Edinburgh Tram Inquiry Office Use Only
Witness Name: Jonathan More
Dated: *[DATE OF SIGNING]* 27 JUL 16

THE EDINBURGH TRAM INQUIRY

Witness Statement of Jonathan More

Statement Taken by Drew Fox on 2 March 2016.

My full name is Jonathan More. My contact details are known to the Inquiry.

GENERAL

1. I graduated from Aberdeen University in 1996 with an Honours degree in Law, with Diploma of Legal Practice. I undertook my legal traineeship in Galashiels from August 1996 with a small general practice firm called Pike & Chapman. Within a couple of years I moved to Edinburgh, initially working for Steedman Ramage. I practised primarily in residential and commercial property dispute resolution. Approximately three years into my career I decided to specialise in construction. I moved to firms to get more experience in contentious construction work until I joined Masons, which later became Pinsent Masons, working 100% of the time on construction matters.

2. I then joined Lindsays as an associate with the potential that this became a move into partnership. However I soon began to feel that I wanted a change from the Scottish private practice market. I had enjoyed a couple of secondments in-house, so I looked for an in-house role. I then found an opportunity with TIE, working on the Edinburgh Airport Rail Link (EARL) project. I was offered that job in about March 2007.

3. Before I took it up, the newly-elected SNP government cancelled EARL. Shortly before I was due to start, I received an email saying that TIE no longer required

me. I asked Lindsays for my job back, and they agreed. Then, that same day, I got a call from Lesley McCourt who was the Commercial Manager at TIE who had interviewed me saying words to the effect that *"you shouldn't have got that email. The job that you applied for isn't available anymore but I've got authority to sign you up to the tram project"*. It was all very awkward, but I'd made my mind up to move in house and took the job with TIE. It was no longer a permanent role, but a contracted one and was for six months initially. It was later extended by three months to take me to the end of the projected procurement phase. I was with TIE from June 2007 until the end of March 2008.

4. I am asked what I think TIE were looking for in the role. I think it was really the full "cradle to grave" kind of service that you might expect from an in house lawyer. There was, clearly, going to be outsourcing of legal work. There was an element of managing and, at the same time, dealing with whatever we could in-house. I didn't really know what to expect from the tram side of things. My only exposure had been to EARL and discussing that at my interview. From the EARL side of things it was going to be starting the contracts from scratch. Lesley McCourt recognised that most of my experience was dispute related, but that there were a lot of experienced contract/commercial people within TIE and I would support their work. I was happy with this as I knew if I wanted a career as an in house construction lawyer I would need more experience of non-contentious construction work. I thought that the role would allow me to expand my experience. From the tram side of things, I didn't really know what exactly would be expected of me. I presumed it would be the same kind of thing as had been expected for EARL. I didn't know how far along the tram project was at the time, although was aware that it was further on than EARL.

5. I am asked whether I had the impression that TIE were looking for someone before I got moved across. No, I don't know. I am asked whether I got the impression that TIE were trying to build up their in-house team to take on more of the legal work. No. I never got the impression they were looking to build a team.

6. At the time, most of my experience had been in building related work (civil construction work). I had no experience in transport. Back then you just

specialised in 'construction'. There wasn't a lot of sub-division within that. People didn't specialise in infrastructure, major projects etc. Nowadays there is a lot more specialism within construction. Even somewhere like Masons you were a just a 'construction lawyer'. You didn't really focus in on an area. Now there are lots of people that would say they were infrastructure lawyers. To be honest, in Scotland at the time, there wasn't a huge number of large scale infrastructure projects. All I knew was that there was a construction element to the role and I wanted to work in-house.

7. I am asked whether I felt comfortable that my dispute experience would be sufficient to enable me to draft contracts. I felt comfortable that I was bright enough to pick it up. I had started to do a little bit of that type of work at Lindsays. I did that because I wanted to become the sort of person who could take on both types of construction work. In any event, the interview convinced me that there would be enough support. I was convinced that I wasn't going to be drafting a contract from scratch myself. There was a safety net. A support network was in place. I was going to be part of a team.

