by him.

Once comments have been received from Gordon, Peter and Kenneth (along of course with anything you may wish to say) and we have reached an agreed (or preferred) position, I will make an arrangement to see Tom as soon as possible.

I shall be out from about 9 until 1 today but hope to be able to progress things this afternoon, as it is already nearly a fortnight

since the Remuneration Committee met.

Regards.

Brian

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From: david\_mackay@[redacted] [mailto:david\_mackay@[redacted]]  
Sent: 28 November 2008 20:00  
To: Colin.McLauchlan@tie.ltd.uk; briancox@[redacted]; Kenneth.Hogg@scotland.gsi.gov.uk;  
Peter.Strachan@networkrail.co.uk; 'Gordon.f.Mackenzie@edinburgh.gov.uk'  
Cc: Joan M Cradden (Brodies Solicitors)  
Subject: Re: DRAFT WG BRIEF FOR TA

Colin,

Alas for some reason I can't open some of these files from home.

Suggest therefore we talk on Monday. Whatever the decision this is potential dynamite for Tom A and CEC. I think 'tis much better for Brian to visit Tom and on a one to one basis reach the best possible solution for all concerned.

With enormous respect to Brodies and indeed you there is also "life hereafter" to consider across the board and indeed Willie's privacy and health. Beware therefore of the perceived need for a compromise agreement. Willie has assured me that this is neither a required or in fact preferred route and I consider that Tom thinks likewise.

See you Monday but a final word of extreme caution, if you get this one wrong, then have no doubts that the forward impact on other "contracts" will be hugely significant.

As ever very happy to try to help.

David

Meantime what have you done about Lothian and TE1?

David

-----Original Message-----

From: Colin.McLauchlan@tie.ltd.uk  
Date: 28/11/2008 18:02  
To: "briancox@[redacted]"<briancox@[redacted]>,  
"Kenneth.Hogg@scotland.gsi.gov.uk"<Kenneth.Hogg@scotland.gsi.gov.uk>,  
"Peter.Strachan@networkrail.co.uk"<Peter.Strachan@networkrail.co.uk>,  
"Gordon.f.Mackenzie@edinburgh.gov.uk"<Gordon.f.Mackenzie@edinburgh.gov.uk>  
Cc: "Joan M Cradden (Brodies Solicitors)"<joan.cradden@brodies.co.uk>, "David Mackay"<david\_mackay@[redacted]>  
Subj: DRAFT WG BRIEF FOR TA

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All

I have attached the draft brief for TA with advice from Brodies and the two letters.

My view as HR director is that the identified options are rated:

1. Deal Breaker - legal advice would say to WG not enough
2. Possible Deal - low side and legal advice would argue for more and then its whats the middle gound?
3. Possible Deal - reasonable but may look for sweetener to agree
4. Deal Maker – difficult for WG to come back for more

If we are committed to being reasonable and fair and fulfilling contractual obligations and getting a swift agreement then my view is only options 3 or 4 are appropriate.

From a pragmatic HR perspective and my experience and based on getting a deal I would suggest option 4 (based on option 2 plus 50% banked bonus) giving settlement of £96,294.40. Figure is just under 10% greater than option 3, is based on real figures and my view would very likely get agreement.

Thoughts? When agreed to be sent to TA

Thanks

Colin

Colin J McLauchlan

HR and Corporate Affairs Director

tie ltd

City Point

65 Haymarket Terrace

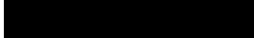
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For more information on Transport Edinburgh go to: -[www.transport-edinburgh.org.uk](http://www.transport-edinburgh.org.uk) <<http://www.transport-edinburgh.org.uk/>>

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