8. I am asked whether my role was one which was more akin to being an assistant. Kind of, yes. I did the 'donkey' work. I would have been in the meeting that determined what needed to be done, but there would always be someone like Lesley McCourt, Geoff Gilbert or Bob Dawson there. They were experienced people. They were the ones who would say *"right, can you do this chunk of work? What we need is this, this and this."*

9. I am asked who I generally worked with at TIE. The immediate people I worked with were the people I have already mentioned. Lesley McCourt was a commercial manager. Geoff Gilbert was equivalent of the Commercial Director who led the negotiations. Bob Dawson was a commercial guy. Mark Hamill was the risk manager. Willie Gallagher and Matthew Crosse above who were the executives. I didn't really have anything to do with them.

10. I am asked whether I was the only lawyer in the team. Around about the time that I arrived, Andrew Fitchie of DLA was taken on in a secondee role. He was a

partner at DLA but was essentially seconded onto the job. He was there not long after I started, if not when I started. He was the legal guy. I had the title 'Legal and Commercial Manager' but I was an assistant really.

11. Any work that I did was always on request from others, and was always reviewed, either by the TIE team or Andrew Fitchie or sometimes also by Philip Hecht (who was an associate at DLA). The decision makers, as regards work or things to be put out to the bidders, were a mixture of Geoff and Andrew.

12. I am asked how I saw DLA in the equation as a whole. As far as I was really concerned, Andrew was almost working as an in-house lawyer. DLA were the lead legal advisors, certainly above me in the hierarchy. I was aware of other people at DLA who had an involvement. There was Philip Hecht who became increasingly more involved. He wasn't seconded out though. Andrew Fitchie was the lead lawyer. He was the decision maker in respect of legal issues that arose or advice that was required.

13. I am asked whether I got the impression that Andrew Fitchie was also representing CEC. I don't know the answer to that. From an impression perspective, I recall that CEC had an overview role. The people who I worked with at TIE viewed their role as more of a reporting role. The roles were quite distinct. CEC, to start with, weren't really heavily involved. Later on they became more heavily involved. However, I was at a junior level so I can't really comment on the full extent of the roles. I presume, as part of the reporting that went on, Andrew, as the lead lawyer, would be making certain representations to CEC that may have looked like advice but he just really had a reporting role. The impression I got was that there was the recognition that CEC was putting money towards the project and had an overview role and that the people in TIE were the decision makers. It was quite a distinct thing. That was my impression.

14. It was relatively easy to work with people within TIE. It was a small organisation. In hindsight I'm a bit surprised that there wasn't more proximity between our team and the executive guys. I never really even had a chat with Willie Gallagher or Matthew Crosse (apart from when I first joined). That said in a place like

Transport for London (TfL), where I have worked since, I don't expect to be having chats with Mike Brown or whoever is at the top of the heap. However, in an environment where you're essentially on the same floor, from my perspective, there was a distance there. I thought it was okay though.

15. You had the commercial team who were doing the negotiations. Then you had people like Alistair Richards who was on the operational side. He had quite a heavy involvement with the negotiations because he needed to make sure that, at handover, he got what he needed to be able to operate.

16. There were a couple of people who were a bit more abrasive but that's a construction thing. You get guys who are just a bit more bullish in a construction environment. If you're on a project you are guaranteed 10 or 15% of the people you meet to be 'straight down the middle no bulls**t' guys. Strategically, sometimes, they go off and try to make the point they need to make to get a deal. It wasn't something that was heavily prevalent. Looking back at it now, my view is that that type of thing was just a construction thing.

17. It seemed to me that we worked pretty well as a team. The only thing I ever thought was that there wasn't a lot of employees. Most people were consultants/contractors. I considered myself an employee, even though I was on a contract. I wasn't on a daily rate. I was on an annual salary. However, at the time, there was nothing that made me think *"this is pretty dysfunctional"*. There was nothing like that. It seemed to work as well as it needed to.

18. I am asked whether Matthew Crosse was 'hands on'. I really don't know about this as I was had no exposure to Matthew. I wasn't involved in any conversations or negotiations that they might have had with the bidders. They weren't in our negotiation meetings or anything like that. The negotiation meetings were where I spent most of my time. I probably spent three days a week, probably eight hours a day, in negotiations.

19. I am asked who was involved in our part of the negotiations. It was Andrew Fitchie, Geoff Gilbert, Bob Dawson, Lesley McCourt and myself. At times Philip

Hecht was also involved. This would be the negotiations on the detail, what I would call 'page turning' meetings. Matthew Crosse and Willie Gallagher would be above that and separate. I didn't really know what their roles were. To be fair, that probably says more about me, and my level within the company, as much as anything else. I hadn't worked in that kind of structure before.

20. I am referred to the email sent to me, and others, by Andrew Fitchie dated 10 July 2007 and found at **TIE00898726**. It is suggested that there's some evidence DLA were from time to time out of the loop on negotiations on INFRACO. I am asked to comment on this suggestion. Looking at this email I'm about a month in at this stage. I don't really know what happened before I joined. If you asked me *"were DLA in every negotiation meeting I sat through?"* I think the answer would be *"no they weren't"*. You have to remember though that this was also around about the time that Andrew Fitchie changed from being advisor to being seconded in. Maybe this was as a result of the fact that things had maybe been progressed and he didn't know about them. I think it would be fair to say that some things happened where DLA weren't involved. Having said that, the contracts that we had were revised on a very iterative basis. At that stage in negotiations if something had been revised in the contract it was still possible for DLA to review it and advise that we could not accept such a revision. Nothing was "final and binding" at this point.

21. When I arrived we were down to two preferred bidders in the infrastructure contract (and the Tram Supply contract for that matter). The contract negotiations had already started. I didn't arrive at a clean starting point. I don't know what happened before I arrived from a negotiating point of view. All I know is, around about the time I arrived, Andrew Fitchie was seconded in to the company. I am asked whether the reason DLA were not involved at times was because Andrew Fitchie was there. Yes although Andrew Fitchie was a partner of DLA and remained a partner of DLA.

22. As far as I was aware, there was a procurement programme and there was a date by which a decision had to be made. I don't recall whether that date was extended. The procurement may well have gone on for a couple of weeks after I

left. I don't know because I'd left by that stage. I didn't keep in touch with people really about the project. I was down in London and had enough to do with changing jobs. A lot of people that I worked with left at the end of the procurement in any event.

23. I would say that there was nothing I was aware of that DLA did or didn't do when I was there that delayed anything. Not from what I picked up. I never got the impression that they weren't accessible or at the end of a phone.

24. I am looking at the persons copied in to the email from Andrew Fitchie dated 10 July 2007. I don't know who Shannon Rousson and Sharon Fitzgerald were. I knew who Philip Hecht was. He was involved at this stage. He was a really approachable and accessible guy. I probably was just passing information on rather than taking a massively inquisitive role as regards to progress. That was not my role. I wasn't a real decision maker who had influence.

25. It would be rare that I would personally ask DLA for advice. That would be undertaken as part of a more group approach. Most of what DLA did was evidenced through the negotiations rather than notes of advice coming out or anything like that.

26. I am referred to an email from Andrew Fitchie to Bob Dawson and Lorna Tweedie dated 14 December 2007 and found at **CEC01542928**. I am copied into the email chain. It is suggested that this appears to show that DLA were not involved in negotiating the Tram Supply Agreement (TSA) with CAF between approximately July and December 2007. I am asked why DLA were not involved over that period. I genuinely don't know. I would agree with the comment that DLA were not as involved in the negotiation of the TSA. These were smaller negotiation sessions. Nobody said to me DLA aren't involved in this because of *'x'*. I am asked whether Andrew Fitchie attended those negotiations. Primarily, it was a smaller team that did those. I don't know if the work with the INFRACO side of things meant that the teams were split. The team that worked on the TSA was principally made up of Bob Dawson, Alastair Richards, myself and occasionally Geoff Gilbert. The TSA was really the focus of the operational side. Alastair

Richards was the key person involved with the TSA. He wasn't a lawyer but, from my experience of working with him, he appeared to have a good knowledge of contracts. That was what was needed. I don't know why DLA weren't as heavily involved in the TSA negotiations.

27. I am referred to the document entitled 'TRAMCO Agreements – Main Alignment Issues' dated 7 December 2007 and found at **CEC01429918**. It is suggested that this may be evidence that negotiations over and the re-drafting of the TSA (including alignment issues) caused delays in the project. I don't know whether that was the case. I am asked whether I was involved in the re-drafting of the TSA. I was involved to the limited extent that I've already mentioned. Sometimes I was asked just to tick a section where there was an agreement on the principle of a change of a clause. The drafting wouldn't be done during the session. I was not the main drafter or re-drafter of the TSA. I was just part of the team. What mostly happened was that changes were agreed in the meeting itself. It was very rare that a principle was taken away for drafting outside of the meeting. It was much better to agree the words to be changed when everyone was there. What we'd do is annotate the changes and then I would do some of the work transferring the annotations into the mark up. I'm not able to comment on any overall delay in the project as I have no knowledge of this or the reasons.

CONTRACTS

28. I am referred to the report to the Legal Evaluation Team dated 21 October 2007 and found at **CEC01546926**. The report recommended Wallace for the preferred bidder stage. It states that *"tie's task of minimising any tendency for revisiting closed contractual points or for poorly justified insistence on readjustment at PB stage should not be underestimated".* I am asked what did that mean and why we came to that conclusion. I'm not even sure I knew who Wallace and Bruce were at the time. These were code names. From memory, one of the bidders kept on re-opening negotiations on the contract side of things. We'd agree something and they'd come back the following week and say *"oh no, we can't actually agree that."* I think that's what that's aimed at. A recommendation was being made here on the basis of the contract negotiations. Part of the thinking was that the contracts

weren't signed yet. I think what that passage is saying is that Wallace have been the easier more reliable people to negotiate with. They appear the least likely to delay or change things. I think that's what this means but I did not draft those words so I cannot be certain.

29. I am asked whether I considered that TIE was successful in meeting the Legal Evaluation Team's recommendation and if not, what else could have been done to achieve it. I don't know the answer to this.

30. I am asked who was responsible for the preparation and maintenance of the INFRACO risk matrix. I am referred to the email from me to Lesley McCourt dated 10 September 2007 and found at **TIE00898665**. It is suggested that this email suggests DLA were instructed to undertake it, but the 'final' version, dated 12 May 2008 was a joint DLA/TIE production. I didn't know at the time who was responsible for the maintenance of the INFRACO risk matrix. In this email, I think I'd been asked to do something and send it to them for approval. It doesn't appear as if it been properly explained to me what was required. It's clear from this email that I didn't know what DLA were to do.

31. I am referred to document entitled Contractual Allocation of Risks in the Draft INFRACO Contract dated 12 May 2008 and found at **CEC01347795**. I am asked about the logos at the top of the document and whether it showed that DLA was responsible for the preparation and maintenance of the INFRACO risk matrix. I think that these things were probably done for presentational purposes. I'm not sure though. I do remember going through this with Mark Hamill who was the risk manager in TIE. I probably went through this with Lesley McCourt and Bob Dawson as well. From what I recall, this was something that was predominantly done by three or four of us in the TIE team. I am asked whether the genesis of these documents might be DLA. It might be. It's well put together and the structure of document is clear. However, I don't think DLA were leading on it. My recollection was, ultimately, that it was looked over by DLA in the end.

32. I am asked to comment on the statement found in Andrew Fitchie's email to Susan Clark dated 14 September 2007 and found at **CEC01712931** which states

"retrofit the risk matrices from the contracts as now drafted/amended as opposed to comparing the contracts to a TIE generated". I don't know what that means to be honest as I did not draft it. Any comment would be supposition and opinion rather than anything else.

33. I am asked what I considered to be the major issues which had to be addressed in finalising the terms of the INFRACO contract. I was aware that there were continuing discussions in respect of price. I wasn't involved in those discussions. If you ask me what was holding up the negotiations I would say that there was nothing that I was aware of.

34. I am asked to comment on my experience of contracts since working for TIE. What you had here was a fairly bespoke contract. I believe it had been based on was based on the contracts used for the cancelled Leeds tram project. As I understand it, the Leeds tram project got to a certain point and then got pulled for lack of a funding. I think DLA had worked on that project. I do not know whether Andrew Fitchie was involved. I understand that the contract that was used there was brought up to be used as the template for the Edinburgh tram project. They were quite a way into that process by the time that I joined.

35. After TIE I negotiated contracts in subsequent jobs. I remember approaching negotiations on the basis that the contracts were an important part of the tender process. The people who I worked with would say *"don't worry about it. As long as the x, y and z risks are covered off then it should all come down to a negotiation of price and risk."* From my subsequent experience, the contractual negotiations in the Edinburgh tram project were more of an important decision influencer than in the subsequent projects I have been involved in. However, if you asked me now what this was contract like, I couldn't tell you. I never really sat down and read the totality of the final contract, I also did not have sight of the Schedules to the agreement such as the commercial particulars, the Employers Requirements etc.

36. It's only when there is a dispute that you find out how good a contract is. If you are asking me whether I think this was a good contract or not, I couldn't possibly have an opinion on that. This is because I never saw what the final contract was.

37. I am asked to what extent incomplete designs under the SDS contract and issues with utilities under MUDFA were matters which impacted on the finalisation of the INFRACO contract. I don't think I was involved in those types of meetings. I don't recall dealing with such issues.

38. I am referred to the document entitled Legal Evaluation of ITN Tender Submissions for the Procurement of the INFRACO Contract dated 21 October 2007 and found at **CEC01549356**. I am asked whether I can explain what is meant by the comment that *"Wallace ... has stipulated a "status quo" letter from TIE on SDS Deliverables at contract award".* I presume it's got something to do with having the contracts novated to the contractor. The contractor potentially would be taking the risk of work that had been done / not done prior to the contract moving over to them. I'd imagine what they were wanting was a letter stating *"where they are now at contract award".* As regards what this meant to me at the time, I don't recall being in a meeting where they said *"we need this before we're going to enter into it".*

39. I am referred to the email exchange between Phillip Hecht and Geoff Gilbert dated about 1 November 2007 and found at **CEC01549151**. BBS raised two issues of possible significance. It is stated that *"BBS require to be able to price for risk on any tie change. The current mechanism allows for payment to be made based on the valuation of the change ... however on top of this, they also require to be able to take account for any risk that is inherent from implementing the change."* It is also stated that they further wanted the TIE change procedure, rather than the INFRACO change procedure, to be followed *"where consents are unavailable".* Both are identified as having cost implications for TIE and were being resisted. It is suggested that this would suggest that the risks arising from incomplete design work were recognised. All I knew was that a major part of procurement strategy was to have all the contracts novated to the main contractor. Obviously, from the contractor's perspective, that's additional risk. The impression I got was that a

decision was taken at some stage that the incomplete designs would be novated to the contractor.

40. I am asked whether I was involved in the drafting and revisal of the Employer's Requirements in INFRACO. No I wasn't. I wouldn't be able to comment on what difficulties arose, if any, in making these consistent with the design under the SDS contract. I don't know when the difficulties began to arise.

41. I am asked whether I knew who was dealing with the Employer's Requirements on the Edinburgh tram project. I don't know. It would likely have been a combination of Commercial Managers and the lead engineers. In my opinion, the schedules should be reviewed by legal to some extent. This is because there will be things in the Employer's Requirements that will change the risk profile of the contract. I don't know what legal review there was of the Employer's Requirements on this project.

42. I am asked what role, if any, I had in ensuring that the SDS contract was capable of smooth novation to the INFRACO contractor. I wouldn't have been asked to be involved with that. This is because you're looking at two separate contracts. It's quite a technical thing to do. Novations, and things like that, can be difficult things that somebody with my experience would not take the lead on. I might have been in attendance at some of the meetings, but I didn't have a role. It's not the sort of thing that would have been given to me. I am asked whether I recall who had the responsibility for this area. I don't know the answer to this.

43. I am referred to an email exchange between Phillip Hecht and Geoff Gilbert dated 1 November 2007 and found at **CEC01549151**. I am copied into the email exchanges. The email exchange highlights that BBS had two issues of possible significance. *"BBS require to be able to price for risk on any tie change. The current mechanism allows for payment to be made based on the valuation of the change ... however on top of this, they also require to be able to take account for any risk that is inherent from implementing the change."* They also wanted the TIE change procedure, rather than the INFRACO change procedure, to be

followed *"where consents are unavailable"*. Both were identified as having cost implications for TIE and were being resisted. It is suggested that this shows that the risks arising from incomplete design work were recognised. I am asked to comment on whether I agree with this suggestion. Looking at the email I can see that there's no specific reference to design. However, it seems to me that, if your design is incomplete and the responsibility of part of the design has been undertaken before the contractor signs the contract, there would be a risk to the contractor of there being changes required to what they thought they were going to do. It seems to me, from this, that DLA were aware that that was an issue. If that is the suggestion then I would agree with that. Was it one that was discussed with me in a lot of detail? No. So it does seem as if that was recognised, yes.

44. I am asked whether I can explain what Geoff Gilbert is referring to in his response on these issues. *"Consents he needs to review. PCG. A parent company guarantee."* That's a commercial issue. It's about what corporate guarantee they were going to give. *"Consortium member insolvency"*? I presume that's about what happens in the event that one of the members of joint venture becoming insolvent. Again, that's a commercial thing. *"On the issue of risk, I think that is covered in the current rules"*? I don't know what that means.

45. I'm asked whether I was aware of a risk that the non-completion of the design contract would lead to increased costs for TIE under INFRACO through a need to pay for variations. No I wasn't aware.

46. I am asked to what extent the risk was appreciated by the contract drafting team and by TIE generally. DLA were really leading on that element. Whilst I might have had things copied in to me, I wasn't involved in the drafting of the clauses dealing with risk. I don't recall what the solution was.

47. I am asked whether there was a time pressure to conclude the contracts. There was a programme and things seemed to take longer than expected so I presume there was pressure. I personally wasn't put under any particular pressure. I wasn't working nights or weekends or anything like that. I think DLA were working pretty hard. Once it got to the nitty-gritty stage, and people were trying to push

things over the line, I think it was DLA that really took control. I didn't actually know of a deadline. Nobody said to me that, *"'x' has to be done by 1 January and you need to work over the weekend to make sure you do that"*.

48. I'm asked whether in hindsight there weren't tight schedules or whether my lack of awareness was indicative more of the level I was at. Indicative of the level I was at, I would say. I am absolutely certain that there was pressure behind the scenes. It's just that I wasn't involved in the sharp end of things. I am asked whether a desire to meet the time pressure trumped any concerns about risk for TIE arising from the incomplete nature of the design. Not as far as I know. All I know was that the meetings that I sat through, where we went through the contracts, was pretty fine toothcomb stuff. There was a lot of time being spent on these contracts. It didn't strike me that corners were being cut due to time constraints.

49. I am asked whether it is correct that version 31 of the SDS programme was incorporated into INFRACO, rather than version 37; and is it correct that version 37 was the programme current at the date INFRACO was signed. I don't know. I wasn't involved with this at all.

50. I am asked to what extent, if at all, I was involved in the negotiations leading to the agreement reached at Wiesbaden in December 2007, including preparation for the visit to Wiesbaden, or in documenting the agreement, or in preparing for the Wiesbaden meeting. I wasn't aware of a Wiesbaden meeting. I wasn't aware that there was a negotiating meeting in Wiesbaden. I am asked, in terms of the general atmosphere in TIE as a whole, whether there was a feeling that we were all working towards a meeting. Not that I was aware of. I don't recall, at that stage, calls coming back from Germany where a negotiation is going on or anything like that. It wouldn't be unusual for me not to know about the big issues. The legal consequences of issues such as that were being dealt with by DLA.

51. I am asked whether I have any observations on the contractual structure used for the project, and in particular, the use of bespoke contracts being novated to INFRACO. I was aware that the INFRACO contract was bespoke. It was not the

type of contract that I had worked with during my time as a solicitor dealing with dispute matters. My working knowledge of that contract was restricted to what I learned from sitting through meetings. I can comment generally and say that novation can be tricky. It has to be done properly and carefully otherwise there are risk gaps. But in theory the strategy allowed the client to pass more risk on to the Contractor.

52. I am asked to comment, using my experience since leaving TIE, on whether there is merit in having a design and build contract rather than separating the two out. Yes there is because you pass the design risks onto the contractor. The downside, however, it that you also lose some control of the design. An example of where the contracts were separated out is Crossrail. I think Crossrail took the view that when you're digging big tunnels underneath the heart of the City of London it's riskier to have the contractor with all the liability for design than being responsible for large chunks of the design yourself.

53. The choice of contract type all depends on how much risk versus control the client wants. Sometimes it's better for the client to retain an element of control and keep that risk. There is not one answer that can be applied to every project.

DESIGN PROBLEMS

54. I am referred to the draft document entitled Tie Claim to SDS dated August 2007 and found at **CEC00103624**. It is suggested that this is evidence that TIE at least contemplated making a claim against Parsons Brinkerhoff under the System Design Services contract. I am asked whether I was aware of this. I wasn't aware of this happening.

55. I am referred to the email from me to Lesley McCourt dated 11 July 2007 and found at **TIE00007135**. I advised TIE about SDS's obligations to provide documents to substantiate their work. I am asked why this was an issue. I would occasionally be asked to do some research on a discrete point and report back. Here Lesley McCourt had probably been working on negotiations and wanted a legal point checked. She'd probably asked me to undertake that and then I'd fed

what I'd discovered back to her. I think that's what happened here. I notice I state *"You asked me to have a look at SDS requirements to provide back-up docs."* This is quite a discrete point. It's the sort of thing you could just look at the contract and give an answer to. I don't recall being involved in any more detail than that. I note I state *"Given I have no real knowledge of the SDS claim".* That would back this up.

56. I am referred to the email from me to Geoff Gilbert dated 25 July 2007 and found at **TIE00898458** and its attachment found at **TIE00898459**. I am asked whether I had involvement with advising on claims. It seems to me, looking at these documents, that Lesley that was leading this. I wasn't aware of how big an issue this was (the claim against PB). During the nine months I was there I wasn't aware of any disputes. I think I might have said *"with my experience, if there's any dispute stuff that you want me involved in, you know, make sure that you do"* but I wasn't aware of any disputes. I am asked whether there was an in-house dispute lawyer. No there wasn't.

GOVERNANCE / ADVICE

57. I am referred to a paper with my name on it, dated 24 July 2007 and found at **TIE00898701**. I state *"a request by CEC that they and their legal advisors be afforded the opportunity to have a supervisory review brief in respect of the contract drafts, and mark ups, as negotiations progress to financial close"*, to *"enable CEC to be satisfied that the principles and intent of the Procurement Strategy and Risk Allocation set out in the DFBC have been implemented in the negotiated contracts"*. I am asked why I prepared the paper. You'll find that my name appears at the end of a paper. I do recall that some things were prepared for discussions with CEC and, presentationally, TIE wanted to make sure they had been at least reviewed by legal. They did this to make the paper look like a legal document rather than a commercial document. I'm pretty certain that, although I will have reviewed the narrative that it will have just been cut and pasted in. I arrived after the commercial and procurement strategy was fixed. If I did draft this, I'm pretty certain that I will have got these words from other sources. This may have been a case of me being asked *"Can you do a document that explains*

this and that / the proposals we're going to make". From recollection, I think there was to be some sort of report or presentation to CEC. I think that this paper was part of that. I am asked whether I recall who asked me to prepare the paper. I presume it was Geoff Gilbert but it might have been Lesley McCourt. I am asked what happened as a consequence of the paper. I don't recall attending any presentation meeting. I didn't really have any dealings with CEC. CEC never picked up the phone to me to discuss it. I don't recall CEC saying to me *"oh, we've seen this report you have written. Can you explain a bit more?"* I am asked to what extent, if at all, CEC in fact carried out a review of the type envisaged by my paper. I think they did. However, that's kind of anecdotal. It just seemed to me that at a certain point CEC started to make more of the decisions and influence things a bit more. That, however, is just an impression I wasn't dealing with CEC directly.

58. I am referred to an email forwarded to me by Andrew Fitchie dated 12 March 2008 and found at **CEC01541242**. Attached is a draft letter intended to update CEC on the evolution of the contract documents **CEC01541243**. Graeme Bissett comments within the email chain on the draft letter. Subsequent changes are apparent to the letter by comparing the draft with the signed version sent on 18 March 2008, **CEC01347797**. I can see that the email and draft was forwarded by Andrew to me but I wasn't in the original chain. The date of the email chain is two weeks before I'm due to leave. I can see that Andrew hasn't asked me to do anything. The letter has just been forwarded to me. I don't remember being involved in the drafting or the providing comment on the letter. I don't know why Andrew would just forward it to me and nobody else. It's odd that he forwarded it to me but didn't ask me to do anything. I am asked whether I was ever asked to review letters by Andrew Fitchie. Not that I recall. It wouldn't be me that would approve letters. It would be somebody like Geoff Gilbert. In fact, this letter might be the sort of letter that needs to be approved by somebody higher than Geoff.

59. I am asked, generally, whether I reviewed things that got sent to CEC. I wasn't at that level. I might, if I was copied in on an email, read things but I was never the sole reviewer of drafts. I was not the sort of person that would make decisions on

behalf of TIE. Other people clearly made the decisions. If anyone within TIE wanted me to check a particular legal nuance then they'd ask me to do it but I certainly would have remembered being involved in something like this. I have no recollection of being involved in drafting this letter.

60. I am asked to comment on the fact that the letter is on DLA Piper letter-headed paper. This is presentationally a DLA letter. Clearly before it was copied to me Graeme Bissett had seen it. I recognise the name Graeme Bissett, but I wouldn't be able to tell you what he did, who he was or what he looked like. It's a little bit odd, in my opinion, that it got forwarded just to me without any narrative.

OTHER

61. Once the contracts had been negotiated, many people on the procurement side of tie left the project. This happens in every project. I don't think it's necessarily best practice but it's not unusual. It's maybe an industry thing. The people that construct and put the contracts together are procurement-specific people and they leave once the contract is signed. They're the people that know the ins and outs of the whole contract. Then, when people start doing work under the contract, the people that put the contract together are not on the project any more. I just find that odd. I think it was a bit more stark at TIE because it was almost 80 per cent of the people left. It's quite common in projects that a chunk of people leave at the end of the procurement stage. Sometimes they don't though. They didn't on Crossrail. On Crossrail they retained the legal director and the lawyer that were involved in the procurement of all those works. If issues came up as regards *"well, what does this mean?"* they were there to explain what was intended. I don't think TIE had that point of reference. I just think you should always have some continuity. That said Andrew Fitchie could well have had this role after the contracts were signed. I just don't know.

62. I am asked whether I think there was a difficulty in attracting the right guys to the Edinburgh tram project. No. I've met Geoff since I've been back down here. He's back at TfL. There are four or five commercial directors responsible for various areas of TfL's rail improvement works and he's one of them. He's experienced,

and obviously gets jobs done otherwise he wouldn't be where he is. Bob Dawson was a senior guy. He has now got into a partnership down here. Mark Hamill's out for Abu Dhabi Airport Authority. I can't comment though on the quality of the decision making at the top, because I didn't know anything about it.

63. It seems to me that Andrew Fitchie and DLA were on the ball with what needed to be done and what didn't need to be done. From my perspective, I don't think there was a quality issue with the people that I worked with on a day-to-day basis.

64. I am asked who would have been the person at TIE dealing with the employer's requirements. I would expect Geoff Gilbert to be involved in this to some extent. He was a quasi-commercial director. I don't know if he's an engineer or a quantity surveyor but he'd have more technical knowledge of a lot of the things that we were involved in. In my view generally though experienced lawyers should review the Employer's Requirements. I wasn't involved with the drafting, reviewing or construction of the schedules or Employer's Requirements at TIE.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding eighteen pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature..... [redacted] .....

Date of signing.....27 July 2016.....